Meltem Deniz Güner-Özbek *Editor*

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

An Appraisal of the "Rotterdam Rules"

Springer

Meltem Deniz Güner-Özbek
Editor

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

An Appraisal of the "Rotterdam Rules"

KOÇ UNIVERSITY
LAW SCHOOL
DR.NÜSRET - SEMAHAT ARSEL
INTERNATIONAL BUSINESS
LAW IMPLEMENTATION AND
RESEARCH CENTER

Springer

Editor
Dr. Meltem Deniz Güner-Özbek
Koç University, School of Law
Rumeli Feneri Yolu
34450 Sanyer-Istanbul, Turkey
dguner@ku.edu.tr

Koç University Faculty of Law Dr. Nüsret-Semahat Arsel International Business Law Implementation and Research Center

ISBN 978-3-642-19649-2 e-ISBN 978-3-642-19650-8
DOI 10.1007/978-3-642-19650-8
Springer Heidelberg Dordrecht London New York

Library of Congress Control Number: 2011930789

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Foreword

At the beginning of 2010, the Koç University Law School's Dr. Nüsret – Semahat Arsel International Business Law Implementation and Research Center decided to organize an international conference in order to thoroughly discuss the "*UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*", also known as the "*Rotterdam Rules*".

On 11 December 2008, the United Nations General Assembly adopted the Rotterdam Rules and authorized a signing ceremony for the Convention, which took place in Rotterdam on 23 September 2009. The intention in adopting the Rotterdam Rules was to replace the outdated Hague / Hague-Visby Rules, which were considered inadequate for fulfilling the needs of modern trade, and the Hamburg Rules, which have proved unpopular with maritime nations. Significantly, the Rotterdam Rules embody contemporary and uniform regulations for modern door-to-door container shipping and include innovations that the current international shipping regime lack. However it should also be acknowledged that the Convention has been subject to criticism with regard to certain issues.

In this regard, the aforementioned international conference was hosted by the Dr. Nüsret – Semahat Arsel International Business Law Implementation and Research Center on 6–7 May 2010. The Research Center has also decided to publish the papers delivered at the Conference as a book, in order to make them available to legal circles. Accordingly, this book primarily consists of the papers presented at the conference. One notable addition is a paper submitted by Prof. Francesco Berlingieri, even though he was unable to attend and present it at the conference.

It must be noted that a significant number of the contributors to the book also personally took part in the process of drafting the Rotterdam Rules. Turkish lawyers were also invited to contribute to the drafting process in order to prepare Turkey for the Rotterdam Rules, though the country is not yet a party to the Convention.

I would like to express my gratitude to Dr. Meltem Deniz Güner-Özbek for her efforts both in organizing the conference and editing this book. Furthermore I am grateful to Springer Verlag, who agreed to publish this book, for their interest in the subject.

Prof. Dr. Tankut Centel
Dean of Koç University Law School

Preface

It is my great pleasure to edit *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, An Appraisal of the Rotterdam Rules* with the intent of disseminating both the insider's and outsider's evaluations and views on the Rotterdam Rules. The insiders are Prof. Francesco Berlingieri – infamous doyen of maritime law, who was so kind as to send his advance paper even though he was not able to attend the conference; Prof. Michael Sturley – Senior advisor of the U.S. delegation to UNCITRAL Working Group III and Member of the UNCITRAL Secretariats's Expert Group on Transport Law, who has been involved with the Rotterdam Rules since their earliest stages; Prof. Tomotaka Fujita, – Head of the Japanese Delegation to UNCITRAL Working Group III and Member of the UNCITRAL Secretariats's Expert Group on Transport Law; Prof. Dr. Gertjan van der Ziel – Head of the Netherland's Delegation to UNCITRAL Working Group III and Member of the UNCITRAL Secretariats's Expert Group on Transport Law; and Dr. Anders Moellmann – Delegate and Head of the Danish Delegation to UNCITRAL Working Group III at the 18th through to the 21st Sessions and the 41st Commission Session. In their papers they provide the background ideas of the Rotterdam Rules, as well as their individual evaluations and criticism on both general issues and particular topics. On the other hand, local academics Prof. Dr. Samim Ünan, myself, Prof. Dr. Fehmi Ülgener, Associate Prof. Dr. Kerim Atamer, Associate Prof. Dr. Hakan Karan, and Assistant Prof. Dr. Zeynep Derya Tarman have evaluated the Rotterdam Rules from another perspective taking into account Turkish Law. Discussions at the conference involved interesting arguments as well as undiscovered issues pertaining to the Rotterdam Rules. We do not know if or when the Rotterdam Rules will come into force. What we do know is that the Rotterdam Rules take the basic rules of the Hague-Visby Rules and develops them in light of modern developments. Even if the Rotterdam Rules do not come into force, they will nevertheless influence future developments in this area of maritime law.

I am grateful to Koç University Law School Dr. Nüsret – Semahat Arsel International Business Law Implementation and Research Center for its generous funding to organize the conference as well as to publish its proceedings. I am also deeply thankful to Prof. Dr. Tankut Centel, Dean of Koç University Law School, for his invaluable support in academic work in general and for believing in me in

particular. He has supported me and my international academic activities since my early academic life.

In addition, I would like to acknowledge my special thanks to my dear colleague Dr. Zeynep Derya Tarman for her inestimable suggestions and observations. I do not know how I would have coped without her valuable assistance in preparing for the conference as well as preparing this book for publication. I also owe thanks to Anthony Richard Townley for his kind and expeditious assistance in proof-reading of some of the papers.

Last but not least, I owe gratitude to my family.

Sariyer, January 2011

Dr. Meltem Deniz Güner-Özbek
Koç University School of Law

Contents

Chapter 1
The History of the Rotterdam Rules

Francesco Berlingieri

Abstract There are various ways in which the history of the Rotterdam Rules may be narrated. On another occasion I have chosen the technique of following the evolution of the provisions throughout the debate in the UNCITRAL Working Group, indicating the various changes that had taken place and the debates within the Working Group that had given rise to each change. Since it would not have been possible within the time allowed to that for all the provisions, I had selected some of them, including some important definitions. This time I decided instead to report the global progress of the work, starting from the preparatory work done by the CMI and then following the work during each session of the UNCITRAL Working Group. Therefore the main part of this history is organized on the basis of the successive sessions of the Working Group, providing a summary, based on the reports of each session prepared by the Secretariat, of the most relevant issues discussed in each session and of the decisions made. The numbers and titles of the chapters and articles are those of the draft that at any given time was being considered.

I have annexed to my history a list of the States and of the organizations that attended the sessions of the Working Group (Annex I) and the tables of contents of each of the thirteen sessions of the Working Group during which the Draft Instrument was discussed (Annex II).

1.1 The Work of the Comité Maritime International

1. When the Comité Maritime International (CMI) decided, in 1962, to embark upon the revision of the Hague Rules, it probably did that in a too prudent manner and avoided tackling the most significant issues, such as that relating to the exoneration of the carrier's liability for errors in the navigation and management of the ship and that relating to the restriction of the carrier's obligation to exercise due diligence to make the ship seaworthy at the time preceding the

Prof. F. Berlingieri
President of Honor of the Comité Maritime International
e-mail: slb@dirmar.it

M.D. Güner-Özbek (ed.), *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*,
DOI 10.1007/978-3-642-19650-8_1,

commencement of the voyage. Nor was anything more done at the CMI 1963 Stockholm Conference and at the Diplomatic Conference of 1968. Quite to the contrary, the proposal made by the CMI to extend the scope of application of the Hague Rules to the shipments bound to Contracting States also was not adopted. And this has possibly contributed to the adoption in 1978 of the Hamburg Rules. In any event, that adversely affected the initial uniformity achieved by the Hague Rules, for several States that were parties to the Hague Rules have not become parties to the 1968 Protocol (the Hague-Visby Rules) or to the 1979 Protocol that replaced the Poincaré Franc with the Special Drawing Right, and the Hamburg Rules created an alternative system that, in addition to being adopted by an increasing number of countries, almost all being developing States (now 33), gave rise in some countries, such as the Scandinavian countries and China, to a mixed national regime, based partly on the Hague-Visby Rules and partly on the Hamburg Rules. Besides all that, there occurred an unpredictable event, the container revolution, that slowly replaced the traditional contract of carriage by sea from port to port with a contract from the door of the shipper to the door of the consignee.

2. The CMI soon realised that it was necessary to proceed to a more substantial revision of the Hague-Visby Rules and in 1988 decided to place that subject on the agenda of its next Conference, due to take place in Paris in June 1990. An International Sub-Committee (I-SC) was created by the CMI Executive Council with the task of considering what features the uniform maritime law on carriage of goods by sea should possess in the last decade of the second millennium. The I-SC submitted to the Conference a report[1] in which the following subjects were considered:

   - Identity of the carrier
   - Contracts and documents subject to a mandatory regime
   - Deck cargo
   - Period of responsibility
   - Exemptions from liability
   - Limits of liability
   - Deviation
   - Delay
   - Damages

After its discussion at the Conference the report was approved with some amendments[2] together with a declaration with which the CMI expressed the hope that the competent intergovernmental organizations would continue offering to the CMI the cooperation it had benefited from in the past, in order to enable the CMI to perform its future work.

[1]Comité Maritime International, Paris I, p. 54.

[2]Comité Maritime International, Paris II, p. 104.

3. Four years later, in May 1994, the Executive Council of the CMI appointed a Working Group[3] with a mandate to continue the work commenced before the Paris Conference. That Working Group drew up a questionnaire[4] for the CMI national associations in which their opinion on the best way to find a remedy to the proliferation of the regimes governing carriage by sea in force in the maritime world[5] was requested and, in the alternative on whether such new regime should consist of a modernisation of either the Hague-Visby Rules or the Hamburg Rules or should consist of an entirely new set of uniform rules. Subsequently the Executive Council created a new International Sub-Committee giving it the preparation of a study of the most important questions in the area of carriage of goods by sea and the submission of recommendations on the most convenient manner of handling them with a view to ensuring international uniformity as terms of reference. The I-SC chose 22 subjects[6] for its consideration and the study of these subjects was carried out during the five subsequent sessions of the I-SC held in 1995 and 1996.[7]
4. In 1996 UNCITRAL at its twenty-ninth session considered a proposal to include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules where no such rules existed and with a view to achieving greater

[3]Consisting of Professors Francesco Berlingieri, Rolf Herber, Jan Ramberg and William Tetley.

[4]Published in the CMI Yearbook 1995, p. 111.

[5]The summary drawn up by the Working Group is published in CMI Yearbook 1995, p. 112.

[6]Such subjects were the following:

1. Definitions
2. Scope of application
3. Interpretation
4. Period of application
5. Identity of the carrier
6. Liability of the carrier
7. Liability of the performing carrier
8. Through carriage
9. Deviation
10. Delay
11. Limitation of liability
12. Loss of right to limit
13. Transport document
14. Evidentiary value
15. Liability of the shipper
16. Dangerous cargo
17. Letters of guarantee
18. Notice of loss
19. Time bar
20. Choice of law
21. Jurisdiction
22. Arbitration

[7]See the reports of each session, in CMI Yearbook 1996, pp. 343–420 and their summary in CMI Yearbook 1997, p. 291.

uniformity of laws. At that session, the Commission also decided that the Secretariat should gather information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems, so as to be able to present at a later stage a report to the Commission. It was agreed that such information-gathering should be broadly based and should include, in addition to Governments, the international organizations representing the commercial sectors involved in the carriage of goods by sea, such as the CMI, the International Chamber of Commerce (ICC), the International Union of Marine Insurance (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbors (IAPH).

5. In the following year the President and the Past President of the CMI, having heard about the above decisions, deemed it useful to pay a visit to the Secretary of UNCITRAL, Dr. Herrmann, with a view to exploring the feasibility of a joint initiative for the purpose of creating a new uniform legislation meant to replace both the Hague-Visby Rules and the Hamburg Rules. They tackled the problem in a very frank manner. They said that the Hague-Visby Rules were at least in part obsolete and that the Hamburg Rules also, albeit more modern, had been overtaken by events, such as the container revolution and that it appeared very unlikely that the traditional maritime countries would be willing to replace the Hague-Visby Rules with the Hamburg Rules. The meeting was very successful and marked the peace between the father of the Hague-Visby Rules and the father of the Hamburg Rules.
6. Following that meeting, in May 1988 the CMI Executive Council created a working group under the chairmanship of Stuart Beare with the initial mandate, in consideration of the resolution adopted by UNCITRAL in 1996, of studying the feasibility of widening the area, covered by the existing conventions on carriage of goods by sea, to other aspects of the contract of carriage of goods, taking into account the studies that had already been carried out in the recent years by CMI working groups and international sub-committees. However on the occasion of a round table organized by the CMI to which the representatives of the industry had been invited, great pressure was exerted to include in the study a review of the liability regime of both the carrier and the shipper also. The Working Group, named "W.G. on Issues of Transport Law", drew up a questionnaire[8] and on the basis of the responses received from the National Maritime Law Associations submitted to the CMI Executive Council an initial report in which it indicated that the idea of preparing a new Convention intended to replace both the Hague-Visby Rules and the Hamburg Rules had been widely supported. In view of that, the Executive Council decided to create without delay an ad hoc International Sub-Committee and to send delegates to the forthcoming session of UNCITRAL in order to report on the steps already taken with a view to implementing the agreement that had been reached with Dr. Herrmann 2 years before.

[8]Published in the CMI Yearbook 1999, at p. 132.

7. In the following session of UNCITRAL, held in New York in July 2000, a colloquium jointly organized by UNCITRAL and CMI took place in New York on 6 July 2000 with a view to gathering information from the industry about the problems that existed in the trade and identifying the issues that required special consideration. Attention was drawn to the various lacunae that existed in the present uniform legislation, amongst other things, in respect of the increasing importance in the carriage of containers of the door-to-door transportation, of the need for rules on electronic equivalents of bills of lading and of the attention that should be paid to the relation between contracts of carriage and contracts of sale of goods. The need for a reform of the existing uniform rules was widely shared by the participants.
8. Meanwhile two sessions of the International Sub-Committee under the chairmanship of Stuart Beare had already taken place[9] and a third one followed that month,[10] during which the liability regime of the carrier and the extension of the scope of application of the future transport instrument to the land phases of door-to-door transport were discussed. Such extension received very wide support, together with the adoption of rules on the electronic equivalent of paper transport documents, at the subsequent Conference of the CMI, held in Singapore in February 2001, when the preliminary draft of the new instrument, approved by the International Sub-Committee during its fourth session, held in London on 12 and 13 October 2000, was considered.[11] A subsequent session of the I-SC was held in London on 16–18 July 2001, when amendments to the Draft Instrument were effected on the basis of the comments and suggestions made during the Singapore Conference. The amended draft was circulated to all national associations for comments, followed by a synopsis of all comments received up to 30 October 2001, whereupon the I-SC held in Madrid on 12 and 13 November 2001 its last session for a final review of the instrument. The Draft Instrument, accompanied by explanatory notes, after its approval by the CMI Executive Council was sent to the UNCITRAL Secretariat on 11 December 2001.

1.2 The Work of the UNCITRAL Working Group on Transport Law

After consideration of a report of the Secretary General on the work of the CMI I-SC, UNCITRAL had decided to create a working group, called "Working Group on Transport Law", to which the task of reviewing the Draft Instrument now at the

[9]The first in London on 27 and 28 January 2000 (CMI Yearbook 2000. Singapore I, p. 176) and the second also in London, on 6 and 7 April 2000 (CMI Yearbook 2000 – Singapore I, p. 202).

[10]The third session was held in New York, on 7 and 8 July 2000 (CMI Yearbook 2000 – Singapore I, p. 234).

[11]CMI Yearbook 2001 – Singapore II, p. 532.

almost final stage of preparation by the CMI was to be entrusted. As regards the matters that were supposed to be covered in the Draft Instrument, UNCITRAL decided that the liability regime should also be included, although the period of application, at least initially, should be limited to the maritime leg of the carriage.

The Working Group on Transport Law, which was composed of all State members of UNCITRAL, devoted thirteen sessions to the preparation of the Draft Convention (initially called Draft Instrument), during which three readings of the draft have taken place and four subsequent drafts have been prepared.

Ninth session, held in New York from 15 to 26 April 2002

The WG started its work on the Draft Instrument prepared by the CMI in April 2002. Prof. Rafael Illescas from Spain was elected Chairman and Mr. Walter de Sá Leitão was elected Rapporteur. The CMI Draft Instrument on Transport Law,[12] sent to the UNCITRAL Secretariat on 11th December 2001, was inserted as an annex to the first UNCITRAL document of the Working Group[13] without the introduction and with only some minor language adjustments to the comments following the individual provisions. The title of the draft was changed to "Preliminary Draft Instrument on the Carriage of Goods by Sea".

The Working Group decided to commence its work by a broad exchange of views regarding the general policy reflected in the Draft Instrument, rather than focusing initially on an article-by-article analysis of the Draft Instrument. To assist in structuring the general discussion, it was agreed that seven themes should be examined, with reference to each case of the relevant provisions in the Draft Instrument. These were: sphere of application (draft chapter 3); electronic communication (draft chapters 2, 8 and 12); liability of the carrier (draft chapters 4, 5 and 6); rights and obligations of parties to the contract of carriage (draft chapters 7, 9 and 10); right of control (draft chapter 11); transfer of contractual rights (draft chapter 12) and judicial exercise of those rights emanating from the contract (draft chapters 13 and 14). Upon the suggestion made by one delegation, the Working Group agreed that a further theme should be added regarding the freedom of contract (currently dealt with in draft chapter 17) for examination as part of the thematic analysis of the Draft Instrument.

It is worth mentioning that when the last of the above themes was discussed, after a general agreement that the exclusion of charter parties would still be appropriate[14] it was stated that the practice of individualized transport agreements (in practice referred to by expressions such as volume contracts or transport service contracts) had developed in different industries that shipped goods internationally and with shippers of different sizes. Such contracts typically resulted from careful negotiations which addressed matters such as the volume of goods to be transported (expressed in absolute or relative terms), the period over which the goods would be

[12]In CMI Yearbook 2001 – Singapore II, p. 532.

[13]Document A/CN.9/WG.III/WP.21.

[14]A/CN.9/510, § 62.

transported, various service terms, price, as well as liability issues. Such individually negotiated contracts varied in their focus, for example, in that some specifically dealt with liability issues while others did not pretend to modify the generally applicable liability regime. It was suggested that such contractual arrangements should be considered by the Working Group with a view to treating them differently from other transport contracts. Such contracts would include the following special features: they would be covered by the Draft Instrument but its provisions would not be mandatory with respect to them; the Draft Instrument, including the liability provisions would apply fully except to the extent the parties specifically agreed otherwise; derogations from the otherwise mandatory regime would have to be individually negotiated and could not be established by standard terms; third parties, including the consignee (the holder of the bill of lading or the person entitled to take delivery of the goods on another basis) would be bound by such individually negotiated terms only if, and only to the extent that, they specifically agreed to them (for example, by becoming a party to the individually negotiated contract); such agreement by third persons would have to be specific and could not be expressed in standard terms.

There followed a specific consideration of draft chapters 1-Definitions, 5-Obligations of the carrier and 7-Obligations of the shipper. In respect of the obligations of the carrier the discussion covered, inter alia, article 5.2.2 pursuant to which the parties may agree that during the period of responsibility of the carrier certain functions may be performed by or on behalf of the shipper. It was noted that that provision was designed to accommodate the practice of FIO and FIOS clauses and the view was expressed that FIO(S) clauses might be appropriate for maritime (port-to-port) carriage but had no place in the global transport service of door-to-door transport contracts where it would be agreed that loading and unloading operations in an intermediary port should be performed by the cargo owner and that the agreement would shift the risk of those operations on the cargo owner in the midst of the service. It was thus suggested that the draft provision should be deleted. That view received considerable support and it was considered that the impact of those clauses on door-to-door operations needed to be evaluated.[15]

Tenth session, held in Vienna from 16 to 20 September 2002

Chapter 6 – Liability of the carrier

The WG devoted most of its time to the whole of chapter 6 that included the provisions now contained in articles 17, 22, 19, 21, 24, 25, 59, 61 and 23. After consideration of article 6.1.1, corresponding to the present article 17.1, the debate centred on article 6.1.2, corresponding to article 4.2 (a) and (b) of the Hague-Visby Rules and the Working Group agreed to delete the exoneration for errors in the navigation and management and to keep that for fire. There followed a discussion on the subsequent excepted perils, now listed in article 6.1.3, and two different approaches were considered, the first being to qualify them as exonerations and the

[15] A/CN.9/510, § 120–127.

second to qualify them instead as presumptions only, without any decision being reached in that respect.[16] In respect of loss or damage due to a combination of causes, for which two alternative versions were included in article 6.1.4, preference was provisionally expressed for the first one, based on article 5.7 of the Hamburg Rules.[17] It is also worth mentioning that in respect of the provisions on calculation of compensation in article 6.2 the question whether consequential losses were excluded or not was raised and the only response given was that the intention of the CMI had been to replicate the Hague-Visby Rules and that in respect of the provisions on delay in article 6.4 no agreement could be reached on whether to treat the failure to deliver the goods within the time it would be reasonable to expect of a diligent carrier as delay, mentioned in square brackets in article 6.4.1.

Eleventh session, held in New York from 24 March to 4 April 2003

Chapters 8, 10, 11, 12, 14, 16 and 17

The WG considered several chapters of the Draft Instrument, namely chapters 8-Transport documents and electronic records, 10-Delivery to the consignee, 11-Right of control,12-Transfer of rights, 14-Time for suit, 16-Other conventions and 17-Limits of contractual freedom.

Chapter 8 – Transport documents and electronic records

Several comments and suggestions were made in respect of paragraph 3.1 (corresponding to the present article 40) including that of providing that the carrier should be required to give the reasons of its qualification, thereby avoiding the use of general clauses such as "said to be" or "said to contain" and that, as regards the weight of containers, that wording should be added to cover the case where there was no commercially reasonable possibility of weighing the container.[18] Comments and suggestions were also made on paragraph 3.3 (corresponding to the present article 41), in particular in respect of the evidentiary effect of the particulars in non-negotiable documents and it was pointed out that the conclusive evidence rule already existed with respect to sea waybills in article 5 of the CMI Uniform Rules for Sea Waybills.[19] Finally the novel provision on the identity of the carrier in paragraph 4.2 (corresponding to the present article 37) was the subject of debate, and opposite views were expressed on it.[20]

Chapter 10 – Delivery to the consignee (now Chapter 9)

The provision in paragraph 1 (corresponding to the present article 43) on the obligation of the consignee to accept delivery where it exercises any of its rights under the contract of carriage met with considerable support, whereas the subsequent part of the paragraph, relating to the rights of the carrier where the consignee

[16] A/CN.9/525, § 41.
[17] A/CN.9/525, § 46–56.
[18] A/CN.9/526, § 36–37.
[19] A/CN.9/526, § 44–48.
[20] A/CN.9/526, § 56–60.

does not collect the goods, was the subject of differing views and the Secretariat was asked to prepare a revised draft.[21] A careful analysis was then made of paragraphs 3 (corresponding to the present articles 45–47) and 4 (corresponding to the present article 48) and the Secretariat was asked to prepare a redraft of both taking into account the views expressed, even though the Working Group had reserved to revert on the text of paragraph 3.[22]

Chapter 11 – Right of control (now Chapter 10)
The adoption on provisions on the right of control was generally felt a welcome addition to the traditional maritime transport instrument. The individual provisions were the subject of an initial debate and, as for other articles, the Secretariat was requested to prepare a revised draft, with possible variants, for the continuation of the discussion.

Chapter 12 – Transfer or rights (now Chapter 11)
The provisions in that chapter constituted a novel approach, at least with regard to maritime conventions. It was noted that there were two principal reasons for the inclusion of a chapter on transfer of rights: first, to ensure that the provisions of the Draft Instrument were coherent throughout in terms of the issue of liability of the parties, and second, in order to set out the necessary rules to accommodate the electronic communication component of the Draft Instrument.

The debate focused in particular on paragraphs 2 and 3 that regulated the liability of the holders of negotiable transport documents as well as of the transferees of the rights under a contract of carriage when no negotiable transport document is issued[23] and the Secretariat was asked to prepare a revised draft of such paragraphs placing them in square brackets.

Chapter 13 – Rights of suit (deleted)
Its paragraph 1, which identifies the parties entitled to assert rights under a contract of carriage, met with considerable objections and its deletion was strongly supported. At that stage, however, the Secretariat was only requested to prepare a revised draft, taking into account the objections that had been raised.[24]

Chapter 14 – Time for suit (now Chapter 13)
In respect of chapter 14, which provided that the carrier is discharged from all liability in case suit is not brought within 1 year, an important question of terminology was raised with respect to article 14.1. It was noted that the commentary to this provision[25] stated that the expiration of the time for suit resulted in the extinguishment of the rights of the potential claimant, and as such, suggested that chapter 14.1 concerned a prescription period rather than a limitation period. It was

[21] A/CN.9/526, § 65–72.
[22] A/CN.9/526, § 78–99.
[23] A/CN.9/526, § 135–148.
[24] A/CN.9/526, § 150–159.
[25] A/CN.9/WG.III/WP.21, § 208.