



UNITED STATES MISSION TO THE UNITED NATIONS

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United States Statement – UN General Assembly Sixth Committee – Agenda Item 74: Report of the United Nations Commission on International Trade Law October 20, 2008

The United States is pleased again to be able to support the work of the Commission on International Trade Law. The Commission has continued its technical and non-politicized approach to commercial and economic law reform, and has focused on promotion of commerce in all geographic regions and for states at all levels of development. The Commission and its Working Groups throughout their work in 2008 continued to recognize that, despite liberalization of trade through international agreements, the failure also to upgrade commercial law has meant that trade liberalization is less effective and its benefits do not reach as many sectors as it might. The Commission's work continues to help close that gap and reflects the practical achievements possible within the UN system.

A significant development this year was the completion of the draft United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

The United States strongly supports this draft Convention. It will bring about a much-needed modernization and harmonization of the law in this field. In the United States, the governing legal regime is the 1936 Carriage of Goods by Sea Act (COGSA), which is (for the most part) simply the domestic enactment of the 1924 Hague Rules. Updating and modernizing are particularly necessary when a law drafted over 80 years ago still regulates an industry that has changed remarkably in the meantime. For example, the draftsmen of the early 1920s could not anticipate the container revolution or electronic commerce.

Prior to the commencement of this negotiation six years ago, U.S. shipper and carrier interests were prepared to join together to seek new U.S. legislation to replace the 1936 COGSA. They realized, however, that a new global regime would be preferable to domestic U.S. legislation. They therefore agreed to defer seeking new U.S. legislation and to support U.S. government participation in the UNCITRAL negotiation of a new carriage of goods convention, so long as that process was successfully concluded within a reasonable period of time. They announced that they would support a new international regime so long as it was consistent with their key objectives. Those objectives included:

1. replacement of the current “port-to-port” scope of application with a modified “door-to-door” scope, so that the same legal regime will govern the entire contractual period of carriage, which in a multimodal shipment will often include inland transportation as well as a sea voyage;
2. inclusion of a two-part rule on jurisdiction and forum selection clauses;
3. inclusion of a provision that allows the parties to certain types of contracts of carriage containing various safeguards to derogate from the terms of the Convention.

The text approved by UNCITRAL achieves all of these objectives. That is not to say that the United States supports each and every one of the Convention’s provisions. But we understand that, just as there were certain issues that were key to U.S. support of the Convention, there were likewise other issues that were key to other countries. We can accept the parts of the Convention that we do not like as part of an overall compromise because we strongly believe that any detriments of the Convention are more than offset by the benefits of greater predictability and uniformity.

We believe that the draft Convention is a major improvement over the current situation, and we hope that it will achieve widespread support. This is a unique opportunity to unify and update maritime law and practice.

United States industry has indicated it supports the Convention. With industry support, we look forward to the signing ceremony in Rotterdam next year, and we will take the necessary steps to begin the ratification process.