The UNCITRAL Draft Instrument/Convention: From Hague Rules to Whose Rules?

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Introduction

Will the UNCITRAL Draft contribute to a carrier's nightmares and/or to a lawyer's dreams of paradise?

The law of Carriage of Goods by Sea has moved from near uniformity to a confused jigsaw of different rules and international conventions not forgetting diverse domestic laws and standard form contracts of carriage.

Politics stepped in during the 1970s when developing countries persisted in pushing the Hamburg Rules for adoption in 1978. These Rules entered into force on 1 November 1992 but none of the world's major trading nations has implemented them.

The Hamburg Rules were adopted on 31 March 1978. The Convention entered into force on 1 November 1992 when the specified number of countries (20) acceded to it. However, none of the world's major trading nations has ratified the Hamburg Rules, nor have its provisions been widely incorporated in domestic legislation. The Hamburg Rules may have over-compensated in their effort to redress a perceived imbalance in the Hague Rules in favour of carriers.

Rather than just amending the Hague Rules, the Hamburg Rules adopted a new approach to cargo liability, reversing the burden of proof of loss or damage to goods. Under the Hamburg Rules the carrier is held responsible for the loss of or damage to goods whilst in its care, unless it can prove that all reasonable measures to avoid damage or loss were taken. Carrier liability is extended to reflect the different categories of cargo now carried, new technology and loading methods, and other practical problems incurred by shippers such as losses from delays in delivery.

From 1978 the CMI tried to improve the Hague-Visby Rules but gave up in 1998. From 1999 CMI drafted a fresh Instrument dealing with issues of transport law.

In 2001, the CMI Draft Instrument was given to UNCITRAL and became the UNCITRAL Draft Instrument. UNCITRAL changed it from an "Instrument" (which may have led to voluntary Model Rules) to a "Convention". A Convention may become conditionally binding on contracting States which introduce legislation that becomes mandatory on private parties engaged in transport especially maritime transport.

In the latest UNCITRAL Draft there are 100 "Articles" in 20 Chapters. It is complex with considerable cross-referencing and can be problematic for a lay-person carrier or shipper or consignee when trying to decipher rights and obligations and liabilities.

If adopted, it can introduce further uncertainty if some countries accede to it denouncing the earlier rules they may have ratified, some without denouncing the earlier rules

This paper will develop these issues, ask if we need the Draft and suggest going on a different voyage to uniformity, in the due course of time.

Uniformity of the law and freedom of contract

> " Transportation law would be very simple and straightforward if the law only had to respect the needs inherent to a contract of carriage: All the legislator would have to regulate would be the rights and duties of both contractual parties, the carrier and the shipper."[1]

The nature of the contract and the content of any document evidencing the contract of carriage of goods would be simply an agreement for the cargo owner to deliver the goods to the carrier, for the carrier to transport the goods safely to their destination and there, to return them to the cargo owner.

1 von Ziegler, A. "Transfer of Rights and Transport Documents", a paper given at a Congress on "*Modern Law for Global Commerce*" at Vienna on 09-12 July 2007, 1

If there were only two parties, the carrier and the shipper, each party would be free to bargain and agree on contractual terms covering the carriage.

Of course in today's world that is too simplistic. For example, the cargo owner's identity can change from shipper to consignee and the transfer of rights to the consignee includes not only the right to possession of the goods but also protective rights under the contract of carriage.

This transfer of rights and the very contracting itself can be conducted freely with complete freedom of contract. However since 1893 governments have stepped in and legislatively restricted freedom of contract – for various reasons.

It was thought that the Hague Rules in 1924 introduced some uniformity but the ensuing eight decades have engendered complex and idiosyncratic law affecting carriage of goods by sea, with some of the changes possibly based on ideological grounds.

While the new UNCITRAL Instrument may be aiming at a uniform approach so did the earlier Conventions and Rules. If a uniform approach is sought now, what went wrong with the earlier "uniform" approaches? Or, are the earlier, relatively successful adoptions and ratifications really no longer uniform? Have not judicial interpretations, especially of Hague Visby provisions, created some precedent and certainty? Doesn't uniformity just mean certainty? And don't we already have that?

The new Instrument can introduce new problems of uncertainty with some provisions subject to national or domestic law. National law of some countries can be different when applied to different aspects of carriage of goods.

In any case, even the suggestion of Professor von Ziegler that legislators having to "regulate" the rights and duties of carriers and cargo owners introduces further questions such as: Why should domestic law of any country be able to legislate not only for outwards movement of goods but also for inwards movements?

Yet another significant question is: why is the focus on a so-called "uniform" law of carriage of goods so heavily on liability of the carrier by sea and less, if any, on other issues such as transfer of ownership rights under contracts of carriage and uniform documentation and liability regimes where there is multi-modal carriage of goods?

It can be conceded that the new Instrument introduces necessary changes such as applying to a contract of carriage in general rather than applying only to carriage evidenced by Bills of Lading or similar documents of title. However, when discontent surfaced with the Hague Rules during and after about four decades, changes were made in 1968 and 1979 to meet the demands of various bodies. Why do we need a new Instrument to bring in changes again.

A short historical development of "uniform" law

That the law of carriage of goods by sea today is a confused jigsaw is almost a "given". A core provision of any law covering carriage of goods is the liability regime. At present there is not only a multiplicity of regimes covering carriage of goods by sea but also by air, road and rail. The scope of this paper does not include carriage by modes other than by sea except to conclude that one of the approaches to attain uniformity in carriage law should address multimodalism.

Professor Michael Sturley has provided us with extremely valuable sources dealing with the legislative history of the US Carriage of Goods by Sea Act[2] and also the Hague Rules[3] and I cannot improve on that by recounting the history. This paper will, however, briefly look at the search for uniformity and suggest that we might simply be repeating the arguments in the journey to uniformity that were used from the nineteenth century. An of-quoted aphorism is that if we "... cannot remember the past (we) are condemned to repeat it."[4] We are almost trying to remember what we have almost

2 Sturley, M. *The Legislative History of the Carriage of Goods by Sea Act and the Travaux Preparatoires of the Hague Rules*, Littleton: Fred B Rothman & Co, 1990

3 Sturley, M. "The History of COGSA and the Hague Rules", (1991) 22 *Journal of Maritime Law and Commerce* 1

4 Sanatyana, G. *The life of reason, or, the phases of human progress, Vol.1: Reason in Common Sense*, 284

forgotten.

What may have changed over the course of time are the ideologies, the agendas and the interests of the two main players: the carrier and the cargo owner. There has always been some form of economic warfare between these two and it seems there is little changed, except their chosen soldiers have changed between governments and international associations of maritime lawyers.

> "In the economic warfare between cargo and carrier a truce of sorts had been achieved in the United States in the 1893 legislation, the *Harter Act*... The ... Act was a piece of reform legislation deriving its force from the ... desire to preserve a free market place ... It was a radical interference with the illusory freedom of contract whereby shipowners offered printed form bills of lading, containi8ng many exculpatory clauses, as contracts of affreightment."[5]

Of course, Professor Sweeney was writing not about the present UNCITRAL Draft Convention but about the last UNCITRAL Draft Convention that became what we know as the "Hamburg Rules".

Professor Sweeney was also cognisant of an apparent paradox in that this "freedom" was merely that the imbalance of bargaining strength at the time permitted carriers to be "free" to take advantage of cargo owners. The Act cut down the carriers' freedom.

However, while the Act "was the first legislation anywhere to address the question of risk allocation for cargo damage"[6] by reaching a compromise that somewhat curtailed the freedom of carriers, the Bill was originally drafted strongly in favour of cargo. [7]

However, when the bill reached the Senate, it was also recognised that while there were relatively few US shipowners the restrictions could also adversely affect them and numerous amendments resulted in a more balanced compromise. The most significant provision was the now familiar formula: if a carrier uses "due diligence" to make the vessel seaworthy before commencing the voyage, that carrier "should be exonerated, by statute, from liability for 'faults and errors in the navigation or management of the vessel'".[8]

We can trace the course of the "economic warfare" and the outcomes especially those that change the allocation of risks between carrier and cargo.

Before 1893 when the *Harter Act* was passed in the United States, there was a great lack of uniformity and the agendas of the two protagonists were not so different from now. It was assumed that the *Harter Act* and its offspring, the Hague Rules, 1924, brought about uniformity by regulating the activities mainly of the carrier. Before this supposed "uniformity", the liability of carriers moved from "absolute" to "strict" in the 17th to 19th centuries when the carrier was a "common (or public) carrier" to almost nil in the years just before 1893, when "... the carriers developed the "free" contract to a point where it could be said that the carrier accepted the goods to be carried when he liked, as he liked, and wherever he liked."[9]

"Under early nineteenth century general maritime law principles, which both common law and civil law countries recognised and accepted, a carrier was absolutely liable for cargo damage". This liability was without fault (a "no-fault liability"). The only escape for a carrier was if it could prove that the damage or loss occurred without any negligence of the carrier AND the damage or loss occurred from one of four "excepted" causes: act of God, act of public enemies ("of the King"), shipper's fault or inherent vice of the goods. [10] The carrier was sometimes described as an "insurer"[11]

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5 Sweeney, JC. "The UNCITRAL Draft Convention on Carriage of Goods by Sea (Part I)" (1975) 7 *Journal of Maritime Law and Commerce* 69, 70-71

6 Sweeney, JC. "UNCITRAL and the Hamburg Rules" (1991) 22 *Journal of Maritime Law and Commerce* 511, 515

7 Sturley, M. "The History of COGSA and the Hague Rules" (1991) 22 *Journal of Maritime Law and Commerce* 1, 12

8 Knauth, AW. *The American Law of Ocean Bills of Lading*, 4th Edition, Baltimore: American Maritime Cases, Inc., 1953, 121

9 *Ibid,* 116

10 Sturley, M. *ibid*, 4-5

11 Beale, JH. "The Carrier's Liability: Its History", (1897) 11 Harvard Law Review 158; Knauth, *ibid*, 116; *Peterson Steamships* v. *Canadian Wheat* [1934] A.C. 538, 544-545, *per* Lord Wright in the Privy Council

although this may have been technically incorrect.

The law was strongly in favour of cargo: Cargo 1 Carrier 0

In the 19th century as power-driven vessels, owned mainly by Europeans, gained the competitive edge on the trans-Atlantic runs simply by providing a better service than the sailing vessels, the Owners began to flex their economic muscle and use the resulting imbalance of bargaining strength in their favour to offer contracts of carriage that gradually removed any liability. British Courts, followed by European Courts and other Courts in British Colonies, viewed this as a principle of "freedom of contract" and upheld the exculpatory clauses. The British merchant fleet, supported by the royal Navy, "ruled the waves".[12]

The law grew gradually stronger in favour of the carrier: Carrier 2 Cargo 1

It appears significant that when the shipping market is high (in favour of the carrier) the carrier can take advantage and reduce its liabilities. In 2007 and into 2008, the markets are high and in carriers' favour. It will be interesting to see whether all the negotiations that have led to the present UNCITRAL Draft Instrument will be to nought, if carrier countries and carrier representatives (for example, carriers' associations such as BIMCO and carriers' liability insurers such as the International Group of P&I Associations) are lobbied by carriers to lobby against changes to the present systems of risk allocation that could be adverse to carriers.

In 1873 the International Law Association was formed by two Americans, David Field and James Miles. Mr Field was strongly in favour of codification and Rev. Miles was the secretary of the American Peace Society. The ILA was to prepare a Code of International Law to contribute to World peace[13] but soon dealt with private law topics including maritime law.

At its Liverpool Conference in 1882 a local committee of commercial people and lawyers drafted a model bill of lading for voluntary adoption by carrier and cargo. This was a compromise between the interests of the two protagonists. One significant provision was the carrier's obligation to exercise "due diligence" to make the vessel seaworthy instead of an absolute obligation.[14]

The model bill was used in some carriage circles and some of the compromise provisions and ontology led to similar compromises in other risk allocation regimes, such as the Hague Rules. However, the model bill did not reach universal acceptance.

It was almost a situation of a draw between the two protagonists, Carrier 2 ½ Cargo 2 ½.

Unfortunately the ILA did not pursue the matter but altered course at its Hamburg Conference in 1885. The ILA "proposed a set of rules (to be known as the 'Hamburg Rules of Affreightment') that parties could voluntarily incorporate by reference into their bills of lading ... In substance, though, the Hamburg Rules created an unworkable compromise."[15]

Of course Professor Sturley is talking about the Hamburg Rules 1885 and not the Hamburg Rules 1978. It is coincidental that both versions of "Hamburg Rules" were and are nearly still-born.

The two protagonists, carrier and cargo, resumed their economic warfare. Cargo interests began to pressure their elected politicians in cargo-strong countries and also in Britain. The most successful pressure led to the *Harter Act* in 1893 which attempted to use the compromise approach to restore some equality in bargaining strengths.

The Act was followed by New Zealand in 1908[16], Australia in 1904[17], Canada in 1910[18] and also

12 Sweeney, J. "The Prism of COGSA" (1999) 30 *Journal of Maritime Law and Commerce* 543, 551
13 Sturley, M. "The History of COGSA and the Hague Rules" (1991) 22 *Journal of Maritime Law and Commerce* 1, 6
14 *Ibid*, 7
15 *Ibid,* 8
16 *Shipping and Seamen Act* 1903
17 *Sea Carriage of Goods Act* 1904
18 *Water Carriage of Goods Act* 1910

Morocco in 1919[19]. Some legislation was more generous to cargo more than to carrier. For example, the Australian legislation was passed after pressure from Tasmanian fruit growers and shippers of other perishable products. In that legislation the carrier's "due diligence" to make the vessel seaworthy in the *Harter Act* was replaced by an absolute obligation to make and keep the shop seaworthy.[20]

While it may be considered that the *Harter Act* may have been a precursor to uniformity of risk allocation between carrier and cargo, the very fact that governments can alter provisions in any model or Convention or Instrument is itself a precursor to a possibility that even if the present UNCITRAL Draft Instrument is adopted, uncertainty and a lack of uniformity can prevail for many years. Indeed, even though the 1978 Hamburg Rules entered into force in 1992, 14 years after adoption, and by September 2007, 32 countries had ratified these, many governments of major trading nations have not. For example, Australia, China, India, Japan, New Zealand and the UK have not ratified or acceded to the Hamburg Rules. The USA signed the Instrument on 30 April 1979 but has also not ratified it.

It is also interesting to view the status of the other four risk allocation regimes as of 2006:

Regime	Adopted	In force	Countries ratifying/acceding	Denunciations
Hague Rules 1924	1924	1931	90	14
Visby Rules	1968	1977	30	Nil
SDR Protocol	1979	1984	21	Nil

In comparison, the Hamburg Rules took twice as long to enter into force as the Hague Rules.

The CMI was set up in 1897 and took early steps to harmonise and unify carriage liability regimes.

The Hague Rules were adopted by the CMI in 1921 initially for voluntary incorporation but in 1924 a Diplomatic Conference in Brussels called by the Belgian government changed them into mandatory rules.

> "Although they unified disparate national rules and imposed a sense of order on contracts for the sea carriage of goods, the Hague Rules were not a panacea. They reflected hard-fought compromises by commercial interests; and in subsequent decades, international political and economic developments led many countries to question the principles that underlay the Rules."[21]

Dissatisfaction with the Hague Rules came from two very different sources.

In the forty years after 1924, commercial and maritime legal interests in the traditional maritime States (mainly the "developed" countries which generally represented carrier interests) were unhappy about:

- Unit limitation of liability suitable to pre-containerised cargoes
- Agency issues that arose from case law
- Monetary value of the unit limit
- Time bar issues

In 1963, the CMI had approved the changes in the Visby Rules. The Belgian government convened a Diplomatic Conference in 1967 that led to the signing of the Rules in 1968. In 1979, the Belgian

19 *Maritime Commercial Code* 1919

20 *Sea Carriage of Goods Act* 1904 s 5(b): "... any clause lessening the carrier's obligation to make and keep the ship seaworthy, is void..."

21 Frederick, D.C. "Political Participation and Legal Reform in the International Maritime Rulemaking Process: From the Hague Rules to the Hamburg Rules", (1991) *22 Journal of Maritime Law and Commerce* 81, 81

government called another Diplomatic Conference to add a Protocol expressing the unit of limitation in Special Drawing Rights.

> "Dissatisfaction of the developing world stems essentially from the belief that the operation of traditional maritime law ... impairs the balance of payments position of developing states so as to ensure continued poverty and perpetual underdevelopment in an industrial age."[22]

By the 1960s while the CMI was achieving and promoting necessary changes in compliance with commercial and legal demands, prominent persons in the developing world considered that the "entire politico-economic background in the maritimefield (had) metamorphosed so considerably since 1924 that ... (the Hague Rules') ... relevance is perhaps even*per se* questionable."[23] Mr M J Shah who was writing in 1978 was a Barrister and, at the time, Chief of the Maritime Legislation Section of UNCTAD. Much of his article criticised the apparent freedom of carriers under the Hague Rules 1924 even those modified by the Visby Rules of 1968. He continued, "... the indiscriminate use of wide exception clauses – continued its unpunished (*sic*) course. ... Such clauses are particularly detested in developing countries where shippers tend, from lack of expertise and weaker bargaining power, to acquiesce in them. The only alternative is expensive litigation of uncertain outcome."[24]

"In the 1960s and 1970s the developing countries spearheaded efforts to reallocate the risks first through UNCTAD and then through UNCITRAL."[25]

While the protagonists in the economic warfare still appeared to be carrier and cargo/shipper, the nature of these seemed to have changed from large cargo representatives in the ship-user countries to governments representing ship users in developing countries.

When the Hague Rules were being drafted, of the 44 delegates to the 1921 Hague Conference only four appeared to represent political or diplomatic interests. The rest were exclusively from the private commercial sector.[26]

However, the Hamburg Rules Conferences were politically or diplomatically conducted.

The fact that the present UNCITRAL Draft Instrument is debated and decided at UNCITRAL sessions, cannot void the possibility that the Sessions are again politically or diplomatically conducted.

The lack of uniformity and the different regimes of risk allocation may require another attempt to unify the risk allocation. However, it may be worthwhile remembering Professor Sweeney's words in 1991:

> "I wish I could say that after all the time and money spent on the Hamburg Rules that they are perfect. They are not, but I believe that whenever conflicting economic interests must be compromised, the resulting structure must be inelegant and shaky. I do not see how the results could be noticeable improved in the foreseeable future by another conference."[27]

and also George Santayana's advice that if we "... cannot remember the past (we) are condemned to repeat it."[28]

<u>Why do we need uniformity and how do weget there?</u>

The Hague Rules 1924 created some semblance of a uniform carriage of goods regime. This has

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22 Sweeney, J.C. "The UNCITRAL Draft Convention on Carriage of Goods by Sea (Part I)", (1975) 7 *Journal of Maritime Law and Commerce 69, 73*

23 Shah, M.J. "The revision of the Hague Rules on bills of lading within the UN system – Key issues" in Mankabady, S. (Ed) *The Hamburg Rules on the Carriage of Goods by Sea*, (1978) Leyden/Boston: A.W.Sijthoff, 1978, 5

24 *Ibid*

25 Frederick, D.C. "Political Participation and Legal Reform in the International Maritime Rulemaking Process: From the Hague Rules to the Hamburg Rules", (1991) *22 Journal of Maritime Law and Commerce* 81, 107

26 Frederick, *Ibid,* 88

27 Sweeney, JC. "UNCITRAL and the Hamburg Rules" (1991) 22 *Journal of Maritime Law and Commerce* 511, 530

28 Sanatyana, G. *The life of reason, or, the phases of human progress, Vol.1: Reason in Common Sense*, 284

become fragmented with some countries applying Hague, some Hague-Visby with or without the SDR Protocol, others Hamburg and yet others passing domestic legislation that may be a mix of the three regimes. While the Hague and Hague-Visby may be widely accepted and applied many commentators consider they are outdated and do not meet "the world's needs for a modern uniform law on the subject."[29]

Professor Tetley has pointed out that after twenty years of consultation and negotiations, in 1998 the CMI finally abandoned a reformation of the Hague and Hague Visby Rules.[30]

Professor Tetley also criticised the UNCITRAL Draft that existed at the time he wrote his article but it must be pointed out that in 2003 he was commenting on the 2002 Draft.[31] His criticism was aimed at numerous shortcomings that he perceived at the time. He wrote that the project was far too ambitious and a long way from completion. Indeed even UNCITRAL noted at its thirty-ninth session in 2006, that due to the magnitude and complexity of the project as also noted by the Commission at its thirty-sixth through thirty-eighth sessions, and decided to accommodate again the need of Working Group III (Transport Law) for two-week sessions to be held in the autumn of 2006 and the spring of 2007.[32] The working draft of 17 chapters in 2002 has expanded to 20 chapters of 100 Articles in 2007.

Many of Professor Tetley's criticisms have been addressed or are to be addressed.

For example one major criticism, that jurisdiction and arbitration provisions were not provided for, is being addressed in discussions by the UNCITRAL Working Group III in October 2007. These issues are included in Articles 15 and 16 of the latest Draft Instrument.[33] The Working Group had, at its sixteenth and seventeenth sessions, in 2005 and 2006, made some progress regarding a number of difficult issues, including those concerning jurisdiction, arbitration, obligations of the shipper, delivery of goods, including the period of responsibility of the carrier, the right of control, delivery to the consignee, scope of application and freedom of contract, and transport documents and electronic transport records. Also considered by the Working Group were the topics of transfer of rights and, more generally, the issue of whether any of the substantive topics currently included in the draft convention should be deferred for consideration in a possible future instrument[34].

However, what is still to be discussed at the Working Group's 20th session in October 2007 apart from issues of Jurisdiction and Arbitration are issues relating to:

- Limitation of Liability (Chapter 13)
- Transport documents and Electronic Records (Chapter 9)
- Derogations by countries (Chapter 20, Article 93) and
- Potential issues in the Draft Instrument that may be deferred to be considered in another, future Instrument such as Model Rules

The derogation by countries itself will introduce a further lack of uniformity. Some of the topics can be problematic especially if freedom of contract prevails again, especially with volume contracts, a principle that Australia and France wanted to protect. UNCITRAL has realised that these can be problem issues especially if countries can derogate from the provisions of the Instrument or sign with reservations.

> "Some concerns were expressed regarding the treatment in the draft convention of the issues

29 Sturley, M. "The United Nations Commission on International Trade Law's Transport Law Project: An Interim View of a Work in Progress" (2004) 39 *Texas International Journal* 65, 67

30 Tetley, W. "Reform of Carriage of Goods – the UNCITRAL Draft and Senate COGSA '99" (2003) 28 *Tulane Maritime Law Journal* 1, 4

31 UNCITRAL, "Transport Law: Preliminary draft instrument on the carriage of goods by sea", 8 January 2002, Document A/CN.9/WG.III/WP.21

32 UNCITRAL, "Annotated Provisional Agenda", A/CN.9/WG.III/WP.92, 8, Paragraph 26

33 UNCITRAL, "Transport Law: Preliminary draft instrument on the carriage of goods by sea", 13 February 2007, Document A/CN.9/WG.III/WP.81

34 UNCITRAL, "Annotated Provisional Agenda", A/CN.9/WG.III/WP.92, 8, Paragraph 27

> of scope of application and freedom of contract. The freedom given to the parties to volume contracts to derogate from provisions of the draft convention was said to constitute a significant departure from the prevailing regime in transport law conventions. It was argued that, in view of the broad definition of volume contracts in article 1 of the draft convention, freedom of contract might potentially cover almost all carriage of goods by shipping lines falling within the scope of the draft convention. It was further argued that the conditions for valid derogation from the draft convention did not require the express consent to the derogations by both parties, which was said to open up the possibility that standard contracts containing derogating clauses could be submitted to the shippers.
>
> There was support to those concerns, and to the need for the Working Group to consider them. However, there were also objections to both the criticism to the treatment of freedom of contract as well as to the characterisation of the alleged problems created by the draft convention. It was said, in that connection, that freedom of contract was an important element in the overall balance of the draft convention and that the current text reflected an agreement that had emerged in the Working Group after extensive discussions."[35]

So, it does appear that UNCITRAL has some way to go to produce an Instrument that will encourage countries to accept it and denounce the other three risk allocation regimes.

In fact, the Canadian Maritime Law Association has recommended a two-track approach to arrive at a faster outcome. In the fast track approach in which CMI resumes its consideration of amending the Hague and Hague-Visby Rules to take into account what may be crucial issues such as jurisdiction and arbitration, limitation of liability, identity of carriers under multi-modal transport and overall responsibility of the carrier from door-to door. UNCITRAL could deal with the other issues and bring its expertise to bear on the larger issues such as multi-modal transport in general and transfer of rights as under various countries' Bills of Lading legislation.

Perhaps this approach is to be commended.

At the end of it all, commercial interests on both sides of the economic war games should be able to stand up and say "I have the right to contract on my terms and the right to be wrong and I respect the your right to prove that I am wrong."

Once again, if we "... cannot remember the past (we) are condemned to repeat it."[36]

35 UNCITRAL, "Annotated Provisional Agenda", A/CN.9/WG.III/WP.92, 8, Paragraphs 29-30
36 Sanatyana, G. *The life of reason, or, the phases of human progress, Vol.1: Reason in Common Sense*, 284