

Belgische Vereniging voor Zeerecht
Association Belge de Droit Maritime

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**THE BELGIAN POSITION
ON THE NEW UNCITRAL CONVENTION**

**POSITION PAPER BY THE BELGIAN MARITIME LAW ASSOCIATION
REGARDING THE UNCITRAL DRAFT CONVENTION
ON THE CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA**

INTRODUCTION

Following the publication of the Report of the United Nations Commission on International Trade Law of its forty-first session held from 16 June to 3 July 2008, and in preparation of the CMI Conference at Athens, the Belgian Maritime Law Association (*Belgische Vereniging voor Zeerecht – Association belge de droit maritime*) thought it useful to instruct an ad hoc Working Group to ascertain the general feeling in the relevant Belgian industry branches towards ratification of the new Convention.

The matter is of considerable importance for Belgium. First, in its relatively small territory several important seaports are located, and they would certainly feel the impact of some of the innovations contained in the new Convention. Secondly, in 2007 a Royal Commission was mandated to review and fundamentally reform the outdated Belgian Maritime Code. A possible ratification of the new Convention, and the ensuing denunciation of the present Hague Visby Rules, would obviously deeply affect the work of the Royal Commission.

After careful consideration, and relying on the comprehensive background information which the Belgian Maritime Law Association communicated to the Royal Commission regarding the industry views on the new Convention, a number of significant elements pro and contra were identified by the ad hoc Working Group.

ELEMENTS PRO

The following items were perceived as positive innovations and ameliorations to the present Hague Visby regime.

- The provisions for electronic documents.
- The general liability rule, operating on a rebuttable presumption of liability.
- The increase in the liability limits (with reserve by shipping interests).
- The deletion of the nautical fault defence (with reserve by shipping interests).
- The principle of door to door applicability of one single liability regime.
- The innovations regarding the liability of performing parties, bringing them, in principle, under the same general regime the contracting carrier is operating under.
- The provisions regarding the carriage on deck of containers. These would adequately solve a long-standing legal dispute in the application of the Hague Visby Rules by the Belgian Courts.

ELEMENTS CONTRA

As to a number of items, it appeared that the present Hague Visby regime was felt to be preferable to the new Convention. These items concern either fundamental policy decisions which were perceived not to fulfil the expectations the Belgian industry would have from new transport legislation, or compromise solutions in the new Convention which were seen as missed chances.


- The freedom of contract provisions for volume contracts. Although the Working Group understood the in itself legitimate wish of ocean carriers and large, so-called sophisticated shippers to regulate their legal relations in complete independence, and was aware of the technical difficulties in defining volume contracts, it was generally felt that the resulting rules do not offer sufficient protection to smaller shippers and freight forwarders, who may be forced into contracts offering less legal certainty than the present Hague Visby regime.
- The provisions on the shipper's liability to the carrier. The main criticism is that the shipper, in stark contrast to the carrier, is subject to unlimited liability, although shipping interests remarked that the shipper is intimately familiar with the nature of its cargo.
- The actual door to door regime. As indicated above, the Working Group was in favour of a door to door regime, but the limited network rule contained in the new Convention – the "maritime plus" solution – was felt to create more anomalies than it would solve, inter alia because of the effective overruling of mandatory national law based on the CMR and COTIF Conventions.
- The possibility to render the cargo interests responsible for loading, stowing and discharging.
- The jurisdiction rules. The Working Group would have applauded an adequate independent set of rules on jurisdiction, which could have solved a number of pressing problems that the Belgian Courts experience in applying EU Regulation 44/2001. The opting out clause in Article 74, combined with the separate status of "regional economic integration organizations" described in Article 93, will most probably render the jurisdiction provisions useless for Belgium.

CONCLUSION

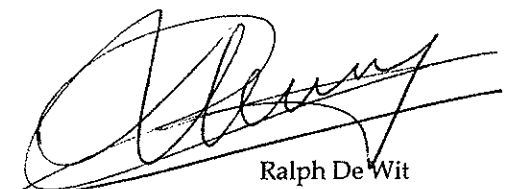
The Belgian Maritime Law Association recognizes the considerable effort of all the negotiating parties over so many years, and acknowledges a great number of practical and helpful innovations. Nevertheless, the Association does not support two fundamental policy options: first, the – in itself commendable – freedom to opt out of the Convention, which is perceived as being defined too vaguely, and secondly, the Convention's applicability to carriage other than sea carriage, the practical elaboration of which is seen as anomalous.

Consequently, the Belgian Maritime Law Association regrets that it will not advocate ratification of the new Convention.

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