

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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**Report
of the United Nations Conference
on a Convention on International Multimodal Transport
on its resumed session**

held at the Palais des Nations, Geneva, from 8 to 24 May 1980



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UNITED NATIONS CONFERENCE ON A CONVENTION
ON INTERNATIONAL MULTIMODAL TRANSPORT

REPORT OF THE UNITED NATIONS CONFERENCE ON A CONVENTION ON
INTERNATIONAL MULTIMODAL TRANSPORT ON ITS RESUMED SESSION */

held at the Palais des Nations, Geneva,
from 8 to 24 May 1980

*/ For the text of the United Nations Convention on International Multimodal Transport of Goods, adopted by the Conference on 24 May 1980, see TD/ITF/CONF/16.

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<u>Annex</u>
I. Report of the Chairman of the First Committee
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INTRODUCTION

1. In accordance with the resolution adopted at the first part of its session, 1/ the United Nations Conference on a Convention on International Multimodal Transport resumed on 8 May 1980. The resumed session was opened by Mr. E. Selvig (Norway), President of the Conference. 2/
2. At its opening meeting, the Conference observed a minute of silence in tribute to the memory of the late President Josip Broz-Tito of Yugoslavia.
3. In reviewing the work still to be accomplished at the resumed session, the President of the Conference recalled the resolution adopted at the first part of the session, wherein the Conference expressed its determination to finish its work at the resumed session. He noted from discussions he had had with co-ordinators that the determination expressed at that time still existed at the resumed session. In order to realize this objective the substantive work of the Conference should begin immediately, making use of the organizational structure already established at the first part of the session. Matters already agreed upon should not be re-opened. Furthermore, he expressed the hope that there would exist at the resumed session a willingness to harmonize views so that agreement could be reached quickly on the technical and less significant issues, leaving sufficient time to deal with the essential issues in the same spirit of co-operation.

1/ See TD/MT/CONF/12/Add.1, annex I.

2/ For the background to the Conference, see the report of the Conference on the first part of its session (TD/MT/CONF/12/Add.1), paras. 1-7.

Chapter I

PREPARATION AND ADOPTION OF A CONVENTION ON
INTERNATIONAL MULTIMODAL TRANSPORT

(Agenda item 8)

A. Consideration of the reports of the
Chairmen of the main committees

4. At the eighth (closing) meeting of the Conference, on 24 May 1980, the Chairman of the First Committee introduced his report, which was contained in document TD/MT/CONF/C.I/L.2.

5. The Conference approved the report of the Chairman of the First Committee and decided to annex it to the report of the Conference. 3/

6. At the same meeting, the Chairman of the Second Committee introduced his report which was contained in documents TD/MT/CONF/C.II/L.2/Rev.1; TD/MT/CONF/C.II/L.2/Add.1 and Add.2.

7. The Conference approved the report of the Chairman of the Second Committee and decided to annex it to the report of the Conference. 4/

B. Adoption of the Convention and of the
Final Act of the Conference

8. At the eighth (closing) meeting, on 24 May 1980, the text of the draft convention was presented to the Conference for adoption in documents TD/MT/CONF/L.6 and Add.1. The President read out a number of amendments to this text. A new paragraph 5 of article 34, circulated to the Conference in English only, was subsequently issued as document TD/MT/CONF/L.6/Add.2. The Conference also noted that the Drafting Committee had made certain drafting changes to the text of the convention which would be inserted in the final version.

9. At the same meeting, the Conference adopted by consensus the United Nations Convention on International Multimodal Transport of Goods. 5/

10. In connexion with the signing of the Final Act of the Conference, 6/ the representative of the Syrian Arab Republic stated that in his understanding the no reservation clause of the Convention (article 35) did not apply to statements

3/ For the report of the Chairman of the First Committee, see annex I below.

4/ For the report of the Chairman of the Second Committee, see annex II below.

5/ For the final text of the Convention, see TD/MT/CONF/16.

6/ For the text of the Final Act, see TD/MT/CONF/15.

which States might make at the time of signing the Final Act. Such statements were necessary to protect their interests in certain circumstances. Referring to paragraph 21 of the Final Act, the representative of Spain stated that his delegation had preferred the word "convocatoria" to "convocación" when this paragraph had been considered by the Drafting Committee, and he wished to record his surprise that the latter word still appeared in the Spanish text.

11. At the same meeting the Conference adopted the Final Act of the Conference by consensus.

12. Representatives of the following States signed the Final Act of the Conference: Algeria; Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Burundi; Byelorussian Soviet Socialist Republic; Canada; Chile; China; Colombia; Cuba; Czechoslovakia; Denmark; Ecuador; Egypt; El Salvador; Ethiopia; Finland; France; Gabon; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Honduras; Hungary; India; Indonesia; Iraq; Ireland; Israel; Italy; Ivory Coast; Japan; Kenya; Lebanon; Libyan Arab Jamahiriya; Madagascar; Mexico; Morocco; Netherlands; New Zealand; Nigeria; Norway; Panama; Peru; Poland; Portugal; Romania; Senegal; Spain; Sri Lanka; Sweden; Switzerland; Syrian Arab Republic; Thailand; Trinidad and Tobago; Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Cameroon; United Republic of Tanzania; United States of America; Venezuela; Yugoslavia.

C. Concluding statements

13. The Secretary-General of UNCTAD noted that the Conference had just adopted a Convention on a subject which for 30 years or more had exercised the minds of economists, lawyers, entrepreneurs and users of transport services in all parts of the world, as well as of Governments as public concern had grown in the sphere of international transport. He referred to the previous unsuccessful attempts made at private institutional levels to accommodate the various seemingly polarised private interests that were at stake - those of shippers, carriers, insurers, assured, multimodal transport operators, bankers, and all the intermediaries that were involved in multimodal transport - as well as the interests of Governments in matters of regulation. He noted that these efforts had not failed for lack of commitment to find viable solutions. The problems and issues were so complex, so bound up with hard commercial realities and the difficulty of accommodating these aspects in reasonable balance with Government policies, that it had not been found possible for the international commercial community to devise viable solutions which could survive at the international level as acceptable norms for the regulation and practice of multimodal transport services. It was for this reason that, although multimodal transport services were regulated under privately drawn-up rules, the Economic and Social Council had resolved that an Intergovernmental Preparatory Group should be established to elaborate an international multimodal transport convention under the auspices of UNCTAD. UNCTAD had been selected because it was in UNCTAD that the "gut issues" were dealt with, which was precisely why it frequently appeared to take so long within UNCTAD to resolve problems.

14. He said that when conventions were adopted, satisfaction was frequently tempered with disappointment and frustration since many cherished positions had to be relinquished or diluted. The secretariat had always desired to have a Convention which would be a viable and reasonably sound instrument that would receive the support of all or most of the countries participating in the Conference and which would operate successfully, meeting a felt commercial need to regulate international

multimodal transport in accordance with the public interest. Now that the Convention had been adopted by consensus, he hoped that States would soon ratify or accede to it and help in a practical manner to bring it into force. Furthermore, he trusted that in the years to come, as experience was gained of its wide operation, it would function as a worthy symbol of the concrete and practical agreements which were sought within the framework of the New International Economic Order, because that was exactly what the Conference had entailed: representatives from different economic systems coming together with opposing or significantly divergent views, discussing common problems and issues, and reaching agreement upon, and adopting, an instrument by consensus. Adoption of the Convention was significant in the light of the disappointment and impatience that had often been expressed in respect of the progress made in the field of international co-operation for development. He trusted that the success achieved at this Conference would be an encouragement to the other efforts being made in UNCTAD and elsewhere to bring negotiations on important international economic issues to a fruitful conclusion. It was sometimes said that UNCTAD was not suitable for the elaboration of technical agreements in view of its size. However, by adopting the Convention on International Multimodal Transport, which involved numerous technical issues, the Conference had proved that this could be done within the framework of UNCTAD.

15. The spokesman for Group B noted with satisfaction that the Conference had been able to complete its work at its resumed session despite the many divergent views on important issues which had still existed at the outset of the session. In this respect, he recalled that multimodal transport rules had for more than 50 years been the subject of work of eminent transport lawyers.

16. He said that with the increased use of containers the multimodal transport concept had become a major part of operations in maritime transport. A universally applicable system of liability and transport documentation had consequently become a necessity. Since maritime transport played such a preponderant role in this context, it was natural to shape, wherever possible, the provisions of the Convention according to a model which had been elaborated within UNCTAD and UNCITRAL, namely the Hamburg Rules of 1978. ^{7/} He noted that these were now the two great private law Conventions in the field of transport for which UNCTAD was responsible. A third no less important international instrument was the United Nations Convention on a Code of Conduct for Liner Conferences which would soon enter into force. These three instruments were meant to provide a basis for future orderly transport operations, in particular in the field of shipping. As multimodal transport drew upon all existing modes of transport it was particularly necessary to avoid any possible overlap with existing international rules for such modes of transport. Another prerequisite was to shape rules in such a way that their application would promote the concept of multimodal transport. This meant that they should encourage private commercial entrepreneurs to develop more multimodal transport services. It was likewise necessary to make it quite clear that segmented transport operations could continue to exist, leaving it up to commercial interests to choose in each case the most appropriate mode of transport. In conclusion, he expressed the hope that the provisions of the Convention would stand the test of time.

17. The spokesman for the Group of 77 stated that his Group considered the Convention which had just been adopted by consensus, as it hoped other groups and China did, to be a true multimodal transport convention which should receive the widest application. In order to accommodate the wishes of many Group B countries, his Group had conceded many formulations to them which some of the Group of 77 countries

^{7/} United Nations Convention on the Carriage of Goods by Sea, 1978.

still feared might make it easier for stronger parties to attempt to circumvent the Convention by utilizing other existing conventions. In view of all the restrictions or loopholes that had been agreed to - for example the flexible language on pick-up and delivery, the limitations on scope of application, the deference to other conventions in article 38 and in many other places - his Group felt the need to appeal to the States members of the Group of 77, of Group D, China, and particularly to Group B, to implement this Convention as quickly as possible. Any difficulties made in this respect would, as in the case of the Code of Conduct on Liner Conferences, be self-defeating. The Group of 77 believed that this was a sound and viable Convention and urged that it be brought into effect soon in order to see how it would work in practice and to gain experience with it. If serious problems arose, they could be put right at the review conference. If ratification were delayed, if the scope of the Convention were restricted, then the Convention would not be given a chance to prove its worth, and the situation in the long run would become increasingly difficult for everybody.

18. He said that all delegations in all Groups had done their best and had gone as far as they could at this stage to accommodate each others problems on such matters as the liability régime of the Convention, conflict of conventions, the air leg, the monetary limits, and the public law aspects. All these issues had now been settled in the Convention. It was therefore necessary for participating States to demonstrate faith in the result of the negotiations which had taken place and to exert their best efforts to sign, ratify or accede to the Convention as quickly as possible.

19. He said that the Group of 77 countries, having fought to bring this work to UNCTAD, had now succeeded, with the co-operation of the other groups and China, in adopting, if not exactly the type of convention they had wanted, certainly one which largely met their concerns and needs. He noted that it had not been possible for many years to elaborate a multimodal transport convention on an international scale, although many institutions had tried, and it was significant that such an effort had succeeded in UNCTAD. Many countries and carrier industries had criticised the efforts of this Conference and it was a pleasure to have adopted by consensus a Convention which his Group hoped would take its place along with the Code of Conduct on Liner Conferences and the Hamburg Rules - also products of UNCTAD - as one of the three basic structures of modern transport services.

20. In conclusion, he requested the UNCTAD secretariat to exert its best efforts to assist developing and other countries to implement this Convention, and he appealed again to all countries to ratify the Convention as quickly as possible.

21. The representative of China stated that through full and active negotiation, both at the first part of its session and during the resumed session, and thanks to the concerted efforts of all participants, the Conference had accomplished the task of drawing up and adopting a Convention on International Multimodal Transport. The Convention represented a positive step towards the establishment of a new international economic order. His delegation believed that the effective implementation of the Convention would further promote world trade and facilitate international multimodal transport. It would also enhance developing countries' participation in international multimodal transport and strengthen their position in the international carriage of goods. His delegation was therefore, in principle, in favour of the Convention.

22. The spokesman for Group D said that, thanks to the wisdom and the spirit of mutual understanding shown by all participants, the text of the Convention had been adopted by consensus. On behalf of the delegations of the Byelorussian Soviet Socialist Republic, Bulgaria, Hungary, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic, Czechoslovakia, and the Union of Soviet Socialist Republics, he stated that the inclusion in the Convention of a paragraph (article 34, paragraph 5) providing for the possibility of organizations for regional economic integration to become parties to the Convention did not signify a change of attitude on the part of the above-named socialist countries and did not imply any obligations for them in respect of organizations of this kind.

23. The representative of the United Kingdom said that his country, recognizing the aspirations set out in the preamble to the Convention, had participated fully in discussions before and during the Conference. Its aim had been to reach a solution which was fair to all interests and which provided a satisfactory legal base for worldwide multimodal transport operations. Sufficient progress had been made towards these aims for the United Kingdom not to oppose the final consensus, but it could not give any more positive support to the Convention. A multimodal transport convention could only benefit the aims set out in the preamble if it was consistent with the practical realities of multimodal transport operations throughout the world. In particular, it was necessary for the relationship between the multimodal transport Convention and unimodal transport conventions to be appropriate and unambiguously clear. If this were not so, a multimodal transport convention would hinder rather than help the development of this form of transport.

24. In the circumstances the United Kingdom believed that it would have been appropriate for article 19 of the Convention to specify a network of liability; for article 2 to specify application of the Convention between contracting States; and for article 3 to specify that this particular Convention should be of optional application. His country welcomed the provisions which seemed to meet this problem but had difficulty in accepting them as comprehensive alternative provisions. His country also believed that the Convention made inadequate provision for the legal position of the actual carrier, and that it was inappropriate and undesirable that a private law convention should include public law provisions. In conclusion, he said that the United Kingdom would consider carefully the Convention as a whole, but it was not persuaded that the Convention was the best way to further the common objective of encouraging multimodal transport and world trade in general.

25. The representative of Japan stated that his delegation had not been able to get fully satisfactory solutions on certain fundamental issues. The adoption of a uniform system of liability in article 19 of the Convention altered existing practices based on the network approach and would require adjustment by the commercial interests concerned. This would substantially increase transportation costs and have a serious effect on the trading interests of all countries, including developing countries. Also, since more than 80 per cent of actual cases of damage in multimodal transport were identifiable as localized damage, his delegation, with the unanimous support of commercial interests in his country, considered that the network system was the most suitable system for the liability regime. He considered that the uniform liability system would create the problem of possible conflicts between the multimodal transport Convention and other unimodal Conventions. His delegation, together with some other delegations, had put forward a proposal for a practical solution to the problem of the relationship between the multimodal

transport Convention and other Conventions, which had not gained general support. Furthermore, no agreement had been reached on the Group B proposal regarding a cumulative approach for the scope of application of the Convention (article 2), which was intended to minimize, in a practical sense, the possible conflicts of conventions. The provisions of article 38, based upon the President's compromise proposal, might serve to resolve some, but not all, of the conflicts of conventions.

26. While his delegation had not opposed the consensus procedure, since it had no intention of insisting on a vote which would have prevented the adoption of the Convention, it considered that the adoption of the Convention by consensus did not necessarily mean "adoption by unanimity" or "adoption by unanimous support". His delegation's participation in the adoption of the Convention by consensus, in the signing of the Final Act, and in the adoption of the report of the Conference was without prejudice to the position of his Government on any obligation, including the obligation to become a party to the Convention in the future.

27. The representative of the United States of America stated that, although his delegation had joined in adopting the Convention without a vote, it nevertheless felt bound to express some of its concerns. His delegation found that the Convention suffered from a serious shortcoming which was related directly to the fundamental nature of multimodal transport. Experience in his country had shown that this was a dynamic area of international trade and communication which had steadily evolved over the past several decades and had produced important economic gains throughout the world. His delegation believed this had been true precisely because multimodal transport had evolved in a climate which had encouraged technical, economic and institutional innovation. Noting that any convention in this area must be so constructed as to encourage rather than restrict the growth and development of multimodal transport, which required continuing experimentation in areas such as institutional arrangements, his delegation supported the principles of optionality and limited scope of application as the most effective and appropriate devices to achieve this end, in that they would permit the maximum range of multimodal services to be agreed upon by the consignor and the multimodal transport operator.

28. His delegation also regretted that major problems surrounding the involvement of air transport in the multimodal chain had been only partially addressed by the Convention. Furthermore, his delegation believed that it was fundamentally unsound to inject any public law provisions into a private law transport convention. A rigid set of customs provisions had been inserted into the body of the Convention which should instead have been dealt with in appropriate intergovernmental agreements within the framework of established customs machinery and institutions. In the view of his delegation, such shortcomings detracted from the purpose of the Convention, which was to unify private commercial law, and could lessen its chances of attaining the universal adherence which such a convention required.

29. The representative of Argentina stated that his delegation believed that the Convention's "scope of application" (article 2) conflicted with fundamental Argentine legal principles. His delegation did not agree with the provisions relating to "localized damage" (article 19), since in its opinion the so-called "network system" was best suited to the juridical and economic nature of multimodal transport. Furthermore, the concept of "jurisdiction" in article 26, paragraph 1(d), was not consistent with the principles of Argentine jurisprudence. The provisions relating to "arbitration" (article 27) also created difficulties since the legal

system of his country allowed arbitration to be agreed on in writing only after a dispute had arisen. His delegation also believed that the article concerning "other conventions" (article 30) was inadequate since it contained only a partial list of international conventions. His delegation would have preferred an automatic procedure for revision and amendments in article 39. In article IV of the annex relating to customs matters, an exception should have been made as to national provisions in force concerning the possible requirement of a deposit in lieu of payment. Lastly, on the question of the adherence of organizations for regional economic integration as parties to the Convention, when such organizations assumed in a specific field rights and responsibilities of States members of such organizations (article 34, para. 5), this could in no way imply any exemption from the equitable rights and obligations which were assumed by all the countries signing the Convention.

30. The representative of Iraq stated that, with reference to article 38, his delegation understood the wording of the English text to mean that the court or the arbitration tribunal had the choice, in the cases provided for in that article, of applying either the rules of other conventions or this Convention, since the word "may" as used in this context was permissive.

31. The representative of Spain expressed the view that there were some imbalances in the Convention viewed as a whole. One of them was the preponderant role ascribed to the consignor to determine the nature of the recourse to the multimodal transport contract, contrary to the traditional principle of mutual agreement. Another important factor of imbalance was the setting of too high a limit of liability. Furthermore, the provision declaring null and void any clause assigning benefit of insurance of the goods ran counter to the present trend of reducing the costs of the multimodal transport contract. From a juridical point of view, his delegation believed that a less ambiguous solution might have been found regarding conflict between conventions in article 38. The legal uncertainty in that article would hinder the implementation of the Convention. His delegation also had difficulty with the principle set forth in article 39, paragraph 4, which would leave States which had not accepted the adopted amendments with the alternatives of going back on their decision and ultimately accepting them, or facing the legal and practical uncertainty resulting from non-acceptance, or lastly, resorting to the undesirable step of denouncing the Convention. These fundamental imbalances, as well as the legal problems referred to, caused his delegation to harbour grave doubts as to whether the text agreed upon could pass without difficulty through his country's internal constitutional channels.

32. The representative of Turkey stated that his delegation had joined in the adoption of the Convention by consensus, even though it had a certain number of problems concerning the text, in particular the solution chosen for the liability regime relating to localized damage, because his delegation preferred the network system.

33. The representative of the Netherlands said that the subject dealt with by the Conference was complicated and that the group system followed in UNCTAD was not very efficient when it came to tackling technical legal subjects. Referring to the participation of non-governmental organizations in the work of the two main committees of the Conference, he said that his delegation had reluctantly agreed

to the "gentleman's agreement" reached at the first part of the session that representatives should decide before each main committee whether it was to be public or private in character. However, his Government considered that this agreement should not serve as a precedent for future United Nations or UNCTAD conferences; his Government supported the principle that non-governmental organizations which had been invited to participate in a conference should be permitted to express their views in the meetings of the main committees of the conference. In future, the rules of procedure should contain the necessary guarantee in this respect.

34. He said that his delegation had agreed to the final "package deal" on the Convention because it had obtained some satisfaction with regard to certain safeguards after article 19, Alternative B, had been deleted from the draft convention. However, his Government and commercial circles in his country believed that only a complete network system for localized damage was satisfactory for multimodal transport. His Government would, after consultation with the commercial circles, study the Convention carefully and take a decision at the appropriate time. In the meantime, his delegation's participation in the consensus adoption of the Convention should in no way be regarded as acceptance in principle of the Convention by his Government.

35. The representative of France stated that his delegation had serious legal reservations concerning the Convention, although it had not objected to its adoption by consensus. Although the Convention preserved the interests of maritime transport, it undermined the principle of freedom of contract in that it precluded multimodal transport contracts other than those envisaged in the Convention, even though commercial practices had already been providing such multimodal transport services satisfactorily. The sole choice between a contract for segmented transport and a multimodal transport contract under the Convention did not meet commercial need for flexibility. Furthermore, although the Convention preserved the application of the existing combined transport regimes for rail transport (CIM) and road transport (CMR), it did not take into account subsequent modifications of these regimes, nor did it contain a general provision preserving the application of the whole body of transport conventions and their subsequent amendments. It was not desirable to proceed to a uniformisation of transport law that prevented the application of the existing international conventions. This was why his delegation had supported the network system, especially when these conventions were satisfactory and could give the consignor better protection than the multimodal transport Convention. In the case of air transport, his delegation shared the grave legal concerns of ICAO and had declared itself at the sixth session of the Intergovernmental Preparatory Group to be in favour of the exclusion of air transport from the scope of the Convention. His delegation noted that the air transport regime was only very inadequately preserved by the sole exclusion of pick-up and delivery operations.

36. He considered that the limit of liability was insufficient to cover other modes of transport. It was not acceptable legally, in the case of applying a higher limit of liability, that inland transport was assimilated to maritime transport, since French law established an unlimited liability for inland transport. Furthermore, the criterion of the fault of only the multimodal transport operator for the loss of his right to limit his liability was contrary to the French legal principles which implied that the fault of the servants and agents was also a criterion. In this respect the solution offered by the Convention was less favourable to the interests of the consignor.

37. Finally, he said that the scope of application of the Convention should have been limited to transport between contracting States. It was also unsatisfactory to include public law provisions in a private law convention. Nevertheless, his delegation, in order to respond to the request of the Group of 77, had agreed to the inclusion of provisions on customs within the Convention. Moreover, it had agreed with difficulty to the procedures on consultations, but it had failed to have them expressly limited to maritime transport.

38. The representative of Greece said that, despite all difficulties and divergencies, the Conference had made appreciable progress during its resumed session and had managed to find solutions that were acceptable to all parties on several points at issue. However, certain controversial points had not been resolved in an appropriate manner. His delegation had not opposed the final consensus, although it did not consider the Convention to be satisfactory, in particular with respect to articles 2, 3, 19 and 30, for a number of reasons. In the first place, given that the fundamental aim of the Convention was to simplify as far as possible the procedures and the means employed for the expansion of the trade of the developing countries, it would have been in the general interest to conclude a coherent text that would be likely to enjoy wide-spread application. His delegation was not convinced that the Conference had succeeded in this endeavour. Secondly, as the President had pointed out, the multimodal transport Convention constituted a meeting ground for several unimodal legal systems, and for this reason it was essential to harmonize the different traditions of the various unimodal transport regimes in force. Implementation of the multimodal Convention thus conflicted with the other international transport conventions. His delegation considered that a modification of the present practice, which was based on the network liability system, would entail costly adjustments for the trade circles concerned, the repercussions of which would also be felt by the developing countries. Thirdly, unimodal transport operations were largely vested in the private sector, the multimodal transport Convention gave rise to problems in its relationship with the private law provisions of national legislations. In view of the latter objections of a legal nature, his Government remained committed to the principle of freedom of contract. The Convention should be applied only between contracting parties (cf. article 2). Moreover, his Government defended the optional application of the Convention, as well as the present practice based on the network system, in order to avoid any conflict with existing laws and conventions. The multimodal transport Convention should facilitate combined transport operations and should not introduce elements that were of a coercive nature.

39. The President of the Conference stated that the Conference had accomplished the task entrusted to it by the General Assembly in 1978. ^{8/} Noting the concerns which had been expressed by some countries with respect to the Convention, he hoped that such concerns were largely attributable to the heat of negotiation and that with time they would be looked upon differently. He further hoped that the Convention would prove its viability and that international trade would be well served by it. It did great credit to all delegations as well as to UNCTAD, within which the Convention had been prepared and adopted, that it had eventually become possible to adopt by consensus such an elaborate legally binding instrument on a very complicated subject. He recalled that he had noted at the opening of the Conference

^{8/} General Assembly resolution 33/160 of 20 December 1978.

in November 1979 that, while UNCTAD was involved in many fields, it was perhaps in the field of liner transport of goods that the most tangible results had been achieved. During the 1970s a new international regime for liner transport of goods had been developed through UNCTAD. Three important Conventions had been adopted. The first was the United Nations Convention on a Code of Conduct for Liner Conferences, the second was the United Nations Convention on the Carriage of Goods by Sea, and the third was now the United Nations Convention on International Multimodal Transport of Goods. He noted that there were close links between these three Conventions: they had all been elaborated within the United Nations with the full participation of countries from all parts of the world, and the chief responsibility for the work had been placed on UNCTAD; moreover, they had all been prepared during a decade in which liner transport of goods had been subjected to significant technical and commercial changes. It was remarkable that in this period of rapid evolution it had been possible to harmonize divergent views and, through mutual co-operation, to find widely acceptable solutions. The fact that the multimodal transport Convention had been adopted by consensus was a major encouragement to UNCTAD. He was convinced that the elaboration of the Convention would set an example which would strengthen the idea of international co-operation. Acknowledging the limited scope of the Convention, he felt nevertheless that the Convention dealt with a subject matter which constituted a meeting ground for quite different interests and traditions, both legal and commercial. A generation of international lawyers had set their minds to the problems involved without having been able to find generally acceptable solutions. Against all odds, a consensus had been reached at this Conference, and this in itself was a significant accomplishment. Moreover, the resulting new Convention on International Multimodal Transport had qualities which, in his view, would well bear comparison with the existing conventions in the field of international transportation law. The achievement of this Conference would help strengthen the belief in and dedication to world-wide international co-operation. Many Conferences had gone down in history without being able to leave such an image. The successful completion of the work of the present Conference was due to the fact that all representatives at the Conference - each in his own capacity - and all those who belonged to the secretariat had contributed to the best of their ability.

Chapter II
ORGANIZATIONAL MATTERS

A. Organization of the work of the Conference
(Agenda item 5)

40. At its sixth (opening) meeting, on 8 May 1980, the Conference decided to maintain the structural organization which it had adopted at its first plenary meeting on 12 November 1979, 9/ as follows:

General Committee: Composed of the President of the Conference, the 15 Vice-Presidents, the Rapporteur, and the Chairmen of the two main committees. The General Committee had the function of assisting the President in the general conduct of the business of the Conference and ensuring the co-ordination of its work.

Two main committees: The Conference allocated to the two main committees the consideration of agenda item 8 (Preparation and adoption of a convention of international multimodal transport) on the basis of the proposed text of the draft convention contained in part one of the report of the United Nations Conference on a Convention on International Multimodal Transport on the first part of its session (TD/MT/CONF/12), as follows:

First Committee: Draft articles 1 to 23 and 29 to 32 of the draft convention (i.e. parts I-IV and part VI)

Second Committee: Draft articles 24 to 28 (i.e. part V - Claims and actions, draft article 33 (i.e. part VII - customs matters), the draft preambular clauses, and the proposed draft provisions on final clauses prepared by the UNCTAD secretariat (TD/MT/CONF/12, annex II).

The Drafting Committee: Composed of representatives of the Group of 77, Group B, Group D, and China. 10/ In addition to considering such draft articles as were referred to it by the main committees, the Drafting Committee was entrusted by the Conference with the preparation of the draft Final Act of the Conference, for submission to the plenary.

The Credentials Committee: Composed of nine members appointed by the Conference on the proposal of the President. 11/

9/ For the organization of the work of the Conference at the first part of its session, see TD/MT/CONF/12/Add.1, chapter II.

10/ See TD/MT/CONF/12/Add.1, paras. 60-61.

11/ Ibid., para. 57.

41. In the course of the resumed session of the Conference the First Committee held seven meetings, from 9 to 24 May 1980, and the Second Committee held 13 meetings, from 9 to 23 May 1980. The officers of the First and Second Committees elected at the first part of the session continued to serve at the resumed session. 12/

42. Also at its opening meeting, the Conference decided to base its work, as appropriate, on the suggestions for the organization of work contained in the note by the UNCTAD secretariat (TD/MT/CONF/13), which reproduced the agenda of the Conference as follows:

1. Opening of the Conference
2. Election of the President
3. Adoption of the rules of procedure
4. Adoption of the agenda
5. Organization of the work of the Conference
6. Election of other officers
7. Credentials:
 - (a) Appointment of a Credentials Committee
 - (b) Report of the Credentials Committee
8. Preparation and adoption of a convention on international multimodal transport
9. Consideration and adoption of final resolutions
10. Other business.

B. Election of other officers 13/
(Agenda item 6)

Replacement of Vice-Presidents

43. At its opening meeting, on 8 May 1980, the Conference elected Mr. F. Suzuki (Japan) as a Vice-President of the Conference, to replace Mr. M. Sawaki (Japan) who was unable to attend the resumed session. At its seventh meeting, on 22 May 1980, the Conference elected Mr. M. Sikic (Yugoslavia) as a Vice-President of the Conference, to replace Mr. R. Pradhan (India) who was also unable to attend.

12/ Ibid., paras. 45 and 46 (First Committee) and paras. 48 and 49 (Second Committee).

13/ For the officers of the Conference elected at the first part of the session, see TD/MT/CONF/12/Add.1, para. 51.

C. Participation in the resumed session of the Conference 14/

44. The following States members of UNCTAD participated in the Conference: Algeria; Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Burundi; Byelorussian Soviet Socialist Republic; Canada; Chile; China; Colombia; Cuba; Cyprus; Czechoslovakia; Denmark; Ecuador; Egypt; El Salvador; Ethiopia; Finland; France; Gabon; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Honduras; Hungary; India; Indonesia; Iraq; Ireland; Israel; Italy; Ivory Coast; Jamaica; Japan; Kenya; Lebanon; Libyan Arab Jamahiriya; Madagascar; Malawi; Malaysia; Malta; Mexico; Morocco; Netherlands; New Zealand; Nigeria; Norway; Pakistan; Panama; Peru; Philippines; Poland; Portugal; Republic of Korea; Romania; Saudi Arabia; Senegal; Somalia; Spain; Sri Lanka; Sudan; Sweden; Switzerland; Syrian Arab Republic; Thailand; Trinidad and Tobago; Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Cameroon; United Republic of Tanzania; United States of America; Uruguay; Venezuela; Yemen; Yugoslavia; Zaire.

45. The Economic Commission for Africa and the Economic Commission for Europe were represented at the Conference.

46. The United Nations Industrial Development Organization was represented at the Conference.

47. The following specialized agencies were represented at the Conference: International Civil Aviation Organization; Inter-Governmental Maritime Consultative Organization.

48. The following intergovernmental organizations were represented at the Conference: Arab Federation of Shipping; Central Office for International Railway Transport; Council of Arab Economic Unity; Customs Co-operation Council; European Economic Community; International Institute for the Unification of Private Law; League of Arab States; Organisation for Economic Co-operation and Development; Organization of African Unity; Organization of American States.

49. The following non-governmental organizations were represented at the session:
General category: International Chamber of Commerce; International Road Transport Union; International Union of Marine Insurance.

Special category: Baltic and International Maritime Conference; International Air Transport Association; International Chamber of Shipping; International Container Bureau; International Federation of Freight Forwarders Associations; International Shipowners' Association; International Union of Railways; Latin American Shippers' Association.

D. Credentials 15/
(Agenda item 7)

50. At its eighth (closing) meeting, on 24 May 1980, the Conference adopted the report of the Credentials Committee (TD/MT/CONF/14). 16/

14/ For the list of participants, see TD/MT/CONF/INF.2.

15/ For the composition of the Credentials Committee, see TD/MT/CONF/12/Add.1, paras. 57-58.

16/ For the report, see annex III below.

ANNEXES

Annex I

REPORT OF THE CHAIRMAN OF THE FIRST COMMITTEE

Introduction

1. During the resumed session of the Conference the First Committee held seven public meetings, from 9 to 24 May 1980.
2. Mr. B. Mbakileki (United Republic of Tanzania) was Chairman and Mr. S. Suchorzewski (Poland) was Vice-Chairman of the First Committee.
3. In accordance with the decision of the Conference at its sixth plenary meeting, the First Committee continued its consideration of articles 1 to 23 and articles 29 to 32 of the draft convention on international multimodal transport as contained in part one of the report of the United Nations Conference on a Convention on International Multimodal Transport on the first part of its session (TD/ITT/CONF/12).
4. During its first twelve meetings, the Committee had a first reading of articles 1 to 15 of the draft convention (see TD/ITT/CONF/12/Add.1, annex II). During its next six meetings (i.e. up to and including its eighteenth meeting), the Committee had a first reading of articles 15 to 23 and articles 29 to 32 and articles 2 and 3 of the draft convention. Views expressed during the first reading of the latter articles are summarized below. References to articles are to those of the draft convention on international multimodal transport contained in TD/ITT/CONF/12. References to proposals contained in conference room papers of the First Committee (i.e. TD/ITT/CONF/C.I/CRP. ...) are to those contained in TD/ITT/CONF/12/Add.1, annex IV.A, and to those circulated at the resumed session of the Conference (TD/ITT/CONF/C.I/CRP.37 to CRP.56).
5. Following the first reading of articles 1 to 23 and articles 29 to 32, all outstanding questions with respect to these articles were referred to the Co-ordinators Group of the President for consideration and solution.

Article 15

The First Committee resumed its consideration of article 15. The Committee considered the proposal contained in TD/ITT/CONF/C.I/CRP.44. The Committee agreed to retain Alternative A subject to an amendment which Group B was to propose for the Committee's consideration.

Article 16Paragraph 1

The Committee decided that for the time being this paragraph should remain unchanged. The Committee further decided to revert at a later stage to the proposal contained in TD/ITT/CONF/C.I/CRP.33.

Paragraph 2

The Committee decided that this paragraph should remain unchanged.

Paragraph 3

The Committee decided that this paragraph should remain unchanged and to insert "90" between the words "within" and "consecutive days".

Article 17

The Committee decided that this article should remain unchanged.

Article 18

Paragraph 1

The Group of 77, Group D and China were in favour of Alternative A, and proposed that the amount of limitation of liability should be set at a figure of about 10 to 15 per cent higher than that set out in article 6 of the United Nations Convention on the Carriage of Goods by Sea, 1973. Group B was in favour of Alternative B.

China proposed that the sentence: "However, if the international multimodal transport does [...] of the goods lost or damaged." appearing in Alternative B, paragraph 1, of article 18 should be added to Alternative A. The proposals contained in TD/MT/CONF/C.I/CRP.19 and CRP.34 were withdrawn. The Committee decided to revert to this paragraph at a later stage.

Paragraph 2

The Committee agreed that the need to include this paragraph in article 18 depended on whether the single or double criterion was finally adopted in paragraph 1. Subject to that decision the Committee agreed that paragraph 2 would be maintained as worded. As regards subparagraph 2 (a), the Group of 77 proposed to delete the words ", if issued, or otherwise in any other document evidencing the multimodal transport contract,". Group B, Group D and China were of the view that this phrase should be retained for the time being and considered again at a later stage in the light of the Committee's decision with respect to article 5 (4).

Paragraph 3

The Committee agreed that this paragraph should read:

"3. The liability of the multimodal transport operator for loss resulting from delay in delivery according to the provisions of article 16 shall be limited to an amount equivalent to two and a half times the freight payable for the goods delayed but not exceeding the total freight payable under the multimodal transport contract."

Paragraph 4

The Committee decided that this paragraph should remain unchanged.

Paragraph 5

The Committee considered the proposal contained in TD/MT/CONF/C.I/CRP.23. This proposal was supported by Group B and Group D. The Group of 77 was in favour of the text of paragraph 5 as worded, with the inclusion of the words "in the multimodal transport document". China could support the text of paragraph 5, but queried whether it was appropriate to limit the application of this provision to cases only where the full value of the goods is declared by the consignor. The Committee agreed to revert to paragraph 5 in connexion with article 29 (2) at a later stage.

Paragraph 6

The Committee decided that this paragraph should remain unchanged.

Article 19

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.20, CRP.26, CRP.42 and the memorandum contained in TD/MT/CONF/C.I/CRP.1 and CRP.2 and Add.1.

The majority of the countries, i.e. the Group of 77, Group D, China and a number of countries of Group B supported Alternative A. Some other countries of Group B supported Alternative B, while the remaining number of countries of Group B were of the view that a final decision on article 19 could be taken only after several other issues with respect to the draft convention had been settled.

With respect to certain phrases in Alternative A, the following preferences were expressed by those countries that supported Alternative A:

"applicable": The Group of 77 and China wished to retain this word in the text. Group B and Group D wished to delete this word as it might create problems of interpretation.

"intergovernmental international convention": The Group of 77 and China proposed to retain these words. Group D proposed to delete the word "intergovernmental". Group B proposed to replace these words by the word "treaties" as suggested in TD/MT/CONF/C.I/CRP.42.

"or mandatory national law": The Group of 77, Group B and China wished to retain these words in the text. Group D proposed to delete the word "mandatory", but could also accept the view of the majority of countries and proposed that the phrase "mandatory national law" should be defined in article 1 of the draft convention as suggested in TD/MT/CONF/C.I/CRP.26.

"provides a higher limit": The Group of 77, Group B, Group D and China agreed to retain this phrase in the text.

"provides another limit": The Group of 77, Group B, Group D and China agreed to delete this phrase from the text.

"or national law": The Group of 77, Group B, Group D and China agreed to retain this phrase in the text. Group D proposed the insertion of the word "mandatory".

Article 20Paragraph 1

The Committee decided that this paragraph should remain unchanged.

Paragraph 2

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.24, CRP.23, CRP.41 and CRP.45. The proposals contained in TD/MT/CONF/C.I/CRP.24 and CRP.23 were withdrawn as they were incorporated into TD/MT/CONF/C.I/CRP.45.

Group B and Group D were in favour of the proposal contained in TD/MT/CONF/C.I/CRP.45. Group D, however, stated that it could not accept the last sentence of that proposal. The Group of 77 and China were in favour of the text of paragraph 2 as worded and could not support the proposal contained in TD/MT/CONF/C.I/CRP.45.

The Committee decided to revert to this paragraph at a later stage when it would be considered together with certain related issues in other articles of the draft convention.

Paragraph 3

Group D and China proposed deletion of the brackets and retention of the words. The Group of 77 and Group B stated that their decision on this paragraph was tied up with the decision on paragraph 2. Group B felt, however, that if TD/MT/CONF/C.I/CRP.4 was accepted they could accept retention of the words in the square brackets. TD/MT/CONF/C.I/CRP.41 was withdrawn. The Committee decided to revert to this paragraph at a later stage.

Article 21

The Committee considered the proposal contained in TD/MT/CONF/C.I/CRP.46, which suggested a substitute text for paragraphs 1 and 2 of article 21.

Paragraph 1

The Group of 77, some countries of Group D and China preferred the text of paragraph 1 as worded and could not accept the proposal contained in TD/MT/CONF/C.I/CRP.46.

Group B and some other countries of Group D were in favour of the text of paragraph 1 proposed in TD/MT/CONF/C.I/CRP.46.

Paragraph 2

The Committee agreed that the text of this paragraph was similar to that of paragraph 2 in TD/MT/CONF/C.I/CRP.46 and requested the Drafting Committee to align the wording of the two texts.

A possible new article to be placed at the end of Part III

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.32 and CRP.48. The proposal contained in TD/MT/CONF/C.I/CRP.32 had been incorporated in CRP.48 and was therefore withdrawn.

Group B was in favour of the proposal contained in TD/MT/CONF/C.I/CRP.48. The Group of 77, Group D and China could not accept this proposal.

The Committee decided to consider this question again at a later stage.

Article 22

The Committee agreed to retain Alternative A and requested the Drafting Committee to draft the language in the positive mode.

Article 23

Paragraph 1

The Committee decided that this paragraph should remain unchanged.

Paragraph 2

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.21 and CRP.49.

The Committee decided that this paragraph should remain unchanged and that in subparagraph (b) the words "as the circumstances may require" should be retained and that the words "if reasonably justified" should be deleted.

Paragraph 3

The Committee decided that this paragraph should remain unchanged.

Paragraph 4

The Committee decided that this paragraph should remain unchanged and that the words "as the circumstances may require" should be retained, and that the words "if reasonably justified" should be deleted. TD/MT/CONF/C.I/CRP.49 was withdrawn.

Article 30

Paragraph 1

The Committee decided that this paragraph should remain unchanged.

Paragraph 2

The Committee decided that the brackets should be deleted and that this paragraph should remain unchanged.

Article 32

The Committee decided to accept this article and requested the Drafting Committee (i) to align the text of this article with that of article 26 of the United Nations Convention on the Carriage of Goods by Sea, 1978; and (ii) to determine in which instances the words "Contracting State" and "State" had to be used.

Article 29

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.52 which replaced the proposals contained in TD/MT/CONF/C.I/CRP.19, CRP.50 and CRP.51.

The Group of 77, Group D, China and a number of countries of Group B could not accept the proposals contained in TD/MT/CONF/C.I/CRP.52, because these countries were in favour of a convention that would be of mandatory application. As a result these countries could accept article 29 as worded in the draft convention.

A number of other countries in Group B supported the proposal contained in TD/MT/CONF/C.I/CRP.52, because they favoured a convention that would be of optional application. As a result they could not accept the inclusion of article 29 in the proposed convention.

Group D proposed to add "or another document evidencing the multimodal transport contract" after the words "multimodal transport document" whenever they appear in article 29. The Committee agreed that this question should be considered again in the light of the Committee's decision on article 5 (4).

Article 2

The Committee considered the proposals contained in TD/MT/CONF/C.I/CRP.17, CRP.25 and CRP.38.

Group D, China and the Group of 77, with the exception of a few countries, were in favour of retaining paragraphs (a), (b), (c) and (d) and the retention of the word "or" in paragraphs (a), (b) and (c) and the deletion of the word "and" in paragraphs (a) and (b).

Group B and a few countries in the Group of 77 were in favour of deleting paragraphs (c) and (d) and the retention of the word "and" in paragraph (a) and the deletion of the words "and or" in paragraph (b).

Article 3

The Committee considered the proposal contained in TD/MT/CONF/C.I/CRP.43. The proposal contained in TD/MT/CONF/C.I/CRP.52 was considered in connexion with article 29.

The Group of 77, Group D and China were in favour of the retention of article 3, as worded. Group D, however, could accept the inclusion of TD/MT/CONF/C.I/CRP.43 as the second paragraph to article 3.

Group B proposed that the text of article 3 as worded should be replaced by the text proposed in TD/MT/CONF/C.I/CRP.43.

Article 31

The Committee noted the proposals contained in TD/MT/CONF/C.I/CRP.2, CRP.4, CRP.14, CRP.36, CRP.37, CRP.47 and CRP.55. TD/MT/CONF/C.I/CRP.4 and CRP.37 were withdrawn as they were incorporated in CRP.47 and CRP.55 respectively.

The Committee considered the proposal contained in TD/MT/CONF/C.I/CRP.47 and preferences were expressed as follows:

Paragraph 1 was acceptable to Group B, Group D and China.

Paragraph 2 was acceptable to Group B, Group D and China. Whether there was a need to include the words "or bilateral" depended on the decision on whether to retain article 27 in the draft convention.

Paragraph 3 was acceptable to Group B, Group D and China.

Paragraphs 4 and 5: the inclusion of these paragraphs in article 31 was supported by Group B. Group D and China were of the view that there was no need to include paragraphs 4 and 5 in article 31.

The Group of 77 stated that it was still considering this matter but nonetheless felt that if an article was necessary it could possibly be along the lines of TD/MT/CONF/C.I/CRP.47. In this respect, the Group of 77 felt initially that paragraphs 1 to 3 of CRP.47 could be acceptable but not paragraphs 4 to 5.

The Committee decided to revert to TD/MT/CONF/C.I/CRP.47 at a later stage.

The Committee then considered the proposal contained in TD/MT/CONF/C.I/CRP.55. This proposal was supported by a number of countries of Group B. The Group of 77, Group D and China could not support this proposal.

Annex II

REPORT OF THE CHAIRMAN OF THE SECOND COMMITTEE

Introduction

1. During the resumed session of the Conference the Second Committee held 13 public meetings, from 9 to 23 May 1980.
2. Mr. D. Popov (Bulgaria) was Chairman and Mr. D. Al-Hilali (Iraq) was Vice-Chairman of the Second Committee.
3. In accordance with the decision of the Conference at its sixth plenary meeting, the Second Committee continued its consideration of article 33, the provisions or guidelines on customs matters, and the Preamble. It also considered articles 24 to 28 and the draft Final Clauses as contained in the report of the United Nations Conference on a Convention on International Multimodal Transport on the first part of its session (TD/MT/CONF/12).

Preamble

4. The Committee had a second reading of the text on the Preamble as submitted by the Drafting Committee (TD/MT/CONF/C.II/CRP.27). The Committee confirmed the agreement reached at the first part of the Conference on the whole text except for paragraph (i) under the chapeau "RECOGNIZING" and paragraph (b) under the chapeau "AGREEING". Both matters were referred to the President's Co-ordinators Group for further consideration.

PART V. CLAIMS AND ACTIONS

Articles 24 to 28

5. After preliminary consideration of these draft articles, the Committee set up a Working Group to facilitate negotiations among regional groups, under the chairmanship of Mrs. A. Celis Roca (Mexico). The proposed amendments were circulated in documents TD/MT/CONF/C.II/CRP.13 to CRP.17 and CRP.25. The result of the work of the Working Group is contained in document TD/MT/CONF/C.II/CRP.29 and 30.
6. During the informal negotiations the Committee reached an agreement on all outstanding issues in draft articles 24, 25, 26 and 28. Article 27 (Recognition and enforcement of judgements) was referred to the President's Co-ordinators Group since the views on this subject could not be reconciled. The Committee decided to remit the agreed text to the Drafting Committee.
7. The text submitted by the Drafting Committee on articles 24 to 28, as contained in document TD/MT/CONF/C.II/CRP.32, was reviewed by the Second Committee. The following alterations were made by the Second Committee:
 - (i) Article 24, paragraph 1, last line: the words in square brackets were deleted.
 - (ii) Article 25, paragraph 4, second line: the words "for indemnity" were inserted after the words "a recourse action".
 - (iii) Article 26, subparagraph 4 (a), third line: the word "may" is replaced by the word "shall".

8. The representative of Argentina stated that her Government did not share the agreement on article 26, subparagraph 1 (d), and article 28, subparagraph 2 (b), because of the legislation and the decisions of courts in her country.

PART VII. CUSTOMS MATTERS

9. On draft article 33, the Group of 77 amplified their proposal which read as follows:

"1. Contracting States shall authorize the use of the procedure of customs transit for international multimodal transport.

2. Without prejudice to the provisions of national law or regulations or intergovernmental agreements, the customs transit of goods in international multimodal transport shall follow the customs provisions I to VI contained in the annex to this Convention."

10. This proposal was supported by the countries of Group D and China. Group B countries maintained their position that there should be no provision. The delegation of Sweden confirmed that its proposal, contained in document TD/MT/CONF/C.II/CRP.9, was a compromise proposal.

11. The Committee could not reach unanimity on this question and decided to refer it to the President's Co-ordinators Group.

12. The Second Committee had a second reading of the draft provisions or guidelines on customs matters on the basis of the text submitted by the Drafting Committee in TD/MT/CONF/C.II/CRP.28 and amendments circulated in TD/MT/CONF/C.II/CRP.26. The Second Committee reached agreement on all substantive issues except for consequential matters resulting from the decision on article 33. The text as agreed by the Committee was circulated in TD/MT/CONF/C.II/L.2/Add.1. a/

PART VIII. FINAL CLAUSES

13. Changes suggested by the Office of Legal Affairs of the United Nations regarding the draft Final Clauses were circulated in document TD/MT/CONF/C.II/CRP.12. Amendment submitted by the delegations with regard to Final Clauses were contained in TD/MT/CONF/C.II/CRP.18 to CRP.24 and CRP.31. The Second Committee reached agreement on provisions concerning depositary and signature, ratification, etc., and also agreed to exclude provision on implementation. The Committee set up an informal Working Group for consideration of the remaining provisions. As a result, the Committee agreed on the provisions concerning date of application, denunciation and authentic text.

14. With regard to the provision on the reservations, it was suggested by the Group of 77 and Group D that its consideration should be deferred to a later stage. With regard to the provision on entry into force, no agreement was reached on paragraph 1. Alternative A was supported by the Group of 77 and also by Group D and China. Alternative B was proposed by the countries of Group B. The matter was to be taken up by the President's Co-ordinators Group together with TD/MT/CONF/C.II/CRP.3

a/ The text is reproduced below in the appendix to the present annex.

15. New article 39 combined the draft provisions concerning amendments and review conferences. An agreement was reached on all paragraphs of this article but some comments were made on paragraph 1. The spokesman for the Group of 77 requested the Drafting Committee to add a phrase in article 39, paragraph 1, concerning the advanced circulation of proposed amendments before the review conference. The outcome of the Second Committee's deliberations on Final Clauses, circulated in TD/MT/CONF/C.II/L.2/Add.2, read as follows:

PART VIII. FINAL CLAUSES

Article 34. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 35. Signature, ratification, acceptance,
approval and accession

1. All States are entitled to become Parties to this Convention by:
 - (a) Signature not subject to ratification, acceptance or approval; or
 - (b) Signature subject to and followed by ratification, acceptance or approval; or
 - (c) Accession.
2. This Convention shall be open for signature as from 1 September 1980 until and including 31 August 1981 at the Headquarters of the United Nations in New York.
3. After 31 August 1981, this Convention shall be open for accession by all States which are not signatory States.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

[Article 36. Reservations]

[No reservation may be made to this Convention.]

Article 37. Entry into force

Paragraph 1.

Alternative A

This Convention shall enter into force 12 months after the Governments of [20] [?] States have either signed if not subject to ratification, acceptance or approval or have deposited instruments of ratification, acceptance or approval or accession with the depositary.

Alternative B

(Paragraph 1 of article 49 of the Convention on a Code of Conduct for Liner Conferences, with more recent statistical basis).

Paragraph 2.

For each State which ratifies, accepts, approves or accedes to this Convention after the requirements for entry into force given in paragraph 1 of this article have been met, the Convention shall enter into force 12 months after the deposit by such State of the appropriate instrument.

Article 38. Date of application

Each Party shall apply the provisions of this Convention to multimodal transport contracts concluded on or after the date of entry into force of this Convention in respect of that Party.

Article 39. Revision and amendments

1. At the request of not less than one-third of the Contracting States to this Convention, the depositary shall, after the entry into force of the Convention, convene a conference of the Contracting States for revising or amending it. b/
2. Any decision by the revision conference including amendments must be taken by a two-thirds majority of the States present and voting. Amendments adopted by the Conference shall be communicated by the depositary to all the Contracting States for acceptance and to all the State signatories of the Convention for information.
3. Subject to paragraph 4 below, any amendment adopted by the conference shall enter into force only for those Contracting Parties which have accepted it, on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. For any State accepting an amendment after it has been accepted by two-thirds of the Contracting States, the amendment shall enter into force on the first day of the month following one year after its acceptance by that State.
4. Any amendment adopted by the Conference altering the amounts specified in article 18 and paragraph 2 of article 32 or substituting either or both the units defined in paragraphs 1 and 3 of article 32 by other units shall enter into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Contracting States which have accepted the altered amounts or the substituted units shall apply them in their relationship with all Contracting States.
5. Acceptance of amendments is to be effected by the deposit of a formal instrument to that effect with the depositary.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of any amendment adopted by the Conference is deemed to apply to the Convention as amended.

b/ The Drafting Committee was requested to add a phrase in this paragraph concerning circulation of proposed amendments in advance of the review Conference.

Article 40. Denunciation

1. Each Contracting Party may denounce this Convention at any time after the expiration of a period of two years from the date on which this Convention has entered into force by means of a notification in writing addressed to the depositary.

2. Such denunciation shall take effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have affixed their signatures hereunder on the dates indicated.

DONE at on in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

APPENDIX

Annex */

[PROVISIONS] [GUIDELINES] ON CUSTOMS MATTERS RELATING
TO INTERNATIONAL MULTIMODAL TRANSPORT

I.

[For the purposes of this Convention:] a/

"Customs transit procedure" means the customs procedure under which goods are transported under customs control from one customs office to another.

"Customs office of destination" means any customs office at which a customs transit operation is terminated.

"Import/export duties and taxes" means customs duties and all other duties, taxes, fees or other charges which are collected on or in connexion with the import/export of goods but not including fees and charges which are limited in amount to the approximate cost of services rendered.

"Customs transit document" means a form containing the record of data entries and information required for the customs transit operation.

II.

1. Subject to the provisions of the law, regulations and intergovernmental agreements in force in their territories, [Contracting States] [Governments] b/ shall grant freedom of transit to goods in international multimodal transport.

2. Provided that the conditions laid down in the customs transit procedure used for the transit operation are fulfilled to the satisfaction of the customs authorities, goods in international multimodal transport:

(a) Shall not, as a general rule, be subject to customs examination during the journey except to the extent deemed necessary to ensure compliance of rules and regulations which the Customs are responsible for enforcing. Flowing from this, the customs authorities shall normally restrict themselves to the control of customs seals and other security measures at points of entry and exit.

(b) Without prejudice to the application of law and regulations concerning public or national security, c/ public morality or public health, shall not be subject to any customs formalities or requirements additional to those of the customs transit régime used for the transit operation.

*/ I.e. annex to the draft convention.

a/ The Second Committee agreed that the term "Convention", as used in this annex, might need to be modified subsequently in the light of the final decision to be taken on the legal status of the provisions contained in the annex.

b/ Group B was in favour of retaining "Governments" whereas the Group of 77 and Group D supported the term "Contracting States". (See also foot-note a/ above).

c/ Group B understood that "national security" was covered by "public security".

III.

In order to facilitate the transit of the goods, each [Contracting State]
[Government] shall:

(a) If it is the country of shipment, as far as practicable, take all measures to ensure the completeness and accuracy of the information required for the subsequent transit operations;

(b) If it is the country of destination:

(i) take all necessary measures to ensure that goods in customs transit shall be cleared, as a rule, at the customs office of destination of the goods,

(ii) endeavour to carry out the clearance of goods at a place as near as is possible to the place of final destination of the goods, provided that national law and regulations do not require otherwise.

IV.

1. Provided that the conditions laid down in the customs transit procedure are fulfilled to the satisfaction of the customs authorities, the goods in international multimodal transport shall not be subject to the payment of import/export duties, and taxes or deposit in lieu thereof in transit countries.

2. The provisions of the preceding paragraph shall not preclude:

(a) The levy of fees and charges by virtue of national regulations on grounds of public security or public health.

(b) The levy of fees and charges, which are limited in amount to the approximate cost of services rendered, provided they are imposed under conditions of equality.

V.

1. Where a financial guarantee for the customs transit operation is required, it shall be furnished to the satisfaction of the customs authorities of the transit country concerned in conformity with its national law and regulations and intergovernmental agreements.

2. With a view to facilitating customs transit, the system of customs guarantee shall be simple, efficient, moderately-priced and shall cover import/export duties and taxes chargeable and, in countries where they are covered by guarantees, any penalties due.

VI.

1. Without prejudice to any other documents which may be required by virtue of an international convention, intergovernmental agreement or national law and regulations, customs authorities of transit countries shall accept the multimodal transport document as a descriptive part of the customs transit document.

2. With a view to facilitating customs transit, customs transit documents shall be aligned, as far as possible, with the layout reproduced below. d/

d/ For the model layout of the Goods Declaration (Customs Transit) form, see the annex to the United Nations Convention on International Multimodal Transport of Goods (TD/B/CONF/16).

Annex III

REPORT OF THE CREDENTIALS COMMITTEE

1. At its third plenary meeting, on 20 November 1979, the Conference, in accordance with rule 4 of its rules of procedure, appointed a Credentials Committee consisting of the representatives of Belgium, China, Ecuador, Kenya, Pakistan, Panama, Senegal, Union of Soviet Socialist Republics and the United States of America.
2. The Committee held its second meeting on 22 May 1980, under the chairmanship of Mr. J. Poswick (Belgium).
3. The secretariat transmitted to the Committee, in conformity with rule 3 of the rules of procedure, credentials which had been received for the representatives of the 31 States which either had not participated in the first part of the session or did not do so as representatives.
4. The Committee found the credentials referred to in paragraph 4 to be in due and proper form and recommends that they be accepted.