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Monrovia, Liberia, July 1979

REPORT OF THE SECRETARY-GENERAL
ON THE PROGRESS ON A CONVENTION
ON INTERNATIONAL MULTIMODAL TRANSPORT



CM 0986.

MICROFICHE

THE PROPOSED CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT(a) Background to the Proposed Convention.

1. The history of an international convention to regulate multimodal transport goes back to 1948 when the International Chamber of Commerce prepared the first draft of a convention on the combined transport of goods. The draft was not accepted. For the next twenty years or so, efforts to create an acceptable draft continued and in 1971 the Intergovernmental Maritime Consultative Organization (IMCO) and the Economic Commission for Europe approved a draft text of a "Convention on International Combined Transport", the so-called TCM Convention. The draft TCM Convention was due to be considered by a UN/IMCO sponsored Diplomatic Conference on International Container Traffic in autumn 1972. At the request of the developing countries, the Diplomatic Conference did not consider the Draft Convention at all. Instead a request was addressed to the UN Economic and Social Council (ECOSOC) that the whole question of combined transport be referred to UNCTAD for thorough re-examination. In its resolution 1734(LIV) of 10 January 1973, ECOSOC requested UNCTAD to set up an Intergovernmental Preparatory Group (IPG) to elaborate, under the auspices of UNCTAD, a preliminary draft a convention on international intermodal transport, bearing in mind particularly the needs and requirements of developing countries. In its decision 96(XII), of 10 May 1973, the UNCTAD Trade and Development Board duly set up the IPG consisting of 68 UNCTAD Member States among whom are 18 African States. The IPG held its first session in 1973, the second session in 1974 and the third session, first part, in 1976, and second part in 1977; the fourth session in 1977, the 5th session in 1978 and the 6th session in February 1979.

2. At its First Session, the IPG gave guidance to the UNCTAD Secretariat as to the studies required in order to enable the IPG to prepare at later session a preliminary draft of a convention on international intermodal transport. The Second Session assessed the studies prepared by the UNCTAD Secretariat and began a general discussion on the question of a possible convention on international intermodal transport and on the major

aspects of that convention, namely, documentation, customs, insurance and liability and scope of application. At the end of the session, additional studies were requested from the UNCTAD Secretariat on the Economic and Social complications of Multimodal Transport in Developing Countries and on Insurance and Liability. The additional studies were presented to the IPG at its Third Session, first part, and more detailed discussion was held on the various aspects of a Convention on International Intermodal Transport. A Working Group, under the Chairmanship of Mr. Tomesgen of Ethiopia, was set up to identify issues suited to be dealt with in a Draft Convention and to recommend principles or rules providing appropriate solutions to these issues. A decision was made that in order to avoid unnecessary linguistic complexities, the expression "multimodal" rather than "intermodal" or "combined" should be henceforth used to describe the carriage of goods by more than one mode. Therefore, it was recommended to the Trade and Development Board that the name of the IPG be changed to accord with the agreed phraseology. The recommendation was accepted by the Board and the name of IPG altered accordingly. Detailed discussions on the various aspects of the proposed convention continued at the second part of the Third Session both in the Plenary and in the Working Group. The latter set up a Drafting Party to prepare preliminary texts of draft articles on some areas, such as scope of application and documentation, where there had been a considerable degree of consensus. The preliminary draft articles, as modified by the Working Group, were later endorsed by the Plenary. It was emphasized, however, that the said draft articles were strictly preliminary texts and could be changed at will by the IPG at later sessions.

(b) Africa's Participation in the IPG Work

3. African States, like all the developing countries, decided to participate in the work of the IPG after very careful consideration. As was stated by the spokesman of the Group of 77 during the Second Session of the IPG, the developing countries, African countries included, fully realized the irreversible character of the technical evolution taking place in the area of transport which has led to the introduction of international multimodal transport, in varying degrees, in their trade. They had no control over the

development of the new technologies and, on their own, are likely to have but little control over the economic, social and institutional repercussions engendered by these new technologies. At the same time they appreciated that the unregulated disseminational practices in the field of multimodal transport, no less than in other areas, may have far-reaching adverse implications, especially on these countries. In as much as the proposed Convention was intended to bring some order in the international multimodal transport practices, African countries, along with the other developing countries, deemed it necessary to take an active part in the elaboration of an International Convention on International Multimodal Transport. However, the acceptance of the eventual convention would depend on the inclusion in that convention of specific provisions designed to take into account the interests and points of view of the developing countries, in general, and of African countries in particular.

4. As a matter of principle, the developing countries, including African countries, insisted that the proposed convention:

- (a) should be envisaged within the framework of the establishment of a new international economic order as called for in the Declaration and the Programme of Action adopted by the United Nations General Assembly at its Sixth Special Session. It should aim, inter alia, at promoting the economic and social development of developing countries and especially of the least-favoured ones the developing land-locked countries and the developing island countries; at ensuring an orderly introduction of new transport techniques in developing countries; and at promoting continental inland international multimodal transport arrangements which would in turn, facilitate and promote increased trade;
- (b) should be compatible with the Convention on the Code of Conduct for Liner Conference, in order to protect adequately the interests of the developing countries in the maritime transport field; and

(c) should contain clauses of public law. The norms of public law in the convention should be mandatory for users and for the MTO's. States should have the right to regulate in detail and supervise multimodal transport activities in their territories, such as national norms on routes to follow and other obligations of the carriers in countries where they operate.

(c) Role of OAU in Assisting to African Group

5. In resolution CM/Res.523(XXVII) of the Council of Ministers of the OAU, which resolution was endorsed by the Assembly of Heads of State and Government, the Administrative Secretary-General of the OAU was authorized to set up, in collaboration with the Executive Secretary of ECA, an Ad-Hoc Committee of Experts to undertake an in-depth techno-economic study of the implications to Africa of multimodal Transport. The Ad-Hoc Committee, consisting of five members drawn from different academic and operational disciplines, namely, law transport geography and economic, cargo-handling, sociology, and insurance was duly set up and commenced its operations in June 1977.

6. The terms of reference given to the Committee were:

"To undertake a study of multimodal transport with a view to:

- (a) determining the implications for the transport policies of the OAU Member States of introducing multimodal transport and unitized cargo, into Africa's international trade and formulating therefrom appropriate guidelines for these Member States;
- (b) determining the implications to the OAU Member States of the adoption by the international community as a whole of a Convention on Multimodal Transport and, again, formulating therefrom, appropriate recommendations for the guidance of the OAU Member States; and

- (c) preparing an appropriate brief for the African Member States of the UNCTAD Inergovernmental Preparatory Group on a Convention on International Multimodal Transport (IPG).

With regard to term (a) above, the Committee was instructed to study more specifically, the following aspects of the question, namely,

- "(a) economic effects and implications of multimodal transport and unitization of cargo;
- (b) transport facilitation, with particular reference to documentation procedures;
- (c) effects on and implications of multimodal transport and unitization of cargo upon forwarding and clearing procedures;
- (d) legal effects and implications of multimodal transport and unitization of cargo, in particular, on carriage of goods by sea and by land, and on the resultant contracts;
- (e) effects and implications of multimodal transport and unitization of cargo upon the administration of harbours;
- (f) effects and implications of multimodal transport and unitization of cargo upon customs administration; and
- (g) socio-economic implications of the new transport system".

7. In order to execute its mandate, the Committee held two meetings in Addis Ababa, the first meeting from 9 - 14 June, and the second from 14 - 21 October, 1977. At the first meeting, the Committee planned the programme for carrying out its task. At the second meeting, the Committee finalized its Report.

8. One of the instructions given to the Committee by the Secretary-General was that, in preparing its study, the Committee should make:

"visits to certain OAU Member States in order to study the situation on the spot".

9. In compliance with these instructions, the Committee, from 22 July to 13 October, 1977, visited 20 OAU Member States and in all these States, except Zambia, held discussions with Government and quasi-government officials as well as with representatives of private shipping lines, banks, cargo handling companies, clearing and forwarding agencies and insurance companies. In addition, the Committee made on-site visit to ports, railway yards, container depots and terminal and to such other places as would enable members of the Committee to appreciate the actual situation in the subject of their inquiry.

10. The States visited by the Committee included 16 coastal States, 4 in East Africa, 9 in West Africa and 2 in North Africa, and 5 land-locked States, 2 in East Africa, 1 in Central Africa and 2 in West Africa. Three of these States, Central African Empire, Congo and Zaire, are connected by the well-developed Congo/Zaire River system inland waterway system. In terms of language, 8 States are English-speaking, 8 French-speaking, 2 Portuguese-speaking and 2 Arab-speaking. Among these States were those, at least as far as the Committee could ascertain, with the greatest experience with unitization of cargo, especially containerization, and with some forms of multimodal transport operations. Thus, although it did not visit all the OAU Member States, the Committee is satisfied that the States it visited were representative enough to warrant a generalization, on an Africa-wide basis, on findings and conclusions based on experience in these States.

11. The General Secretariat made every effort to co-ordinate the activities of the African Group in the IPG, but it was not until the above study was undertaken and completed that a substantial contribution was made. Accordingly, from the Fourth IPG through the Sixth and last IPG, the OAU made available to the African Group in the IPG, as well as other African states participating, a brief based upon the recommendation of the Committee of Experts, to assist them in the negotiations. This undoubtedly assisted the African Group and subsequent UNCTAD draft provisions of the proposed convention took into account the recommendation of the OAU study as well.

12. The Sixth Session of the IPG took place in Geneva from 21 February to 9 March 1979. As it was the last session of the IPG, the OAU in co-operation with ECA organized a two day preparatory meeting for all the African states. During this two-day meeting, in which Twenty African States participated (Algeria, Cameroon, Egypt, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Liberia, Madagascar, Morocco, Nigeria, Senegal, Somalia, Tanzania, Tunisia, Uganda and Zaire), the Group was able to review the composite text of the proposed convention and further clarify its position with clear amendements and recommendations.

13. Whereas the proposals and amendements of the African Group were generally accepted at the level of the Group of 77 many of the provisions of the proposed convention still remained in square brackets at the level of the IPG. These concern the various aspects of:

- a. Preambular clauses
- b. General Provisions
- c. Documentation
- d. Liability
- e. Claims and actions
- f. Customs matters.

14. At the conclusion of this last session of the IPG a resolution was adopted recommending that the Trade and Development Board request the Secretary-General of UNCTAD make the necessary arrangements for the convening of a Conference of Plenipotentiaries on a Convention on International Multimodal transport in November 1979. The resolution further requests the Secretary-General of UNCTAD:

- (a) To circulate, at the earliest possible opportunity, the text of the draft convention on International Multimodal Transport to Governments for their comments,
- (b) To circulate the comments received to all governments two months in advance of the Conference of Plenipotentiaries,

- (c) To place before the Conference of Plenipotentiaries the text of a draft convention on international multimodal transport together with draft provisions on final clauses and all comments received from Government,
- (d) Conclusion.

15. It is significant to note that in the history of international conventions this is the first time that African States are directly involved in the formulation of an important international convention in the domain of transport. The dictates of technological developments make it mandatory for Africa to make her voice heard in the preparation and adoption of such an important international convention. The contribution of African states in the protracted work of the Inter-governmental Preparatory Group (IPG) has been substantial both for the benefit of the international community but also in safeguarding Africa's political, economical and social interests. Having thus broken the ground there is yet much to be done in order to produce a worthwhile international convention on multimodal transport.

16. The primary aim of this report is, therefore, to alert OAU Member States to the impending conference of plenipotentiaries and the acute need for greater coordination and united approach which is awaiting all Member States of the OAU at the diplomatic conference. It is further of paramount importance that all Member States of the OAU make special efforts to ensure full and effective participation at the diplomatic Conference. The proposed agenda for the diplomatic conference is attached to this report as Annex I.

17. It is the conviction of the General Secretariat that there is every reason to support any steps that are being taken, especially at the international level, to find ways and means of ensuring that the multimodal transport system benefits not only the operators but also the shippers, governments and other interests, in particular those in developing countries. In the light of this, Africa cannot but continue participating in UNCTAD efforts to adopt a convention on international multimodal transport.

18. The Council may therefore wish to adopt a resolution inter alia on the following points:

- a) calling on all Member States of the OAU to fully participate in the Plenipotentiary Conference in November 1979 in New York,
- b) appealing to the international community to be flexible especially on matters with serious implications on developing countries generally, and Africa in particular,
- c) calling on the Secretary-General of OAU in co-operation with ECA to organize a preparatory African Group Meeting prior to the plenipotentiaries conference.

CM/986

Annex I

TRADE AND DEVELOPMENT BOARD

Intergovernmental Preparatory Group on a
Convention on International Multimodal
Transport

Sixth session

Geneva, 21 February 1979

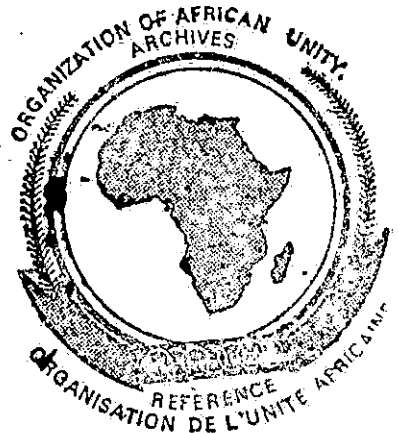
Item 5 of the provisional agenda

Draft provisional agenda of the United Nations Conference
on a Convention on International Multimodal Transport

Note by the UNCTAD secretariat

As part of its preparations for the United Nations Conference on a Convention on International Multimodal Transport, the Preparatory Group may wish to draw up the provisional agenda of the Conference. To assist the Preparatory Group the UNCTAD secretariat has prepared the following draft provisional agenda.

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



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