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INLAND TRANSPORT COMMITTEE

Working Party on Road Transport
(Ninety-ninth session, 17-19 October 2005)

**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL
ROAD TRANSPORT AND FACILITATION OF ITS OPERATION**

Protocol additional to the CMR

The Working Party at its ninety-eighth session requested UNIDROIT to prepare a revised and expanded version of its initial draft of a Protocol to the CMR to introduce the electronic consignment note. Following this request, the Secretary-General of UNIDROIT commissioned Professor Putzeys to prepare the draft. The text of the draft Protocol and the introductory note which accompanies it can be found below.

It is expected that the SC.1 Working Party will consider the text during its ninety-ninth session, take a decision on the principles it contains and determine the procedure to be followed that will lead to the signature of the Protocol.

**PROTOCOL ADDITIONAL TO THE CONVENTION ON THE CONTRACT
FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR)
CONCERNING THE ELECTRONIC CONSIGNMENT NOTE**

THE PARTIES TO THIS PROTOCOL

BEING PARTIES to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

DESIROUS OF supplementing the Convention in order to facilitate the making out of the consignment note by means of procedures used for the electronic registration and treatment of data,

HAVE AGREED as follows:

Article 1

For the purposes of the present Protocol “Convention” means the Convention on the Contract for the International Carriage of Goods by Road (CMR).

Article 2

1. Subject to the provisions of this Protocol, the consignment note referred to in article 5 of the Convention may be made out by any procedure used for the electronic registration and treatment of data.

Such a consignment note, whether or not in coded form, shall be considered to be equivalent to the consignment note referred to in article 5 of the Convention and shall therefore have the same evidential value and exercise the same effects as that consignment note if, concurrently:

- (a) It meets the requirements and fulfils the functions prescribed by the Convention;
- (b) The data recorded in it:
 - (i) are stored, archived and ready for use at any time and as long as may be necessary to comply with the Convention and the national legislation applicable as a result of its institution,
 - (ii) may be transformed into legible written symbols or made otherwise accessible to any person entitled to access them, even if he does not have adequate technical equipment;
- (c) It is authenticated by the parties to the contract of carriage.

2. The equivalence referred to in paragraph 1 above shall be considered to have been obtained:

(a) Once the goal of a requirement or a duty demanded by the Convention is achieved, even if the procedures used differ from those mentioned in the Convention;

(b) If the data referred to in paragraph 1 (b) above are available and can be read and, in accordance with the Convention, be supplemented or amended:

(i) in transit, particularly, but not exclusively, on board the road vehicle, or

(ii) by the Contracting Parties, locally or remotely, or

(iii) by a third party, locally or remotely, if the carrier has made that party responsible for the electronic registration and treatment of the consignment notes to which this Protocol refers;

(c) If the authentication of the consignment notes referred to in article 5 of the Convention, is effected, in accordance with the choice of the carrier and the sender, by appending:

(i) their signatures, as agreed both with regard to the persons authorized to sign and with regard to the form of the signatures (printed signature, signature using an electronic pen, uncertified electronic signature, electronic signature certified by a third party, etc.), or

(ii) agreed electronic stamps, replacing the signatures of the carrier and the sender, in accordance with the Convention.

3. The sender and the carrier making use of the consignment notes referred to in this Protocol shall agree on the procedures and their implementation in order to comply with the requirements of this Protocol and the Convention.

4. The carrier shall in any case hand over to the sender, at the latter's request, a receipt for the goods and all information necessary for identifying the shipment and for access to the consignment notes to which this Protocol refers.

5. The documents referred to in article 6, paragraph 2 (g) and article 11 of the Convention may be furnished by the sender to the carrier in the form of an electronic data recording, if the documents exist in this form, if the parties have agreed to procedures enabling a link to be established between these documents and the consignment note to which this Protocol refers and if the documents comply with the conditions set out in paragraph 1 (b) and in paragraph 2 (b) of this article.

FINAL PROVISIONS

Article 3

1. This Protocol shall be open for signature by States which are signatories to, or have acceded to the Convention and are either members of the Economic Commission for Europe or have been admitted to the Commission in a consultative capacity under paragraph 8 of that Commission's terms of reference.
2. This Protocol shall remain open for accession by any of the States referred to in paragraph 1 of this article which are Parties to the Convention.
3. Such States as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of that Commission's terms of reference which have acceded to the Convention may become Contracting Parties to this Protocol by acceding thereto after its entry into force.
4. This Protocol shall be open for signature at Geneva from ... to ... inclusive. Thereafter, it shall be open for accession.
5. This Protocol shall be subject to ratification after the State concerned has ratified or acceded to the Convention.
6. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.
7. Any instrument of ratification or accession deposited after the entry into force of an amendment to the present Protocol with respect to all Contracting Parties or after the completion of all measures required for the entry into force of the amendment with respect to all Contracting Parties shall be deemed to apply to the Protocol as modified by the amendment.

Article 4

1. This Protocol shall enter into force on the ninetieth day after five of the States referred to in article 3, paragraphs 1 and 2 of this Protocol, have deposited their instruments of ratification or accession.
2. For any State ratifying or acceding to it after five States have deposited their instruments of ratification or accession, this Protocol shall enter into force on the ninetieth day after the said State has deposited its instrument of ratification or accession.

Article 5

1. Any Contracting Party may denounce this Protocol by so notifying the Secretary-General of the United Nations.

2. Denunciation shall take effect 12 months after the date of receipt by the Secretary-General of the notification of denunciation.
3. Any Contracting Party which ceases to be Party to the Convention shall on the same date cease to be Party to this Protocol.

Article 6

If, after the entry into force of this Protocol, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, this Protocol shall cease to be in force from the date on which the last of such denunciations takes effect. It shall also cease to be in force from the date on which the Convention ceases to be in force.

Article 7

1. Any State may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by a ratification addressed to the Secretary-General of the United Nations that this Protocol shall extend to all or any of the territories for whose international relations it is responsible and in respect of which it has made a declaration in accordance with article 46 of the Convention. This Protocol shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Protocol has not yet entered into force, as from the time of its entry into force.
2. Any State which has made a declaration under the preceding paragraph extending this Protocol to any territory for whose international relations it is responsible may denounce the Protocol separately in respect of the territory in accordance with the provisions of article 5 above.

Article 8

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Protocol which the Parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 9

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to this Protocol, declare by a notification addressed to the Secretary-General of the United Nations that it does not consider itself bound by article 8 of this Protocol. Other Contracting Parties shall not be bound by article 8 of this Protocol in respect of any Contracting Party which has entered such a reservation.
2. The declaration referred to in paragraph 1 of this article may be withdrawn at any time by a notification addressed to the Secretary-General of United Nations.
3. No other reservation to this Protocol shall be permitted.

Article 10

1. After this Protocol has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing this Protocol. The Secretary-General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary-General not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.

2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the Conference together with the texts of such proposals at least three months before the date on which the Conference is to meet.

3. The Secretary-General shall invite to any conference convened in accordance with this article all States referred to in article 3, paragraphs 1 and 2 and States which have become Contracting Parties under article 3, paragraph 3 of this Protocol.

Article 11

In addition to the notifications provided for in article 10, the Secretary-General of the United Nations shall notify the States referred to in article 3, paragraphs 1 and 2, of this Protocol and the States which have become Contracting Parties under article 3, paragraph 3, of this Protocol, of:

- (a) Ratifications and accessions under article 3;
- (b) The date of entry into force of this Protocol in accordance with article 4;
- (c) Communications received under article 2, paragraph 2;
- (d) Denunciations under article 5;
- (e) The termination of this Protocol in accordance with article 6;
- (f) Notifications received in accordance with article 7;
- (g) Declarations and notifications received in accordance with article 9, paragraphs 1 and 2.

Article 12

After, the original of this Protocol shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the States mentioned in article 3, paragraphs 1, 2 and 3 of this Protocol.

DONE at Geneva, this, in a single copy in the English and French languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol in the name of

Introductory note

Although transport modes (by rail, road, air, sea and inland waterway) have not changed since 19 May 1956, the date on which the Convention on the Contract for the International Carriage of Goods by Road (CMR) was signed, the methods of transmitting information used in such transport operations have undergone a major evolution. Almost all users have gone over from paper-based transport documents (waybills or consignment notes, bills of lading) to electronic data interchange.

International lawmakers have therefore made an effort to adapt the transport conventions to this development. This was done for the railways (COTIF-CIM, 1999), inland navigation (CMNI, 2000) and air transport (Montreal, 1999). Drafts are currently in preparation for maritime transport within the United Nations Commission on International Trade Law (UNCITRAL). Only international road transport (CMR, 1956-1978) has not yet benefited from this adaptation, although exchanging data by electronic means (the “tracking” of the goods) is widely practised.

States and the international economic integration organizations (in particular the European Union) for their part have drafted instruments to make such exchanges more secure, in particular the identification and authentication of signatures, read-only data, accessibility to and reproduction of data, etc.

The Working Party on Road Transport (SC.1) at its ninety-second session recommended drawing up a Protocol on electronic data interchange to the CMR Convention and requested the collaboration of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, represented by Professor Jacques Putzeys.

A number of working documents were drafted, in particular a note submitted by Professor Putzeys on 31 August 2000 (TRANS/SC.1/2000/9) and a draft Protocol on 1 August 2000 (TRANS/SC.1/7/Add.1).

Following its ninety-fifth session on 16-19 October 2001, the Working Party decided to request the opinion of the Contracting Parties to the CMR in writing, by means of a questionnaire (TRANS/SC.1/369 and TRANS/SC.1/2001/1 of 15 February 2002).

This opinion is analysed in document TRANS/SC.1/2002/2 of 30 July 2002. The view is unanimous that article 5 of the CMR should be expanded so as to permit the use of an “electronic consignment note”. The proposed text was widely approved once some drafting changes had been made. Germany, however, made substantive comments (TRANS/SC.1/2002/2/Add.1 of 30 July 2002) and a proposal for a protocol of broader scope (TRANS/SC.1/2003/1 of 15 April 2003). France made some suggestions of form (TRANS/SC.1/2002/2/Add.2).

Professor Putzeys commented on the replies in a note of 10 August 2002 (TRANS/SC.1/2002/2/Add.3).

In view of the divergences between the UNIDROIT draft and that of the German delegation, a new questionnaire was submitted to the members of SC.1 on 31 January 2004, the

replies to which are analysed in document TRANS/SC.1/2004/3. They reveal a clear majority in favour of the UNIDROIT proposal (14 countries, with the addition of two countries which supported the proposal in session, as against two for the German proposal). Comments and suggestions were made about the text proposed by UNIDROIT.

The draft additional Protocol (there can be no question of amending the CMR since this would require implementation of the procedure for which article 49 of the CMR provides) presented here is entirely different from the draft of 2000. It takes account of the comments and suggestions made by the States, including Germany. Unlike the initial draft, it no longer reproduces the standards adopted for other transport modes (see the analysis of these standards in Professor Putzeys' notes, mentioned above). It is intended to be specific to international road transport in view of the fact that:

- The consignment note is documentary evidence of the contract of carriage;
- It must be “drafted” in three original copies;
- A copy must accompany the goods;
- The right of disposal depends on possession of the consignment note or on the handing over of the third copy.

In-depth legal and technical studies have been carried out and have shown that the exchange of data by electronic means is totally reliable, and even more reliable than paper-based data (particularly in terms of the read-only aspect of data in transit).

The essence of the draft is to be found in its aim: the functional equivalence of the electronic consignment note in comparison with the consignment note as apparently provided by the CMR - “apparently”, since the CMR does not require any particular medium for the consignment note.

1. The use of an electronic consignment note is permitted; it is not, of course, obligatory. The agreement of the parties will be required for its use.
2. At the present time, the attachments may also be transmitted electronically; this is the case for numerous administrative documents (customs and other documents).
3. Functional equivalence implies that the data contained in the electronic consignment note can be “tracked” like those of the paper-based consignment note: storage, consultation, reproduction (even in transit) and that both signatures and the actual data are secure.
4. Receipts will continue to be necessary for following up the cargo (tracing).
5. It is not possible to describe all the procedures that are used currently or that may be devised. This is a matter for the parties. To give details would only cause confusion.
