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Summary record of the 876th meeting
Held at Headquarters, New York, on Monday, 23 June 2008, at 3 p.m.

Chairperson: Mr. Illescas . . . . . (Spain)

Contents

08-39362 (E)

The meeting was called to order at 3.10 p.m.

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*) (A/CN.9/642, A/CN.9/645 and A/CN.9/658 and Add.1-13; A/CN.9/XLI/CRP.5)

Draft article 81 (General provisions) (*continued*)

1. **The Chairperson** invited the Commission to consider the proposed amendments to draft article 81 (A/CN.9/XLI/CRP.5) sponsored by the delegations of Germany, Austria, Switzerland and Australia.

2. **Ms. Czerwenka** (Germany), introducing the proposal, said that the draft convention established the basis of the shipper's liability to the carrier in draft article 31 but did not set a monetary cap on that liability. In order to achieve a fairer balance between shipper and carrier, the proposal's sponsors felt that the parties to a contract of carriage should have the option of agreeing to a cap on the shipper's liability. That was particularly true of strict liability, which was capped under many States' domestic law. Since the Working Group had been unable to agree on the amount of such a cap, the sponsors had felt that the draft convention should allow the issue to be addressed by agreement between the parties.

3. There had been some discussion as to whether the word "limits" in draft article 81 referred to a monetary cap on liability or to the modification of an obligation. For purposes of clarity, the proposal would replace the verb "limits" by "reduces" in paragraphs 2 (a) and (b). It would also add a new paragraph 2 (c), which would read:

> "The contract of carriage may, however, provide for an amount of limitation of the liability of the shipper, consignee, controlling party, holder or documentary shipper for a breach of obligations, provided that the claimant does not prove that the loss resulting from the breach of obligations was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result."

4. The second part of that sentence, after "provided", which reflected the language of draft article 63 (Loss of the benefit of limitation of liability), had been included in order to address the concern expressed by the representative of France, who had pointed out that even a cap that had been agreed contractually should not apply in the event of a wilful misconduct on the part of the shipper.

5. **Mr. Miller** (United States of America) said that, while he was pleased to see that the German delegation appreciated the benefits of freedom of contract, he thought that draft article 82 (Special rules for volume contracts), which the Commission had already approved in substance, offered an appropriate means of providing for limits of liability not available under the draft convention, since it was the parties to a volume contract that were most likely to agree to a cap on the shipper's liability. Moreover, the types of limits envisaged in the proposal were even broader than the shipper would be able to obtain under draft article 82, which contained super-mandatory provisions from which derogation was not possible. The proposal was therefore unacceptable to his delegation.

6. **Ms. Halde** (Canada) and **Ms. Talbot** (Observer for New Zealand) endorsed the proposal.

7. **Mr. Sato** (Japan) said that, generally speaking, his delegation welcomed flexibility regarding the shipper's liability and freedom of contract. However, he would like the sponsors to clarify whether, as the representative of the United States of America had suggested, the proposal's intent was to allow complete freedom of contract even with regard to the carriage of dangerous goods. A public policy issue was involved; draft article 82, paragraph 4, specifically stated that, even in the case of a volume contract, the derogations authorized in article 82, paragraph 1, did not apply to the rights and obligations provided in articles 30 and 33 or to liability arising from the breach thereof. If the intent at the proposal was to allow such derogations, it would call previous assumptions into question and would change his delegation's understanding of draft articles 30 and 33.

8. **Mr.** Ibrahima Khalil **Diallo** (Senegal) said that after all the unsuccessful efforts to limit the shipper's liability, it would be dangerous to allow it to be limited by contract, since the consignee's interests might not be protected. It would be preferable to leave draft article 81 in its current form and to allow the courts to determine the limits of liability in the event of a dispute.

9. **Mr. Schelin** (Observer for Sweden) said that he supported the proposal, which would benefit both parties. In particular, the option of setting a cap on liability would allow cargo insurers to cover such liability which would benefit the carrier as well. However, in light of the public policy implications of the proposal, the super-mandatory provisions of draft article 82 should be carried over to draft article 81 by including a statement to the effect that the new paragraph did not apply to the situations covered by articles 30 and 33.

10. **Ms. Downing** (Australia), speaking as a sponsor of the proposal, stressed that strict liability was usually capped under the domestic law of States; the proposal would allow the parties to agree on the cap, which, generally speaking, would be equal to the insurance value of the goods. She did not think that that option would be exercised frequently, but it should be available.

11. **Mr. Mbiah** (Observer for Ghana) said that in the interests of clarity, he welcomed the proposed changes in paragraphs 2 (a) and (b) of the draft article. However, the proposed new paragraph was a case of "too little, too late". During the negotiations, several delegations had said that they would like to set a limit on the shipper's liability. Their position had not met with the approval of the majority and the current proposal, which took the approach of contractual freedom, did not address their concerns. The draft article should remain in its current form.

12. **Ms. Czerwenka** (Germany) explained that the proposed new paragraph was intended to provide the option of capping liability, even strict liability in the case of dangerous goods. If the agreement between the parties was unfair, the matter could be referred to the courts. She did not agree with the representative of Senegal's interpretation; it seemed to her that in its current form, draft article 81, paragraph 2, did not allow for the capping of liability, even by the courts. It was true that draft article 81, paragraph 1, allowed the carrier's liability to be increased; her delegation would not object if that fact were made more explicit.

13. Draft article 82 allowed the parties to agree on greater or lesser rights, obligations and liabilities than those imposed by the draft convention. The super-mandatory provisions contained in paragraph 4 of draft article 82 were necessary because paragraphs 1 through 3 allowed for very broad derogation from the convention, but the proposed amendments to draft article 81 were narrower in scope. They did not allow the parties to change their obligations or liabilities, but merely to set a monetary cap on liability.

14. **Mr. Mollmann** (Observer for Denmark) recalled that a similar issue had arisen in the context of draft article 32. During the negotiations, his delegation had expressed the view that the draft convention should accord equal treatment to shippers and carriers; it had been opposed to allowing for the possibility of increasing the carrier's obligations under draft article 81, paragraph 1. The new proposal would increase the existing inequality by making it possible for a strong shipper to limit its own liability while increasing that of the carrier.

15. In addition, the proposal was worded in very general terms, and his concerns had not been allayed by the representative of Germany's explanation. He did not think it unrealistic to envisage a situation in which a strong shipper was able to force the carrier to accept a liability limit as low as one Special Drawing Right (SDR), allowing the shipper to escape liability entirely for all intents and purposes. As the observer for Ghana had said, during the meetings of the Working Group some delegations had tried, without success, to agree on a limit of liability for shippers. The resulting text was not his delegation's first preference, but it stood by the compromise that had been agreed.

16. **Mr. Tsantzalos** (Greece) said that he endorsed the views expressed by the representatives of Denmark and the United States of America.

17. **Mr. Bigot** (Observer for Côte d'Ivoire) said that, while his delegation would like to strike a better balance between the liability of the two parties, it was not satisfactory to do so through freedom of contract. He supported the views expressed by the representative of Senegal.

18. **Mr. Sharma** (India) said that he agreed with the proposal to replace "limits" by "reduces" in paragraphs 2 (a) and (b). As the representative of Ghana had noted, the Working Group had failed to reach agreement on a monetary cap on the shipper's liability. The compromise package agreed in January 2008 would not, therefore, be affected by a decision to allow the parties to agree on such a cap, taking into account their circumstances and the nature of their trade. The representative of Germany's explanation of the

differences between draft articles 81 and 82 was convincing, and his delegation supported the proposal.

19. **Mr. Elsayed** (Egypt) said that in light of the explanation provided by the representative of Germany, he was prepared to support the proposal, since it would ensure a fairer balance between the parties to the contract.

20. **Mr. Kim** In Hyeon (Republic of Korea) said that his delegation thought highly of the current text of draft article 81, which sought to address recent developments in shipping, such as the widespread use of containers. Since a carrier was unable to check the contents inside a closed container, without adequate information from the shipper about the nature of the contents the carrier could not transport the goods safely. In his country, in fact, there had been a number of incidents of fire and explosion due to the failure of the shipper to disclose the nature of the cargo. That was the rationale for the obligations imposed on the shipper by draft articles 32 and 33. Safe transport depended on not allowing the shipper to derogate from those obligations. Another noticeable development was the emergence of large shippers with the power to force carriers to accept absolute liability. It was highly likely that large shippers would try to exclude or limit some of their own obligations by contract; the words "excludes" and "limits" in paragraphs 2 (a) and (b) were intended to prevent that. As Denmark had pointed out, the carrier was already at a disadvantage in that the word "increases" had been omitted from the provisions in draft article 81, paragraph 1, concerning the scope of contractual derogation permitted to the carrier but was included in the parallel provisions in paragraph 2 in relation to the shipper. The implication was that the carrier's obligations and liability could be increased contractually but the shipper's could not. Although the version of draft article 81 proposed in A/CN.9/XLI/CRP.5 sounded reasonable, it in fact shifted the balance even further in favour of the shipper. His delegation preferred to retain the current text.

21. **Ms. Shall-Homa** (Nigeria) said that her delegation aligned itself with the statements of the United States of America, Denmark and Senegal and in particular those of Ghana about the Working Group's previous efforts to find a way to cap the shipper's liability. It supported the proposal to change the verb "limits" to "reduces", since the amendment was in keeping with the intent of the provision. Otherwise it wished to retain the current wording of the draft article.

22. **Mr. van der Ziel** (Observer for the Netherlands) said that his delegation could support the change from "limits" to "reduces" but had serious objections to the proposed new sentence in A/CN.9/XLI/CRP.5. As the proposal was drafted, a shipper with sufficient bargaining power could impose drastic limits on its liability; if the new provision had said, for example, that the minimum cap would be equal to the value of the goods the proposal would have been more acceptable. Moreover, some of the shipper's obligations involved a public policy issue. There were too many cases of accidents due to misinformation from the shipper about the nature of the goods; a large chemical shipper, for example, should not be allowed to contract out of liability resulting from a breach of its obligation under draft article 33.

23. **Mr. Delebecque** (France) said that his delegation could not support the proposal contained in A/CN.9/XLI/CRP.5 for the reasons stated by Japan. Provision must be made to exclude derogation with respect to the obligations under draft articles 32 and 33.

24. **Mr. Prosser** (United Kingdom) and **Mr. Berlingieri** (Italy) said that their delegations supported the retention of the current wording for the reasons stated by Denmark.

25. **Mr. Gombrii** (Norway) said that the proposal went even further than the volume contract provisions in draft article 82, which provided for certain safeguards by excluding its application to the so-called super-mandatory provisions. A powerful shipper negotiating under draft article 81 with the amendment proposed in A/CN.9/XLI/CRP.5 would be even less constrained than under draft article 82.

26. **Ms. Sobekwa** (South Africa) said that her delegation had some sympathy with the proposal but would prefer to retain draft article 81 as it stood.

27. **Mr. Honka** (Observer for Finland) said that his delegation supported the current text for the reasons given by the Netherlands and Denmark.

28. **Mr. Hron** (Czech Republic) said that his delegation supported the views expressed by the Netherlands.

29. **Mr. Moulopo** (Observer for the Congo) said that his delegation shared the views of Senegal and Côte d'Ivoire. A contract of carriage was usually a contract of adhesion, so that contractual freedom, which presupposed consent between the parties, would not provide a solution. Since the documents were usually drawn up by the carrier, the latter should not be allowed the opportunity to increase the obligations of the shipper. His delegation supported the current text.

30. **Mr. Bokana Olenkongo** (Observer for the Democratic Republic of the Congo) said that his delegation aligned itself with the statements of Denmark, the United States of America and Senegal and preferred to retain the current text.

31. **Mr. Serrano Martínez** (Colombia) said that, to be consistent with its previous position, his delegation supported the text of draft article 81 as it stood.

32. **Mr. M'inoti** (Kenya), **Mr. Sandoval** (Chile), **Mr. Essigone** (Gabon) and **Mr. Luvambano** (Observer for Angola) said that their delegations preferred to retain the current wording of draft article 81.

33. *Draft article 81 was approved in substance and referred to the drafting group.*

Draft article 78 (*continued*)

34. **Mr. Lebedev** (Russian Federation) said that, although the Commission had already approved the substance of draft article 78, there was a need for greater clarity in the drafting of paragraph 2. For example, subparagraph (a) referred to an arbitration agreement, whereas subparagraph (b) talked about an arbitration clause.

35. **Mr. Estrella Faria** (International Trade Law Division) said that at first glance there did seem to be a confusion in terms. The thrust of paragraph 2 was that the three conditions set out in subparagraphs (a), (b) and (c) were cumulative. If all those conditions were met, the arbitration agreement would not be subject to the provisions of chapter 15, which made the enforceability of the arbitration agreement dependent on certain conditions that did not normally apply to arbitration agreements in general. Perhaps the solution would be to harmonize the terms used in subparagraphs (a) and (b).

36. **Mr. Lebedev** (Russian Federation) said that the cumulative nature of the conditions was not obvious from the current wording. Perhaps some additional words of explanation would be helpful.

37. **Mr. Berlingieri** (Italy) said that chapter 15 sometimes used the term "arbitration clause", sometimes "arbitration agreement" and sometimes "arbitration clause or agreement". In some jurisdictions "arbitration clause" referred to something agreed before any dispute had arisen and "arbitration agreement" referred to something agreed after a dispute had arisen. Inconsistency in the use of terms should be avoided to prevent difficulties in interpretation.

38. **Ms. Czerwenka** (Germany) said that, if the text was referred to the drafting group, her delegation would like to see the new wording before the adoption of the draft convention as a whole, since it was hard to judge the possible implications without seeing the new text.

39. **Mr. Gombrii** (Norway) said that the provision was not a model of clarity but he could explain the practical background. Paragraph 1 provided that the arbitration provisions did not apply to charterparties, but since the draft convention could apply to bills of lading issued under charterparties, paragraph 2 then became relevant. It was very common in such bills of lading to state that the bill of lading incorporated the terms and conditions of the charterparty, and that was the situation referred to in subparagraph (a). However, it was important for a party acquiring a bill of lading to be aware that the charterparty included an arbitration agreement, hence the requirement in subparagraph (b) of a specific reference to the arbitration clause.

40. **Mr. Sekolec** (Secretary of the Commission) said that the drafting group might consider it helpful to make the use of the terms "arbitration agreement" and "arbitration clause" consistent with other Commission texts on arbitration, such as the UNCITRAL Model Law on International Commercial Arbitration. In those texts "arbitration agreement" was a generic term indicating an agreement in any form to arbitrate, whereas "arbitration clause" referred to a paragraph in a larger document. It seemed to make sense, then, to refer to an "arbitration clause" in paragraph 2 (b).

41. **Mr. Miller** (United States of America) suggested, to dispel the ambiguity pointed out by the Russian Federation, that one could simply make it clear in paragraph 2 that subparagraph (b), like subparagraph (a), referred to the charterparty clause. The appropriate

use of the terms “agreement” or “clause” could then be decided by the drafting group as it checked for linguistic consistency with other Commission texts.

42. **Mr. Hu** Zhengliang (China) proposed that paragraph 2 (b) could be eliminated, and the word “specific” could be added before the word “reference” in paragraph 2 (a). In addition, since a charterparty, a transport document or an electronic transport record could by definition contain only an arbitration clause, not an arbitration agreement, he believed that the proper reference would be to a clause, both in the chapeau of paragraph 2 and in subparagraph (a).

43. **Mr. Morán Bovio** (Spain) said that paragraph 2, which he interpreted as Norway did, was clear enough as drafted.

44. **Mr. Estrella Faria** (International Trade Law Division) suggested, after consultations and on the basis of remarks by the delegations of China and Norway, that article 78, paragraph 2, could be reformulated to read:

> “2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this chapter unless such an arbitration agreement:
>
> (a) Identifies the parties to and the date of the charterparty or other contract excluded from the application of this Convention by reason of the application of article 6; and
>
> (b) Incorporates by reference and specifically refers to the clause in the charterparty or other contract that contains the terms of the arbitration agreement.”

The drafting group could then easily make any minor adjustments to the text.

45. *Draft article 78, as amended, was approved in substance and referred to the drafting group.*

Draft article 84 (International conventions governing the carriage of goods by other modes of transport)

46. **Ms. Czerwenka** (Germany), supported by **Mr. Delebecque** (France), said that her delegation was in general agreement with the text but proposed deleting, in the chapeau, the phrase “in force at the time this Convention enters into force” after the phrase “international conventions”, so as not to limit the scope of article 84 only to international conventions in force at the time but to encompass also subsequent protocols to amend existing conventions and new conventions governing other modes of carriage. For example, an additional protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) had recently been adopted.

47. **Mr. Schelin** (Observer for Sweden) said that additional protocols to existing conventions could be considered to be covered by the current wording. However, it would be a matter of serious concern if the proposed deletion meant that draft article 84 applied to entirely new conventions replacing the existing inland carriage conventions, for that might force some contracting States to denounce the draft convention if they wished to become parties to the new conventions. The issue would have implications for draft article 92 on reservations.

48. **Mr. Berlingieri** (Italy) said that draft article 84 should not allow the draft convention to be superseded by any new conventions adopted or any protocols that significantly extended the scope of the pre-existing conventions.

The meeting was suspended at 4.40 p.m. and resumed at 5.05 p.m.

49. **Mr. Mollmann** (Observer for Denmark) said that his delegation did not think that draft article 84 should encompass new conventions replacing existing inland unimodal conventions, for that would undermine the application of the draft convention. A reference to subsequent amendments or protocols to existing conventions would be acceptable, but would require new wording, whereas his delegation was satisfied with the current wording.

50. **Mr. Barbuk** (Belarus) proposed that the word “convention” in subparagraphs (a) to (d) should be replaced by the words “international treaty”, reflecting the definition of treaty in the Vienna Convention on the Law of Treaties. That might address some of the concerns of the German delegation.

51. **Mr. van der Ziel** (Observer for the Netherlands), noting that draft article 84 was a conflict of conventions provision, said that it clearly defined the scope of application of the other conventions; as long as subsequent protocols did not extend the scope, no problem would arise. The German proposal, however,

would give a "blank cheque" to new conventions, whereas the point of draft article 84 was to protect the scope of the draft convention against future inroads from other conventions. The German proposal was undesirable not just in theory but in practice, because it was largely unnecessary. Draft article 27 applied to possible future international instruments governing inland modes of transport and addressed Germany's concerns adequately.

52. **Mr. Sato** (Japan) said that his delegation sympathized with Germany's concerns insofar as simple amendments to existing inland transport conventions were concerned, but the deletion suggested by Germany was too broad because it opened the door to entirely new unimodal conventions as well as simple amendments. However, to address Germany's point, the chapeau of draft article 84 could be amended by adding, after the words "enters into force", the phrase "including any amendment thereto". A similar phrase was used in draft article 88 (a). To be sure, that proposal would not solve the problem when an existing convention was replaced by a new convention that was in many respects a continuation of the previous convention.

53. **Ms. Carlson** (United States of America) said that her delegation opposed the Danish and Japanese proposals, since nothing would prevent a future amendment to an existing convention from completely changing the scope of that convention. She agreed with the representative of the Netherlands that it would be very dangerous to give a "blank cheque" to the drafters of amendments to existing conventions or new conventions. As he had also pointed out, future conflicts were already covered by draft article 27. The current version of draft article 84 should, therefore, be retained.

54. **Mr. Honka** (Observer for Finland) said that, as the representative of the Netherlands had pointed out, draft article 27, in its chapeau, referred to other international instruments in force "at the time of such loss, damage or event or circumstances". Any future amendments to existing inland transport conventions would, therefore, apply under draft article 27. The purpose of draft article 84 was to safeguard against possible incursions from future conventions or future amendments to existing conventions expanding their scope; the current wording should therefore be retained.

55. **Ms. Czerwenka** (Germany) said that the inclusion of the phrase "to the extent that" in subparagraphs (a) to (d) made it clear which provisions of the international conventions in question would apply; the drafters of amendments to existing conventions or new conventions would not, therefore, be given a "blank cheque", since future provisions that did not fall within the scope of the existing conventions would not apply.

56. In a spirit of compromise, she could support the Japanese proposal even if, as he himself had pointed out, it still did not cover instruments that were not amended, per se, but replaced by a complete new version. The 1999 revision of the Convention concerning International Transport by Rail (COTIF) — to which many members of the Commission were a party — was just one example of such an instrument.

57. **The Chairperson** suggested that, in view of the fairly even split in opinions, interested delegations should consult informally in order to try to reach an understanding.

58. *It was so decided.*

Draft article 85 (Global limitation of liability)

59. **Mr. Imorou** (Benin) asked why draft article 85 referred to "vessel owners" when thus far the convention had used the terms "carrier" and "shipper".

60. **Ms. Czerwenka** (Germany), supported by **Mr. Sato** (Japan), explained that draft article 85 aimed to resolve situations in which the carrier under the current convention was also the shipowner under either the Convention on Limitation of Liability for Maritime Claims or the Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels, both of which allowed the shipowner to limit his liability, for example in the case of a major accident. A carrier who was also the shipowner might be liable under the present convention to, say, up to $1 million. However, if there were other claimants against whom the shipowner could invoke a limitation of liability under the Convention on Limitation of Liability for Maritime Claims, the consignee or the shipper might receive less than the full amount and the claim would not be fully met. Her delegation believed it was important for the Conventions in question to continue to apply in the way that they currently applied. The term "vessel" had been chosen because it applied to the

carriage of goods both by sea and by inland waterways and, therefore, to both Conventions.

61. **Mr. Elsayed** (Egypt) said that it was normal for draft article 85 to refer to "vessel owners" if the vessel owner was the same person as the person mentioned in the contract of carriage. He wished to know nonetheless what was meant by the word "regulating" in the context of draft article 85. He was also concerned that any understanding reached with regard to draft article 84 might run counter to draft article 85.

62. **Mr. Berlingieri** (Italy) expressed support for the German and Japanese position, but cautioned that problems might arise if the term "vessel owners" was interpreted in the light of the Convention on Limitation of Liability for Maritime Claims, which defined "shipowner" as the owner, charterer, manager or operator of the ship.

63. **Mr. Hu** Zhengliang (China), supported by **Mr. Kim** In Hyeon (Republic of Korea), said that while he agreed that draft article 85 was necessary, he also agreed that the term "vessel owners" might give rise to misunderstandings and even disputes, particularly since the present convention did not define either "vessel" or "owner". To make the draft article clearer, he proposed changing its title to "Global limitation of liability for maritime claims", in line with the wording of the related Convention.

64. **Mr. Sharma** (India) and **Mr. Tsantzalos** (Greece) expressed support for the German and Japanese position.

65. **Mr. van der Ziel** (Observer for the Netherlands) expressed support for the current version of draft article 85. Responding to the concerns raised in respect of the term "vessel owners", he said that the word "owner" clearly referred to the Convention on Limitation of Liability for Maritime Claims and subsequent conventions, including any conventions relating to the liability of owners of inland navigation vessels; that was the most important consideration. As pointed out by the representative of Germany, the word "vessel" had been used instead of "ship" so as to cover the carriage of goods both by sea and by inland waterways; that was also relevant to draft article 27.

66. **Ms. Markovčić Kostelac** (Observer for Croatia) said that, while her delegation supported the current version of draft article 85, the inclusion of the phrase "as defined by the respective instruments" directly after the term "vessel owners" would make it absolutely clear that the draft convention referred to both the Convention on Limitation of Liability for Maritime Claims and the relevant instruments relating to inland waterways.

67. **Mr. Imorou** (Benin) said that, while he fully understood the positions of Germany and Japan, he remained concerned about possible confusion between the terms "carrier" and "vessel owners", particularly in the absence of a definition of the latter.

68. **Mr. Gombrii** (Norway) said that the proposal by Croatia would seem to solve some of the problems raised.

69. **Ms. Czerwenka** (Germany) said that, as far as her delegation was concerned, draft article 85 was adequate as it stood. The draft article simply provided that, in the event of a conflict, nothing in the draft convention would affect the application of any international convention or national law regulating the global limitation of liability of vessel owners. It was impossible to know at the current juncture whether or not such an international convention or national law would be applicable; that would depend on the instrument in question. Hence the use of the word "regulating", which also made it unnecessary to add the phrase "as defined by the respective instruments".

70. Responding to the representative of China, she said that draft article 85 related not only to maritime claims, but also to inland waterway claims, so that the current title should be left unchanged.

71. **Mr. Mbiah** (Observer for Ghana) said that, though he had initially been sympathetic to the Chinese proposal, he had been convinced by the explanation of the representative of Germany that the proposed wording would be too restrictive. The current title should, therefore, be retained.

72. **The Chairperson** said that a clear majority of delegations were in favour of retaining the current version of draft article 85.

73. *Draft article 85 was approved in substance and referred to the drafting group.*

Draft article 86 (General average)

74. **Mr. Elsayed** (Egypt) drew attention to a discrepancy between the English term "general average" and the term used in the Arabic version of

draft article 86 and said that his delegation thought that a definition of “general average” would be useful.

75. **The Chairperson** said that he noted no support for a definition, but the Secretariat would look into the matter of the Arabic wording.

76. *Draft article 86 was approved in substance and referred to the drafting group.*

The meeting rose at 6 p.m.