

vention at its present stage by including an "opting-in" provision, but rather to present the uniform rules without prejudice as to the ultimate form which the text would assume.³⁷ It is submitted that the Commission might also wish to defer its decision on the ultimate form the uniform rules should take until after the working group which will be entrusted with the work of preparing draft texts finalizes its work, at which time the Commission may be in a better position to decide on the matter in the light of developments surrounding the project.

X. Future work

48. With respect to the procedure to be followed in the elaboration of uniform rules, one approach may be

for the working group to which the work is assigned first to review the UNIDROIT preliminary draft Convention with the need in mind to take decisions on the approaches to be adopted with respect to issues discussed in this study, and then to proceed to the preparation of a draft set of uniform rules on the basis of a draft which the secretariat might be requested to prepare after such decisions have been taken.

49. With respect to the working group to which the work should be assigned, it may be noted that the Working Group on International Contract Practices has recently completed its work on a model law on international commercial arbitration, and would be available to commence work on the liability of OTTs in the third quarter of 1984. The working group may be expected to be able to proceed with its work expeditiously, and perhaps complete a set of draft uniform rules during the course of 1985.

³⁷*Ibid.*, para. 13.

ANNEX I

Selected provisions of major international transport Conventions

<i>Convention</i>	<i>Standard of liability</i>	<i>Limit of liability for loss of or damage to goods (per kilogramme)*</i>	<i>Limitation period</i>
<i>Carriage by sea</i>			
International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) ("Hague Rules")	Based on duties and immunities in articles 3 and 4; broadly, a duty of reasonable care	No per-kilogramme limit: 100 pounds sterling per package or unit (article 4 (5))	1 year (article 3 (6))
Hague Rules as amended by Protocol done at Brussels on 23 February 1968 ("Hague/Visby Rules")	Essentially as Hague Rules, above	30 Poincaré francs (article 4 (5) (a))	1 year (article 3 (6))
Protocol amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 25 August 1924, as amended by the Protocol of 23 February 1968 (1979) (not yet in force)	Not applicable	2 units of account (SDR) (non-IMF members which cannot apply SDR provision may fix limit at 30 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article II)	Not applicable
United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) ("Hamburg Rules") (not yet in force)	Carrier liable unless he proves that he, his servants or agents took "all measures that could reasonably be required to avoid the occurrence and its consequences" (article 5 (1))	2.5 units of account (SDR) (article 6 (1)) (non-IMF members which cannot apply SDR provision may fix limit at 37.5 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article 26)	2 years (article 20)

<i>Convention</i>	<i>Standard of liability</i>	<i>Limit of liability for loss of or damage to goods (per kilogramme)*</i>	<i>Limitation period</i>
<i>Carriage by air</i>			
Convention for the Unification of Certain Rules relating to International Carriage by Air (1929) ("Warsaw Convention")	Carrier liable (article 18 (1)): (a) unless he proves he and his agents have taken "all necessary measures to avoid the damage or that it was impossible for him or them to take such measures" (article 20 (1)), or (b) unless he proves that the damage was occasioned by negligent pilotage, negligence in handling of aircraft or in navigation, and that in all other respects he and his agents have taken all necessary measures to avoid the damage (article 20 (2))	250 Poincaré francs (article 22 (2))	2 years (article 29)
Warsaw Convention as amended by Protocol done at The Hague on 28 September 1955	Warsaw Convention standard "(a)", above, only (article 20)	250 Poincaré francs (article 22 (2))	2 years (article 29)
Montreal Protocol No. 4 to amend the Warsaw Convention as amended by the Protocol done at The Hague on 28 September 1955 (1975) (not yet in force)	Carrier liable unless he proves that destruction, loss or damage resulted solely from inherent defect etc., defective packing by one other than carrier, his servants or agents, act of war or armed conflict, or act of public authority in connection with entry exit or transit of cargo (article IV)	17 SDRs (non-IMF members which cannot apply SDR provision may fix limit at 250 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article VII)	Not applicable
<i>Carriage by road</i>			
Convention on the Contract for the International Carriage of Goods by Road (CMR) (1956)	Carrier liable (article 17 (1)) unless he proves loss or damage caused by wrongful act or neglect of claimant, by instructions of claimant not resulting from wrongful act or neglect of carrier, by inherent vice, or through "circumstances" which the carrier could not avoid and the consequences of which he was unable to prevent" (article 17 (2)); or unless he proves that loss or damages arose from an enumerated special risk (article 17 (4)) (generally loss or damage is rebuttably presumed to have arisen from a special risk if carrier establishes it could have so arisen (article 18))	25 Germinal francs (article 23 (3))	1 year; 3 years if wilful misconduct (article 32)
Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) (1978)	Not applicable	8.33 units of account (SDR) (non-IMF members which cannot apply SDR provision may fix limit at 25 monetary units (1 monetary unit equal to 1 Germinal franc)) (article 2)	Not applicable
<i>Carriage by rail</i>			
Agreement concerning the International Carriage of Goods by Rail (SMGS) (1966)	Carrier liable unless he proves that loss or damage resulted from circumstances he could not avoid or consequences of which he could not prevent or unless they resulted from other enumerated circumstances (article 22)	Price of goods or declared value (articles 24, 25)	9 months (article 30)
International Convention concerning the Carriage of Goods by Rail (CIM) (1970)	Essentially same as CMR Convention, above (articles 27, 28)	50 Germinal francs (articles 31 (1), 33)	1 year; 2 years if wilful misconduct, fraud, others (article 47)

<i>Convention</i>	<i>Standard of liability</i>	<i>Limit of liability for loss of or damage to goods (per kilogramme)*</i>	<i>Limitation period</i>
Complementary provision concerning method of conversion of gold franc under the CIM Convention (1977)	Not applicable	3 francs = 1 SDR	Not applicable
Appendice B à la Convention relative aux transports internationaux ferroviaires (COTIF) du 19 Mai 1980 (not yet in force)	Same as CIM Convention, above (articles 36, 37)	17 units of account (SDR) (articles 40 (2), 42) (for non-IMF members which cannot apply SDR provision the unit of account equals 3 Germinal francs) (article 7)	Same as CIM Convention (article 58)
<i>Multimodal transport</i>			
United Nations Convention on International Multimodal Transport of Goods (1980) ("Multimodal Convention") (not yet in force)	Essentially same as Hamburg Rules, above (article 16)	2.75 units of account (SDR) (article 18 (1)) (non-IMF members which cannot apply SDR provision may fix limit at 41.25 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article 31)	2 years (article 25)

*The Poincaré franc referred to in this column consists of 65 1/5 milligrammes of gold of millesimal fineness 900; the Germinal franc consists of 10/31 of a gramme of gold of millesimal fineness 900. The relative values of these units is therefore approximately 1 Germinal franc = 5 Poincaré francs. Most of the Conventions listed in this chart, either in the Conventions themselves or in Protocols, contain equivalences between these units and the SDR; in general, 1 SDR = 15 Poincaré francs or 3 Germinal francs. For cases in which these provisions do not apply (e.g. to a State which is a party to a Convention but not to the Protocol which contains the provision) there is no international agreement on the method of converting the Poincaré or Germinal franc into national currencies. This has led to disparities in the conversion of liability limits expressed in these units.

ANNEX II

For the text of annex II see the following section B.

B. Text of preliminary draft Convention on Operators of Transport Terminals^a (A/CN.9/252, annex II)

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the rights and duties of operators of transport terminals and in particular to their liability;

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

Article 1

DEFINITIONS

For the purposes of the application of this Convention:

(1) "Operator of a transport terminal (OTT)" means any person acting in a capacity other than that of a carrier, who undertakes against remuneration the safe-keeping of goods before, during or after carriage, either by agreement or by taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them.

^aUNIDROIT 1983, study XLIV, document 24.