

ANNEX II

TEXT OF PRELIMINARY DRAFT CONVENTION ON OPERATIONS
OF TRANSPORT TERMINALS

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 safekeeping 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.

2. "Goods" includes any container, pallet or similar article of transport or packaging, if not supplied by the OTT.

Article 2

SCOPE OF APPLICATION

This Convention applies whenever the operations for which the OTT is responsible are:

- (a) performed in the territory of a Contracting State, and
- (b) related to carriage in which the place of departure and the place of destination are situated in two different States.

Article 3

PERIOD OF RESPONSIBILITY

1. The OTT shall be responsible for the safekeeping of goods from the time he has taken them in charge until their handing over to the person entitled to take delivery of them.
2. If the OTT has undertaken to perform or to procure performance of discharging, loading or stowage of the goods, even before their taking in charge or after their being handed over, the period of responsibility shall be extended so as to cover such additional operations also.

Article 4

ISSUANCE OF DOCUMENT

1. The OTT shall, at the request of the other party to the contract issue a dated document acknowledging receipt of the goods and stating the date on which they were taken in charge.
2. Such a document shall indicate any inaccuracy or inadequacy of any particular concerning the description of the goods taken in charge as far as this can be ascertained by reasonable means of checking.
3. Such a document is prima facie evidence of the contract for the safekeeping of goods and the taking in charge of the goods as therein described.
4. The document issued by the OTT may, if the parties so agree, and the applicable national law so permits, contain an undertaking by the OTT to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person or to order, or to bearer, constitutes such an undertaking.
5. Nothing in this Convention shall prevent the issuing of documents by any mechanical or electronic means, if not inconsistent with the law of the place where the document is issued.

Article 5

SECURITY RIGHTS IN THE GOODS

1. The OTT shall have a right of retention over the goods he has taken in charge for costs and claims relating to such goods, fees and warehousing rent included. However, nothing in this Convention shall affect the validity under national law of any contractual arrangements extending the OTT's security in the goods.

2. The OTT shall not be entitled to retain the goods he has taken in charge if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operations for which the OTT is responsible under this Convention are performed.

3. The OTT may, after giving timely and adequate notice, sell or cause to be sold all or part of the goods retained by him so as to obtain the amount necessary to satisfy his claim.

Article 6

BASIS OF LIABILITY

1. The OTT is liable for loss resulting from loss of or damage to the goods for which he is responsible under this Convention, unless he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence which caused the loss or damage, and its consequences.

2. If the OTT does not hand over the goods at the request of the person entitled to take delivery of them within a period of 60 consecutive days following such request, the person entitled to make a claim for the loss of the goods may treat them as lost.

3. Where fault or neglect on the part of the OTT, his servants or agents combines with another cause to produce loss or damage the OTT is liable only to the extent that the loss or damage is attributable to such fault or neglect, provided that the OTT proves the amount of the loss or damage not attributable thereto.

Article 7

LIMIT OF LIABILITY

1. The liability of the OTT for loss resulting from loss of or damage to goods according to the provisions of Article 6 is limited to an amount equivalent to 2.75 units of account per kilogramme of gross weight of the goods lost or damaged.

2. Unit of account means the unit of account mentioned in Article 13.

3. The OTT may, by agreement, increase the limits of liability provided for in paragraph 1 of this article.

Article 8

NON-CONTRACTUAL LIABILITY

1. The defences and limits of liability provided for in this Convention apply in any action against the OTT in respect of loss of or damage to goods

caused by any act or omission within the scope of the OTT's obligations provided for under this Convention, whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the OTT, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the OTT is entitled to invoke under this Convention.

3. Except as provided in Article 9, the aggregate of the amounts recoverable from the OTT and from any person referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 9

LOSS OF THE RIGHT TO LIMIT LIABILITY

1. The OTT is not entitled to the benefit of the limitation of liability provided for in Article 7 if it is proved that the loss or damage resulted from an act or omission of the OTT done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

2. Notwithstanding the provisions of Article 8, paragraph 2, a servant or agent of the OTT is not entitled to the benefit of the limitation of liability provided for in Article 7 if it is proved that the loss or damage resulted from an act or omission of such servant or agent, done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 10

NOTICE OF LOSS OR DAMAGE

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing to the OTT not later than the working day after the day when the goods were handed over to the person entitled to take delivery of them, such handing over is prima facie evidence of the delivery by the OTT of the goods as described in the document issued by the OTT or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

3. If the state of the goods at the time they were handed over to the person entitled to take delivery of them has been the subject of a joint survey or inspection, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the OTT and the person entitled to take delivery of the goods must give all reasonable facilities to each other for inspecting and tallying the goods.

Article 11

LIMITATION OF ACTIONS

1. Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences on the day on which the OTT has handed over the goods or part thereof or, in cases where no goods have been handed over, on the last day of the period referred to in Article 6, paragraph 2.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. Provided that the provisions of another applicable international convention are not to the contrary, a recourse action for indemnity by a person held liable under this Convention may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted; however, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 12

CONTRACTUAL STIPULATIONS

1. Any stipulation in a contract for the safekeeping of goods concluded by an OTT or in any document evidencing such a contract is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

2. Notwithstanding the provisions of paragraph 1 of this article, the OTT may, by agreement, increase his responsibilities and obligations under this Convention.

Article 13

UNIT OF ACCOUNT AND CONVERSION

1. The unit of account referred to in Article 7 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 7 are to be expressed in the national currency of a State according to the value of such currency at the date of judgment or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of paragraph 1 is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in Article 7 as is expressed there in units of account. Contracting States must communicate to the Depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

Article 14

OTHER CONVENTIONS

This Convention does not modify any rights or duties which may arise under any international Convention relating to the international carriage of goods.

Article 15

INTERPRETATION OF THE CONVENTION

1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based, or in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article Y

REVISION OF THE LIMITATION AMOUNTS AND UNIT OF ACCOUNT

1. The Depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in Article 7:

- (a) Upon the request of at least [] Contracting States, or
- (b) When five years have passed since the Convention was opened for signature or since the Committee last met.

2. If the present Convention comes into force more than five years after it was opened for signature, the Depositary shall convene a meeting of the Committee within the first year after it comes into force.

3. Amendments shall be adopted by the Committee by a [] majority of its members present and voting.

4. Any amendment adopted in accordance with paragraph 3 of this article shall be notified by the Depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of [6] months after it has been notified, unless within that period not less than [one-third] of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all Contracting States [12] months after its acceptance.

5. A Contracting State which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment has entered into force. Such denunciation shall take effect when the amendment enters into force.

6. When an amendment has been adopted by the Committee but the [6] month period for its acceptance has not yet expired, a State which becomes a Contracting State to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Contracting State to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 4.