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INTERNATIONAL LEGISLATION ON SHIPPING

Preliminary version of a draft convention on the
liability of carriers of goods by sea

Note by the Secretariat

1. At its fifth session the United Nations Commission on International Trade Law (UNCITRAL) decided that within the topic of international legislation on shipping "the Working Group should give priority in its work to the basic question of the carrier's responsibility" and it recommended that "the Working Group keep in mind the possibility of preparing a new convention as appropriate, instead of merely revising and amplifying the rules in the International Convention for the Unification of Certain Rules relating to Bills of Lading (1924 Brussels Convention), and the Brussels Protocol, 1968." 1/
2. The Working Group at its third, fourth, fifth, sixth and seventh sessions approved draft provisions concerning the liability of carriers of goods by sea. 2/

1/ Report of the United Nations Commission on International Trade Law on the work of its fifth session (1972), Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 51.

2/ At its sixth session the Working Group had before it a note by the Secretariat entitled "Compilation of draft provisions on carrier responsibility approved by the Working Group" (A/CN.9/WG.III/WP.13; A/CN.9/88 (annex)), which contained the draft provisions considered at the third, fourth and fifth sessions of the Working Group. At its seventh session the Working Group had before it a note by the Secretariat entitled "Revised compilation of draft provisions on carrier responsibility" (A/CN.9/WG.III/WP.16), which contained the draft provisions considered by the Working Group at its third, fourth, fifth and sixth sessions.

3. At its seventh session the Working Group decided that "its future work in respect of carrier responsibility should be carried out with a view to establishing a new Convention." 3/ To this end, the Group requested the Secretariat "to structure the draft provisions approved by the Working Group in the form of a convention and to submit a draft of such a convention to its eighth session for a second reading." 4/

4. The preliminary version of a draft convention on the liability of carriers of goods by sea, which is set forth in the annex to this note, was prepared in response to this request. The Working Group suggested that "the revised compilation of draft provisions on carrier responsibility (A/CN.9/WG.III/WP.16) could be used as a basis for the preparation of such draft convention." 5/ Accordingly, the preliminary version follows as much as possible the basic organization, chapter and article headings, and paragraph numbering found in the revised compilation. In addition, this version includes the draft provisions approved by the Working Group at its seventh session.

5. The provisions of the 1924 Brussels Convention not yet considered by the Working Group, but which are to be considered at its eighth session, are noted at their appropriate place in this version.

6. The preliminary version includes both draft provisions approved by the Working Group and texts placed in brackets signifying less than general approval by the Working Group. Foot-notes identify the relevant paragraphs in the report of the session of the Working Group at which action was taken with respect to a particular draft provision included in this preliminary version.

3/ Report of the Working Group on International Legislation on Shipping on the work of its seventh session (A/CN.9/96), para. 107.

4/ Ibid.

5/ Ibid.

Annex

PRELIMINARY VERSION OF A DRAFT CONVENTION ON THE
LIABILITY OF CARRIERS OF GOODS BY SEA

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* Not yet considered by the Working Group.

PRELIMINARY VERSION OF A DRAFT CONVENTION ON THE
LIABILITY OF CARRIERS OF GOODS BY SEA

PART I. SCOPE OF APPLICATION

Article 1. Contracts covered 1/

1. The provisions of this Convention shall be applicable to all contracts for the carriage of goods by sea.

2. Where a bill of lading or similar document of title is not issued, the parties may expressly agree that the Convention shall not apply, provided that a document evidencing the contract is issued and a statement of the stipulation is endorsed on such document and signed by the shipper. 2/

3. The provisions of this Convention shall not be applicable to charter-parties. 3/ However, where a bill of lading is issued under or pursuant to a charter-party, the provisions of the Convention shall apply to such a bill of lading where it governs the relation between the carrier and the holder of the bill of lading.

4. For the purpose of this article, contracts for the carriage of a certain quantity of goods over a certain period of time shall be deemed to be charter-parties. 4/

1/ Report of the Working Group on International Legislation on Shipping on the work of its sixth session, Geneva, 4 to 20 February 1974 (A/CN.9/88) (herein referred to as Working Group, report on sixth session), para. 48 (a). The Working Group also approved the Drafting Party's recommendation that "the Convention should not contain any definition of the terms 'charter-party' and 'contrat d'affrètement'" and that "article 6 of the Brussels Convention of 1924 should be deleted." Ibid., para. 48 (b) (i) and (iii).

2/ Ibid., para. 48 (c): "Opinion as to whether this paragraph should be included was divided in the Drafting Party and it was agreed that the paragraph should appear in square brackets ...".

3/ Pro memoria: The report of the Drafting Party stated that it was noted by the representative of France that charter-party was translated into French as 'contrat d'affrètement'. It was also noted by the representatives of Argentina and Chile that 'charter-party' was translated into Spanish as 'contrato de fletamento'. The Working Group decided to follow these suggestions concerning the French and Spanish language versions. Ibid., para. 48 (c).

4/ "At the request of four representatives who were opposed to this provision it was agreed to place this subparagraph in square brackets." Ibid., para. 48 (c).

/...

Article 2. /Geographic scope/ 5/

1. The provisions of this Convention shall, subject to article 1/, be applicable to every contract for carriage of goods by sea between ports in two different States, if:

(a) The port of loading as provided for in the contract of carriage is located in a Contracting State, or

(b) The port of discharge as provided for in the contract of carriage is located in a Contracting State, or

(c) One of the optional ports of discharge provided for in the contract of carriage is the actual port of discharge and such port is located in a Contracting State, or

(d) The bill of lading or other document evidencing the contract of carriage is issued in a Contracting State, or

(e) The bill of lading or other document evidencing the contract of carriage provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

2. The provisions of paragraph 1 are applicable without regard to the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

3/ Each Contracting State shall apply the provisions of this Convention to the contracts of carriage mentioned above. 6/

4. This article shall not prevent a Contracting State from applying the rules of this Convention to domestic carriage.

Article 3. /Definitions/

In this Convention:

1. "Carrier" or "contracting carrier" means any person who in his own name enters into a contract for carriage of goods by sea with the shipper. 7/

2. "Actual carrier" means any person to whom the contracting carrier has entrusted the performance of all or part of the carriage of goods. 7/

5/ Working Group, report on sixth session, para. 65 (a).

6/ "The majority of the representatives, some of whom considered this paragraph to be superfluous, preferred placing paragraph 3 in square brackets for further consideration at a later stage." Ibid., para. 65.

7/ Working Group, report on sixth session, para. 133 (a).

3. "Goods" includes goods, wares, merchandise and articles of every kind whatsoever including live animals. 8/

4. "Contract of carriage" means a contract whereby the carrier agrees with the shipper to carry by sea against payment of freight, specified goods from one port to another where delivery is to take place. 9/

5/ "Ship" means any vessel used for the carriage of goods by sea. 10/

6. "Bill of lading" means a document which evidences a contract for the carriage of goods by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes 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 bearer, constitutes such an undertaking. 11/

7. "Consignee" means the person entitled to take delivery of the goods. 12/

8/ Working Group, report on sixth session, para. 115 (a).

9/ Report of the Working Group on International Legislation on Shipping on the work of its seventh session, Geneva, 30 September to 11 October 1974 (A/CN.9/96) (herein referred to as Working Group, report on seventh session), para. 104.

10/ Working Group, report on sixth session, states at paragraph 141 that "the Working Group decided to place in square brackets the definition of 'ship' in article I (d) of the 1924 Brussels Convention in order to indicate that the Working Group wished to leave the matter open until a later stage in its drafting."

11/ Working Group, report on seventh session, para. 60. (The Working Group also approved the decision of the Drafting Party "not to deal with all the various questions relating to the negotiability of the bill of lading". Ibid., note (b) on the proposed draft provisions.)

12/ Working Group, report on seventh session, para. 104. The Working Group decided not to include a general provision on the legal position of the consignee. Ibid., para. 98.

PART II. LIABILITY OF THE CARRIER

Section 1. General provisions

Article 4. /Period of liability of the carrier/ 13/

1. "Carriage of goods" covers the period during which the goods are in the charge of the carrier at the port of loading, during the carriage, and at the port of discharge.

2. For the purpose of paragraph 1, the carrier shall be deemed to be in charge of the goods from the time the carrier has taken over the goods until the time the carrier has delivered the goods:

(a) By handing over the goods to the consignee; or

(b) In cases when the consignee does not receive the goods, by placing them at the disposal of the consignee in accordance with the contract or with law or usage applicable at the port of discharge; or

(c) By handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In the provisions of paragraphs 1 and 2, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants, the agents or other persons acting pursuant to the instructions, respectively, of the carrier or the consignee.

Article 5. /Basic rules on the liability of the carrier/ 14/

1. The carrier shall be liable for loss, damage or expense resulting from loss of or damage to the goods, as well as from delay in delivery, if the

13/ Report of the Working Group on International Legislation on Shipping on the work of its third session, Geneva, 31 January to 11 February 1972 (A/CN.9/63) (herein referred to as Working Group report on third session), para. 14 (1). At its third session, the Working Group also decided to delete article 7 of the Hague Rules as being inconsistent with this new article, and to adopt the recommendation of the Drafting Party to consider article 3 (6) of the Hague Rules in the light of the present article 4 on the period of liability of the carrier (*ibid.*, para. 15).

14/ At the fourth session of the Working Group, the Drafting Party recommended that the revised basic rules on the liability of carriers adopted by the Working Group at that session should replace articles 3 (1), 3 (2), 4 (1) and 4 (2) of the 1924 Brussels Convention (Report of the Working Group on International

(Foot-note continued)

/...

occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon in writing or, in the absence of such agreement, within the time which, having regard to the circumstances of the case, would be reasonable to require of a diligent carrier. 15

3. The person entitled to make a claim for the loss of goods may treat the goods as lost when they have not been delivered as required by article 4 within sixty days following the expiry of the time for delivery according to paragraph 2 of this article. 16

4. In case of fire, the carrier shall be liable, provided the claimant proves that the fire arose due to fault or negligence on the part of the carrier, his servants or agents. 17

5. With respect to live animals, the carrier shall be relieved of his liability where the loss, damage or delay in delivery results from any special risks inherent in that kind of carriage. When the carrier proves that he has complied with any special instructions given him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it shall be presumed that the loss, damage or delay in delivery was so caused unless there is proof that all or a

14 (continued)

Legislation on Shipping on the work of its fourth (special) session, Geneva, 25 September to 6 October 1972 (A/CN.9/74) (herein referred to as Working Group report on fourth session), para. 28 (5)).

At its third session, the Working Group decided to defer consideration of a proposal to add the following new article to the revised Convention:

"Subject to the provisions of article V, there shall be no liability on the carrier for loss or damage to goods at the port of loading, during the carriage of goods or at the port of discharge except in accordance with these Rules". (Working Group report on third session, para. 18.) It should be noted that the substance of article V of the Hague Rules has been incorporated into article 23 (2) of the present preliminary draft convention.

15 Working Group, report on sixth session, para. 26 (a). Paragraph (1) of article 5 is a revision of a draft provision that appeared in Working Group report on fourth session, para. 28 (3).

16 Working Group report on sixth session, para. 26 (a).

17 Working Group report on fourth session, para. 28 (3).

/...

part of the loss, damage or delay in delivery resulted from fault or negligence on the part of the carrier, his servants or agents. 18/

6. The carrier shall not be liable for loss or damage resulting from measures to save life and from reasonable measures to save property at sea. 19/

7. Where fault or negligence on the part of the carrier, his servants or agents, concurs with another cause to produce loss or damage, the carrier shall be liable only for that portion of the loss or damage attributable to such fault or negligence, provided that the carrier bears the burden of proving the amount of loss or damage not attributable thereto. 20/

Section 2. Limits on the liability of carriers

Article 6. /Computation of the limits/ 21/

/Alternative A: single method for the limitation of the carrier's liability:

1. The liability of the carrier according to the provisions of article 15/ shall be limited to an amount equivalent to () francs per package or other shipping unit or () francs per kilo of gross weight of the goods lost, damaged or delayed, whichever is the higher.7

/Alternative B: dual method for the limitation of the carrier's liability:

1. (a) The liability of the carrier for loss, damage or expense resulting from loss of or damage to the goods shall be limited to an amount equivalent to () francs per package or other shipping unit or () francs per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(b) In case of delay in delivery, if the claimant proves loss, damage or expense other than as referred to in subparagraph (a) above, the liability of the carrier shall not exceed:

18/ Working Group report on sixth session, para. 115 (a).

19/ Report of the Working Group on International Legislation on Shipping on the work of its fifth session, New York, 5 to 16 February 1973 (A/CN.9/76) (herein referred to as Working Group report on fifth session), para. 54 (2).

20/ Working Group report on fourth session, para. 28 (3).

21/ Working Group report on sixth session, para. 26 (a). Alternatives A and B for para. 1 are revisions of para. 1 as it appeared in Working Group report on fifth session, para. 26 (2). Paragraphs 2, 3 and 4 were approved by the Working Group at its fifth session (Working Group report on fifth session, para. 26). A paragraph 5, which had been placed within brackets at the fifth session, was deleted by the Working Group at its sixth session (Working Group report on sixth session, para. 94 (b) (5)).

/...

variation x: /double/ the freight.

variation y: 22/ an amount equivalent to ~~(X-Y)~~ francs per package or other shipping unit or (X-Y) francs per kilo of gross weight of the goods delayed, whichever is the higher.

(c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred. 23/

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1, the following rules shall apply:

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading as packed in such article of transport shall be deemed packages or shipping units. Except as aforesaid the goods in such article of transport shall be deemed one shipping unit.

(b) In cases where the article of transport itself has been lost or damaged, that article of transport shall, when not owned or otherwise supplied by the carrier, be considered one separate shipping unit.

3. A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900.

4. The amount referred to in paragraph 1 of this article shall be converted into the national currency of the State of the court or arbitration tribunal seized of the case on the basis of the official value of that currency by reference to the unit defined in paragraph 3 of this article on the date of the judgement or arbitration award. If there is no such official value, the competent authority of the State concerned shall determine what shall be considered as the official value for the purposes of this Convention.

22/ It was assumed that (X-Y) would represent lower limitations on the liability of carriers than those established under subparagraph 1 (a). (Working Group report on sixth session, foot-note 26 at para. 26.)

23/ A slight majority of the representatives "expressed their preference for a dual system of liability" (Working Group report on sixth session, para. 21). Furthermore, "among the representatives favouring the dual method of limiting liability, a majority supported Alternative B, variation x" (*ibid.*, para. 26 (b)).

/...

Article 7. /Applicability of the limits on liability:
torts; servants and agents/

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss of or damage to the goods covered by the contract of carriage, as well as of delay in delivery, whether the action be founded in contract or in tort. 24/

2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention. 25/

3. The aggregate of the amounts recoverable from the carrier and any persons referred to in the preceding paragraph, shall not exceed the limits of liability provided for in this Convention.

Article 8. /Effect of wilful misconduct/ 26/

The carrier shall not be entitled to the benefit of the limitation of liability provided for in paragraph 1 of article 16/ if it is proved that the damage was caused by wilful misconduct of the carrier, or of any of his servants or agents acting within the scope of their employment. Nor shall any of the servants or agents of the carrier be entitled to the benefit of such limitation of liability with respect to damage caused by wilful misconduct on his part.

Section 3. Deck cargo

Article 9. /Deck cargo/ 27/

1. The carrier shall be entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper, with the common usage of the particular trade/ 28/ or with statutory rules or regulations.

24/ Working Group report on sixth session, paragraph 26 (a). This is a revision of para. 1 as it appeared in Working Group report on fifth session, para. 26 (2).

25/ Paragraphs 2 and 3 of article 7 were approved by the Working Group at its fifth session. Working Group report on fifth session, para. 26 (2).

26/ Working Group report on fifth session, para. 26.

27/ Working Group report on sixth session, para. 103 (a).

28/ The Working Group placed this phrase in square brackets on the ground that the question needed further study and consideration. Ibid., para. 105 (a).

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier shall insert in the bill of lading or other document evidencing the contract of carriage a statement to that effect. In the absence of such a statement the carrier shall have the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier shall not be entitled to invoke such an agreement against a third party who has acquired a bill of lading in good faith. 29/

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1, the carrier shall be liable for loss of or damage to the goods, as well as for delay in delivery, which results solely from the carriage on deck, in accordance with the provisions of articles 6 and 7. The same shall apply when the carrier, in accordance with paragraph 2 of this article, is not entitled to invoke an agreement for carriage on deck against a third party who has acquired a bill of lading in good faith.

4. Carriage of goods on deck contrary to express agreement for the carriage under deck shall be deemed to be wilful misconduct and subject to the provision of article 8.

Section 4. Liability of contracting carrier and actual carrier

Article 10. Carriage by an actual carrier 30/

1. Where the contracting carrier has entrusted the performance of the carriage or part thereof to an actual carrier, the contracting carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Convention.

2. The actual carrier also shall be responsible, according to the provisions of this Convention, for the carriage performed by him.

3. The aggregate of the amounts recoverable from the contracting carrier and the actual carrier shall not exceed the limits provided for in this Convention.

4. Nothing in this article shall prejudice any right of recourse as between the contracting carrier and the actual carrier.

29/ The Working Group noted the suggestion made by several representatives to modify paras. 2, 3 and 4 of the draft article on deck cargo and decided to consider that proposal at the next session of the Working Group. Ibid., para. 105, subparas. (b) and (c).

30/ Working Group report on sixth session, para. 133 (a). Article 10 is a revision of article D as it appeared in Working Group report on fifth session, para. 38 (2).

Article 11: /Through bill of lading/ 31/

1. Where the contract of carriage provides that a designated part of the carriage covered by the contract shall be performed by a person other than the contracting carrier (through bill of lading), the responsibility of the contracting carrier and of the actual carrier shall be determined in accordance with the provisions of article 10.

2. However, the contracting carrier may exonerate himself from liability for loss of, damage (or delay) to the goods caused by events occurring while the goods are in the charge of the actual carrier, provided that the burden of proving that any such loss, damage (or delay) was so caused, shall rest upon the contracting carrier.

31/ Working Group report on sixth session, para 133(a). Article 11 is a revision of article E as it appeared in Working Group report on fifth session para. 38 (2). Paragraph 43 of that report states: "It was decided that the report of the Drafting Party should be set forth as presented to the Working Group subject to placing brackets around the text of article E, but that it be indicated that there were more members of the Working Group opposed to para. 2 of article E than there were members who favoured its inclusion."

PART III. LIABILITY OF THE SHIPPER

Article 12. /General rule/

/Not yet considered by the Working Group./ 32/

Article 13. /Dangerous goods/

/Not yet considered by the Working Group./ 33/

32/ The text of article 4 (3) of the 1924 Brussels Convention is as follows:

"The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants."

33/ The text of article 4 (6) of the Brussels Convention of 1924 is as follows:

"Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any."

At the sixth session of the Working Group, a number of proposals were made with regard to modifying article 4 (6) of the 1924 Brussels Convention. Working Group report on sixth session, para. 117 (e).

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PART IV. TRANSPORT DOCUMENTS

Section 1. Bills of lading

Article 14. /Duty to issue bill of lading/ 34/

1. When the goods are received in the charge of the contracting carrier or the actual carrier, the contracting carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things the particulars referred to in article 15/.

2. The bill of lading may be signed by a person having authority from the contracting carrier. A bill of lading signed by the Master of the ship carrying the goods shall be deemed to have been signed on behalf of the contracting carrier.

Article 15. /Contents of bill of lading/ 35/

1. The bill of lading shall set forth among other things the following particulars:

(a) The general nature of the goods, the leading marks necessary for identification of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;

(b) The apparent condition of the goods including their packaging;

(c) The name and principal place of business of the carrier;

(d) The name of the shipper;

(e) The consignee if named by the shipper;

(f) The port of loading under the contract of carriage and the date on which the goods were taken over by the carrier at the port of loading;

(g) The port of discharge under the contract of carriage;

(h) The number of originals of the bill of lading;

(i) The place of issuance of the bill of lading;

34/ Working Group report on sixth session, para. 1333 (a).

35/ Working Group report on seventh session, para. 60.

(j) The signature of the carrier or a person acting on his behalf; the signature may be printed or stamped if the law of the country where the bill of lading is issued so permits; and

(k) The freight to the extent payable by the consignee or other indication that freight is payable by him.

2. After the goods are loaded on board, if the shipper so demands, the carrier shall issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 shall state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier the shipper shall surrender such document in exchange for the "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article shall not affect the validity of the bill of lading.

Article 16. /Bills of lading: reservations and evidentiary effect/ 36/

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier has reasonable grounds for suspecting not accurately to represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier shall make special note of these grounds or inaccuracies, or of the absence of reasonable means of checking.

2. When the carrier fails to note on the bill of lading the apparent condition of the goods, including their packaging, he is deemed to have noted on the bill of lading that the goods, including their packaging, were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which the carrier has entered a reservation permitted under paragraph 1 of this article:

(a) The bill of lading shall be prima facie evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(b) Proof to the contrary by the carrier shall not be admissible when the bill of lading has been transferred to a third party, including any consignee, who in good faith has acted in reliance on the description of the goods therein.

36/ Working Group report on seventh session, para. 60.

4. If the bill of lading does not, as provided in paragraph 1, subparagraph (k) of article /15/, set forth the freight or otherwise indicate that freight shall be payable by the consignee, it shall be presumed that no freight is payable by him. However, proof to the contrary by the carrier shall not be admissible when the bill of lading has been transferred to a third party, including any consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17 /Guarantees/ 37/

1. The shipper shall be deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper shall indemnify the carrier against all loss, damage or expense resulting from inaccuracies of such particulars. The shipper shall remain liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity shall in no way limit his liability under the contract of carriage to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss, damage or expense resulting from the issuance of the bill of lading by the carrier, or a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods including their packaging, shall be void and of no effect as against any third party, including any consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement shall be void and of no effect as against the shipper if the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including any consignee, who acts in reliance on the description of the goods in the bill of lading. If in such a case, the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier shall have no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case referred to in paragraph 3 of this article the carrier shall be liable, without the benefit of the limitation of liability provided for in this Convention, for any loss, damage or expense incurred by a third party, including any consignee, who has acted in reliance on the description of the goods in the bill of lading issued.

37/ Working Group report on seventh session, para. 85 (a).

Section 2. Documents other than bills of lading

Article 18 /Evidentiary effect of documents other than bills of lading/ 38/

When a carrier issues a document other than a bill of lading to evidence a contract of carriage, such a document shall be prima facie evidence of the taking over by the carrier of the goods as therein described.

PART V. CLAIMS AND ACTIONS

Article 19 /Notice of loss or damage/

/Not yet considered by the Working Group./ 39/

38/ Working Group report on seventh session, para. 60.

39/ The notice provisions in article 3 (6) of the 1924 Brussels Convention read as follows:

"Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

"If the loss or damage is not apparent, the notice must be given within three days of the delivery.

"The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

"...

"In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

The Working Group at its third session approved the recommendation of the Drafting Party to consider article 3 (6) of the Brussels Convention in the light of the article on the period of liability of the carrier (art. 4 in the present preliminary draft convention). See Working Group report on third session, para. 15.

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Article 20 /Limitation period/ 40/

1. The carrier shall be discharged from all liability whatsoever relating to carriage under this Convention unless legal or arbitral proceedings are initiated within /one year/ /two years/: 41/

(a) In the case of partial loss of or of damage to the goods, or delay, from the last day on which the carrier has delivered any of the goods covered by the contract;

(b) In all other cases, from the /ninetieth/ day after the time the carrier has taken over the goods or, if he has not done so, the time the contract was made.

2. The day on which the period of limitation begins to run shall not be included in the period.

3. The period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

4. An action for indemnity against a third person may be brought even after the expiration of the period of limitation provided for in the preceding paragraphs if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall not be less than /ninety days/ commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself. 42/

Article 21 /Choice of forum/ 43/

1. In a legal proceeding arising out of the contract of carriage the plaintiff, at his option, may bring an action in a contracting State within whose territory is situated:

40/ Working Group report on fifth session, para. 65 (1).

41/ "With respect to the length of the period of limitation, members of the Drafting Party were divided as to whether the period should be one year or two years. Consequently, both periods are set forth in brackets." Ibid., para. 65 (3).

42/ It was agreed at the fifth session of the Working Group that two draft proposals dealing with the interruption of the period of limitation by the institution of legal or arbitral proceedings would be considered at a future session of the Working Group. Ibid., paras. 68-71.

43/ Working Group report on third session, para. 39 (3). The Working Group approved the report of the Drafting Party which had noted, ibid., at para. 39 (4), the necessity of considering the relationship between para. 2 of this article and the provisions on jurisdiction in the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships (Brussels 1952).

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(a) The principal place of business or, in the absence thereof, the ordinary residence of the defendant; or

(b) The place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(c) The port of loading; or

(d) The port of discharge; or

(e) A place designated in the contract of carriage.

2. (a) Notwithstanding the preceding provisions of this article, an action may be brought before the courts of any port in a contracting State at which the carrying vessel may have been legally arrested in accordance with the applicable law of that State. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action;

(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court at the place of the arrest.

3. No legal proceedings arising out of the contract of carriage may be brought in a place not specified in paragraphs 1 and 2 above. The provisions which precede do not constitute an obstacle to the jurisdiction of the contracting States for provisional or protective measures.

4. (a) Where an action has been brought before a court competent under paragraphs 1 and 2 or where judgement has been delivered by such a court, no new action shall be started between the same parties on the same grounds unless the judgement of the court before which the first action was brought is not enforceable in the country in which the new proceedings are brought;

(b) For the purpose of this article the institution of measures with a view to obtaining enforcement of a judgement shall not be considered as the starting of a new action;

(c) For the purpose of this article the removal of an action to a different court within the same country shall not be considered the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties after a claim under the contract of carriage has arisen, which designates the place where the claimant may bring an action, shall be effective.

Article 22 /Arbitration/ 44/

1. Subject to the rules of this article, any clause or agreement referring disputes that may arise under a contract of carriage to arbitration shall be allowed.

2. The arbitration proceedings shall, at the option of the plaintiff, be instituted at one of the following places;

- (a) A place in a State within whose territory is situated
 - (i) The port of loading or the port of discharge, or
 - (ii) The principal place of business of the defendant or, in the absence thereof, the ordinary residence of the defendant, or
 - (iii) The place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- (b) Any other place designated in the arbitration clause or agreement.

3. The arbitrator(s) or arbitration tribunal shall apply the rules of this Convention.

4. The provisions of paragraphs 2 and 3 of this article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

5. Nothing in this article shall affect the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage has arisen. 45/

44/ Working Group report on fourth session, para. 47 (2). ()

45/ At its fourth session, the Working Group approved the report of the Drafting Party (ibid., at para. 48), which included the recommendation that at a later stage the Working Group consider adoption of the substance of the following draft provision:

"6. The word 'State' within the meaning of this article shall be deemed to mean 'contracting State' at such time as [] States of which [] shall each have a total tonnage of not less than [] tons of shipping, have become parties to this Convention." (Ibid., para. 47 (3).)

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PART VI. CONTRACT STIPULATIONS DEROGATING FROM THE CONVENTION

Article 23 /General rule/ 46/

1. Any stipulation of the contract of carriage or contained in a bill of lading or any other document evidencing the contract of carriage shall be null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation shall not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, shall be null and void.

2. Notwithstanding the provisions of paragraph 1 of this article, a carrier may increase his responsibilities and obligations under this Convention.

3. When a bill of lading or any other document evidencing the contract of carriage is issued, it shall contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in the preceding paragraph, the carrier shall pay compensation to the extent required in order to give the claimant full compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier shall, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked shall be determined in accordance with the law of the court seized of the case.

Article 24 /General average/

/Not yet considered by the Working Group./ 47/

46/ Working Group report on sixth session, paragraph 94 (a). The Working Group approved the recommendation of the Drafting Party (para. 94 (b) (5)) that paragraph 5 of the article on computing the limitation on the liability of carriers (art. 6), which had been placed in brackets when the Working Group approved these provisions (Working Group report on fifth session, para. 26) should be deleted "in view of the proposed draft provisions", in particular art. 23, para. 2.

47/ Article 5, paragraph 2, second sentence of the 1924 Brussels Convention provides: "Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average."

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PART VII. RELATIONSHIP OF THE CONVENTION WITH OTHER
MARITIME CONVENTIONS

/Not yet considered by the Working Group./ 48/

PART VIII. IMPLEMENTATION

/Not yet considered by the Working Group./ 49/

48/ Article 8 of the Brussels Convention of 1924 provides: "The provision of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of liability of owners of seagoing vessels."

Article 4 of the 1968 Brussels Protocol adds the following provision to the Convention: "This Convention shall not affect the provision of any international Convention or national law governing liability for nuclear damage."

49/ It may be noted that the recently approved Convention on the Limitation Period in the International Sale of Goods contains the following provisions relating to implementation:

"Article 31

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Secretary-General of the United Nations and shall state expressly the territorial units to which the Convention applies.

3. If a Contracting State described in paragraph (1) of this article makes no declaration at the time of signature, ratification or accession, the Convention shall have effect within all territorial units of that State.

Article 32

Where in this Convention reference is made to the law of a State in which different systems of law apply, such reference shall be construed to mean the law of the particular legal system concerned.

Article 33

Each Contracting State shall apply the provisions of this Convention to contracts concluded on or after the date of the entry into force of this Convention."

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PART IX. DECLARATIONS AND RESERVATIONS

/Not yet considered by the Working Group./ 50/

50/ It may be noted that the recently approved Convention on the Limitation Period in the International Sale of Goods contains the following provisions relating to declarations and reservations:

"Article 34

Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be governed by this Convention, because they apply to the matters governed by this Convention the same or closely related legal rules.

Article 35

A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession, that it will not apply the provisions of this Convention to actions for annulment of the contract.

Article 36

Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it shall not be compelled to apply the provisions of article 24 of this Convention.

/Article 24 of the Convention on the Limitation Period in the International Sale of Goods reads as follows:

'Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings.'

Article 37

This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters covered by this Convention, provided that the seller and buyer have their places of business in States parties to such a convention.

Article 38

1. A Contracting State which is a party to an existing convention relating to the international sale of goods may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply this Convention exclusively to contracts of international sale of goods as defined in such existing convention.

(Foot-note continued on following page)

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(Foot-note 50) (continued):

2. Such declaration shall cease to be effective on the first day of the month following the expiration of 12 months after a new convention on the international sale of goods, concluded under the auspices of the United Nations, shall have entered into force.

Article 39

No reservation other than those made in accordance with articles 34, 35, 36 and 38 shall be permitted.

Article 40

1. Declarations made under this Convention shall be addressed to the Secretary-General of the United Nations and shall take effect simultaneously with the entry of this Convention into force in respect of the State concerned, except declarations made thereafter. The latter declarations shall take effect on the first day of the month following the expiration of six months after the date of their receipt by the Secretary-General of the United Nations.

2. Any State which has made a declaration under this Convention may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Secretary-General of the United Nations. In the case of a declaration made under article 34 of this Convention, such withdrawal shall also render inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article."

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PART X. FINAL CLAUSES

/Not yet considered by the Working Group./ 51/

51/ It may be noted that the recently approved Convention on the Limitation Period in the International Sale of Goods contains the following provisions relating to final clauses:

"Article 41

This Convention shall be open until 31 December 1975 for signature by all States at the Headquarters of the United Nations.

Article 42

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 43

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 44

1. This Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, this Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification or accession.

Article 45

1. Any Contracting State may denounce this Convention by notifying the Secretary-General of the United Nations to that effect.

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after receipt of the notification by the Secretary-General of the United Nations.

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(Foot-note 51) (continued):

Article 46

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.¹¹

It may be noted that the Working Group on Time-Limits and Limitations (Prescription) did not consider the final clauses when it prepared the draft of a Convention on Prescription (Limitation) in the field of International Sale of Goods. The draft Convention prepared by that Group nevertheless included final clauses /drafted by the Secretariat/ based on the Vienna Convention on the Law of Treaties and on the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods.
