

UNITED NATIONS CONFERENCE ON THE CARRIAGE OF GOODS BY SEA

Hamburg, 6-31 March 1978

OFFICIAL RECORDS

*Documents of the Conference
and
Summary Records of the Plenary Meetings
and of the Meetings
of the Main Committees*

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UNITED NATIONS
New York, 1981

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INTRODUCTORY NOTE

The *Official Records of the United Nations Conference on the Carriage of Goods by Sea* contains the preliminary documents, the summary records of the plenary meetings and the meetings of the Main Committees, the Final Act and the Convention; it also contains a complete index of the documents relevant to the proceedings of the Conference.

The symbols of the United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The summary records contained in this volume were originally circulated in mimeographed form as documents A/CONF.89/SR.1-10, A/CONF.89/C.1/SR.1-37 and A/CONF.89/C.2/SR.1-11. They include the corrections to the provisional summary records that were requested by the delegations and such editorial changes as were considered necessary.

A/CONF.89/14

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GENERAL ASSEMBLY RESOLUTION CONVENING THE CONFERENCE

31/100. United Nations Conference on the Carriage of Goods by Sea

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law and defined the object and terms of reference of the Commission,

Having considered chapter IV of the report of the United Nations Commission on International Trade Law on the work of its ninth session¹ which contains draft articles for a convention on the carriage of goods by sea,

Noting that the United Nations Commission on International Trade Law considered and adopted the draft articles taking note of observations and comments submitted by Governments, by the Working Group on International Shipping Legislation of the United Nations Conference on Trade and Development and by international organizations,

Taking note with appreciation of the comments of the Trade and Development Board of the United Nations Conference on Trade and Development that the revision of the law on carriage of goods by sea involves consideration not only of legal but also of economic and shipping trade aspects, and that these aspects should be given due consideration at an international conference of plenipotentiaries,²

Convinced that international trade is an important factor in the promotion of friendly relations among States and that the adoption of a convention on the carriage of goods by sea which would take into account the legitimate interests of all States, particularly those of the developing countries, which would remove such uncertainties and ambiguities as exist in the rules and practices relating to bills of lading and which would establish a balanced allocation of risks between the cargo owner and the carrier, would contribute to the harmonious development of international trade,

1. Expresses its appreciation to the United Nations Commission on International Trade Law for the valuable work done in having prepared draft articles for a convention on the carriage of goods by sea;

2. Decides that an international conference of plenipotentiaries shall be convened in 1978 in New York, or at any other suitable place for which the Secretary-General may receive an invitation, to consider the question of the carriage of goods by sea and to embody the results of its

work in an international convention and such other instruments as it may deem appropriate;

3. Refers to the conference the draft articles for a convention on the carriage of goods by sea approved by the United Nations Commission on International Trade Law, together with draft provisions concerning implementation, reservations and other final clauses to be prepared by the Secretary-General;

4. Requests the Secretary-General:

(a) To circulate the draft Convention on the Carriage of Goods by Sea,³ together with draft provisions concerning implementation, reservations and other final clauses to be prepared by the Secretary-General, to Governments and interested international organizations for comments and proposals;

(b) To convene the United Nations Conference on the Carriage of Goods by Sea for an appropriate period in 1978 at any of the places referred to in paragraph 2 above;

(c) To arrange for the preparation of summary records of the proceedings of the plenary meetings of the Conference and of meetings of committees of the whole which the Conference may wish to establish;

(d) To invite all States to participate in the United Nations Conference on the Carriage of Goods by Sea;

(e) To invite representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices, in the capacity of observers, in accordance with Assembly resolution 3237 (XXIX) of 22 November 1974;

(f) To invite representatives of the national liberation movements recognized in its region by the Organization of African Unity, in the capacity of observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974;

(g) To invite the specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Conference by observers;

(h) To draw the attention of the States and other participants referred to in subparagraphs (d) to (g) above to the desirability of appointing as their representatives persons especially competent in the field to be considered;

(i) To place before the Conference:

(i) All comments and proposals received from Governments;

¹ Official Records of the General Assembly, Thirty-first Session, Supplement No. 17.

² TD/B/C.4/153, annex 1

³ Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, chap. IV, sect. C.

- (ii) Working and background papers which may be received from the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development and other interested international organizations, taking into consideration the legal, economic and shipping trade aspects of the draft Convention;
- (iii) Draft provisions concerning implementation, reservations and other final clauses and all relevant documentation and recommendations relating to methods of work and procedure;

(j) To ensure that all relevant documentation for the Conference will be distributed to all participants in the Conference at the earliest possible date;

(k) To arrange for adequate staff and facilities required for the Conference, bearing in mind the fact that the legal, economic and shipping trade aspects of the carriage of goods by sea should receive due consideration at the Conference.

*99th plenary meeting
15 December 1976*

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conference

Mr. Rolf Herber (Federal Republic of Germany).

Vice-Presidents of the Conference

The representatives of the following States: Algeria, Argentina, Australia, Belgium, Canada, Cuba, Denmark, Ecuador, German Democratic Republic, Greece, Indonesia, Iraq, Italy, Nigeria, Pakistan, Philippines, Poland, Senegal, Turkey, Uganda, Union of Soviet Socialist Republics and Venezuela.

First Committee

Chairman: Mr. M. Chafik (Egypt).

Vice-Chairman: Mr. S. Suchorzewski (Poland).

Rapporteur: Mr. D. M. Low (Canada).

Second Committee

Chairman: Mr. D. Popov (Bulgaria).

Vice-Chairman: Mr. Th. J. A. M. de Bruijn (Netherlands).

Rapporteur: Mr. N. Gueiros (Brazil).

Drafting Committee

Chairman: Mr. R. K. Dixit (India).

Members: Argentina, Austria, Ecuador, France, German Democratic Republic, Hungary, India, Iraq, Japan, Kenya, Norway, Peru, Sierra Leone, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

Credentials Committee

Chairman: Mrs. H. Haji Yusof (Malaysia).

Members: Bangladesh, Canada, Czechoslovakia, Ecuador, Madagascar, Malaysia, Nigeria, Syrian Arab Republic and United States of America.

Secretariat of the Conference

Mr. Erik Suy, Under-Secretary-General, The Legal Counsel of the United Nations (Representative of the Secretary-General of the United Nations from 6 to 11 March 1978).

Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs (Representative of the Secretary-General of the United Nations from 13 to 31 March 1978).

Mr. Willem C. Vis, Chief, International Trade Law Branch, Office of Legal Affairs (Executive Secretary of the Conference and Secretary of the General Committee and of the Drafting Committee).

Mr. Sinha Basnayake, Legal Officer, International Trade Law Branch (Secretary of the First Committee).

- Mr. John P. Dietz, Legal Officer, International Trade Law Branch (Secretary of the Second Committee).
- Mr. Agwu Okali, Legal Officer, International Trade Law Branch (Assistant Secretary of the First Committee).
- Mr. Gerold Herrmann, Legal Officer, International Trade Law Branch (Assistant Secretary of the Second Committee).
- Mr. Miroslav Kotora, Legal Officer, International Trade Law Branch (Assistant Secretary of the Drafting Committee).
- Mr. Zeno Marcella, Legal Officer, General Legal Division (Secretary of the Credentials Committee).
- Mr. Anthony J. Miller, Legal Officer, International Trade Law Branch (Assistant Secretary of the Credentials Committee).

AGENDA¹

1. Opening of the Conference
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees
6. Credentials of representatives to the Conference:
 - (a) Appointment of the Credentials Committee
 - (b) Report of the Credentials Committee
7. Appointment of members of the Drafting Committee
8. Organization of work
9. Consideration of the question of the carriage of goods by sea in accordance with General Assembly resolution 31/100 of 15 December 1976
10. Adoption of a Convention and other instruments deemed appropriate, and of the Final Act of the Conference
11. Signature of the Final Act and of the Convention and other instruments
12. Closure of the Conference

¹ As adopted by the Conference at its 2nd plenary meeting.

RULES OF PROCEDURE¹

CHAPTER I

Representation and credentials

Composition of delegations

Rule 1

The delegation of each State participating in the Conference shall consist of a head of delegation and such other accredited representatives, alternate representatives and advisers as may be required.

Alternates and advisers

Rule 2

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

Submission of credentials

Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary of the Conference if possible not later than 24 hours after the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

¹ As adopted by the Conference at its 2nd plenary meeting and circulated as document A/CONF.89.3/Rev.1. The text is the same as the provisional rules of procedure (A/CONF.89.3), except for some modifications adopted at the 5th plenary meeting.

CHAPTER II

Officers

Elections

Rule 6

The Conference shall elect a President and 22 Vice-Presidents, as well as a Chairman of each of the two Main Committees provided for in rule 43. These 25 officers shall constitute the General Committee and shall be elected on the basis of ensuring its representative character. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

Acting President

Rule 7

1. If the President finds it necessary to be absent from a meeting or any part thereof, he shall designate a Vice-President to take his place.

2. A Vice-President acting as President shall have the powers and duties of the President.

Replacement of the President

Rule 8

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 9

The President, or a Vice-President acting as President, shall not vote in the Conference, but shall designate another member of his delegation to vote in his place.

CHAPTER III

General Committee

Chairman

Rule 10

The President of the Conference or, in his absence, one of the Vice-Presidents designated by him, shall serve as Chairman of the General Committee.

Substitute members

Rule 11

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee. In case of

absence, the Chairman of a Main Committee shall designate the Vice-Chairman of that Committee as his substitute. When serving on the General Committee, the Vice-Chairman of a Main Committee shall not have the right to vote if he is of the same delegation as another member of the General Committee.

Functions

Rule 12

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

CHAPTER IV

Secretariat

Duties of the Secretary-General

Rule 13

1. The Secretary-General of the United Nations shall be the Secretary-General of the Conference. He, or his representative, shall act in that capacity in all meetings of the Conference.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference.

Duties of the Secretariat

Rule 14

The Secretariat of the Conference shall, in accordance with these rules:

- (a) Interpret speeches made at meetings;
- (b) Receive, translate, reproduce and distribute the documents of the Conference;
- (c) Publish and circulate the official documents of the Conference;
- (d) Prepare and circulate records of public meetings;
- (e) Make and arrange for the keeping of sound recordings of meetings;
- (f) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations; and
- (g) Generally perform all other work that the Conference may require.

Statements by the Secretariat

Rule 15

The Secretary-General or any member of the staff designated for that purpose may at any time make either oral or written statements concerning any question under consideration.

CHAPTER V

Conduct of business

Quorum

Rule 16

The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

General powers of the President

Rule 17

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his functions, remains under the authority of the Conference.

Speeches

Rule 18

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 19, 20 and 23 to 25, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

2. The Conference may limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call him to order without delay.

Precedence

Rule 19

The Chairman or another representative of a subsidiary organ may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary organ.

*Points of order**Rule 20*

During the discussion of any matter, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

*Closing of list of speakers**Rule 21*

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

*Right of reply**Rule 22*

The right of reply shall be accorded by the President to a representative of a State participating in the Conference who requests it. Any other representative may be granted the opportunity to make a reply. Such replies should be as brief as possible.

*Adjournment of debate**Rule 23*

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be put to the vote immediately.

*Closure of debate**Rule 24*

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be put to the vote immediately.

*Suspension or adjournment of the meeting**Rule 25*

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be put to the vote immediately.

*Order of motions**Rule 26*

Subject to rule 20, the motions indicated below shall

have precedence in the following order over all proposals or other motions before the meeting.

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate;
- (d) To close the debate.

*Proposals**Rule 27*

1. The basis for consideration by the Conference on the Carriage of Goods by Sea shall be the following proposals:

(a) The draft articles for a Convention on the Carriage of Goods by Sea approved by the United Nations Commission on International Trade Law as contained in the report of the Commission on the work of its ninth session;²

(b) The draft provisions concerning implementation, reservations and other final clauses prepared by the Secretary-General.³

2. Other proposals shall be those submitted at the Conference in accordance with rule 28.

*Other proposals and amendments**Rule 28*

Other proposals shall normally be submitted in writing to the Executive Secretary of the Conference, who shall circulate copies to all delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments even though these amendments have not been circulated or have only been circulated the same day.

*Decisions on competence**Rule 29*

Subject to rule 20, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

*Withdrawal of proposals and motions**Rule 30*

A proposal or a motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that it has not been amended. A proposal or a motion which has thus been withdrawn may be reintroduced by any representative.

² See document A/CONF.89/5 below.

³ See documents A/CONF.89/6 and Add.1 and 2 below.

Reconsideration of proposals

Rule 31

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be put to the vote immediately.

CHAPTER VI

Voting

Voting rights

Rule 32

Each State represented at the Conference shall have one vote.

Required majority

Rule 33

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President shall rule thereon. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

4. For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

5. If the vote is equally divided on a decision requiring a majority of the representatives present and voting, the proposal or motion shall be regarded as rejected.

Method of voting

Rule 34

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Conduct during voting

Rule 35

The President shall announce the commencement of voting, after which no representative shall be permitted to intervene until the result of the vote has been announced, except on a point of order in connexion with the process of voting.

Explanation of vote

Rule 36

Representatives may make brief statements consisting solely of explanation of their votes, before the voting has commenced or after the voting has been completed. The representative of a State sponsoring a proposal or motion shall not speak in explanation of vote thereon except if it has been amended.

Division of proposals

Rule 37

A representative may move that parts of a proposal shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. If the motion for division is carried, those parts of the proposal which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Amendments

Rule 38

An amendment is a proposal that does no more than add to, delete from or revise part of another proposal. Unless specified otherwise, the word "proposal" in these rules shall be considered as including amendments.

Voting on amendments

Rule 39

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

Voting on proposals

Rule 40

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.

Elections

Rule 41

All elections shall be held by secret ballot, unless otherwise decided by the Conference in an election where the number of candidates does not exceed the number of places to be filled.

Rule 42

1. When one or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of such places, obtaining in the first ballot a majority of the votes cast and the largest number of votes, shall be elected.

2. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places.

CHAPTER VII**Subsidiary organs***Main committees, sub-committees and working groups***Rule 43**

1. The Conference shall establish two Main Committees (the "First Committee" and the "Second Committee"), each of which may set up sub-committees or working groups.

2. The Conference shall determine the matters to be considered by each Main Committee. The General Committee, upon the request of the Chairman of a Main Committee, may adjust the allocation of work between the Main Committees.

*Drafting Committee***Rule 44**

1. The Conference shall establish a Drafting Committee consisting of 18 members appointed by the Conference on the proposal of the General Committee. The Rapporteur of each of the Main Committees may participate *ex officio*, without a vote, in the work of the Drafting Committee.

2. The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference or by a Main Committee. It shall co-ordinate and review the drafting of all texts adopted, and shall report as appropriate either to the Conference or to the Main Committee concerned.

*Officers***Rule 45**

1. Each Main Committee shall have a chairman, a vice-chairman and a rapporteur. Other subsidiary organs shall have a chairman and such other officers as may be required.

2. Except as otherwise provided in rules 6 and 10, each committee, sub-committee and working group shall elect its own officers.

*Applicable rules***Rule 46**

The rules contained in chapters II, IV, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of subsidiary organs, except that:

(a) The chairmen of the General Committee, the Drafting Committee and the Credentials Committee and

the chairmen of sub-committees and working groups may exercise the right to vote.

(b) The chairman of a Main Committee may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

(c) A majority of the representatives on the General Committee, the Drafting Committee, the Credentials Committee or on any sub-committee or working group shall constitute a quorum.

(d) Decisions of subsidiary organs shall be taken by a majority of the representatives present and voting, except that a motion to reconsider a proposal shall require the majority established by rule 31.

CHAPTER VIII**Languages and records***Languages of the Conference***Rule 47**

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

*Interpretation***Rule 48**

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Conference. In this case he shall himself provide for interpretation into one of the languages of the Conference, and interpretation into the other languages by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

*Records and sound recordings of meetings***Rule 49**

1. Summary records of the plenary meetings of the Conference and of the meetings of the Main Committees shall be kept in the languages of the Conference. As a general rule, they shall be circulated as soon as possible simultaneously in all the languages of the Conference, to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any corrections they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Conference and of the Main Committees. Such recordings shall be made of meetings of other subsidiary organs when the body concerned so decides.

*Language of official documents***Rule 50**

Official documents shall be made available in the languages of the Conference.

CHAPTER IX

Public and private meetings*Plenary and Main Committees***Rule 51**

The plenary meetings of the Conference and the meetings of its Main Committees shall be held in public unless the body concerned decides otherwise.

*Subsidiary organs***Rule 52**

As a general rule, meetings of subsidiary organs other than Main Committees shall be held in private.

CHAPTER X

Other participants and observers*Representatives of the United Nations Council for Namibia***Rule 53**

Representatives designated by the United Nations Council for Namibia may participate in the deliberations of the Conference, its Main Committees and, as appropriate, in other subsidiary organs. They shall have the right to submit proposals.

Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly, in the capacity of observers

Rule 54

Representatives designated by organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly may participate as observers, without the right to vote, in the deliberations of the Conference, its Main Committees and, as appropriate, in other subsidiary organs.

*Representatives of national liberation movements***Rule 55**

Representatives designated by national liberation movements invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, its Main Committees and, as appropriate, in other subsidiary organs.

*Representatives of United Nations organs and agencies***Rule 56**

Representatives designated by organs of the United Nations, the specialized agencies and the International Atomic Energy Agency may participate as observers,

without the right to vote, in the deliberations of the Conference, its Main Committees and, as appropriate, in other subsidiary organs.

*Observers for other intergovernmental organizations***Rule 57**

Observers designated by other intergovernmental organizations invited to the Conference may participate, without the right to vote, in the deliberations of the Conference, its Main Committees and, as appropriate, in other subsidiary organs.

*Observers for non-governmental organizations***Rule 58**

1. Observers designated by non-governmental organizations invited to the Conference may attend public meetings of the Conference and its Main Committees and, as appropriate, other subsidiary organs.

2. Upon the invitation of the presiding officer of the body concerned, and subject to the approval of that body, such observers may make oral statements on questions in which they have a special competence.

*Written statements***Rule 59**

Written statements related to the work of the Conference submitted by the designated representatives or observers referred to in rules 53 to 58 shall be distributed by the Secretariat to all delegations in the quantities and in the languages in which the statements are made available to the Secretariat for distribution, provided that a statement submitted on behalf of a non-governmental organization is on a subject in which it has a special competence and is related to the work of the Conference.

CHAPTER XI

Amendment or suspension of the rules of procedure*Method of amendment***Rule 60**

These rules may be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting upon a recommendation of the General Committee.

*Method of suspension***Rule 61**

These rules may be suspended by a decision of the Conference, provided that 24 hours notice of the proposal for the suspension has been given, which may be waived if no representative objects; subsidiary organs may by unanimous consent waive rules pertaining to them. Any suspension shall be limited to a specific and stated purpose and to the period required to achieve it.

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Part I

DOCUMENTS OF THE CONFERENCE

PROPOSALS, REPORTS AND OTHER DOCUMENTS

A. REPORT OF THE CREDENTIALS COMMITTEE

Document A/CONF.89/9

[Original: English]
[25 March 1978]

1. At its 5th plenary meeting, on 10 March 1978, the Conference, in accordance with rule 4 of its rules of procedure, appointed a Credentials Committee composed of the following States: Bangladesh, Canada, Czechoslovakia, Ecuador, Madagascar, Malaysia, Nigeria, Syrian Arab Republic and United States of America.

2. The Credentials Committee held one meeting, on 24 March 1978. Mrs. Heliah Haji Yusof (Malaysia) was unanimously elected Chairman.

3. The Committee noted from a memorandum submitted to it by the Representative of the Secretary-General to the Conference that as at 24 March 1978:

(a) There were 76 States participating in the Conference and one State had sent an observer;

(b) Credentials issued by the Head of State or Government or the Minister for Foreign Affairs had been submitted, as provided for in rule 3 of the rules of procedure of the Conference, by 62 participating States;

(c) The credentials of the representatives of four States were communicated to the Executive Secretary of the Conference in the form of cables from their respective Ministers for Foreign Affairs;

(d) The representatives of six States were designated in letters or notes verbales from their respective Permanent Representatives or Permanent Missions in New York, or from their embassies in Bonn or consulates in Hamburg;

(e) The representative of one State was designated by a Government ministry other than the Ministry of Foreign Affairs;

(f) In respect of three States participating in the Conference, no communication regarding the designation of their representatives had been received, but the Executive Secretary of the Conference had been informed that proper credentials for those representatives had been dispatched.

4. With reference to rule 3 of the rules of procedure, it was emphasized by one representative that credentials should be submitted as early as possible in the Conference. In reply to a question by another

representative, with regard to the communication referred to in subparagraph 3 (e) above, the representative of the Secretary-General stated that, while it was the practice strictly to apply rule 3, there had been occasions where credentials issued by another Government ministry, under whose competence the subject-matter of the Conference fell, had been accepted provisionally.

5. The Committee noted that the credentials issued by 19 Governments included full powers to sign any convention that might be adopted by the Conference. The Committee thought it desirable to draw to the attention of the Conference the fact that, while no special powers were needed for signing the Final Act of the Conference, those representatives who intended to sign a convention at the close of the Conference should be in possession of appropriate full powers for that purpose.

6. On the proposal of the Chairman, the Committee agreed to accept the credentials of the 62 States referred to in subparagraph 3 (b) above. The Committee further agreed that, in the light of past practice and in view of the approaching end of the Conference, the communications referred to in subparagraphs 3 (c), 3 (d) and 3 (e) above should be accepted provisionally, pending the receipt of the formal credentials of the representatives concerned. The Committee noted that in the latter instances assurances had been given that proper credentials would be transmitted as soon as possible. Furthermore, in respect of the representatives referred to in subparagraph 3 (f) above, the Committee agreed that they should be entitled to participate provisionally in the Conference, in accordance with rule 5 of the rules of procedure, it being understood that their credentials had already been dispatched. The Committee also authorized its Chairman to report directly to the Conference in the event that, in the time intervening between the meeting of the Credentials Committee and consideration by the plenary of the Committee's report, further credentials were received.

7. Upon the proposal of the Chairman, the Committee thereupon decided to submit this report for the approval of the Conference.

B. TEXT OF THE DRAFT CONVENTION ON THE CARRIAGE OF GOODS BY SEA APPROVED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Document A/CONF.89/5

[Previously published in the report of the Commission
on the work of its ninth session]*

[Original: English]
[19 August 1977]

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* See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, chap. IV, sect. C*

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or part of the carriage, has been entrusted by the carrier, and any other person to whom such performance has been entrusted.

3. "Consignee" means the person entitled to take delivery of the goods.

4. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

5. "Contract of carriage" means a contract whereby the carrier against payment of freight undertakes to carry goods by sea from one port to another.

6. "Bill of lading" means a document which evidences a contract of carriage 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 order, or to bearer, constitutes such an undertaking.

7. "Writing" includes, *inter alia*, telegram and telex.

Article 2. Scope of application

1. The provisions of this Convention shall be applicable to all contracts of carriage 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 this Convention are applicable

without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

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

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention shall apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article shall apply.

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

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

- (a) By handing over the goods to the consignee; or
- (b) In cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, 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 paragraphs 1 and 2 of this article, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants or the agents, respectively of the carrier or the consignee.

Article 5. Basis of liability

1. The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 at the port of discharge provided for in the contract of carriage within the time expressly agreed upon

or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

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 60 days following the expiry of the time for delivery according to paragraph 2 of this article.

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

5. With respect to live animals, the carrier shall not be liable for loss, damage or delay in delivery resulting 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 part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier shall not be liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier shall be liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of loss, damage or delay in delivery not attributable thereto.

Article 6. Limits of liability

1. (a) The liability of the carrier for loss of or damage to goods according to the provisions of article 5 shall be limited to an amount equivalent to (. . .) units of account per package or other shipping unit or (. . .) units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed [. . .]¹ the freight [payable for the goods delayed] [payable under the contract of carriage].

(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.

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

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or

¹ The question as to whether the limit should be the freight or a multiple of the freight is to be determined at the conference of plenipotentiaries which will consider the draft Convention.

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. Unit of account means²

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Alternative article 6. Limits of liability³

1. The liability of the carrier according to the provisions of article 5 shall be limited to an amount equivalent to (. . .) units of account per kilogram of gross weight of the goods lost, damaged or delayed.

2. Unit of account means⁴

3. By agreement between the carrier and the shipper, a limit of liability exceeding that provided for in paragraph 1 may be fixed.

Article 7. Application to non-contractual claims

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, in tort or otherwise.

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.

3. The aggregate of the amounts recoverable from the carrier, and any persons referred to in paragraph 2 of this article, shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result, which was an act or omission of:

(a) The carrier himself, or

(b) An employee of the carrier other than the master and members of the crew, while exercising, within the scope of his employment, supervisory authority in respect of that part of the carriage during which such act or omission occurred, or

(c) An employee of the carrier, including the master or any member of the crew, while handling or caring for the goods within the scope of his employment.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9. Deck cargo

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 or with the usage of the particular trade or is required by statutory rules or regulations.

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.

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier shall, notwithstanding the provisions of paragraph 1 of article 5, 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, and the extent of his liability shall be determined in accordance with the provisions of article 6 or 8, as the case may be.

4. Carriage of goods on deck contrary to express agreement for the carriage under deck shall be deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10. Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Convention. The carrier shall, in relation to the carriage performed by the actual carrier, be responsible for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2. The actual carrier shall be responsible, according

² The unit of account is to be determined at the conference of plenipotentiaries which will consider the draft Convention

³ If the liability for delay in delivery was to be subject under this alternative text to a special limit of liability, paragraph 1 of this alternative text may be supplemented by paragraphs 1 (b) and 1 (c) of the basic text for article 6 set forth above. If this be done, paragraph 1 of the alternative text would need drafting changes.

⁴ The unit of account is to be determined at the conference of plenipotentiaries which will consider the draft Convention.

to the provisions of this Convention, for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 shall apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the actual carrier only if agreed by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability shall be joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits provided for in this Convention.

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

Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence shall rest upon the carrier.

2. The actual carrier shall be responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper shall not be liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor shall any servant or agent of the shipper be liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper shall mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper shall inform him of the dangerous character of the goods and, if necessary, the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier

does not otherwise have knowledge of their dangerous character:

(a) The shipper shall be liable to the carrier and any actual carrier for all loss resulting from the shipment of such goods, and

(b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

1. When the goods are received in the charge of the carrier or the actual carrier, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the 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 carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15. Contents of bill of lading

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;

(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, if more than one;

- (i) The place of issuance of the bill of lading;
- (j) The signature of the carrier or a person acting on his behalf;
- (k) The freight to the extent payable by the consignee, or other indication that freight is payable by him;
- (l) The statement referred to in paragraph 3 of article 23; and
- (m) The statement, if applicable, that the goods shall or may be carried on deck.

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 of this article, 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 legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 6 of article 1.

Article 16. Bills of lading: reservations and evidentiary effect

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 or other persons issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately 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 or such other persons shall insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. When the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

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

(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.

4. A bill of lading which 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 or does not set forth demurrage incurred at the port of loading payable by the consignee, shall be *prima facie* evidence that no freight or such demurrage 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 by the shipper⁵

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 resulting from inaccuracies in 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 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, 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 valid as against the shipper unless 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 the latter 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 of intended fraud 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 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.

Article 18. Documents other than bills of lading

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.

⁵ A number of delegations were of the view that article 17 should consist of paragraph 1 only and that paragraphs 2, 3 and 4 should be deleted.

PART V. CLAIMS AND ACTIONS

Article 21. Jurisdiction

Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the consignee to the carrier not later than the day after the day when the goods were handed over to the consignee, such handing over shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport 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 shall apply correspondingly if notice in writing has not been given within 15 consecutive days after the day when the goods were handed over to the consignee.

3. If the state of the goods has at the time they were handed over to the consignee been the subject of joint survey or inspection by the parties, 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 carrier and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for delay in delivery unless a notice has been given in writing to the carrier within 21 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to the actual carrier shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall also have effect as if given to such actual carrier.

Article 20. Limitation of actions

1. Any action relating to carriage of goods under this Convention is time-barred if legal or arbitral proceedings have not been initiated within a period of two years.

2. The limitation period commences on the day on which the carrier has delivered the goods or part of the goods or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the period of limitation commences shall not be included in the period.

4. The person against whom a claim is made may at any time during the limitation period extend the period by a declaration in writing to the claimant. The declaration may be renewed.

5. An action for indemnity by a person held liable 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 State where proceedings are initiated. However, the time allowed shall not be less than 90 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.

1. In a legal proceeding relating to carriage of goods under this Convention the plaintiff, at his option, may bring an action in a court which, according to the law of the State^a where the court is situated, is competent and within the jurisdiction of which is situated one of the following places or ports:

(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 the port of discharge; or

(d) Any additional place designated for that purpose 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 or any other vessel of the same ownership 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 of this article 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 paragraph 1 or 2 of this article. The provisions of this paragraph 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 paragraph 1 or 2 of this article 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 as 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.

^a A considerable number of delegations favoured the addition of the word "Contracting" before the word "State".

Article 22. Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. 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 principal place of business of the defendant or, in the absence thereof, the ordinary residence of the defendant; or

(ii) 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

(iii) The port of loading or the port of discharge.

(b) Any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraphs 3 and 4 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.

6. 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.

PART VI. SUPPLEMENTARY PROVISIONS*Article 23. Contractual stipulations*

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 paragraph 3 of this article, 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 State where proceedings are initiated.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods shall also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention shall not modify the rights or duties of the carrier, the actual carrier and their servants and agents provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) Under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) By virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

3. No liability shall arise under the provisions of this Convention for any loss of, or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

C. TEXT OF THE PROVISIONS OF THE DRAFT CONVENTION ON THE CARRIAGE OF GOODS BY SEA CONCERNING IMPLEMENTATION, RESERVATIONS AND OTHER FINAL CLAUSES PREPARED BY THE SECRETARY-GENERAL

Documents A CONF.89.6 and Add. 1 and 2

Document A/CONF.89.6

[Original: English]

[22 August 1977]

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INTRODUCTION

1. At the ninth session of the United Nations Commission on International Trade Law, the Secretary-General placed before the Commission draft provisions concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea.¹ These draft provisions were considered by the Commission in conjunction with the draft Convention on the Carriage of Goods by Sea prepared by the Commission's Working Group on International Legislation on Shipping. An account of the deliberations of the Commission is contained in the report of the Commission on the work of its ninth session.² At the conclusion of its deliberations, the Commission did not approve any provisions concerning implementation, reservations and other final clauses, but requested the Secretary-General to prepare draft provisions based on those placed before the Commission, and incorporating observations made during the deliberations of the Commission, and to circulate such draft provisions, together with the draft Convention on the Carriage of Goods by Sea approved by the Commission, to Governments and interested international organizations for comments and proposals.³ The provisions contained in this document were prepared in response to that request.

2. The report of the Commission on the work of its ninth session was considered by the General Assembly at its thirty-first session, at which session the General Assembly adopted resolution 31/100 of 15 December 1976, entitled "United Nations Conference on the Carriage of Goods by Sea". After convening the United Nations Conference on the Carriage of Goods by Sea, the resolution in paragraph 3 referred to the Conference the text of the draft Convention on the Carriage of Goods by Sea approved by the Commission, together with the draft provisions concerning implementation, reservations and other final clauses to be prepared by the Secretary-General. In accordance with paragraph 4 of the resolution, the Secretary-General circulated, under cover of a note verbale dated 26 January 1977 and a letter dated 16 February 1977, the draft Convention, together with the draft provisions concerning implementation, reservations and other final clauses, to Governments and interested international organizations for comments and proposals.

3. In relation to the draft provisions set forth in this document it will be noted that certain alternatives in the draft article on "entry into force" make the entry into force of the Convention dependent on the tonnage of merchant shipping of a contracting State. Such tonnage is determined by reference to certain statistical tables contained in *Lloyd's Register of Shipping*. The Secretariat has communicated with *Lloyd's Register of Shipping* in regard to the method of compiling these tables, their format, and the date of publication of the Register, and has received the following information:

(a) The statistical tables are principally based on data recorded in the ships' registers, and supplemented by any published data on small ships. The data are held on a computer file and updated daily. Data are collected from all known reliable sources, including government authorities, shipowners and shipbuilders. The data are examined and evaluated to ensure their accuracy;

(b) *Lloyd's Register of Shipping* cannot be certain that the categories of merchant vessels currently set forth in table 2 will remain the same in future issues of the tables, since technological development in shipbuilding may necessitate changes. However, no radical changes in these categories are at present foreseen;

(c) The Register is published annually in October or November of each year. The figures contained in an issue are applicable as at 1 July in the year of publication.

The relevant extracts from the statistical tables contained in *Lloyd's Register of Shipping*, 1977, will be placed before the Conference as document A CONF.89.6/Add. 1.

¹ A CN.9.115 and Add. 1.

² See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, annex I*.

³ *Ibid.*, Supplement No. 17, para. 44.

4. It will also be noted that alternative D in the draft article on "entry into force" makes the entry into force of the Convention dependent on the volume of sea-cargo connected with States becoming parties to the Convention. This volume is calculated by reference to statistical tables contained in the United Nations *Statistical Yearbook*. The relevant extracts from the statistical tables contained in the *Statistical Yearbook*, 1976, will be placed before the Conference as document A/CONF.89/6/Add.2.

DRAFT ARTICLES

Article []. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

[Article []. Implementation]⁴

[1. If a Contracting State has two or more territorial units in which [, according to its constitution.]⁵ different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification [, acceptance, approval]⁶ 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. Declarations made at the time of signature are subject to confirmation upon ratification [, acceptance or approval].

3. Declarations made under paragraph 1 of this article, and the confirmation of declarations made under paragraph 2 of this article, shall be in writing and shall be formally notified to the depositary.

⁴ The present article is modelled on article 31 of the Convention on the Limitation Period in the International Sale of Goods, New York, 1974 (see *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), p. 101, document A/CONF.63/15). During the consideration at the ninth session of the Commission of the draft provisions concerning implementation, reservations and other final clauses placed before the Commission, the representative of one federal State expressed the view that an article such as the present one was unnecessary, and the representative of another federal State expressed the view that such an article would create difficulty under the constitution of his country. The entire article is therefore placed within square brackets to indicate that its utility is in question.

⁵ The present paragraph 1 is modelled on paragraph 1 of article 31 of the Convention on the Limitation Period in the International Sale of Goods, and the words "according to its constitution" appear in the latter paragraph. These words may, however, be unnecessary for the purposes of the draft Convention, and the words are accordingly placed within square brackets.

⁶ In the draft article set forth below defining the method by which the consent of a State to be bound by this Convention is to be expressed (i.e. "Article []. Signature, ratification, [acceptance, approval, accession]"), the desirability of including acceptance and approval as authorized methods of expressing consent is left open. Accordingly in that draft article, and in all the other draft articles, the words "acceptance" and "approval" following the word "ratification" are placed within square brackets.

4. Declarations shall state expressly the territorial units to which the Convention applies.

5. Declarations made under paragraph 1 of this article shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned, except for declarations of which the depositary only receives formal notification after such entry into force. The latter declarations shall take effect on the date the formal notification thereof is received by the depositary. If the formal notification of the latter declarations states that they are to take effect on a date specified therein, and such date is later than the date the formal notification is received by the depositary, the declarations shall take effect on such later date.

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

Article []. Date of application

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

Article []. Signature, ratification, [acceptance, approval,] accession

1. This Convention shall be open for signature by all States until ... at the Headquarters of the United Nations, New York.

2. This Convention shall be subject to ratification [, acceptance or approval] by the signatory States.

3. After ...⁷, this Convention shall be open for accession by all States which are not signatory States.

4. Instruments of ratification [, acceptance, approval] and accession shall be deposited with the Secretary-General of the United Nations.

Article []. Reservations

1. Any State may, at the time of signature, ratification [, acceptance, approval] or accession, make one or more of the following reservations:

- (a) ...
- (b) ...

2. No reservations may be made to this Convention other than those set forth in paragraph 1 of this article.

3. Reservations made at the time of signature are subject to confirmation upon ratification [, acceptance or approval].

4. Reservations made under paragraph 1 of this article, and the confirmation of reservations made under paragraph 3 of this article, shall be in writing and shall be formally notified to the depositary.

5. Any State which has made a reservation to this Convention may withdraw it at any time by means of a

⁷ Same date to be inserted.

formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the date the formal notification is received by the depositary. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the depositary, the withdrawal shall take effect on such later date.

Article []. Entry into force

Alternative A

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date of the deposit of the . . .⁸ instrument of ratification [acceptance, approval] or accession.

2. For each State which becomes a Contracting Party to this Convention after the date of the deposit of the . . .⁹ instrument of ratification [acceptance, approval] or accession, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

Alternative B

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, the combined merchant fleets of which constitute not less than . . . per cent of the gross tonnage of the world's merchant fleets, have become Contracting States to it in accordance with article [].¹⁰

2. For the purposes of paragraph 1 of this article, the gross tonnage of a Contracting State, and the gross tonnage of the world's merchant fleets, shall be deemed to be that contained [in *Lloyd's Register of Shipping*, Statistical Tables, 197-, table 1, in respect of the merchant fleets of the world]¹¹ [in the issue of *Lloyd's*

Register of Shipping, Statistical Tables, table 1, in respect of the merchant fleets of the world, published immediately prior to the date on which the most recent Contracting State counted for the purposes of paragraph 1 of this article becomes a Contracting Party].¹²

3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

Alternative C

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, including . . . States each with not less than . . . gross tons of merchant shipping, have become Contracting States to it in accordance with article [].¹³

2. For the purposes of paragraph 1 of this article, the gross tons of merchant shipping of a Contracting State shall be deemed to be the tonnage [contained in *Lloyd's Register of Shipping*, Statistical Tables, 197-, table 1, in respect of the merchant fleets of the world]¹⁴ [contained in respect of a Contracting State, in the issue of *Lloyd's Register of Shipping*, Statistical Tables, table 1, in respect of the merchant fleets of the world, published most

¹² In regard to the use made in this paragraph of *Lloyd's Register of Shipping*, Statistical Tables, the following may be noted:

(1) Certain conventions in respect of which the Secretary-General of the Intergovernmental Maritime Consultative Organization is the depositary (e.g. article 17, International Convention on the Tonnage Measurement of Ships, 1969) and certain ILO maritime conventions (e.g. article 15, Convention No. 133 of 1970: Convention concerning Crew Accommodation on Board Ship) contain provisions making entry into force depend on Contracting States having a specified tonnage of shipping, but do not state how such tonnage is to be determined. In response to inquiries made by the Secretariat, the secretariats of IMCO and ILO have stated that the tonnage is determined for the purposes of these provisions as to entry into force by reference to the statistical data contained in *Lloyd's Register of Shipping*. It may also be noted that the statistics as to "Merchant Shipping: fleets" contained in the United Nations Statistical Yearbook, 1975, table 158 (pp. 497-500) are taken from *Lloyd's Register of Shipping*.

(2) In response to an inquiry by the Secretariat to *Lloyd's Register of Shipping* as to the possible use of its statistical tables to determine the tonnage of merchant fleets of Contracting States, *Lloyd's Register of Shipping* suggested that consideration might be given to determining the tonnage of shipping not by reference to table 1 ("Merchant fleets of the world") but by reference to table 2 ("World fleets - analysis by principal types"). Reference to table 2 may be appropriate if it was considered that only the tonnage of certain types of merchant vessels was to be relevant for calculating the tonnage of shipping for the purposes of the provisions relating to entry into force.

¹³ This paragraph is modelled on the approach taken in article 13 of the Protocol to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924, Brussels, 23 February 1968; article 11 of the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships, Brussels, 1957; and article 15 of the International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969.

¹⁴ This alternative provision is identical in substance with the first alternative provision in paragraph 2 of alternative B.

⁸ Appropriate ordinal to be inserted.

⁹ Same ordinal to be inserted as in paragraph 1.

¹⁰ This paragraph is modelled on the approach taken in article 17 of the International Convention on the Tonnage Measurements of Ships, London, 1969, and article 49 of the Convention on a Code of Conduct for Liner Conferences, Geneva, 1974.

¹¹ This alternative provision is modelled on the approach taken in article 49 of the Convention on a Code of Conduct for Liner Conferences, Geneva, 1974. Article 49, paragraph 1, reads as follows:

"(1) The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with article 48. For the purpose of the present article the tonnage shall be deemed to be that contained in *Lloyd's Register of Shipping*, Statistical Tables 1973, table 2, 'World fleets - analysis by principal types', in respect of general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States reserve fleet and the American and Canadian Great Lakes fleets."

It may be noted that the statistics as to tonnage extracted from the *Lloyd's Register of Shipping*, Statistical Tables 1973, table 2, "World fleets - analysis by principal types", together with an explanatory note, are set forth in the report of the Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, vol. II (TD/CODE/13/Add.1, part 2). A reference to these statistics as set forth in TD/CODE/13/Add.1, part 2, is given in a foot-note to article 49 of the Convention on a Code of Conduct for Liner Conferences.

recently prior to the date on which that State becomes a Contracting State].

3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.¹⁵

Alternative D¹⁶

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, at the ports of which are loaded and unloaded not less than . . . per cent of the total weight of goods loaded and unloaded in international sea-borne shipping, have become Contracting States to it in accordance with article[. . .].

2. For the purposes of paragraph 1 of this article, the total weight of goods loaded and unloaded in international sea-borne shipping, and the weight of goods loaded and unloaded in international sea-borne shipping at the ports of a Contracting State, shall be deemed to be that [contained in the United Nations *Statistical Yearbook*, 197 . . . table . . . "Analysis of goods loaded and unloaded in international sea-borne shipping" for the year 197 . . .] [contained, in respect of the last year for which statistics are set forth, in the United Nations *Statistical Yearbook* published immediately prior to the date on which the most recent Contracting State counted for the purposes of paragraph 1 becomes a Contracting State, in the table entitled "Analysis of goods loaded and unloaded in international sea-borne shipping".]

¹⁵ This paragraph is identical with paragraph 3 of alternative B.

¹⁶ This alternative has been drafted in response to a request made at the ninth session of the Commission during the consideration of the draft provisions concerning implementation, reservations and other final clauses (A/CN.9.115 and Add.1) that an alternative provision be added making entry into force depend on the volume of international sea cargo connected with States becoming parties to the Convention.

¹⁷ The United Nations *Statistical Yearbook* is published annually by the Statistical Office of the Department of Economic and Social Affairs of the United Nations. It contains a table entitled "Analysis of goods loaded and unloaded in international sea-borne shipping" which sets forth in metric tons the weight both of goods loaded and goods unloaded. The statistics as to both goods loaded and goods unloaded are also analysed and presented under the two categories of "petroleum" and "dry cargo" so that statistics are available as to the weight of both petroleum and dry cargo loaded and unloaded.

The figures for goods loaded and unloaded represent the weight of goods (including packing) in external trade loaded onto and unloaded from seagoing vessels of all flags at the ports of the country in question. Figures for the following categories of goods are excluded: bunkers, ship's stores, ballast and trans-shipped goods (goods trans-shipped from an importing vessel to an exporting vessel). Goods unloaded or loaded from bonded warehouses are included. The table covers goods loaded and unloaded during a calendar year, and provides statistics in respect of all countries of the world.

The following considerations are relevant to the possible use of the table for the purposes of this alternative provision:

(a) The table necessarily contains no statistics in respect of land-locked States. Adherence to the Convention by land-locked States will therefore influence the entry into force of the Convention only by contributing to making up the number of Contracting States specified in paragraph 1.

3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

Alternative X

[3.] [4.]¹⁸ A State which is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention, so that the 1924 Convention shall cease to have effect for that State simultaneously with the entry into force of this Convention with respect to that State. Prior to the date on which the last instrument of ratification [acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention is deposited with the Secretary-General of the United Nations, for the purposes of this paragraph a State may request the Government of Belgium to consider the notification by that State of its denunciation of the 1924 Convention to be received on the first day of the month following that date.¹⁹

[4.] [5.] Upon the deposit of the last instrument of ratification [acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention, the depositary of this Convention shall inform the Government of Belgium as the depositary of the 1924 Convention of the date of such deposit and of the names of Contracting States to the Convention on that date.

Alternative Y²⁰

[3.] [4.] A State which is a party to the International Convention for the Unification of certain Rules relating

(b) In some years, the statistics available for certain States are provisional and may change in subsequent issues of the *Yearbook* when final figures become available.

(c) Although in general the figures are uniformly presented, this is not always the case, e.g. in some cases the time period covered is not the relevant calendar; in other cases goods normally included, such as livestock and timber, are excluded; and in yet other cases goods normally excluded, such as mail, passengers' luggage, bunkers and bullion, are included.

The current issue of the *Yearbook*, which is that for 1975, sets forth as table 160 the "Analysis of goods loaded and unloaded in international sea-borne shipping". The statistics given in that table are for the years 1972 and 1973.

¹⁸ In alternatives X and Y, the two paragraphs in each of those alternatives would be numbered 3 and 4 if alternative A above were adopted, and 4 and 5 if either alternative B, C or D above were adopted.

¹⁹ The provision "Prior to . . . that date" in this paragraph is modelled on article 19 of the Convention on the Measurement of Inland Navigation Vessels, Geneva, 1966.

²⁰ A further alternative to both alternatives X and Y may be a provision requiring a State to annex to its instrument of ratification [approval, acceptance] or accession a proper notification of denunciation of the Brussels Convention of 1924, together with a request that the notification of denunciation should be forwarded by the depositary of

to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

[4.] [5.] Upon the entry into force of this Convention under paragraph 1 of this article, the depositary of this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

[5.] [6.]²¹ The provisions of paragraph [3] [4] of this article shall apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924.

Article [] Domestic carriage

A Contracting State may apply, by its national legislation, the rules of this Convention to domestic carriage.²²

Article [] Multimodal transport

Alternative A²³

1. Subject to paragraph 3 of this article the provisions of this Convention shall apply to all contracts for the carriage of goods performance of which requires that the goods be carried by sea between two different States, but shall so apply only to the extent of such sea carriage.

2. This Convention shall apply to such sea carriage as if that sea carriage were a contract for carriage of goods by sea between ports in two different States within the meaning of article 2, paragraph 1, of this Convention.

3. The operation of this article may be superseded, in relation to any particular type of contract for the carriage of goods, by the entry into force of any subsequent

convention, if it is one regulating that type of contract and if it contains a provision for the supersession of this Convention.

Alternative B²⁴

The provisions of this Convention shall not apply to carriage of goods by sea in connexion with a multimodal transport of goods provided that the operator of such transport is liable for the whole transport under an international convention on multimodal transport of goods concluded under the auspices of the United Nations or any of its specialized agencies or under international law giving effect thereto.

Alternative C²⁵

Nothing in this Convention shall prevent the application of an international convention relating to contracts for carriage of goods by two or more modes of transport concluded under the auspices of the United Nations or any of its specialized agencies.

Article [] Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation shall take effect ...²⁶ after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification has reached the depositary.

Done at ... in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Document A CONF.89/6 Add.1

[Original: English]
[14 December 1977]

NOTE BY THE SECRETARIAT FOR CONSIDERATION WITH ALTERNATIVES B AND C OF THE DRAFT PROVISIONS ON ENTRY INTO FORCE

1. The draft provisions concerning implementation, reservations and other final clauses, prepared by the Secretary-General for the draft Convention on the Carriage of Goods by Sea (A/CONF.89/6), include, *inter alia*, four alternatives for "Article [] Entry into force". Under two of those alternatives, alternatives B and C, it is necessary to ascertain the gross tonnage of the merchant fleet of a contracting State, and such tonnage is determined by reference to *Lloyd's Register of Shipping*, Statistical Tables, table 1, "Merchant fleets of the world". A foot-note to alternative B states that consideration

this Convention to the depositary of the Brussels Convention of 1924 in accordance with the terms of the provision in question. The provision would further require the depositary of this Convention to transmit the notification of denunciation to the depositary of the Brussels Convention of 1924 so that, in respect of the State making the denunciation, the denunciation would take effect simultaneously with the entry into force of this Convention in respect of that State.

²¹ This paragraph would be numbered 5 if alternative A above was adopted, and 6 if either alternative B, C or D above was adopted.

²² The substance of this provision was contained in article 2, paragraph 3, of the draft Convention on the Carriage of Goods by Sea adopted by the Working Group on International Legislation on Shipping of the Commission. During the discussion of the latter paragraph at the ninth session of the Commission, the Commission decided to delete it from article 2 and to place it among the draft provisions concerning implementation, reservations and other final clauses.

²³ This alternative was proposed by the representative of Australia at the ninth session of the Commission during the consideration of the draft provisions concerning implementation, reservations and other final clauses (A/CN.9/115 and Add. 1).

²⁴ This alternative was similarly proposed by the representative of the Federal Republic of Germany.

²⁵ This alternative was similarly proposed by the representative of Norway.

²⁶ Period of time to be inserted.

might be given to determining the tonnage of shipping not by reference to table 1 of the Statistical Tables, but by reference to table 2, "World fleets - analysis by principal types".

2. In order to assist the Conference in its consideration of alternatives B and C, table 1 and table 2 of the *Lloyd's Register of Shipping*, Statistical Tables, 1977 are reproduced in the annex hereto.²⁷

3. The Secretariat has communicated with *Lloyd's Register of Shipping* in regard to the method of compiling these tables, their format, and their date of publication, and has received the following information:

(a) The Statistical Tables are principally based on data

recorded in *Lloyd's Register of Ships*, and are supplemented by other published data. The data are held on a computer file and updated daily. Data are collected from all known reliable sources, including government authorities, shipowners and shipbuilders. The data are examined and evaluated to ensure their accuracy.

(b) *Lloyd's Register of Shipping* cannot be certain that the categories of merchant vessels currently set forth in table 2 will remain the same in future issues of the tables, since technological development in shipbuilding may necessitate changes. However, no radical changes in these categories are at present foreseen.

(c) The Statistical Tables are published annually in October or November of each year. The figures contained in an issue are applicable as at 1 July in the year of publication.

²⁷ The Secretariat gratefully acknowledges the authorization given to it by the Society to reproduce table 1 and table 2.

ANNEX

Annex
TABLE I **MERCHANT FLEETS OF THE WORLD**

FLAG	STEAMSHIPS		MOTORSHIPS		TOTAL STEAMSHIPS AND MOTORSHIPS		TOTAL STEAMSHIPS AND MOTORSHIPS
	No	Tons Gross	No	Tons Gross	No	Tons Gross	Tons Deadweight
UNITED KINGDOM	331	15,333,033	3,101	16,313,318	3,432	31,646,351	51,722,148
ANGUILLA	—	—	1	399	1	399	525
ANTIGUA	—	—	1	149	1	149	182
AUSTRALIA	49	374,368	375	999,829	424	1,374,197	1,970,407
BAHAMAS	3	41,071	106	65,246	109	106,317	147,321
BANGLADESH	12	14,635	121	229,679	133	244,314	347,079
BARBADOS	—	—	33	4,448	33	4,448	574
BELIZE	—	—	3	620	3	620	800
BERMUDA	8	201,646	80	1,549,869	88	1,751,515	3,040,194
BRITISH SOLOMON IS	—	—	9	1,746	9	1,746	1,955
BRITISH VIRGIN IS	—	—	16	4,057	16	4,057	5,335
CANADA	133	1,070,421	1,150	1,752,527	1,283	2,822,948	3,462,905
CAYMAN IS	1	10,498	105	113,289	106	123,787	170,478
CYPRUS	26	182,270	274	2,605,638	300	2,787,908	4,015,428
FALKLAND IS	—	—	5	6,937	5	6,937	4,584
FJI	1	232	32	10,647	33	10,879	10,408
GAMBIA	—	—	5	1,608	5	1,608	1,328
GHANA	6	2,459	73	180,237	79	182,696	206,211
GIBRALTAR	1	271	5	10,278	6	10,549	15,730
GILBERT IS	—	—	2	1,333	2	1,333	868
GRENADA	—	—	2	226	2	226	340
GUYANA	7	3,334	63	12,940	70	16,274	15,180
HONG KONG	2	28,407	111	581,272	113	609,679	896,350
INDIA	95	246,262	473	5,235,914	568	5,482,176	8,746,101
JAMAICA	—	—	7	7,075	7	7,075	5,804
KENYA	3	875	16	14,317	19	15,192	19,883
MALAYSIA	1	17,191	178	546,475	179	563,666	815,391
MALTA	3	3,885	43	96,535	46	100,420	141,587
MAURITIUS	—	—	17	37,288	17	37,288	46,055
MONTserrat	—	—	3	1,248	3	1,248	1,861
NALRU	—	—	5	48,353	5	48,353	62,014
NEW HEBRIDES	—	—	10	12,189	10	12,189	15,085
NEW ZEALAND	17	9,760	95	189,682	102	199,462	210,587
NIGERIA	—	—	94	335,540	94	335,540	523,446
PAPUA NEW GUINEA	1	274	63	15,943	64	16,217	15,613
SAINT KITTS-NEVIS	—	—	1	256	1	256	90
SAINT LUCIA	—	—	3	928	3	928	911
SAINT VINCENT	—	—	25	8,428	25	8,428	11,209
SEYCHELLES	—	—	10	59,140	10	59,140	49,676
SERRA LEONE	—	—	12	7,298	12	7,298	8,639
SINGAPORE	17	556,547	855	6,234,851	872	6,791,398	11,351,841
SRI LANKA	6	3,615	31	88,966	37	92,581	126,998
TANZANIA	1	359	21	35,254	22	35,613	42,446
TONGA	—	—	12	14,180	12	14,180	17,117
TRINIDAD & TOBAGO	4	2,782	38	14,410	42	17,192	16,947
TURKS & CAICOS IS	—	—	8	2,405	8	2,405	3,700
UGANDA	—	—	1	5,510	1	5,510	9,115
ZAMBIA	—	—	1	5,513	1	5,513	9,110
TOTAL COMMONWEALTH	728	18,104,215	8,181	37,463,990	8,909	55,568,205	88,169,311
ALBANIA	4	12,247	16	43,623	20	55,870	74,457
ALGERIA	7	434,618	105	621,344	112	1,055,962	1,651,315
ANGOLA	—	—	22	22,043	22	22,043	26,627
ARGENTINA	77	530,178	324	1,146,991	401	1,677,169	2,262,170
AUSTRIA	—	—	11	53,284	11	53,284	76,377
BAHRAIN	—	—	28	6,409	28	6,409	4,709
BELGIUM	7	68,129	264	1,527,360	271	1,595,489	2,437,681
BENIN, PEOPLE'S REP OF	—	—	7	912	7	912	255
BRAZIL	83	754,248	455	2,575,703	538	3,329,951	5,335,672
BRUNEI	—	—	2	899	2	899	896
BULGARIA	4	18,247	182	945,909	186	964,156	1,294,978
BURMA	8	3,440	48	64,062	56	67,502	76,859
CAMEROON	1	47,527	28	30,653	29	78,180	110,257
CAPE VERDE REPUBLIC	2	452	7	3,514	9	3,966	5,187
CHILE	33	80,779	110	325,192	143	405,971	589,586
CHINA, PEOPLE'S REP OF	102	340,769	520	3,904,677	622	4,245,446	6,588,840
TAIWAN, PROVINCE OF	26	307,318	417	1,251,395	443	1,558,713	2,366,657
COLOMBIA	2	6,470	50	240,770	52	247,240	297,123
COMORO	—	—	3	765	3	765	1,051
CONGO	—	—	14	4,172	14	4,172	483
COSTA RICA	3	1,793	11	5,018	14	6,811	7,370
CUBA	7	13,741	308	653,777	315	667,518	839,416
CZECHOSLOVAKIA	—	—	14	148,689	14	148,689	224,794
DENMARK	31	2,360,134	1,376	2,971,071	1,407	5,331,165	8,567,313
DOMINICAN REPUBLIC	2	1,404	18	7,065	20	8,469	11,894
ECUADOR	5	44,978	50	152,266	55	197,244	277,131
EGYPT	37	69,558	139	338,260	176	407,818	533,387

MERCHANT FLEETS OF THE WORLD (continued)

FLAG	STEAMSHIPS		MOTORSHIPS		TOTAL STEAMSHIPS AND MOTORSHIPS		TOTAL STEAMSHIPS AND MOTORSHIPS
	No	Tons Gross	No	Tons Gross	No	Tons Gross	Tons Deadweight
EL SALVADOR	—	—	2	1,987	2	1,987	3,303
EQUATORIAL GUINEA	1	3,070	—	—	1	3,070	3,366
ETHIOPIA	—	—	18	23,989	18	23,989	30,985
FAROE ISLANDS	1	1,036	171	56,074	172	57,110	52,993
FINLAND	5	7,906	332	2,354,189	337	2,262,095	3,414,967
FRANCE	70	6,463,733	1,257	5,150,126	1,327	11,613,859	20,051,782
GABON	—	—	15	98,645	15	98,645	171,025
GERMAN DEMOCRATIC REPUBLIC	—	—	447	1,486,838	447	1,486,838	1,930,208
GERMANY, FEDERAL REP OF	53	3,326,938	1,922	6,265,376	1,975	9,591,314	15,584,267
GREECE	251	5,779,194	3,093	23,737,865	3,344	29,517,059	49,322,789
GUATEMALA	—	—	8	11,854	8	11,854	16,076
GUINEA	—	—	11	12,597	11	12,597	16,787
GUINEA-BISSAU	—	—	1	219	1	219	—
HONDURAS	8	35,172	55	69,731	63	104,903	116,317
HUNGARY	—	—	19	63,016	19	63,016	87,760
ICELAND	6	2,991	369	163,711	375	166,702	144,421
INDONESIA	31	36,732	1,001	1,126,441	1,032	1,163,173	1,462,858
IRAN	20	553,226	173	448,835	193	1,002,061	1,666,093
IRAQ	14	371,241	96	764,004	110	1,135,245	2,022,176
IRISH REPUBLIC	3	2,013	95	209,859	98	211,872	261,031
ISRAEL	2	52,048	56	352,603	58	404,651	541,231
ITALY	217	3,655,657	1,473	7,455,525	1,690	11,111,182	17,732,545
IVORY COAST	3	32,431	56	83,286	59	115,717	147,682
JAPAN	183	13,283,366	9,459	26,752,487	9,642	40,035,853	65,869,598
JORDAN	—	—	2	696	2	696	1,200
KAMPUCHEA	1	998	2	2,560	3	3,558	3,779
KOREA (NORTH)	—	—	19	89,482	19	89,482	101,117
KOREA (SOUTH)	16	756,323	1,026	1,728,401	1,042	2,484,724	3,898,330
KUWAIT	14	1,008,744	212	822,450	226	1,831,194	3,130,995
LEBANON	6	10,143	157	216,866	163	227,009	307,879
LIBERIA	640	41,875,026	1,977	38,107,942	2,617	79,982,968	155,951,179
LIBYA	2	163,476	51	510,493	53	673,969	1,195,029
MADAGASCAR	—	—	44	39,850	44	39,850	51,609
MALDIIVE IS	5	13,417	40	97,264	45	110,681	137,470
MAURITANIA	—	—	4	1,113	4	1,113	645
MEXICO	16	32,440	295	641,524	311	673,964	1,403,370
MOROCCO	6	1,622	85	268,673	91	270,295	415,345
MOZAMBIQUE, PEOPLES REP OF	7	2,730	52	24,886	59	27,616	24,150
NETHERLANDS	47	2,098,728	1,207	3,191,632	1,254	5,290,360	8,055,125
NICARAGUA	1	2,500	29	32,088	30	34,588	48,026
NORWAY	100	9,142,636	2,638	18,658,835	2,738	27,801,471	49,192,943
OMAN	—	—	10	6,137	10	6,137	9,339
PAKISTAN	9	7,071	75	468,529	84	475,600	634,581
PANAMA	231	5,464,620	3,036	13,993,799	3,267	19,458,419	31,593,234
PARAGUAY	—	—	26	21,930	26	21,930	23,619
PERU	11	41,283	670	514,137	681	555,419	687,421
PHILIPPINES	4	9,896	500	1,136,633	504	1,146,529	1,640,391
POLAND	72	299,128	701	3,148,389	773	3,447,517	4,892,102
PORTUGAL	24	333,232	326	948,207	350	1,281,439	1,906,937
QATAR	—	—	19	84,710	19	84,710	149,361
ROMANIA	3	3,950	204	1,214,221	207	1,218,171	1,727,609
SAUDI ARABIA	11	564,066	108	454,647	119	1,018,713	1,739,408
SENEGAL	—	—	75	28,044	75	28,044	26,312
SOMALI REPUBLIC	2	4,278	29	153,888	31	158,166	229,451
SOUTH AFRICA	37	78,521	260	397,803	297	476,324	564,599
SPAIN	325	1,089,785	2,501	5,296,296	2,726	7,186,081	11,711,543
SUDAN	2	459	11	42,916	13	43,375	56,893
SURINAME	—	—	12	7,277	12	7,277	9,086
SWEDEN	48	2,877,596	680	4,551,798	728	7,429,394	12,616,984
SWITZERLAND	—	—	28	252,746	28	252,746	382,071
SYRIA	1	2,016	31	18,663	32	20,679	31,003
THAILAND	13	46,435	87	214,229	100	260,664	401,951
TOGO	—	—	1	134	1	134	—
TUNISIA	4	752	35	99,376	39	100,128	147,449
TURKEY	97	703,584	351	1,084,698	448	1,788,282	1,821,282
U.S.S.R.	641	2,658,247	7,526	18,780,044	8,167	21,438,291	23,641,993
UNITED ARAB EMIRATES	2	5,427	83	146,673	85	152,100	249,164
UNITED STATES OF AMERICA	932	13,301,692	3,808	1,997,989	4,740	15,299,681	22,134,980
URUGUAY	12	67,383	33	125,409	45	192,792	309,239
VENEZUELA	22	505,825	157	333,571	179	639,396	780,397
VIETNAM	6	8,589	63	119,936	69	128,525	175,712
YEMEN ARAB REPUBLIC	—	—	4	1,436	4	1,436	1,850
YEMEN, PEOPLES DEM REP OF	—	—	16	6,390	16	6,390	7,324
YUGOSLAVIA	10	10,110	449	2,274,416	459	2,284,526	3,445,194
ZAIRE	—	—	34	109,785	34	109,785	157,603
WORLD TOTAL	5,317	140,099,726	62,628	253,578,643	67,945	393,678,369	648,842,904

TABLE 2

WORLD FLEETS -- ANALYSIS BY PRINCIPAL TYPES

FLAG	OIL TANKERS		LIQUEFIED GAS CARRIERS		CHEMICAL TANKERS		MISCELLANEOUS TANKERS (Trading)		BULK OIL CARRIERS (Inc. Ore Oil)		ORE & BULK CARRIERS	
	No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross
UNITED KINGDOM	438	14,834,078	35	872,698	38	165,693	1	1,541	38	2,913,602	228	5,346,363
ANGUILLA	—	—	—	—	—	—	—	—	—	—	—	—
ANTIGUA	—	—	—	—	—	—	—	—	—	—	—	—
AUSTRALIA	16	284,272	—	—	—	—	—	—	1	35,082	24	555,663
BAHAMAS	5	14,631	—	—	—	—	—	—	—	—	4	53,792
BANGLADESH	26	41,472	—	—	—	—	—	—	1	55,752	—	—
BARBADOS	—	—	—	—	—	—	—	—	—	—	—	—
BELIZE	—	—	—	—	—	—	—	—	—	—	—	—
BERMUDA	28	1,008,861	—	—	—	—	—	—	1	21,200	21	573,000
BRITISH SOLOMON IS	—	—	—	—	—	—	—	—	—	—	—	—
BRITISH VIRGIN IS	—	—	—	—	—	—	—	—	—	—	—	—
CANADA	63	274,673	—	—	3	15,050	—	—	—	—	112	1,619,351
CAYMAN IS	6	4,099	—	—	—	—	—	—	—	—	2	23,656
CYPRUS	28	301,699	4	5,091	9	11,504	2	1,988	1	17,946	17	193,032
FAKLAND IS	—	—	—	—	—	—	—	—	—	—	—	—
FIJI	1	254	1	1,217	—	—	—	—	—	—	—	—
GAMBIA	—	—	—	—	—	—	—	—	—	—	—	—
GHANA	—	—	—	—	—	—	—	—	—	—	—	—
GIBRALTAR	—	—	—	—	—	—	—	—	—	—	1	9,568
GILBERT IS	—	—	—	—	—	—	—	—	—	—	—	—
GRENADA	—	—	—	—	—	—	—	—	—	—	—	—
GUYANA	3	1,626	—	—	—	—	—	—	—	—	—	—
HONG KONG	17	26,032	—	—	—	—	—	—	—	—	16	387,865
INDIA	43	1,146,718	—	—	—	—	—	—	14	680,748	80	1,660,018
JAMAICA	—	—	—	—	—	—	—	—	—	—	—	—
KENYA	3	2,704	—	—	—	—	—	—	—	—	—	—
MALAYSIA	12	7,258	—	—	3	56,877	—	—	1	81,231	11	219,497
MALTA	3	23,267	—	—	—	—	—	—	—	—	2	20,574
MALRITILS	—	—	—	—	—	—	—	—	—	—	—	—
MONTSERRAT	—	—	—	—	—	—	—	—	—	—	—	—
NAURU	—	—	—	—	—	—	—	—	—	—	1	19,568
NEW HEBRIDES	—	—	—	—	—	—	—	—	—	—	—	—
NEW ZEALAND	2	32,442	—	—	—	—	—	—	—	—	—	—
NIGERIA	6	143,469	—	—	—	—	—	—	—	—	—	—
PAPUA NEW GUINEA	3	1,276	2	2,412	—	—	—	—	—	—	—	—
ST. KITTS-NEVIS	—	—	—	—	—	—	—	—	—	—	—	—
ST. LUCIA	—	—	—	—	—	—	—	—	—	—	—	—
ST. VINCENT	1	387	—	—	—	—	—	—	—	—	—	—
SEYCHELLES	1	1,595	—	—	—	—	—	—	—	—	—	—
SIERRA LEONE	—	—	—	—	—	—	—	—	—	—	—	—
SINGAPORE	136	3,103,824	3	2,989	2	3,198	1	1,150	4	275,225	56	1,072,363
SRI LANKA	6	21,355	—	—	—	—	—	—	—	—	—	—
TANZANIA	1	239	—	—	—	—	—	—	—	—	—	—
TONGA	—	—	2	1,973	—	—	—	—	—	—	—	—
TRINIDAD & TOBAGO	1	1,736	1	205	—	—	—	—	—	—	—	—
TURKS & CAICOS IS	1	499	—	—	—	—	—	—	—	—	—	—
UGANDA	—	—	—	—	—	—	—	—	—	—	—	—
ZAMBIA	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL COMMONWEALTH	850	21,278,466	48	886,185	55	252,322	4	4,679	61	4,080,786	575	11,794,388
ALBANIA	—	—	—	—	—	—	—	—	—	—	—	—
ALGERIA	17	623,203	4	192,800	—	—	1	3,111	—	—	5	63,094
ANGOLA	2	1,875	—	—	—	—	—	—	—	—	—	—
ARGENTINA	64	562,712	—	—	—	—	—	—	2	34,716	13	216,628
AUSTRIA	—	—	—	—	—	—	—	—	—	—	1	11,845
BAHRAIN	2	913	—	—	—	—	—	—	—	—	—	—
BELGIUM	11	291,643	—	—	4	75,037	—	—	—	—	22	675,009
BENIN, PEOPLE'S REP OF	—	—	—	—	—	—	—	—	—	—	—	—
BRAZIL	57	1,202,047	4	11,954	2	20,175	—	—	7	536,999	18	290,432
BRUNEI	—	—	—	—	—	—	—	—	—	—	—	—
BULGARIA	21	290,239	—	—	—	—	—	—	1	8,769	20	224,501
BURMA	12	6,258	—	—	—	—	—	—	—	—	—	—
CAMEROON	1	47,527	—	—	—	—	—	—	—	—	—	—
CAPE VERDE REPUBLIC	—	—	—	—	—	—	—	—	—	—	—	—
CHILE	6	61,128	5	14,273	—	—	—	—	1	37,148	2	29,821
CHINA, PEOPLE'S REP OF	75	996,412	—	—	—	—	—	—	—	—	44	746,576
TAIWAN, PROVINCE OF	14	340,096	—	—	—	—	1	1,572	1	64,558	30	470,219
COLOMBIA	3	4,784	—	—	—	—	—	—	—	—	—	—
COMORO	1	139	—	—	—	—	—	—	—	—	—	—
CONGO	—	—	—	—	—	—	—	—	—	—	—	—
COSTA RICA	—	—	—	—	—	—	—	—	—	—	—	—
CUBA	14	64,382	1	906	3	2,290	—	—	—	—	2	29,845
CZECHOSLOVAKIA	—	—	—	—	—	—	—	—	—	—	5	107,586
DENMARK	69	2,682,725	31	42,506	7	11,468	—	—	—	—	31	637,836
DOMINICAN REPUBLIC	1	674	—	—	—	—	—	—	—	—	—	—
ECLADOR	18	113,969	—	—	—	—	—	—	—	—	—	—
EGYPT	24	126,887	—	—	—	—	—	—	—	—	—	—

TABLE 2

WORLD FLEETS—ANALYSIS BY PRINCIPAL TYPES (continued)

FLAG	OIL TANKERS		LIQUEFIED GAS CARRIERS		CHEMICAL TANKERS		MISCELLANEOUS TANKERS (Trading)		BULK OIL CARRIERS (Inc. Ore Oil)		GENERAL Single Deck	
	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross
EL SALVADOR	—	—	—	—	—	—	—	—	—	—	—	—
EQUATORIAL GUINEA	—	—	—	—	—	—	—	—	—	—	6	2,777
ETHIOPIA	1	2,051	—	—	—	—	—	—	—	—	8	2,162
FAROE IS.	—	—	—	—	—	—	—	—	—	—	63	54,702
FINLAND	50	1,166,590	3	12,172	1	1,984	—	—	—	—	64	95,885
FRANCE	112	7,512,825	7	211,485	14	80,581	13	23,305	7	659,569	1	455
GABON	2	74,471	—	—	—	—	1	257	—	—	—	—
GERMAN DEM. REP.	17	275,441	—	—	—	—	—	—	4	63,276	30	39,123
GERMANY, FED. REP. OF	128	3,534,126	13	38,161	8	41,837	—	—	2	123,196	429	263,960
GREECE	428	9,725,491	10	15,700	—	—	6	9,706	23	1,515,861	629	1,136,903
GUATEMALA	—	—	—	—	—	—	—	—	—	—	1	3,528
GUINEA	—	—	—	—	—	—	—	—	—	—	2	436
GUINEA-BISSAU	—	—	—	—	—	—	—	—	—	—	—	—
HONDURAS	2	1,364	—	—	—	—	—	—	—	—	17	7,038
HUNGARY	—	—	—	—	—	—	—	—	—	—	9	11,475
ICELAND	4	2,434	—	—	—	—	—	—	—	—	10	9,572
INDONESIA	68	101,138	3	1,653	2	5,860	—	—	—	—	377	320,218
IRAN	26	616,555	—	—	—	—	1	650	—	—	23	10,633
IRAQ	27	978,664	—	—	—	—	—	—	—	—	1	124
IRISH REPUBLIC	3	3,972	—	—	1	1,409	—	—	—	—	15	8,806
ISRAEL	2	368	—	—	—	—	—	—	—	—	1	232
ITALY	296	4,684,889	30	179,406	20	33,969	20	10,171	30	1,911,445	213	172,434
IVORY COAST	—	—	—	—	—	—	—	—	—	—	—	—
JAPAN	1,461	17,116,763	162	602,927	219	139,803	26	25,760	47	3,527,627	2,255	2,928,324
JORDAN	—	—	—	—	—	—	—	—	—	—	—	—
KAMPUCHEA	—	—	—	—	—	—	—	—	—	—	—	—
KOREA (NORTH)	3	21,734	—	—	—	—	—	—	—	—	—	—
KOREA (SOUTH)	58	1,053,626	2	1,773	6	14,001	—	—	—	—	197	412,975
KUWAIT	13	1,078,775	—	—	—	—	—	—	—	—	20	16,034
LEBANON	—	—	—	—	—	—	—	—	—	—	76	49,007
LIBERIA	910	50,772,231	42	1,096,031	23	185,479	4	30,879	144	7,586,146	188	970,280
LIBYA	11	595,381	—	—	1	3,148	—	—	—	—	6	4,825
MADAGASCAR	3	1,324	—	—	1	1,599	—	—	—	—	9	2,375
MALDIVE IS.	3	2,192	—	—	—	—	—	—	—	—	7	14,059
MAURITANIA	—	—	—	—	—	—	—	—	—	—	—	—
MEXICO	27	336,312	2	10,833	2	35,627	—	—	—	—	27	26,540
MOROCCO	5	105,582	1	2,345	5	30,023	1	1,100	—	—	3	1,845
MOZAMBIQUE, PEOPLE'S REP.	1	366	—	—	—	—	—	—	—	—	1	168
NETHERLANDS	84	2,285,647	5	64,161	13	20,462	1	1,609	—	—	212	203,931
NICARAGUA	4	5,237	—	—	—	—	—	—	—	—	2	4,468
NORWAY	244	14,400,791	51	441,046	52	624,010	1	499	57	3,751,564	469	365,755
OMAN	—	—	—	—	—	—	—	—	—	—	2	2,027
PAKISTAN	1	15,941	—	—	—	—	—	—	—	—	1	330
PANAMA	282	6,523,949	27	305,365	17	45,690	4	4,777	8	441,037	985	2,765,348
PARAGUAY	2	1,813	—	—	—	—	—	—	—	—	15	13,254
PERU	12	79,789	—	—	—	—	—	—	—	—	6	3,866
PHILIPPINES	49	294,918	6	4,158	1	363	—	—	1	78,003	126	181,276
POLAND	28	572,131	—	—	—	—	—	—	—	—	37	86,155
PORTUGAL	23	653,329	2	3,688	1	1,453	1	1,858	—	—	31	24,720
QATAR	2	72,570	—	—	—	—	—	—	—	—	—	—
ROMANIA	10	246,927	—	—	—	—	—	—	—	—	28	28,195
SAUDI ARABIA	34	859,216	—	—	—	—	—	—	—	—	12	8,305
SENEGAL	4	3,876	1	492	—	—	1	2,209	—	—	2	3,444
SOMALI REPUBLIC	2	24,992	—	—	—	—	—	—	—	—	8	11,811
SOUTH AFRICA	4	45,367	—	—	—	—	—	—	—	—	5	1,966
SPAIN	114	4,217,362	15	56,765	12	15,158	2	7,364	4	255,831	292	488,880
SUDAN	—	—	—	—	—	—	—	—	—	—	1	382
SURINAME	1	208	—	—	—	—	—	—	—	—	3	1,435
SWEDEN	117	3,713,242	3	38,016	4	28,937	5	13,034	14	1,070,793	132	231,681
SWITZERLAND	—	—	—	—	2	3,198	—	—	—	—	1	1,000
SYRIA	—	—	—	—	1	232	—	—	—	—	17	11,035
THAILAND	30	143,927	1	743	—	—	—	—	—	—	35	68,728
TOGO	—	—	—	—	—	—	—	—	—	—	—	—
TUNISIA	2	26,827	—	—	1	3,280	—	—	—	—	8	24,085
TURKEY	54	360,610	3	3,634	4	9,080	3	3,231	—	—	115	71,252
U.S.S.R.	497	4,385,489	6	43,208	1	3,115	9	22,072	4	216,535	1,045	2,502,957
UNITED ARAB EMIRATES	10	77,899	2	958	—	—	1	499	—	—	21	13,155
UNITED STATES OF AMERICA	314	5,976,499	3	127,383	9	93,349	—	—	2	80,190	125	203,336
URUGUAY	7	133,618	—	—	—	—	—	—	—	—	5	3,427
VENEZUELA	18	267,846	—	—	—	—	—	—	—	—	22	78,763
VIETNAM	10	33,906	—	—	—	—	—	—	—	—	24	28,952
YEMEN ARAB REPUBLIC	—	—	—	—	—	—	—	—	—	—	3	1,260
YEMEN, PEOPLE'S DEM. REP.	—	—	—	—	—	—	—	—	—	—	3	1,908
YUGOSLAVIA	30	233,774	—	—	—	—	—	—	1	45,330	85	90,915
ZAIRE	—	—	—	—	—	—	—	—	—	—	—	—
WORLD TOTAL	6,932	174,124,444	493	4,410,727	492	1,755,050	106	168,331	426	26,089,373	18,671	16,798,598

CARGO		PASSENGER		CONTAINER		LIGHTER		VEHICLE		FLAG
Multi Deck		CARGO SHIPS		SHIPS (Fully Cellular)		CARRIERS		CARRIERS		
No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	
1	1,816	—	—	—	—	—	—	—	—	EL SALVADOR
—	—	1	3,070	—	—	—	—	—	—	EQUATORIAL GUINEA
6	18,365	—	—	—	—	—	—	—	—	ETHIOPIA
12	5,892	—	—	—	—	—	—	—	—	FAROE IS
100	397,260	—	—	1	3,895	—	—	—	—	FINLAND
205	1,255,301	1	500	13	253,332	—	—	1	1,600	FRANCE
3	21,676	—	—	—	—	—	—	—	—	GABON
149	693,619	1	11,061	—	—	—	—	—	—	GERMAN DEM. REP.
749	2,378,995	1	10,328	48	708,216	1	37,134	3	2,919	GERMANY, FED. REP. OF
1,166	7,206,900	32	179,635	3	20,738	—	—	—	—	GREECE
4	7,947	—	—	—	—	—	—	—	—	GUATEMALA
—	—	—	—	—	—	—	—	—	—	GUINEA
—	—	—	—	—	—	—	—	—	—	GUINEA-BISSAU
23	84,017	1	8,185	—	—	—	—	—	—	HONDURAS
10	51,541	—	—	—	—	—	—	—	—	HUNGARY
39	58,360	2	1,418	—	—	—	—	—	—	ICELAND
174	395,516	27	115,563	—	—	—	—	1	170	INDONESIA
51	337,038	—	—	—	—	—	—	—	—	IRAN
14	80,774	—	—	—	—	—	—	—	—	IRAQ
9	11,315	—	—	4	6,530	—	—	—	—	IRISH REPUBLIC
24	104,620	—	—	8	87,826	—	—	—	—	ISRAEL
215	847,780	13	114,405	9	171,241	—	—	1	500	ITALY
15	103,073	—	—	—	—	—	—	—	—	IVORY COAST
396	1,571,678	7	19,910	52	1,261,599	—	—	59	224,359	JAPAN
1	496	—	—	—	—	—	—	—	—	JORDAN
—	—	—	—	—	—	—	—	—	—	KAMPUCHEA
8	23,958	1	5,000	—	—	—	—	—	—	KOREA (NORTH)
45	213,663	3	1,051	16	89,884	—	—	—	—	KOREA (SOUTH)
54	656,999	—	—	—	—	—	—	—	—	KUWAIT
7	152,389	2	20,593	—	—	—	—	—	—	LEBANON
392	2,909,818	9	71,029	32	299,281	—	—	12	123,879	LIBERIA
10	31,507	—	—	—	—	—	—	—	—	LIBYA
7	30,475	3	711	—	—	—	—	—	—	MADAGASCAR
70	88,446	1	4,140	—	—	—	—	—	—	MALDIVE IS
—	—	—	—	—	—	—	—	—	—	MAURITANIA
27	107,049	—	—	—	—	—	—	—	—	MEXICO
27	73,611	—	—	—	—	—	—	—	—	MOROCCO
6	13,934	—	—	—	—	—	—	—	—	MUZAMBIQUE, PEOPLES REP.
301	1,454,339	—	—	14	182,537	1	36,974	—	—	NETHERLANDS
9	20,257	—	—	—	—	—	—	—	—	NICARAGUA
356	1,194,600	10	24,863	2	55,285	2	73,732	19	158,705	NORWAY
4	2,546	—	—	—	—	—	—	—	—	OMAN
41	356,101	7	62,855	—	—	—	—	—	—	PAKISTAN
849	4,279,010	29	164,038	21	136,938	—	—	10	84,914	PANAMA
3	2,312	—	—	—	—	—	—	—	—	PARAGUAY
27	186,847	1	3,383	—	—	—	—	—	—	PERU
74	324,003	23	36,785	—	—	—	—	—	—	PHILIPPINES
205	1,168,049	—	—	—	—	—	—	—	—	POLAND
55	309,017	5	34,927	3	6,260	—	—	—	—	PORTUGAL
—	—	—	—	—	—	—	—	—	—	QATAR
69	334,543	1	6,669	—	—	—	—	—	—	ROMANIA
30	96,840	2	7,987	—	—	—	—	—	—	SAUDI ARABIA
3	1,423	1	1,012	—	—	—	—	—	—	SENEGAL
19	112,131	—	—	—	—	—	—	—	—	SOMALI REPUBLIC
34	239,639	1	1,573	1	2,994	—	—	—	—	SOUTH AFRICA
200	376,832	17	80,869	19	33,610	—	—	2	2,646	SPAIN
7	41,873	—	—	—	—	—	—	—	—	SUDAN
3	4,806	—	—	—	—	—	—	—	—	SURINAM
122	731,143	1	186	2	66,916	—	—	2	28,959	SURINAME
17	120,250	—	—	—	—	—	—	—	—	SWITZERLAND
8	8,008	—	—	—	—	—	—	—	—	SYRIA
10	34,944	—	—	—	—	—	—	—	—	THAILAND
—	—	—	—	—	—	—	—	—	—	TOGO
10	22,467	—	—	—	—	—	—	—	—	TUNISIA
80	304,235	17	93,284	—	—	—	—	—	—	TURKEY
745	4,955,892	22	56,628	14	108,780	—	—	—	—	U.S.S.R.
17	42,498	1	8,700	—	—	—	—	—	—	UNITED ARAB EMIRATES
376	3,419,529	7	41,011	98	1,712,399	23	646,579	—	—	UNITED STATES OF AMERICA
10	44,180	—	—	—	—	—	—	—	—	URUGUAY
37	168,375	1	1,100	—	—	—	—	—	—	VENEZUELA
14	51,913	—	—	—	—	—	—	—	—	VIETNAM
—	—	—	—	—	—	—	—	—	—	YEMEN ARAB REPUBLIC
2	1,347	—	—	—	—	—	—	—	—	YEMEN, PEOPLES DEM. REP.
174	1,037,355	9	38,369	3	20,226	—	—	—	—	YUGOSLAVIA
10	82,470	1	13,481	—	—	—	—	—	—	ZAIRE
11,810	58,452,620	380	1,836,782	507	7,543,242	27	794,419	114	633,323	WORLD TOTAL

TABLE 2

WORLD FLEETS—ANALYSIS BY PRINCIPAL TYPES (continued)

FLAG	FISH FACTORIES & CARRIERS		FISHING (Inc. Factory Trawlers)		FERRIES & PASSENGER VESSELS		SUPPLY SHIPS & TENDERS		TUGS		DREDGERS	
	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross
UNITED KINGDOM	—	—	557	198,263	163	643,856	155	229,547	343	117,986	156	237,806
ANGUILLA	—	—	—	—	—	—	—	—	—	—	—	—
ANTIGUA	—	—	—	—	—	—	—	—	—	—	—	—
AUSTRALIA	—	—	95	18,344	21	22,768	20	17,951	125	31,857	20	19,876
BAHAMAS	1	994	22	5,457	1	422	2	687	9	2,668	1	283
BANGLADESH	—	—	2	317	10	6,088	3	1,157	27	6,390	5	6,287
BARBADOS	—	—	28	3,446	—	—	—	—	3	574	—	—
BELIZE	—	—	—	—	—	—	—	—	—	—	—	—
BERMUDA	1	18,888	7	3,525	1	5,813	5	6,192	11	4,184	—	—
BRITISH SOLOMON IS.	—	—	—	—	2	354	—	—	—	—	—	—
BRITISH VIRGIN IS.	—	—	—	—	1	146	—	—	—	—	—	—
CANADA	2	357	482	145,872	120	260,164	31	29,465	201	61,045	10	11,264
CAYMAN IS.	—	—	7	1,226	4	3,406	8	3,027	8	2,855	—	—
CYPRUS	—	—	7	3,182	23	60,722	1	178	7	1,281	—	—
FALKLAND IS.	—	—	—	—	—	—	—	—	—	—	—	—
FJI	—	—	2	306	7	1,745	1	132	3	550	—	—
GAMBIA	—	—	—	—	2	657	—	—	1	146	1	164
GHANA	3	5,602	44	38,885	—	—	—	—	9	1,718	1	450
GIBRALTAR	—	—	—	—	1	271	—	—	—	—	—	—
GILBERT IS.	—	—	—	—	—	—	—	—	—	—	—	—
GRENADA	—	—	—	—	—	—	—	—	—	—	—	—
GUYANA	—	—	25	2,676	12	4,299	—	—	3	366	1	548
HONG KONG	—	—	7	1,454	33	14,293	—	—	14	3,151	1	1,154
INDIA	—	—	26	4,075	6	22,471	7	10,742	62	18,781	43	82,142
JAMAICA	—	—	3	648	—	—	—	—	—	—	—	—
KENYA	—	—	1	122	3	654	—	—	9	2,392	—	—
MALAYSIA	—	—	7	1,479	13	4,675	19	7,802	19	3,919	6	1,463
MALTA	—	—	—	—	6	3,350	—	—	13	3,137	1	499
MAURITIUS	—	—	9	2,764	1	1,315	—	—	2	296	—	—
MONTSERRAT	—	—	—	—	—	—	—	—	—	—	—	—
NAURU	—	—	—	—	1	3,179	—	—	—	—	—	—
NEW HEBRIDES	1	385	—	—	1	130	—	—	—	—	—	—
NEW ZEALAND	—	—	17	4,180	10	22,223	1	111	27	7,275	9	8,054
NIGERIA	—	—	21	3,091	9	3,093	5	1,931	8	1,755	2	4,320
PAPUA NEW GUINEA	—	—	14	2,067	2	335	2	365	1	274	—	—
ST. KITTS-NEVIS	—	—	—	—	—	—	—	—	—	—	—	—
ST. LUCIA	—	—	1	105	—	—	—	—	—	—	—	—
ST. VINCENT	—	—	—	—	2	409	—	—	—	—	—	—
SEYCHELLES	—	—	—	—	2	27,204	—	—	1	191	—	—
SIERRA LEONE	—	—	1	119	3	600	—	—	5	1,537	—	—
SINGAPORE	—	—	9	4,720	9	37,730	26	17,218	116	36,087	1	1,105
SRI LANKA	—	—	11	3,187	—	—	—	—	8	3,558	4	3,281
TANZANIA	—	—	1	499	5	6,696	1	383	4	1,031	—	—
TONGA	—	—	1	101	1	515	—	—	1	228	—	—
TRINIDAD & TOBAGO	—	—	19	2,797	4	6,836	—	—	8	1,878	—	—
TURKS & CAICOS IS.	—	—	1	124	—	—	—	—	—	—	—	—
UGANDA	—	—	—	—	—	—	—	—	—	—	—	—
ZAMBIA	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL COMMONWEALTH	8	26,226	1,427	433,031	479	1,166,419	287	336,828	1,048	317,110	262	378,690
ALBANIA	—	—	2	300	—	—	—	—	—	—	1	939
ALGERIA	—	—	22	2,371	5	42,275	—	—	23	4,574	—	—
ANGOLA	—	—	3	959	—	—	—	—	6	1,621	—	—
ARGENTINA	—	—	108	34,403	18	31,277	1	195	34	11,141	9	18,630
AUSTRIA	—	—	—	—	—	—	—	—	—	—	—	—
BAHRAIN	—	—	4	420	—	—	1	194	11	2,103	—	—
BELGIUM	—	—	91	14,145	12	49,666	5	2,639	61	16,374	12	30,958
BENIN, PEOPLE'S REP. OF	—	—	5	625	—	—	—	—	1	182	—	—
BRAZIL	—	—	34	11,886	14	21,816	6	32,665	73	22,409	6	19,472
BRUNEI	—	—	—	—	—	—	—	—	—	—	1	616
BULGARIA	6	32,176	34	77,950	8	2,220	—	—	16	3,224	—	—
BURMA	—	—	4	714	3	362	4	2,348	12	2,895	3	2,411
CAMEROON	—	—	22	5,105	—	—	—	—	3	470	—	—
CAPE VERDE REPUBLIC	—	—	3	1,083	—	—	—	—	1	179	—	—
CHILE	—	—	48	8,783	2	747	—	—	9	2,063	1	252
CHINA, PEOPLE'S REP. OF	11	10,025	9	3,750	6	37,416	5	3,320	32	16,896	30	83,748
TAIWAN, PROVINCE OF	—	—	230	64,924	2	10,466	1	1,459	16	3,835	5	7,336
COLOMBIA	—	—	1	118	—	—	1	393	1	117	2	4,977
COMORO	—	—	—	—	—	—	—	—	—	—	—	—
CONGO	—	—	12	3,630	—	—	—	—	2	542	—	—
COSTA RICA	—	—	4	1,184	—	—	—	—	1	143	—	—
CUBA	—	—	195	134,144	4	8,224	1	385	10	2,505	2	597
CZECHOSLOVAKIA	—	—	—	—	—	—	—	—	—	—	—	—
DENMARK	2	630	373	73,455	87	226,387	6	3,502	34	14,774	42	18,009
DOMINICAN REPUBLIC	—	—	—	—	—	—	—	—	2	385	—	—
ECUADOR	—	—	19	5,997	2	2,193	—	—	—	—	—	—
EGYPT	—	—	6	8,728	4	12,465	7	5,857	51	14,329	1	7,689

LIVESTOCK CARRIERS		ICEBREAKERS		RESEARCH SHIPS		MISCELLANEOUS (Non-Trading)		TOTAL		FLAG
No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	
1	941	—	—	24	29,653	177	353,550	3,432	31,446,351	UNITED KINGDOM
—	—	—	—	—	—	—	—	1	399	ANGUILLA
—	—	—	—	—	—	1	149	1	149	ANTIGUA
1	720	—	—	1	161	45	29,131	424	1,374,197	AUSTRALIA
1	400	—	—	1	476	1	157	109	106,317	BAHAMAS
—	—	—	—	3	705	—	—	133	244,314	BANGLADESH
—	—	—	—	—	—	1	137	33	4,448	BARBADOS
—	—	—	—	—	—	—	—	3	610	BELIZE
—	—	—	—	—	—	2	75,185	88	1,751,515	BERMUDA
1	140	—	—	—	—	1	194	9	1,746	BRITISH SOLOMON IS.
1	837	15	51,050	30	38,159	4	574	16	4,057	BRITISH VIRGIN IS.
—	—	—	—	—	—	50	58,354	1,283	2,822,948	CANADA
—	—	—	—	3	2,692	1	120	106	123,787	CAYMAN IS.
5	4,370	—	—	—	—	5	6,521	880	2,787,908	CYPRUS
—	—	—	—	2	6,400	—	—	5	6,937	FALKLAND IS.
—	—	—	—	1	105	4	712	33	10,879	FIJI
—	—	—	—	—	—	—	—	5	1,008	GAMBIA
—	—	—	—	—	—	—	—	79	182,696	GHANA
—	—	—	—	—	—	1	134	6	10,549	GIBRALTAR
—	—	—	—	—	—	—	—	2	1,333	GILBERT IS.
—	—	—	—	—	—	2	226	2	226	GRENADA
—	—	—	—	—	—	3	401	70	16,274	GUYANA
—	—	—	—	—	—	5	2,700	113	609,679	HONG KONG
—	—	—	—	5	3,983	14	18,757	566	5,482,176	INDIA
—	—	—	—	—	—	1	137	7	7,075	JAMAICA
—	—	—	—	—	—	—	—	19	15,192	KENYA
—	—	—	—	—	—	6	1,143	179	363,666	MALAYSIA
—	—	—	—	—	—	2	616	44	100,420	MALTA
—	—	—	—	—	—	—	—	17	37,288	MAURITIUS
—	—	—	—	—	—	—	—	3	1,248	MONTERRAT
—	—	—	—	—	—	—	—	5	48,353	NAURU
—	—	—	—	—	—	—	—	10	12,189	NEW HEBRIDES
—	—	—	—	1	1,192	1	762	102	199,462	NEW ZEALAND
—	—	—	—	1	1,056	4	737	94	335,540	NIGERIA
—	—	—	—	—	—	10	2,082	64	16,217	PAPUA NEW GUINEA
—	—	—	—	1	226	—	—	1	256	ST. KITTS-NEVIS
—	—	—	—	—	—	—	—	3	928	ST. LUCIA
—	—	—	—	—	—	1	134	25	8,428	ST. VINCENT
—	—	—	—	—	—	1	192	10	59,140	SEYCHELLES
—	—	—	—	—	—	—	—	12	7,298	SIERRA LEONE
8	63,425	—	—	4	689	24	15,894	872	6,791,398	SINGAPORE
—	—	—	—	—	—	—	—	37	92,581	SRI LANKA
—	—	—	—	—	—	—	—	22	35,613	TANZANIA
—	—	—	—	—	—	—	—	12	14,180	TONGA
—	—	—	—	—	—	2	426	42	17,192	TRINIDAD & TOBAGO
—	—	—	—	—	—	—	—	8	2,405	TURKS & CAICOS IS.
—	—	—	—	—	—	—	—	1	5,510	UGANDA
—	—	—	—	—	—	—	—	1	5,513	ZAMBIA
18	71,033	15	51,050	77	85,527	379	569,125	8,909	55,568,205	TOTAL COMMONWEALTH
—	—	—	—	—	—	—	—	20	55,870	ALBANIA
—	—	—	—	—	—	1	1,500	112	1,055,962	ALGERIA
—	—	—	—	—	—	—	—	22	22,043	ANGOLA
—	—	1	3,640	—	—	13	30,396	401	1,677,169	ARGENTINA
—	—	—	—	—	—	—	—	11	53,284	AUSTRIA
—	—	—	—	—	—	3	836	18	6,409	BAHRAIN
1	1,179	—	—	2	404	10	18,971	271	1,595,489	BELGIUM
—	—	—	—	—	—	1	105	7	912	BENIN, PEOPLE'S REP. OF
1	569	—	—	1	578	20	15,870	338	3,329,951	BRAZIL
—	—	—	—	—	—	—	—	2	899	BRUNEI
—	—	—	—	—	—	7	2,578	186	944,156	BULGARIA
—	—	—	—	—	—	5	1,020	56	67,502	BURMA
—	—	—	—	—	—	—	—	29	78,180	CAMEROON
—	—	—	—	—	—	2	452	9	3,946	CAPE VERDE REPUBLIC
—	—	—	—	—	—	15	5,353	143	485,971	CHILE
—	—	—	—	2	3,118	12	16,245	1,065	5,804,159	CHINA, PEOPLE'S REP. OF
—	—	—	—	1	596	2	870	—	—	TAIWAN, PROVINCE OF
—	—	—	—	—	—	—	—	52	247,340	COLOMBIA
—	—	—	—	—	—	—	—	3	765	COMORO
—	—	—	—	—	—	—	—	14	4,172	CONGO
—	—	—	—	—	—	—	—	14	6,811	COSTA RICA
—	—	—	—	—	—	14	2,822	315	667,518	CUBA
—	—	—	—	—	—	—	—	14	148,689	CZECHOSLOVAKIA
5	12,107	6	8,841	1	495	59	25,659	1,407	5,331,165	DENMARK
—	—	—	—	—	—	—	—	20	8,469	DOMINICAN REPUBLIC
—	—	—	—	—	—	2	1,600	55	197,244	ECUADOR
—	—	—	—	2	819	16	3,996	176	407,818	EGYPT

TABLE 2

WORLD FLEETS - ANALYSIS BY PRINCIPAL TYPES (continued)

FLAG	FISH FACTORIES & CARRIERS		FISHING (Inc. Factory Trawlers)		FERRIES & PASSENGER VESSELS		SUPPLY SHIPS & TENDERS		TUGS		DREDGERS	
	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross	No.	Tons Gross
EL SALVADOR	—	—	—	—	—	—	—	—	1	172	—	—
EQUATORIAL GUINEA	—	—	—	—	—	—	—	—	—	—	—	—
ETHIOPIA	—	—	3	327	—	—	—	—	1	337	—	—
FAROE IS.	—	—	134	43,052	7	4,016	—	—	1	436	1	236
FINLAND	—	—	9	2,122	42	172,321	1	400	19	5,403	2	890
FRANCE	3	6,119	561	189,479	46	206,374	21	13,636	129	28,882	19	29,525
GABON	—	—	3	723	—	—	—	—	—	—	—	—
GERMAN DEM. REP.	8	43,713	153	103,305	15	46,919	1	1,135	18	2,841	5	4,707
GERMANY, FED. REP. OF	—	—	148	137,513	100	136,106	53	50,891	167	65,360	9	32,851
GREECE	2	3,167	100	43,623	210	554,723	—	—	71	19,704	4	1,990
GUATEMALA	—	—	2	250	—	—	—	—	1	129	—	—
GUINEA	—	—	2	368	1	387	—	—	3	386	—	—
GUINEA-BISSAU	—	—	—	—	1	219	—	—	—	—	—	—
HONDURAS	—	—	13	1,512	—	—	—	—	2	693	—	—
HUNGARY	—	—	—	—	—	—	—	—	—	—	—	—
ICELAND	—	—	295	83,694	5	2,539	1	381	2	323	3	1,084
INDONESIA	3	450	125	25,499	43	55,697	34	24,727	127	32,704	7	15,854
IRAN	—	—	20	3,817	3	1,062	10	8,072	54	16,973	2	2,101
IRAQ	—	—	9	2,147	1	129	3	2,043	31	13,152	15	51,416
IRISH REPUBLIC	—	—	27	6,186	7	20,535	4	4,916	11	2,502	5	1,083
ISRAEL	—	—	2	2,010	—	—	—	—	11	3,172	—	—
ITALY	—	—	243	89,082	186	695,248	5	2,999	230	51,466	12	13,229
IVORY COAST	1	499	36	10,866	—	—	—	—	7	1,285	—	—
JAPAN	71	180,257	2,943	979,215	481	968,316	11	6,848	634	147,626	5	14,911
JORDAN	—	—	1	200	—	—	—	—	—	—	—	—
KAMPUCHEA	—	—	—	—	—	—	—	—	1	210	1	2,350
KOREA (NORTH)	6	36,190	1	2,600	—	—	—	—	—	—	—	—
KOREA (SOUTH)	13	51,976	639	241,703	19	8,861	1	266	11	5,964	—	—
KUWAIT	2	4,879	95	13,219	3	4,137	3	589	21	6,053	—	—
LEBANON	—	—	4	560	—	—	—	—	—	—	—	—
LIBERIA	1	2,001	2	224	6	98,389	8	4,616	7	2,839	1	6,663
LIBYA	—	—	8	1,106	3	30,466	1	2,500	8	1,920	1	644
MADAGASCAR	—	—	18	2,539	—	—	—	—	2	378	—	—
MALDIVES IS.	—	—	2	1,313	—	—	—	—	2	531	—	—
MALITANIA	—	—	4	1,113	—	—	—	—	—	—	—	—
MEXICO	—	—	168	37,899	11	45,780	2	339	28	9,195	12	25,037
MOROCCO	1	1,966	24	6,365	4	9,119	—	—	13	2,557	2	2,183
MOZAMBIQUE, PEOPLES REP.	—	—	32	4,787	—	—	1	459	13	4,758	2	2,904
NETHERLANDS	—	—	380	86,228	21	126,948	3	2,434	123	82,016	20	70,981
NICARAGUA	—	—	15	4,526	—	—	—	—	—	—	—	—
NORWAY	6	18,841	646	203,681	335	416,389	32	22,231	161	75,184	2	532
OMAN	—	—	1	236	1	123	—	—	1	215	—	—
PAKISTAN	—	—	2	398	1	113	1	350	7	1,665	7	6,161
PANAMA	7	19,818	318	136,985	41	278,738	101	51,674	195	77,750	14	35,899
PARAGUAY	—	—	—	—	4	2,701	—	—	—	—	—	—
PERU	—	—	610	129,166	—	—	—	—	9	1,701	1	1,530
PHILIPPINES	5	1,616	101	23,193	66	75,180	2	582	35	13,244	1	480
POLAND	9	75,340	319	277,810	21	36,122	1	276	57	12,249	6	5,596
PORTUGAL	—	—	165	126,508	7	27,084	3	4,314	42	10,519	3	2,907
QATAR	—	—	3	346	—	—	—	—	4	2,633	—	—
ROMANIA	4	34,038	30	84,435	2	268	2	1,300	17	4,605	5	4,345
SAUDI ARABIA	—	—	2	364	4	17,368	7	11,525	18	4,743	—	—
SENEGAL	—	—	57	14,246	—	—	—	—	5	1,164	—	—
SOMALI REPUBLIC	—	—	—	—	—	—	—	—	1	178	—	—
SOUTH AFRICA	2	939	174	65,434	1	30,213	7	1,372	42	23,525	7	16,123
SPAIN	4	14,144	1,797	580,181	40	127,663	1	124	101	23,519	10	6,346
SUDAN	—	—	—	—	—	—	—	—	5	1,120	—	—
SURINAM	—	—	—	—	—	—	—	—	3	544	—	—
SWEDEN	—	—	62	14,324	88	209,919	5	5,992	93	20,961	1	107
SWITZERLAND	—	—	—	—	1	277	—	—	—	—	—	—
SYRIA	—	—	—	—	—	—	—	—	5	933	—	—
THAILAND	—	—	3	906	—	—	2	562	10	1,766	5	8,022
TOGO	—	—	1	134	—	—	—	—	—	—	—	—
TUNISIA	—	—	1	148	1	286	—	—	14	2,878	—	—
TURKEY	4	663	2	501	102	83,307	—	—	31	7,632	2	1,651
U.S.S.R.	573	2,960,889	3,964	3,479,179	203	630,743	3	853	622	223,265	30	36,291
UNITED ARAB EMIRATES	—	—	1	150	1	180	2	891	15	2,994	—	—
UNITED STATES OF AMERICA	9	8,985	1,920	426,290	54	204,920	400	89,945	1,039	246,438	6	17,870
URUGUAY	—	—	14	5,325	1	1,622	—	—	7	1,432	1	3,188
VENEZUELA	—	—	43	7,376	12	52,805	—	—	39	9,888	2	34,806
VIETNAM	—	—	17	2,590	1	7,034	—	—	1	582	1	2,841
YEMEN ARAB REPUBLIC	—	—	—	—	—	—	—	—	1	176	—	—
YEMEN, PEOPLES DEM. REP.	—	—	7	2,285	—	—	—	—	4	850	—	—
YUGOSLAVIA	1	113	5	2,518	55	27,718	—	—	26	7,091	5	5,173
ZAIRE	—	—	14	4,793	—	—	—	—	5	1,161	4	7,880
WORLD TOTAL	762	3,535,660	19,178	8,626,375	2,903	7,091,020	1,057	699,047	5,816	1,730,642	616	1,081,209

LIVESTOCK CARRIERS		ICEBREAKERS		RESEARCH SHIPS		MISCELLANEOUS (Non-Trading)		TOTAL		FLAG
No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	No	Tons Gross	
—	—	—	—	—	—	—	—	2	1,987	EL SALVADOR
—	—	—	—	—	—	—	—	1	3,070	EQUATORIAL GUINEA
—	—	—	—	—	—	1	132	18	23,989	ETHIOPIA
—	—	—	—	—	—	9	1,316	172	57,110	FAROE ISLANDS
—	—	10	39,227	7	2,286	3	1,558	337	2,262,095	FINLAND
—	—	—	—	19	14,346	46	60,013	1,327	11,613,859	FRANCE
—	—	—	—	—	—	3	1,063	15	95,645	GABON
—	—	1	2,254	4	1,841	27	22,338	447	1,486,838	GERMAN DEM. REP.
2	657	3	3,703	15	7,780	31	19,959	1,975	9,592,314	GERMANY, FED. REP. OF
3	1,502	—	—	2	1,707	90	35,954	3,344	29,517,059	GREECE
—	—	—	—	—	—	—	—	8	11,854	GUATEMALA
—	—	—	—	—	—	2	256	11	12,597	GUINEA
—	—	—	—	—	—	—	—	1	219	GUINEA-BISSAU
—	—	—	—	—	—	5	2,094	43	104,903	HONDURAS
—	—	—	—	—	—	—	—	19	63,016	HUNGARY
—	—	—	—	—	—	14	6,897	375	166,702	ICELAND
—	—	—	—	4	3,825	33	20,827	1,032	1,163,173	INDONESIA
—	—	—	—	—	—	7	5,130	193	1,002,061	IRAN
—	—	—	—	2	1,008	7	5,788	110	1,235,245	IRAQ
—	—	—	—	—	—	6	1,675	98	211,872	IRISH REPUBLIC
—	—	—	—	—	—	—	—	58	404,651	ISRAEL
4	2,266	—	—	2	1,474	55	53,216	1,690	11,111,182	ITALY
—	—	—	—	—	—	—	—	59	115,717	IVORY COAST
1	8,325	—	—	13	15,236	406	346,232	9,642	40,035,853	JAPAN
—	—	—	—	—	—	—	—	2	696	JORDAN
—	—	—	—	—	—	—	—	3	3,558	KAMPUCHEA
—	—	—	—	—	—	—	—	19	89,482	KOREA (NORTH)
—	—	—	—	—	—	3	422	1,042	2,494,724	KOREA (SOUTH)
5	36,334	—	—	—	—	8	1,315	226	1,831,194	KUWAIT
3	4,245	—	—	—	—	1	235	163	227,009	LEBANON
2	4,811	—	—	—	—	13	161,767	2,617	79,982,968	LIBERIA
—	—	—	—	—	—	4	2,470	53	673,969	LIBYA
—	—	—	—	—	—	1	449	44	39,850	MADAGASCAR
—	—	—	—	—	—	—	—	45	110,681	MALDIVE ISLANDS
—	—	—	—	—	—	—	—	4	1,113	MAURITANIA
—	—	—	—	—	—	8	7,248	311	673,964	MEXICO
—	—	—	—	—	—	3	1,114	91	270,295	MOROCCO
—	—	—	—	—	—	3	242	50	27,618	MOZAMBIQUE, PEOPLE'S REP.
7	4,212	—	—	5	5,573	35	60,819	1,254	5,290,360	NETHERLANDS
—	—	—	—	—	—	—	—	30	34,588	NICARAGUA
1	299	2	285	11	7,746	60	104,064	2,738	27,801,471	NORWAY
—	—	—	—	—	—	1	990	10	6,137	OMAN
—	—	—	—	1	100	13	9,881	84	475,600	PAKISTAN
4	11,974	—	—	9	3,957	87	242,251	3,267	19,458,419	PANAMA
1	728	—	—	—	—	1	1,122	26	21,930	PARAGUAY
—	—	—	—	—	—	6	1,581	681	555,419	PERU
—	—	—	—	5	1,036	4	1,734	504	1,746,579	PHILIPPINES
—	—	1	1,152	3	587	19	8,159	773	3,447,517	POLAND
—	—	—	—	—	—	5	1,651	350	1,281,439	PORTUGAL
1	7,977	—	—	—	—	4	1,184	19	84,710	QATAR
2	2,566	—	—	1	659	7	5,245	207	1,218,171	ROMANIA
2	4,720	—	—	—	—	8	7,645	119	1,018,713	SAUDI ARABIA
—	—	—	—	1	178	—	—	75	28,044	SENEGAL
—	—	—	—	—	—	—	—	31	154,366	SOMALI REPUBLIC
—	—	—	—	1	278	15	6,438	297	476,324	SOUTH AFRICA
—	—	—	—	—	—	51	38,832	2,726	7,186,081	SPAIN
—	—	—	—	—	—	—	—	13	43,375	SUDAN
—	—	—	—	—	—	2	284	32	2,277	SURINAM
—	—	11	33,127	2	1,185	18	6,846	728	7,429,394	SWEDEN
—	—	—	—	—	—	1	2,900	28	252,746	SWITZERLAND
—	—	—	—	—	—	1	380	32	20,679	SYRIA
—	—	—	—	2	461	2	605	100	240,664	THAILAND
—	—	—	—	—	—	—	—	1	134	TOGO
—	—	—	—	—	—	—	—	39	100,128	TUNISIA
—	—	—	—	1	750	14	9,397	448	1,288,282	TURKEY
—	—	35	177,101	148	277,168	172	325,496	8,167	21,438,291	U.S.S.R.
1	289	—	—	1	145	12	3,742	85	152,100	UNITED ARAB EMIRATES
—	—	2	21,800	82	44,149	105	178,670	4,740	15,299,681	UNITED STATES OF AMERICA
—	—	—	—	—	—	—	—	45	192,792	URUGUAY
1	1,344	—	—	2	208	1	7,813	179	639,396	VENEZUELA
—	—	—	—	—	—	1	707	69	128,525	VIETNAM
—	—	—	—	—	—	—	—	4	1,436	YEMEN ARAB REPUBLIC
—	—	—	—	—	—	—	—	16	6,390	YEMEN, PEOPLES DEM. REP.
—	—	1	159	2	331	17	4,696	459	2,284,526	YUGOSLAVIA
—	—	—	—	—	—	—	—	34	109,785	ZAMBIA
65	177,137	88	342,339	429	485,551	2,006	2,470,227	67,945	793,678,369	WORLD TOTAL

Document A/CONF.89/6 Add.2

[Original: English]
[4 November 1977]

NOTE BY THE SECRETARIAT FOR CONSIDERATION WITH
ALTERNATIVE D OF THE DRAFT PROVISIONS ON
ENTRY INTO FORCE

1. The draft provisions concerning implementation, reservations and other final clauses, prepared by the Secretary-General for the draft Convention on the Carriage of Goods by Sea (A/CONF.89/6), include, *inter alia*,

four alternatives for "Article [] Entry into force". One of those alternatives, alternative D, makes entry into force of the Convention dependent upon data contained in the table entitled "Analysis of goods loaded and unloaded in international sea-borne shipping", in the applicable issue of the United Nations *Statistical Yearbook*.

2. In the United Nations *Statistical Yearbook*, 1976, the "Analysis of goods loaded and unloaded in international sea-borne shipping" is contained in table 159. In order to assist the Conference in its consideration of alternative D of the draft provisions on entry into force, table 159 of the United Nations *Statistical Yearbook*, 1976, is reproduced in the annex hereto.

ANNEX

TRANSPORT

159. Analysis of goods loaded and unloaded in international sea-borne shipping
Thousand metric tons

Country or area	1973							
	Goods loaded - Marchandises embarquées				Goods unloaded - Marchandises débarquées			
	Total	Petroleum - Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum - Pétrole		Dry cargo Cargaisons sèches
		Crude Brut	Products Produits			Crude Brut	Products Produits	
WORLD	3,273,327	1,513,138	354,769	1,405,420	3,235,496	1,515,550	337,882	1,382,064
AFRICA	413,135	272,090	8,990	132,055	94,927	31,266	8,933	54,728
Algeria	* 44,247	36,161	* 3,499	4,587	* 5,752	—	* 150	* 5,602
Angola	15,847	7,323	* 96	* 8,428	2,064	—	336	1,728
Benin	142	—	—	142	546	—	190	356
Cape Verde	* 70	—	—	* 70	410	—	* 314	* 96
Comoros	9	—	—	9	54	—	11	43
Congo	2,659	* 2,050	—	* 609	595	—	* 269	* 326
Egypt	* 6,886	* 4,500	201	2,185	* 9,860	* 2,890	* 199	6,771
Equatorial Guinea	* 40	—	—	* 40	* 140	—	* 5	* 135
Ethiopia	783	—	135	648	1,004	* 680	* 47	* 277
Fr. Territory of the Afars and the Issas	151	—	—	151	759	—	* 490	* 269
Gabon	* 7,708	* 6,018	* 710	* 980	356	—	* 6	* 350
Gambia	76	—	4	72	120	—	25	95
Ghana	2,294	—	218	2,076	2,787	1,069	* 1	* 1,717
Guinea	* 1,500	—	—	* 1,500	* 570	—	* 251	* 319
Guinea-Bissau	40	—	—	40	172	—	31	141
Ivory Coast	* 4,062	—	87	3,995	3,495	1,255	130	2,110
Kenya	2,551	—	393	2,158	4,173	2,716	124	1,333
Liberia	25,713	—	—	25,713	1,133	446	* 3	* 684
Libyan Arab Republic	* 107,166	104,861	* 2,286	19	5,051	—	834	4,217
Madagascar	692	—	196	496	1,116	646	24	446
Mauntania	* 8,500	—	—	* 8,500	* 350	—	* 97	* 253
Mauntius	900	—	—	900	731	—	* 283	* 448
Morocco	19,327	—	12	19,315	6,092	2,262	249	3,581
Mozambique	12,146	—	163	11,983	4,793	792	171	3,830
Nigeria	* 101,442	99,064	278	* 2,100	* 4,700	—	90	* 4,610
Reunion	316	—	—	316	735	—	* 105	* 630
St. Helena	1	—	—	1	9	—	* 1	* 8
Sao Tome and Principe	20	—	—	20	35	—	* 5	* 30
Senegal	2,386	—	* 43	* 2,343	2,377	668	1,005	704
Seychelles	12	—	—	12	110	—	32	78
Sierra Leone	* 3,150	—	* 10	* 3,140	* 830	* 300	* 41	* 489
Somalia	475	—	—	475	437	—	72	365
South Africa	* 18,815	—	* 20	18,795	* 22,265	* 13,665	* 1,188	* 7,412
Sudan	1,175	—	—	1,175	2,143	* 700	* 735	* 708
Togo	2,253	—	—	2,253	385	—	109	276
Tunisia	16,425	12,113	81	4,231	3,212	1,030	346	1,836
United Rep. of Cameroon	891	—	—	891	1,167	—	* 318	* 849
United Rep. of Tanzania:								
Tanganyika	1,061	—	353	708	* 2,602	1,415	373	814
Zanzibar	* 50	—	—	* 50	* 90	—	* 13	* 77
Western Sahara ^a	585	—	—	585	226	—	45	181
Zaire	549	—	* 205	* 344	1,481	732	* 215	* 534
AMERICA, NORTH	484,663	9,187	76,675	398,001	647,255	189,802	146,777	210,676
Antigua	* 229	—	* 222	* 7	* 637	* 596	* 1	* 40
Bahamas	* 15,231	—	11,531	* 3,700	* 16,380	14,295	885	* 1,200
Barbados	* 155	—	* 3	* 152	* 592	* 160	* 172	* 260
Belize	* 110	—	—	* 110	* 140	—	* 49	* 91
Bermuda	* 100	—	—	* 100	* 405	—	* 205	* 200

For general note and foot-notes, see end of table.

TRANSPORTS

159. Analyse des marchandises embarquées et débarquées dans les transports maritimes internationaux

Milliers de tonnes métriques

1974								
Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées				Pays ou zone
Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	
	Crude Brut	Products Produits			Crude Brut	Products Produits		
3,304,218	1,497,558	335,310	1,471,350	3,253,489	1,470,267	311,905	1,471,317	MONDE
388,003	147,901	9,099	131,003	105,050	29,454	9,365	66,231	AFRIQUE
* 42,824	34,466	* 3,628	4,730	* 7,447	—	* 157	* 7,290	Algérie
16,568	7,377	* 262	* 8,929	2,954	—	167	2,787	Angola
127	—	—	127	611	—	171	440	Bénin
27	—	—	27	277	—	* 169	* 108	Cap-Vert
* 10	—	—	* 10	* 60	—	* 9	* 51	Comores
2,764	* 2,450	—	* 314	645	—	* 296	* 355	Congo
* 4,344	* 2,320	575	1,449	* 11,384	* 2,000	* 540	8,844	Egypte
* 45	—	—	* 45	* 145	—	* 17	* 128	Guinée équatoriale
681	—	103	578	1,014	* 610	* 42	* 362	Ethiopie
139	—	—	139	728	—	* 505	* 223	Terr. français des Afars et des Issas
* 10,306	9,071	* 485	* 750	351	—	* 6	* 345	Gabon
99	—	5	94	110	—	19	91	Gambie
2,118	—	289	1,829	3,311	1,108	* 5	* 2,198	Ghana
* 1,550	—	—	* 1,550	* 580	—	* 263	* 317	Guinée
53	—	—	53	134	—	26	108	Guinée-Bissau
3,821	—	153	3,668	3,586	1,418	25	2,143	Côte d'Ivoire
2,468	—	526	1,942	4,054	2,808	16	1,079	Kenya
25,211	—	1	25,210	* 1,125	595	* 3	* 527	Liberia
* 74,065	72,105	* 1,957	3	6,413	—	1,254	5,159	Republique arabe libyenne
673	—	302	371	1,112	604	16	492	Madagascar
* 8,600	—	—	* 8,600	* 360	—	* 97	* 263	Mauritanie
861	—	—	861	802	—	* 295	* 507	Maurice
21,425	—	10	21,415	6,619	2,585	275	3,759	Maroc
10,038	—	23	10,015	3,989	255	188	3,546	Mozambique
* 111,124	108,765	159	* 2,200	* 5,200	—	526	* 4,674	Nigeria
215	—	—	215	813	—	* 116	* 697	Réunion
1	—	—	1	11	—	* 1	* 10	Sainte-Hélène
* 25	—	—	* 25	* 40	—	* 5	* 35	Sao Tomé-et-Principe
2,602	—	* 57	* 2,545	2,013	673	857	483	Sénégal
13	—	—	13	106	—	* 36	* 70	Seychelles
* 3,200	—	* 1	* 3,199	* 800	* 310	* 25	* 465	Sierra Leone
* 500	—	—	* 500	* 450	—	* 80	* 370	Somalie
* 19,100	—	* 30	19,070	* 25,012	* 12,600	* 1,077	* 11,335	Afrique du Sud
884	—	—	884	1,901	* 710	* 745	* 446	Soudan
2,643	—	—	2,643	345	—	101	244	Togo
15,667	11,347	135	4,185	3,977	843	378	2,756	Tunisie
858	—	—	858	1,231	—	* 306	* 925	Rép.-Union du Cameroun
1,112	—	193	919	3,454	1,638	89	1,927	Rép.-Union de Tanzanie
* 55	—	—	* 55	* 95	—	* 13	* 82	Tanganyika
* 600	—	—	* 600	* 250	—	* 50	* 200	Zanzibar
587	—	* 205	* 382	* 1,541	* 697	* 254	* 590	Sahara occidental*
466,825	9,750	68,472	388,603	633,471	299,848	122,586	215,037	Zaire
* 227	—	* 220	* 7	* 583	* 420	* 123	* 40	AMERIQUE DU NORD
* 13,704	—	* 10,204	* 3,500	* 13,127	* 10,000	* 2,027	* 1,100	Antigua
* 134	—	—	* 134	* 676	* 145	* 261	* 270	Bahamas
* 115	—	—	* 115	* 140	—	* 50	* 90	Barbade
* 100	—	—	* 100	* 470	—	* 263	* 207	Belize
								Bermudes

Voir la fin du tableau pour la remarque générale et les notes

TRANSPORT

159. Analysis of goods loaded and unloaded in international sea-borne shipping (continued)

Thousand metric tons

Thousand metric tons

1973

Country or area	Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées			
	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches
		Crude Brut	Products Produits			Crude Brut	Products Produits	
AMERICA, NORTH (continued)								
British Virgin Islands	* 5	—	—	* 5	36	—	8	28
Canada	112,436	961	6,084	105,391	65,961	20,309	4,888	40,764
Cayman Islands	* 4	—	—	* 4	* 37	—	19	* 18
Costa Rica	1,539	—	—	1,539	1,301	447	169	685
Cuba	5,407	—	—	5,407	12,077	5,243	* 1,841	* 4,993
Dominica	* 45	—	—	* 45	* 31	—	* 8	* 23
Dominican Republic	3,424	—	—	3,424	* 1,915	* 775	* 490	* 650
El Salvador	410	—	—	410	1,349	* 612	* 11	726
Greenland	77	—	—	77	278	—	168	110
Grenada	* 25	—	—	* 25	* 106	—	* 21	* 85
Guadeloupe	332	—	—	332	573	—	122	451
Guatemala	690	—	—	690	1,225	* 940	* 23	* 262
Haiti ¹⁾	877	—	—	877	356	—	* 121	* 235
Honduras	1,842	—	* 222	* 1,620	* 1,157	* 681	* 9	* 467
Jamaica	* 10,147	25	72	* 10,050	* 4,141	* 1,780	* 161	* 2,200
Martinique	435	—	119	316	875	486	—	389
Mexico	11,663	—	772	10,891	10,454	3,546	2,614	4,294
Montserrat	—	—	—	—	32	—	9	23
Netherlands Antilles	* 44,713	3,375	38,538	* 2,800	* 52,130	45,293	5,812	* 1,025
Nicaragua	656	—	* 3	* 653	1,163	* 575	* 72	* 516
Panama	1,255	—	540	715	4,225	3,648	20	557
Canal Zone	* 156	—	* 121	* 35	* 4,850	—	* 4,200	* 650
St. Kitts-Nevis-Anguilla	30	—	—	30	60	—	* 9	* 51
St. Lucia	38	—	—	38	143	—	2*	118
St. Pierre and Miquelon	2	—	—	2	102	—	79	23
St. Vincent	27	—	—	27	70	—	* 9	* 61
Trinidad and Tobago	* 21,650	4,736	15,304	* 1,610	* 16,101	14,651	50	* 1,400
Turks and Caicos Islands	* 4	—	—	* 4	* 10	—	* 2	* 8
United States ²⁾	250,194	* 90	* 2,978	247,126	422,102	* 150,456	* 124,303	147,343
United States Virgin Islands ³⁾	* 755	—	* 166	* 589	* 26,464	25,344	231	* 889
AMERICA, SOUTH	313,788	124,755	57,199	131,834	83,547	41,514	4,699	37,334
Argentina	* 14,380	—	15	* 14,365	* 9,760	* 2,088	* 940	* 6,732
Brazil	64,059	2,030	1,751	60,278	49,769	32,111	1,775	15,883
Chile	* 10,605	* 524	51	* 10,030	* 5,800	* 3,140	* 338	* 2,322
Colombia	* 4,916	1,340	* 1,876	* 1,700	* 2,300	—	* 32	* 2,268
Ecuador	11,880	9,937	—	1,943	* 1,940	894	* 14	* 1,032
Falkland Islands (Malvinas)	* 2	—	—	* 2	* 22	—	* 2	* 20
French Guiana	33	—	—	33	148	—	35	113
Guyana	* 2,990	—	—	* 2,990	* 1,070	—	* 570	* 500
Peru	12,329	* 17	* 200	* 12,112	* 3,500	* 1,575	* 219	* 1,706
Surinam	* 4,900	—	—	* 4,900	* 1,300	—	* 643	* 657
Uruguay	* 627	—	6	* 621	2,749	1,706	* 111	* 932
Venezuela	* 187,067	110,907	* 53,300	* 22,860	* 5,189	—	* 20	* 5,169
ASIA	1,321,237	1,034,257	85,888	201,082	885,848	366,721	55,999	463,128
Bahrain	10,992	—	10,916	76	684	—	64	620
Bangladesh	1,023	—	—	1,023	5,759	* 550	* 102	* 5,107
Brunei	12,819	10,390	—	2,429	387	—	* 50	* 337
Burma	654	—	—	654	509	* 200	* 20	* 289

For general note and foot-notes, see end of table

159. Analyse des marchandises embarquées et débarquées dans les transports maritimes internationaux (suite)

Milliers de tonnes métriques

1974

Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées				Pays ou zone
Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	
	Crude Brut	Products Produits			Crude Brut	Products Produits		
AMERIQUE DU NORD (suite)								
* 6	—	—	* 6	36	—	8	28	Iles Vierges britanniques
106,100	1,515	5,174	99,411	60,694	19,207	3,200	38,287	Canada
* 5	—	—	* 5	* 38	—	* 20	* 18	Iles Caïmanes
1,464	—	—	1,464	1,450	* 400	* 133	* 917	Costa Rica
6,430	—	—	6,430	11,029	* 5,350	* 1,850	* 3,829	Cuba
* 45	—	—	* 45	* 32	—	* 9	* 23	Dominique
3,466	—	—	3,466	* 2,065	* 950	* 465	* 650	République dominicaine
433	—	—	433	1,444	* 595	* 12	837	El Salvador
* 80	—	—	* 80	* 280	—	174	* 106	Groenland
* 24	—	—	* 24	* 104	—	* 20	* 84	Grenade
* 260	—	—	* 260	* 595	—	115	* 480	Guadeloupe
* 810	—	—	* 810	* 1,300	* 950	* 36	* 314	Guatemala
913	—	—	913	348	—	* 123	* 225	Haiti ¹⁾
* 1,850	—	200	* 1,650	* 1,158	612	46	* 500	Honduras
* 8,557	—	57	* 8,500	* 4,862	* 2,220	* 442	* 2,200	Jamaïque
* 475	—	167	* 308	* 875	516	—	* 359	Martinique
13,268	534	1,326	11,408	8,962	1,505	1,483	5,974	Mexique
—	—	—	—	* 34	—	* 9	* 25	Montserrat
* 37,323	* 570	* 34,153	* 2,600	* 45,930	* 40,500	* 4,380	* 1,050	Antilles néerlandaises
697	—	—	697	1,305	* 560	* 41	* 704	Nicaragua
1,198	—	* 510	* 688	4,088	3,506	* 30	* 552	Panama
* 84	—	* 49	* 35	* 4,750	—	* 4,000	* 750	Zone du Canal
* 27	—	—	* 27	44	—	* 9	* 35	St-Christophe-et-Nièves et Anguilla
53	—	—	53	139	—	24	115	Sainte-Lucie
2	—	—	2	83	—	65	18	St-Pierre-et-Miquelon
36	—	—	36	69	—	* 9	* 60	St-Vincent
* 22,783	7,001	* 14,382	* 1,400	* 16,280	* 14,683	* 97	* 1,500	Trinité-et-Tobago
* 4	—	—	* 4	* 10	—	* 2	* 8	Turques et Caïques, Iles
245,531	* 130	* 1,910	243,491	424,902	* 169,329	* 102,791	152,782	Etats-Unis ²⁾
* 621	—	* 120	* 501	* 25,569	* 24,400	269	* 900	Iles Vierges américaines ³⁾
315,091	102,365	55,853	156,873	90,522	43,164	4,195	43,163	AMERIQUE DU SUD
* 15,360	—	40	* 15,320	* 9,230	* 2,646	* 660	* 5,924	Argentine
78,462	619	423	77,420	54,898	32,731	1,767	20,400	Bésil
* 12,663	* 344	149	* 12,170	* 6,717	* 3,729	* 88	* 2,900	Chili
* 3,845	68	* 1,505	2,272	* 2,583	—	* 30	2,553	Colombie
10,338	8,342	—	1,996	* 2,118	* 850	* 14	* 1,254	Equateur
* 2	—	—	* 2	* 22	—	* 2	* 20	Iles Falkland (Malvinas)
* 25	—	—	* 25	* 135	—	31	* 104	Guyane française
* 2,950	—	—	* 2,950	* 1,075	—	* 495	* 580	Guyane
11,881	* 190	* 225	* 11,466	* 3,780	* 1,500	321	* 1,949	Pérou
* 4,900	—	—	* 4,900	* 1,360	—	* 666	* 694	Surinam
* 863	—	11	* 852	2,764	1,698	* 121	* 945	Uruguay
* 173,802	92,802	* 53,500	* 27,500	* 5,840	—	—	* 5,840	Venezuela
1,360,929	1,073,819	80,035	207,075	910,022	362,659	57,566	489,797	ASIE
12,478	—	12,408	70	982	—	73	909	Bahrein
* 950	—	* 5	* 945	* 5,795	* 575	* 110	* 5,110	Bangladesh
11,253	* 8,550	—	* 2,703	405	—	* 45	* 360	Brunei
* 660	—	—	* 660	* 565	* 250	* 15	* 300	Birmanie

Voir la fin du tableau pour la remarque générale et les notes

TRANSPORT

159. Analysis of goods loaded and unloaded in international sea-borne shipping (continued)

Thousand metric tons

1973								
Country or area	Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées			
	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches
		Crude Brut	Products Produits			Crude Brut	Products Produits	
ASIA (continued)								
China.....	* 10,100	* 1,000	* 100	* 9,000	* 15,000	—	—	* 15,000
Cyprus.....	1,167	—	—	1,167	2,155	663	169	1,323
Democratic Kampuchea ^a	50	—	—	50	583	—	* 162	* 421
East Timor ¹⁰	* 15	—	—	* 15	* 39	—	5	* 34
Hong Kong.....	4,465	—	69	4,396	13,342	—	4,838	8,504
India ⁷	32,027	—	* 312	* 31,715	29,301	13,443	* 3,040	* 12,818
Indonesia.....	77,761	49,438	8,127	20,196	9,943	—	1,181	8,762
Iran.....	274,503	263,728	* 8,915	* 1,860	5,516	—	—	5,516
Iraq.....	* 41,883	1,270	—	613	1,309	—	—	1,309
Israel.....	* 27,004	* 23,770	* 756	* 2,478	* 50,222	* 24,590	* 357	* 5,275
Japan ⁴	55,986	35	762	55,189	588,279	246,689	26,506	315,084
Jordan.....	811	—	—	811	434	—	—	434
Korea, Dem. People's Rep.....	* 854	—	—	* 854	* 1,210	—	585	* 625
Korea, Rep. of.....	7,964	4	731	7,229	31,798	14,082	244	17,422
Kuwait ²	* 149,190	132,763	* 15,500	927	1,296	—	—	1,296
Lebanon.....	41,467	40,476	—	1,031	3,278	—	305	2,973
Macao.....	58	—	—	58	375	—	32	343
Malaysia.....	—	—	—	—	—	—	—	—
East Sabah.....	5,618	—	—	5,618	1,359	—	310	1,049
Sarawak.....	6,581	3,350	2,030	1,201	696	—	118	578
West.....	5,609	* 50	* 156	* 5,403	8,452	* 2,700	* 1,228	* 4,524
Maldives.....	7	—	—	7	* 10	—	* 1	* 9
Oman.....	14,398	14,393	—	5	* 1,755	—	* 1,328	427
Pakistan ³	3,201	—	* 393	* 2,808	7,303	2,710	646	3,947
Philippines.....	16,768	—	386	16,382	13,928	9,256	83	4,589
Qatar.....	* 28,000	27,485	—	* 515	392	—	* 100	* 292
Saudi Arabia ¹⁴	* 335,480	318,502	* 16,950	* 28	* 3,500	—	—	* 3,500
Singapore.....	* 21,406	21	* 15,681	5,704	* 36,575	21,241	* 6,543	8,791
Socialist Republic of Viet Nam ¹¹	—	—	—	—	—	—	—	—
Former Dem. Rep. of Viet-Nam.....	* 400	—	—	* 400	630	—	230	* 400
Former Rep. of South Viet-Nam.....	* 170	—	—	170	* 6,000	—	* 5,250	* 750
Sri Lanka.....	1,177	—	* 20	* 1,157	3,403	1,758	44	1,601
Syrian Arab Republic.....	34,751	33,954	—	797	2,211	—	* 164	* 2,047
Thailand.....	8,349	—	514	7,835	12,809	7,540	1,081	4,188
Turkey.....	4,798	—	751	4,047	16,074	9,306	126	6,642
United Arab Emirates.....	* 74,833	* 73,664	—	* 1,165	* 900	—	* 320	* 580
Yemen.....	19	—	—	19	531	—	107	* 424
Yemen, Democratic.....	2,873	—	* 2,196	* 677	3,726	3,124	* 80	* 522
EUROPE								
Albania.....	* 2,600	—	—	* 2,600	* 720	—	* 20	* 700
Belgium.....	* 31,218	9	* 5,698	25,511	62,202	15,240	4,279	42,683
Bulgaria.....	2,198	—	—	2,198	17,671	9,652	* 1,519	* 6,500
Denmark ⁵	* 12,790	—	2,705	* 10,085	* 38,520	9,719	9,841	* 18,960
Faeroe Islands.....	98	—	—	98	282	—	82	200
Finland.....	12,792	—	147	12,645	24,400	9,522	3,731	11,147
France.....	37,952	—	* 8,000	* 29,952	219,573	157,336	* 8,300	* 53,737
German Dem. Rep.....	2,648	—	* 30	* 2,618	13,111	5,013	—	8,098
Germany, Fed. Rep. of.....	27,791	17	2,184	25,590	110,230	43,758	9,760	56,712
Gibraltar.....	8	—	—	8	339	—	214	125

For general note and foot-notes, see end of table.

TRANSPORTS

159. Analyse des marchandises embarquées et débarquées dans les transports maritimes internationaux (suite)

Milliers de tonnes métriques

1974								
Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées				Pays ou zone
Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	
	Crude Brut	Products Produits			Crude Brut	Products Produits		
ASIE (suite)								
* 14,130	* 4,000	* 150	* 10,000	* 16,000	—	—	* 16,000	Chine
1,013	—	—	1,013	1,404	510	149	745	Chypre
* 50	—	—	* 50	* 485	—	* 85	* 400	Kampuchea démocratique*
* 17	—	—	* 17	* 40	—	* 6	* 34	Timor oriental ¹⁰
4,920	—	81	4,839	13,709	—	5,000	8,709	Hong Kong
30,722	—	* 160	* 30,562	31,495	14,629	* 3,685	* 13,181	Inde ¹
80,889	34,635	5,688	20,566	10,444	—	1,584	8,860	Indonésie
279,064	268,273	* 9,265	* 1,526	8,268	—	—	8,268	Iran
50,907	50,069	—	838	2,847	—	—	2,847	Irak
* 29,664	* 25,930	* 776	* 2,958	* 33,045	* 26,790	* 352	* 5,903	Israël
67,133	3	2,114	65,016	597,190	238,101	30,230	328,859	Japon ⁴
1,116	—	—	1,116	367	—	—	367	Jordanie
* 1,100	—	—	* 1,100	* 1,850	—	942	* 908	Corée, Rép. populaire dém.
8,258	5	736	7,517	33,829	15,532	328	17,969	Corée, République de
* 124,324	110,847	* 12,600	877	1,571	—	—	1,571	Koweït ⁷
25,654	24,836	—	818	4,006	—	407	3,599	Liban
147	—	—	147	299	—	* 36	* 263	Macao
3,839	—	—	3,839	1,599	—	* 343	* 1,256	Malaisie
5,821	* 3,025	* 1,490	* 1,306	* 700	—	* 116	* 584	Orientale: Sabah
5,566	* 100	* 140	* 5,326	9,169	* 2,850	* 1,210	* 5,109	Sarawak
8	—	—	8	* 11	—	* 1	* 10	Occidentale
14,269	14,266	—	3	* 1,811	—	* 1,168	643	Maldives
3,073	—	* 387	* 2,686	7,559	* 3,100	* 630	* 3,829	Oman
12,964	—	121	12,843	14,532	8,485	713	5,334	Pakistan ³
* 25,400	24,636	—	* 764	582	—	* 134	* 448	Philippines
* 390,110	373,639	* 16,430	* 41	* 4,000	—	—	* 4,000	Qatar
* 19,751	10	* 13,985	5,756	* 36,397	23,059	* 4,099	9,239	Arabie saoudite ¹⁴
* 750	—	—	* 750	* 650	—	293	* 357	Singapour
* 160	—	—	* 160	* 3,480	—	* 2,750	* 730	République socialiste du Viet Nam ¹³
1,119	—	* 20	* 1,099	3,034	1,422	75	1,537	Ancienne Rép. dém. du Viet Nam
29,622	29,066	—	556	3,832	—	* 956	* 2,876	Ancienne Rép. du Sud Viet Nam
9,905	—	141	9,764	11,578	* 6,800	1,022	* 3,756	Sri Lanka
4,305	—	688	3,617	17,630	9,961	253	7,416	République arabe syrienne
* 82,891	* 81,691	—	* 1,200	* 1,021	—	* 421	* 600	Thaïlande
23	—	—	23	578	—	113	465	Turquie
2,308	—	* 2,080	* 228	3,780	2,700	* 72	1,008	Emirats arabes unis
475,754	21,545	89,108	363,181	1,444,625	721,223	111,822	612,380	Yémen
* 2,700	—	—	* 2,700	* 740	—	* 20	* 720	Yémen, démocratique
* 30,779	25	* 6,521	24,233	63,880	13,206	5,073	45,601	EUROPE
2,103	—	—	2,103	20,659	10,629	* 1,515	* 8,515	Albanie
* 12,750	—	2,383	* 10,367	* 39,680	9,283	10,148	* 20,249	Belgique
* 105	—	—	* 105	306	—	99	207	Bulgarie
11,440	—	229	11,211	25,306	9,468	2,903	12,935	Danemark ⁵
38,498	—	* 8,000	* 30,498	221,833	151,613	* 7,000	* 63,220	Îles Féroé
2,954	—	* 30	* 2,924	13,349	5,207	—	8,142	Finlande
35,507	37	3,031	32,439	115,119	47,542	8,007	59,770	France
5	—	—	5	405	—	273	132	Rép. dém. allemande
								Allemagne, Rép. féd. d'
								Gibraltar

Voir la fin du tableau pour la remarque générale et les notes

TRANSPORT

159. Analysis of goods loaded and unloaded in international sea-borne shipping (continued).

Thousand metric tons

Thousand metric tons								
1973								
Country or area	Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées			
	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches
		Crude Brut	Products Produits			Crude Brut	Products Produits	
EUROPE (continued)								
Greece.....	8,846	—	2,460	6,386	25,257	12,321	* 1,591	* 11,345
Iceland.....	403	—	—	403	1,300	—	658	642
Ireland.....	* 3,338	5	482	* 2,851	* 11,402	2,725	2,938	* 5,739
Italy.....	37,041	168	23,842	13,031	237,336	167,521	8,182	61,633
Malta.....	94	—	—	94	941	—	339	602
Netherlands.....	88,121	25,148	23,079	39,894	261,833	135,729	16,583	109,521
Norway.....	42,499	1,531	2,114	38,854	22,325	7,050	4,399	10,876
Poland.....	28,666	—	605	28,061	15,945	—	1,253	14,692
Portugal.....	3,388	—	167	3,221	10,966	4,382	1,174	5,410
Romania.....	* 6,700	—	* 2,500	* 4,200	* 10,643	4,143	—	* 6,500
Spain ^{1,2}	17,038	14	5,081	11,943	71,398	41,356	561	29,481
Sweden ³	40,126	461	1,359	38,306	50,487	11,399	18,922	20,166
United Kingdom.....	57,058	2,852	15,379	38,827	221,085	114,594	20,040	86,451
Yugoslavia.....	3,947	91	198	3,658	* 16,091	8,317	* 537	7,237
OCEANIA	160,534	283	2,893	157,358	42,944	13,270	6,751	22,923
American Samoa.....	56	—	—	56	264	—	154	110
Australia.....	144,710	283	2,789	141,638	25,898	8,477	3,456	13,965
Christmas Island.....	1,366	—	—	1,366	46	—	* 31	* 15
Cook Islands.....	16	—	—	16	28	—	* 3	* 25
Fiji.....	457	—	23	434	764	—	355	409
French Polynesia.....	34	—	—	34	442	—	* 140	* 302
Gilbert Islands.....	748	—	—	748	21	—	2	19
Guam.....	* 150	—	* 79	71	* 2,064	* 1,620	* 184	* 260
Nauru ⁴	* 2,400	—	—	* 2,400	* 45	—	* 28	* 17
New Caledonia.....	2,130	—	—	2,130	1,231	—	785	446
New Hebrides.....	88	—	—	88	129	—	36	93
New Zealand.....	7,452	—	2	7,450	10,812	3,173	937	6,702
Pacific Islands.....	* 18	—	—	* 18	* 117	—	* 64	* 53
Papua New Guinea ⁵	* 671	—	—	* 671	925	—	* 530	* 395
Solomon Islands.....	154	—	—	154	62	—	25	37
Tonga.....	33	—	—	33	19	—	* 9	* 10
Western Samoa.....	51	—	—	51	77	—	12	65
USSR	112,470	* 42,270	* 27,094	* 43,256	36,918	13,200	* —	* 13,718

Note. Analysis by type of cargo presented in this table are mostly estimates based on the information available in external trade statistics and also on the data shown in the international sea-borne shipping table (table 158). Petroleum products exclude bunkers and those products not generally carried by tanker, namely: paraffin wax, petroleum coke, asphalt and lubricating oil which are included with the data for dry cargo. See also the general note to table 158.

¹Twelve months beginning 1 April of year stated.

²Including Kuwait's share of traffic in the Neutral Zone.

³Twelve months ending 30 June of year stated.

⁴Including Puerto Rico. Excluding shipments to and from U.S. Virgin Islands.

⁵Including international ferry traffic.

*Formerly Cambodia.

⁶Excluding shipments to and from United States and Puerto Rico.

*Formerly Spanish Sahara.

⁷Including data for Okinawa prefecture.

⁸Formerly Portuguese Timor.

⁹Twelve months ending 30 September of year stated.

¹⁰Including Canary Islands, Ceuta and Melilla previously presented separately in African area.

¹¹Formerly Democratic Republic of Viet-Nam and Republic of South Viet-Nam.

¹²Including Saudi Arabia's share of traffic in the Neutral Zone.

TRANSPORTS

159. Analyse des marchandises embarquées et débarquées dans les transports maritimes internationaux (suite)

Milliers de tonnes métriques

1974								
Goods loaded — Marchandises embarquées				Goods unloaded — Marchandises débarquées				Pays ou zone
Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	Total	Petroleum — Pétrole		Dry cargo Cargaisons sèches	
	Crude Brut	Products Produits			Crude Brut	Products Produits		
EUROPE (suite)								
12,179	-	* 1,246	* 10,933	25,284	12,197	* 792	* 12,295	Grèce
363	—	-	363	1,373	—	618	755	Islande
* 3,387	—	422	* 2,965	* 10,856	2,652	2,824	* 5,380	Irlande
35,920	402	19,733	15,785	225,515	152,779	9,156	63,580	Italie
91	—	—	91	914	—	* 321	* 593	Malte
85,120	18,856	21,641	44,623	250,916	113,972	18,725	118,219	Pays-Bas
40,549	1,982	1,223	37,344	22,644	6,729	3,748	12,167	Norvège
33,788	—	626	33,162	18,060	—	1,015	17,045	Pologne
3,470	—	263	3,207	13,032	5,765	1,083	6,184	Portugal
* 7,000	—	* 2,500	* 4,500	* 12,000	4,538	—	* 7,462	Roumanie
18,031	206	4,567	13,258	76,569	43,764	1,186	31,619	Espagne ¹²
41,284	1,025	1,859	38,400	55,233	11,371	20,901	22,961	Suède ¹³
53,739	1,012	14,586	38,141	213,909	113,286	15,030	85,593	Royaume-Uni
3,992	—	248	3,744	* 17,043	7,422	* 585	9,036	Yougoslavie
179,410	178	2,513	176,719	47,753	13,519	7,171	27,063	Océanie
65	—	—	65	319	—	134	185	Samoa américaines
161,055	178	2,430	158,447	29,263	8,518	3,574	17,171	Australie
1,714	—	—	1,714	52	—	* 36	* 16	Ile Christmas
10	—	—	10	21	—	* 5	* 16	Iles Cook
* 480	—	35	* 445	682	—	359	323	Fidji
* 40	—	—	* 40	* 470	—	* 147	* 323	Polynésie française
* 800	—	—	* 800	* 25	—	* 4	* 21	Iles Gilbert
* 125	—	* 48	77	* 2,085	* 1,650	* 175	* 260	Guam
* 3,000	—	—	* 3,000	* 50	—	* 33	* 17	Nauru ¹⁴
3,565	—	—	3,565	1,264	—	441	423	Nouvelle-Calédonie
104	—	—	104	145	—	37	108	Nouvelles-Hébrides
7,514	—	—	7,514	12,110	3,351	1,204	7,555	Nouvelle-Zélande
* 23	—	—	* 23	* 125	—	* 71	* 54	Iles du Pacifique
* 700	—	—	* 700	* 1,000	—	* 503	* 497	Papouasie-Nouv.-Guinée ¹⁵
* 145	—	—	* 145	* 70	—	* 27	* 43	Iles Salomon
46	—	—	46	21	—	* 9	* 12	Tonga
24	—	—	24	51	—	* 12	* 39	Samoa-Occidental
118,206	* 40,000	* 36,230	* 47,976	22,046	4,400	* —	* 17,646	URSS

Remarque. Les analyses par type de cargaison présentées dans ce tableau sont principalement des estimations fondées sur les renseignements disponibles dans les statistiques du commerce extérieur et aussi sur les données du tableau relatif aux transports maritimes internationaux (tableau 158). Les produits dérivés du pétrole ne comprennent pas les combustibles de soute et les produits non transportés en général par bateau-citerne, à savoir: paraffine, coke de pétrole, asphalté et les huiles de graissage qui sont compris avec les données des cargaisons sèches. Voir également la remarque générale au tableau 158.

¹ Douze mois commençant le 1^{er} avril de l'année indiquée.

² Y compris la partie du trafic de la Zone neutre de Koweït.

³ Douze mois finissant le 30 juin de l'année indiquée.

⁴ Y compris Porto Rico. A l'exclusion du trafic avec les Iles Vierges américaines.

⁵ Y compris le trafic international par ferry.

⁶ Anciennement Cambodge.

⁷ A l'exclusion du trafic avec les Etats-Unis et Porto Rico.

⁸ Anciennement Sahara espagnol.

⁹ Comprend les données pour la préfecture d'Okinawa.

¹⁰ Anciennement Timor portugais.

¹¹ Douze mois finissant le 30 septembre de l'année indiquée.

¹² Y compris Canaries, Ceuta et Melilla présentées anciennement en séparation dans la zone d'Afrique.

¹³ Anciennement la République démocratique du Viet Nam et la République du Sud Viet Nam.

¹⁴ Y compris la partie du trafic de la Zone neutre de l'Arabie saoudite.

D. ANALYSIS OF COMMENTS AND PROPOSALS BY GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS ON THE DRAFT CONVENTION ON THE CARRIAGE OF GOODS BY SEA, AND ON THE DRAFT PROVISIONS CONCERNING IMPLEMENTATION, RESERVATIONS AND OTHER FINAL CLAUSES PREPARED BY THE SECRETARY-GENERAL

Document A/CONF.89.8

[Original: English]
[10 November 1977]

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1. Introduction

1. The present document, which analyses the comments and proposals of Governments and interested international organizations¹ on the draft Convention on the Carriage of Goods by Sea (see document A/CONF.89/5 above) and on the draft provisions concerning implementation, reservations and other final clauses for the draft Convention prepared by the Secretary-General (*ibid.*, documents A/CONF.89/6 and Add. 1 and 2), has been prepared for submission to the Conference in response to a decision of the United Nations Commission on International Trade Law (UNCITRAL) taken at its ninth session (12 April-7 May 1976).²

2. All comments received as at 31 October 1977 are analysed, and as at that date comments and proposals

¹ The comments and proposals received as at 1 October 1977 are reproduced in document A/CONF.89/7, and comments and proposals received thereafter are reproduced in addenda to that document. The introduction to document A/CONF.89/7 sets forth the background to the receipt of the comments and proposals.

² See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, para. 44.*

had been received from the following Governments and international organizations:³

GOVERNMENTS

Australia, Austria, Byelorussian Soviet Socialist Republic, Canada, Chad, Czechoslovakia, France, German Democratic Republic, Germany, Federal Republic of, Iraq, Mauritius, Netherlands, Norway, Qatar, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

INTERNATIONAL ORGANIZATIONS

Asian-African Legal Consultative Committee, United Nations Economic Commission for Latin America, International Maritime Committee, International Civil Aviation Organization, International Chamber of

³ In addition to the comments and proposals contained in document A/CONF.89/7, the present document analyses comments and proposals submitted by the Governments of Iraq and of the United Kingdom of Great Britain and Northern Ireland.

Commerce, International Chamber of Shipping, International Shipowners' Association, International Union of Marine Insurance, and Central Office for International Railway Transport, Berne.⁴

3. In the analysis, the comments and proposals are considered under the article or, where appropriate, the paragraphs or subparagraphs of the article to which they refer. Where the comments or proposals concern the article as a whole, and not a particular paragraph of an article, they are analysed under the heading "article as a whole". Since the analysis is complementary to document A/CONF.89/7 and the addenda thereto which reproduce the comments and proposals in full, the analysis only sets forth the substance of a comment or proposal and the principal arguments adduced in support thereof. To facilitate reference, if considered necessary, to the comment in its original form, the comments and proposals have been reproduced in document A/CONF.89/7 and the addenda thereto in numbered paragraphs, and the analysis refers to these paragraph numbers. Whenever a proposal sets forth a draft text for the modification of the draft Convention, the analysis reproduces that draft text.⁵

4. Certain comments refer by way of comparison to provisions in other transport conventions. These provisions are reproduced in foot-notes when such comments are analysed. Although some comments refer to provisions of the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924, and of the Protocol to amend that Convention signed at Brussels on 23 February 1968, such provisions are not reproduced, as they are contained in a document which will be placed before the Conference setting forth a comparative table of the legal provisions of these two instruments and the draft Convention on the Carriage of Goods by Sea.⁶

ABBREVIATIONS

5. The names of the international organizations which commented on the draft Convention are abbreviated as follows:

AALCC	Asian-African Legal Consultative Committee
ECLA	United Nations Economic Commission for Latin America
CMI	International Maritime Committee
ICAO	International Civil Aviation Organization

⁴ Certain documents of the United Nations Conference on Trade and Development will be placed before the Conference. These documents are mentioned in paragraph 4 of document A/CONF.89/4 ("Methods of work and procedures of the Conference"). The documents are not analysed herein because of their extensive nature and special character, and because all but one of them were issued prior to the approval by UNCITRAL of the draft Convention on the Carriage of Goods by Sea.

⁵ It should be noted, however, that, under the provisional rules of procedure of the Conference (A/CONF.89/3), these draft texts must be submitted at the Conference in accordance with rule 28 in order to qualify as proposals under the rules.

⁶ "A comparative table of legal provisions relating to the international regulation of the carriage of goods by sea" (Doc TD B C.JSL 19.Supp.1, prepared by the UNCTAD secretariat).

ICC	International Chamber of Commerce
ICS	International Chamber of Shipping
INSA	International Shipowners' Association
IUMI	International Union of Marine Insurance
OCTI	Central Office for International Railway Transport, Berne

6. The titles of the transport conventions referred to in the analysis are abbreviated as follows:

Arrest Convention of 1952: International Convention relating to the Arrest of Seagoing Ships, signed at Brussels on 10 May 1952 (United Nations, *Treaty Series*, vol. 439, p. 195; *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, published by UNCITRAL, vol. II, chap. II).

Athens Convention of 1974: Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, signed at Athens on 13 December 1974 (IMCO document, Sales No. 75.03.E).

Brussels Convention of 1924: International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (League of Nations, *Treaty Series*, vol. CXX, p. 157; *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, published by UNCITRAL, vol. II, chap. II).

Brussels Protocol of 1968: Protocol to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924, Protocol signed at Brussels on 23 February 1968 (*Register of Texts of Conventions and Other Instruments concerning International Trade Law*, published by UNCITRAL, vol. II, chap. II).

CIM Convention: International Convention Concerning the Carriage of Goods by Rail, signed at Berne on 25 October 1952 (United Nations, *Treaty Series*, vol. 241, p. 336).

CIV Convention: International Convention concerning the Carriage of Passengers and Luggage by Rail, signed at Berne on 25 October 1952 (United Nations, *Treaty Series*, vol. 242, p. 354).

CMR Convention: Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956 (United Nations, *Treaty Series*, vol. 399, p. 189).

Guadalajara Convention of 1961: The Convention supplementary to the Warsaw Convention for the Unification of certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (ICAO document 8181).

Hague Protocol of 1955: Protocol to amend the Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929, Protocol signed at The Hague on 28 September 1955 (United Nations, *Treaty Series*, vol. 478, p. 371).

London Convention of 1976: Convention on Limitation of Liability for Maritime Claims, 1976, signed at London

on 19 November 1976 (IMCO document LEG CONF.5/10).

Montreal Protocol No. 4: Montreal Protocol No. 4 to amend the Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended by the Protocol done at The Hague on 28 September 1955, signed at Montreal on 25 September 1975 (ICAO document 9148).

Warsaw Convention of 1929: Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929 (League of Nations, *Treaty Series*, vol. CXXXVII, p. 11).

II. Analysis of comments and proposals

A. COMMENTS AND PROPOSALS ON THE DRAFT CONVENTION AS A WHOLE

7. The following respondents, in commenting on the draft Convention as a whole, are of the view that its provisions are, in general, acceptable and that the draft Convention would be a suitable basis for the discussions at the United Nations Conference on the Carriage of Goods by Sea: Australia (paras. 3-5),⁷ Austria (para. 1), Canada (general comment), Czechoslovakia (paras. 1 and 7), France (paras. 1-3), Germany, Federal Republic of (para. 1), Iraq (para. 1), Mauritius (paras. 1, 2 and 4), Netherlands (para. 1), Norway (paras. 1-4), Qatar (paras. 8-11 and 35), Sweden (paras. 1-2), United Kingdom (para. 1), United States of America (paras. 1-3), AALCC (para. 1) and OCTI (paras. 10-11).

8. The respondents mentioned in paragraph 7 above give the following reasons for their general approval of the draft Convention:

(a) The draft Convention as a whole is a carefully worked out and balanced compromise between different legal and economic systems and between the interests of all the parties to contracts for the carriage of goods by sea (Australia, para. 3; France, para. 2; Norway, paras. 2-4; United States, paras. 1-2);

(b) It is an improvement over the corresponding provisions in the Brussels Convention of 1924 (Mauritius, para. 4; Norway, para. 2; Qatar, paras. 8-11 and 35; Sweden, paras. 1-2; United States, para. 2);

(c) It serves the interest of harmonization with the international conventions governing other modes of transport and might make it easier to adopt in the future a convention on multimodal transport (Austria, para. 1; France, para. 1; United States, para. 3; OCTI, paras. 10-11);

(d) In the formulation of the draft Convention, due consideration was given to the guidelines set forth in the 1971 resolution of the UNCTAD Working Group on International Shipping Legislation⁸ (Canada, general

comment; Czechoslovakia, para. 7; Norway, para. 1; Qatar, paras. 10, 11 and 35).

9. With the exception of Mauritius, all the respondents (listed in para. 7 above), who find the draft Convention as a whole generally acceptable and suitable for consideration by the United Nations Conference on the Carriage of Goods by Sea, note, however, that particular difficulties still exist with the present text and suggest appropriate methods to resolve these difficulties.⁹ Australia (paras. 4-5), France (para. 3) and the United States (para. 4) stress that the articles in the draft Convention on which they do not make particular comments are fully acceptable in their present form.

10. Norway (para. 3) and Sweden (para. 3) stress that the new Convention on the Carriage of Goods by Sea should be such as to gain world-wide acceptance quickly, so that within a relatively short period it will replace the other international conventions on the subject.

11. ICC (para. 8), ICS (para. 2) and IUMI (para. 7) note their reservations regarding the acceptability of the draft Convention and express the view that, at least in so far as the legal régime for the liability of carriers is concerned, the interests of international trade will be better served by retention of the Brussels Convention of 1924 as amended by the Brussels Protocol of 1968.

12. Australia (para. 1), Canada (para. 4), Germany, Federal Republic of (para. 2), the German Democratic Republic (para. 20), Norway (para. 8), Sweden (para. 12) and the United Kingdom (para. 3) specifically reserve their right to introduce further amendments at the diplomatic conference.

TITLE OF THE DRAFT CONVENTION

13. The Byelorussian Soviet Socialist Republic (para. 1), the Union of Soviet Socialist Republics (para. 1) and INSA (para. 1) note that the draft Convention does not cover all questions concerning the carriage of goods by sea; for example, article 2, paragraph 3, excludes its applicability to carriage under charter-parties. They suggest therefore that the draft Convention should bear a title such as "Convention on the Unification of certain Rules governing the Carriage of Goods by Sea".

B. COMMENTS AND PROPOSALS ON PROVISIONS OF THE DRAFT CONVENTION

PART I. GENERAL PROVISIONS

Article 1. Definitions

Article as a whole

Proposed additional definitions

14. Austria (para. 3) and Qatar (para. 12) propose that a definition of the term "shipper" be added to the draft Convention. Austria suggests the following wording: "Shipper" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded

⁷ These paragraph numbers indicate the paragraphs in the comments and proposals by the respective Governments or international organizations as contained in document A/CONF.89/1.

⁸ TD/B/C.4.86, annex I, also reproduced in the *Yearbook of the United Nations Commission on International Trade Law*, vol. II: 1971, part two, chap. III, annex II.

⁹ These comments are noted below, in the discussion of the respective articles of the draft Convention to which they pertain.

with a carrier and for whom the carriage of goods by sea is performed."

15. Austria (para. 4) also proposes that the terms "port of loading" and "port of discharge" be defined in order to make it clear that the scope of these terms is not limited strictly to the respective port areas; the following are the proposed definitions:

(a) "'Port of loading' means any port or place in which the ship was actually loaded."

(b) "'Port of discharge' means any port or place in which the ship was actually discharged."

16. Qatar (para. 12) suggests that article 1 should include a definition of the term "ship".

Paragraph 1

17. Canada (para. 1 (d)) expresses agreement with the definition of "carrier" and approves the distinction drawn between that term and the term "actual carrier".

18. The United States (para. 5) proposes that the phrase "in whose name" be replaced in this paragraph by the phrase "by whose authority" so as to ensure that a person "in whose name", but without whose authority, a contract for carriage of goods is concluded will not be considered liable under that contract.

Paragraph 2

19. Canada (para. 1 (d)) expresses agreement with the definition of "actual carrier" and with the distinction drawn between that term and the term "carrier".

20. ICAO (para. 1) suggests that the definition of "actual carrier" should be based on the definition of that term in article I (c) of the Guadalajara Convention of 1961 as follows: "'Actual carrier' means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage . . . Such authority is presumed in the absence of proof to the contrary."

21. Iraq (para. 2) and AALCC (para. 2) suggest that consideration be given to the addition of the word "subsequently" immediately before the last word of the paragraph.

Paragraph 3

22. Qatar (para. 13) notes its dissatisfaction with the definition of the term "consignee" in the draft Convention.

Paragraph 4

23. France (para. 1), Qatar (para. 14) and ICS (para. 9) note that the definition of "goods" in the draft Convention covers live animals, which were specifically excluded in the definition of goods contained in the Brussels Convention of 1924. ICS notes that the carriage of live animals poses special risks and problems. In the view of ICS, such carriage should be the subject of special contracts between shippers and carriers and should not be within the mandatory ambit of the draft Convention.

24. The Byelorussian Soviet Socialist Republic (para. 2), the German Democratic Republic (para. 2), ICS (para. 11) and INSA (para. 2) express reservations about the

inclusion of packaging in the definition of "goods" on the ground that carriers should be protected against claims based on the normal wear and tear of packaging. The Byelorussian SSR and the USSR propose that this aim should be accomplished by an appropriate amendment of article 15, subparagraph 1 (b) and by a clarification of the definition of "goods".

25. The German Democratic Republic (para. 4), ICS (para. 11) and INSA (para. 2) propose that the definition of "goods" should only include packaging of a durable, reusable nature, such as containers. The German Democratic Republic and INSA¹⁶ suggest deletion of the phrases "or where they are packed" and "or packaging" from the definition of "goods", while ICS advocates the addition of the phrase "designed for multiple reuse" after the word "packaging".

26. In order to eliminate possible conflict with the Athens Convention of 1974, ICS (para. 10) advocates the express exclusion from the definition of "goods" of "passengers' luggage, liability for which is governed by the 1974 International Convention relating to the Carriage of Passengers and their Luggage by Sea."¹⁷

27. ICS (para. 12) expresses the view that the draft Convention should contain a provision permitting shippers and carriers to agree on the exclusion of certain specified types of goods from the coverage of the draft Convention.

Paragraph 5

28. Australia (paras. 6-12) and the United States (para. 6) express concern that this paragraph may be viewed as limiting the scope of the draft Convention strictly to shipments from one port to another, thus excluding all shipments either beginning "through transit" at an inland location or terminating at an inland location even if a substantial portion of such shipments is by sea.

29. In order to meet this concern, the United States proposes the following definition of "contract of carriage": "'Contract of carriage' means any contract in which the carrier against payment of freight undertakes to carry goods by sea, in accordance with article 2."

30. Australia (para. 6) notes that the Brussels Convention of 1924 applies to the sea leg of shipments under through bills of lading from or to inland points. In order to preserve this protection for shippers and consignees under the draft Convention, Australia (paras. 7-12) considers it necessary to extend the scope of the draft Convention to cover the sea leg of all contracts that involve the carriage of goods by sea, at least until the adoption of a comprehensive convention regulating multimodal transport. Australia (para. 12) proposes that a

¹⁶ For consequential amendments proposed by the Byelorussian SSR, the USSR and INSA to article 15, subparagraph (b), see para. 177, in the analysis of comments on article 15.

¹⁷ For an observation by ICS to the same effect in relation to article 25, paragraph 3, see paragraph 254 below, in the analysis of comments on article 25.

provision intended to resolve this problem be added to the final clauses of the draft Convention.¹²

31. In order to cover the case where the carrier only arranges for the carriage of goods by sea but does not undertake to carry the goods himself, the United Kingdom (para. 4) suggests substitution of the words "undertakes that goods will be carried" for the words "undertakes to carry goods" in the definition of the term "contract of carriage".

32. ICS (paras. 13-14) proposes that the definition of "contract of carriage" should exclude certain types of contracts which are usually negotiated "at arm's length" between shippers and carriers, such as for shipment of personal effects, vehicles and experimental cargoes. ICS notes that in these cases valuation of the cargo for purposes of insurance is very difficult and that, in order to avoid possible over-insurance and resulting high freight charges, it is preferable to let the shipper decide on the amount of insurance needed.

Paragraph 6

33. The United States (paras. 7-10) and ICC (paras. 11-13) note that the present definition of "bill of lading" covers only negotiable bills of lading which must be surrendered in exchange for delivery of the goods, and thus excludes non-negotiable way-bills and "straight" bills of lading. They note that the use of negotiable bills of lading is declining as a consequence of the increased speed of transportation of goods, an increase in shipments not involving the extension of credit through banks, and the growing reliance on electronic data processing instead of the traditional "paper" documentation.

34. The United States (para. 10) proposes the following revision of this paragraph: "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."

35. ICC (para. 13) suggests that the draft Convention should take into account the increasing use of electronic data processing in the field of transport and suggests as a model the Montreal Protocol No. 4.¹³

¹² For an analysis of the comments of Australia and the United States noted at paras. 28-30 above in so far as they relate to multimodal transport, see paras. 261-262 below, in the analysis of comments on the draft provisions concerning implementation, reservations and other final clauses, contained in part C below. The text proposed by Australia is reproduced as alternative A of the article "Multimodal transport" contained in the text of the draft provisions concerning implementation, reservations and other final clauses prepared by the Secretary-General (document A/CONF.89/6).

¹³ The relevant article of the Montreal Protocol No. 4 reads as follows:

"Article 5

"1. In respect of the carriage of cargo an air way-bill shall be delivered

"2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air way-bill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means."

Article 2. Scope of application

Article as a whole

36. Canada (para. 1 (a)) and France (para. 1) approve the application of the draft Convention to all contracts for the carriage of goods by sea, including contracts not evidenced by bills of lading.

37. Australia (paras. 6-12) states that the provisions on the scope of application of the draft Convention should be clarified in order to ensure that the sea leg of a multimodal transport of cargo is covered. Australia (para. 12) proposes that a provision intended to resolve this problem be added to the final clauses of the draft Convention.¹⁴

38. ICS (paras. 15-18) expresses the view that the mandatory application of the draft Convention to all contracts for the carriage of goods by sea is undesirable. ICS states that there are cases, such as shipments of experimental cargoes and goods of no commercial value, where shippers do not want the protection afforded by the draft Convention. In order to permit parties to a contract of carriage to exclude by agreement the application of the draft Convention, ICS proposes the addition of the following paragraph to article 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."¹⁵

Paragraph 1

39. The United States (para. 11) expresses the view that the scope of application of the draft Convention established under this paragraph should take into account not only the ports of loading and discharge provided for in the contract of carriage, but also the actual ports of loading and discharge. The United States notes that often in practice the port of discharge is not named in the contract of carriage and that the definition of "bill of lading" in article 1, paragraph 6, does not require that a port of discharge be named. The United States (para. 11) proposes the following revision of the first part of the paragraph, consolidating the existing subparagraphs (a) and (b) into a new subparagraph (a) and adding two new subparagraphs:

"The provisions of this Convention shall be applicable to all contracts for carriage of goods by sea between ports in two different States, if:

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

"(b) The port of loading is located in a Contracting State, or

¹⁴ See foot-note 12.

¹⁵ For similar comments by ICS in relation to article 1, see paragraph 27 above, in the analysis of comments on article 1.

(c) The port of discharge is located in a Contracting State, or

"..."

40. INSA (para. 3) notes that the holder of the bill of lading can agree with the carrier to receive the goods other than at the port of discharge provided for in the original contract of carriage and suggests the following new wording for subparagraph (b):

"The port of destination provided for in the contract or the actual port of discharge is located in a Contracting State, or ..."

41. The AALCC (para. 3) suggests that the question of the applicability of this paragraph to a carriage of goods between a State and a dependent territory should be considered.

Paragraph 3

42. The German Democratic Republic (para. 5) proposes that this paragraph should exclude time charter-parties, but not voyage charter-parties, from the scope of the draft Convention. The German Democratic Republic suggests the following text for paragraph 3:

"The provisions of this Convention shall not be applicable to time charter-parties."¹⁶

43. INSA (para. 4) proposes the following rewording of the second sentence of the paragraph in order to make it clear that the relationship between the carrier and the holder of the bill of lading is always governed by the bill of lading:

"However, when the bill of lading is issued pursuant to a charter-party, the provisions of the Convention shall apply to such a bill of lading if the holder of the bill of lading is not a charterer."

Paragraph 4

44. The United Kingdom (para. 5) proposes a revision of this paragraph, intended to clarify that, while volume contracts are excluded from the scope of the draft Convention, individual shipments under such contracts are covered unless carried under charter-parties:

"If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention shall not apply to such contract, but (subject to paragraph 3 of this article) shall apply to shipments made according to such contract."

Article 3. Interpretation of the Convention

45. There are no comments or proposals on this article.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

Article as a whole

Extension of the period of carrier responsibility

46. Canada (para. 1 (b)), France (paras. 1 and 4),

¹⁶ The German Democratic Republic (para. 5) suggests that, if its proposal is adopted, the second sentence of article 2, paragraph 4, should be deleted.

Mauritius (para. 3) and Qatar (para. 15) approve the extension under this article of the period of responsibility of the carrier beyond the period of responsibility established by the Brussels Convention of 1924. Mauritius notes that the provisions of the article recognize the role of port authorities and are consistent with the applicable national law in Mauritius. France (para. 4) points out that the article is more restrictive than the applicable French law, which extends to the taking over of goods by the carrier outside the port of loading and the delivery of goods at a place beyond the port of discharge.

47. ICS (paras. 19-21) expresses disagreement with the extension of the period of carrier responsibility on the following grounds:

(a) The extension of the period of carrier responsibility will lead to insurance being taken out by the carrier, and not by the cargo owner;

(b) The exact extent of carrier liability will be uncertain, leading to expensive litigation;

(c) The state of uncertainty will cause prudent cargo owners to continue to take out insurance as if the period of carrier responsibility under the Brussels Convention of 1924 remained in force. Since the carrier will also take out insurance for his extended period of responsibility under the draft Convention, the goods would be doubly insured, and this will lead to increased transport costs;

(d) The extended period for which the carrier is made responsible by this article concerns to a large degree responsibility for dock pilferage rather than for carriage of goods by sea. Variable insurance rating for dock pilferage, based for example on the nature of the cargo and the record of a particular port, will become very difficult, and hence the actual cost of such insurance will be higher when it will constitute merely a segment of the carrier's liability insurance coverage.

Paragraphs 1 and 2

Need for clarification of the period of carrier responsibility

48. The German Democratic Republic (para. 6), the United Kingdom (paras. 6-7), the United States (para. 12), CMI (para. 1), and INSA (para. 5) observe that the period of carrier responsibility established by the phrase "the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge" in paragraph 1, coupled with the provisions in paragraph 2 concerning the period the carrier is "deemed to be in charge of the goods", is uncertain. They note that sea carriers often take over the goods not at the port of loading, but at some other point (e.g., inland) or at a port of trans-shipment, and that sea carriers often agree with shippers or consignees to hand over the goods at some location beyond the geographic limits of the port of discharge.

Proposals for clarification

49. The following proposals are made for revising the text of either paragraph 1 or paragraph 2 of this article, in order to clarify the geographic limits for carrier responsibility under the draft Convention:

(a) Delete from paragraph 1 the phrase "at the port of loading, during the carriage and at the port of discharge" (German Democratic Republic, para. 6¹⁷, INSA, para. 5);

(b) Define "port of loading" and "port of discharge" to include terminals located outside the official limits of sea ports (German Democratic Republic, para. 6);

(c) Add a provision to subparagraph 2 (a) to the effect that delivery will be deemed to have taken place at the port of discharge in cases where the goods are handed over to the consignee outside that port (United Kingdom, para. 7);

(d) Amend the introductory language of paragraph 2 to read:

"For the purpose of paragraph 1 of this article, the carrier shall be deemed to be in charge of the goods from the time he has taken over the goods from the shipper or a transporter by land or air or inland water at the port of loading or the goods have been brought to the port of loading of the carrier until the time the carrier has delivered the goods:"

Furthermore, add the following new subparagraph 2 (d):

"The goods are removed from the port of discharge by the carrier in the course of delivering them to the consignee." (United States, para. 12);

(e) Clarify the meaning of the phrase "in charge of the goods" so as to exclude carriage on land and warehousing not forming an integral part of the carriage of goods by sea (CMI, para. 1);

(f) Combine into one paragraph the provisions presently contained in paragraphs 1 and 2 (INSA, para. 5).

Dissimilar carrier responsibility at port of loading and at port of discharge

50. The German Democratic Republic (para. 7), the Netherlands (paras. 4-5), the United Kingdom (para. 8) and ICS (paras. 22-23) note that in relation to "delivery", if the law or regulations applicable at the port of discharge require that the goods be handed over to an authority or other third party, the responsibility of the carrier would, under subparagraph 2 (c), terminate upon the handing over of the goods to such authority or other third party. However, it is argued that the carrier is not under article 4 relieved from responsibility if during "loading" he is similarly required to hand over the goods to an authority or other third party.

Proposals for equating carrier responsibility at port of loading and at port of discharge

51. The following proposals are submitted for the purpose of relieving the carrier from responsibility, also at the port of loading, for the period during which the goods are in the actual custody, mandated by law, of an authority or other third party:

(a) Replace subparagraph 2 (c) by a new paragraph 3 which would read:

¹⁷ The German Democratic Republic (para. 6) notes, however, that its first preference is for the alternative solution described below in subparagraph (b) of this paragraph.

"The goods shall not be deemed to be in the charge of the carrier during the period they are in the hands of an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, respectively discharge, the goods must be handed over before being loaded, respectively after having been discharged." (Netherlands, para. 4);¹⁸

(b) Extend the principle in subparagraph 2 (c), relieving the carrier from liability at the port of discharge in certain cases, also to the port of loading (United Kingdom, para. 8);

(c) Amend the introductory language of paragraph 2 to read:

"For the purpose of paragraph 1 the carrier shall be presumed in the absence of evidence to the contrary to be in charge of the goods from the time he has taken them into his custody within the port area until he has delivered them." (ICS, para. 23).

Other proposals

52. The German Democratic Republic (para. 7) expresses the view that the provisions of paragraph 2 necessitate the establishment of an international regime governing the responsibility for loss or damage to goods of persons whose services a sea carrier, shipper or consignee may be obliged to use in delivering or handing over goods covered by a contract for the carriage of goods by sea. The German Democratic Republic notes in particular the need to confer on carriers a right of recourse against such persons.

Article 5. Basis of liability

Support for article 5

53. Canada (para. 1(c)) and Qatar (para. 17) note with satisfaction that article 5 eliminates to a large extent the list of exemptions from carrier liability found in article 4, paragraph 2, of the Brussels Convention of 1924. France (para. 1) and Qatar (para. 16) express support for the general principle in article 5 regarding the burden of proof, according to which the carrier, unless he presents evidence to the contrary, is presumed to be liable for loss of or damage to goods in his charge.

54. While the comment by ICC is critical of the new liability system established by this article, ICC (para. 9) notes that, in the ICC Working Party that considered the draft Convention, one member (a representative of shippers) dissented from this position. In the view of the dissenting member of the ICC Working Party, the new liability system is logical and corresponds to the commercial interests of the parties involved.

Criticism of article 5

55. Respondents critical of the allocation of the risks of carriage between the carrier and cargo interests in article 5 are agreed, with the exception of ICC (para. 8) and IUMI (para. 7), that the complete list of exemptions

¹⁸ The Netherlands (para. 5) notes that, if its proposal is adopted, the present paragraph 3 will have to be renumbered as paragraph 4, and its opening phrase will have to be amended to read "In paragraphs 1, 2 and 3 of this article . . .".

from carrier liability in article 4, paragraph 2, of the Brussels Convention of 1924 need not be retained. It is suggested by the Netherlands (para. 6), ICS (para. 6) and CMI (paras. 11 and 15) that the exemption for fault "in the management of the ship" can be deleted.

56. ICC (para. 8) and IUMI (para. 7) express the view that the rules on carrier liability contained in the Brussels Convention of 1924, as amended by the Brussels Protocol of 1968, serve the interests of international trade and commerce better than the liability régime established by article 5 of the draft Convention.

57. Sweden (para. 4) notes that article 5 contains a number of controversial elements and suggests (para. 7) that further efforts should be made at the United Nations Conference on the Carriage of Goods by Sea to find compromises capable of attracting wider support.

58. (a) Criticisms directed at specific elements in the legal régime established by article 5 are discussed under the following headings:

A. Defence of "error in navigation" (paras. 59-61 below);

B. Defence of fire (paras. 62-64);

C. Delay in delivery (paras. 65-66);

D. General rules on carrier liability (paras. 67-70);

(b) Assessments by respondents of the possible harmful consequences of the adoption of article 5 in its present form are listed under the heading:

E. Possible harmful consequences (para. 71).

A. Defence of "error in navigation"

59. The Byelorussian SSR (para. 4), the Federal Republic of Germany (paras. 3-5), the Netherlands (para. 6), the United Kingdom (paras. 2 and 10-14), the USSR (para. 6), ICS (paras. 6 and 32), CMI (paras. 11 and 15), INSA (paras. 13-14) and IUMI (para. 3) are critical of the fact that article 5 does not retain for the carrier the exemption from liability based on "error in navigation", found in article 4, subparagraph 2 (a) of the Brussels Convention of 1924.

60. OCTI (para. 13) notes, however, that the elimination of the defence of "error in navigation" is consistent with the aim of harmonizing the international conventions governing different modes of transport.

61. The Byelorussian SSR (para. 4), ICS (para. 32) and INSA (para. 13) submit proposals that would include in article 5 as a defence available to the carrier the defence based on "error in navigation".

(a) The Byelorussian SSR (para. 4) proposes the inclusion in article 5, paragraph 6, of "a provision relieving the carrier of liability for loss of or damage to the goods and for delay in delivery in the event of a so-called 'navigational error'";

(b) ICS (para. 32) proposes a revised text for article 5, paragraph 1, which reads in its relevant part¹⁹ as follows:

"1. The carrier shall be liable for loss resulting from loss or damage to the goods if the occurrence which caused the loss or damage took place while the goods were in his charge as defined in article 4 unless:

"(a) The loss or damage resulted from act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation of the ship, or

"..."

(c) INSA (para. 13) proposes that article 5 include a provision for the "exoneration of the carrier from the liability for the loss, damage or delay in delivery of the goods resulting from errors in navigation, unless it is proved that such loss or damage to the goods or delay in their delivery resulted from the fault of the carrier himself".

B. Defence of fire

62. The Federal Republic of Germany (paras. 3-5), ICS (paras. 6 and 32), CMI (para. 12) and IUMI (para. 3) favour retention of this defence substantially in the form found in article 4, subparagraph 2 (b), of the Brussels Convention of 1924, which exonerates the carrier from liability if the loss or damage arose from "fire, unless caused by the actual fault or privity of the carrier". These respondents are critical of the increased burden of risk placed on carriers as a consequence of the modified defence of fire in article 5, paragraph 4, of the draft Convention.

63. In the view of CMI (para. 12) the defence of fire is not a suitable subject for compromise and should be either retained as it appears in the Brussels Convention of 1924 (preferred by CMI) or entirely deleted.

64. ICS (para. 32) proposes a revision of article 5, paragraph 1, which, *inter alia*²⁰ will preserve for carriers the traditional defence of fire:

"1. The carrier shall be liable for loss resulting from loss or damage to the goods if the occurrence which caused the loss or damage took place while the goods were in his charge as defined in article 4 unless:

"..."

"(b) The loss or damage resulted from fire, or

"..."

C. Delay in delivery

65. Austria (para. 6) and ICS (para. 33) express their opposition to the provisions in article 5 holding carriers liable for loss, damage and expense due to delay in delivery and propose the deletion of such provisions. In the view of Austria (para. 6), rules imposing carrier liability for delay seem unnecessary. ICS (para. 33) notes that, at present, liability for delay is only recognized in some jurisdictions and that the potential loss from delay is usually known by the shipper but not by the carrier.

66. Sweden (para. 4) notes that the rules on carrier liability for delay in delivery contain controversial elements.

¹⁹ The revised text for article 5, paragraph 1, proposed by ICS (para. 32) is also designed to retain for carriers the defence of fire as found in the Brussels Convention of 1924 and to ease the general burden of proof placed on carriers.

²⁰ The revised text for article 5, paragraph 1, proposed by ICS (para. 32) is also designed to retain for carriers the defence of "error in navigation" and to ease the general burden of proof placed on carriers.

D. General rules on carrier liability

67. The Byelorussian SSR (para. 3), the United Kingdom (para. 9), the USSR (para. 3), ICS (paras. 24, 31 and 32), CMI (para. 10) and INSA (paras. 6-8) are critical of the general rule on carrier liability in article 5, paragraph 1, which makes the carrier liable if the occurrence causing loss or damage takes place while the goods are in his charge, "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".

68. The Byelorussian SSR (para. 3), the United Kingdom (para. 9), the USSR (para. 3), and ICS (paras. 24, 31 and 32) are of the view that paragraph 1 should be reformulated in order to make it clear that the basic rule in article 5 should be carrier liability for fault, which in most cases will consist of negligence. ICS (para. 24) states that the present wording tends towards the imposition of strict liability on the carrier. The United Kingdom (para. 9) suggests that in paragraph 1 the liability of the carrier should be explicitly based upon his act, fault or negligence.

69. The United Kingdom (para. 9), ICS (para. 31) and CMI (para. 10) note that the standard in paragraph 1 for the exoneration of the carrier from liability, namely that "he, his servants and agents took all measures that could reasonably be required" is uncertain and will probably give rise to a great deal of litigation. ICS (para. 32) proposes a revision of paragraph 1, modifying the substance of the carrier's burden of proof as follows:²¹

"1. The carrier shall be liable for loss resulting from loss or damage to the goods if the occurrence which caused the loss or damage took place while the goods were in his charge as defined in article 4 unless:

"(c) The carrier proves that the loss or damage did not result from his neglect or default."

70. INSA (paras. 6-8) notes that, under the present wording of paragraph 1, if the particular occurrence that caused the loss or damage cannot be identified, the carrier will be held liable even if he proves that he has taken all reasonable measures to avoid loss or damage to the goods or delay in their delivery. INSA (para. 8) proposes the following new text for article 5, paragraph 1, modelled on articles 18 and 20 of the Warsaw Convention of 1929²² and on the provisions on burden of proof in article 12 of the draft Convention (governing the liability of shippers):

²¹ The revised text of article 5, paragraph 1, proposed by ICS (para. 32) is also intended to retain for carriers the defences of "error in navigation" and fire as found in the Brussels Convention of 1924.

²² Articles 18 and 20 of the Warsaw Convention of 1929 are as follows:

"Article 18:

"(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo if the occurrence which caused the damage so sustained took place during the carriage by air.

"(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

"The carrier shall be liable for loss, damage or expense resulting from the loss of or damage to the goods, as well as from delay in delivery, which took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents, took all measures that could reasonably be required to avoid such loss, damage or expense."

E. Possible harmful consequences

71. Respondents who are critical of the general liability provisions in article 5 note that, while the precise economic effects are necessarily only conjectural at this stage, adoption of article 5 is likely to have some or all of the following consequences:

(a) The increased liability and risks imposed on carriers will cause carriers to take out increased amounts of liability insurance (P and I insurance) and thus to incur higher liability insurance premiums (Federal Republic of Germany, para. 4; Netherlands, para. 2; Sweden, para. 5; United Kingdom, paras. 11-12; ICC, paras. 5 and 7; ICS, paras. 3-5; CMI, para. 3; INSA, para. 14; IUMI, para. 3);

(b) Over-all transportation costs will increase since the increase in premiums for carrier liability insurance will be much higher than any possible decrease in cargo insurance premiums (Byelorussian SSR, para. 4; Federal Republic of Germany, para. 4; Netherlands, paras. 2 and 6; Sweden, para. 5; United Kingdom, paras. 2 and 11; USSR, para. 6; ICC, paras. 5 and 7;²³ ICS, paras. 2, 3 and 28; CMI, para. 4; INSA, para. 14). The following reasons are given for this result:

(i) Many costly recourse actions will be undertaken by cargo insurers against carriers and their liability insurers, while under the existing régime there are few such actions (Federal Republic of Germany, para. 4; Sweden, para. 5; United Kingdom, para. 11; ICC, paras. 4, 5 and 7; ICS, para. 4; CMI, para. 4; IUMI, para. 4);

(ii) Cargo insurance is generally cheaper as it is tailored to the particular shipment, while liability insurance protects against the greatest amounts at risk (Federal Republic of Germany, para. 4; United Kingdom, para. 11; IUMI, para. 2);

(iii) Uncertainties as to the exact extent of carrier liability will lead to a great deal of litigation (ICC, paras. 4-5; ICS, paras. 4 and 31; CMI, para. 10; IUMI, para. 4).

(c) For complete protection a cargo owner will still

"(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of landing, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air."

"Article 20:

"The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

²³ However, in the view of the dissenting member of the ICC Working Party (para. 9), it is doubtful that total insurance costs will in fact increase.

have to take out cargo insurance corresponding to his commercial and economic interests, often by utilizing a local cargo insurer (Federal Republic of Germany, para. 4; Netherlands, para. 3; Sweden, para. 5; ICC, para. 1):

(d) Article 5 will, in effect, place the cost of increased insurance on the cargo owner since the carrier will protect himself against the increased liability imposed on him and will then include this cost in the freight charge; it is preferable to leave the question of cargo insurance flexible and within the control of the cargo interests as regards the cost, the choice of the insurer and the amount of insurance required (United Kingdom, para. 13; ICC, para. 3; IUMI, para. 2):

(e) The interests of the commercial world and of the participants in sea carriage will be better served by retaining substantially the liability régime of the Brussels Convention of 1924 (Federal Republic of Germany, para. 5; United Kingdom, paras. 2 and 13; ICS, para. 29; IUMI, para. 5):

(f) Recognition of the economic realities is more important than the attempt to harmonize the draft Convention with the international régime for the other modes of transport (Federal Republic of Germany, para. 5) and, in any event, the draft Convention fails to bring about complete harmonization (CMI, paras. 13-14):

(g) The increased liability under article 5 will not cause carriers to be more careful, since it has always been in their self-interest to safeguard from loss or damage both the ship and its cargo (Netherlands, para. 6; ICS, paras. 4 and 28; CMI, paras. 7, 8 and 15):

(h) As carrier liability insurance is concentrated in a small number of developed countries, the shift from cargo insurance to carrier liability insurance will hurt the slowly growing cargo insurance industries of developing countries and will have a detrimental effect on the balance of payments of developing countries (Netherlands, para. 3; United Kingdom, para. 14; ICC, para. 7; ICS, paras. 2-3; CMI, para. 5; IUMI, para. 6):

(i) The controversial nature of the liability provisions in article 5 may lead to non-ratification of the draft Convention by many States (Sweden, paras. 4 and 7; ICS, para. 8):

(j) Article 5 will upset the risk distribution in general average and the "property fund" in collision cases, while not resulting in a more equitable allocation of risks, since risks, when insured against, become simply cost factors (CMI, paras. 3, 9 and 15):

(k) Article 5 does not take into account the fact that in carriage by sea the shipowner does not have continuous effective control over the master, crew or pilots and that the shipowner's liability is almost always vicarious (CMI, paras. 7-8; INSA, para. 13).

Proposed addition to article 5

72. The United States (paras. 13-32) and CMI (paras. 16-20) express reservations concerning the provisions in the draft Convention dealing with delay in delivery. The United States (paras. 17-20) and CMI (paras. 19-20) analyse the various kinds of loss that can result from delay in delivery and suggest that article 5 should include a

definition of "loss resulting from delay", specifying the types of economic loss for which the cargo owner will be entitled to reimbursement from the carrier.²⁴ The United States (para. 20) notes that the absence of such a definition will lead to a great deal of litigation whose outcome may vary in different Contracting States. CMI (paras. 17-18) is of the view that leaving the resolution of this issue to national law will create difficulties in settling claims for losses resulting from delay in delivery.

73. The United States (para. 32 (i)) proposes that a definition of "loss resulting from delay" be added to article 5, substantially along the following lines:

"Loss resulting from delay" shall include:

"(a) Damages suffered by the claimant by reason of loss of use of the delayed cargo itself;

"(b) Damages due to a fall in the market at the port of destination if the claimant proves the carrier knew or should have known that the market price would probably be lower at the time the delayed goods were delivered than it was at the time they should have been delivered;

"(c) Damages due to a loss of profit or incurrence of consequential liabilities incident thereto and damages consequent to the loss of use of the delayed cargo itself if the claimant proves the carrier knew or should have known the use to which the goods were to be put and the likelihood of losses consequential to delay."

74. The United States (para. 21) suggests that an alternative to defining "loss resulting from delay" in article 5 would be "to permit recovery under a limitation formula in all cases of delay with no showing of actual loss". The United States, however, states that it does not favour this alternative.

Drafting suggestion

75. OCTI (paras. 39-42) notes that the expressions "loss", "loss, damage or delay in delivery" and "the occurrence which caused the loss, damage or delay" appear several times in the English text of article 5, and suggests that the equivalents for these expressions in the French language version should also be uniform and consistent.

Paragraph 1

76. The United States (para. 32 (ii)) and CMI (paras. 16, 19 and 20) are of the view that carrier liability for physical deterioration of the goods due to delay in delivery should be dealt with under this paragraph in the same way as loss or damage resulting from any other cause for which the carrier is liable under the draft Convention. They propose therefore that physical damage to the goods should not be included in the definition they advocate for "loss resulting from delay",²⁵ as that

²⁴ Both the United States (para. 32 (iii)) and CMI (para. 20) state, however, that physical damage to goods resulting from delay in delivery should be treated within article 5, paragraph 1, in the same way as physical loss or damage to goods from other causes.

²⁵ See the discussion in paragraphs 72-74 above, on a proposed addition to article 5 of the draft Convention.

term should only specify the types of economic loss attributable to delay in delivery for which the carrier would be held liable.

77. The United States (para. 32 (ii)) suggests that the following sentence be added to this paragraph in order to ensure that physical damage resulting from delay is treated in the same way as loss or damage from other causes:

"The occurrence for which compensation shall be payable shall include physical deterioration of the cargo due to delay in delivery."

78. The United States (paras. 25 and 32 (iii)) proposes that the language of this paragraph be clarified so as to prevent the possible exemption from liability of a carrier who, after failing to deliver goods by an expressly agreed-upon delivery date, proves that he has acted reasonably throughout the voyage. The United States (*ibid.*) suggests that existing references to delay be deleted from paragraph 1²⁶ and that the problem be met by an appropriate addition to paragraph 2 of article 5.²⁷

79. The United Kingdom (para. 9) suggests that the provisions in this paragraph concerning carrier liability for negligence, with the burden of proof for exoneration placed on the carrier, should be aligned with the "fault or neglect" language in article 5, paragraphs 4, 5 and 7, and in article 12 of the draft Convention.

Paragraph 2

80. The United States (paras. 22-23) is critical of the provision in this paragraph that, where applicable, delay in delivery is to be determined by reference to "the time expressly agreed upon". It notes (para. 22) that there are no restrictions on the form of such an express agreement on the delivery date or on the possible use of exculpatory clauses negating the carrier's liability for late delivery. In the interest of certainty, the United States (para. 23) proposes that the phrase "within the time expressly agreed upon", appearing in article 5, paragraph 2, be replaced by the following language: "by a definite date set forth in writing on the face of the bill of lading, if any, or specifically and prominently referred to in the contract of carriage".

81. In order to prevent the possible exoneration from liability for delay in delivery of a carrier who proves that, although he failed to deliver the goods by a date expressly agreed upon, he had acted reasonably, the United States (para. 25) suggests the following amendments to the text of paragraph 2:

(a) It should commence: "Delay in delivery for which the carrier shall be liable occurs";

(b) It should contain the following new sentence: "By agreeing to deliver by a date certain, the carrier shall bear all risks of delay."

82. The United States (para. 24) is critical of the

standard in this paragraph for determining whether "delay in delivery" has occurred in the absence of an express agreement on the delivery date. It notes that the standard "within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case" is very general and likely to lead to a great deal of litigation. The United States therefore proposes that "delay in delivery" be limited to cases where there is an express agreement concerning the delivery date.

Paragraph 3

83. The United States (paras. 26-27) and ICS (para. 34) are of the view that special provision should be made in this paragraph for cases where, although delay in delivery of 60 or more days duration has occurred, the goods are not in fact lost.

84. The United States (paras. 26-27) suggests that, following the occurrence of a 60-day delay in delivery, the cargo owner should be given a fixed number of days within which he should notify the carrier that he elects to treat the goods as lost. If he so elects, any documentary evidence of title over the goods would have to be given to the carrier, thus enabling the carrier to sell the goods if they should turn up subsequently. The United States (para. 26) proposes that the following language be added at the end of article 5, paragraph 3:

"... provided that the person entitled to recovery for loss shall state his election to the carrier in writing within () days following the expiration of such period and shall deliver to the carrier the original bill of lading, if any, duly endorsed."

85. ICS (para. 34) proposes the addition of the following sentence at the end of this paragraph, giving the carrier an extra 60 days to deliver goods whose whereabouts are known:

"If at the expiry of 60 days the carriers can establish the whereabouts of the goods, a further period of 60 days shall elapse before the person entitled may treat the goods as lost."

Paragraph 4

Loss, damage or delay in delivery caused by fire

86. France (paras. 5-6) holds the view that the defence of fire formulated in paragraph 4 constitutes an integral part of the over-all compromise on carrier liability incorporated in article 5 and supports therefore the retention of that defence in its present formulation.

87. The United States (para. 31) and CMI (para. 12) note that the present wording of this paragraph may be interpreted as freeing from liability a carrier in the case where the cargo interests cannot establish that the fire arose due to the negligence of the carrier or his agents but they can prove that the spreading of the fire could have been prevented, e.g., by having adequate fire-fighting equipment on board.²⁸ The United States (para. 31)

²⁶ It may be noted that ICS (para. 33) also proposes deletion of all references to "delay" in article 5, paragraph 1. The reason given is, however, that ICS opposes the inclusion in the draft Convention of provisions on "delay".

²⁷ See the discussion in paragraph 81 below on article 5, paragraph 2.

²⁸ CMI (para. 12) is of the view that no compromise is possible, and that the "fire defence" should either be retained as formulated in the Brussels Convention of 1924 or deleted in its entirety from the draft Convention.

proposes that this paragraph be amended as follows:

"In case of fire, the carrier shall not be liable, unless the claimant proves that the fire resulted from or spread due to fault or neglect on the part of the carrier, his servants or agents."

88. The Federal Republic of Germany (paras. 3-5), ICS (paras. 6 and 32), CMI (para. 12) and IUMI (para. 3) favour retention of the defence of fire as formulated in article 4, subparagraph 2 (b), of the Brussels Convention of 1924.²⁹

89. Austria (para. 5), Canada (para. 2 (a)), Chad (para. 1), Czechoslovakia (para. 3), Iraq (para. 3), AALCC (para. 4), ECLA (paras. 1-4), CMI (para. 12) and OCTI (para. 12) are critical of the specific burden of proof rule in article 5, paragraph 4, according to which a carrier is held liable for loss or damage from fire only if "the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents". Canada (para. 2 (a)), Czechoslovakia (para. 3), ECLA (para. 2) and CMI (para. 12) note that this rule places a difficult burden on shippers and consignees which they will generally find impossible to meet in practice, since they are not aboard the ship at the time of the fire and cannot always know when and how the fire developed; these respondents note further that it would be more equitable to place the burden of proof for exoneration from liability for loss or damage from fire on the carrier, since the carrier knows and has control over events occurring on board the ship.

90. Austria (para. 5), ECLA (para. 4) and OCTI (para. 12) propose that this paragraph be deleted and that carrier liability for fire should be governed by the general rule on carrier liability in article 5, paragraph 1. OCTI (para. 12) notes that no other international convention on transport contains a requirement that the claimant prove fault or neglect by the carrier.

91. Similarly, while not suggesting deletion of article 5, paragraph 4, Canada (para. 2 (a)) and Chad (para. 1) favour its amendment so that, in the case of fire, the carrier would have the burden of proving that due care had been exercised by him, his servants and agents. Chad (para. 1) proposes the following new wording:

"In case of fire, the carrier, his servants or agents shall be liable unless they prove that they took all measures that could reasonably be required to avoid the occurrence and its consequences."

92. Czechoslovakia (para. 3), Iraq (para. 3) and AALCC (para. 4) suggest that consideration be given to shifting the burden of proof in cases of fire from the cargo interests to the carrier.

Paragraph 5

Carriage of live animals

93. The Byelorussian SSR (para. 3), the USSR (para. 4) and INSA (paras 9-10) are of the view that the wording

of this paragraph is unnecessarily complicated and should therefore be simplified.

94. INSA (para. 10) notes that carriers will face great difficulties in practice if they have to prove both that they complied with any special instructions given by the shipper and that the particular loss, damage or delay in delivery can be attributed to the special risks inherent in the carriage of live animals before it will be presumed under this paragraph that the loss, damage or delay in delivery was so caused. INSA proposes therefore that the words "and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks" be deleted, so that, if the carrier proves compliance with any special instructions given by the shipper, it will then be presumed that the loss, damage or delay was due to a special risk inherent in the carriage of live animals.

Paragraph 6

Carrier exemption from liability for "reasonable measures to save property at sea"

95. The Byelorussian SSR (para. 5), the USSR (para. 5) and INSA (paras. 11-12) are critical of the rule in this paragraph exonerating carriers from liability only for "reasonable measures to save property at sea". They note that it will be difficult to determine in practice whether particular measures taken at sea are or are not "reasonable" and that therefore the issue will often be the subject of litigation.

96. The Byelorussian SSR (para. 5) and the USSR (para. 5) express the view that to exonerate the carrier only for "reasonable measures to save property at sea" may have an adverse effect on compliance with the traditional rules of navigation calling for assistance to ships in distress. INSA (para. 11) notes that, at the time the master of a cargo ship is deciding upon the measures to be taken, he will often not know whether his actions will result in saving lives or only property.

97. The Byelorussian SSR (para. 5), the USSR (para. 5) and INSA (para. 11) propose that the word "reasonable" be deleted so that carriers would be exonerated from liability whenever the loss, damage or delay in delivery resulted from measures to save property at sea. As an alternative, INSA (para. 12) suggests that the cargo interests should bear the burden of proving that the measures taken by the carrier to save property were "obviously unreasonable", and proposes the following new wording:

"The carrier shall not be liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life and from measures to save property at sea if there is no proof that in saving the property the carrier deliberately acted unreasonably."

Other comment

98. The United States (para. 30) notes that under the present formulation of article 5, paragraph 2, delay in delivery (for which the carrier will be liable under article 5, paragraph 1) can occur even in the absence of an express

²⁹ The comments advocating retention of the defence of fire as formulated in the Brussels Convention of 1924 are considered in the discussion on article 5 as a whole, paras. 62-64 above.

agreement on the delivery date.³⁰ In order to clarify that delay in delivery can be excused for reasons other than measures to save life or property, the United States (paras. 30 and 32 (vi)) proposes that the following phrase be added at the beginning of paragraph 6: "In addition to such reasons as may be found sufficient under section I above . . .".

Article 6. Limits of liability

Article as a whole—Choice between the basic text and the alternative text for article 6

Preference for basic text

99. The Byelorussian SSR (para. 6), Canada (para. 3 (a)), Czechoslovakia (para. 4), France (para. 7), the Federal Republic of Germany (para. 7), the United Kingdom (para. 15), the USSR (para. 7), ECLA (paras. 5-6 and INSA (paras. 15-16) express preference for the basic text of article 6, which establishes the limitations on the liability of carriers in terms of the dual criteria of weight and "package or other shipping unit". The following reasons for this choice are given by these respondents:

(a) The basic text takes fully into account the interests of owners of various types of goods (Byelorussian SSR, para. 6; USSR, para. 7) and gives adequate protection to the owners of low-weight but high-value goods (Federal Republic of Germany, para. 7; INSA, paras. 15-16);

(b) It provides better protection to shippers and consignees than the single criterion of weight, since higher limits on the liability of carriers are to the benefit of shippers and consignees (Canada, para. 3 (a));

(c) It maintains the compromise achieved by article 2 of the Brussels Protocol of 1968 between adoption of the single criterion of package or unit (as in article 4, paragraph 5, of the Brussels Convention of 1924) and the criterion of weight alone (as in several international conventions applicable to other modes of transport) (France, para. 7; ECLA, paras. 5-6);

(d) It corresponds more closely to the economic realities of international sea transport (United Kingdom, para. 15).

Preference for alternative text

100. Austria (para. 7), the German Democratic Republic (para. 8), the Netherlands (para. 7), Norway (para. 5), Sweden (para. 8) and OCTI (para. 14) favour the adoption of the alternative text for article 6, which relies on the single criterion of the weight of the goods to formulate the limitations on the liability of carriers. In the view of some of these respondents, the alternative text for article 6 should be supplemented by paragraph 1, subparagraphs (b) and (c) of the basic text of article 6 (German Democratic Republic, para. 8; Netherlands, para. 7; OCTI, para. 14). Norway (para. 5) suggests that, in order to protect shippers of light-weight cargo, the inclusion of minimum limitation amounts applicable in

all cases should be considered. The following reasons are given in favour of the single criterion of the weight of the goods for limiting the liability of carriers:

(a) It is easy to apply in practice and eliminates the need to establish what constitutes a shipping unit (Netherlands, para. 7);

(b) It serves better the interest of harmonization with international conventions governing other modes of transport (OCTI, para. 14);

(c) The dual system of weight and "package or other shipping unit" is unclear and may cause shippers to establish light-weight shipping units (OCTI, para. 15).

Other views

101. Qatar (para. 18) summarizes the basic text and the alternative text for article 6 without, however, expressing a preference for either solution. France (para. 8) notes that although it favours the basic text, it could accept the alternative text, since the latter corresponds to the relevant provisions in other international transport conventions. Iraq (para. 6) and AALCC (para. 7) suggest that the United Nations Conference on the Carriage of Goods by Sea should give special attention to the provisions in article 6.

Level of the monetary limits of liability

102. France (para. 12), the Federal Republic of Germany (para. 6), Norway (para. 6), Sweden (para. 9), ICC (para. 6) and ICS (para. 35) suggest that the monetary limits for the liability of carriers for loss of or damage to the goods should not be set at too high a level. The following reasons are given in support of this view:

(a) If the monetary limits are set at too high a level, the cost of liability insurance for carriers will go up sharply and this will be reflected in increased freight charges (France, para. 12; ICC, para. 6; ICS, para. 35);

(b) Shippers want relatively low limits, since they can take out any additional coverage that might be needed less expensively by way of cargo insurance (France, para. 12; ICS at para. 35);

(c) High monetary limits will result in the shipper of low-value cargo subsidizing the shipper of high-value goods (ICS, para. 35).

103. France (para. 12), the Federal Republic of Germany (para. 6), Norway (para. 6) and Sweden (para. 9) state that, in real terms, the limits in the draft Convention should not be substantially higher than the limits in the Brussels Protocol of 1968. The Federal Republic of Germany (para. 6) notes that the average value of sea-borne goods does not exceed those limits.

Establishment of limits in terms of special drawing rights

104. Norway (para. 7), Sweden (para. 10) and INSA (para. 20) propose that the monetary limits of liability should be defined in terms of the special drawing rights of the International Monetary Fund. INSA (para. 20) suggests that for States not members of the International Monetary Fund the limits be expressed in gold value.

³⁰ See the analysis in paragraph 82 above of the comments by the United States concerning article 5, paragraph 2.

following the example of the London Convention of 1976³¹ and the Montreal Protocol No. 4.³²

³¹ Article 8 of the London Convention of 1976 reads as follows:

"Unit of Account"

"1. The unit of account referred to in articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall 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 value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

"2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- "(a) In respect of article 6, paragraph 1 (a), at an amount of:
 - "(i) 5 million monetary units for a ship with a tonnage not exceeding 500 tons;
 - "(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 3,000 tons, 7,500 monetary units;
 - for each ton from 3,001 to 30,000 tons, 5,000 monetary units;
 - for each ton from 30,001 to 70,000 tons, 3,750 monetary units;
 - and
 - for each ton in excess of 70,000 tons, 2,500 monetary units;
- "(b) In respect of article 6, paragraph 1 (b), at an amount of:
 - "(i) 2.5 million monetary units for a ship with a tonnage not exceeding 500 tons;
 - "(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 30,000 tons, 2,500 monetary units;
 - for each ton from 30,001 to 70,000 tons, 1,850 monetary units;
 - and
 - for each ton in excess of 70,000 tons, 1,250 monetary units;
- "(c) In respect of article 7, paragraph 1, at an amount of 700,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding 375 million monetary units.

"Paragraphs 2 and 3 of article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

"3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

"4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in article 16 and whenever there is a change in either."

³² Article VII of the Montreal Protocol No. 4 reads as follows:

"In article 22 of the Convention:

- "(a) In paragraph 2 (a) the words "and of cargo" shall be deleted;

Special limit on liability for delay in delivery

105. The Byelorussian SSR (para. 6), France (para. 10), the German Democratic Republic (para. 9), the Netherlands (para. 8), the United Kingdom (para. 16), the United States (paras. 28 and 32 (v)), the USSR (para. 7), INSA (paras. 17 and 19) and OCTI (para. 16) favour the inclusion in article 6 of a special rule for the calculation of the limits on the liability of carriers for delay in delivery. They agree that subparagraph 1 (b) in the basic text of article 6 can serve as the basis for the consideration of the special rule on the limitation of liability for delay in delivery.³³

106. Czechoslovakia (para. 4) proposes that consideration be given to the adoption of the same limits for all cases where a carrier is held liable under the draft Convention, including liability for the consequences of delay in delivery. If the majority at the United Nations Conference on the Carriage of Goods by Sea should be opposed to the establishment of the same limits for all cases of carrier liability, Czechoslovakia (para. 4) notes its readiness to accept the special rule in subparagraph 1 (b) in the basic text of article 6, provided the limit on carrier liability for delay in delivery is expressed as "a multiple of the freight".

107. Austria (para. 6) is of the view that special rules

"(b) After paragraph 2 (a) the following paragraph shall be inserted:

"(b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case, the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination."

"(c) Paragraph 2 (b) shall be designated as paragraph 2 (c);

"(d) After paragraph 5 the following paragraph shall be inserted:

"6. The sums mentioned in terms of the Special Drawing Right in this article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

"Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 (b) of article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned."

³³ For comments directed specifically at subparagraph 1 (b) in the basic text of article 6, see the discussion of the comments on that subparagraph in paragraphs 109-115 below.

governing liability of carriers for delay in delivery are unnecessary and opposes therefore the inclusion in article 6 of a special limit on carrier liability for delay in delivery.

Particular comments on provisions in the basic text of article 6

Subparagraph 1(a)

108. France (para. 9) suggests that this subparagraph should retain for shippers the option they enjoy under article 2, paragraph (a), of the Brussels Protocol of 1968 to exclude the application of the prescribed limits of carrier liability in appropriate cases, for example, where the calculation by weight would result in disproportionately high limits for heavy goods. France (para. 9) proposes therefore that the following phrase, appearing in the Brussels Protocol of 1968, be inserted at the beginning of subparagraph 1 (a):

"Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading . . ."

109. INSA (para. 18) notes that the present wording of subparagraph 1 (a) leaves unclear the proper method for calculating the "per weight" limitation on carrier liability where several "packages or other shipping units" are lost or damaged. It proposes the addition of a provision that would determine whether in such a case a number of "per weight" limitations should be calculated based on the weight of each separate "package or other shipping unit", or only a single "per weight" limitation based on the aggregate weight of the packages or shipping units that were lost or damaged.

Subparagraph 1(b)

110. The Byelorussian SSR (para. 6), France (para. 10), the German Democratic Republic (para. 9), the Netherlands (para. 8), the USSR (para. 7) and INSA (para. 19) support the formulation of the special limit on carrier liability for delay in delivery in terms of "the freight payable for the goods delayed". The Netherlands (para. 8) notes that if a delay in delivery occurs which only affects a portion of the goods covered by a single bill of lading and subject to a single freight charge, the limit on carrier liability will be the part of the freight charge attributable to the goods delayed.

111. The Byelorussian SSR (para. 6), the German Democratic Republic (para. 9), the Netherlands (para. 8), the USSR (para. 7) and INSA (para. 19) prefer the simple freight charge payable for the goods delayed, and not a multiple of this figure, as the special limit for delay in delivery. France (para. 10) notes that it can accept as such special limit twice the freight charges payable for the goods delayed, in the interest of establishing a strong deterrent to delay in delivery.

112. Czechoslovakia (para. 4) states that if a special limit on carrier liability for delay in delivery is established, it should be expressed in a multiple of the freight.

113. OCTI (para. 16) is of the view that the limit in this subparagraph should be expressed in terms of "the freight payable under the contract of carriage". OCTI

(para. 16) observes that the CIM⁴⁴ and CIV⁴⁵ Conventions both adopt this approach.

114. The United States (paras. 28 and 32 (v)) favours the recasting of this subparagraph in the form of a commercial agreement for liquidated damages by establishing a unit limitation of liability for delay in delivery which is then multiplied by the number of days of delay. The United States (para. 28) notes that a similar formula is contained in the CIM Convention.⁴⁶ The revision of subparagraph 1 (b) that the United States (para. 32 (v)) proposes, reads as follows:

"The liability of the carrier for loss resulting from delay in delivery according to the provisions of article 5 shall not exceed . . . [whatever unit is applied] multiplied by the number of days of delay [a limitation based

⁴⁴ Article 34 of the CIM Convention reads as follows:

"Amount of compensation for delay in delivery"

"1. In the event of delay in delivery the railway shall, in the absence of proof by the person entitled to make a claim in that regard that he has thereby suffered damage, pay one tenth of the carriage charges in respect of each fraction of the delay equivalent to one tenth of the transit period, any fraction of the delay of less than one tenth of the transit period being counted as one tenth. Compensation shall not, however, exceed one half of the carriage charges.

"2. If it is proved that damage has, in fact, resulted from the delay in delivery, compensation not exceeding the amount of the carriage charges shall be payable.

"3. The compensation provided for in paragraphs 1 and 2 above shall not be payable in addition to that due in respect of total loss of the goods.

"In the case of partial loss, such compensation shall be payable, where appropriate, in respect of that part of the consignment which has not been lost.

"In the case of damage, such compensation may, where appropriate, be additional to that provided for in article 33 of this Convention.

"In any case, compensation payable under paragraphs 1 and 2 of this article, together with that payable under articles 31 and 33 of this Convention, shall not, in the aggregate, exceed the compensation which would be payable in respect of total loss of the goods."

⁴⁵ Article 35 of the CIV Convention reads as follows:

"Amount of compensation for delay in delivery of luggage"

"1. In the event of delay in delivery the railway shall, in the absence of proof by the claimant that he has suffered loss or damage thereby, pay compensation at the rate of twenty centimes per gross kilogramme of the luggage delivered late in respect of each period of twenty-four hours or part thereof after delivery has been requested, but subject to a maximum of fourteen days.

"2. If it is proved that loss or damage has in fact resulted from the delay, compensation not exceeding four times the compensation specified in paragraph 1 of this article shall be payable.

"3. The compensation provided for in paragraphs 1 and 2 above shall not be payable in addition to that due in respect of total loss of the luggage.

"In the case of partial loss, such compensation shall be payable, where appropriate, in respect of that part of the luggage which has not been lost.

"In the case of damage, such compensation may, where appropriate, be additional to that provided for in article 34 of this Convention.

"In any case, compensation payable under paragraphs 1 and 2 of this article, together with that payable under articles 33 and 34 of this Convention, shall not, in the aggregate, exceed the compensation which would be payable in respect of total loss of the luggage."

⁴⁶ See article 34 of the CIM Convention set forth in foot-note 34 above.

on a fixed number of units which could be a maximum delay provision or related to freight charges]."

115. The United States (para. 29) notes that the limits on carrier liability for physical damage caused by delay in delivery should be the same as for physical damage from any other cause for which the carrier is liable under the draft Convention. The United States (*ibid.*) suggests that this result could best be achieved by defining the term "loss resulting from delay" so as to exclude physical damage to the goods.³⁷

Subparagraph 1 (c)

116. The United Kingdom (para. 16) notes that cover for delay in delivery is rarely included in cargo insurance and that, consequently, claims for delay in delivery would normally be brought not by cargo insurers but by consignees. In order to keep separate the limits for loss of or damage to the goods and for delay in delivery, the United Kingdom suggests deletion of this subparagraph.

Subparagraph 2 (a)

117. Czechoslovakia (para. 4) and ECLA (para. 6) express support for the provision in this subparagraph regulating, for purposes of the "per package or other shipping unit" limitation in paragraph 1, what constitutes a package or other shipping unit when the goods are carried in containers or in similar articles of transport. ECLA (para. 6) notes that, under subparagraph 2 (a), shippers and carriers retain considerable flexibility when goods are transported in containers or similar articles of transport by virtue of the provision that "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".

Paragraph 4

118. France (para. 11) notes that this paragraph, authorizing shippers and carriers to agree to limits on carrier liability that are higher than the limits in article 6, paragraph 1, is to some extent a duplication of article 23, paragraph 2, which permits carriers to increase their obligations under the draft Convention.

Proposed addition to article 6

119. The Netherlands (para. 9) proposes that a provision concerning the calculation of the value of the goods, along the lines of article 2, paragraph (b), of the Brussels Protocol of 1968 and article 23, paragraphs 1 and 2, of the CMR Convention,³⁸ should be added either to article 5 or to article 6.

³⁷ For the related comments by the United States on the delay provisions in article 5, see the analysis of comments on article 5, paragraph 1, in paragraphs 76-77 above.

³⁸ Article 23, paragraphs 1 and 2, of the CMR Convention read as follows:

"1. Where, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted.

"2. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price

Article 7. Application to non-contractual claims

Article as a whole

120. Qatar (para. 19) notes that this article lays down the principle that the defences and limits of liability provided for in the draft Convention are applicable to any action against the carrier, whether the action be founded in contract, tort or otherwise.

Paragraph 3

121. The United States (para. 33) proposes that, to avoid any possible misconstruction, this paragraph be amended to begin: "Except as provided in article 8, the aggregate . . .".

Article 8. Loss of right to limit liability

Article as a whole

122. Qatar (para. 20) notes that this article lays down the principles concerning loss of the carrier's right to limit his liability, and clarifies the circumstances when the limitation of liability established under article 6 will not apply.

123. Canada (para. 3 (d)) notes that, where a fundamental breach of the contract of carriage takes place, the draft Convention is unclear as to the carrier's entitlement to limit his liability in view of the legal test provided in this article.

Paragraph 1

124. France (para. 15), the Federal Republic of Germany (para. 8), Sweden (para. 6), the United States (para. 34), ICC (para. 14), ICS (paras. 36-37) and CMI (para. 21) note the close connexion between the extent to which the limit of liability can be removed and the amount of insurance required to be taken out in respect of loss or damage to the goods during the sea carriage. It is submitted that a virtually irremovable and clearly formulated limit of liability has the advantage that cargo and liability insurers know with certainty their maximum exposure (Sweden, para. 6; United Kingdom, para. 17; ICC, para. 14; ICS, para. 37). It is further submitted that clauses removing such limits, unless carefully drafted, can lead to a considerable increase in premiums, or can make certain risks uninsurable (France, para. 15; United States, para. 34).

125. It is suggested that this paragraph, however, does not formulate with sufficient clarity the circumstances under which the limit of liability is removed (France, paras. 14 and 16; United Kingdom, para. 17; United States, para. 35), and can lead to expensive litigation (United Kingdom, para. 17). In particular, it is noted that the following phrases in the paragraph may be capable of different interpretations:

(a) "While exercising . . . supervisory authority" (Federal Republic of Germany, para. 9; Netherlands, para. 10);

or current market price, by reference to the normal value of goods of the same kind and quality."

(b) "while exercising, within the scope of his employment" (ICC, para. 15; ICS, para. 37);

(c) "handling or caring for the goods within the scope of his employment" (Netherlands, para. 10; ICC, para. 15; ICS, para. 37; CMI, para. 25).

Comparison with rules adopted in other transport conventions

126. It is noted (Netherlands, para. 10; Sweden, para. 6; ICC, para. 16; ICS, para. 39; CMI, para. 23) that the trend in modern conventions relating to maritime transport (e.g., the Brussels Protocol of 1968, the Athens Convention of 1974³⁹ and the London Convention of 1976⁴⁰) is to adopt virtually irremovable limits.

127. France (paras. 13-15) notes that, while in the transport conventions mentioned in paragraph 126 above, the limit is only removed if the carrier himself is at fault, the limit in other conventions (the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955⁴¹, and the CMR Convention⁴²) is removed both when the carrier is at fault and when his servants or agents acting within the scope of their employment are at fault. France further notes in this connexion that article 8 of the

³⁹ The relevant provisions of the Athens Convention of 1974 are as follows:

"Article 13

"1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in articles 7 and 8 and paragraph 1 of article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

"2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result."

⁴⁰ The relevant provision of the London Convention of 1976 is as follows:

"Article 4

"A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

⁴¹ Article 25 of the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955 reads as follows:

"The limits of liability specified in article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

⁴² Article 29 of the CMR Convention reads as follows:

"1. The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct.

"2. The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1."

draft Convention is a compromise between these two approaches, in that it removes the limit for fault on the part of the master or members of the crew in the commercial handling of the goods, but does not remove the limit for fault committed by such persons in the navigation of the vessel.

128. The United Kingdom (para. 17) notes that uncertainties which have resulted from article 25, paragraph 2, ⁴³ of the Warsaw Convention of 1929 may also arise from subparagraphs (b) and (c) of article 8, and proposes that the limit of liability should not be removed in respect of an act or omission of the persons mentioned in subparagraphs (b) and (c).

Principles which should determine the removal of the limit

129. CMI notes (para. 21) that the possible reasonableness of removing the limit on the carrier's liability when loss or damage is caused by a servant or agent's intentional or reckless act is irrelevant to the object sought to be achieved by establishing the limit, namely the creation of a clear basis for determining insurance liability. CMI (para. 22) submits that the only case where the limit should be removed is where the carrier himself is guilty of intentional or reckless conduct causing loss or damage, since no one should be allowed to limit his liability for loss or damage caused by his own intentional or reckless acts.

130. INSA (para. 22) notes that the carrier's limit of liability should only be removed if he has been guilty of a high degree of culpability, such as where the loss or damage has been caused by an intentional act, or by a reckless act with knowledge that loss or damage will probably result. Where, however, loss or damage is caused by the act of a servant or agent, the carrier is normally only guilty of ordinary negligence in failing to control properly the servant or agent, and therefore the limit of liability should not be removed.

Proposals

131. The Netherlands (para. 10), ICC (para. 16), ICS (para. 39) and INSA (para. 22) propose that the present text of article 8 be deleted, and that the text formulated by the UNCITRAL Working Group on International Legislation on Shipping be adopted.⁴⁴

⁴³ Article 25, paragraph 2, of the Warsaw Convention of 1929 reads as follows:

"2. Similarly, the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment."

⁴⁴ The text is as follows:

"The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the damage resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. 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 resulting from an act or omission of such servants or agents, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result." (See *Yearbook of the United Nations Commission on International Trade Law*, vol. VI, 1975 (United Nations publication, Sales No. E. 76. V. 5).

132. The Federal Republic of Germany (para. 9) proposes that a text similar to article 2, paragraph (e), of the Brussels Protocol of 1968 be adopted.

133. The United States (para. 35) proposes that, unless the text of the article is more clearly defined, the article be deleted.

134. The United Kingdom proposes (para. 17) that a text based on article 4 of the London Convention of 1976 be adopted.⁴⁵

135. France (para. 16) proposes that the article be retained as an acceptable compromise, but that the drafting be clarified.

Article 9. Deck cargo

Article as a whole

136. Qatar (para. 21) notes that, under this article, the draft Convention is applicable to carriage of deck cargo, including animals carried on deck.

137. Canada (para. 2 (b)) proposes that the article should be redrafted so as to distinguish clearly between situations where the carrier will be deprived of the benefit of the Convention, and those where he may take advantage of it.

Paragraph 1

138. ICS (para. 40) notes that it is generally understood that the carriage of containers on deck is the usage in all container trades. It therefore proposes, with a view to avoiding controversy, the addition of the following sentence at the end of this paragraph: "Shipment in containers shall be deemed to constitute agreement to carriage on deck."

Paragraph 2

139. Austria (para. 8) proposes that this paragraph should require the insertion in a bill of lading of a statement that the goods are being carried on deck whenever the goods are carried on deck, and not only when they are carried on deck pursuant to an agreement between the shipper and the carrier.

140. The United States (para. 36) proposes the following:

(a) that the word "prominently" be added before the word "insert" appearing in the first sentence of the paragraph;

(b) that the words "and for value" be added at the end of the paragraph.

Paragraph 4

141. The Netherlands (para. 11) and ICS (para. 41) propose the deletion of this paragraph because:

(a) There is insufficient reason to abandon the principle, set forth in article 8, which determines when the carrier loses his right to limit his liability (Netherlands);

(b) The carriage of goods on deck contrary to express

agreement for their carriage under deck may not amount to the degree of recklessness required by article 8 (ICS).

Article 10.⁴⁶ Liability of the carrier and actual carrier

Paragraph 1

142. Canada (para. 1(d)) approves of the recognition of the carrier's responsibility even in cases where the carrier may have entrusted the performance of the contract of carriage to an actual carrier.

Paragraph 2

143. Australia (para. 15) notes that the words "for the carriage performed by him" appearing in this paragraph imply that the actual carrier will not be responsible in the event of complete non-performance. It further notes (para. 16) that difficulties can arise as to the degree of partial performance which will amount to performance. It therefore proposes (para. 17) that words such as "entrusted to" should be substituted for the words "performed by".

144. The United States (para. 38) notes that the "carrier" and the "actual carrier" are distinguished under article 10 of the draft Convention. Further, paragraph 2 of this article, which imposes responsibility on the actual carrier, does not state that the latter is entitled to the same benefits and limitations of liability to which the carrier is entitled under the draft Convention. Nor is such an entitlement referred to in any other article of the draft Convention. In order to clarify that the actual carrier has the same entitlement as the carrier, the United States proposes (para. 38) that the following words be added at the end of the first sentence of this paragraph:

"and the defences and limitations of liability provided to the carrier according to the provisions of this Convention shall also be applicable to the actual carrier for the carriage performed by him".

145. ICS (para. 42) notes that the proposal made by the UNCTAD secretariat in document TD/B/C.4/ISL/23, paragraph 59, in relation to this paragraph does not appear to serve any necessary function.⁴⁷

⁴⁶ Qatar and OCTI make comments on articles 10 and 11 considered together. These comments are analysed below, following the analysis of the comments on article 11.

⁴⁷ Document TD/B/C.4/ISL-23, dated 18 June 1976, entitled "Bills of lading - Comments on a draft Convention on the Carriage of Goods by Sea adopted by the United Nations Commission on International Trade Law - Report by the UNCTAD secretariat" was placed before the second part of the fifth session of the UNCTAD Working Group on International Shipping Legislation, 26 July 1976. Paragraph 59 of that report is as follows:

"59. In regard to paragraph 2 of the article the secretariat remains of the view expressed in TD/B/C.4/ISL/19, paragraph 93, that an obligation be placed upon the carrier, under sanctions to be agreed, to inform the actual carrier of the fact that it is an on-carriage in the terms of the Convention which the actual carrier is undertaking to perform, and for contracting carriers and actual carriers to conclude the terms of the on-carriage contract on the same terms, *mutatis mutandis*, as the original contract of carriage between the shipper and the contracting carrier, in such a way as to impose liability unequivocally upon one or more actual carriers to the shipper consignee according to the terms of the Convention."

part two, chap. IV, sect. 4, p. 246, Draft convention on the carriage of goods by sea (A/CN.9.105, annex), article 8).

⁴⁵ See foot-note 40 above for the text of article 4.

Paragraph 3

146. France (para. 17) notes that, while it may be preferable in the interests of shippers that actual carriers should be bound by obligations contracted by carriers additional to those imposed by the Convention even without such actual carriers having expressly consented to be bound by such obligations, this result may cause hardships to actual carriers who are not prepared to undertake such additional obligations. France suggests that it is therefore desirable to retain the existing text.

Paragraphs 4 and 5

147. ICAO (para. 2) notes that in cases where there is joint and several liability of the carrier and the actual carrier under paragraph 4, there may be difficulty in interpreting paragraph 5 to determine the maximum aggregate amount recoverable under the latter paragraph. ICAO therefore proposes that the following wording of article VI of the Guadalajara Convention of 1961 should be adopted for paragraph 5:

"In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him."

148. The United States (para. 39) proposes that, to avoid any possible misconstruction, paragraph 5 be amended to begin as follows: "Except as provided in article 8, the aggregate . . .".

*Article 11. Through carriage**Article as a whole*

149. Canada (para. 3 (b)) notes that further consideration should be given to this article since it may permit the carrier to contract out of fundamental obligations.

150. The German Democratic Republic (para. 10) notes that where a carrier undertakes to carry goods from the port of loading to the port of destination on two or more shipping lines, and issues a through bill of lading covering the entire carriage, any limitation of his liability to the part of the carriage performed by him should be void. It notes, however, (para. 11) that if the carrier only undertakes to carry goods on his own line, and to arrange for shipment on other shipping lines, this would not constitute a through carriage contract. Accordingly, the German Democratic Republic proposes (para. 12) that this article either be deleted or be reworded as follows:

"1. Where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the carrier and the actual carrier shall be liable jointly and severally for loss, damage and delay in delivery caused by an occurrence which takes place while the goods are in their charge.

"2. Nothing in paragraph 1 shall prejudice any right

of recourse as between the carrier and the actual carrier.

"3. If local bills of lading will be issued, it shall be noted on them that the goods are carried under a through bill of lading."

*Paragraph 1**Exculpatory clauses in favour of the carrier*

151. The United States notes (para. 40) that this article is unsatisfactory because of its toleration of broad exculpatory provisions for the carrier without any guarantee to shippers of a right of action against actual carriers. It therefore proposes that, if the toleration of broad exculpatory provisions is to be maintained, the first sentence of paragraph 1 should be amended as follows to ensure to the shipper an opportunity of seeking damages from the actual carrier:

"1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage, provided that the actual carrier is subject to suit pursuant to the provisions of article 21."

152. France (para. 18) notes that, since this paragraph requires that the contract of carriage name the person who will perform the on-carriage, with the result that the shipper knows his identity at the time of contracting, the carrier is permitted to exculpate himself from liability for loss or damage occurring while the goods are in the charge of the actual carrier. France (para. 18) further notes that any attempt to eliminate the possibility of such exculpatory clauses in favour of the carrier will in effect eliminate the possibility of issuing a single bill of lading to cover through carriage, and will thereby have adverse effects in relation to documentary credits.

Deletion of the word "named"

153. The United Kingdom (para. 18) and ICS (para. 43) note that the word "named" in the first sentence of this paragraph can lead to the following difficulties:

(a) When the contract of carriage names an actual carrier, in some instances the transport of the goods may be delayed if the carrier has to await the vessel of the named actual carrier (ICS, para. 43);

(b) The named actual carrier may fail to provide a vessel, without any fault on the part of the carrier. In such cases, if the carrier transports the goods on the vessel of another actual carrier, the carrier will be liable under article 10, paragraph 1, for the entire carriage, even though the failure to transport on the vessel of the named actual carrier is due to no fault of the carrier (ICS, para. 43);

(c) The requirement that the actual carrier should be named may create difficulty where several lines operate a joint service and it is not normally possible to specify the

person who will undertake the on-carriage (United Kingdom, para. 18);

(d) Retention of the word "named" will have the arbitrary effect that the law governing the on-carriage will depend on whether or not the named actual carrier performs the on-carriage (United Kingdom, para. 18).

154. The United Kingdom (para. 18) and ICS (para. 43) accordingly propose that the word "named" be deleted.

Paragraph 2

155. France (para. 19) notes that the difference between the contract of carriage contemplated by article 10, paragraph 1, and the contract of carriage contemplated by article 11, paragraph 1, will be clarified if article 11, paragraph 2, is amended to read as follows:

"2. The named carrier who performs a specified part of the carriage in the conditions set forth in paragraph 1 of the present article shall be responsible in the same conditions as an actual carrier, in accordance with the provisions of paragraph 2 of article 10."

Articles 10 and 11 considered together

156. Qatar notes (para. 22) that, while the Brussels Convention of 1924 and the Brussels Protocol of 1968 do not deal with the issue of trans-shipment, articles 10 and 11 of the draft Convention are addressed to the resolution of problems presented by trans-shipment clauses in bills of lading.

157. OCTI proposes (para. 22) that articles 10 and 11 be combined under a new title for the following reasons (para. 25):

- (a) There is a close connexion between the two articles;
- (b) The present titles of the articles are not sufficiently precise;
- (c) Paragraphs 3-6 of the present article 10 should also apply to article 11. OCTI accordingly proposes (paras. 23-24) the following draft:

"Article 10. Liability when one or more actual carriers are involved"

"1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Convention. The carrier shall, in relation to the carriage performed by the actual carrier, be responsible for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

"2. Notwithstanding the provisions of paragraph 1 of this article, where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. The burden of

proving that any loss, damage or delay in delivery has been caused by such an occurrence shall rest upon the carrier.

"3. The actual carrier shall be responsible, according to the provisions of this Convention, for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 shall apply if an action is brought against a servant or agent of the actual carrier.

"4. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the actual carrier only if agreed by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

"5. Where and to the extent that both the carrier and the actual carrier are liable, their liability shall be joint and several.

"6. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits provided for in this Convention.

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

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

Consistency with article 5, paragraph 1

158. The Byelorussian SSR (para. 7) and the USSR (para. 8) proposed that this article should be redrafted so that its provisions relating to the liability of the shipper are consistent with those of article 5, paragraph 1, relating to the liability of the carrier.

159. The German Democratic Republic (para. 13) and INSA (para. 23) propose that this article should be redrafted so as to impose affirmatively a liability on the shipper, because:

(a) The present negative formulation is difficult to understand (German Democratic Republic);

(b) Such redrafting will ensure consistency with the drafting of article 5, paragraph 1 (INSA).

In this connexion, the German Democratic Republic (para. 13) proposes the following text:

"The shipper shall be liable for loss sustained by the carrier or the actual carrier, if such loss or damage was caused by the fault or neglect of the shipper, his servants or agents."

160. INSA also notes (para. 24) that the shipper, in order to exonerate himself from liability, only has to prove absence of fault on his part or on the part of his servants or agents. On the other hand, the carrier who seeks to exonerate himself under article 5, paragraph 1, has to prove which occurrence caused the loss or damage, and that he took all measures that could reasonably be

required to avoid the occurrence and its consequences. INSA notes (para. 25) that this difference between the position of the shipper and the carrier is unjustified, and should be eliminated by amending article 5, paragraph 1.⁴⁸

Other observations

161. INSA notes (para. 26) that this article deals with the contractual liability of shippers to carriers. INSA is therefore of the view that reference in the article to possible non-contractual liabilities of the shipper is unnecessary, and accordingly the words "or the actual carrier, or for damage sustained by the ship" should be deleted.

Article 13. Special rules on dangerous goods

Article as a whole

162. Qatar (para. 24) notes that this article is clearer than article 4, paragraph 6, of the Brussels Convention of 1924 on which it is based. Further, this article imposes an obligation additional to those imposed by the said article 4, paragraph 6, by requiring the shipper to indicate by suitable marking that the goods are dangerous, and to inform the carrier of their dangerous character.

Paragraph 1

163. Austria notes (para. 9) that, while this paragraph requires marking or labelling by the shipper, article 13 does not specify the legal consequences if the requirement is not complied with. Austria accordingly proposes (para. 9) that this paragraph be deleted.

Paragraph 2

164. Austria proposes (para. 10) that, to avoid the consequences set out in subparagraphs (a) and (b) of paragraph 2, it should be sufficient for a shipper to inform the carrier about the dangerous character of the goods, even where such goods are handed over by the shipper to an actual carrier to whom performance of part of the carriage has been entrusted.

165. Canada proposes (para. 2(c)) that subparagraph (b) of this paragraph should be clarified to ensure that, even where the carrier or the actual carrier to whom the goods are handed over has not been informed of the dangerous character of the goods, the carrier or actual carrier is only entitled to unload, destroy or render innocuous the goods if they become a danger to life or property.

166. INSA notes (para. 27) that this paragraph does not define the means whereby the carrier may find out the dangerous character of the goods, and that hence difficulties may arise in determining whether a carrier knows of the dangerous character of the goods. INSA therefore proposes (para. 27) that the second sentence of the paragraph should be redrafted as follows:

"If the shipper fails to do so and such carrier or actual carrier is unable to find out the dangerous

character of the goods by their external inspection or from the description of the cargo."

Paragraphs 2 and 3 considered together

167. ICS notes (paras. 45 and 47) that in order to achieve safety at sea it is important:

(a) To impose a strong obligation on the shipper to inform the carrier of the dangerous character of the goods; and

(b) To provide that the shipper cannot easily escape the liability imposed under subparagraph (a) of paragraph 2 by alleging that the carrier has knowledge of the dangerous character of the goods.

168. ICS (para. 46) accordingly makes the following proposals:

(a) The second sentence of paragraph 2 should only consist of "If the shipper fails to do so", the other words being deleted;

(b) Paragraph 3 should be amended to read as follows:

"The provisions of paragraph 2 may not be invoked if the person taking charge of the goods on behalf of the carrier is, at the time of taking charge, aware of their dangerous character and, if necessary, the precautions to be taken."

Paragraphs 2 and 4 considered together

169. INSA notes (para. 28) that, while under both paragraphs 2 and 4 the carrier has the right to dispose of the goods if they become a danger to the ship or cargo, under both these paragraphs he can only dispose of them "as the circumstances may require". As a result, the manner of disposal must correlate with the circumstances constituting the danger. INSA (para. 29) states that the carrier may find it difficult to make such a correlation, since he may not be able always to determine the extent of the danger. INSA accordingly proposes (para. 30) the deletion of the words "as the circumstances may require" from both paragraphs 2 and 4.

Regulation of the right to freight

170. The Byelorussian SSR (para. 8), the USSR (para. 9) and INSA (para. 31) note that article 13 does not contain provisions regulating the right to freight when goods are unloaded, destroyed or rendered innocuous in accordance with paragraphs 2 and 4. The Byelorussian SSR (para. 8) and the USSR (para. 9) propose that provisions should be included in the article regulating this question. INSA makes the following specific comments:

(a) Where the carrier has knowledge of the dangerous character of the goods, he will charge a high freight for the carriage, as he can foresee the possible risks arising from the transport of such goods. If, therefore, the goods have to be disposed of prior to destination, he should only be entitled to the freight in an amount proportional to the distance covered (para. 31);

(b) Where the carrier has no knowledge of the dangerous character of the goods, he cannot foresee that he may not be able to deliver the goods at the port of destination. He should therefore be entitled to the full freight (para. 32).

⁴⁸ See paragraph 70, in the analysis of comments on article 5, paragraph 1.

Paragraph 4

171. Austria notes (para. 11) that in the French text of this paragraph, the word "*chargeur*" ("shipper") should be replaced by "*transporteur*" ("carrier").⁴⁹

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

Article as a whole

172. Qatar notes (para. 25) that this article, which deals with the issue of a bill of lading, is a revision of article 3, paragraph 3, of the Brussels Convention of 1924.

Paragraph 2

173. In the case of carriage on chartered vessels, the United States (para. 41) notes the importance for cargo interests of retaining both shipowner and charterer as responsible parties. In the case of such carriage, the shipper will ordinarily have dealt with the charterer, and it would be possible to interpret the definition of carrier under article 1, paragraph 1, of the draft Convention as including the charterer, and thereby to make the charterer responsible. If in the case of such carriage the bill of lading is signed by or for the master, the shipowner will also be bound even if the preliminary contract has been concluded with the charterer, and the bill of lading issued on the charterer's form. In order to resolve any doubt as to such dual liability, the United States (para. 41) proposes that the last sentence of paragraph 2 of article 14 should be amended to read as follows:

"A bill of lading signed by the master of the ship carrying the goods or on his behalf with his authority shall be deemed to have been signed on behalf of the carrier as well as on behalf of the shipowner as an actual carrier."

Article 15. Contents of bill of lading

Article as a whole

174. ICS notes (para. 48) that it is undesirable to codify for the future the required contents of a bill of lading, since these documents are constantly under review. Their contents should be left to be determined by the commercial requirements of banks and shippers. Article 16 of the draft Convention gives the shipper the protection he requires. ICS accordingly recommends the deletion of article 15.

175. Qatar notes (para. 25) that this paragraph, which deals with the rules relating to the contents of a bill of lading, is a revision of article 3, paragraph 3, of the Brussels Convention of 1924.

Reduction of mandatory contents of bill of lading

176. The United Kingdom (para. 19) and ICC (para. 17) note that the current trend is towards the elimination

from commercial documents of data not required by commercial practice or by developments in transport. They therefore recommend that the mandatory data on a bill of lading should be kept to a minimum, and note that the sanction if parties exclude commercially necessary data will be the fact that the document will then not be commercially acceptable (United Kingdom, para. 19; ICC, para. 19). ICC further notes (para. 19) that the parties should be allowed to include data additional to the mandatory data depending on the prevalent commercial circumstances, as provided for example under rule 6 of the ICC Uniform Rules for a combined transport document.⁵⁰

Paragraph 1, subparagraph (b)

177. The Byelorussian SSR (para. 2), the USSR (para. 2) and INSA (para. 33) note that, pursuant to their proposal⁵¹ to exclude packaging from the definition of "goods" in article 1, paragraph 4, consequential amendments are required in this subparagraph. INSA (para. 33) notes that in the case of packed goods, the relevant particulars to be set forth in the bill of lading will concern the external condition of the packaging. INSA accordingly proposes that this subparagraph should be amended to read as follows: "(b) The apparent condition of the goods or their packaging."

Paragraph 1, subparagraph (c)

178. The German Democratic Republic notes (para. 14) that this subparagraph needs to be supplemented by the following words: "If the name of the carrier is wrong, incorrect or absent, the shipowner shall be deemed to be the carrier."

Paragraph 1, subparagraph (f)

179. ICS (para. 49) notes that the requirements of this subparagraph cannot be complied with if the consignment is received over a period of several days, and that these requirements are also inappropriate in the case of a shipped bill of lading.

Paragraph 1, subparagraph (k)

180. Austria proposes (para. 12) that, in accordance with established practice, this subparagraph should indicate whether the freight is prepaid, or is payable at destination, and should read as follows: "The indication if the freight is prepaid or payable at destination." It notes that if this proposal is adopted, consequential amendments to article 16, paragraph 4, will be required.

181. ICS notes (para. 50) that this paragraph can create difficulties and lead to extra documentation if the cargo is resold.

⁴⁹ This correction, which is necessary to make the French text accord with the English, Spanish and Russian texts, has been made in the text of the draft Convention contained in document A CONF.89.5.

⁵⁰ Rule 6 of the ICC Uniform Rules reads as follows: "In addition to the information specifically required by these Rules, the parties shall insert in a CT document such particulars as they may agree to be commercially desirable" (ICC Publication 298, 1975).

⁵¹ For this proposal, see paragraph 24, in the analysis of comments on article 1, paragraph 4.

*Article 16. Bills of lading: reservations
and evidentiary effect*

Paragraph 3, subparagraph (a)

Harmonization with other transport conventions

182. OCTI (para. 17) notes that, under this subparagraph, the bill of lading is only evidence of the description of the goods taken over or loaded, whereas under other transport conventions (article 8, para. 3, of the CIM Convention;⁵² article 9, para. 1, of the CMR Convention;⁵³ article 11, para. 1, of the Warsaw Convention of 1929⁵⁴) the transport document is also evidence of the content of the contract of carriage. With a view to harmonization of the transport conventions, OCTI proposes that this subparagraph be redrafted as follows:

"(a) The bill of lading shall be *prima facie* evidence of the making of the contract of carriage, the conditions of the contract and 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."

Paragraph 3, subparagraph (b)

183. France notes (para. 20) that the words "including any consignee" are unnecessary, and that in certain cases a consignee might not be a third party. Thus, under a bill of lading made out to a named consignee, the consignee can invoke the contract of carriage and cannot be considered to be a third party. Further, the shipper himself, who is a party to the contract, can be a consignee. Accordingly, France proposes the adoption of the following restrictive wording, as contained in article 1, paragraph 1, of the Brussels Protocol of 1968: "However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith."

Paragraph 4

184. ICS notes (para. 51) that there is no need to set forth in a bill of lading the demurrage incurred. If it is to be mentioned, the carrier should only be required to state that demurrage is or may be payable, because, if the amount incurred is also to be mentioned, the issue of the bill of lading may be delayed until a statement of demurrage becomes available, and such delay will not be in the interests of shippers.

Deletion of paragraph

185. ICS (para. 52) does not approve of the pre-

⁵² Article 8, paragraph 3, of the CIM Convention reads as follows: "When stamped the consignment note shall, subject to the provisions of paragraph 4 of this article, be evidence of the contract of carriage."

⁵³ Article 9, paragraph 1, of the CMR Convention reads as follows: "The consignment note shall be *prima facie* evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier."

⁵⁴ Article 11, paragraph 1, of the Warsaw Convention of 1929 reads as follows:

"The air way-bill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage."

sumption created by this paragraph that no freight is payable if the freight is not set forth in the bill of lading. It notes that in some cases, such as carriage of goods on chartered vessels where the shipper is also the charterer, the bill of lading is only a receipt, and the absence of a mention of the freight may be due to the wish of the shipper. It is unwise to conclude in such cases that no freight is payable. Where a bill of lading is later negotiated to a third party, the more reasonable presumption to apply is that freight is due because carriers charge for their services. ICS therefore proposes the deletion of this paragraph.

Article 17. Guarantees by the shipper

Article as a whole

186. Iraq (para. 6) and the AALCC (para. 7) note that this article calls for special consideration at the United Nations Conference on the Carriage of Goods by Sea.

Paragraph 2

187. The United States (para. 43) notes that it is desirable that a carrier omitting reservations from a bill of lading in exchange for a letter of indemnity be deprived of his right to limit his liability, but only with respect to loss sustained by the claimant, because of his good faith reliance on the description of the goods in the bill of lading, and not with respect to loss from unrelated causes. It therefore proposes that this paragraph be redrafted by deleting the words "to whom the bill of lading has been transferred" appearing at the end of the paragraph, and replacing them with the following words:

"who in good faith has acted in reliance on the description of the goods therein, and as against such good faith claimant, with respect to loss sustained in reliance on the bill of lading description, the carrier shall be without the benefit of the limitation of liability provided in this Convention."

Paragraphs 2, 3 and 4 considered together

188. Qatar (para. 26) notes that these paragraphs deal with the validity and effect of a letter of guarantee which constitutes an undertaking by the shipper to indemnify the carrier for the liability the latter may incur towards a third party as a result of an inaccurate description of the goods in the bill of lading.

Retention of paragraphs 2, 3 and 4

189. Australia (para. 18), France (para. 22) and Czechoslovakia (para. 5) favour the retention of these paragraphs. Australia and France approve of the regulation under these paragraphs of letters of guarantee at an international level because:

(a) The existence of the practice of fraudulently issuing clean bills of lading in reliance on letters of guarantee suggests that regulation at the national level is ineffective (Australia);

(b) Leaving the issue to be settled by national law may lead to varying and uncertain solutions to the problem (France).

Deletion of paragraphs 2, 3 and 4

190. Canada (para. 2(d)), Netherlands (para. 12), ICC (para. 23) and ICS (para. 58) propose the deletion of these paragraphs, for the following reasons:

(a) Letters of indemnity are considered to be invalid as being against public order and policy (Canada (para. 2(d)));

(b) The provisions of these paragraphs are not useful to a bill of lading holder whose position is affected by a letter of guarantee (Netherlands (para. 12));

(c) It is important that a bill of lading, which is regarded as representing the goods carried, should accurately describe the goods, so that persons receiving a bill of lading can rely on it. Failure to enter a reservation on a bill of lading will mislead such persons, and there should therefore be no recognition in the Convention of letters of guarantee, which can be used to secure the omission of reservations (ICC, paras. 20-23);

(d) The criminal element in the fraudulent use of inaccurate bills of lading cannot appropriately be suppressed by a Convention on private law (ICS (para. 53)).

(e) These provisions, if retained, will make it unlikely that a carrier will accept a letter of indemnity if the shipper desires that the carrier should not enter reservations in the bill of lading. The carrier will adopt alternative practices, such as requiring a deposit. These alternative practices will cause hardship to the shipper, who is the person currently initiating the issue of a letter of indemnity (ICS, paras. 54-56);

(f) The difficulties currently experienced over letters of guarantee are due to the refusal by banks to accept clauséd bills of lading under letters of credit. The proper solution is not the adoption of the provisions contained in these paragraphs, but a change in commercial practice in regard to letters of credit (ICS, paras. 56-57).

Deletion of the words "including any consignee" from article 17, paragraphs 2, 3 and 4

191. France and INSA propose the deletion of the words "including any consignee" from these paragraphs:

(a) for the reasons given by France supporting the deletion of the same words in article 16, subparagraph 3 (b) (France, para. 21);⁵⁵

(b) because the words are unnecessary (INSA, para. 40).

Deletion of paragraphs 3 and 4

192. The Byelorussian SSR, the USSR, and INSA propose the deletion of paragraph 3:

(a) as it is unnecessary, since the issues it deals with can be regulated under national law (Byelorussian SSR, para. 9; USSR, para. 10; INSA, para. 42);

(b) as it places the carrier and the shipper on a footing of inequality. For although in the case of the issue of a letter of guarantee with intent to defraud a third party the shipper will have initiated the fraud, the shipper bears

almost no responsibility under this paragraph (INSA, para. 42).

193. The Byelorussian SSR (para. 10), the USSR (para. 10) and INSA (para. 43) propose the deletion of paragraph 4 as unnecessary because the question of the loss of the right to limit liability is already regulated by article 8.

194. The United States (para. 42) notes that any attempt in the Convention to define the circumstances under which a letter of guarantee will be enforceable against the shipper will have the effect of encouraging the undesirable practice, conducive to fraud on consignees, of issuing letters of guarantee. Accordingly, the United States (para. 42) proposes the deletion of paragraphs 3 and 4.

Article 18. Documents other than bills of lading

195. The German Democratic Republic notes (para. 15) that, as article 18 is intended to take account of the declining relevance of the bill of lading and the increasing significance of the data freight receipt, it would be appropriate for the Convention to codify to a minimum degree rules for the latter document. For this purpose, the German Democratic Republic makes the following proposals:

(a) The words "with approval by the shipper" should be added to the article after the words "When a carrier . . ." (para. 16);

(b) The following two additional paragraphs should be added to the article:

"2. The carrier shall deliver the goods to the consignee named in the document.

"3. The shipper keeps the right of disposal on the goods until they have arrived at the port of destination unless he has transferred this right beforehand in writing and without reservations to the consignee or any other person and has informed the carrier of such a transfer."

196. Qatar notes (para. 27) that, unlike the Brussels Convention of 1924 and the Brussels Protocol of 1968, the draft Convention regulates all documents evidencing the contract of carriage.

197. INSA (para. 44) notes that the conclusion of the contract of carriage and the taking over of the goods are in law different events which may not coincide in time. Therefore, the issue of a document evidencing a contract will not always evidence the taking over of goods. In the light of this consideration, INSA proposes that this article be redrafted as follows:

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

198. OCTI (para. 17) notes that, under this article, a document other than a bill of lading is only evidence of the description of the goods taken over, whereas under other transport conventions (article 8, para. 3, of the CIM Convention; article 9, para. 1, of the CMR Convention;

⁵⁵ See paragraph 183, in the analysis of comments on article 16, subparagraph 3 (b).

article 11, para. 1, of the Warsaw Convention of 1929⁵⁶) the transport document is also evidence of the content of the contract of carriage. With a view to harmonization of the transport conventions, OCTI proposes that this article be redrafted as follows:

"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 making of the contract of carriage and the conditions of the contract as well as of the taking over by the carrier of the goods as therein described."

PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

Article as a whole

199. Qatar notes (para. 28) that this article, which is a revision of article 3, paragraph 6, of the Brussels Convention of 1924, is concerned with notice of loss, damage or delay to be given to the carrier.

Paragraph 1

Desirability of requiring notice to be given of loss or damage at the time of handing over

200. The Federal Republic of Germany (para. 11), ICC (para. 24) and ICS (paras. 59-61) propose that this paragraph should require that notice of apparent loss or damage be given by the consignee at the time of handing over of the goods because:

(a) The power given to the consignee under the existing text to give notice later than at the time of handing over will lead to disputes and litigation as to whether the loss or damage existed at the time of handing over (ICC and ICS);

(b) The power to give notice later than at the time of handing over may result in the notification to the carrier of loss or damage occurring after the handing over of the goods (Federal Republic of Germany);

(c) A requirement that notice be given, whether orally or in writing, at the time of handing over does not place a heavy burden on the consignee (Federal Republic of Germany).

201. ICS accordingly proposes (para. 61) that the following text approved by the UNCITRAL Working Group on International Legislation on Shipping should be substituted:

"1. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the consignee to the carrier not later than at the time the goods are handed over to the consignee, such handing over shall be *prima facie* evidence of the delivery of the goods by the carrier in good condition and as described in the document of transport, if any."⁵⁷

⁵⁶ For the text of these provisions, see foot-notes 52, 53 and 54 pertaining to the analysis of comments on article 16, subparagraph 3(a).

⁵⁷ See *Yearbook of the United Nations Commission on International Trade Law*, vol. VI, 1975 (United Nations publication, Sales No.

Other proposals

202. (a) The United States notes (para. 45) that, where no notice is given under this paragraph, and a transport document has been issued in respect of the carriage of the goods, this paragraph only creates a presumption that the goods were delivered in apparent good condition, for a transport document will only describe the apparent condition of the goods. However, where no notice is given under this paragraph, and no transport document has been issued, this paragraph creates a presumption that the goods were delivered in good condition. The carrier therefore has the benefit of a more favourable presumption when a transport document is not issued than when such a document is issued.

(b) The United States also notes (para. 45) that the subject of non-apparent loss or damage is separately treated in paragraph 2 of this article, where a longer period is provided for the giving of notice of non-apparent as opposed to apparent loss or damage. Creation of a presumption as to the actual, as distinguished from the apparent, condition of the goods tends to create confusion as to whether the shorter or the longer period applies for giving of notice of non-apparent loss or damage when no transport document has been issued.

203. The United States accordingly proposes (para. 45) that the words "in good condition" appearing at the end of this paragraph be replaced by the words "in apparent good condition".

204. Iraq (para. 6) and AALCC (para. 7) note that this paragraph calls for special consideration at the United Nations Conference on the Carriage of Goods by Sea.

Paragraph 2

Reduction of the period of 15 days

205. France (para. 23), ICC (para. 25) and ICS (paras. 62-63) observe that the period of 15 days permitted under this paragraph for the giving of notice is too long. France and ICS propose that the period be reduced to 10 days, ICC (para. 62) noting that this period is quite sufficient for the consignee to discover even cases of non-apparent loss or damage, and France noting that a period of 10 days is specified in the text approved by the UNCITRAL Working Group on International Legislation on Shipping.⁵⁸ ICC (para. 25) proposes that the period be reduced to 7 days, noting that it understands that a 7-day period is specified in regard to damage caused during the sea leg of a multimodal transportation under the UNCTAD draft Convention on multimodal transport, and that a 7-day period is also specified under rule 10⁵⁹ of

E.76.V.5), part two, chap. IV, sect. 4, p. 246. Draft convention on the carriage of goods by sea (A/CN.9.105, annex), article 19.

⁵⁸ The text is as follows:

"2. Where the loss or damage is not apparent, the notice in writing must be given within 10 days after the completion of delivery, excluding that day." (*Ibid.*).

⁵⁹ Rule 10 of the ICC Uniform Rules reads as follows:

"Except in respect of goods treated as lost in accordance with rule 15 hereof the CTO shall be deemed *prima facie* to have delivered the goods as described in the CTO document unless notice of loss of, or damage to, the goods indicating the general nature of such loss or

the ICC Uniform Rules for a combined transport document.

Paragraphs 1 and 2 considered together

Burden of proof created by the paragraphs

206. OCTI (para. 30) notes that, while it is clear that these paragraphs create a presumption of delivery of the goods as described in the document of transport, or in good condition, as the case may be, where notice has not been given in the time specified, the result where notice has been given in time is unclear. In the latter case, it will be inequitable to demand proof by the carrier of delivery in good condition after a certain period has elapsed after delivery without complaint by the consignee, and also unfair to give evidential effect to a notice of loss or damage given by the consignee after delivery (paras. 32-33). If the general rule that the burden of proof lies on the person making an allegation is adopted, the consignee will have to prove the existence of loss or damage. He will therefore have to prove loss or damage whether or not he has given notice in time (paras. 34-35).

207. In view of this uncertainty as to their effect, OCTI proposes (para. 35) that these paragraphs be deleted.

208. If it is considered necessary, in the interests of the carrier, to require the consignee to give notice, OCTI proposes (para. 37) that appropriate sanctions should be attached to the failure to give notice, and suggests that a system of extinction of rights of action resulting from a failure to give notice at the time of delivery be adopted. It notes (paras. 27 and 31) that such a system is adopted in article 45 of the CIM Convention,⁴⁰ and article 26 of the Warsaw Convention of 1929.⁴¹

damage, shall have been given in writing to the CTO or to his representative at the place of delivery before or at the time of removal of the goods into the custody of the person entitled to delivery thereof under the CTO document, or, if the loss or damage is not apparent, within seven consecutive days thereafter." (ICC publication 298, 1975).

⁴⁰ Article 45 of the CIM Convention reads as follows:

"Extinction of rights of action against the railway arising from the contract of carriage

"1. Acceptance of the goods by the person entitled to them shall extinguish all rights of action against the railway for delay in delivery, partial loss, or damage.

"2. Nevertheless the right of action shall not be extinguished:

"(a) If the person entitled to the goods furnishes proof that the loss or damage was caused by wilful misconduct or gross negligence on the part of the railway;

"(b) In the case of a claim for delay in delivery made against one of the railways specified in article 43 (3) of this Convention within a period not exceeding thirty days excluding the day on which the goods were accepted by the person entitled to receive them.

"(c) In the case of a claim for partial loss or for damage

"(i) If the loss or damage was discovered before the acceptance of the goods by the person entitled to them in accordance with article 44 of this Convention;

"(ii) If the verification which should have been made under article 44 was omitted solely through the wrongful act or neglect of the railway.

"(d) In the case of claims for non-apparent loss or damage discovered after acceptance of the goods by the person entitled to them, provided that:

"(i) Immediately after discovery of the loss or damage and in any event within seven days of the acceptance of the goods, the

Harmonization of language with article 4, paragraph 2

209. The United States notes (para. 44) that the period within which notice must be given commences from the time the goods "were handed over" by the carrier to the consignee. However, under article 4, paragraph 2, the term "delivered" is used to mark the point of time at which the carrier ceases to be in charge of the goods. The United States accordingly proposes that the term "delivered" should be substituted for "handed over" in these paragraphs, as the former term has a more settled meaning.

Paragraph 5

210. ICC notes (para. 26) that, while under article 5, paragraph 3, the person entitled to make a claim for the loss of goods may treat the goods as lost after a delay in delivery of 60 days, article 19 does not provide for the giving of notice in such a case.

211. ICS proposes (para. 64) that if liability for delay is to be retained in the Convention, the words "his servants or agents" should be added at the end of this paragraph.

Article 20. Limitation of actions

Paragraph 1

Comparison with the Brussels Convention of 1924

212. Qatar (para. 29) notes that this article differs from the corresponding provision in the Brussels Convention of 1924 as amended by article 1, paragraphs 2 and 3, of the Brussels Protocol of 1968 in that:

(a) The latter provision covers only actions against carriers, while this paragraph also covers actions by carriers against shippers or consignees.

(b) While the period of limitation under the latter is one year, it is two years under this paragraph.

person entitled asks for a verification in accordance with article 44 of this Convention; and

"(iii) The person entitled to the goods proves that the loss or damage occurred between acceptance for carriage and delivery.

"3. If the goods have been reconsigned subject to the conditions laid down in article 29 (1) of this Convention, rights of actions for compensation in respect of partial loss or damage arising from the contract of carriage preceding the reconsignment shall be extinguished in the same manner as if there had only been one contract of carriage."

⁴¹ Article 26 of the Warsaw Convention of 1929 reads as follows:

"(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

"(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

"(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

"(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part."

Reduction of period of limitation to one year

213. ICS (paras. 65-66), CMI (para. 26) and OCTI (para. 19) propose that the period of limitation should be reduced to one year for the following reasons:

(a) There will be considerable difficulty for both parties in procuring evidence for a trial two years after the day on which the limitation period commences to run. In actions for loss of or damage to the goods, the difficulty will be greater for the carrier, since the burden of proof rests on him (ICS, paras. 65-66);

(b) If a period of limitation longer than one year is required for negotiation in a complicated case, it is possible under paragraph 4 of the article to extend the one-year period (CMI, para. 26);

(c) A change from the well established period of one year may mislead some persons, such as those engaged in "short-sea" ferry traffic, into the belief that the two-year period is now applicable to them, whereas the one-year period may still be applicable, depending on the circumstances (CMI, para. 26);

(d) Adoption of a one-year period will result in harmony with the period of limitation in article 46 of the CIM Convention⁶² and article 32 of the CMR Convention⁶³ (CMI, para. 26; ICS, para. 66; OCTI, para. 19), while the retention of the two-year period will create difficulties for a sea through-carrier in pursuing recourse actions against road and rail carriers (CMI, para. 26).

214. OCTI (para. 20) notes, however, that if a one-year period is adopted, it will be useful to add the following provision to the paragraph: "Nevertheless, in the case of wilful misconduct, the period of limitation shall be two years."

⁶² Article 46, paragraph 1, of the CIM Convention reads as follows:

"1. The period of limitation for an action arising out of the contract of carriage shall be one year. Nevertheless, the period of limitation shall be three years in the case of:

"(a) an action to recover 'cash on delivery' charges collected by the railway from the consignee;

"(b) an action to recover the net proceeds of a sale effected by the railway;

"(c) an action for loss or damage caused by wilful misconduct;

"(d) an action for moneys due under article 39 of this Convention, in cases of fraud;

"(e) an action arising out of the contract of carriage previous to the reassignment in cases to which article 29 (1) of this Convention applies."

⁶³ Article 32, paragraph 1, of the CMR Convention reads as follows:

"1. The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

"(a) in the case of partial loss, damage or delay in delivery, from the date of delivery;

"(b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier;

"(c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage. The day on which the period of limitation begins to run shall not be included in the period."

Retention of the two-year period

215. France (para. 24) notes that the one-year period of limitation provided in article 3, paragraph 6, of the Brussels Convention of 1924 has been increased under this paragraph to two years, and is applicable to both actions against the carrier and actions against the shipper and consignee, and proposes that the two-year period be retained.

Reduction of period to one year in actions for indemnity against a carrier

216. INSA (para. 45) proposes that the limitation period in actions for indemnity against the carrier be limited to one year, because:

(a) Such a period gives sufficient time for instituting an action against the carrier;

(b) A period of one year will result in claims being settled without undue delay;

(c) If necessary, the one-year period can be extended under paragraph 4 of this article.

Paragraph 4

Harmonization with other transport conventions

217. OCTI (para. 21) notes that a provision modelled on those contained in article 46, paragraph 3, of the CIM Convention⁶⁴ and article 32, paragraph 2 of the CMR Convention⁶⁵ under which the period of limitation is suspended when a claim is made, will be more useful than this paragraph. It accordingly proposes that this paragraph be replaced by the following paragraph:

"A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted, the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of receipt of the claim, or of the reply and return of the documents, shall rest with the party relying on these facts. The running of the period of limitation shall not be suspended by further claims having the same object."

⁶⁴ Article 46, paragraph 3, of the CIM Convention reads as follows:

"3. When a claim is made in writing to a railway in accordance with article 41 of this Convention, the period of limitation shall be suspended until such date as the railway rejects the claim by notification in writing and returns the documents attached thereto. If part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim or of the reply and of the return of the documents shall rest with the party relying upon these facts.

"The running of the period of limitation shall not be suspended by further claims having the same object."

⁶⁵ Article 32, paragraph 2, of the CMR Convention reads as follows:

"2. A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object."

Article 21. Jurisdiction

Article as a whole

Deletion of the article

218. The Byelorussian Soviet Socialist Republic (paras. 11-13), the Union of Soviet Socialist Republics (paras. 11-16) and INSA (paras. 46-49) propose that this article be deleted for the following reasons:

(a) The numerous options given to the plaintiff under paragraph 1 of the article as to the place where he can institute an action create an imbalance between the parties to the advantage of the plaintiff (Byelorussian SSR, para. 11; USSR, paras. 11-12);

(b) The article is contrary to international agreements, binding on certain States, containing rules as to the proper jurisdiction for instituting actions in respect of contracts for the carriage of goods by sea (USSR, para. 13);

(c) The problem of jurisdiction is outside the proper scope of the Convention (USSR, para. 15);

(d) The article, and in particular paragraph 2 thereof, in providing for the possible arrest of state-owned ships, is contrary both to a principle of contemporary international law and to generally recognized international agreements (Byelorussian SSR, para. 11);

(e) The article is contrary to the settled practice whereby the competent jurisdiction is settled by agreement of the parties (INSA, paras. 46-47).

219. It is accordingly proposed that the problem of jurisdiction should be left to be resolved by national legislation (USSR, para. 15) or by agreement of the parties (INSA, para. 49).

Retention of the article

220. Australia (para. 19), France (paras. 25-26) and Qatar (para. 30) support the retention of this article for the following reasons:

(a) By inserting jurisdiction clauses in transport documents, carriers can impose on shippers and consignees inconvenient forums for the prosecution of claims by the latter. This article provides a remedy if such clauses are inserted. (Australia, para. 19; France, para. 25; Qatar, para. 30);

(b) The article reflects a compromise on the issue of jurisdiction between the interests of carriers and shippers (France, para. 26).

Paragraph 1

Alternative to deletion: options to be available only in the absence of agreed forum

221. The Byelorussian Soviet Socialist Republic (para. 16), the German Democratic Republic (para. 18) and the Union of Soviet Socialist Republics (para. 16) propose that, if this paragraph is to be retained, the options given to the plaintiff as to forums for instituting actions should only be available in the absence of agreement by parties to the contract of carriage as to the competent forum.

Reduction of options as to forums

222. The German Democratic Republic (para. 19) and ICS (para. 67) propose that the number of optional forums given to the plaintiff for instituting actions should be reduced. ICS notes that the number of options now available might lead to "forum-shopping". It is accordingly proposed that:

(a) Paragraph 1, subparagraph (b), should be deleted (German Democratic Republic, para. 19);

(b) Paragraph 1, subparagraphs (b), (c) and (d), or at least two of them, should be deleted (ICS, para. 69).

Restriction of jurisdiction to contracting States

223. France (para. 27) and ICS (paras. 67-68) propose that the word "Contracting" be added before the word "State", as this will ensure that an action is only brought in a court which applies the Convention. In support of the above proposal, France (para. 27) notes that it is unclear whether the statement that the contract is subject to the Convention, required by article 23, paragraph 3, to be inserted in every document evidencing a contract of carriage, will ensure the application of the Convention by the courts of non-contracting States.

Drafting proposal

224. Iraq (para. 4) and the AALCC (para. 5) propose that, in order to harmonize the phrase "any additional place" appearing in subparagraph (d) of this paragraph, and the phrase "any place" appearing in article 22, subparagraph 3 (b), the phrase "any other place" should be substituted for each of those phrases.

Paragraph 2

Deletion of the paragraph

225. The Byelorussian Soviet Socialist Republic (paras. 11-13) proposes that, even if the other provisions of the article are retained, this paragraph should be deleted as it is contrary both to a principle of international law, and to generally recognized international agreements, in providing for the possible arrest of state-owned ships.

226. INSA (para. 48) opposes the retention of this paragraph because under the legal system of a number of States it is impossible to institute actions *in rem*.

Retention of the paragraph

227. The United States (para. 47) notes that, if the Convention is to deal with jurisdiction, it is essential to retain this paragraph which contains a compromise form of action *in rem*.

Restriction of the scope of the paragraph as an alternative to deletion

228. The Byelorussian Soviet Socialist Republic (para. 14) and the Union of Soviet Socialist Republics (para. 14) propose that, if the paragraph is retained, it should be amended to exclude the possibility of arresting state-owned ships under its provisions.

Possibility of conflict with the International Convention relating to the Arrest of Seagoing Ships, 1952

229. The Federal Republic of Germany (para. 12) proposes the deletion of the second sentence of this paragraph because:

(a) It is inconsistent with the Arrest Convention of 1952, which does not oblige a plaintiff to remove to another competent court an action which an arresting court is competent to try by reason of the arrest; and

(b) Such a removal is not feasible, since the procedural laws of courts are not uniform.

230. France (para. 28), while noting the possible conflict between this paragraph and the Arrest Convention of 1952, states that the provisions of this paragraph are residuary, and therefore create little risk of conflict.

Other proposals

231. The United States (para. 46) proposes that, to cover the case where a vessel is arrested outside a port, the phrase "courts of any port" appearing in the first sentence of this paragraph should be replaced by the phrase "courts of any port or place".

Article 22. Arbitration

Article as a whole

General observation

232. Qatar (para. 31) notes that this article is concerned with the arbitration of disputes that may arise under a contract of carriage.

Deletion of the article

233. The Byelorussian Soviet Socialist Republic (paras. 17-18), the Union of Soviet Socialist Republics (paras. 17-19) and INSA (paras. 50-52) propose that this article be deleted for the following reasons:

(a) The article gives the plaintiff the power to make an arbitrary selection of the place of arbitration and the form of the arbitration proceedings (i.e. *ad hoc* or institutional) (Byelorussian SSR, para. 17; USSR, para. 17);

(b) The article undermines the importance of agreement by parties as to the place of arbitration (INSA, para. 51), and might lead to a decline in the use of arbitration, which is an inexpensive and efficient method of settling disputes arising out of international carriage contracts (USSR, para. 18; INSA, para. 52).

Retention of the article

234. Australia (para. 19) and France (paras. 25-26) support the retention of this article for the same reasons given by them for the retention of article 21.⁶⁶

Paragraph 2

235. The United States (para. 48) proposes that the words "in good faith" appearing at the end of this paragraph be replaced by the words "without actual knowledge of the arbitration provision", because the

carrier should be able to invoke a charter-party arbitration clause against a holder of a bill of lading only if the latter has notice of such a clause at the time of his acquisition of the bill of lading.

236. The United States (para. 49) also notes that, since the purpose of article 22 is to protect the holder of a bill of lading no matter who the carrier may be, the words "such provision may not be invoked" should be substituted for the words "the carrier may not invoke such provision" currently appearing in this paragraph.

Paragraph 3

Alternative to deletion: options as to place of arbitration to be available only in the absence of an agreed place of arbitration

237. The Byelorussian Soviet Socialist Republic (para. 18), the German Democratic Republic (para. 18) and the Union of Soviet Socialist Republics (para. 19) propose that, if this paragraph is to be retained, the options given to the plaintiff as to the place for instituting arbitration proceedings should only be available in the absence of an agreed place of arbitration.

Restriction of options as to place of arbitration

238. The German Democratic Republic (para. 19) proposes that the number of available options as to the place for instituting arbitration proceedings should be reduced through the deletion of subparagraph (a) (ii) of this paragraph.

Other proposals

239. In order to prevent a claimant from instituting arbitration proceedings at remote places in large States, the United States (para. 51) proposes that the text of subparagraphs (a), (b) and (c) of paragraph 1 of article 21 should be substituted for the present text of subparagraphs (a) and (b) of this paragraph.

Drafting proposal⁶⁷

240. In order to harmonize this paragraph with other provisions, the United States (para. 50) proposes that the phrase "claimant having suffered loss or damage" be substituted for the word "plaintiff" appearing in the opening words of this paragraph.

Paragraph 6

241. In order to demonstrate clearly that the provisions of paragraphs 4 and 5 of article 22 also apply to an arbitration agreement made after a claim under a contract of carriage has arisen, OCTI (para. 38) proposes that this paragraph be placed as paragraph 4 of the article, and that the present paragraphs 4 and 5 be placed as paragraphs 5 and 6.

⁶⁶ For another drafting proposal affecting subparagraph (b) of paragraph 3, made by Iraq (para. 4) and AALCC (para. 5), see paragraph 224 above, in the analysis of comments on article 21, paragraph 1.

⁶⁷ See paragraph 220, in the analysis of comments on article 21.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

Paragraph 1

Drafting proposal

242. Iraq (para. 5) and AALCC (para. 6) suggest that the drafting of the first sentence of this paragraph may be improved if the opening words "Any stipulation of the contract of carriage or contained in a bill of lading or any other document evidencing the contract of carriage" are replaced by the words "Any stipulation in the contract of carriage, in a bill of lading, or in any other document evidencing the contract of carriage".

Paragraph 3

243. Iraq (para. 6) and AALCC (para. 7) note that this paragraph calls for special consideration at the Conference on the Carriage of Goods by Sea.

Paragraph 4

244. Canada (para. 1 (e)) approves of the development of provisions to deter the inclusion of invalid clauses in contracts of carriage.

Article 24. General average

Article as a whole

245. Qatar (para. 32) notes that this article has a wider scope than the corresponding provision in article 5, paragraph 2, of the Brussels Convention of 1924.

Paragraph 2

Deletion of the paragraph

246. Canada (para. 2 (e)) proposes that this paragraph be deleted as it reinforces the carrier's privileged position without any corresponding benefit to the shipper.

*Amendment or clarification of paragraph: relationship to articles 5, 6 and 20**Relationship to article 5*

247. The Netherlands (paras. 13-14) notes that:

(a) The paragraph makes it uncertain whether a consignee who contends that the carrier is liable for the event which gives rise to the general average act is entitled to refuse to provide security for the payment of his contribution in general average (para. 13);

(b) The paragraph should not impede the present system of drawing up general average adjustments, but should only clarify that contributions paid by cargo owners must be reimbursed if a carrier is liable under the Convention (para. 14).

248. The United States (paras. 52-55) makes the following observations:

(a) While this paragraph makes the right of the carrier to recover contributions dependent on his freedom from liability under the Convention for loss of or damage to the

goods, it does not make it dependent on his freedom from liability under the Convention for delay. This omission may give rise to future problems (para. 53);

(b) This paragraph does not adequately deal with the case, envisaged in article 5, paragraph 7, where the carrier is only partly at fault, and where the shipper, who may also be the consignee as defined by paragraph 3 of article 1, is also at fault (e.g. under article 12 or 13). The United States (para. 55) accordingly proposes that the opening words of the paragraph be redrafted as follows:

"With the exception of article 20, the provisions of this Convention relating to the liability of the carrier or a shipper for loss of or damage to the goods . . ."

249. ICS (para. 70) notes that:

(a) If this paragraph merely refers to the fact that article 5 is silent as to liability for general average contributions, the matter should more properly be dealt with in article 5;

(b) If, however, the paragraph effects a substantial change in the apportionment of general average, it would be unfortunate for the Convention to prejudge an issue which is included in the future work programme of the UNCTAD Working Group on International Shipping Legislation.

Relationship to article 6

250. In order to clarify that the rules on limits of liability in article 6 of the Convention do not apply in respect of contributions in general average, the United Kingdom (para. 20) proposes that the opening words of this paragraph be amended as follows: "With the exception of articles 6 and 20, . . .".

Relationship to article 20

251. The United States (para. 54) notes that the purpose of excluding under this paragraph the application of the limitation period created by article 20 of the Convention is presumably to allow a cargo owner to plead the carrier's liability under the Convention for loss of or damage to the goods as a defence to a carrier's claim for contribution, even though the cargo owner can bring no action in respect of the carrier's liability because the limitation period has expired.

Article 25. Other conventions

Article as a whole

252. Qatar (para. 33) notes that this article regulates the relationship between liability under this Convention and possible liability under other conventions for loss of or damage to the goods.

Paragraph 1

253. Canada (para. 3 (c)) proposes that this paragraph should not superimpose limits of liability created by any other international conventions or national laws relating to the limits of liability of owners of seagoing ships so as to diminish the amount recoverable by cargo interests under the present Convention.

Paragraph 3

254. ICS (para. 71) observes that this Convention should not apply to passenger luggage and that this can be ensured by excluding passenger luggage from the definition of goods contained in article 1, paragraph 4. If passenger luggage is so excluded, this paragraph will be unnecessary.⁶⁸

C. COMMENTS AND PROPOSALS ON THE DRAFT PROVISIONS CONCERNING IMPLEMENTATION, RESERVATIONS AND OTHER FINAL CLAUSES

Draft provisions as a whole

255. The German Democratic Republic (para. 20) reserves its right to state its position on these draft provisions at the Conference on the Carriage of Goods by Sea.

Article []. Implementation

256. Canada (para. 3 (e)) states that the "federal State clause" set forth in this article is satisfactory.

Article []. Entry into force

General observations

257. Sweden (para. 11) and the United Kingdom (para. 21) note that this article should provide that the Convention only enters into force after a considerable number of States have adhered to it. Unless such provision is made, a transitional period may occur during which different States may apply one of three sets of international rules (the Brussels Convention of 1924, that Convention as modified by the Brussels Protocol of 1968, and this Convention) to regulate carriage of goods by sea. Such a transitional period will result in confusion.

Alternative A

258. Czechoslovakia (para. 6) proposes that this alternative, which does not use as a criterion for entry into force the tonnage of the merchant fleets of contracting States, should be adopted, as the entry into force of the Convention concerns not only carriers but also shippers.

Alternative C

259. Chad (para. 3) notes that this alternative appears to be the most appropriate because it is the most realistic.

Article []. Multimodal transport

Alternative A

260. Chad (para. 4) notes that this alternative seems best adapted to current global transport conditions.

261. Australia (paras. 6-12) notes that a provision such as this alternative⁶⁹ is needed because the draft Convention is made applicable under article 2 only to contracts of carriage of goods between ports. As a result, the draft Convention will not apply to the sea leg of a contract of carriage under which the place of either origin or termination of the carriage is not a port. In order to secure the protection of the draft Convention in such cases, shippers will be forced to enter into separate contracts of sea carriage for the sea leg of the carriage. However, the conclusion of such separate contracts will be inconvenient, and in some cases may be impossible.⁷⁰

262. The United States (paras. 3 and 6), on the other hand, while noting that the draft Convention is not a convention concerned with multimodal transport from one inland point to another, states that the draft Convention should not be interpreted as excluding from its coverage the sea leg of a contract of carriage where the transport begins at one inland point and terminates at another. The United States (para. 6) accordingly proposes that the proper scope of application of the draft Convention be clarified by amending the definition of contract of carriage contained in article 1, paragraph 5.⁷¹

263. OCTI (paras. 3-6) does not approve of this alternative, for the following reasons:

(a) Paragraph 1 of this alternative is based on article 31 of the Warsaw Convention of 1929.⁷² However, the rules contained in article 31 have been a source of difficulty during the preparation of the draft TCM Convention on combined transport of goods.⁷³

(b) Although the applicability of the draft Convention under paragraph 1 of this alternative is restricted by paragraph 3 of this alternative, the restriction is inadequate in that, despite the restriction, the draft Convention will displace the rules of the CIM Convention in cases where they currently apply to sea carriage. Under articles 2 and 62 of the CIM Convention,⁷⁴ that Con-

⁶⁸ The text of alternative A was proposed by Australia at the ninth session (12 April-7 May 1976) of the United Nations Commission on International Trade Law and also in the comments on the draft Convention on the Carriage of Goods by Sea submitted by Australia to the Secretary-General (A/CONF.89/6).

⁶⁹ For an analysis of these comments in so far as they relate to the definition of "contract of carriage", see paragraphs 28 and 30 above, in the analysis of comments on article 1, paragraph 5.

⁷⁰ For the amendment proposed by the United States, see paragraph 29 above, in the analysis of comments relating to article 1, paragraph 5.

⁷¹ Article 31 of the Warsaw Convention of 1929 reads as follows:

"1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of article 1.

"2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air."

⁷² The text of the draft TCM Convention is set forth in document E/CONF.59/17, annex 1.

⁷³ Article 2 of the CIM Convention reads as follows:

"1. Regular road services or shipping services which are com-

⁶⁸ For the proposal by ICS for excluding passenger luggage from the definition of goods in article 1, paragraph 4, see paragraph 26 above, in the analysis of comments on article 1, paragraph 4.

vention applies to shipping services which are complementary to railway services, and the useful regional harmonization of transport law effected by such application should be maintained;

(c) It is unclear whether, under paragraph 3 of this alternative, the operation of this alternative provision is only superseded by the subsequent entry into force of genuine transport conventions (which specify the use of a single transport document, and apply to a community of carriers) or is also superseded by conventions governing only the legal relationship between the users and the providers of multimodal transport. If the intention is to make the latter form of convention supersede the operation of this alternative provision, that result may not be achieved, because the latter form of convention generally will not contain "a provision for the supersession of this Convention" as required by paragraph 3;

plementary to railway services and which carry international traffic under the responsibility of a Contracting State or of a railway whose lines are included in the list referred to in article 1 of this Convention, may, in addition to railways, be included in that list

"2. The undertakings operating such services shall be subject to all the obligations imposed and enjoy all the rights conferred on railways by this Convention, subject always to such derogations as necessarily result from the different forms of transport. Such derogations shall not, however, in any way affect the rules as to liability laid down in this Convention.

"3. Any State wishing to have a service of the kind referred to in paragraph 1 of this article included in the list shall take the necessary steps to have the derogations provided for in paragraph 2 of this article published in the same manner as tariffs.

"4. In the case of international traffic making use both of railways and of transport services other than those referred to in paragraph 1 of this article, the railways, in conjunction with the other transport undertakings concerned, may, so as to take account of the special features of each form of transport, lay down conditions in the tariffs which have a legal effect different from that of this Convention. The railways may, in such a case, provide for the use of a transport document other than that prescribed by this Convention."

Article 62 of the CIM Convention reads as follows:

"1. In rail-sea transport by the services referred to in article 2 (1) of this Convention each State may, when requesting that such services be included in the list of lines governed by the Convention, indicate that the following grounds of exemption from liability will apply in their entirety in addition to those provided for in article 27 of this Convention.

"The carrier may only avail himself of these grounds of exemption if he proves that the loss, damage or delay in delivery occurred in the course of carriage by sea between the time when the goods were loaded on board the ship and the time when they were loaded from the ship.

"The grounds of exemption are as follows:

"(a) act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

"(b) unseaworthiness of the ship, if the carrier proves that the unseaworthiness was not due to lack of due diligence on his part to make the ship seaworthy, to secure that it is properly manned, equipped and supplied or to make all parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation;

"(c) fire, if the carrier proves that it was not caused by his act or default, or that of the master, mariner, pilot, or that of the carrier's servants;

"(d) perils, dangers and accidents of the sea or other navigable waters;

"(e) saving or attempting to save life or property at sea;

"(f) the carriage of goods on the deck of the ship, if they are so carried with the consent of the sender given in the consignment note and that they are not in wagons.

(d) The alternative does not deal with the relationship between the draft Convention and multimodal transport under the rules contained in such documents as those of the International Chamber of Commerce,⁷⁵ the International Federation of Forwarding Agents Associations⁷⁶ and BIMCO,⁷⁷ documents dealing with combined transport.

Alternative B

264. OCTI (para. 7) does not approve of this alternative for the same reasons given by it for its lack of approval of alternative A (see paragraph 263 above). In particular, it notes that:

(a) This alternative impliedly presupposes that the draft Convention applies to the sea leg of a multimodal carriage; and

(b) This alternative displaces the application of the draft Convention only in favour of a multimodal transport convention concluded under the auspices of the United Nations or one of its specialized agencies, and the draft Convention thus will prevail over multimodal transport conventions adopted under the auspices of other bodies.

Alternative C

265. OCTI (para. 8) does not approve of this alternative because of a possible interpretation that, because it does not prevent the application of a multimodal transport convention concluded under the auspices of the United Nations or one of its specialized agencies, *a contrario* it does prevent the application of other multimodal transport conventions.

Proposals

266. ICC (para. 10) proposes that specific provision should be made excluding the applicability of the draft Convention to multimodal transport.

"The above grounds of exemption do not affect the general obligations of the carrier and, in particular, his obligation to exercise due diligence to make the ship seaworthy, to secure that it is properly manned, equipped and supplied and to make all parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.

"Even when the carrier can rely on the foregoing grounds of exemption, he shall nevertheless remain liable if the person entitled to claim proves that the loss, damage or delay in delivery is due to fault of the carrier, master, mariner, pilot, or of the carrier's servants other than that referred to in (a) above.

"2. Where the same sea route is served by several undertakings included in the list provided for in article 1 of this Convention, the rules of liability shall be the same for all those undertakings. In addition, where such undertakings have been included at the request of several States, the adoption of such rules of liability shall be the subject of prior agreement between those States.

"3. The measures taken under this article shall be notified to the Central Office. They shall not come into force before the expiry of thirty days from the date of the letter by which the Central Office notified such measures to the other States.

"Consignments in transit shall not be affected by such measures."

⁷⁵ ICC, Uniform Rules for a combined transport document (ICC Publication 298, 1975).

⁷⁶ Standard conditions governing combined transport bills of lading of the International Federation of Forwarding Agents Associations.

⁷⁷ Combined transport bill of lading adopted by the Baltic and International Maritime Conference.

267. In the light of its comments noted above on alternatives A, B and C, OCTI (para. 9) makes the following alternative proposals:

(a) The draft Convention should contain no provision relating to multimodal transport. Since article 1, paragraph 5, defines contract of carriage as a contract to carry goods from one port to another, and since article 2, paragraph 1, applies the draft Convention only to contracts of carriage between ports, the result will be that

the draft Convention will not apply to multimodal transport;

(b) Another possible solution is to adopt alternative C, redrafted as follows:

"Nothing in this Convention shall prevent the application of another legal régime to contracts for carriage of goods by two or more modes of transport, even for the sea carriage."

E. REPORT OF THE FIRST COMMITTEE

Document A/CONF.89/10

[Original: English]
[30 March 1978]

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I. Introduction

A. SUBMISSION OF THE REPORT

1. By its resolution 31/100 of 15 December 1976, the General Assembly of the United Nations decided that an international conference of plenipotentiaries should be convened in 1978 in New York, or at any other suitable place for which the Secretary-General might receive an invitation, to consider the question of the carriage of goods by sea, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. An invitation received from the Government of the Federal Republic of Germany for the Conference to be held at Hamburg, Federal Republic of Germany, was accepted by the Secretary-General, and the Conference was accordingly convened at Hamburg from 6 to 31 March 1978.

2. The United Nations Conference on the Carriage of Goods by Sea opened on 6 March 1978 at the Congress

Centrum Hamburg, Hamburg, Federal Republic of Germany. At its 1st plenary meeting, held on 6 March 1978, the Conference, in accordance with rule 43 of its rules of procedure, established two Main Committees, the First Committee and the Second Committee. Subject to review by the General Committee, the Conference at its 1st plenary meeting entrusted the First Committee with the consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea prepared and approved by the United Nations Commission on International Trade Law (UNCITRAL) (A/CONF.89/5) and with the draft article "Reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea (A/CONF.89/6).

3. The present document contains the report of the First Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the First Committee during its deliberations.

B. ELECTION OF OFFICERS

4. At its 3rd plenary meeting, on 7 March 1978, the Conference unanimously elected Mr. M. Chafik (Egypt) as Chairman of the First Committee. On 7 March 1978, at the 1st meeting of the Committee, Mr. S. Suchorzewski (Poland) was elected as Vice-Chairman and Mr. M. Low (Canada) as Rapporteur.

C. MEETINGS, ORGANIZATION OF WORK AND STRUCTURE OF THIS REPORT

(i) Meetings

5. The First Committee held 37 meetings, between 7 and 29 March 1978.

(ii) Organization of work

6. At its 1st meeting, on 7 March 1978, the First Committee adopted as its agenda the provisional agenda contained in document A/CONF.89/C.1/L.1. The First Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to the draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments by the First Committee, and subject to the decisions taken on the amendments, the article was referred to the Drafting Committee.

(iii) Structure of this report

7. This report describes the work of the First Committee relating to each article before it, in accordance with the following scheme:

- (a) Text of UNCITRAL draft article;
- (b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;
- (c) Proceedings of the First Committee, subdivided as follows:

- (i) Meetings;
- (ii) Consideration of the article.

8. Eight documents added in an annex to this report contain observations and explanations submitted to the Committee, which do not also contain proposals or amendments.

II. Consideration by the First Committee of the articles of the draft Convention on the Carriage of Goods by Sea

ARTICLE I

A. UNCITRAL TEXT

9. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 1. Definitions"

"In this Convention:

"1. 'Carrier' means any person by whom or in whose

name a contract of carriage of goods by sea has been concluded with a shipper.

"2. 'Actual carrier' means any person to whom the performance of the carriage of the goods, or part of the carriage, has been entrusted by the carrier, and any other person to whom such performance has been entrusted.

"3. 'Consignee' means the person entitled to take delivery of the goods.

"4. 'Goods' includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, 'goods' includes such article of transport or packaging if supplied by the shipper.

"5. 'Contract of carriage' means a contract whereby the carrier against payment of freight undertakes to carry goods by sea from one port to another.

"6. 'Bill of lading' means a document which evidences a contract of carriage 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 order, or to bearer, constitutes such an undertaking.

"7. 'Writing' includes, *inter alia*, telegram and telex."

B. AMENDMENTS

10. Amendments to article I were submitted by Greece, the United States of America, Tunisia, Iraq, Japan, Bulgaria, the Union of Soviet Socialist Republics, the German Democratic Republic, Australia, the United Kingdom of Great Britain and Northern Ireland, Poland and Austria.

11. These amendments were to the following effect:

Paragraph 1

(a) *Greece (A/CONF.89/C.1/L.2)*

Modify the definition of "carrier" to read as follows:

"'Carrier' means any person who by a contract of carriage undertakes to carry goods by sea."

[Rejected; see paragraph 13, below.]

(b) *Tunisia (A/CONF.89/C.1/L.37)*

Replace the words "by whom or in whose name" by the words "by whose authority".

[Rejected; see paragraph 13, below.]

(c) *United States of America (A/CONF.89/C.1/L.51)*

Replace the words "in whose name" by the words "by whose authority".

[Rejected; see paragraph 13, below.]

Paragraph 2

(a) *Greece (A/CONF.89/C.1/L.2)*

Delete the words "by the carrier, and any other person to whom such performance has been entrusted".

[Rejected; see paragraph 14, below.]

(b) *Iraq (A/CONF.89/C.1/L.73)*

Add the word "subsequently" immediately before the last word of the paragraph.

[Referred to the Drafting Committee; see paragraph 14, below.]

Paragraph 4

(a) *Greece* (A/CONF.89/C.1/L.2)

Exclude live animals from the scope of the definition.

[Rejected; see paragraph 16, below.]

(b) *Japan* (A/CONF.89/C.1/L.16), *Bulgaria* (A/CONF.89/C.1/L.54) and *German Democratic Republic* (A/CONF.89/C.1/L.86)

Delete the words "or where they are packed" and "or packaging".

[Rejected; see paragraph 16 below.]

(c) *Tunisia* (A/CONF.89/C.1/L.37)

The definition of "goods" should not include packaging.

[Rejected; see paragraph 16, below.]

(d) *Bulgaria* (A/CONF.89/C.1/L.54)

Insert the word "ou" after the word "palette" in the French version.

[Rejected; see paragraph 16, below.]

(e) *Union of Soviet Socialist Republics* (A/CONF.89/C.1/L.75)

There should be clarification that the carrier is not liable for normal wear and tear to the packaging.

[Withdrawn; see paragraph 16, below.]

Paragraph 5

(a) *Australia* (A/CONF.89/C.1/L.31)

After the words "from one port to another", add the words "and includes contracts in which the sea carriage of goods is an obligation, but only to the extent of that obligation".

[Referred to an *ad hoc* working group; see paragraph 17, below.]

(b) *United Kingdom* (A/CONF.89/C.1/L.34)

Adopt the following definition:

"Contract of carriage" means a contract whereby the carrier undertakes against payment of freight that goods will be carried by sea from one port to another, whether or not the contract also provides for carriage of the goods by any other means."

[Referred to an *ad hoc* working group; see paragraph 17, below.]

(c) *Tunisia* (A/CONF.89/C.1/L.37)

Adopt the following definition:

"Contract of carriage" means a contract whereby the carrier against payment of freight undertakes to carry goods by sea from one port to another on the terms agreed upon."

[Referred to the Drafting Committee; see paragraph 17, below.]

(d) *United States of America* (A/CONF.89/C.1/L.51)

Adopt the following definition:

"Contract of carriage" means any contract in which

the carrier against payment of freight undertakes to carry goods by sea, in accordance with article 2."

[Referred to an *ad hoc* working group; see paragraph 17, below.]

Paragraph 6

(a) *United Kingdom* (A/CONF.89/C.1/L.34)

Delete the words "which evidences a contract of carriage and the taking over or loading of the goods by the carrier, and".

[Withdrawn; see paragraph 18, below.]

(b) *United States of America* (A/CONF.89/C.1/L.51)

The paragraph should read as follows:

"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."

[Withdrawn; see paragraph 18, below.]

Paragraph 7

Poland (A/CONF.89/C.1/L.55)

Delete the word "telegram".

[Rejected; see paragraph 19, below.]

Proposed new paragraphs

(a) *Tunisia* (A/CONF.89/C.1/L.37)

Include the following definition of "shipper" in the article:

"Shipper" means any person by whose authority a contract of carriage of goods by sea has been concluded with a carrier and for whom the carriage of goods by sea is performed."

[Withdrawn in favour of the definition of "shipper" contained in document A/CONF.89/C.1/L.96; see paragraph 20, below.]

(b) *Austria* (A/CONF.89/C.1/L.53)

Include the following definition of "shipper" in the article:

"Shipper" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a carrier and for whom the carriage of goods by sea is performed."

[Withdrawn in favour of the definition of "shipper" contained in document A/CONF.89/C.1/L.96; see paragraph 20, below.]

(c) *Austria* (A/CONF.89/C.1/L.53)

Include the following definitions of "port of loading" and "port of discharge" in the article:

"Port of loading" means any port, port area or place in which the ship was actually loaded."

"Port of discharge" means any port, port area or place in which the ship was actually discharged."

[Withdrawn in favour of the definition of port set forth in document A/CONF.89/C.1/L.77; see paragraph 22, below.]

(d) *United Kingdom* (A/CONF.89/C.1/L.77)

Include the following definition of "port" in the article:

"Port" includes place and the expressions 'port of loading' and 'port of discharge' include any place other than a port at which under the contract of carriage goods may or are to be loaded and discharged on or from a seagoing vessel."

[Rejected; see paragraph 22, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

12. The First Committee considered article 1 at its 1st to 5th, 8th, 31st, 33rd and 34th meetings, between 7 and 28 March 1978.

(ii) Consideration

Paragraph 1

13. At the 2nd meeting, the amendment by Greece (A/CONF.89/C.1/L.2) was withdrawn, the amendments by the United States of America (A/CONF.89/C.1/L.51) and Tunisia (A/CONF.89/C.1/L.37) were rejected, and the UNCITRAL text was adopted.

Paragraph 2

14. At the 2nd meeting, the amendment by Iraq (A/CONF.89/C.1/L.73) was referred to the Drafting Committee. At the 3rd meeting, the amendment by Greece (A/CONF.89/C.1/L.2) was rejected, and the UNCITRAL text was adopted.

Paragraph 3

15. At the 3rd meeting, the UNCITRAL text was adopted.

Paragraph 4

16. At the 3rd meeting, the amendment by Greece (A/CONF.89/C.1/L.2) was rejected, and the amendment by the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.75) was withdrawn, subject to its possible reconsideration when article 5, paragraph 1, was discussed. At the 4th meeting, the amendments by Japan (A/CONF.89/C.1/L.16), Bulgaria (A/CONF.89/C.1/L.57) and the German Democratic Republic (A/CONF.89/C.1/L.86) were rejected, and the UNCITRAL text was adopted.

Paragraph 5

17. At the 4th meeting, the amendment by Tunisia (A/CONF.89/C.1/L.37) was referred to the Drafting Committee. The amendments by Australia (A/CONF.89/C.1/L.31), the United Kingdom (A/CONF.89/C.1/L.34) and the United States of America (A/CONF.89/C.1/L.51) were referred to an *ad hoc* Working Group, composed of the representatives of those three States, for the formulation of a joint amendment defining "contract of carriage". At the 7th meeting, the *ad hoc* Working Group was enlarged so as to consist of the representatives of Australia, Brazil, Bulgaria, Canada, Finland, Greece, Mexico, Nigeria, Pakistan, Sierra Leone, Singapore, the United Kingdom and the United States of America. The enlarged *ad hoc* Work-

ing Group submitted the following text (see A/CONF.89/C.1/L.121):

"Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means shall be deemed to be a contract of carriage by sea for the purposes of this Convention only to the extent that it relates to the carriage by sea."

The Committee adopted this text by a vote of 40 to 14, with 3 abstentions.

Paragraph 6

18. At the 4th meeting, the amendments by the United Kingdom (A/CONF.89/C.1/L.34) and the United States of America (A/CONF.89/C.1/L.51) were withdrawn, and the UNCITRAL text was adopted.

Paragraph 7

19. At the 4th meeting, the amendment by Poland (A/CONF.89/C.1/L.55) was rejected, and the UNCITRAL text was adopted.

Proposed new paragraphs

Proposed definition of "shipper"

20. At the 2nd meeting, the Committee decided, by a vote of 28 to 27, with 4 abstentions, to include a definition of "shipper" in article 1, and established an *ad hoc* Working Group, composed of the representatives of Austria, France, India, the Union of Soviet Socialist Republics, the United Republic of Tanzania, the United States of America and Venezuela, to formulate a suitable definition. The *ad hoc* Working Group submitted the following definition (A/CONF.89/C.1/L.96):

"Shipper" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a carrier."

At the 5th meeting, the amendments by Tunisia (A/CONF.89/C.1/L.37) and Austria (A/CONF.89/C.1/L.53) were withdrawn in favour of this proposed definition. After considering the definition submitted by the *ad hoc* Working Group, the Committee at the 5th meeting established an enlarged *ad hoc* Working Group, composed of the representatives of Austria, Finland, France, the German Democratic Republic, India, Mexico, Sierra Leone, the Union of Soviet Socialist Republics, the United Kingdom, the United Republic of Tanzania and the United States of America, to further consider a possible definition of "shipper" and to submit a revised definition.

21. The *ad hoc* Working Group was unable to reach agreement on a definition, but submitted to the First Committee the following definition (A/CONF.89/C.1/L.173), which was used by the Working Group as a basis of consideration.

"Shipper" means any person by whom or in whose behalf a contract of carriage of goods by sea has been concluded with a carrier, and includes any person by whom or in whose behalf the goods are actually

delivered to the carrier in performance of the contract of carriage."

22. At the 33rd meeting, the Committee did not adopt the above definition, and established a new *ad hoc* Working Group, composed of the representatives of France, India and Sierra Leone, to formulate another definition.

23. At the 34th meeting, the Committee, by a vote of 36 to 10, with 12 abstentions, adopted the definition submitted by this *ad hoc* Working Group (A/CONF.89/C.1/L.212) subject to an oral amendment by the United Kingdom. The definition adopted reads as follows:

"'Shipper' means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea."

Proposed definition of "port"

24. At the 5th meeting, the amendments by Austria (A/CONF.89/C.1/L.53) were withdrawn in favour of the amendment by the United Kingdom (A/CONF.89/C.1/L.77), which was deferred till the consideration by the Committee of article 4, paragraph 1, and was rejected at the 9th meeting.

ARTICLE 2

A. UNCITRAL TEXT

25. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 2. Scope of application"

"1. The provisions of this Convention shall be applicable to all contracts of carriage 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 the 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 this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

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

"4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention shall apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article shall apply."

B. AMENDMENTS

26. Amendments to article 2 were submitted by the United Kingdom of Great Britain and Northern Ireland, Tunisia, the United States of America, Poland, the German Democratic Republic, Peru, Japan and jointly by Denmark, Finland, Norway and Sweden.

27. These amendments were to the following effect:

Paragraph 1

(a) *United Kingdom (A/CONF.89/C.1/L.35)*

Delete subparagraphs (b) and (c).

[Withdrawn; see paragraph 29, below.]

(b) *Tunisia (A/CONF.89/C.1/L.38)*

Link subparagraphs (a) and (b) by the word "and" instead of by the word "or".

[Withdrawn; see paragraph 29, below.]

(c) *United States of America (A/CONF.89/C.1/L.52)*

The paragraph should read as follows:

"The provisions of this Convention shall be applicable to all contracts for carriage of goods by sea between ports in two different States, if:

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

"(b) The port of loading is located in a Contracting State, or

"(c) The port of discharge is located in a Contracting State, or

"(d) 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

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

"(f) 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."

[Rejected; see paragraph 29, below.]

Paragraph 3

(a) *Poland (A/CONF.89/C.1/L.56)*

After the words "to charter-parties" add the words "being not contracts of carriage".

[Withdrawn; see paragraph 31, below.]

(b) *German Democratic Republic (A/CONF.89/C.1/L.87)*

Replace the existing text of this paragraph by the following:

"The provisions of this Convention shall not be applicable to time charter-parties."

[Rejected; see paragraph 31, below.]

(c) *Peru (A/CONF.89/C.1/L.103)*

In the Spanish text of this paragraph the word "fletamento" should be replaced by the words "póliza de fletamento".

[Referred to the Drafting Committee; see paragraph 31, below.]

Paragraph 4

(a) *Japan (A/CONF.89/C.1/L.17)*

Replace the existing text by the following:

"The provisions of this Convention shall not be applicable to the shipments made under the quantity contract, volume contract, frame contract or other similar contract. However, where a bill of lading is issued pursuant to such contract, the provisions of the Convention shall apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading not being the party to such contract."

[Rejected; see paragraph 32, below.]

(b) *United Kingdom (A/CONF.89/C.1/L.35)*

Replace the existing text by the following:

"If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention shall not apply to such contract but, subject to paragraph 3, shall apply to shipments made in pursuance of such contract."

[Withdrawn; see paragraph 32, below.]

(c) *German Democratic Republic (A/CONF.89/C.1/L.87)*

Delete the last sentence of this paragraph.

[Withdrawn; see paragraph 32, below.]

Proposed new paragraphs

(a) *Japan (A/CONF.89/C.1/L.17)*

Add the following new paragraph:

"This Convention shall not be applicable to the cases where a bill of lading is not issued and the shipper and the carrier expressly agree that the Convention shall not apply to the contract of carriage made by them."

[Rejected; see paragraph 33, below.]

(b) *Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.32)*

Add the following new paragraph:

"The provisions of this Convention are also applicable where the goods are carried by inland waterway in

a barge which, during the carriage by sea, is carried on board a seagoing ship."

[Rejected; see paragraph 33, below.]

(c) *United Kingdom (A/CONF.89/C.1/L.35)*

Add the following new paragraph:

"This Convention shall not apply to a contract of carriage if:

"(a) it is not the custom of the trade to issue a bill of lading in respect of the goods to be carried thereunder; and

"(b) no bill of lading is issued in respect of the goods; and

"(c) the parties have expressly agreed that the Convention shall not apply to the contract of carriage, and

"(i) the agreement is specifically recorded in the document evidencing of the contract; and

"(ii) the agreement so recorded is signed by the shipper in addition to his signature to the document as a whole."

[Withdrawn; see paragraph 33, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

28. The First Committee considered article 2 at its 5th, 6th and 8th meetings, on 10 and 13 March 1978.

(ii) Consideration

Paragraph 1

29. At the 5th meeting, the amendment by Tunisia (A/CONF.89/C.1/L.38) was withdrawn. At the 6th meeting, the amendment by the United Kingdom (A/CONF.89/C.1/L.35) was withdrawn and the amendment by the United States of America (A/CONF.89/C.1/L.52) was rejected by a vote of 34 to 26. At the 8th meeting, an *ad hoc* Working Group, composed of the representatives of Australia, Brazil, Bulgaria, Canada, Finland, Greece, Mexico, Nigeria, Pakistan, Sierra Leone, Singapore, the United Kingdom and the United States of America, submitted the following text for the opening words of this paragraph (see A/CONF.89/C.1/L.121):

"The provisions of this Convention shall be applicable to all contracts of carriage by sea between two different States, if:"

The Committee adopted this text.

Paragraph 2

30. At the 6th meeting, the UNCITRAL text was adopted.

Paragraph 3

31. At the 6th meeting, the amendment by Poland (A/CONF.89/C.1/L.56) was withdrawn, and the amendment by Peru (A/CONF.89/C.1/L.103) was referred to the Drafting Committee. The amendment by the German

Democratic Republic (A/CONF.89/C.1/L.87) was rejected, and the UNCITRAL text was adopted.

Paragraph 4

32. At the 6th meeting, the amendments by the United Kingdom (A/CONF.89/C.1/L.35) and the German Democratic Republic (A/CONF.89/C.1/L.87) were withdrawn. The amendment by Japan (A/CONF.89/C.1/L.17) was rejected, and the UNCITRAL text was adopted.

Proposed new paragraphs

33. At the 6th meeting, the amendment by Japan (A/CONF.89/C.1/L.17) was rejected, the amendment by the United Kingdom (A/CONF.89/C.1/L.35) was withdrawn, and, by a vote of 38 to none, a decision on the amendment by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.32) was deferred till a decision was taken on the amendment by the United Kingdom (A/CONF.89/C.1/L.77) to include in article 1 a definition of "port". At the 9th meeting, the amendment by Denmark, Finland, Norway and Sweden was rejected.

ARTICLE 3

A. UNCITRAL TEXT

34. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 3. Interpretation of the Convention"

"In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity."

B. AMENDMENTS

35. An amendment to article 3 was submitted by the United Kingdom, proposing the deletion of this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

36. The Committee considered article 3 at its 7th meeting, on 13 March 1978.

(ii) Consideration

37. At the 7th meeting, the proposal by the United Kingdom (A/CONF.89/C.1/L.36) was rejected, and the UNCITRAL text was adopted.

ARTICLE 4

A. UNCITRAL TEXT

38. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 4. Period of responsibility"

"1. The responsibility of the carrier for the goods under this Convention covers the period during which

the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

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

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

"(b) In cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, 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 paragraphs 1 and 2 of this article, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants or the agents, respectively of the carrier or the consignee.

B. AMENDMENTS

39. Amendments were submitted to article 4 jointly by Denmark, Finland, Norway and Sweden, by Tunisia, the United Kingdom of Great Britain and Northern Ireland, the German Democratic Republic, Greece, the United States of America and Uganda.

40. These amendments were to the following effect:

Paragraph 1

(a) *Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33)*

The paragraph should read as follows:

"The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods under the contract of carriage."

[Rejected; see paragraph 44, below.]

(b) *Tunisia (A/CONF.89/C.1/L.39)*

Amend the paragraph for the following reason:

"In order to make provision for the development of combined transport, paragraph 1 should be amended so as to make the Convention applicable from the time the carrier takes over the goods until the time he delivers them."

[Rejected; see paragraph 44, below.]

(c) *Tunisia (A/CONF.89/C.1/L.40)*

Amend the paragraph to read as follows:

"The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods, from the time he takes them over until the time he delivers them on the terms agreed upon."

[Rejected; see paragraph 44, below.]

(d) *United Kingdom (A/CONF.89/C.1/L.76)*

Amend the paragraph to read as follows:

"The carrier shall be responsible for goods carried by sea pursuant to contracts of carriage to which this Convention applies so long as he is in charge of them at the port of loading, during the carriage between the port of loading and the port of discharge, and at the port of discharge, but not elsewhere."

[Rejected; see paragraph 44, below.]

(e) *German Democratic Republic (A/CONF.89/C.1/L.88)*

Delete the words "at the port of loading, during the carriage and at the port of discharge".

[Rejected; see paragraph 44, below.]

Paragraph 2

(a) *Greece (A/CONF.89/C.1/L.3)*

Replace the words "taken over" by the words "taken the goods into his custody within the port area".

[Rejected; see paragraph 44, below.]

(b) *Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33)*

Amend the paragraph to read as follows:

"For the purpose of paragraph 1 of this article, the carrier shall be deemed to be in charge of the goods:

"(a) from the time he has taken over the goods from:

"(i) the shipper, or a person acting on his behalf, at a place in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading; or

"(ii) an authority or other third party to whom, pursuant to law or regulation applicable at the port of loading, the goods must be handed over when shipped; and

"(b) until the time he has delivered the goods:

"(i) by handing over the goods to the consignee; or

"(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

"(iii) 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."

[Rejected; see paragraph 44, below.]

(c) *United States of America (A/CONF.89/C.1/L.57)*

Amend the paragraph to read as follows:

"For the purpose of paragraph 1 of this article, the carrier shall be deemed to be in charge of the goods from the time he has taken over the goods from the shipper or a transporter by land or air or inland water at the port of loading or the goods have been brought to the port of loading of the carrier until the time the carrier has delivered the goods:

"(d) The goods are removed from the port of discharge by the carrier in the course of delivering them to the consignee."

[Withdrawn; see paragraph 42, below.]

(d) *United Kingdom (A/CONF.89/C.1/L.76)*

Amend the paragraph to read as follows:

"For the purpose of paragraph 1 of this article, the carrier shall cease to be in charge of goods:

"(a) When he hands them over to the consignee at the port of discharge; or

"(b) In cases where the consignee does not receive the goods from the carrier, when he places them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

"(c) When he hands over the goods to an authority or third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over."

[Rejected; see paragraph 44, below.]

(e) *Uganda (A/CONF.89/C.1/L.107)*

Consolidate subparagraphs (b) and (c) of this paragraph as follows:

"In cases where the consignee fails to receive the goods from the carrier within reasonable time after being notified, by handing over the goods to an authority or other third party to whom, in accordance with the contract, or with the usage of the particular trade, law, or regulations applicable at the port of discharge, the goods must be handed over."

[Referred to the Drafting Committee; see paragraph 44, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

41. The First Committee considered article 4 at its 7th to 9th meetings, on 13 and 14 March 1978.

(ii) Consideration

42. At the 7th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.57) was withdrawn and the amendments by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33), Tunisia (A/CONF.89/C.1/L.39 and L. 40), the United Kingdom (A/CONF.89/C.1/L.76), Greece (A/CONF.89/C.1/L.3) and Uganda (A/CONF.89/C.1/L.107) were referred to an *ad hoc* Working Group consisting of the representatives of Australia, Brazil, Bulgaria, Canada, Finland, Greece, Mexico, Nigeria, Pakistan, Sierra Leone, Singapore, the United Kingdom, and the United States of America. This Working Group submitted the following text for article 4 (A/CONF.89/C.1/L.121/Add.1):

"1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of

loading, during the carriage and at the port of discharge.

"2. For the purpose of paragraph 1 of this article, the carrier shall be deemed to be in charge of the goods:

"(a) from the time he has taken over the goods from:

"(i) the shipper, or a person acting on his behalf, in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading; or

"(ii) an authority or other third party to whom, pursuant to law or regulation applicable at the port of loading, the goods must be handed over when shipped; and

"(b) until the time he has delivered the goods:

"(i) by handing over the goods to the consignee; or

"(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

"(iii) 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 paragraphs 1 and 2 of this article, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants or the agents, respectively of the carrier or the consignee."

43. At the 8th and 9th meetings, the Committee considered this text, and one oral amendment was submitted at the 8th meeting by the United States of America for the deletion from subparagraph 2 (a) (i) of the words "in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading;"

44. The Committee:

(a) Adopted paragraph 1 of the text submitted by the *ad hoc* Working Group, which was identical with the UNCITRAL text of paragraph 1 of article 4, and rejected the amendments of Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33), Tunisia (A/CONF.89/C.1/L.39 and A/CONF.89/C.1/L.40) and the United Kingdom (A/CONF.89/C.1/L.76). The amendment by the German Democratic Republic (A/CONF.89/C.1/L.88) was rejected by a vote of 41 to 7, with 9 abstentions;

(b) By a vote of 48 to 2, with 9 abstentions, adopted paragraph 2 of the text submitted by the *ad hoc* Working Group subject to the oral amendment by the United States of America referred to above, and rejected the amendments by Greece (A/CONF.89/C.1/L.3) and Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33). The amendment by Uganda

(A/CONF.89/C.1/L.107) was referred to the Drafting Committee; and

(c) Adopted paragraph 3 of the text submitted by the Working Group which was identical with the UNCITRAL text of paragraph 3 of article 4.

ARTICLE 5

A. UNCITRAL TEXT

45. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 5. Basis of liability

"1. The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 at the port of discharge provided for in the contract of carriage within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

"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 60 days following the expiry of the time for delivery according to paragraph 2 of this article.

"4. In case of fire, the carrier shall be liable, provided the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents.

"5. With respect to live animals, the carrier shall not be liable for loss, damage or delay in delivery resulting 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 part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

"6. The carrier shall not be liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

"7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery, the carrier shall be liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of loss, damage or delay in delivery not attributable thereto."

B. AMENDMENTS

46. Amendments were submitted to article 5 by Greece, the United States of America, Poland, the United Kingdom of Great Britain and Northern Ireland, jointly by Belgium, Germany, Federal Republic of, Greece, Ireland, Italy, Liberia, the Netherlands, Poland, Portugal, Switzerland and the United Kingdom of Great Britain and Northern Ireland, by the Union of Soviet Socialist Republics, Peru, Mauritius, Argentina, Turkey, Algeria, Japan, India, Czechoslovakia, Austria, Uganda, Turkey, Bulgaria, the Netherlands, Yugoslavia, jointly by Belgium, Germany, Federal Republic of, Ireland, Italy, Liberia, the Netherlands, Poland, Portugal, Switzerland and the United Kingdom of Great Britain and Northern Ireland and jointly by Singapore and the United States of America.

47. These amendments were to the following effect:

Paragraph 1

(a) *Greece (A/CONF.89/C.1/L.4)*

Amend the paragraph by the addition of the following paragraph:

"It shall be deemed that the carrier and his servants and agents took all the aforesaid measures, if the carrier proves that the damage, loss or delay was caused by: (a) act of war, riots or civil commotions, (b) acts of public authorities or seizure under legal process, (c) quarantine restrictions, (d) act or omission of the shipper, his agents, representatives or servants, (e) strikes, lock-outs or other restraint or stoppage of work, (f) insufficiency of packing or marks, or (g) inherent or latent defects of the nature of the goods, provided that the carrier shall remain liable if the person interested in the goods proves that the damage, loss or delay was caused by the fault of the carrier, his servants or agents."

[Withdrawn; see paragraph 52, below.]

(b) *United States of America (A/CONF.89/C.1/L.58; Corr.1)*

Delete the phrase "as well as from delay in delivery" and the word "delay", and add the following sentence to the paragraph:

"The occurrence for which compensation shall be payable shall include physical deterioration of the cargo due to delay in delivery."

[Withdrawn; see paragraph 52, below.]

(c) *Poland (A/CONF.89/C.1/L.60)*

Delete the words "loss resulting from" and replace the word "from" in the following phrase by the word "for".

[Withdrawn; see paragraph 52, below.]

(d) *United Kingdom (A/CONF.89/C.1/L.78)*

Substitute the following text for the existing text of the paragraph:

"Subject to article 4, the carrier shall be liable for loss or damage to or in connexion with the goods (in this Convention referred to as 'loss') unless he proves that the loss arose without fault or neglect on the part of himself, his servants or agents."

[Withdrawn; see paragraph 52, below.]

(e) *Belgium, Germany, Federal Republic of, Greece, Ireland, Italy, Liberia, Netherlands, Poland, Portugal, Switzerland and United Kingdom (A/CONF.89/C.1/L.112)*

After the words "as defined in article 4", substitute the following words for the existing text: "unless the carrier proves that the loss, damage [or delay] did not result from any fault or neglect on the part of himself, his servants or agents."

[Withdrawn; see paragraph 52, below.]

(f) *United Kingdom (A/CONF.89/C.1/L.115)*

Amend the paragraph to commence as follows:

"The carrier shall be liable for loss incurred in connexion with the goods if the occurrence which caused the loss took place while the goods were in his charge as defined in article 4."

[Withdrawn; see paragraph 52, below.]

(g) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.117)*

Amend the paragraph to read as follows:

"The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 the occurrence and its consequences are not attributable to any fault or neglect on the part of the carrier, his servants or agents."

[Withdrawn; see paragraph 52, below.]

(h) *Peru (A/CONF.89/C.1/L.120)*

Replace the words "took all measures that could reasonably be required" by the words "exercised due diligence".

[Withdrawn; see paragraph 52, below.]

(i) *Mauritius (A/CONF.89/C.1/L.122)*

1. Amend the opening words of the paragraph to read as follows:

"The carrier shall be liable for loss resulting from loss of or damage to, or in connexion with, the goods . . ."

2. Amend the final words of the paragraph to read as follows:

"... unless the carrier proves that the said loss of or damage to, or in connexion with, the goods results from an event which cannot be imputed to him."

[Withdrawn; see paragraph 52, below.]

(j) *Argentina (A/CONF.89/C.1/L.123)*

Add the following words to the existing text of the paragraph, or to the text of the paragraph suggested in the amendment contained in document A/CONF.89/C.1/L.112 (see subparagraph (e) above):

"Unless the claimant proves the contrary, exemption from liability shall be taken as proved if the carrier demonstrates that the occurrence which caused the damage did not result from an act or omission by him or by his servants or agents."

[Withdrawn; see paragraph 52, below.]

(k) *Turkey (A/CONF.89/C.1/L.129)*

Amend the existing text to read as follows:

"The carrier shall be liable for loss of or damage to the goods, as well as for delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4 and if he is unable to prove that he, his servants and agents exercised due diligence to avoid the occurrence and its consequences."

[Withdrawn; see paragraph 52, below.]

Paragraph 2

(a) *United States of America (A/CONF.89/C.1/L.58)*

Amend the paragraph to read as follows:

"Delay in delivery for which the carrier shall be liable occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by a definite date set forth in writing on the face of the bill of lading, if any, or specifically and prominently referred to in the contract of carriage. By agreeing to deliver by a date certain the carrier shall bear all risks of delay beyond the date set forth, unless the carrier proves that he, his servants and agents took all measures that could reasonably be required to avoid the delay in delivery."

[Withdrawn; see paragraph 53, below.]

(b) *Poland (A/CONF.89/C.1/L.60)*

Amend the paragraph so as to exclude from the definition of "delay" the period of time used by the ship for loading and discharging cargo during the fixed sea voyage.

[Withdrawn; see paragraph 53, below.]

(c) *United Kingdom (A/CONF.89/C.1/L.78)*

Delete the paragraph.

[Withdrawn; see paragraph 53, below.]

(d) *Algeria (A/CONF.89/C.1/L.124)*

Add the following words to the paragraph:

"However, the carrier shall not be held liable for delay in delivery occasioned by particular port situations lying outside the carrier's control."

[Withdrawn; see paragraph 53, below.]

Paragraph 3

(a) *Japan (A/CONF.89/C.1/L.18)*

Add the following new sentence to the paragraph:

"When such person has treated the goods as lost, he shall extend reasonably necessary assistance to the carrier in disposing of or selling the goods on reasonable prices or terms."

[Withdrawn; see paragraph 54, below.]

(b) *United States of America (A/CONF.89/C.1/L.58)*

Add the following words at the end of the paragraph:

"provided that the person entitled to recover for loss shall state his election in writing within () days following the expiration of such period and shall

deliver to the carrier the original bill of lading, if any, duly endorsed."

[Withdrawn; see paragraph 54, below.]

(c) *United Kingdom (A/CONF.89/C.1/L.78)*

Replace the existing text of the paragraph by the following:

"The consignee may treat the goods as lost, and accordingly make a claim in respect of their loss under paragraph 1 of this article, upon the expiry of a period of 60 days after the time expressly agreed upon for delivery of the goods or, if none is so agreed, upon the expiry of a period of 60 days after a reasonable time for delivery."

[Withdrawn; see paragraph 54, below.]

Alternative paragraph 3

United Kingdom (A/CONF.89/C.1/L.78)

If the proposal to delete paragraph 2 of article 5 (see subparagraph (c) above) is rejected, add the following alternative paragraph 3:

"When delay in delivery of goods occurs in accordance with paragraph 2 of this article, the consignee may treat them as lost, and accordingly make a claim in respect of their loss under paragraph 1 of this article, upon the expiry of a period of 60 days after the day on which such delay in delivery occurred."

[Withdrawn; see paragraph 55, below.]

Paragraph 4

(a) *United States of America (A/CONF.89/C.1/L.58)*

Amend the paragraph to read as follows:

"In case of fire, the carrier shall not be liable, unless the claimant proves that the fire resulted from or spread due to fault or neglect on the part of the carrier, his servants or agents."

[Withdrawn; see paragraph 56, below.]

(b) *India (A/CONF.89/C.1/L.61)*

Amend the paragraph to read as follows:

"In case of fire, the carrier shall be liable for loss of or damage to the goods unless the carrier proves that the fire did not arise from fault or neglect on the part of the carrier, his servants or agents."

[Withdrawn; see paragraph 56, below.]

(c) *United Kingdom (A/CONF.89/C.1/L.78)*

Amend the paragraph to read as follows:

"In case of fire, the carrier shall be liable if the claimant proves that the loss arose from fault or neglect on the part of the carrier, his servants or agents."

[Withdrawn; see paragraph 56, below.]

(d) *Czechoslovakia (A/CONF.89/C.1/L.84)*

Delete the paragraph.

[Withdrawn; see paragraph 56, below.]

(e) *Austria (A/CONF.89/C.1/L.97)*

Delete the paragraph.

[Withdrawn; see paragraph 56, below.]

(f) *Uganda (A/CONF.89/C.1/L.108)*

Amend the paragraph to read as follows:

"In case of fire, the carrier shall be liable unless he proves that the fire did not arise from fault on his part or the part of his servants or agents."

[Withdrawn; see paragraph 56, below.]

(g) *Mauritius* (A/CONF.89/C.1/L.122)

Either retain the present text of the paragraph or delete the paragraph.

[Withdrawn; see paragraph 56, below.]

(h) *Turkey* (A/CONF.89/C.1/L.129)

Amend the paragraph to read as follows:

"In case of fire, the carrier shall be liable if he is unable to prove that the fire did not arise from fault or neglect on his part and on the part of his servants or agents."

[Withdrawn; see paragraph 56, below.]

Paragraph 5

(a) *Union of Soviet Socialist Republics* (A/CONF.89/C.1/L.117)

In the second sentence of the paragraph, delete the words "and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks", and replace the words "was so caused" by the words "was caused by such risks".

[Rejected; see paragraph 57, below.]

(b) *Mauritius* (A/CONF.89/C.1/L.122)

Amend the paragraph to read as follows:

"The carrier shall not be liable for loss, damage or delay resulting from any special risks inherent in the carriage of certain goods, including live animals, or any inherent vice of the goods being carried. When the carrier proves that he has complied with any special instructions given him by the shipper respecting the goods and that . . . [succeeding words as in present text]."

[Withdrawn; see paragraph 57, below.]

Paragraph 6

(a) *Bulgaria* (A/CONF.89/C.1/L.48)

Delete the words "or from reasonable measures to save", and add the word "or" before the word "property".

[Withdrawn; see paragraph 58, below.]

(b) *United States of America* (A/CONF.89/C.1/L.58)

Add the following introductory words to the paragraph: "In addition to such reasons as may be found sufficient under paragraph 1 above . . .".

[Withdrawn; see paragraph 58, below.]

(c) *Union of Soviet Socialist Republics* (A/CONF.89/C.1/L.117)

Delete the word "reasonable".

[Rejected; see paragraph 58, below.]

(d) *Mauritius* (A/CONF.89/C.1/L.122)

Amend the paragraph to read as follows:

"The carrier shall not be liable where loss, damage or delay in delivery resulted from measures to save life or property at sea."

[Withdrawn; see paragraph 58, below.]

Paragraph 7

(a) *United Kingdom* (A/CONF.89/C.1/L.78)

Amend the paragraph to read as follows:

"Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, the carrier shall not be responsible for any part thereof which he proves is attributable to that other cause."

[Withdrawn; see paragraph 59, below.]

(b) *Argentina* (A/CONF.89/C.1/L.123)

Replace the words "provided that the carrier proves the amount of loss, damage or delay in delivery not attributable thereto" by the words "the court shall determine the proportion accounted for by the different causes".

[Rejected; see paragraph 59, below.]

Proposed additional paragraphs

(a) *United States of America* (A/CONF.89/C.1/L.58; Corr.1)

Add a paragraph on the following lines to the article: "Loss resulting from delay shall include:

"(a) Damages suffered by the claimant by reason of loss of use of the delayed cargo itself;

"(b) Damages due to a fall in the market at the port of destination if the claimant proves the carrier knew or should have known that the market price would probably be lower at the time the delayed goods were delivered than it was at the time they should have been delivered; and

"(c) Damages due to a loss of profit or incurrance of consequential liabilities incident thereto and damages consequent to the loss of use of the delayed cargo itself if the claimant proves the carrier knew or should have known the use to which the goods were to be put and the likelihood of losses consequential to delay."

[Withdrawn; see paragraph 60, below.]

(b) *United Kingdom* (A/CONF.89/C.1/L.78)

Add the following new paragraph immediately after paragraph 1:

"The carrier shall not be liable for any loss under this article if he proves that the loss arose as a result of the act, fault or neglect of his servants or agents in the navigation of the ship and that neither he nor they were negligent or at fault in any other way."

[Withdrawn; see paragraph 60, below.]

(c) *Netherlands* (A/CONF.89/C.1/L.95)

Add the following new paragraph:

"When, under paragraph 1 of this article, a carrier is liable for compensation in respect of loss of or damage to the goods, such compensation shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract, or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current

market price, by reference to the normal value of goods of the same kind and quality."

[Adopted; see paragraph 60, below.]

(d) *Yugoslavia (A/CONF.89/C.1/L.110)*

Add the following new paragraph immediately after paragraph 2:

"The carrier shall not be liable for consequential losses resulting from delay."

[Withdrawn; see paragraph 60, below.]

(e) *Belgium, Germany, Federal Republic of, Ireland, Italy, Liberia, Netherlands, Poland, Portugal, Switzerland and United Kingdom (A/CONF.89/C.1/L.113)*

Add the following new paragraph immediately after paragraph 1:

"The carrier shall not be liable for loss, damage [or delay] if he proves that the loss, damage [or delay] resulted from the act, fault or neglect of his servants or agents in the navigation of the ship."

[Withdrawn; see paragraph 60, below.]

(f) *Bulgaria (A/CONF.89/C.1/L.116)*

Add the following new paragraph immediately after paragraph 4:

"Notwithstanding the provisions of paragraph 1, the carrier shall not be liable for injury arising or resulting from any act, neglect or nautical fault of the master, other members of the crew or the pilot. The burden of proving such act, neglect or nautical fault shall rest upon the carrier."

[Withdrawn; see paragraph 60, below.]

(g) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.118)*

Add the following new paragraph to the article:

"The carrier shall not be liable for loss of or damage to the goods or delay in delivery if he proves that they occurred due to an act or omission of the master, other members of the crew or the pilot in the navigation of the ship."

[Withdrawn; see paragraph 60, below.]

(h) *Singapore and United States of America (A/CONF.89/C.1/L.126)*

Add the following new paragraph to the article:

"8. In this article, references to servants and agents of the carrier include all persons of whose services the carrier makes use for the performance of the carriage during the period of responsibility prescribed in article 4."

[Rejected; see paragraph 60, below.]

(i) *Yugoslavia (A/CONF.89/C.1/L.160)*

Add the following new paragraph immediately after paragraph 2:

"The carrier shall not be liable for consequential losses resulting from loss of or damage to the goods as well as from delay in delivery."

[Withdrawn; see paragraph 60, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

48. The First Committee considered article 5 at its 9th,

10th and 13th meetings, on 14 and 15 March 1978, and at its 34th and 35th meetings, on 28 March 1978.

(ii) Consideration

49. At the 9th and 10th meetings, the First Committee considered, on the basis of issues formulated by its Chairman (see A/CONF.89 L.132 and 9th meeting, para. 41), the principles arising out of this article, and the relationship between these principles and those arising out of article 6, alternative article 6, and article 8. At the 13th meeting, the Committee decided to defer consideration of this article pending informal consultation among representatives, and established a Consultative Group, composed of the representatives of Argentina, Czechoslovakia, Ecuador, Ghana, India, Mexico, the Netherlands, Norway, the Philippines, Poland, Uganda, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, with the Chairman of the First Committee as its Chairman, to assist the Chairman in formulating a compromise solution to the related issues arising out of articles 5 and 6, alternative article 6, and article 8.

50. At the 34th meeting, the Chairman submitted the following text of paragraphs 1 to 4 of article 5 for consideration, together with the texts of paragraphs 1 and 3 of article 6, paragraphs 1 and 2 of article 8, and paragraphs 1 to 4 of a new article 26 (A/CONF.89/C.1/L.211):

"Article 5. Basis of liability

"1. The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 at the port of discharge provided for in the contract of carriage within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

"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 60 days following the expiry of the time for delivery according to paragraph 2 of this article.

"4. (a) The carrier shall be liable:

"(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

"(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be re-

quired to put out the fire and avoid or mitigate its consequences.

"(b) In case of fire aboard ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices shall be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and a claimant as the case may be."

51. At the 34th meeting, the Committee adopted paragraphs 1 to 4 of this text by 64 votes to 3, with 9 abstentions.

Paragraph 1

52. At the 34th meeting, the amendments by Greece (A/CONF.89/C.1/L.4), United States of America (A/CONF.89/C.1/L.58/Corr.1), Poland (A/CONF.89/C.1/L.60), United Kingdom (A/CONF.89/C.1/L.78 and L.115), Belgium, Germany, Federal Republic of, Greece, Ireland, Italy, Liberia, Netherlands, Poland, Portugal, Switzerland and United Kingdom (A/CONF.89/C.1/L.112), Union of Soviet Socialist Republics (A/CONF.89/C.1/L.117), Peru (A/CONF.89/C.1/L.120), Mauritius (A/CONF.89/C.1/L.122), Argentina (A/CONF.89/C.1/L.123) and Turkey (A/CONF.89/C.1/L.129) were withdrawn, and paragraph 1 of the text submitted by the Chairman was adopted.

Paragraph 2

53. At the 34th meeting, the amendments by the United States of America (A/CONF.89/C.1/L.58), Poland (A/CONF.89/C.1/L.60), United Kingdom (A/CONF.89/C.1/L.78) and Algeria (A/CONF.89/C.1/L.124) were withdrawn, and paragraph 2 of the text submitted by the Chairman was adopted.

Paragraph 3

54. At the 34th meeting, the amendments by Japan (A/CONF.89/C.1/L.18), United States of America (A/CONF.89/C.1/L.58) and United Kingdom (A/CONF.89/C.1/L.78) were withdrawn, and paragraph 3 of the text submitted by the Chairman was adopted.

Alternative paragraph 3

55. At the 34th meeting, the amendment by the United Kingdom (A/CONF.89/C.1/L.78) was withdrawn.

Paragraph 4

56. At the 34th meeting, the amendments by the United States of America (A/CONF.89/C.1/L.58), India (A/CONF.89/C.1/L.61), United Kingdom (A/CONF.89/C.1/L.78), Czechoslovakia (A/CONF.89/C.1/L.84), Austria (A/CONF.89/C.1/L.97), Uganda (A/CONF.89/C.1/L.108), Mauritius (A/CONF.89/C.1/L.122) and Turkey (A/CONF.89/C.1/L.129) were withdrawn, and paragraph 4 of the text submitted by the Chairman was adopted.

Paragraph 5

57. At the 34th meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.117) was rejected, the amendment by Mauritius

(A/CONF.89/C.1/L.122) was withdrawn, and the UNCITRAL text was adopted.

Paragraph 6

58. At the 34th meeting, the amendments by Bulgaria (A/CONF.89/C.1/L.48), United States of America (A/CONF.89/C.1/L.58) and Mauritius (A/CONF.89/C.1/L.122) were withdrawn, the amendment by the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.117) was rejected by a vote of 32 to 11, with 21 abstentions, and the UNCITRAL text was adopted.

Paragraph 7

59. At the 35th meeting, the amendment by the United Kingdom (A/CONF.89/C.1/L.78) was withdrawn, the amendment by Argentina (A/CONF.89/C.1/L.123) was rejected by a vote of 35 to 14, with 9 abstentions, and the UNCITRAL text was adopted.

Proposed additional paragraph for article 5

60. At the 35th meeting, the amendments by the United States of America (A/CONF.89/C.1/L.58/Corr.1), United Kingdom (A/CONF.89/C.1/L.78), Yugoslavia (A/CONF.89/C.1/L.110 and L.160), Belgium, Germany, Federal Republic of, Ireland, Italy, Liberia, Netherlands, Poland, Portugal, Switzerland and United Kingdom (A/CONF.89/C.1/L.113), Bulgaria (A/CONF.89/C.1/L.116), and Union of Soviet Socialist Republics (A/CONF.89/C.1/L.118) were withdrawn. The amendment by Singapore and the United States of America (A/CONF.89/C.1/L.126) was rejected. The amendment by the Netherlands (A/CONF.89/C.1/L.95) was adopted as a new paragraph 8 of article 5.

ARTICLE 6

A. UNCITRAL TEXT

61. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 6. Limits of liability

"1. (a) The liability of the carrier for loss of or damage to goods according to the provisions of article 5 shall be limited to an amount equivalent to [...] units of account per package or other shipping unit or [...] units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

"(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed [...] the freight [payable for the goods delayed] [payable under the contract of carriage].

"(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.

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

"(a) Where a container, pallet or similar article of

transport is used to consolidate goods, the packages 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. Unit of account means . . .

"4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed."

B. AMENDMENTS

62. Amendments to article 6 were submitted by Greece, the United States of America, the United Kingdom of Great Britain and Northern Ireland, Czechoslovakia, Mauritius, jointly by Denmark, Finland, India, Norway, Sweden and United States of America, jointly by Denmark, Finland, Germany, Federal Republic of, Netherlands, Norway, Sweden and United States of America and Algeria.

63. These amendments were to the following effect:

Article as a whole

(a) *Greece (A/CONF.89/C.1/L.5)*

Adopt this article, and not alternative article 6, to determine the limits of liability.

[Withdrawn; see paragraph 68, below.]

Paragraph 1

(a) *United States of America (A/CONF.89/C.1/L.72)*

Amend subparagraph (b) of the paragraph to read as follows:

"The liability of the carrier for loss resulting from delay in delivery according to the provisions of article 5 shall not exceed [whatever unit is applied] multiplied by the number of days of delay [a limitation based on a fixed number of units which could be a maximum delay provision or related to freight charges]."

[Withdrawn; see paragraph 69, below.]

(b) *United Kingdom (A/CONF.89/C.1/L.78)*

Delete subparagraphs (b) and (c) of the paragraph.

[Withdrawn; see paragraph 69, below.]

(c) *Czechoslovakia (A/CONF.89/C.1/L.85)*

If article 6 be accepted to determine the limits of liability, specify the limit of liability for delay in subparagraph (b) of this paragraph as a multiple of the freight.

[Withdrawn; see paragraph 69, below.]

(d) *Mauritius (A/CONF.89/C.1/L.127)*

Insert the words "or in connexion with" after the words "damage to".

[Withdrawn; see paragraph 69, below.]

Paragraph 2

Denmark, Finland, India, Norway, Sweden and United States of America (A/CONF.89/C.1/L.138)

Amend the first sentence of subparagraph (a) to read as follows:

"(a) Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage, as packed in such article of transport shall be deemed packages or shipping units."

[Adopted; see paragraph 70, below.]

Paragraph 3

(a) *Greece (A/CONF.89/C.1/L.5)*

The utility of adding a provision determining the time of conversion of the unit of account adopted in the Convention into national currency should be considered.

[Withdrawn; see paragraph 71, below.]

(b) *Denmark, Finland, Germany, Federal Republic of, Netherlands, Norway, Sweden and United States of America (A/CONF.89/C.1/L.114)*

Adopt the following text:

"1. The unit of account referred to in article 6 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in article 6 shall be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency in terms of the special drawing right, of a State Party which is a member of the International Monetary Fund, shall 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 value of a national currency in terms of the special drawing right of a State Party which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State Party.

"2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature [without reservation as to ratification, acceptance or approval] or at the time of ratification [acceptance, approval] or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

[—monetary units per package or other shipping unit or—monetary units per kilogram of gross weight of the goods.]"

"3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

"4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature [without reservation as to ratification, acceptance or approval] or when depositing an instrument referred to in article ____ and whenever there is a change in either.

"* The paragraph enclosed in brackets is so enclosed because some countries do not favour a per package or its shipping unit limitation."

[Withdrawn; see paragraph 71, below.]

Paragraph 4

(a) *Algeria* (A/CONF.89/C.1/L.125)

Add the following words at the end of the paragraph: "but without that being reflected in an increase in freight rates".

[Withdrawn; see paragraph 72, below.]

(b) *Mauritius* (A/CONF.89/C.1/L.127)

Amend the paragraph to read as follows:

"Provided that the value of the goods has been declared in the bill of lading before shipment and accepted as such by the carrier as a basis for his liability, then such a value would be the measure of his liability. Such a declaration shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier."

[Withdrawn; see paragraph 72, below.]

(c) *Union of Soviet Socialist Republics* (A/CONF.89/C.1/L.203)

Add the following sentence at the end of the paragraph:

"The inclusion in the bill of lading of the value of the goods as declared by the shipper shall constitute such fixing with regard to the carrier's liability for loss of or damage to the goods to the extent that the shipper's declaration represents the actual value of the goods."

[Withdrawn; see paragraph 72, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

64. The First Committee considered article 6 at its 13th meeting, on 16 March 1978, and at its 34th and 35th meetings, on 28 March 1978.

(ii) Consideration

65. At its 13th meeting the Committee considered, on the basis of issues formulated by the Chairman (see A/CONF.89/L.132, below and 9th meeting, para. 41), the principles arising out of this article, and the relationship between these principles and those arising out of article 5, alternative article 6, and article 8. At the same meeting, the Committee decided to defer consideration of this article pending informal consultations among representatives, and established a Consultative Group,

composed of the representatives of Argentina, Czechoslovakia, Ecuador, Ghana, India, Mexico, the Netherlands, Norway, the Philippines, Poland, Uganda, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, to assist the Chairman of the First Committee in formulating a compromise solution to the related issues arising out of articles 5 and 6, alternative article 6 and article 8.

66. At the 34th meeting, the Chairman submitted the following text of paragraphs 1 and 3 of article 6 for consideration, together with the texts of paragraphs 1 to 4 of article 5, paragraphs 1 and 2 of article 8 and paragraphs 1 to 4 of a new article 26 (A/CONF.89/C.1/L.211):

"Article 6. Limits of liability

"1. (a) The liability of the carrier for loss of or damage to goods according to the provisions of article 5 shall be limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

"(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall be limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

"(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.

"3. Unit of account means the unit of account mentioned in article 26."

67. At the 34th meeting, the Committee adopted paragraphs 1 and 3 of this text submitted by the Chairman by a vote of 64 to 3, with 9 abstentions.

Article as a whole

68. At the 34th meeting, the amendment by Greece (A/CONF.89/C.1/L.5) was withdrawn.

Paragraph 1

69. At the 34th meeting, the amendments by the United States of America (A/CONF.89/C.1/L.72), the United Kingdom (A/CONF.89/C.1/L.78), Czechoslovakia (A/CONF.89/C.1/L.85) and Mauritius (A/CONF.89/C.1/L.127) were withdrawn, and paragraph 1 of the text submitted by the Chairman was adopted.

Paragraph 2

70. At the 35th meeting, the amendment by Denmark, Finland, India, Norway, Sweden and the United States of America (A/CONF.89/C.1/L.138) was adopted, and the UNCITRAL text was adopted subject to that amendment.

Paragraph 3

71. At the 34th meeting, the amendments by Greece (A/CONF.89/C.1/L.5) and by Denmark, Finland,

Germany, Federal Republic of, the Netherlands, Norway, Sweden and the United States of America (A/CONF.89/C.1/L.114) were withdrawn, and paragraph 3 of the text submitted by the Chairman was adopted.

Paragraph 4

72. At the 35th meeting, the amendments by Algeria (A/CONF.89/C.1/L.125), Mauritius (A/CONF.89/C.1/L.127) and the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.203) were withdrawn, and the UNCITRAL text was adopted.

ALTERNATIVE ARTICLE 6

A. UNCITRAL TEXT

73. The text of the United Nations Commission on International Trade Law provided as follows:

"Alternative article 6. Limits of liability"

"1. The liability of the carrier according to the provisions of article 5 shall be limited to an amount equivalent to [...] units of account per kilogram of gross weight of the goods lost, damaged or delayed.

"2. Unit of account means ...

"3. By agreement between the carrier and the shipper, a limit of liability exceeding that provided for in paragraph 1 may be fixed."

B. AMENDMENTS

74. Amendments to alternative article 6 were submitted by Greece, the German Democratic Republic and Uganda.

75. These amendments were to the following effect:

Article as a whole

Greece (A/CONF.89/C.1/L.5)

If this alternative article 6, and not article 6, be adopted to determine the limits of liability, add the following words at the end of paragraph 1: "provided that in the case of bulk cargoes the limit of liability of the carrier shall be reduced to one half of the said amount".

[Withdrawn; see paragraph 79, below.]

Article as a whole and paragraph 1

German Democratic Republic (A/CONF.89/C.1/L.89)

This alternative article might be adopted provided that:

(a) the words "or delayed" at the end of the paragraph be deleted;

(b) the text of this alternative article be supplemented by subparagraphs 1 (b) and (c) of the text of article 6;

(c) the supplementary subparagraph 1 (b) be reworded as follows: "The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed the freight payable for the goods delayed."

[Withdrawn; see paragraph 79, below.]

Paragraph 3

Uganda (A/CONF.89/C.1/L.119)

Amend the paragraph to read either as follows:

"The carrier and the shipper may by agreement fix liability exceeding that provided for in paragraph 1." or as follows:

"The carrier and the shipper may agree to extend the limit of liability provided for in paragraph 1."

[Withdrawn; see paragraph 79, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

76. The First Committee considered alternative article 6 at its 13th and 34th meetings, held respectively on 16 and 28 March 1978.

(ii) Consideration

77. At its 13th meeting, the Committee considered, on the basis of issues formulated by the Chairman, the principles arising out of this article, and the relationship between these principles and those arising out of articles 5, 6 and 8. At the same meeting, the Committee decided to defer consideration of this article pending informal consultations among representatives, and established a Consultative Group, composed of the representatives of Argentina, Czechoslovakia, Ecuador, Ghana, India, Mexico, the Netherlands, Norway, the Philippines, Poland, Uganda, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, to assist the Chairman of the First Committee in formulating a compromise solution to the related issues arising out of articles 5 and 6, alternative article 6 and article 8.

78. At the 34th meeting, the Chairman submitted a text for paragraphs 1 and 3 of article 6 and the Committee adopted as article 6 the text of these paragraphs together with the text of paragraph 2 of the UNCITRAL text of article 6, as amended, and the text of paragraph 4 of the UNCITRAL text of article 6.

79. At the 34th meeting, the amendments by Greece (A/CONF.89/C.1/L.5), the German Democratic Republic (A/CONF.89/C.1/L.89) and Uganda (A/CONF.89/C.1/L.119) were withdrawn.

ARTICLE 7

A. UNCITRAL TEXT

80. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 7. Application to non-contractual claims"

"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, in tort or otherwise.

"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.

"3. The aggregate of the amounts recoverable from the carrier, and any persons referred to in paragraph 2 of this article, shall not exceed the limits of liability provided for in this Convention."

B. AMENDMENTS

81. Amendments to article 7 were submitted by Mauritius and by the United States of America.

82. These amendments were to the following effect:

Paragraph 1

Mauritius (A/CONF.89/C.1/L.135)

Amend the paragraph to read as follows:

"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 or in connexion with the goods covered by the contract of carriage, as well as of delay in delivery, whether the action be founded in contract, in tort or otherwise."

[Withdrawn: see paragraph 84, below.]

Paragraph 3

United States of America (A/CONF.89/C.1/L.59)

Add the following phrase at the beginning of the paragraph: "Except as provided in article 8, the aggregate . . .".

[Referred to the Drafting Committee; see paragraph 86, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

83. The First Committee considered article 7 at its 14th and 34th meetings, on 16 and 28 March 1978 respectively.

(ii) Consideration

Paragraph 1

84. At the 34th meeting, the amendment by Mauritius (A/CONF.89/C.1/L.135) was withdrawn and the UNCITRAL text was adopted.

Paragraph 2

85. At the 14th meeting, the UNCITRAL text was adopted.

Paragraph 3

86. At the 14th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.59) was referred to the Drafting Committee, and the UNCITRAL text was adopted.

ARTICLE 8

A. UNCITRAL TEXT

87. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 8. Loss of right to limit liability

"1. The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result, which was an act or omission of:

"(a) the carrier himself; or

"(b) an employee of the carrier other than the master and members of the crew, while exercising, within the scope of his employment, supervisory authority in respect of that part of the carriage during which such act or omission occurred; or

"(c) an employee of the carrier, including the master or any member of the crew, while handling or caring for the goods within the scope of his employment.

"2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result."

B. AMENDMENTS

88. Amendments to article 8 were submitted by the United States of America, Greece, Japan and Uganda.

89. These amendments were to the following effect:

Article as a whole

United States of America (A/CONF.89/C.1/L.62)

Delete the article.

[Withdrawn: see paragraph 94, below.]

Paragraph 1

(a) *Greece (A/CONF.89/C.1/L.6)*

Delete subparagraphs (b) and (c).

[Withdrawn: see paragraph 95, below.]

(b) *Japan (A/CONF.89/C.1/L.19)*

Insert the words "of the carrier" before the word "done" and delete the words "which was an act or omission of", as well as subparagraphs (a), (b) and (c).

[Withdrawn: see paragraph 95, below.]

(c) *United States of America (A/CONF.89/C.1/L.140)*

Amend the paragraph to read as follows:

"The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss or damage (including loss or

damage from delay) resulted from an act or omission done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result . . ."

[Withdrawn; see paragraph 95, below.]

(d) *Uganda* (A/CONF.89/C.1/L.141)

Delete the words "within the scope of his employment" from subparagraphs (b) and (c).

[Withdrawn; see paragraph 95, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

90. The First Committee considered article 8 at its 12th and 13th meetings, on 15 and 16 March 1978, and at its 34th meeting, on 28 March 1978.

(ii) Consideration

91. At its 12th and 13th meetings, the Committee considered, on the basis of issues formulated by the Chairman (see A/CONF.89/L.132 below and 9th meeting, para. 41), the principles arising out of this article, and the relationship between these principles and those arising out of articles 5 and 6, and alternative article 6. At the 13th meeting, the Committee decided to defer further consideration of this article pending informal consultations among representatives, and established a Consultative Group, composed of the representatives of Argentina, Czechoslovakia, Ecuador, Ghana, India, Mexico, the Netherlands, Norway, the Philippines, Poland, Uganda, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, to assist the Chairman of the First Committee in formulating a compromise solution to the related issues arising out of articles 5 and 6, alternative article 6 and article 8.

92. At the 34th meeting, the Chairman submitted the following text of article 8 for consideration, together with the texts of paragraphs 1 to 4 of article 5, paragraphs 1 and 3 of article 6, and a new article 26 (A/CONF.89/C.1/L.211):

"Article 8. Loss of right to limit responsibility"

"1. The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

"2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result."

93. At the 34th meeting, the Committee adopted the

text of article 8 submitted by the Chairman by a vote of 64 to 3, with 9 abstentions.

Article as a whole

94. At the 34th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.62) was withdrawn.

Paragraph 1

95. At the 34th meeting, the amendments by Greece (A/CONF.89/C.1/L.6), Japan (A/CONF.89/C.1/L.19), the United States of America (A/CONF.89/C.1/L.140) and Uganda (A/CONF.89/C.1/L.141) were withdrawn, and paragraph 1 of the text submitted by the Chairman was adopted.

Paragraph 2

96. At the 34th meeting, paragraph 2 of the text submitted by the Chairman was adopted.

ARTICLE 9

A. UNCITRAL TEXT

97. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 9. Deck cargo"

"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 or with the usage of the particular trade or is required by statutory rules or regulations.

"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.

"3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier shall, notwithstanding the provisions of paragraph 1 of article 5, 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, and the extent of his liability shall be determined in accordance with the provisions of article 6 or 8, as the case may be.

"4. Carriage of goods on deck contrary to express agreement for the carriage under deck shall be deemed to be an act or omission of the carrier within the meaning of article 8."

B. AMENDMENTS

98. Amendments to article 9 were proposed by France, the United States of America, Canada, Austria, Greece and Japan.

99. These amendments were to the following effect:

Paragraph 1

France (A/CONF.89/C.1/L.50)

Add the following sentence at the end of the paragraph: "The shipper shall be presumed to be in agreement in the case of shipment in containers."

[Withdrawn; see paragraph 101 below.]

Paragraph 2

(a) *United States of America (A/CONF.89/C.1/L.63)*

Insert the word "prominently" before the word "insert" and add the words "and for value" at the end of the paragraph.

[Referred to the Drafting Committee; see paragraph 102 below.]

(b) *Canada (A/CONF.89/C.1/L.149)*

Add the words, "at the time of issuance thereof, an express" in the first sentence of the paragraph after the words "evidencing the contract of carriage".

[Referred to the Drafting Committee; see paragraph 102, below.]

(c) *Austria (A/CONF.89/C.1/L.98)*

Delete the second sentence of the paragraph (beginning with the words "In the absence of ...").

[Withdrawn; see paragraph 102, below.]

Proposed new paragraphs

(a) *Greece (A/CONF.89/C.1/L.7)*

Add a paragraph to provide that the carrier shall not be liable for loss or damage to cargo carried on deck in accordance with the provisions of paragraph 1 of the article or, alternatively, in accordance with an agreement with the shipper.

[Withdrawn in favour of the amendment by Japan (A/CONF.89/C.1/L.20); see paragraph 105, below.]

(b) *Japan (A/CONF.89/C.1/L.20)*

Add the following paragraph:

"When the goods are carried on deck pursuant to paragraph 1, the carrier shall be relieved of his liability where the loss, damage or delay in delivery results from any special risks inherent in such carriage. When the carrier proves 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 part of the loss, damage or delay in delivery resulted from fault or negligence on the part of the carrier, his servants or agents."

[Rejected; see paragraph 105, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

100. The First Committee considered article 9 at its 14th and 15th meetings, on 16 March 1978.

(ii) Consideration

Paragraph 1

101. At the 14th meeting, the amendment by France (A/CONF.89/C.1/L.50) was withdrawn, and the UNCITRAL text was adopted.

Paragraph 2

102. At the 14th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.63) was referred to the Drafting Committee. At the 15th meeting, the amendment by Austria (A/CONF.89/C.1/L.98) was withdrawn, the amendment by Canada (A/CONF.89/C.1/L.149) was referred to the Drafting Committee and the UNCITRAL text was adopted.

Paragraph 3

103. At the 15th meeting, the UNCITRAL text was adopted.

Paragraph 4

104. At the 15th meeting, the UNCITRAL text was adopted.

Proposed new paragraphs

105. At the 15th meeting, the proposal by Greece (A/CONF.89/C.1/L.7) was withdrawn in favour of the proposal by Japan (A/CONF.89/C.1/L.20), which was rejected by a vote of 48 to 10, with 5 abstentions.

ARTICLE 10

A. UNCITRAL TEXT

106. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 10. Liability of the carrier and actual carrier"

"1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Convention. The carrier shall, in relation to the carriage performed by the actual carrier, be responsible for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

"2. The actual carrier shall be responsible, according to the provisions of this Convention, for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 shall apply if an action is brought against a servant or agent of the actual carrier.

"3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the actual carrier only if agreed by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier shall nevertheless remain bound by

the obligations or waivers resulting from such special agreement.

"4. Where and to the extent that both the carrier and the actual carrier are liable, their liability shall be joint and several.

"5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits provided for in this Convention.

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

B. AMENDMENTS

107. Amendments to article 10 were submitted by India, jointly by India, Kenya and Sierra Leone, by Japan, the United States of America and Australia.

108. These amendments were to the following effect:

Paragraph 1

(a) *India (A/CONF.89/C.1/L.143)*

Add the following sentence after the first sentence of the paragraph:

"In this case the carrier shall conclude the contract with the actual carrier in terms of the contract of carriage with the shipper and this Convention."

[Rejected; see paragraph 110, below.]

(b) *India, Kenya and Sierra Leone (A/CONF.89/C.1/L.154)*

Add the following sentence after the last sentence of the paragraph:

"The actual carrier shall be deemed to be a party to the contract of carriage between the carrier and the shipper in so far as his part of the performance of the contract of carriage is concerned."

[Rejected; see paragraph 110, below.]

Paragraph 2

(a) *Japan (A/CONF.89/C.1/L.21)*

Add at the end of the first sentence the words "as if he were a carrier."

[Rejected; see paragraph 111, below.]

(b) *United States of America (A/CONF.89/C.1/L.64)*

Add the following words to the first sentence:

"and the defences and limitations of liability provided to the carrier according to the provisions of this Convention shall also be applicable to the actual carrier for the carriage performed by him."

[Withdrawn; see paragraph 113, below.]

(c) *Australia (A/CONF.89/C.1/L.142)*

Replace the words "performed by" by the words "entrusted to".

[Rejected; see paragraph 111, below.]

Paragraph 5

United States of America (A/CONF.89/C.1/L.64)

If article 8 is retained, paragraph 5 should begin with

the words "Except as provided in article 8, the aggregate ...".

[Rejected; see paragraph 114, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

109. The First Committee considered article 10 at its 15th to 17th meetings, on 16 and 17 March 1978.

(ii) Consideration

Paragraph 1

110. At the 17th meeting, the amendments by India (A/CONF.89/C.1/L.143) and India, Kenya and Sierra Leone (A/CONF.89/C.1/L.154) were rejected, and the UNCITRAL text was adopted.

Paragraph 2

111. At the 15th meeting, the amendment by Japan (A/CONF.89/C.1/L.21) was rejected. At the 16th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.64) was withdrawn, the amendment by Australia (A/CONF.89/C.1/L.142) was rejected by a vote of 30 to 22, with 7 abstentions, and the UNCITRAL text was adopted.

Paragraph 3

112. At the 16th meeting, the UNCITRAL text was adopted.

Paragraph 4

113. At the 16th meeting, the Committee deferred a decision on this paragraph pending the decision of the Committee on article 5. At the 35th meeting, the UNCITRAL text was adopted.

Paragraph 5

114. At the 16th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.64) was rejected and the UNCITRAL text was adopted.

Paragraph 6

115. At the 16th meeting, the UNCITRAL text was adopted.

ARTICLE 11

A. UNCITRAL TEXT

116. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 11. Through carriage

"1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual

carrier during such part of the carriage. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence shall rest upon the carrier.

"2. The actual carrier shall be responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge."

B. AMENDMENTS

117. Amendments to article 11 were submitted by the German Democratic Republic, Canada, Greece, Japan, the United States of America, France and Argentina.

118. These amendments were to the following effect:

Article as a whole

(a) *German Democratic Republic (A/CONF.89/C.1/L.90)*

Either delete the article or amend it to read as follows:

"1. Where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the carrier and the actual carrier shall be liable jointly and severally for loss, damage and delay in delivery caused by an occurrence which takes place while the goods are in their charge.

"2. Nothing in paragraph 1 shall prejudice any right of recourse as between the carrier and the actual carrier.

"3. If local bills of lading will be issued, it shall be noted on them that the goods are carried under a through bill of lading."

[Rejected in so far as it relates to deletion; see paragraph 120, below.]

(b) *Canada (A/CONF.89/C.1/L.148)*

Delete the article.

[Rejected; see paragraph 120, below.]

Paragraph 1

(a) *Greece (A/CONF.89/C.1/L.8)*

Delete the word "named", and clarify the paragraph to ensure that "through carriage" only concerns sea carriage and does not relate to carriage by land.

[Rejected as to the deletion of the word "named", and referred to the Drafting Committee as to the rest of the amendment; see paragraph 123, below.]

(b) *Japan (A/CONF.89/C.1/L.22)*

Delete the word "named".

[Rejected; see paragraph 123, below.]

(c) *United States of America (A/CONF.89/C.1/L.65)*

Amend the first sentence of the paragraph to read as follows:

"Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person

other than the carrier, the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage, provided that the actual carrier is subject to suit pursuant to the provisions of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence shall rest upon the carrier."

[Adopted; see paragraph 123, below]

(d) *France (A/CONF.89/C.1/L.79)*

Replace the words "while the goods are in the charge of the actual carrier during such part of the carriage" by the words "while the goods are in the charge of such named carrier during the part of the carriage performed by the latter."

[Referred to the Drafting Committee; see paragraph 123, below.]

(e) *Argentina (A/CONF.89/C.1/L.130 and Corr.1)*

Adopt one of the following proposals:

(a) Insert between the words "the carrier" and the words "the contract" the words "and the carrier does not issue a through bill of lading":

(b) Delete paragraph 1 of article 11 and begin the present paragraph 2 by the following words: "Where a through bill of lading is issued, the actual carrier..."

In the case of either of the alternatives proposed, a final paragraph should be added, after the present paragraph 2, reading as follows:

"In addition to the carrier and the actual carrier, the person delivering the goods shall also be liable, without prejudice to recourse actions involving claims against the person under whose control or period of carriage the occurrence giving rise to liability took place. Liability as between the carrier and the person delivering the goods shall be joint and several."

[Withdrawn, with the understanding that the proposal will be introduced in the plenary; see paragraph 123, below.]

Paragraph 2

(a) *France (A/CONF.89/C.1/L.79)*

Replace the existing text of the paragraph by the following text:

"The named carrier who performs a specified part of the carriage in the conditions set forth in paragraph 1 of the present article shall be responsible in the same conditions as an actual carrier, in accordance with the provisions of paragraph 2 of article 10."

[Referred to the Drafting Committee; see paragraph 124, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

119. The First Committee considered article 11 at its 16th, 17th and 32nd meetings, on 16, 17 and 27 March 1978.

(ii) Consideration

120. At the 17th meeting, the amendment by the German Democratic Republic (A/CONF.89/C.1/L.90), in so far as it related to the deletion of the article, and the amendment by Canada (A/CONF.89/C.1/L.148) were rejected by a vote of 36 to 18, with 8 abstentions. The Committee decided to refer the other amendments for consideration by an *ad hoc* Working Group composed of the representatives of Argentina, Bulgaria, Canada, France, the German Democratic Republic, Greece, Indonesia, the Philippines, Poland, Sweden, Uganda and the United States of America. The *ad hoc* Working Group submitted the following text (A/CONF.89/C.1/L.186):

"1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier, the contract may also provide that the carrier, while remaining responsible to provide for the proper performance of such part, shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability shall be without effect if no legal proceedings can be brought against the actual carrier before a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery were caused by an occurrence which took place while the goods were in the charge of the actual carrier shall rest upon the carrier.

"2. The actual carrier shall be responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

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

Note:

"Some members of the Working Group wish to draw the attention of the First Committee to the fact that a rearrangement and consolidation of articles 10 and 11 into a single article can advantageously be accomplished in the following way:

"Paragraph 1 = Paragraph 1 of article 10

"Paragraph 2 = Paragraph 1 of article 11, as amended

"Paragraphs 3-7 = Paragraphs 2-6 of article 10

"Delete article 11."

121. The following amendment was submitted to the text of the *ad hoc* Working Group:

Canada (A/CONF.89/C.1/L.191)

Amend the second sentence of that text to read:

"Nevertheless, any stipulation limiting or excluding such liability shall be without effect if no legal proceedings can be brought against the actual carrier before a

court competent under subparagraph 1 (c) or paragraph 2 of article 21."

122. At the 32nd meeting, the Committee rejected the text of the *ad hoc* Working Group (A/CONF.89/C.1/L.186) by a vote of 28 to 21, with 16 abstentions. The amendment by Canada (A/CONF.89/C.1/L.191) was consequently withdrawn.

Paragraph 1

123. At the 32nd meeting, the Committee rejected that part of the amendment by Greece (A/CONF.89/C.1/L.8) proposing the deletion of the word "named", and referred the rest of the amendment to the Drafting Committee. The Committee rejected the amendment by Japan (A/CONF.89/C.1/L.22) and adopted the amendment by the United States of America (A/CONF.89/C.1/L.65) by a vote of 43 to 17, with 6 abstentions. The amendment by France (A/CONF.89/C.1/L.79) was referred to the Drafting Committee. The amendment by Argentina (A/CONF.89/C.1/L.130 and Corr.1) was withdrawn, with the understanding that it would be introduced in the plenary of the Conference. The UNCITRAL text, as amended by the United States of America (A/CONF.89/C.1/L.65), was adopted.

Paragraph 2

124. The amendment by France (A/CONF.89/C.1/L.79) was referred to the Drafting Committee, and the UNCITRAL text was adopted.

ARTICLE 12

A. UNCITRAL TEXT

125. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 12. General rule

"The shipper shall not be liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor shall any servant or agent of the shipper be liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part."

B. AMENDMENTS

126. Amendments to article 12 were proposed by Greece, the German Democratic Republic, the Union of Soviet Socialist Republics and Japan.

127. These amendments were to the following effect:

(a) Greece (A/CONF.89/C.1/L.9)

Insert the words "Without prejudice to the shipper's liabilities under the contract" or the words "Without prejudice to the carrier's rights under the contract" at the beginning of the article.

[Withdrawn; see paragraph 129, below.]

(b) German Democratic Republic (A/CONF.89/C.1/L.91)

Amend the article (to read) as follows:

"The shipper shall be liable for loss sustained by the carrier or the actual carrier, if such loss or damage was caused by the fault or neglect of the shipper, his servants and agents."

[Withdrawn; see paragraph 129, below.]

(c) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.153)*

Amend the article to read as follows:

"The shipper shall be liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, if such loss or damage is attributable to any fault or neglect of the shipper, his servants, or agents. Any servant or agent of the shipper shall be also liable for such loss or damage if the loss or damage is attributable to any fault or neglect on his part."

[Withdrawn; see paragraph 129, below.]

Proposed new paragraph

Japan (A/CONF.89/C.1/L.23)

Add the following paragraph:

"If the goods have not been claimed by the consignee within a reasonable period after notice was given to him of their arrival, the shipper shall upon request by the carrier give the carrier the instruction on the disposal of the goods. If no such instruction has been given by the shipper within a reasonable time, the goods may be sold or otherwise disposed of by the carrier, and the shipper or the consignee, as the case may be, shall be liable for any loss, damage or expenses incurred by the carrier as the result of the consignee's failure to take delivery of the goods within a reasonable period."

[Withdrawn; see paragraph 129, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

128. The First Committee considered article 12 at its 17th meeting, on 17 March 1978.

(ii) *Consideration*

129. At the 17th meeting, all the amendments proposed to this article, including the proposal for a new paragraph to the article, were withdrawn, and the UNCITRAL text was adopted.

ARTICLE 13

A. UNCITRAL TEXT

130. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 13. *Special rules on dangerous goods*

"1. The shipper shall mark or label in a suitable manner dangerous goods as dangerous.

"2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper shall inform him of the dangerous character

of the goods and, if necessary, the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

"(a) The shipper shall be liable to the carrier and any actual carrier for all loss resulting from the shipment of such goods, and

"(b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

"3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

"4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5."

B. AMENDMENTS

131. Amendments to article 13 were submitted by Tunisia, Austria, Bulgaria, Yugoslavia, Mauritius, the United Kingdom of Great Britain and Northern Ireland, Austria, Brazil and France.

132. These amendments were to the following effect:

Paragraph 1

(a) *Tunisia (A/CONF.89/C.1/L.41)*

Amend the paragraph to read as follows:

"The shipper shall mark or label, in a manner that complies with the regulations in force and with the particular practices observed in the carriage of such type of goods, dangerous goods as dangerous."

[Rejected; see paragraph 134, below.]

(b) *Austria (A/CONF.89/C.1/L.99)*

Delete the paragraph.

[Withdrawn in favour of the proposal by Tunisia; see paragraph 134, below.]

Paragraph 2

(a) *Bulgaria (A/CONF.89/C.1/L.106)*

Delete the words "if necessary".

[Rejected; see paragraph 135, below.]

(b) *Yugoslavia (A/CONF.89/C.1/L.111)*

Delete the words "if necessary" and the accompanying commas.

[Rejected; see paragraph 135, below.]

(c) *Mauritius (A/CONF.89/C.1/L.128)*

Include a definition of "dangerous goods" or, alternatively, include a reference to international norms which exist in the context of dangerous goods, as follows:

"When the shipper hands over dangerous goods to the carrier or actual carrier, as the case may be, the

shipper shall inform him of the dangerous character of the goods, namely by reference to prevailing international norms

[Withdrawn; see paragraph 135, below.]

(d) *United Kingdom (A/CONF.89/C.1/L.147)*

Delete the words following "to do so" and, in subparagraph 2(a), replace the words "loss resulting from the shipment of such goods" by the words "loss which occurs while either of them is in charge of such goods".

[Rejected; see paragraph 135, below.]

(e) *Austria (A/CONF.89/C.1/L.157)*

Amend the paragraph to read as follows:

"The shipper has to inform the carrier of the dangerous character of the goods and, if necessary, the precautions to be taken. If the shipper fails to do so and the carrier does not otherwise have knowledge of their dangerous character:

"(a) The shipper shall be liable to the carrier for all loss resulting from the shipment of such goods, and

"(b) [as in the present text]."

[Rejected; see paragraph 135, below.]

(f) *Brazil (A/CONF.89/C.1/L.166)*

Delete the last sentence of the paragraph.

[Rejected; see paragraph 135, below.]

Paragraph 3

(a) *Yugoslavia (A/CONF.89/C.1/L.111)*

Insert the words "and consequences that may arise from such dangerous character" at the end of the paragraph.

[Withdrawn; see paragraph 136, below.]

(b) *United Kingdom (A/CONF.89/C.1/L.147)*

Reword the paragraph as follows:

"The provisions of paragraph 2 of this article may not be invoked by any person if, when he takes the goods in charge, he has actual knowledge of their dangerous character."

[Rejected; see paragraph 136, below.]

(c) *Brazil (A/CONF.89/C.1/L.166)*

Reword the paragraph as follows:

"3. If the shipper fails to perform any of the requirements of paragraph 1 or 2 and the carrier or actual carrier does not otherwise have knowledge of their dangerous character:

"(a) The shipper shall be liable to the carrier and any actual carrier for all loss resulting from the shipment of such goods, and

"(b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation."

[Rejected; see paragraph 136, below.]

Paragraph 4

(a) *France (A/CONF.89/C.1/L.80)*

Amend the opening words of the paragraph to read as follows:

"If, in cases where they have been shipped with the knowledge and consent of the carrier, dangerous goods become an actual danger"

[Withdrawn; see paragraph 137, below.]

(b) *Bulgaria (A/CONF.89/C.1/L.106)*

Delete the words "as the circumstances may require".

[Rejected; see paragraph 137, below.]

(c) *Brazil (A/CONF.89/C.1/L.166)*

Change the reference made to "paragraph 2, subparagraph (b)" to "paragraph 3, subparagraph (b)".

[Rejected; see paragraph 137, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

133. The First Committee considered article 13 at its 17th to 19th and 25th meetings, on 17, 20 and 23 March 1978.

(ii) Consideration

Paragraph 1

134. At the 17th meeting, the amendment by Austria (A/CONF.89/C.1/L.99) was withdrawn in favour of the amendment by Tunisia (A/CONF.89/C.1/L.41). At the 18th meeting, the amendment by Tunisia (A/CONF.89/C.1/L.41) was rejected, and the UNCITRAL text was adopted.

Paragraph 2

135. At the 18th meeting, the amendment by Mauritius (A/CONF.89/C.1/L.128) was withdrawn and the amendments by Bulgaria (A/CONF.89/C.1/L.106), Yugoslavia (A/CONF.89/C.1/L.111) and the United Kingdom (A/CONF.89/C.1/L.147) were rejected. At the 19th meeting, the amendments by Austria (A/CONF.89/C.1/L.157) and Brazil (A/CONF.89/C.1/L.166) were rejected, and the UNCITRAL text was adopted.

Paragraph 3

136. At the 19th meeting, the amendment by Yugoslavia (A/CONF.89/C.1/L.111) was withdrawn and the amendments by the United Kingdom (A/CONF.89/C.1/L.147) and Brazil (A/CONF.89/C.1/L.166) were rejected. At the 25th meeting, the UNCITRAL text was adopted.

Paragraph 4

137. At the 19th meeting, the amendment by France (A/CONF.89/C.1/L.80) was withdrawn, the amendments by Bulgaria (A/CONF.89/C.1/L.106) and Brazil (A/CONF.89/C.1/L.166) were rejected, and the UNCITRAL text was adopted.

ARTICLE 14

A. UNCITRAL TEXT

138. The text adopted by the United Nations Commission on International Trade Law provided as follows:

"Article 14. Issue of bill of lading"

"1. When the goods are received in the charge of the carrier or the actual carrier, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.

"2. The bill of lading may be signed by a person having authority from the 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 carrier.

"3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued."

B. AMENDMENTS

139. Amendments to article 14 were submitted by Canada, the United Kingdom of Great Britain and Northern Ireland, Tunisia, the United States of America, Austria and Greece.

140. These amendments were to the following effect:

Paragraph 1

Canada (A/CONF.89/C.1/L.158) and United Kingdom (A/CONF.89/C.1/L.162)

Insert the word "signed" before the words "bill of lading".

[Rejected; see paragraph 142, below.]

Paragraph 2

(a) Tunisia (A/CONF.89/C.1/L.42)

Amend the paragraph to read as follows:

"The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship or with his authority shall be deemed to have been signed on behalf of the carrier as well as on behalf of the shipowner as an actual carrier."

[Rejected; see paragraph 143, below.]

(b) United States of America (A/CONF.89/C.1/L.66)

Amend the paragraph to read as follows:

"A bill of lading signed by the master of the ship carrying the goods or on his behalf with his authority shall be deemed to have been signed on behalf of the carrier as well as on behalf of the shipowner as an actual carrier."

[Rejected; see paragraph 143, below.]

(c) Austria (A/CONF.89/C.1/L.100)

Amend the second sentence to read as follows:

"A bill of lading signed by the master of the ship carrying the goods or the port agent shall be deemed to have been signed on behalf of the carrier."

[Withdrawn; see paragraph 143, below.]

(d) Canada (A/CONF.89/C.1/L.158)

Replace the phrases "may be signed" and "have been

signed" by the phrases "may be issued" and "have been issued".

[Withdrawn; see paragraph 143, below.]

Paragraph 3

Greece (A/CONF.89/C.1/L.10)

Delete the words "if not inconsistent with the law of the country where the bill of lading is issued".

[Rejected; see paragraph 144, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE*(i) Meetings*

141. The First Committee considered article 14 at its 19th and 20th meetings, on 20 March 1978.

*(ii) Consideration**Paragraph 1*

142. At the 20th meeting, the amendment by Canada (A/CONF.89/C.1/L.158) was rejected by a vote of 21 to 10, with 20 abstentions. The amendment by the United Kingdom (A/CONF.89/C.1/L.162) was also rejected and the UNCITRAL text was adopted.

Paragraph 2

143. At the 20th meeting, the amendments by the United States of America (A/CONF.89/C.1/L.66), Austria (A/CONF.89/C.1/L.100) and Canada (A/CONF.89/C.1/L.158) were withdrawn, the amendment by Tunisia (A/CONF.89/C.1/L.42) was rejected by a vote of 43 to 3, with 15 abstentions, and the UNCITRAL text was adopted.

Paragraph 3

144. At the 20th meeting, the amendment by Greece (A/CONF.89/C.1/L.10) was rejected and the UNCITRAL text was adopted.

ARTICLE 15**A. UNCITRAL TEXT**

145. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 15. Contents of bill of lading"

"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;

"(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, if more than one;

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

"(j) The signature of the carrier or a person acting on his behalf;

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

"(l) The statement referred to in paragraph 3 of article 23; and

"(m) The statement, if applicable, that the goods shall or may be carried on deck.

"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 of this article, 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 legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 6 of article 1."

B. AMENDMENTS

146. Amendments to article 15 were submitted by the United Kingdom of Great Britain and Northern Ireland, Japan, Tunisia, Uganda, Mauritius, Brazil, the German Democratic Republic, Canada, the Federal Republic of Germany, Austria, Venezuela, India and Portugal.

147. These amendments were to the following effect:

Paragraph 1 as a whole

United Kingdom (A/CONF.89/C.1/L.163)

Amend the paragraph to read as follows:

"The bill of lading shall contain *inter alia* the following particulars:

"(a) The leading marks necessary for identification of the goods, as furnished by the shipper;

"(b) 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;

"(c) The apparent condition of the goods;

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

"(e) The name and principal place of business of the shipper;

"(f) The number of originals of the bill of lading, if more than one; and

"(g) The place of issuance of the bill of lading."

[Withdrawn, but proposed opening words of amendment referred to the Drafting Committee; see paragraphs 149 and 150 below.]

Subparagraph 1 (a)

(a) Japan (A/CONF.89/C.1/L.24¹)

Replace the subparagraph by the following subparagraphs:

"(a) The general nature of the goods and the leading marks necessary for identification of the goods, as furnished by the shipper;

"(a) *bis*. Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished by the shipper;"

[Rejected; see paragraph 151 below.]

(b) Tunisia (A/CONF.89/C.1/L.43)

Insert the phrase "any particulars as to the dangerous character of the goods" before the phrase "the number of packages or pieces".

[Adopted; see paragraph 152, below.]

(c) Uganda (A/CONF.89/C.1/L.144)

In the English text, insert the word "and" before the word "all".

[Rejected; see paragraph 152, below.]

(d) Mauritius (A/CONF.89/C.1/L.164)

Insert the phrase "special instructions for the purposes of article 5, paragraph 5" after the phrase "The general nature of the goods".

[Rejected; see paragraph 152, below.]

(e) Brazil (A/CONF.89/C.1/L.174)

Insert the words "and or dimensions of the packages" after the word "weight".

[Withdrawn; see paragraph 152, below.]

Subparagraph 1 (c)

German Democratic Republic (A/CONF.89/C.1/L.92)

Add the following words at the end of the subparagraph: "if the name of the carrier is wrong, incorrect, or absent, the shipowner shall be deemed to be the carrier."

[Withdrawn; see paragraph 154, below.]

¹ See an explanatory note on this amendment in document A/CONF.89/C.1/L.139, reproduced below in the annex to this report.

Subparagraph 1 (f)

(a) *Canada (A/CONF.89/C.1/L.165)*

Delete the words "and the date on which the goods were taken over by the carrier at the port of loading".

[Rejected; see paragraph 156, below.]

(b) *Federal Republic of Germany (A/CONF.89/C.1/L.169)*

Amend the subparagraph to read as follows:

"(f) The port of loading under the contract of carriage;"

[Withdrawn; see paragraph 156, below.]

Subparagraph 1 (k)

(a) *Japan (A/CONF.89/C.1/L.24)*

Delete the subparagraph.

[Withdrawn; see paragraph 158, below.]

(b) *Austria (A/CONF.89/C.1/L.101)*

Amend the subparagraph to read as follows: "The indication if the freight is prepaid or payable at the destination."

[Rejected; see paragraph 158, below.]

(c) *Venezuela (A/CONF.89/C.1/L.104)*

Amend the subparagraph to read as follows:

"(k) The freight;"

[Withdrawn; see paragraph 158, below.]

(d) *Canada (A/CONF.89/C.1/L.156)*

Amend the subparagraph to incorporate reference to demurrage as follows:

"The freight or any demurrage to the extent payable by the consignee;"

[Rejected; see paragraph 158, below.]

(e) *India (A/CONF.89/C.1/L.168)*

Amend the subparagraph to read as follows:

"(k) The freight; if the freight is payable by the consignee, it should also be so indicated."

[Rejected; see paragraph 158, below.]

Subparagraph 1 (l)

Japan (A/CONF.89/C.1/L.24)

Delete the subparagraph.

[Withdrawn; see paragraph 159, below.]

Proposed additional subparagraphs to paragraph 1

(a) *Canada (A/CONF.89/C.1/L.155/Corr.1)*

Add the following subparagraph immediately after subparagraph (m):

"An express statement, if applicable, as to the dangerous character of the goods."

[Referred to the Drafting Committee; see paragraph 161, below.]

(b) *Portugal (A/CONF.89/C.1/L.161)*

Add the following subparagraph immediately after subparagraph (i):

"The signature of the shipper or a person acting on his behalf;"

[Rejected; see paragraph 161, below.]

(c) *India (A/CONF.89/C.1/L.168)*

Add the following subparagraph:

"The date or the period of delivery of goods at the port of discharge if expressly agreed upon between the parties."

[Adopted; see paragraph 161, below.]

Paragraph 2

United Kingdom (A/CONF.89/C.1/L.163)

Delete the words "or ships".

[Withdrawn; see paragraph 162, below.]

*C. PROCEEDINGS IN THE FIRST COMMITTEE**(i) Meetings*

148. The Committee considered article 15 at its 20th to 22nd meetings, on 20 and 21 March 1978.

*(ii) Consideration**Paragraph as a whole*

149. At the 20th meeting the amendment by the United Kingdom (A/CONF.89/C.1/L.163) was withdrawn.

Opening words of paragraph 1

150. At the 20th and 21st meetings, the UNCITRAL text was adopted, subject to consideration by the Drafting Committee of the proposed opening words for this paragraph in the amendment by the United Kingdom (A/CONF.89/C.1/L.163).

Subparagraph 1 (a)

151. At the 20th meeting, the amendment by Japan (A/CONF.89/C.1/L.24) was rejected.

152. At the 21st meeting, the amendment by Tunisia (A/CONF.89/C.1/L.43) was adopted by a vote of 30 to 22 against, with 14 abstentions, and referred to the Drafting Committee for consideration together with the amendment by Canada (A/CONF.89/C.1/L.155/Corr.1). The amendments by Uganda (A/CONF.89/C.1/L.144) and Mauritius (A/CONF.89/C.1/L.164) were rejected, the amendment by Brazil (A/CONF.89/C.1/L.174) was withdrawn, and the UNCITRAL text, as amended, was adopted.

Subparagraph 1 (b)

153. At the 21st meeting, the UNCITRAL text was adopted.

Subparagraph 1 (c)

154. At the 21st meeting, the amendment by the German Democratic Republic (A/CONF.89/C.1/L.92) was withdrawn, and the UNCITRAL text was adopted.

Subparagraphs 1 (d) and (e)

155. At the 21st meeting, the UNCITRAL text was adopted.

Subparagraph 1 (f)

156. At the 21st meeting, the amendment by the

Federal Republic of Germany (A/CONF.89/C.1/L.169) was withdrawn in favour of the amendment by Canada (A/CONF.89/C.1/L.165). The latter was rejected and the UNCITRAL text was adopted.

Subparagraphs 1 (g), (h), (i) and (j)

157. At the 21st meeting, the UNCITRAL text was adopted.

Subparagraph 1 (k)

158. At the 21st meeting, the amendments by Japan (A/CONF.89/C.1/L.24) and Venezuela (A/CONF.89/C.1/L.104) were withdrawn and the amendment by Austria (A/CONF.89/C.1/L.101) was rejected. At the 22nd meeting, the amendment by Canada (A/CONF.89/C.1/L.156) was rejected by a vote of 32 to 17, with 13 abstentions, the amendment by India (A/CONF.89/C.1/L.168) was rejected by a vote of 35 to 16, with 10 abstentions, and the UNCITRAL text was adopted.

Subparagraph 1 (l)

159. At the 22nd meeting, the amendment by Japan (A/CONF.89/C.1/L.24) was withdrawn and the UNCITRAL text was adopted.

Subparagraph 1 (m)

160. At the 22nd meeting, the UNCITRAL text was adopted.

Proposed additional subparagraphs to paragraph 1

161. At the 22nd meeting, the proposal by Canada (A/CONF.89/C.1/L.155/Corr.1) was referred to the Drafting Committee to be considered together with the amendment by Tunisia (A/CONF.89/C.1/L.43) relating to subparagraph (a), and the amendment by Portugal (A/CONF.89/C.1/L.161) was rejected. The amendment by India (A/CONF.89/C.1/L.168) was adopted and referred to the Drafting Committee.

Paragraph 2

162. At the 22nd meeting, the amendment by the United Kingdom (A/CONF.89/C.1/L.163) was withdrawn, and the UNCITRAL text was adopted.

Paragraph 3

163. At the 22nd meeting, the UNCITRAL text was adopted.

ARTICLE 16

A. UNCITRAL TEXT

164. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 16. *Bills of lading: reservations and evidentiary effect*

"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 or other persons issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately 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 or such other persons shall insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

"2. When the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

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

"(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.

"4. A bill of lading which 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 or does not set forth demurrage incurred at the port of loading payable by the consignee, shall be *prima facie* evidence that no freight or such demurrage 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."

B. AMENDMENTS

165. Amendments to article 16 were proposed by Uganda, France, the United States of America (oral proposal), Japan, Austria, Venezuela, the United Kingdom of Great Britain and Northern Ireland and Canada.

166. These amendments were to the following effect:

Paragraph 2

Uganda (A/CONF.89/C.1/L.145)

Replace the word "is" after the word "he" by the words "shall be".

[Referred to the Drafting Committee; see paragraph 169, below.]

Paragraph 3

France (A/CONF.89/C.1/L.81)

Delete the words "including any consignee" in subparagraph (b).

[Withdrawn in favour of the oral proposal by the United States of America; see paragraph 170, below.]

Paragraph 4

(a) *Japan (A/CONF.89/C.1/L.25)*

Delete the paragraph.

[Rejected; see paragraph 171, below.]

(b) *France (A/CONF.89/C.1/L.81)*

Delete the words "including any consignee".

[Withdrawn; see paragraph 171, below.]

(c) *Austria (A/CONF.89/C.1/L.102)*

In the first sentence of the paragraph, replace the words "that freight shall be payable by the consignee" by the words "that freight shall be payable at destination".

[Withdrawn; see paragraph 171, below.]

(d) *Venezuela (A/CONF.89/C.1/L.105)*

Delete the word "otherwise".

[Withdrawn; see paragraph 171, below.]

(e) *Uganda (A/CONF.89/C.1/L.145)*

Insert the word "which" after the words "by the consignee or" and delete the word "However" and the comma at the beginning of the second sentence so that the sentence would begin with the word "Proof".

[Referred to the Drafting Committee; see paragraph 171, below.]

(f) *United Kingdom (A/CONF.89/C.1/L.175)*

Replace the words "or does not set forth demurrage incurred at the port of loading payable by the consignee" by the words "or does not state whether demurrage incurred at the port of loading is payable by the consignee".

[Rejected; see paragraph 171, below.]

(g) *Canada (A/CONF.89/C.1/L.183)*

Insert the word "expressly" after the word "otherwise" at the beginning of the paragraph.

[Rejected; see paragraph 171, below.]

Proposed new paragraph

Venezuela (A/CONF.89/C.1/L.105)

Add a paragraph 4 bis to the article as follows:

"If the freight is not set forth, the carrier shall forfeit the benefit of the limit of liability provided for in article 6."

[Withdrawn; see paragraph 172, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE*(i) Meetings*

167. The First Committee considered article 16 at its 22nd meeting, on 21 March 1978.

*(ii) Consideration**Paragraph 1*

168. At the 22nd meeting, the UNCITRAL text was adopted.

Paragraph 2

169. At the 22nd meeting, the amendment by Uganda (A/CONF.89/C.1/L.145) was referred to the

Drafting Committee, and the UNCITRAL text was adopted.

Paragraph 3

170. At the 22nd meeting, the amendment by France (A/CONF.89/C.1/L.81) was withdrawn in favour of an oral amendment proposed by the United States of America that the words "including any consignee" be replaced by the words "including a consignee", and the UNCITRAL text, incorporating the proposal by the United States of America, was adopted.

Paragraph 4

171. At the 22nd meeting, the amendments by Austria (A/CONF.89/C.1/L.102) and Venezuela (A/CONF.89/C.1/L.105) were withdrawn, the amendment by France (A/CONF.89/C.1/L.81) was withdrawn in favour of the identical amendment as in paragraph 3, the amendments by Japan (A/CONF.89/C.1/L.25), the United Kingdom (A/CONF.89/C.1/L.175) and Canada (A/CONF.89/C.1/L.183) were rejected, the amendment by Uganda (A/CONF.89/C.1/L.145) was referred to the Drafting Committee, and the UNCITRAL text was adopted.

Proposed new paragraph

172. At the 22nd meeting, the proposal by Venezuela for an additional paragraph to the article (A/CONF.89/C.1/L.105) was withdrawn.

ARTICLE 17**A. UNCITRAL TEXT**

173. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 17. Guarantees by the shipper"

"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 resulting from inaccuracies in 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 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, 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 valid as against the shipper unless 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 the latter 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 of intended fraud 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 incurred by a third party, including a consignee, who has acted in reliance on the description of the goods in the bill of lading issued."

B. AMENDMENTS

174. Amendments to article 17 were proposed by Japan, the United States of America, Greece, France, the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany and the Union of Soviet Socialist Republics.

175. These amendments were to the following effect:

Paragraph 2

(a) *Japan (A/CONF.89/C.1/L.26)*

Delete the paragraph.

[Rejected; see paragraph 178, below.]

(b) *United States of America (A/CONF.89/C.1/L.67)*

Reword the paragraph to read as follows:

"2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss 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, shall be void and of no effect as against any third party, including any consignee, who in good faith has acted in reliance of the description of the goods therein, and as against such good faith claimant, with respect to loss sustained in reliance on the bill of lading description, the carrier shall be without the benefit of the limitation of liability provided in this Convention."

[Withdrawn; see paragraph 178, below.]

Paragraph 3

(a) *Greece (A/CONF.89/C.1/L.11)*

Delete the paragraph.

[Rejected; see paragraph 179, below.]

(b) *Japan (A/CONF.89/C.1/L.26)*

Delete the paragraph.

[Rejected; see paragraph 179, below.]

(c) *United States of America (A/CONF.89/C.1/L.67)*

Delete the paragraph.

[Rejected; see paragraph 179, below.]

(d) *France (A/CONF.89/C.1/L.82)*

Delete the words "including any consignee".

[Withdrawn; see paragraph 179, below.]

(e) *United Kingdom (A/CONF.89/C.1/L.176)*

Delete the last sentence of the paragraph.

[Withdrawn; see paragraph 179, below.]

(f) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.185)*

Delete the paragraph.

[Rejected; see paragraph 179, below.]

Paragraph 4

(a) *Greece (A/CONF.89/C.1/L.11)*

Delete the paragraph.

[Rejected; see paragraph 180, below.]

(b) *Japan (A/CONF.89/C.1/L.26)*

Delete the paragraph.

[Rejected; see paragraph 180, below.]

(c) *United States of America (A/CONF.89/C.1/L.67)*

Delete the paragraph.

[Withdrawn; see paragraph 180, below.]

(d) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.185)*

Delete the paragraph.

[Rejected; see paragraph 180, below.]

Proposed new paragraph

Germany, Federal Republic of (A/CONF.89/C.1/L.170)

Add an additional paragraph to article 17 as follows:

"The carrier shall not be liable in any event for loss or damage to, or in connexion with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading."

[Rejected; see paragraph 181, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

176. The First Committee considered article 17 at its 23rd meeting, on 22 March 1978.

Paragraph 1

177. At the 23rd meeting, the UNCITRAL text was adopted.

Paragraph 2

178. At the 23rd meeting, the amendment by the United States of America (A/CONF.89/C.1/L.67) was withdrawn and the Committee, by a vote of 55 to 5, with 6 abstentions, decided to retain the substance of the paragraph as prepared by UNCITRAL and not to adopt the proposal by Japan (A/CONF.89/C.1/L.26) to delete the paragraph.

Paragraph 3

179. At the 23rd meeting, the amendments by the

United States of America (A/CONF.89/C.1/L.67), France (A/CONF.89/C.1/L.82) and the United Kingdom (A/CONF.89/C.1/L.176) were withdrawn, and the Committee, by a vote of 42 to 19, with 6 abstentions, decided to retain the substance of the paragraph as prepared by UNCITRAL and not to adopt the proposals by Greece (A/CONF.89/C.1/L.11), Japan (A/CONF.89/C.1/L.26) and the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.185) to delete the paragraph. At the same meeting, the Committee decided to replace the words "including any consignee" by the words "including a consignee" as had been done in article 16, paragraphs 3 and 4, and, subject to that change, adopted the text as prepared by UNCITRAL.

Paragraph 4

180. At the 23rd meeting, the representative of the United States of America withdrew his proposal (A/CONF.89/C.1/L.67) and the Committee, by a vote of 42 to 19, with 6 abstentions, decided to retain the substance of the paragraph as prepared by UNCITRAL and not to adopt the proposals by Greece (A/CONF.89/C.1/L.11), Japan (A/CONF.89/C.1/L.26) and the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.185) to delete the paragraph.

Proposed new paragraph

181. At the 23rd meeting, the proposal by the Federal Republic of Germany (A/CONF.89/C.1/L.170) to add a new paragraph was rejected.

ARTICLE 18

A. UNCITRAL TEXT

182. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 18. Documents other than bills of lading"

"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."

B. AMENDMENTS

183. Amendments to article 18 were submitted by the German Democratic Republic, Poland, the Federal Republic of Germany and Canada.

184. These amendments were to the following effect:

(a) *German Democratic Republic (A/CONF.89/C.1/L.93)*

(i) Amend the article to commence with the words "When a carrier, with approval by the shipper, issues . . ."

(ii) Add the following paragraphs to the article:

"2. The carrier shall deliver the goods to the consignee named in the document.

"3. The shipper keeps the right of disposal on the goods until they have arrived at the port of destination

unless he has transferred this right beforehand in writing and unreserved to the consignee or any other person and has informed the carrier of such a transfer."

[Withdrawn; see paragraph 188, below.]

(b) *Poland (A/CONF.89/C.1/L.159)*

Amend the article to read as follows:

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

[Adopted subject to oral amendment; see paragraphs 187 and 188, below.]

(c) *Federal Republic of Germany (A/CONF.89/C.1/L.171)*

Delete the article.

[Withdrawn; see paragraph 188, below.]

(d) *Canada (A/CONF.89/C.1/L.182)*

Delete the article.

[Withdrawn; see paragraph 186, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

185. The First Committee considered article 18 at its 23rd and 24th meetings, on 22 March 1978.

(ii) Consideration

186. At the 23rd meeting, the amendment by Canada (A/CONF.89/C.1/L.182) was withdrawn in favour of the amendment by the Federal Republic of Germany (A/CONF.89/C.1/L.171).

187. At the 24th meeting, the amendment by Poland (A/CONF.89/C.1/L.159) was orally amended to read as follows:

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

188. At the 24th meeting, the amendments by the German Democratic Republic (A/CONF.89/C.1/L.93) and the Federal Republic of Germany (A/CONF.89/C.1/L.171) were withdrawn, and the text set forth in paragraph 187, above, was adopted by a vote of 21 to 15, with 34 abstentions.

ARTICLE 19

A. UNCITRAL TEXT

189. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 19. Notice of loss, damage or delay"

"1. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the consignee to the carrier not later than the

day after the day when the goods were handed over to the consignee, such handing over shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport 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 shall apply correspondingly if notice in writing has not been given within 15 consecutive days after the day when the goods were handed over to the consignee.

"3. If the state of the goods has at the time they were handed over to the consignee been the subject of joint survey or inspection by the parties, 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 carrier and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods.

"5. No compensation shall be payable for delay in delivery unless a notice has been given in writing to the carrier within 21 consecutive days after the day when the goods were handed over to the consignee.

"6. If the goods have been delivered by an actual carrier, any notice given under this article to the actual carrier shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall also have effect as if given to such actual carrier."

B. AMENDMENTS

190. Amendments to article 19 were submitted by Japan, the United States of America, Uganda, Greece, Tunisia, Bulgaria, Yugoslavia, the United Republic of Tanzania, the United Kingdom of Great Britain and Northern Ireland, Canada and Pakistan.

191. These amendments were to the following effect:

Paragraph 1

(a) *Japan (A/CONF.89/C.1/L.27)*

Amend the paragraph to read as follows:

"1. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the consignee to the carrier not later than at the time the goods are handed over to the consignee, or in case of such notice being given orally, unless a written confirmation is sent to the carrier within 24 hours after the oral notice, such handing over shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition."

[Rejected; see paragraph 193, below.]

(b) *United States of America (A/CONF.89/C.1/L.68)*

(i) Replace the phrase "handed over to the consignee" by the phrase "delivered to the consignee".

(ii) Replace the phrase "in good condition" by the phrase "in apparent good condition".

[Withdrawn; see paragraph 193, below.]

(c) *Uganda (A/CONF.89/C.1/L.152)*

Amend the paragraph as follows:

(i) Replace the word "be" at the beginning of the paragraph by the word "is".

(ii) Replace the words "document of transport" by the words "bill of lading".

(iii) Replace the word "document" at the end of the paragraph by the words "bill of lading".

[Amendment (i) referred to the Drafting Committee; amendments (ii) and (iii) rejected; see paragraph 193, below.]

Paragraph 2

(a) *Greece (A/CONF.89/C.1/L.12)*

Replace the period of 15 days specified in the paragraph by a period of 6 days.

[Rejected; see paragraph 194, below.]

(b) *Japan (A/CONF.89/C.1/L.27)*

Replace the period of 15 days specified in the paragraph by a period of 10 days.

[Rejected; see paragraph 194, below.]

(c) *Tunisia (A/CONF.89/C.1/L.44)*

Replace the period of 15 days specified in the paragraph by a period of 7 days.

[Rejected; see paragraph 194, below.]

(d) *United States of America (A/CONF.89/C.1/L.68)*

Replace the phrase "handed over to the consignee" by the phrase "delivered to the consignee".

[Withdrawn; see paragraph 194, below.]

(e) *Bulgaria (A/CONF.89/C.1/L.136)*

Replace the period of 15 days specified in the paragraph by a period of 10 days.

[Rejected; see paragraph 194, below.]

(f) *Yugoslavia (A/CONF.89/C.1/L.146)*

Replace the period of 15 days specified in the paragraph by a period of 7 days.

[Rejected; see paragraph 194, below.]

Paragraph 3

(a) *United Republic of Tanzania (A/CONF.89/C.1/L.137)*

Amend the paragraph to read as follows:

"3. If the state of the goods at the time they were handed over to the consignee has been the subject of joint survey or inspection . . ."

[Referred to the Drafting Committee; see paragraph 195, below.]

(b) *Uganda (A/CONF.89/C.1/L.152)*

Replace the word "parties" by the words "the carrier and the consignee, their servants or agents".

[Referred to the Drafting Committee; see paragraph 195, below.]

Paragraph 5

(a) *Greece (A/CONF.89/C.1/L.12)*

Replace the period of 21 days specified in the article by a period of 10 or 15 days.

[Withdrawn; see paragraph 197, below.]

(b) *Norway* (A/CONF.89/C.1/L.46)

Amend the end of the paragraph to read as follows:

"... within two weeks (respectively three weeks) from the day when the goods were handed over to the consignee."

[Withdrawn; see paragraph 197, below.]

(c) *United Kingdom* (A/CONF.89/C.1/L.78)

Delete the paragraph.

[Deferred; see paragraph 197, below.]

(d) *Canada* (A/CONF.89/C.1/L.181)

Replace the period of 21 days specified in the article by a period of 60 days.

[Adopted; see paragraph 197, below.]

Proposed new paragraph

Pakistan (A/CONF.89/C.1/L.190)

Add the following paragraph to the article as a new paragraph 7:

"7. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the carrier, or by a person on his behalf, to the shipper not later than 15 consecutive days after such damage or loss or the delivery of the goods by the carrier in terms of article 4, paragraph 2, the carrier shall be presumed to have sustained no loss or damage due to the fault or neglect of the shipper, his servants, or his agents."

[Adopted in principle; see paragraph 199, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

192. The First Committee considered article 19 at its 25th and 26th meetings, on 23 March 1978, and at its 32nd, 33rd and 35th meetings, on 27 and 28 March 1978.

(ii) *Consideration*

Paragraph 1

193. At the 25th meeting, the amendment by Japan (A/CONF.89/C.1/L.27) was rejected by a vote of 46 to 7, with 9 abstentions. The amendment by the United States of America (A/CONF.89/C.1/L.68) was withdrawn. The amendment by Uganda (A/CONF.89/C.1/L.152) proposing the replacement of the word "be" at the beginning of the paragraph by the word "is" was referred to the Drafting Committee, and rejected as to the other proposals contained therein. The UNCITRAL text was adopted.

Paragraph 2

194. At the 25th meeting, the amendments by Greece (A/CONF.89/C.1/L.12), Japan (A/CONF.89/C.1/L.27), Tunisia (A/CONF.89/C.1/L.44), Bulgaria (A/CONF.89/C.1/L.136) and Yugoslavia (A/CONF.89/C.1/L.146) were rejected, the proposal by the United States of

America (A/CONF.89/C.1/L.68) was withdrawn and the UNCITRAL text was adopted.

Paragraph 3

195. At the 25th meeting, the amendments by the United Republic of Tanzania (A/CONF.89/C.1/L.137) and Uganda (A/CONF.89/C.1/L.152) were referred to the Drafting Committee and the UNCITRAL text was adopted.

Paragraph 4

196. At the 25th meeting, the UNCITRAL text was adopted.

Paragraph 5

197. At the 25th meeting, the amendment by Greece (A/CONF.89/C.1/L.12) was withdrawn and the amendment by Canada (A/CONF.89/C.1/L.181) was adopted by a vote of 32 to 27, with 9 abstentions. A decision on the amendment by the United Kingdom (A/CONF.89/C.1/L.78) was deferred pending the decision of the Committee on article 5. At the 35th meeting, this amendment by the United Kingdom was withdrawn.

Paragraph 6

198. At the 25th meeting, the UNCITRAL text was adopted.

Proposed new paragraph

199. At the 26th meeting, the amendment by Pakistan (A/CONF.89/C.1/L.190) was adopted in principle by a vote of 27 to 19, with 19 abstentions, and the text of the amendment was referred to a Working Group, composed of the representatives of Australia, Finland, Kenya, Pakistan, Poland and Singapore, for the formulation of a text which would take into account the observations made on the amendment in the course of the deliberations of the Committee. At the 32nd meeting, the Working Group submitted to the First Committee the following text for a new paragraph 7 (A/CONF.89/C.1/L.199):

"7. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence causing such loss or damage or after the delivery of the goods in accordance with article 4, paragraph 2, whichever is later, the failure to give such notice shall be *prima facie* evidence that the carrier or actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants, or his agents."

200. At the 33rd meeting, the text submitted by the Working Group was rejected by a vote of 28 to 24, with 8 abstentions. The Committee then established an *ad hoc* Working Group, composed of the representatives of India, Pakistan, the Philippines, Poland, Sierra Leone and Sweden, to formulate another text. This *ad hoc* Working Group submitted to the Committee the following (A/CONF.89/C.1/L.214):

"7. Unless notice of loss or damage, specifying the general nature of the loss or damage, be given in writing by the carrier or actual carrier to the shipper not later

than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with article 4, paragraph 2, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants, or his agents."

201. At the 35th meeting, this text was adopted as paragraph 7 of article 19 by a vote of 25 to 22, with 19 abstentions.

202. At the 26th meeting, the Committee established an *ad hoc* Working Group, composed of the representatives of the Federal Republic of Germany, Mexico, Uganda, the Union of Soviet Socialist Republics and the United States of America, to formulate a proposed new paragraph 8. The *ad hoc* Working Group proposed the following text (A/CONF.89/C.1/L.198):

"8. For the purpose of this article, a notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or other officer of the ship, or to a person acting on the shipper's behalf shall be deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively."

203. At the 33rd meeting, the Committee considered but did not adopt the above text, and appointed an *ad hoc* Working Group, composed of the representatives of the Federal Republic of Germany, India, Italy and Liberia, to submit a new text in the light of comments made during the debate in the Committee. This *ad hoc* Working Group submitted the following text to the Committee (A/CONF.89/C.1/L.213):

"8. For the purpose of this article, a notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf shall be deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively."

204. At the 35th meeting, the Committee adopted the text as a new paragraph 8 of the article.

ARTICLE 20

A. UNCTRAL TEXT

205. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 20. Limitation of actions

"1. Any action relating to carriage of goods under this Convention is time-barred if legal or arbitral proceedings have not been initiated within a period of two years.

"2. The limitation period commences on the day on which the carrier has delivered the goods or part of the goods or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

"3. The day on which the period of limitation commences shall not be included in the period.

"4. The person against whom a claim is made may at any time during the limitation period extend the period by a declaration in writing to the claimant. The declaration may be renewed.

"5. An action for indemnity by a person held liable 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 State where proceedings are initiated. However, the time allowed shall not be less than 90 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."

B. AMENDMENTS

206. Amendments to article 20 were proposed by Greece, Japan, the United Kingdom of Great Britain and Northern Ireland and Norway.

207. These amendments were to the following effect:

Paragraph 1

(a) Greece (A/CONF.89/C.1/L.13) and Japan (A/CONF.89/C.1/L.28)

Reduce the period of limitation specified in the paragraph from two years to one year.

[Withdrawn; see paragraph 209, below.]

(b) United Kingdom (A/CONF.89/C.1/L.177)

Amend the paragraph to read as follows:

"Any action relating to carriage of goods under this Convention shall be time-barred if legal or arbitral proceedings have not been instituted within a period of one year, or two years if within that period of one year the claimant gives to the person alleged to be liable written notice of his intention to bring a claim, together with particulars sufficient to identify the claim."

[Rejected; see paragraph 209, below.]

Proposed new article 20 bis

Norway (A/CONF.89/C.1/L.46)

Add the following article 20 bis entitled "Calculation of period of time":

"1. Periods of time under this Convention shall be calculated in accordance with the provisions of this article.

"2. A period expressed in weeks shall be calculated in such a way that it shall expire at the end of the day, corresponding to the day of the week on which the period commenced to run.

"3. A period expressed in months or years shall be calculated in such a way that it shall expire at the end of the day which corresponds to the date on which the period commenced to run. If there is no such corresponding date of the applicable month, the period shall expire at the end of the last day of the last month of the period.

"4. Where the last day of the period falls on an

official holiday or other *dies non juridicus* on which usual business is not conducted in the jurisdiction where the appropriate act is to be performed, the period shall be extended so as not to expire until the end of the first day following that official holiday or *dies non juridicus* on which the appropriate act could be normally performed in that jurisdiction. In respect of action pursuant to article 20, the appropriate jurisdiction for the purposes of the present paragraph shall be the jurisdiction where the claimant institutes the proceedings."

[Withdrawn; see paragraph 211, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

208. The First Committee considered these amendments at its 26th meeting, on 23 March 1978.

(ii) Consideration

Paragraph 1

209. At the 26th meeting, the amendments by Greece (A/CONF.89/C.1/L.13) and Japan (A/CONF.89/C.1/L.28) were withdrawn. The amendment by the United Kingdom (A/CONF.89/C.1/L.177) was rejected by a vote of 47 to 13, with 3 abstentions, and the UNCITRAL text was adopted.

Paragraphs 2, 3, 4 and 5

210. At the 26th meeting, the UNCITRAL text was adopted.

Proposed new article 20 bis

211. At the 26th meeting, the amendment by Norway (A/CONF.89/C.1/L.46) was withdrawn.

ARTICLE 21

A. UNCITRAL TEXT

212. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 21. Jurisdiction

"1. In a legal proceeding relating to carriage of goods under this Convention the plaintiff, at his option, may bring an action in a court which, according to the law of the State^{*} where the court is situated, is competent and within the jurisdiction of which is situated one of the following places or ports:

"(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 the port of discharge; or

"(d) Any additional place designated for that purpose 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 or any other vessel of the same ownership 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 of this article 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 paragraph 1 or 2 of this article. The provisions of this paragraph 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 paragraph 1 or 2 of this article 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 as 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."

B. AMENDMENTS

213. Amendments to article 21 were proposed by the Union of Soviet Socialist Republics, Japan, Tunisia, the German Democratic Republic, Turkey, the United States of America, the Federal Republic of Germany, Bulgaria, Canada, Uganda, Greece, Argentina and Liberia.

214. These amendments were to the following effect:

Article as a whole

Union of Soviet Socialist Republics (A/CONF.89/C.1/L.188)

Delete the article.

[Rejected; see paragraph 216, below.]

* A considerable number of UNCITRAL delegations favoured the addition of the word "Contracting" before the word "State".

Paragraph 1

(a) *Japan (A/CONF.89/C.1/L.29 and Corr.1)*

Insert the word "Contracting" before the word "State".

[Rejected; see paragraph 217, below.]

(b) *Tunisia (A/CONF.89/C.1/L.45)*

Insert the word "Contracting" before the word "State".

[Withdrawn; see paragraph 217, below.]

(c) *German Democratic Republic (A/CONF.89/C.1/L.94)*

Insert the words "unless the parties have agreed otherwise" in the paragraph and, that done, delete subparagraphs (b) and (d).

[Withdrawn; see paragraph 217, below.]

(d) *Union of Soviet Socialist Republics (A/CONF.89/C.1/L.188)*

Make provision in the paragraph for "the principle of priority of the contractual jurisdiction along the lines suggested in document A/CONF.89 C.1/L.94" (see subparagraph (c) above).

[Withdrawn; see paragraph 217, below.]

(e) *Turkey (A/CONF.89/C.1/L.192)*

Add the following subparagraphs:

"(e) The court of the place of arrest of the vessel or goods;

"(f) The court of the port where the vessel is registered;

"(g) The court which has taken the provisional or protective measures."

[Rejected; see paragraph 217, below.]

Paragraph 2

(a) *Japan (A/CONF.89/C.1/L.29 and Corr.1)*

Delete the paragraph.

[Rejected; see paragraph 218, below.]

(b) *United States of America (A/CONF.89 C.1/L.69)*

Amend the reference to "courts of any port" in the first sentence of subparagraph (a) to read "courts of any port or place".

[Referred to the Drafting Committee; see paragraph 218, below.]

(c) *Germany, Federal Republic of (A/CONF.89 C.1/L.172)*

Amend subparagraph (a) to read as follows:

"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 or any other vessel of the same ownership may have been legally arrested in accordance with the applicable law of that State, if the domestic law of the country in which the arrest is made gives jurisdiction to such courts."

[Rejected; see paragraph 218, below.]

(d) *Bulgaria (A/CONF.89 C.1/L.187)*

(i) Amend the first sentence of subparagraph (a) to read as follows:

"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 carriage may have been interrupted for any circumstances not governed by this Convention."

[Rejected; see paragraph 218, below.]

(ii) Replace the words "at the place of the arrest" in subparagraph (b) by the word "seized".

[Rejected; see paragraph 218, below.]

(e) *Union of Soviet Socialist Republics (A/CONF.89 C.1/L.188)*

(i) Delete paragraph 2.

[Rejected; see paragraph 218, below.]

(ii) If the preceding proposal is not adopted, amend the first sentence of subparagraph (a) to read as follows:

"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 or any other vessel of the same ownership may have been legally arrested in accordance with international law and applicable rules of the law of that State."

[Adopted in principle, referred to an *ad hoc* working group; see paragraph 218, below.]

(f) *Canada (A/CONF.89 C.1/L.197)*

Delete the word "Contracting" before the word "State" in subparagraph (a).

[Rejected; see paragraph 218, below.]

Paragraph 3

Japan (A/CONF.89 C.1/L.29 and Corr.1)

Delete the words "or 2" in the first sentence of the paragraph.

[Withdrawn; see paragraph 220, below.]

Paragraph 4

(a) *Japan (A/CONF.89 C.1/L.29 and Corr.1)*

Delete the words "or 2" in the first sentence of the paragraph.

[Withdrawn; see paragraph 221, below.]

(b) *Uganda (A/CONF.89/C.1/L.150)*

Change the word "judgement" at the beginning of subparagraph (a) to "judgment".

[Withdrawn; see paragraph 221, below.]

(c) *Turkey (A/CONF.89/C.1/L.192)*

In subparagraph (a), delete the words from "unless the judgement" to the end of the sentence, and also delete subparagraphs (b) and (c).

[Withdrawn; see paragraph 221, below.]

Paragraph 5

(a) *Greece (A/CONF.89 C.1/L.14)*

Delete the words "after a claim under the contract of

carriage has arisen", and insert the word "exclusively" between the words "may" and "bring".

[Withdrawn; see paragraph 222, below.]

(b) *Turkey* (A/CONF.89/C.1/L.192)

Add at the end of the paragraph the words "provided that the law of the place where the action is to be brought permits such an agreement".

[Withdrawn; see paragraph 222, below.]

Proposed new paragraphs

(a) *Argentina* (A/CONF.89/C.1/L.195)

Add the following new provision as paragraph 5 and renumber the existing paragraph 5 as paragraph 6:

"The consignee may apply for the transfer of the proceedings to the jurisdiction of the courts of the port of discharge in any case where he is the defendant in an action arising out of the contract of carriage in another jurisdiction."

[Rejected; see paragraph 223, below.]

(b) *Liberia* (A/CONF.89/C.1/L.180)

Insert the following new paragraph in article 21:

"No action may be brought directly against an insurer of the carrier's liability upon a claim within the scope of this Convention unless, in defence of such action, the insurer is entitled to the benefits of this Convention to the same extent as the carrier."

[Withdrawn; see paragraph 223, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

215. The First Committee considered article 21 at its 27th and 28th meetings, on 24 March 1978, and at its 29th and 35th meetings, on 25 and 28 March 1978.

(ii) *Consideration*

Article as a whole

216. At the 27th meeting, the proposal by the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.188) to delete this article was rejected by a vote of 50 to 11, with 7 abstentions.

Paragraph 1

217. At the 27th meeting, the amendments by the German Democratic Republic (A/CONF.89/C.1/L.94) and the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.188) were withdrawn. At the 28th meeting, the amendment by Tunisia (A/CONF.89/C.1/L.45) was withdrawn, the amendment by Turkey (A/CONF.89/C.1/L.192) was rejected, the amendment by Japan (A/CONF.89/C.1/L.29 and Corr.1) was rejected by a vote of 47 to 11, with 6 abstentions, and the UNCITRAL text was adopted.

Paragraph 2

218. At the 28th meeting, the amendment by Japan (A/CONF.89/C.1/L.29 and Corr.1) was rejected by a vote of 43 to 11, with 9 abstentions, and the amendment by Bulgaria (A/CONF.89/C.1/L.187) was rejected by a vote

of 50 to 7, with 9 abstentions. At the same meeting, the proposal by the Union of Soviet Socialist Republics (A/CONF.89/C.1/L.188) to delete the paragraph was rejected, but the alternative amendment was adopted in principle and referred to an *ad hoc* Working Group, composed of the representatives of Algeria, India, Japan, Norway, the Union of Soviet Socialist Republics and the United States of America, for recommendations on an appropriate wording. At the 29th meeting, the amendment by the United States of America (A/CONF.89/C.1/L.69) was referred to the Drafting Committee, the amendment by the Federal Republic of Germany (A/CONF.89/C.1/L.172) was rejected by a vote of 33 to 8, with 21 abstentions, and the amendment by Canada (A/CONF.89/C.1/L.197) was rejected by a vote of 39 to 9, with 17 abstentions. At the same meeting, an *ad hoc* Working Group composed of the representatives of Liberia, Sierra Leone and the United States of America was established to make recommendations on an appropriate wording to express the right granted a defendant under paragraph 2 to have an action removed from one jurisdiction to another. This *ad hoc* Working Group submitted the following text, which it proposed should replace the existing text of subparagraph 4 (c) of the article (A/CONF.89/C.1/L.208):

"For the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2 (a) of this article, shall not be considered as the starting of a new action."

219. At the 35th meeting the Committee adopted this text as the text of subparagraph 4 (c).

Paragraph 3

220. At the 29th meeting, the amendment by Japan (A/CONF.89/C.1/L.29 and Corr.1) was withdrawn and the UNCITRAL text was adopted.

Paragraph 4

221. At the 29th meeting, the amendments by Japan (A/CONF.89/C.1/L.29 and Corr.1), Uganda (A/CONF.89/C.1/L.150) and Turkey (A/CONF.89/C.1/L.192) were withdrawn and the UNCITRAL text was adopted.

Paragraph 5

222. At the 29th meeting, the amendments by Greece (A/CONF.89/C.1/L.14) and Turkey (A/CONF.89/C.1/L.192) were withdrawn and the UNCITRAL text was adopted.

Proposed new paragraphs

223. At the 29th meeting, the amendment by Liberia (A/CONF.89/C.1/L.180) was withdrawn and the amendment by Argentina (A/CONF.89/C.1/L.195) was rejected.

ARTICLE 22

A. UNCITRAL TEXT

224. The text of the United Nations Commission on International Trade Law provided as follows:

Article 22. Arbitration

"1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

"2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

"3. 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 principal place of business of the defendant or, in the absence thereof, the ordinary residence of the defendant; or

"(ii) 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

"(iii) The port of loading or the port of discharge; or

"(b) Any place designated for that purpose in the arbitration clause or agreement.

"4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

"5. The provisions of paragraphs 3 and 4 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.

"6. 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."

B. AMENDMENTS

225. Amendments to article 22 were submitted by the United States of America, Greece, the German Democratic Republic, Uganda, Turkey and Argentina.

226. These amendments were to the following effect:

Paragraph 2

United States of America (A/CONF.89/C.1/L.70)

Replace the words "the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith" by the words "such provision may not be invoked as against a holder having acquired the bill of lading without actual knowledge of the arbitration provision."

[Rejected; see paragraph 229, below.]

Paragraph 3

(a) *Greece (A/CONF.89/C.1/L.15)*

Insert the words "Unless otherwise provided in the arbitration clause" at the beginning of the paragraph.

[Rejected; see paragraph 230 below.]

(b) *German Democratic Republic (A/CONF.89/C.1/L.49)*

Insert the words "unless the parties have agreed otherwise" in the paragraph.

[Rejected; see paragraph 230, below.]

(c) *United States of America (A/CONF.89/C.1/L.70)*

(i) Substitute the phrase "claimant having suffered loss or damage" for the word "plaintiff".

[Withdrawn; see paragraph 230, below.]

(ii) Replace the present text of subparagraphs (a) and (b) by the text of article 21, subparagraphs 1 (a), (b), (c) and (d).

[Withdrawn; see paragraph 230, below.]

(d) *Uganda (A/CONF.89/C.1/L.151)*

Redraft subparagraph 3 (a) be redrafted to commence as follows:

"(a) A State within whose territory is situated:"

[Rejected; see paragraph 230 below.]

(e) *Turkey (A/CONF.89/C.1/L.193)*

Add the following new subparagraphs to the paragraph:

"(iv) The place of arrest of the vessel or goods; or

"(v) The port of registration of the vessel; or"

[Withdrawn; see paragraph 230 below.]

Proposed new paragraph

Argentina (A/CONF.89/C.1/L.196)

Add the following new provision as paragraph 7 to the article:

"The consignee shall in all cases be entitled to exercise the option provided for in article 21, paragraph 5."

[Withdrawn; see paragraph 234, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

227. The First Committee considered article 22 at its 29th and 30th meetings, on 25 and 27 March 1978, respectively.

(ii) Consideration

Paragraph 1

228. At the 29th meeting, the UNCITRAL text was adopted.

Paragraph 2

229. At the 29th meeting, the proposal by the United States of America (A/CONF.89/C.1/L.70), amended orally by the United States by the deletion of the word "actual" from the proposed new wording was rejected by a vote of 32 to 17, with 6 abstentions, and the UNCITRAL text was adopted.

Paragraph 3

230. At the 30th meeting, the proposals by the United States of America (A/CONF.89/C.1/L.70) and Turkey (A/CONF.89/C.1/L.193) were withdrawn, the proposal by Uganda (A/CONF.89/C.1/L.151) was rejected, and the proposals by Greece (A/CONF.89/C.1/L.15) and the German Democratic Republic (A/CONF.89/C.1/L.49) were, by a vote of 38 to 9 with 8 abstentions, also rejected. At the same meeting, the Committee adopted an oral proposal by Uganda that the word "plaintiff" in the first sentence of the paragraph be changed to "claimant" and, subject to such change, adopted the text as prepared by UNCITRAL.

Paragraph 4

231. At the 30th meeting, the UNCITRAL text was adopted.

Paragraph 5

232. At the 30th meeting, the UNCITRAL text was adopted.

Paragraph 6

233. At the 30th meeting, the UNCITRAL text was adopted.

Proposed new paragraph

234. At the 30th meeting, the proposal by Argentina for a new paragraph (A/CONF.89/C.1/L.196) was withdrawn.

ARTICLE 22 bis

A. PROPOSED NEW ARTICLE

235. A proposal for the inclusion of a new article 22 bis was submitted by Bulgaria, Cuba, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the Union of Soviet Socialist Republics. The proposed new article would read as follows (A/CONF.89/C.1/L.189):

"The provisions of articles 21 and 22 of this Convention do not affect any convention which is concluded or may be concluded and which establishes mandatory rules on jurisdiction for claims relating to carriage of goods by sea, provided that the plaintiff and the defendant have their principal places of business in the States members of one of such conventions."

B. PROCEEDINGS IN THE FIRST COMMITTEE

Meetings, consideration and decision

236. At its 30th meeting, on 27 March 1978, the Committee considered the proposal. At the meeting, the Committee decided to establish an *ad hoc* Working Group, composed of the representatives of Algeria, Ghana, India, Sierra Leone, Singapore, Sweden, the Union of Soviet Socialist Republics and the United States of America, to study the issues raised by the proposal and to make recommendations on a possible wording for such a provision.

237. At the 33rd meeting, on 28 March 1978, the Committee considered the following text proposed by the *ad hoc* Working Group in paragraph 1 of document A/CONF.89/C.1/L.206:

"The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal places of business in States members of such other convention."

The Working Group also proposed in paragraph 2 of the same document, that this text be inserted as paragraph 2 of article 25, with the present paragraphs 2 and 3 of that article being renumbered as paragraphs 3 and 4.

238. At the 33rd meeting, the Committee adopted the following text proposed by the *ad hoc* Working Group:

"The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal places of business in States members of such other convention."

The Committee then referred to the Drafting Committee for its consideration the Working Group's recommendation as to where the text should be inserted.

ARTICLE 23

A. UNCITRAL TEXT

239. The text of the United Nations Commission on International Trade Law provided as follows:

Article 23. Contractual stipulations

"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 paragraph 3 of this article, 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 State where proceedings are initiated."

B. AMENDMENTS

240. Amendments to article 23 were submitted by Turkey, Iraq, Japan, the Federal Republic of Germany and France.

241. These amendments were to the following effect:

Paragraph 1

(a) *Turkey (A/CONF.89/C.1/L.194)*

Delete the words "or indirectly".

[Rejected; see paragraph 243, below.]

(b) *Iraq (A/CONF.89/C.1/L.204)*

Redraft the paragraph to commence as follows:

"Any stipulation in the contract of carriage, in a bill of lading, or in any other document evidencing . . ."

[Referred to the Drafting Committee; see paragraph 243, below.]

Paragraph 3

(a) *Japan (A/CONF.89/C.1/L.30)*

Delete the paragraph.

[Rejected; see paragraph 245, below.]

(b) *Federal Republic of Germany (A/CONF.89/C.1/L.178)*

Delete the paragraph.

[Withdrawn; see paragraph 245, below.]

Paragraph 4

(a) *Japan (A/CONF.89/C.1/L.30)*

Delete the words "or as a result of the omission of the statement referred to in paragraph 3 of this article".

[Withdrawn; see paragraph 246, below.]

(b) *France (A/CONF.89/C.1/L.83)*

Add the words "within the limits provided for in the Convention" after the words "for delay in delivery".

[Referred to the Drafting Committee; see paragraph 246, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

242. The First Committee considered article 23 at its 30th meeting, on 27 March 1978.

(ii) Consideration

Paragraph 1

243. At the 30th meeting, the proposal by Turkey (A/CONF.89/C.1/L.194) was rejected. Also at the 30th meeting, the proposal by Iraq (A/CONF.89/C.1/L.204) was referred to the Drafting Committee and the UNCITRAL text was adopted.

Paragraph 2

244. At the 30th meeting, the UNCITRAL text was adopted.

Paragraph 3

245. At the 30th meeting, the proposal by the Federal Republic of Germany (A/CONF.89/C.1/L.178) was withdrawn in favour of the proposal by Japan (A/CONF.89/C.1/L.30). Also at the 30th meeting, the proposal by Japan (A/CONF.89/C.1/L.30) was rejected by a vote of 45 to 14, with 6 abstentions, and the UNCITRAL text was adopted.

Paragraph 4

246. At the 30th meeting, the proposal by Japan (A/CONF.89/C.1/L.30) was withdrawn as a consequence of the rejection of the proposal relating to paragraph 3. At the same meeting, the UNCITRAL text was adopted, subject to consideration by the Drafting Committee of the proposal by France (A/CONF.89/C.1/L.83).

ARTICLE 24

A. UNCITRAL TEXT

247. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 24. General average

"1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding the adjustment of general average.

"2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods shall also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid."

B. AMENDMENTS

248. Amendments to article 24 were proposed by Canada and the United States of America.

249. These amendments were to the following effect:

Paragraph 1

Canada (A/CONF.89/C.1/L.200)

Replace the present text of paragraphs 1 and 2 by the following paragraph:

"Nothing in this Convention shall be held to prevent

the insertion in a bill of lading of any lawful provision regarding general average."

[Withdrawn; see paragraph 251, below.]

Paragraph 2

(a) *Canada (A/CONF.89/C.1/L.200)*

Replace the present text of paragraphs 1 and 2 by the following paragraph:

"Nothing in this Convention shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average."

[Withdrawn; see paragraph 252, below.]

(b) *United States of America (A/CONF.89/C.1/L.71)*

Amend the beginning of the paragraph to read as follows:

"With the exception of article 20, the provisions of this Convention relating to the liability of the carrier or a shipper for loss or damage to the goods . . ."

[Withdrawn; see paragraph 252, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

250. The Committee considered article 24 at its 30th and 31st meetings, on 27 March 1978.

(ii) Consideration

Paragraph 1

251. At the 30th meeting, the proposal by Canada (A/CONF.89/C.1/L.200) was withdrawn, and the UNCITRAL text was adopted.

Paragraph 2

252. At the 30th meeting, the proposal by Canada (A/CONF.89/C.1/L.200) was withdrawn. At the 31st meeting, the proposal by the United States of America (A/CONF.89/C.1/L.71) was withdrawn, and the UNCITRAL text was adopted.

ARTICLE 25

A. UNCITRAL TEXT

253. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 25. Other conventions

"1. This Convention shall not modify the rights or duties of the carrier, the actual carrier and their servants and agents provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

"2. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

"(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28

January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

"(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as is either the Paris or the Vienna Convention.

"3. No liability shall arise under the provisions of this Convention for any loss of, or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea."

B. AMENDMENTS

254. *An amendment to article 25 was proposed by India, Pakistan and Uganda (A/CONF.89/C.1/L.205).*

255. This amendment was to the following effect:

Paragraph 1

(a) Delete the words "or national law".

[Rejected; see paragraph 257, below.]

(b) If the words "or national law" are retained, qualify them by the words "of a State only if both the parties to a dispute are nationals of that State".

[Withdrawn; see paragraph 257, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

256. The Committee considered article 25 at its 31st meeting, on 27 March 1978.

(ii) Consideration

Paragraph 1

257. At the 31st meeting, the first proposal by India, Pakistan and Uganda (A/CONF.89/C.1/L.105) was rejected, the second proposal was withdrawn, and the UNCITRAL text was adopted.

Paragraph 2

258. At the 31st meeting, the UNCITRAL text was adopted.

Paragraph 3

259. At the 31st meeting, the UNCITRAL text was adopted.

NEW ARTICLE 26

A. TEXT PROPOSED BY THE CHAIRMAN OF THE FIRST COMMITTEE

260. As part of the compromise solution to the issues arising out of articles 5 and 6, alternative article 6 and article 8, the Chairman of the First Committee submitted to the Committee the following text of a new article 26 for the draft Convention (see A/CONF.89/C.1/L.211):

"Article 26. Unit of account"

"1. The unit of account referred to in article 6 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in article 6 shall be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the special drawing right, of a State Party which is a member of the International Monetary Fund shall 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 value of a national currency, in terms of the special drawing right, of a State Party which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State Party.

"2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature [without reservation as to ratification, acceptance or approval] or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

"12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods.

"3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

"4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature [without reservation as to ratification, acceptance or approval] or when depositing an instrument referred to in article ____ and whenever there is a change in either."

B. PROCEEDINGS IN THE FIRST COMMITTEE*(i) Meetings*

261. The First Committee considered this new article 26 at its 34th meeting, on 28 March 1978.

(ii) Consideration

262. At the 34th meeting, the Committee adopted this new article 26.

COMMON UNDERSTANDING

263. The proposals submitted by the Chairman of the First Committee for a compromise solution to the issues arising out of articles 5, 6, 8 and 26 contained a proposal that the following wording be included in the report of the First Committee to the Conference.

"It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule."

264. The Committee considered this proposal at its 34th meeting, and it was adopted.

NEW ARTICLE []**REVISION OF THE LIMITATION AMOUNTS AND
UNIT OF ACCOUNT OR MONETARY UNIT****A. PROPOSED NEW ARTICLE**

265. A proposal for the inclusion of a new article providing a mechanism for the revision of the limitation amounts and unit of account or monetary unit specified in articles 6 and 26 was submitted by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.209). A similar proposal submitted by France to the Second Committee (A/CONF.89/C.2/L.24) was, at that Committee's 11th meeting, on 24 March 1978, referred to the First Committee for consideration (A/CONF.89/C.1/L.201).

266. The text proposed by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.209) was as follows:

"Revision of the limitation amounts

[and unit of account or monetary unit]

"1. Notwithstanding the provisions of article [Revision and amendment], a conference only for the purpose of altering the amounts specified in article 6 and article 26, paragraph 2 [or of substituting either or both of the units defined in article 26, paragraphs 1 and 3, by other units] shall be convened by the depositary in accordance with paragraph 2 of this article.

"2. A revision conference shall be convened by the depositary, whenever UNCITRAL so requests because it finds that there is a significant change in the value of the amounts, or when not less than one fourth of the Contracting States so request.

"3. Any amendment adopted shall enter into force on the first day of the month following its acceptance by [one half] of the Contracting States. Acceptance shall be effected by the deposit of a formal instrument to that effect, with the depositary.

"4. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in the relations with Contracting States which have not accepted the amendment.

"5. The Convention as amended shall be deemed to apply to any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention."

267. The text proposed by France (A/CONF.89/C.1/L.201) was as follows:

"Revision of the amounts of the limit of liability"

"The amount specified in article . . . of this Convention may be modified in conformity with the following provisions:

"(a) The depositary Government will convene the Contracting Parties in a review conference every five years as from the signature of this Convention.

"If the Convention has not entered into force in the five years following its signature, the first review conference will take place within one year from the entry into force of the Convention. The subsequent review conferences will take place every five years as from that date.

"(b) The sole object of the review conference will be to modify, if appropriate, the amount of the limit specified in article . . . of this Convention.

"(c) If the review conference has adopted by a two-thirds majority a new amount of the limit, the amendment will enter into force in the manner specified below:

"(i) The amendment is communicated by the depositary Government to all the Contracting Parties for acceptance and to all the States signatories of the Convention for information.

"(ii) The amendment is deemed to have been accepted on the expiry of six months from its adoption, unless during that period at least one third of the Contracting Parties have communicated an objection to the depositary Government.

"(iii) An amendment which has been accepted in the manner aforesaid will enter into force on the sixtieth day after its acceptance with respect to all the Contracting parties other than those which, before the expiry of this period, have made a declaration stating that they are not bound by the amendment.

"(d) Any State which becomes a party to the Convention after the entry into force of an amendment of the nature described above is bound by the Convention as amended."

B. PROCEEDINGS IN THE FIRST COMMITTEE

Meetings, consideration and decision

268. At its 37th meeting, on 29 March 1978, the Committee considered together the proposal by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.209) and the proposal by France (A/CONF.89/C.1/L.201) for the inclusion of a new article providing a mechanism for the revision of the limitation amounts and unit of account or monetary unit specified in articles 6 and 26. At that meeting, the Committee decided

to establish an *ad hoc* Working Group composed of the representatives of Bulgaria, France, Norway, the Philippines, Poland and Uganda to make recommendations on a possible provision along the lines contained in the two proposals before the Committee.

269. At the 37th meeting, the Committee considered the following text proposed by the *ad hoc* Working Group:

"Revision of the limitation amounts and unit of account or monetary unit"

"1. Notwithstanding the provisions of article [Revision and amendment], a conference only for the purpose of altering the amount specified in article 6 and article 26, paragraph 2, or of substituting either or both of the units defined in article 26, paragraphs 1 and 3, by other units shall be convened by the depositary in accordance with paragraph 2 of this article.

"2. A revision conference shall be convened by the depositary every five years or when not less than one third of the Contracting States so request.

"3. Any decision by the Conference shall be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting Parties for acceptance and to all the States signatories of the Convention for information.

"4. Any amendment adopted shall enter into force on the first day of the month following one year after its acceptance by one half of the Contracting States. Acceptance shall be effected by the deposit of a formal instrument to that effect with the depositary.

"5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

"6. The Convention as amended shall be deemed to apply to any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention."

270. At the 37th meeting, the Committee adopted the text proposed by the *ad hoc* Working Group, subject to the following changes:

(a) In paragraph 2, delete the words "every five years or", and replace the words "one third" by the words "one fourth";

(b) In paragraph 4, replace the words "one half" by the words "two thirds".

271. The text as adopted by the Committee reads as follows:

"Revision of the limitation amounts and unit of account or monetary unit"

"1. Notwithstanding the provisions of article [Revision and amendment], a conference only for the purpose of altering the amount specified in article 6 and article 26, paragraph 2, or of substituting either or both of the units defined in article 26, paragraphs 1 and 3, by

other units shall be convened by the depositary in accordance with paragraph 2 of this article.

"2. A revision conference shall be convened by the depositary when not less than one fourth of the Contracting States so request.

"3. Any decision by the Conference shall be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting Parties for acceptance and to all the States signatories of the Convention for information.

"4. Any amendment adopted shall enter into force on the first day of the month following one year after its acceptance by two thirds of the Contracting States. Acceptance shall be effected by the deposit of a formal instrument to that effect with the depositary.

"5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

"6. The Convention as amended shall be deemed to apply to any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention."

III. Consideration by the First Committee of the draft article entitled "Reservations" in the draft articles concerning implementation, reservations and other final clauses

ARTICLE [] RESERVATIONS

A. UNCITRAL TEXT

272. The text of the United Nations Commission on International Trade Law provided as follows:

"1. Any State may, at the time of signature, ratification [acceptance, approval] or accession, make one or more of the following reservations:

"(a) . . .

"(b) . . .

"2. No reservations may be made to this Convention other than those set forth in paragraph 1 of this article.

"3. Reservations made at the time of signature are subject to confirmation upon ratification [acceptance or approval].

"4. Reservations made under paragraph 1 of this article, and the confirmation of reservations made under paragraph 3 of this article, shall be in writing and shall be formally notified to the depositary.

"5. Any State which has made a reservation to this Convention may withdraw it at any time by means of a formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the date the formal notification is received by the depositary. If the notification states that the with-

drawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the depositary, the withdrawal shall take effect on such later date."

B. AMENDMENTS

273. Amendments to this article were submitted by Greece, France and Japan.

274. These amendments were to the following effect:

Paragraph 1

(a) *Greece (A/CONF.89/C.1/L.179)*

Amend the paragraph to read as follows:

"1. Any State may at the time of signature, ratification, acceptance or accession make one or more of the following reservations:

"(a) providing that the equivalence of the unit indicated in article 6 to the national currency may be fixed by the relevant State from time to time for periods not exceeding six months.

"(b) regarding the provisions of the Convention concerning jurisdiction and arbitration;

"(c) excluding the application of parts or of the whole of the Convention from (i) the carriage of live animals, (ii) the carriage of goods of an unusual character or condition, if such carriage is effected outside ordinary commercial operations and no negotiable bill of lading has been issued."

[Rejected; see paragraph 276, below.]

(b) *France (A/CONF.89/C.1/L.207)*

Amend the paragraph to read as follows:

"1. Any State may, at the time of signature, ratification, acceptance, approval or accession, make one or more of the following reservations:

"(a) The provisions of article [Y] shall have effect for the State making the reservation, only as between States which ratify, accept, approve or accede to this Convention."

[Withdrawn; see paragraph 276, below.]

(c) *Japan (A/CONF.89/C.1/L.210)*

Amend the paragraph to read as follows:

"1. Any State may, at the time of signature, ratification, acceptance, approval or accession, make one or more of the following reservations:

"(a) excluding the application of paragraphs 2 to 4 of article 17;

"(b) excluding the application of paragraph 2 of article 21."

[Rejected; see paragraph 276, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

275. The Committee considered the article entitled "Reservations" in the draft articles concerning implementation, reservations and other final clauses at its 36th and 37th meetings, on 29 March 1978.

(ii) Consideration

Paragraph 1

276. At the 36th meeting, the amendment by France (A/CONF.89/C.1/L.207) was withdrawn, the Committee having decided that the issues raised by the amendment were better considered by the Conference in plenary session. At the same meeting, of the amendments by Japan (A/CONF.89/C.1/L.210), that contained in subparagraph 1 (a) was rejected by a vote of 38 to 10, with 10 abstentions and the other was rejected by a vote of 27 to 19, with 15 abstentions. At the 37th meeting, of the amendments by Greece (A/CONF.89/C.1/L.179), that contained in subparagraph 1 (a) was rejected by a vote of 22 to 6, with 28 abstentions; that contained in subparagraph (b) was withdrawn; that contained in subparagraph (c) (i) was rejected; and that contained in subparagraph (c) (ii) was rejected.

277. At the 37th meeting, the Committee decided to delete the paragraph.

Paragraph 2

278. At the 37th meeting, the Committee decided to delete from this paragraph the reference to paragraph 1, and to retain only the following text of the paragraph:

"2. No reservations may be made to this Convention"

Paragraph 3

279. At the 37th meeting, the Committee decided to delete the paragraph.

Paragraph 4

280. At the 37th meeting, the Committee decided to delete the paragraph.

Paragraph 5

281. At the 37th meeting, the Committee decided to delete the paragraph.

ANNEX

Documents submitted to the Committee which contain observations and explanations and do not contain proposals or amendments

1. UNITED STATES OF AMERICA: NOTE ON ARTICLE 6 AND ALTERNATIVE ARTICLE 6

Document A/CONF.89/C.1/L.47

(Original: English)
(9 March 1978)

1. The attached tables on United States ocean-borne trade summarize both United States export and import trade by ocean-going vessel in recent years (1974 and 1975, and in 1976 exports only, since the import data are not yet available). Each table provides data for the year indicated, giving a specific value in United States dollars per pound, special drawing rights (SDRs) per pound and SDRs per kilogram of shipping value and shipping weight transported by ocean vessel in United States foreign trade. The conversion from United States dollars to SDRs in these tables was made at SDR 1 = \$1.20, approximately the average year-end value for 1974 and 1975, the two years for which both export and import data are available. The current conversion rate is approximately SDR 1 = \$1.21. The summary tables were prepared from United States Bureau of the Census data using the following procedure

for both exports and imports. The average dollar value per pound for each four-digit commodity group (approximately 600 for both exports and imports) was calculated and the commodity groups were then arrayed in ascending order of magnitude according to this value. The cumulative shipping value and shipping weight were determined for each commodity group and for all commodity groups with a lesser average dollar value per pound. These figures were divided by the total value and total shipping weight, respectively, to yield the cumulative percentage of total value and total shipping weight for each commodity group and all commodity groups with a lesser average dollar value per pound. The data in the summary tables are the percentages determined by the above method at specific dollar values per pound. The dollar values were then converted into SDRs per pound and SDRs per kilogram.

2. The most significant data in the summary tables for purposes of determining liability under the proposed Convention is the cumulative percentage of shipping value, since it is the value of the cargo that is insured, not the weight.

2. STATEMENT BY MR STEPHEN A. SILARD, OBSERVER FOR THE INTERNATIONAL MONETARY FUND, ON THE UNIT OF ACCOUNT IN ARTICLE 6

Document A/CONF.89/C.1/L.109*

(Original: English)
(10 March 1978)

1. A task of this Conference is to decide on a unit of account for the purposes of the Convention on the Carriage of Goods by Sea. This decision, like the others that the Conference will make, should be consistent with the objectives set forth in draft article 3, dealing with the interpretation of the Convention, which requires that regard shall be had to the international character of the Convention and to the need to promote uniformity. My observations are offered in this spirit.

2. It would seem to me useful to begin by summarizing the background, as I understand it, against which the provision on the unit of account is being considered: at the meetings of UNCITRAL in April 1976, on the preparation of the draft Convention, consideration was given to the use for this purpose of the special drawing right (SDR) of the International Monetary Fund⁴. This was done in recognition of the changing facts of international monetary law and relations. These facts include the second amendment to the Articles of Agreement of the International Monetary Fund, under which the official price of gold is abolished for almost all practical purposes, and gold cannot be used by the membership of the Fund, which currently numbers 133 States, as either the common denominator of their exchange arrangements or the denominator of individual exchange arrangements. Moreover, the Fund is committed to a gradual reduction in the monetary role of gold and, to the avoidance of a new official price and of fixing a price in the market, and the Fund's members have undertaken to collaborate with the Fund and with each other to make the SDR the principal reserve asset in the international monetary system. The price of gold in the markets is a fluctuating price, and for this reason it is not a technically appropriate basis for the certain and uniform valuation of currencies that a unit of account should achieve. It has been, therefore, generally concluded that these developments have made gold unsuitable as a unit of account for contemporary international agreements of universal scope, such as the Convention on the Carriage of Goods by Sea. This development has given rise to the need for a functionally suitable and generally accepted international unit of account, and such a use of the SDR is already incorporated in, or proposed for, a great variety of treaties dealing with such matters as international transportation by air, sea and rail, international telecommunications and postal services and international financial operations.

3. The proposal to use the SDR as the unit of account is a sound one. The SDR is an official international asset, of which some 9.3 billion units have been allocated, and it is valued by international agreement on the basis of a clearly defined formula that reflects the importance of the most important currencies of the membership of the Fund in international trade and payments. The Fund calculates, provides and publishes the

* Incorporating document A/CONF.89/C.1/L.109 Corr.1.
• See A/CN.9/C.1/SR.10.

USA OCEAN-BORNE TRADE - 1974

<i>Dollars per pound</i>	<i>SDRs per pound</i>	<i>SDRs per kilogram</i>	<i>Exports</i>		<i>Imports</i>	
			<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>	<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>
.10	.08	.18	30.7	80.3	35.9	89.6
.20	.17	.37	44.0	91.2	46.7	94.7
.30	.25	.55	51.5	94.3	51.1	96.0
.40	.33	.73	56.2	95.8	54.3	96.7
.50	.42	.92	61.2	96.9	57.6	97.3
.60	.50	1.10	63.2	97.3	61.0	97.7
.70	.58	1.29	65.1	97.6	64.6	98.1
.80	.67	1.47	65.9	97.7	65.1	98.2
.90	.75	1.65	67.4	97.9	67.6	98.4
1.00	.83	1.84	68.1	98.1	71.3	98.7
1.10	.92	2.02	69.8	98.2	72.9	98.8
1.20	1.00	2.20	75.1	98.6	81.0	99.4
1.30	1.08	2.39	78.9	98.9	82.3	99.4
1.40	1.17	2.57	83.0	99.3	82.9	99.5
1.50	1.25	2.76	83.3	99.3	83.6	99.5
1.60	1.33	2.93	83.6	99.3	84.0	99.5
1.70	1.42	3.12	84.5	99.4	85.9	99.6
1.80	1.50	3.31	85.5	99.4	87.9	99.7
1.90	1.58	3.49	87.0	99.5	88.4	99.7
2.00	1.67	3.67	89.7	99.7	88.8	99.7
2.10	1.75	3.86	90.7	99.7	89.9	99.8
2.20	1.83	4.04	90.7	99.7	90.1	99.8
2.30	1.92	4.23	92.3	99.8	90.8	99.8
2.40	2.00	4.41	92.8	99.8	91.0	99.8
2.50	2.08	4.59	93.2	99.8	91.2	99.8
2.60	2.17	4.78	93.2	99.8	91.3	99.8
2.70	2.25	4.96	93.8	99.9	91.4	99.8
2.80	2.33	5.14	94.2	99.9	92.3	99.8
2.90	2.42	5.33	94.8	99.9	93.1	99.9
3.00	2.50	5.51	94.9	99.9	93.3	99.9
4.00	3.33	7.35	96.3	99.9	98.7	99.9
5.00	4.17	9.19	97.6	99.9	99.1	99.9

USA OCEAN-BORNE TRADE - 1975

<i>Dollars per pound</i>	<i>SDRs per pound</i>	<i>SDRs per kilogram</i>	<i>Exports</i>		<i>Imports</i>	
			<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>	<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>
.10	.08	.18	24.8	56.6	38.9	90.7
.20	.17	.37	42.2	92.0	45.1	94.0
.30	.25	.55	47.6	94.6	52.7	96.3
.40	.33	.73	50.4	95.5	56.5	97.2
.50	.42	.92	54.1	96.4	58.4	97.5
.60	.50	1.10	55.5	96.7	63.2	98.1
.70	.58	1.29	59.3	97.3	64.8	98.3
.80	.67	1.47	60.3	97.5	66.3	98.4
.90	.75	1.65	61.2	97.6	67.7	98.6
1.00	.83	1.84	62.4	97.8	69.9	98.7
1.10	.92	2.02	63.1	97.8	72.3	98.9
1.20	1.00	2.20	63.9	97.9	73.6	99.0
1.30	1.08	2.39	64.9	98.0	74.6	99.1
1.40	1.17	2.57	70.4	98.5	81.9	99.4
1.50	1.25	2.76	74.2	98.8	82.8	99.5
1.60	1.33	2.93	77.0	99.0	83.4	99.5
1.70	1.42	3.12	78.2	99.1	83.8	99.5
1.80	1.50	3.31	83.2	99.4	84.5	99.6
1.90	1.58	3.49	83.5	99.4	87.4	99.7
2.00	1.67	3.67	84.1	99.4	88.5	99.7
2.10	1.75	3.86	84.6	99.5	88.6	99.7
2.20	1.83	4.04	84.7	99.5	88.8	99.7
2.30	1.92	4.23	85.3	99.5	90.2	99.8
2.40	2.00	4.41	86.5	99.6	90.5	99.8

USA OCEAN-BORNE TRADE-1975 (continued)

<i>Dollars per pound</i>	<i>SDRs per pound</i>	<i>SDRs per kilogram</i>	<i>Exports</i>		<i>Imports</i>	
			<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>	<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>
2.50	2.08	4.59	87.9	99.6	91.7	99.8
2.60	2.17	4.78	91.1	99.8	92.1	99.8
2.70	2.25	4.96	91.8	99.8	92.2	99.8
2.80	2.33	5.14	92.2	99.8	94.0	99.9
2.90	2.42	5.33	92.2	99.8	94.1	99.9
3.00	2.50	5.51	92.3	99.8	94.4	99.9
4.00	3.33	7.35	95.1	99.9	96.3	99.9
5.00	4.17	9.19	96.0	99.9	98.8	99.9

USA OCEAN-BORNE TRADE-1976

<i>Dollars per pound</i>	<i>SDRs per pound</i>	<i>SDRs per kilogram</i>	<i>Exports</i>	
			<i>Cumulative per cent of shipping value</i>	<i>Cumulative per cent of shipping weight</i>
.10	.08	.18	34.1	87.0
.20	.17	.37	40.6	92.2
.30	.25	.55	46.1	94.8
.40	.33	.73	49.1	95.7
.50	.42	.92	51.1	96.3
.60	.50	1.10	54.7	97.0
.70	.58	1.29	56.6	97.3
.80	.67	1.47	58.7	97.6
.90	.75	1.65	58.9	97.7
1.00	.83	1.84	59.8	97.8
1.10	.92	2.02	60.8	97.9
1.20	1.00	2.20	61.8	98.0
1.30	1.08	2.39	62.9	98.1
1.40	1.17	2.57	63.6	98.1
1.50	1.25	2.76	69.4	98.6
1.60	1.33	2.93	70.7	98.7
1.70	1.42	3.12	71.5	98.7
1.80	1.50	3.31	76.6	99.1
1.90	1.58	3.49	81.8	99.4
2.00	1.67	3.67	81.9	99.4
2.10	1.75	3.86	82.5	99.4
2.20	1.83	4.04	83.0	99.5
2.30	1.92	4.23	83.2	99.5
2.40	2.00	4.41	83.8	99.5
2.50	2.08	4.59	84.9	99.6
2.60	2.17	4.78	84.9	99.6
2.70	2.25	4.96	86.2	99.6
2.80	2.33	5.14	88.3	99.7
2.90	2.42	5.33	89.3	99.7
3.00	2.50	5.51	90.1	99.8
4.00	3.33	7.35	94.3	99.9
5.00	4.17	9.19	95.0	99.9

SDR 1 = \$US 1.20

\$US 1.00 = SDR .8333

1 kilogram = 2.2046 pounds

valuation of national currencies in terms of this unit. At present, the Fund publishes on a daily basis the value of 32 currencies in terms of the SDR. The SDR is the Fund's own unit of account, in terms of which the Fund's quotas, which will amount in the near future to about SDR 39 billion (upon the conclusion of the sixth general review of quotas), are valued, and in terms of which all operations and transactions of the Fund take place. I should mention in this connexion that, under the second amendment of the Articles of Agreement of the Fund, an 85 per cent majority of the total voting power will be required for making either a change in the principle of valuation of the SDR or a fundamental change in the application of the principle in effect. The requirement of

such a high majority provides practical assurance of stability and continuity in the method of valuation of the SDR.

4. The implications of the fact that a number of States participating in this Conference are not among the members of the International Monetary Fund has been discussed at the UNCITRAL meeting to which I referred earlier. These States had no objection to the use of the SDR as the unit of account for the purposes of the Convention, but wished to determine the value of their national currencies in terms of the SDR themselves, or, if their law did not permit the valuation of their currencies in terms of the SDR, to retain the use of gold as the unit of account for the purpose of valuing their own currencies, as had been

done in the 1975 Montreal Protocols on international civil aviation.^b No decision was taken on this question at the preparatory UNCITRAL meeting and the draft Convention leaves blank the definition of the unit of account in draft article 6.

5. Since the date of the UNCITRAL meeting on 19 April 1976, a further development has been agreement on a revised version of the formulation used in the Montreal Protocols. This was reached on 19 November 1976 by the London Convention on Limitation of Liability for Maritime Claims^c and followed in three other protocols of the same date (Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969; Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974). The revision was an effort to deal with a recognized difficulty under the Montreal Protocols, that is, the lack of legal assurance of uniformity of valuation as between the currencies of States that are and are not members of the Fund. The solution was to require that the necessary calculations and conversions by non-member States "shall be made in such a manner as to express in the national currency of . . . [such] State Party as far as possible the same real value . . . as is expressed . . . in units of account." In order to give effect to this principle, these States are required to communicate to the depositary the manner of calculation or the result of the conversion, and whenever there is a change in either.

6. In order to complete the description of article 8 of the London Convention, a related provision of that Convention, namely article 21, should be mentioned. Article 21 provides for the possibility of substituting other units of account for the units defined in article 8, paragraphs 1 and 2 (that is, either or both units of account, the SDR and gold). The method under article 21 for doing this is the convening of a special conference for this purpose at the request of not less than one fourth of the States Parties, at which conference a decision on substitution may be taken by a two-thirds majority of the States Parties present and voting.

7. As the London Convention of 1976 reflects the latest agreement by both members and non-members of the Fund on a provision dealing with the unit of account, it can be considered an appropriate basis for the consideration of the choice of the unit of account for this Convention, to which I shall now turn.

8. The unit of account provision of the London Convention is a clear improvement over that of the Montreal Protocols because it seeks to assure the substantially uniform valuation of the currencies of all States Parties whether or not they are members of the Fund. This is achieved by using the SDR as the unit of account for Fund members, and by requiring the other States Parties to value their currencies in such a way as to achieve as far as possible the "same real value". Although "real value" is not defined and its meaning must therefore depend on actual practice, the undertaking and the associated requirement of communicating to the depositary the method of valuation by which the value is achieved were found by the negotiators of the London Convention to provide satisfactory assurance that the "same real value" would be achieved as the value calculated on the basis of the SDR. I might suggest, however, that the term "real value" might be improved on because it is a term that in economic usage normally refers to a value adjusted for changes in the price level, which is probably not the intended meaning in the London Convention.

9. The technical effect of this provision for non-members of the Fund whose law does not permit the valuation of their currencies in terms of the SDR does seem to me, however, to raise a question that goes beyond language. The question is whether the requirement of "same real value" is properly understood as a kind of standstill agreement, that is, an undertaking by these States that, unless and until they change their law, they would maintain the valuation of their currencies in terms of gold for the purposes of the London Convention (and the simultaneously adopted protocols) on the basis of a price equivalent to the historical official price of SDR 35 per ounce of fine gold. I am asking this question because the second amendment abolishes this price for almost all purposes in the international monetary system.

10. If the Convention on the Carriage of Goods by Sea were to follow the solution of the London Convention of 1976 in this respect, a difficulty with that solution would have to be dealt with. The difficulty arises out of the fact that the London Convention expressly retains a unit of account defined in terms of gold and provides implicitly an approach to gold valuation by the requirement of the "same real value" in circumstances in which there is no longer a general international agreement on the price of gold. It is true that the option of such a gold valuation would be limited to States Parties which are not members of the Fund and whose law does not permit the valuation of their national currencies in terms of the SDR. Yet, this technique may have broader implications. For example, if these States were to change their laws on the subject of the gold valuation of their currencies at some time in the future in the same direction as the rest of the world, what would be the legal situation under the Convention? Would it be necessary to revise it in order to give effect to any such change? It would be possible to some extent to deal with this technical problem for the purposes of the Convention on the Carriage of Goods by Sea in the same way as was done in the London Convention, that is, by adding a provision similar to article 21 of the London Convention which I mentioned earlier.

11. In view of these considerations, this Conference might wish to consider another solution that would also respect the present position of the States that are not members of the Fund and whose law does not permit the application of the SDR unit of account. The solution would be to authorize these States to value their currencies for the purposes of the Convention in a manner determined by each such State, but subject to the requirement of achieving the same value as will apply to other contracting States, along the lines of article 8, paragraph 4, of the London Convention. Such a formulation would not alter the *status quo* for these States, because they could continue to value their currencies formally in terms of gold for as long as they wished, but would provide a flexible technical framework for the possibility of transition to a different method of valuation by these States without the need for a revision of the Convention.

12. I wish to conclude my remarks by inviting any questions on the points I have covered that participants in the Conference may wish to address to me and by offering my full co-operation in the drafting work on this subject.

*Draft article 6
Provision on the unit of account*

(a) Unit of account means the special drawing right of the International Monetary Fund. The amounts referred to in the present Convention shall be expressed in terms of the national currency of the Contracting State in which limitation is sought according to the value of that currency on the date of payment in terms of the special drawing right as published by the International Monetary Fund or, if such value is not published, as calculated by reference to the value of another currency that is published.

(b) Nevertheless, the value of the national currency of a Contracting State that is not a member of the International Monetary Fund and whose law does not permit the application of the method in subparagraph (a) above shall be calculated for the purposes of the present Convention as determined by that Contracting State, provided that the calculation shall be made in such a manner as to express in the national currency as far as possible the same value as expressed in terms of the unit of account by members of the International Monetary Fund. A Contracting State shall communicate the manner of calculation pursuant to this subparagraph to the depositary at the time of signature and whenever there is a change in the method of calculation.

3. UNITED STATES OF AMERICA: NOTE ON THE EFFECTS OF INFLATION ON THE LIMITS OF LIABILITY IN THE VISBY RULES

Document A/CONF.89/C.1/L.131

[Original: English]
[14 March 1978]

^b For the text of article VII of the Montreal Protocol No. 4, see document A/CONF.89/8 above, foot-note 32.

^c For the text of article 8 of the London Convention, see document A/CONF.89/8 above, foot-note 31.

1. The attached tables, entitled "Price inflation for United States gross national product (GNP)", "Price inflation for goods in United States gross national product (GNP)", "Price inflation for world-wide

exports" and "Price inflation for world-wide imports", were prepared to show the effect of inflation on the limits of liability established by the Visby Rules in 1968, to give some indication of the levels of liability needed in article 6 of the present UNCITRAL draft Convention if real value is to be maintained, and to demonstrate the need for a provision in a new convention to account for future inflation if real value is to be maintained in the proposed convention.

2. The tables were prepared using four regularly published measures of inflation, two by the United States and two by the United Nations. For each year after 1968 the current dollar value needed to maintain real value was calculated by the following formula:

Price deflator for a specific year

Price deflator for base year (1968 x the value in the base year).
(3.90 or \$667.00) = the dollars per pound or dollars per package
in the specific year.

The special drawing rights (SDRs) per kilogram were then calculated by multiplying the dollars per pound by 2.2046 (the number of pounds in a kilogram) and by .8333 (the number of US dollars per 1 SDR at SDR 1 = \$US 1.20). The result was rounded to the nearest one hundredth SDR. The SDRs per package were determined by multiplying the dollars per package by .8333 (the number of US dollars per 1 SDR at SDR 1 = \$US 1.20). The result was rounded to the nearest SDR.

3. The tables indicate average annual rates of inflation ranging from slightly less than 5 per cent for goods only in the United States GNP to a

little more than 11 per cent for both world-wide exports and imports as determined by the United Nations Office of Statistics. Total United States GNP had an average annual inflation rate of a little more than 6 per cent compounded annually.

4. To maintain the real 1968 value of the Visby Rules, not taking into account other changes in the régime of liability affecting the balance between the shipper and the shipowner, at the rates of inflation indicated above the limits of liability in this Convention today would range between

\$US 1.48 per pound (2.72 SDRs per kilogram) and

\$US 2.62 per pound (4.82 SDRs per kilogram)

and

\$US 1,096 per package (913 SDRs per package) and

\$US 1,947 per package (1,622 SDRs per package).

4. PRINCIPAL QUESTIONS ON ARTICLES 5 AND 6 SUBMITTED BY THE CHAIRMAN FOR CONSIDERATION BY THE FIRST COMMITTEE

Document A-CONF.89 C.I.L.132

(Original: French)
[14 March 1978]

1. Should exoneration from liability on grounds of error of navigation be restored?

PRICE INFLATION FOR USA GROSS NATIONAL PRODUCT (GNP)

Year	GNP price deflator*	Dollars Lb.	SDRs Kilo	Dollars Package	SDRs Package
1968	82.57	.90	1.65	667	556
1969	86.72	.95	1.75	700	583
1970	91.36	1.00	1.84	738	615
1971	96.02	1.05	1.93	776	647
1972	100.00	1.09	2.00	808	673
1973	105.80	1.15	2.11	855	712
1974	116.02	1.27	2.33	937	781
1975	127.18	1.39	2.55	1027	856
1976	133.88	1.46	2.68	1081	901
1977	141.33**	1.54	2.83	1142	952

* Source: *Survey of Current Business*, July 1977, Bureau of Economic Analysis, U.S. Department of Commerce. Table 7.1, Implicit Price Deflators for Gross National Product (Total).

** Source: Estimate Bureau of Economic Analysis, U.S. Department of Commerce.

SDR 1 = \$US 1.20 \$US 1.00 = SDR .8333
1 kilogram = 2.2046 pounds

PRICE INFLATION FOR GOODS IN USA GROSS NATIONAL PRODUCT (GNP)

Year	Price deflator for goods*	Dollars Lb.	SDRs Kilo	Dollars Package	SDRs Package
1968	87.1	.90	1.65	667	556
1969	90.6	.94	1.73	694	578
1970	94.4	.98	1.80	723	602
1971	97.6	1.01	1.86	747	622
1972	100.0	1.03	1.89	766	638
1973	105.2	1.09	2.00	806	672
1974	115.2	1.19	2.19	882	735
1975	127.4	1.32	2.43	976	813
1976	131.7	1.36	2.50	1009	841
1977	136.3**	1.41	2.59	1044	870

* Source: *Survey of Current Business*, July 1977, Bureau of Economic Analysis, U.S. Department of Commerce. Table 7.3, Implicit Price Deflators for GNP by Type of Product.

** Source: Estimate Bureau of Economic Analysis, U.S. Department of Commerce.

SDR 1 = \$US 1.20 \$US 1.00 = SDR .8333
1 kilogram = 2.2046 pounds

PRICE INFLATION FOR WORLD-WIDE EXPORTS

Year	Index Base*	Dollars Lb.	SDRs Kilo	Dollars Package	SDRs Package
1968	92	.90	1.65	667	556
1969	95	.93	1.71	689	574
1970	100	.98	1.80	725	604
1971	105	1.03	1.89	761	634
1972	114	1.12	2.06	826	689
1973	141	1.38	2.54	1022	852
1974	199	1.95	3.58	1443	1202
1975	216	2.11	3.88	1566	1305
1976	218**	2.13	3.91	1580	1317

* Source: United Nations Monthly Bulletin of Statistics, January 1977, vol. XXXI, No. 1. Special Table B, World trade of market economies.

** Source: United Nations Office of Statistics.

SDR 1 = \$US 1.20 \$US 1.00 = SDR .8333
1 kilogram = 2.2046 pounds

PRICE INFLATION FOR WORLD-WIDE IMPORTS

Year	Index Base*	Dollars Lb.	SDRs Kilo	Dollars Package	SDRs Package
1968	93	.90	1.65	667	556
1969	96	.93	1.71	688	574
1970	100	.97	1.78	717	598
1971	105	1.02	1.87	753	628
1972	114	1.10	2.02	818	681
1973	140	1.36	2.50	1004	837
1974	198	1.92	3.53	1420	1183
1975	217	2.10	3.86	1556	1297
1976	218**	2.11	3.88	1563	1303

* Source: United Nations Monthly Bulletin of Statistics, January 1977, vol. XXXI, No. 1. Special Table B, World trade of market economies.

** Source: United Nations Office of Statistics.

SDR 1 = \$US 1.20 \$US 1.00 = SDR .8333
1 kilogram = 2.2046 pounds

2. Is the Committee in favour of the solution proposed in article 5, paragraph 4, to the effect that, in the event of damage caused by fire, the burden of proof should be on the claimant to show that the fire arose from fault or negligence on the part of the carrier, his servants or agents?

3. As regards the limitation of liability, should a double criterion (package and weight) or a single criterion (weight) be adopted? What would be the amount of the compensation per unit? In what cases should there be unlimited liability?

4. Should liability for delay be excluded from the scope of application of the régime or of the Convention? If not, should a special régime be established with respect to this kind of prejudice, or should it be put on the same footing as prejudice suffered by loss? If a special régime should be preferable, on what basis should the limitation of liability be determined: on the basis of the amount of the freight or on the basis of a multiple of the freight?

5. How should the unit of account be determined?

5. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: NOTE ON ARTICLE 5

Document A/CONF.89/C.1/L.133

[Original: English]
[14 March 1978]

Introduction

1. The purpose of this paper is to identify the economic implications of the present text of draft article 5 which removes the carrier's defence

available under the 1924 and 1968 Hague Rules for damage to or loss of cargo which is caused by the "act, neglect, or default of the master, manner, pilot, or the servants of the carrier in the navigation . . . of the ship". It is submitted that these implications are applicable equally to all countries: there is no distinction of interest between carrier and shipper in developed and developing countries.

2. The United Kingdom is aware of the reasons put forward for the omission of this defence of "error in navigation" from the UNCITRAL text and can sympathize with many of them. In particular, the desire that the new UNCITRAL Convention should contain a simple formulation of the carrier's liability is supported. However, it is the United Kingdom's view that the economic consequences of deleting the defence of error in navigation have been insufficiently appreciated. It is firmly believed that the most important of these will be an increase in the net cost of maritime transport, which will inevitably result in increased cost for the ultimate consumer and a questionable change in the structure of insurance arrangements. The former consequence will act to the detriment of the entire world trading community (developed as well as developing and carrier as well as shipper countries) whilst the latter will have adverse results, particularly for countries with small or developing insurance markets.

3. It is the United Kingdom's considered opinion, based upon the agreed views of its insurance, shipper and carrier interests, that the economic arguments for the insertion of the defence of error in navigation into the UNCITRAL draft Convention are sufficiently strong to render this matter one of the most important issues to be decided by the Conference. If, for example, as is stated in the report "Bills of Lading", "the economic cost of the present régime is excessive,

the excess being exactly indicated by the extent of overlapping insurance which arises because of uncertainty",⁴ then the absence of the defence of error in navigation will result in the new rules being even more prone to criticism in this respect.

Cost factors

4. There are several important reasons why there can be little doubt that the omission of the defence of error in navigation will result in an increase in the net cost of maritime transport.

5. The first and essential point is that the proposed deletion of the defence of error in navigation will not reduce but rather will increase the extent of overlapping insurance. Cargo underwriters would still have to provide cover for the period before and after sea carriage, for damage which could not be shown to have taken place during the period for which the carrier was responsible and for any shortfall or absence in recovery due to limitation of liability, bankruptcy of the carrier or any other reason. It may be expected, therefore, that any reduction in cargo insurance premiums will be severely limited.

6. The other aspect of this point is that to make the carrier liable for error in navigation would obviously result in the carrier requiring additional liability insurance cover. This is bound to involve additional cost, which will be passed on in increased freight rates. The nature of the insurance arrangements is such that the increased cost of liability insurance will not be balanced by an equivalent fall in cargo insurance costs.

7. There are also likely to be substantial costs which would arise from recourse actions in which cargo underwriters sought to recover these maritime cargo losses which occur as a result of errors in navigation.

8. The second important point is that imposing upon the carrier liability for damage or loss caused by error in navigation will frequently be of restricted benefit to claimants. Should an error in navigation cause a collision and the total loss of the ships concerned, then substantial maritime claims would arise other than those relating to the loss of cargo. In such cases, cargo claims would be subject to global limitation and possibly to large-scale abatement. Equally, the cargo claims would themselves result in the payments in respect of other maritime claims arising from the incident being reduced substantially more than would otherwise be the case.

9. Whilst the analogy with other international transport conventions which contain no comparable defence may be attractive in supporting the omission of the defence of error in navigation, the United Kingdom believes that each transport mode must be dealt with according to the particular circumstances pertaining to that mode. The above economic case for retaining the defence of error in navigation in the maritime context is clear. Irrespective of this, it is submitted that the vast amounts ordinarily at risk in sea transport are not paralleled in other modes, whilst, for example, road transport under the Convention on the Contract for the International Carriage of Goods by Road (CMR) itself contains (article 17) specific defences to the carrier's liability relevant to that mode of transport.

The cargo interest

10. In considering the implications of the omission of the defence of error in navigation, the United Kingdom has paid particular attention to the views of its shippers. The British Shippers Council (the national representative body) has stated that in its opinion the issue of error in navigation is of the utmost importance to cargo owners and shippers. It has no doubt that the omission of this defence, although it has "an obvious superficial attraction to shippers", will result in increased freight costs to the shipper without commensurate reductions in cargo insurance premiums and will not significantly affect the incidence of accidents at sea and the consequent risk from this cause to which cargo is subjected.

11. The Shippers Council also refers to the advantageous flexibility of cargo insurance as an additional argument for not shifting the balance of insurance further towards the carrier. It is, of course, axiomatic that under present arrangements shippers can more or less take out such cover as they wish, where they wish and tailored to the circumstances of an individual shipment. To this extent the shipper can keep his insurance costs largely under his own control. This control would clearly be lost if the carrier were obliged to take out through liability insurance a more substantial portion of the relevant cover.

⁴ TD/B/C.4/SL.6/Rev. 1, para. 165.

Insurance interests

12. Both United Kingdom carrier liability (the P and I Clubs) and cargo insurers are united in opposing the omission of the defence of error in navigation. They see in this an uncompensated increase in their administrative expenses, additional uncertainty and cost arising from the increased duplication of insurance cover and, in view of the absence of any countervailing advantages, an unnecessary disturbance in the balance between cargo and liability insurance.

Carrier interests

13. The above case for the insertion in the proposed rules of the defence of error in navigation is sustained entirely without reference to the interests of carriers themselves. As might be expected, however, United Kingdom shipowners support the views of the shipper and insurance interests. Although it is to be expected that the increased costs which would result for shipowners through their assumption of liability for error in navigation would be passed on to shippers through higher freight rates, the net increase in cost which would occur would, through elementary economic laws, cause a decrease in demand for sea transport services and in the volume of maritime trade as the transportation of certain marginal goods became too expensive. This clearly is unwelcome to shipowners, whose livelihood depends upon the demand for the service which they offer.

General economic effects

14. Even if, contrary to our belief, the fall in cargo insurance rates were to counterbalance increased P and I contributions and consequent increases in freight rates, the resulting benefit, if any, would from a balance of payments point of view be to the countries, such as the United Kingdom, with shipping and P and I interests. The United Kingdom is, however, mainly concerned with the potential over-all increase in cost of transport.

Conclusion

15. The case which is made above is elaborated on the basis of commercial reasoning which is relevant to all countries. The fact that United Kingdom shippers are vehemently opposed to the UNCITRAL text on error in navigation, following an extended study of this issue, is particularly significant, and it is clear that without the insertion of this defence the proposed Convention will have failed the cargo interests as much as (and probably more than) the carrier interests. Although the economic consequences of the omission of this defence will be detrimental to all countries, the worst effects will be felt by the developing countries. It is they who will be most affected by increased costs and who will lose their emerging indigenous cargo insurance activity to carrier liability insurance from the developed countries.

16. For the above reasons, the United Kingdom considers it desirable that the defence of error in navigation should be introduced into article 5.

6. ARGENTINA: A FURTHER FUNDAMENTAL QUESTION ON ARTICLES 5 AND 6 SUBMITTED FOR CONSIDERATION BY THE FIRST COMMITTEE

Document A/CONF.89/C.1/L.134

[Original: Spanish]
[14 March 1978]

Does the Committee agree with the formulation contained in article 5, paragraph 1, in other words, with the principle of liability based on the fault of the carrier and his exemption from such liability where the absence of fault is proved? What does the Committee suggest for the formulation of this paragraph?

7. JAPAN: EXPLANATORY NOTE ON THE AMENDMENT TO ARTICLE 15, SUBPARAGRAPH 1 (a) CONTAINED IN DOCUMENT A/CONF.89/C.1/L.24*

Document A/CONF.89/C.1/L.139

[Original: English]
[16 March 1978]

1. In document A/CONF.89/C.1/L.24, Japan proposed to amend

* See para. 147 above.

article 15, subparagraph 1 (a), that is, the portion thereof reading "the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed," to read "(a) *bis*. Either the number of packages or pieces, or the quantity, or weight, as the case may be".

2. The draft provision of UNCITRAL is intended to make it obligatory to set forth on the bill of lading both the number of packages or pieces and the weight or other quantity, if they are declared by the shipper, while under article 3, subparagraph 3(b), of the Hague Rules, only one of these items need be set forth on the bill of lading.

3. The reason for which Japan submitted the above proposal is that the aforementioned draft provision of UNCITRAL does not meet the necessity nor the practice in the liner trade where quite a number of bill of lading shipments of various merchandise are involved in one voyage of one liner vessel. The situation is as follows:

(a) Under the present practice in liner trade, not only the number of packages or pieces but also the weight and frequently even the measurement are usually set forth on bills of lading, especially in the case of general cargo. This may be partly due to the necessity of this information in calculating the freight because the freight rate is based either on weight or on weight/measurement, whichever is higher, but this may also be due to the requirement on the part of the shipper/consignee in the sales contract. Needless to say, the weight or measurement of the goods that is set forth in the bill of lading is only that declared by the shipper, and the carrier has no reasonable means of checking them at the time of receiving the goods and in fact does not check them, but only checks the number of packages or pieces of goods when he receives them;

(b) Even under the new draft provision, it will be difficult for the carrier to discontinue the above practice of setting forth on the bill of lading the weight and/or measurement of the goods, together with the number of packages or pieces, and we are concerned that, under draft article 16, paragraph 3, the carrier may, as against the endorsee of the bill of lading in good faith, be held responsible for the weight and/or measurement which was set forth by him without any specific reservation;

(c) In order to avoid the above situation, a carrier will be compelled to ask that the checking of weight and/or measurement be made for all the packages and pieces of the cargo, just before receiving or loading them on board the vessel, by competent neutral organizations such as licensed sworn measurers, and to issue the bill of lading only upon the presentation of a certificate thereon by such organization. Needless to say, this procedure will hamper the receiving or loading operation to such an extent that the time consumed and the expenses incurred thereby will be unbearable for the shipping and trade community and ultimately for consumers through increases in freight rates and other costs of transport;

(d) In the case of liner trade, which involves a large number of bill of lading shipments, perhaps even more than one thousand in a given voyage, it is also a great burden for the carrier if he is compelled to enter on each original (usually three) of every set of bills of lading for a liner vessel the specific reservation to the effect that he has no reasonable means of checking weight or "shippers weight", etc. This again will impede smooth issuance by the carrier of bills of lading and will increase the cost of transport in liner trade to the detriment of the shipping and trade community;

(e) We feel that such a rule of law that requires that a specific reservation be inserted in each and every occasion is not a good one and, therefore, that the draft article as mentioned above should be amended to read in such a way as to make the carrier obliged to set forth on the bill of lading either the number of packages or pieces, or the weight or the quantity otherwise expressed, depending upon the nature of the goods.

8. NOTE BY THE IMCO SECRETARIAT ON THE CARRIAGE OF DANGEROUS GOODS BY SEA

Document A/CONF. 89/C.1/L.167

[English only]
[20 March 1978]

1. The secretariat of the Intergovernmental Maritime Consultative

¹ In accordance with rule 39 of the rules of procedure of the Conference, this statement is reproduced and distributed in English only.

Organization (IMCO) considers that the following information on the work of IMCO in the field of the carriage of dangerous goods by sea may be of interest to the Conference, in particular with respect to article 13 of the draft Convention on the Carriage of Goods by Sea, which deals with the special rules on dangerous goods.

2. There has been a very substantial increase in the transport of goods by the marine mode over the past four decades. The amount of all cargo loaded and unloaded in maritime ports throughout the world has increased from some 375 million tonnes in 1937 to well over 1,000 million tonnes. It has been estimated that more than 50 per cent of all goods transported throughout the world are dangerous goods, produced in particular by the oil and oil products, the chemical and the nuclear energy industries. Most of these goods are shipped in bulk and normally, particularly in the case of liquids and gases, in special purpose-built ships. However, to reach the final user or consumer, smaller consignments also have to be transported in packaged forms, down to consumer sizes and very small sizes for use in laboratories. On an average, 10 to 15 per cent of the goods of break-bulk-carrying cargo liners, including ships carrying goods in unitized forms, may be regarded as dangerous.

The International Convention for the Safety of Life at Sea (SOLAS)

3. The SOLAS Convention, currently in force, was adopted in 1960 and entered into force in May 1965. Ninety-seven States are parties to the Convention as at the date of this document. A list of these 97 States is given in annex I.

Chapter VII of the 1960 SOLAS Convention

4. The 1960 SOLAS Convention deals with various aspects of maritime safety and contains, *inter alia*, requirements in respect of the carriage of dangerous goods. The requirements of chapter VII of the 1960 SOLAS Convention prescribe the legal obligations of the contracting parties regarding the carriage of dangerous goods by sea. Recommendation 56 adopted by the 1960 SOLAS Conference urged contracting Governments to adopt a unified international maritime code for the carriage of dangerous goods by sea and recommended that IMCO pursue the study of this matter and prepare such a code covering, *inter alia*, classification, identification and documentation marking and labelling, stowage and segregation, as well as packing and containerization.

5. Chapter VII of the SOLAS Convention is applicable to the carriage of dangerous goods in all ships covered by the Convention.

6. The provisions of the International Maritime Dangerous Goods (IMDG) Code supplement the requirements of chapter VII of the SOLAS Convention.

The International Maritime Dangerous Goods (IMDG) Code

7. The IMDG Code was developed in close co-operation with the United Nations Committee of Experts, taking particularly into account the United Nations recommendations prepared by them.

8. The IMDG Code was recommended to Governments by the 1965 IMCO Assembly for adoption or to form a basis for national requirements and regulations in order to provide harmonization between member States engaged in the carriage of dangerous goods by sea.

9. Although the provisions of the IMDG Code are primarily directed at mariners, they affect all industries involved in international trade, from the manufacturer to the consumer (e.g., manufacturers, packers and shippers are guided by the advice given on terminology, packing, labelling, etc.).

The provisions of the IMDG Code

10. The IMDG Code with its annexes and supplements, prepared by IMCO in fulfilment of recommendation 56, is designed to aid compliance with the international legal requirements of chapter VII of the SOLAS Convention and to supplement these basic and general requirements. Therefore, it should be used as the "unified international code" recommended by the 1960 SOLAS Conference. To date, the provisions of the Code have been implemented, in whole or in part, by 33 States. A list of States which have informed IMCO that they have adopted in whole or in part or that they are considering adopting the said Code is given in annex II.

11. A reprint of the IMDG Code in three bound volumes was published in 1972, and supplements, approved by the IMCO Maritime Safety Committee, have since been published once a year. A new revised

edition of the Code in four volumes in a loose-leaf format has been published by IMCO and has been available since 1 March 1978.

12. For reasons of uniformity, the IMCO Maritime Safety Committee has agreed that the IMDG Code and its annexes, approved in May 1976, should be implemented on 1 September 1978, six months after publication of the English version of the new edition in the loose-leaf format. Copies of the Code, which delegates may wish to refer to, have been made available to the Conference secretariat.

Application of the rules governing the carriage of dangerous goods

13. The Code lays down basic principles. Recommendations for good practice and detailed provisions for individual substances, articles or materials are included in the General Introduction, annex I, the introduction to the various classes and in the individual schedules, for example, on:

- Classification
- Flashpoint test method
- Identification and marking
- Labels
- Shipping documents
- Packing
- Freight container traffic
- Portable tanks and road tank vehicles
- Stowage
- Segregation
- Fire prevention and fire-fighting
- The carriage of dangerous goods on roll-on roll-off ships
- The carriage of dangerous goods in limited quantities
- The carriage of dangerous goods in ship-borne barges on barge-carrying ships

Classification

14. Dangerous goods have been divided into the following classes:

- Class 1. Explosives
- Class 2. Gases: compressed, liquefied or dissolved under pressure
- Class 3. Inflammable liquids
- Class 4. Inflammable solids or substances
- Class 5. Oxidizing substances
- Class 6. Poisonous (toxic) and infectious substances
- Class 7. Radioactive substances
- Class 8. Corrosives
- Class 9. Miscellaneous dangerous substances

"Not otherwise specified" (N.O.S.)

15. In order to cover substances not listed by name in the Code, because shipments are infrequent or because a product is new in international trade, "not otherwise specified" (N.O.S.) entries have also been included, with the effect that all dangerous substances are in fact covered by the Code. In some cases the packing, stowage and segregation requirements are referred to the competent authority for specification or approval. It was recently agreed within IMCO that substances covered by these entries may only be shipped with the approval of the competent authority of the country concerned. The correct technical name of the substances shall be marked on their packagings and be mentioned in all documents required for their shipment. Cases may arise, however, where certain substances not listed in the Code are nevertheless regulated by the competent authority of a particular country. The consignor should ensure that such requirements are met when applicable.

Identification and Marking

16. Each receptacle containing dangerous goods shall be marked with the correct technical name (trade names shall not be used) and identified with a distinctive label or stencil of the label so as to make clear the dangerous character. Each receptacle shall be so labelled except receptacles containing chemicals packed in limited quantities and large shipments which can be stowed, handled and identified as a unit.

Correct technical name

17. When dangerous goods are offered for carriage by sea they should be identified on all shipping documents by a correct technical name and, where appropriate, by a United Nations number. Trade names do not satisfy this requirement until they have come into common international use, although they may be utilized on shipping documents and packages in addition to the correct technical name. A name under which a

substance is commonly known may be considered to be a correct technical name provided it is sufficiently informative to enable interested parties to find out the chemical name by consultation of readily available general literature. When several technical names are in use for the same substance, one of these names has been chosen as the preferred "correct" technical name, the other names being secondary names. Initials only should not be used to describe a substance. Mixtures of substances should be declared under the name of the most dangerous constituent.

Labelling

18. The labelling system is based on the United Nations classification of dangerous goods. The system was established to make dangerous goods easily recognizable from a distance by the general appearance (symbol, colour and shape) of the labels they bear.

Shipping Documents

19. In all documents relating to the carriage of dangerous goods by sea where the goods are named, the correct technical name of the goods shall be used (trade names shall not be used) and the correct description given in accordance with the classification.

20. The shipping documents prepared by the shipper shall include, or be accompanied by, a certificate or declaration that the shipment offered for carriage is properly packaged, marked and labelled and in proper condition for carriage.

21. Each ship carrying dangerous goods shall have a special list or manifest setting forth the dangerous goods on board and their location. A detailed stowage plan, which identifies by class and sets out the location of all dangerous goods on board, may be used in place of such special list or manifest.

Packing

22. The packing of dangerous goods shall be:

- (a) Well made and in good condition;
 - (b) Of such a character that any inferior surface with which the contents may come in contact is not dangerously affected by the substance being conveyed; and
 - (c) Capable of withstanding the ordinary risks of handling and carriage by sea.
23. Where the use of absorbent or cushioning material is customary in the packing of liquids in receptacles that material shall be:
- (a) Capable of minimizing the dangers to which the liquid may give rise;
 - (b) So disposed as to prevent movement and ensure that the receptacle remains surrounded; and
 - (c) Where reasonably possible, of sufficient quantity to absorb the liquid in the event of breakage of the receptacle.

24. The types of receptacles and packagings recommended in the IMDG Code are those which, based on extensive past experience, ensure a high degree of safety. Detailed specifications and a number of performance tests applicable to a wide range of receptacles and packagings recommended in the IMDG Code, together with an illustrated glossary of packagings for the transport of dangerous goods are to be found in annex I to the IMDG Code.

25. The IMDG Code on marking *inter alia* requires as follows:

"Each packaging manufactured and intended for use according to these recommendations should bear indelible and clearly visible markings showing:

- "(a) The United Nations packaging symbol specified in 3.6.2;
- "(b) The specification identification designated for the packaging according to these recommendations; (see annex I to the IMDG Code)
- "(c) The State in whose territory the specified tests have been carried out. (The International Vehicle Registration Identification Code and the initials of the competent authority shall be permitted);
- "(d) The packaging group determined by tests for the packaging. The packaging group shall be indicated using the following designations:

- 'X' For packagings allowed for Groups I, II and III.
- 'Y' For packagings allowed for Groups II and III; and
- 'Z' For packagings allowed only for Group III.

The packaging group marking alone is considered valid for a liquid having a specific gravity not exceeding 1.2. When tested for a higher specific gravity, the specific gravity for which the packaging is tested should follow the group entry 'X', 'Y' or 'Z', as appropriate;

"(e) The name of the manufacturer or other identification of the packaging specified by the competent authority; and,

"(f) The year (last two digits) of manufacture (or reconditioning) of the packaging."

ANNEX I

STATES HAVING ACCEPTED THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1960

	<i>Date of deposit of acceptance*</i>
Haiti	17 March 1961
Norway	23 August 1961
France	16 October 1961
Viet Nam	8 January 1962
Ghana	22 March 1962
Peru	25 July 1962
United States of America	2 August 1962
Madagascar	13 September 1962
Morocco	28 November 1962
Spain	22 January 1963
Greece	13 February 1963
Japan	23 April 1963
Tunisia	20 May 1963
Cuba	22 August 1963
Paraguay	11 September 1963
Algeria**	20 January 1964
Liberia	26 May 1964
United Kingdom of Great Britain and Northern Ireland**	11 June 1964
Netherlands	16 October 1964
Denmark	1 December 1964
Iceland	11 December 1964
Yugoslavia	23 February 1965
Saudi Arabia	3 May 1965
Finland	11 May 1965
Kuwait**	14 May 1965
Republic of Korea	21 May 1965
Germany, Federal Republic of**	25 May 1965
Canada	26 May 1965
Burma	12 July 1965
Cyprus	26 July 1965
Egypt**	27 July 1965
Union of Soviet Socialist Republics	4 August 1965
Philippines	11 August 1965
Malaysia	16 August 1965
Israel	5 October 1965
Panama	12 October 1965
Ivory Coast	2 November 1965
Nigeria	30 November 1965
Sweden	23 December 1965
Switzerland	12 January 1966
Belgium	10 February 1966
New Zealand	14 February 1966
Pakistan**	24 February 1966
India	28 February 1966
Lebanon	27 April 1966
Argentina	27 April 1966

*After 26 May 1965 the Convention will enter into force for a Government three months after the date of the deposit of acceptance.

**With declaration reservation.

*Date of deposit of acceptance**

Poland	29 April 1966
Italy	26 May 1966
Iran	31 May 1966
Turkey	2 June 1966
Portugal	14 June 1966
Mexico	22 June 1966
Trinidad and Tobago	6 September 1966
Chile	7 September 1966
Indonesia	26 October 1966
Gambia	1 November 1966
Romania**	12 December 1966
Ireland	14 February 1967
Brazil	8 March 1967
Somalia	30 March 1967
Czechoslovakia	5 July 1967
Nicaragua	9 October 1967
Bulgaria	16 October 1967
Mauritania	4 December 1967
South Africa	13 December 1967
Australia	20 December 1967
Maldives	29 January 1968
Jamaica	22 February 1968
Zaire	20 May 1968
Guinea	5 September 1968
Uruguay	19 September 1968
Syrian Arab Republic	24 December 1968
Venezuela	23 January 1969
Singapore	12 February 1969
Honduras	18 February 1969
Democratic Yemen	20 May 1969
Nauru	19 January 1970
Hungary**	24 March 1970
Monaco	25 March 1970
Senegal	9 April 1970
Zambia	2 September 1970
Democratic Kampuchea	24 November 1970
Equatorial Guinea	3 March 1972
Austria	4 August 1972
Fiji**	15 August 1972
Libyan Arab Jamahiriya	10 January 1973
Gabon	3 September 1973
China**	5 October 1973
Sri Lanka	10 May 1974
Ecuador	30 June 1975
Oman**	20 August 1975
Kenya	12 September 1975
Papua New Guinea**	18 May 1976
Bahamas**	22 July 1976
Seychelles	1 October 1976
German Democratic Republic**	11 November 1976
Tonga	12 April 1977

ANNEX II

STATES WHICH HAVE INFORMED IMCO THAT THEY HAVE ADOPTED IN WHOLE OR IN PART OR THAT THEY ARE CONSIDERING ADOPTING THE INTERNATIONAL MARITIME DANGEROUS GOODS (IMDG) CODE

Algeria	Finland
Argentina	France
Australia	Germany, Federal Republic of
Belgium	Greece
Canada	India
Chile	Ireland
Denmark	Israel
Egypt	Italy

Japan
Liberia
Netherlands
New Zealand
Norway

Pakistan
Peru
Poland
Republic of Korea
Saudi Arabia

South Africa
Spain
Sweden
Switzerland

Union of Soviet Socialist Republics
United Kingdom of Great Britain
and Northern Ireland
United States of America

F. REPORT OF THE SECOND COMMITTEE

Document A/CONF.89/11

[Original: English]
[30 March 1978]

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I. Introduction

A. SUBMISSION OF THE REPORT

1. By its resolution 31/100 of 15 December 1976, the General Assembly of the United Nations decided that an international conference of plenipotentiaries should be convened in 1978 in New York, or at any other suitable place for which the Secretary-General might receive an invitation, to consider the question of the carriage of goods by sea, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. An invitation received from the Government of the Federal Republic of Germany, for the Conference to be held at Hamburg, Federal Republic of Germany, was accepted by the Secretary-General and the Conference was accordingly convened at Hamburg from 6 to 31 March 1978.

2. The United Nations Conference on the Carriage of Goods by Sea opened on 6 March 1978 at the Congress Centrum Hamburg, Hamburg, Federal Republic of Germany. At its 1st plenary meeting, held on 6 March 1978, the Conference, in accordance with rule 43 of its rules of procedure, established two Main Committees, the First Committee and the Second Committee. Subject to review by the General Committee, the Conference at its 1st plenary meeting entrusted the Second Committee with the consideration of the draft provisions prepared by the Secretary-General concerning implementation, reser-

vations and other final clauses (A/CONF.89/6), with the exception of the draft article "Reservations".

3. The present document contains the report of the Second Committee on its consideration of the draft articles referred to it.

B. ELECTION OF OFFICERS

4. At its 3rd plenary meeting, on 7 March 1978, the Conference unanimously elected Mr. D. Popov (Bulgaria) as Chairman of the Second Committee. On 14 March 1978, at the 2nd meeting of the Committee, Mr. Th. J. A. M. de Bruijn (Netherlands) was elected as Vice-Chairman and Mr. N. Gueiros (Brazil) as Rapporteur.

C. MEETINGS, ORGANIZATION OF WORK AND STRUCTURE OF THIS REPORT

(i) Meetings

5. The Second Committee held 11 meetings, between 13 and 24 March 1978.

(ii) Organization of work

6. At its 1st meeting, on 13 March 1978, the Second Committee adopted as its agenda the provisional agenda contained in document A/CONF.89/C.2/L.1. The second Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to the draft articles submitted by rep-

representatives during the Conference. After initial consideration of an article and amendments pertaining thereto by the Second Committee, and subject to the decisions taken on the amendments, the article was referred to the Drafting Committee.

(iii) *Structure of this report*

7. This report describes the work of the Second Committee relating to each article before it, in accordance with the following scheme:

(a) Text of draft article prepared by the Secretary-General;

(b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;

(c) Proceedings in the Second Committee, subdivided as follows:

(i) Meetings;

(ii) Consideration of the article.

II. Consideration of the draft provisions prepared by the Secretary-General concerning implementation and other final clauses

ARTICLE []. DEPOSITARY

A. TEXT BY THE SECRETARY-GENERAL

8. The text prepared by the Secretary-General provided as follows:

"The Secretary-General of the United Nations is hereby designated as the depositary of this Convention."

B. AMENDMENTS

9. Amendments to the article were submitted by the Union of Soviet Socialist Republics, Uganda and, jointly, by Ecuador and India.

10. These amendments were to the following effect:

(a) *Union of Soviet Socialist Republics (A/CONF.89/C.2/L.3) and Uganda (A/CONF.89/C.2/L.4)*

Delete the article and add its substance to paragraph 4 of the article on signature, ratification, [acceptance, approval,] accession.

[Rejected; see paragraph 12, below.]

(b) *Ecuador and India (A/CONF.89/C.2/L.9)*

Add the following phrase at the end of the article:

"and he shall discharge all the functions of a depositary".

[Withdrawn; see paragraph 12, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

11. The Second Committee considered the article at its 1st and 2nd meetings, on 13 and 14 March 1978.

(ii) *Consideration*

12. At the 2nd meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.89/C.2/L.3), in so

far as it concerned the article on depositary, was rejected. At the same meeting, the amendment by Uganda (A/CONF.89/C.2/L.4) was rejected, the amendment by Ecuador and India (A/CONF.89/C.2/L.9) was withdrawn, and the text prepared by the Secretary-General was adopted.

ARTICLE []. IMPLEMENTATION

A. TEXT BY THE SECRETARY-GENERAL

13. The text prepared by the Secretary-General provided as follows:

"[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 [, acceptance, approval] 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. Declarations made at the time of signature are subject to confirmation upon ratification [, acceptance or approval].

"3. Declarations made under paragraph 1 of this article, and the confirmation of declarations made under paragraph 2 of this article, shall be in writing and shall be formally notified to the depositary.

"4. Declarations shall state expressly the territorial units to which the Convention applies.

"5. Declarations made under paragraph 1 of this article shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned, except for declarations of which the depositary only receives formal notification after such entry into force. The latter declarations shall take effect on the date the formal notification thereof is received by the depositary. If the formal notification of the latter declarations states that they are to take effect on a date specified therein, and such date is later than the date the formal notification is received by the depositary, the declarations shall take effect on such later date.

"6. If a Contracting State described in paragraph 1 of this article makes no declaration at the time of signature, ratification [, acceptance, approval] or accession, the Convention shall have effect within all territorial units of that State.]"

B. AMENDMENTS

14. Amendments were submitted to the article by India and Uganda.

15. These amendments were to the following effect:

Article as a whole

India (A/CONF.89/C.2/L.10)

Delete the article.

[Adopted; see paragraph 17, below.]

Paragraph 4

Uganda (A/CONF.89/C.2/L.5)

Delete paragraph 4.

[Rejected; see paragraph 17, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

16. The Second Committee considered the article at its 1st and 7th meetings, on 13 and 21 March 1978.

(ii) Consideration

17. At the 7th meeting, the amendment by Uganda (A/CONF.89/C.2/L.5) was rejected and the amendment by India (A/CONF.89/C.2/L.10) was adopted.

ARTICLE [] DATE OF APPLICATION

A. TEXT BY THE SECRETARY-GENERAL

18. The text prepared by the Secretary-General provided as follows:

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

B. AMENDMENTS

19. An amendment to the article was submitted jointly by Ecuador and India.

20. This amendment was to the following effect:

Ecuador and India (A/CONF.89/C.2/L.7)

Delete the article and add it as a new paragraph to the article on entry into force.

[Adopted; see paragraph 22, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

21. The Second Committee considered the article at its 1st and 2nd meetings, on 13 and 14 March 1978.

(ii) Consideration

22. At the 2nd meeting, the amendment by Ecuador and India (A/CONF.89/C.2/L.7) was adopted.

ARTICLE [] SIGNATURE, RATIFICATION, [ACCEPTANCE, APPROVAL,] ACCESSION

A. TEXT BY THE SECRETARY-GENERAL

23. The text prepared by the Secretary-General provided as follows:

"1. This Convention shall be open for signature by all States until . . . at the Headquarters of the United Nations, New York.

"2. This Convention shall be subject to ratification [acceptance or approval] by the signatory States.

"3. After . . . this Convention shall be open for accession by all States which are not signatory States.

"4. Instruments of ratification [acceptance, approval] and accession shall be deposited with the Secretary-General of the United Nations.

"* Same date to be inserted."

B. AMENDMENTS

24. Amendments to the article were submitted by the Union of Soviet Socialist Republics, Uganda and India.

25. These amendments were to the following effect:

(a) *Union of Soviet Socialist Republics (A/CONF.89/C.2/L.3)*

The article shall read:

"Article []. Signature, ratification, accession

"1. This Convention shall be open for signature by all States until . . . and shall thereafter remain open for accession.

"2. This Convention shall be subject to ratification by the signatory States.

"3. Instruments of ratification and accession shall be deposited with the Secretary-General of the United Nations, who shall be the depositary of this Convention."

[Rejected in part and withdrawn in part; see paragraph 27, below]

(b) *Uganda (A/CONF.89/C.2/L.4)*

Paragraph 4 shall be joined with the article on depositary so as to read:

"Instruments of ratification (acceptance, approval) and accession shall be deposited with the Secretary-General who is hereby designated as the depositary of this Convention."

[Rejected; see paragraph 27, below.]

(c) *India (A/CONF.89/C.2/L.8)*

The article shall read:

"Article []. Signature, ratification, accession

"1. This Convention shall be open for signature by all States for one year at the Headquarters of the United Nations, New York.

"2. This Convention shall be subject to ratification by the signatory States.

"3. After one year, this Convention shall be open for accession by all States which are not signatory States.

"4. Instruments of ratification and accession shall be deposited with the Secretary-General of the United Nations."

[Adopted with amendments; see paragraph 28, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

26. The Second Committee considered the article at its

1st, 2nd and 3rd meetings, on 13, 14 and 15 March 1978.

(ii) *Consideration*

27. At the 2nd meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.89/C.2/L.3), in so far as it concerned the relation of this article with the article on depositary, and the amendment by Uganda (A/CONF.89/C.2/L.4), were rejected. Also, the remaining provisions of the amendment by the Union of Soviet Socialist Republics were withdrawn.

28. At the 3rd meeting, the amendment by India (A/CONF.89/C.2/L.8) was adopted. However, at the same meeting, the Committee also adopted the following two modifications of that amendment, introduced orally by Brazil and Japan, respectively:

(a) The Convention shall be open for signature until 30 April 1979;

(b) The words "acceptance or approval" shall be inserted immediately after the word "ratification" in paragraphs 2 and 4 of this article.

ARTICLE []. ENTRY INTO FORCE

A. TEXT BY THE SECRETARY-GENERAL

29. The text prepared by the Secretary-General provided as follows:

Alternative A

"1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date of the deposit of the . . . instrument of ratification [, acceptance, approval] or accession.

"2. For each State which becomes a Contracting Party to this Convention after the date of the deposit of the . . . instrument of ratification [, acceptance, approval] or accession, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State."

Alternative B

"1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, the combined merchant fleets of which constitute not less than . . . per cent of the gross tonnage of the world's merchant fleets, have become Contracting States to it in accordance with article [].

"2. For the purposes of paragraph 1 of this article, the gross tonnage of a Contracting State, and the gross tonnage of the world's merchant fleets, shall be deemed to be that contained [in Lloyd's Register of Shipping, Statistical Tables, 197-, table 1, in respect of the merchant fleets of the world] [in the issue of Lloyd's Register of Shipping, Statistical Tables, table 1, in respect of the merchant fleets of the world, published immediately prior to the date on which the most recent Contracting State counted for the purposes of paragraph 1 of this article becomes a Contracting Party].

"3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State."

Alternative C

"1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, including . . . States each with not less than . . . gross tons of merchant shipping, have become Contracting States to it in accordance with article [].

"2. For the purposes of paragraph 1 of this article, the gross tons of merchant shipping of a Contracting State shall be deemed to be the tonnage [contained in Lloyd's Register of Shipping, Statistical Tables, 197-, table 1, in respect of the merchant fleets of the world] [contained in respect of a Contracting State, in the issue of Lloyd's Register of Shipping, Statistical Tables, table 1, in respect of the merchant fleets of the world, published most recently prior to the date on which that State becomes a Contracting State].

"3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State."

Alternative D

"1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States, at the ports of which are loaded and unloaded not less than . . . per cent of the total weight of goods loaded and unloaded in international sea-borne shipping, have become Contracting States to it in accordance with article [].

"2. For the purposes of paragraph 1 of this article, the total weight of goods loaded and unloaded in international sea-borne shipping, and the weight of goods loaded and unloaded in international sea-borne shipping at the ports of a Contracting State, shall be deemed to be that [contained in the United Nations Statistical Yearbook, 197-, table . . ., 'Analysis of goods loaded and unloaded in international sea-borne shipping' for the year 197-] [contained, in respect of the last year for which statistics are set forth, in the United Nations Statistical Yearbook published immediately prior to the date on which the most recent Contracting State counted for the purposes of paragraph 1 becomes a Contracting State, in the table entitled 'Analysis of goods loaded and unloaded in international sea-borne shipping'.]

"3. For each state which becomes a Contracting Party to this Convention during the course of, or after

the expiration of, the one year specified in paragraph 1 of this article, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State."

Alternative X

"[3.] [4.] A State which is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention, so that the 1924 Convention shall cease to have effect for that State simultaneously with the entry into force of this Convention with respect to that State. Prior to the date on which the last instrument of ratification [, acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention is deposited with the Secretary-General of the United Nations, for the purposes of this paragraph a State may request the Government of Belgium to consider the notification by that State of its denunciation of the 1924 Convention to be received on the first day of the month following that date.

"[4.] [5.] Upon the deposit of the last instrument of ratification [, acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention, the depositary of this Convention shall inform the Government of Belgium as the depositary of the 1924 Convention of the date of such deposit and of the names of Contracting States to the Convention on that date."

Alternative Y

"[3.] [4.] A State which is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

"[4.] [5.] Upon the entry into force of this Convention under paragraph 1 of this article, the depositary of this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

"[5.] [6.] The provisions of paragraph [3] [4] of this article shall apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924."

B. AMENDMENTS

30. Amendments to the article on entry into force were submitted by Indonesia, Japan, jointly by Bangladesh, India and Uganda, France, Australia, Brazil and Australia.

31. These amendments were to the following effect:

Alternatives A, B, C and D

(a) *Indonesia (A/CONF.89/C.2/L.2)*

Paragraph 1 of the article shall read:

"This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than . . . States become Contracting States."

[Adopted in principle; see paragraph 34, below.]

(b) *Japan (A/CONF.89/C.2/L.12)*

Alternative B shall be adopted with the following modifications:

(i) In paragraph 1, the figure "24" shall be entered in the first blank space and the figure "25" in the second space;

(ii) In paragraph 2, replace the two texts within brackets by the following:

"in Lloyd's Register of Shipping, Statistical Tables, 1977, table 2, 'World fleets—analysis by principal types', in respect of general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States of America reserve fleet and the American and Canadian Great Lakes fleets."

[Rejected; see paragraph 34, below.]

(c) *Bangladesh, India and Uganda (A/CONF.89/C.2/L.15)*

The first three paragraphs of the article shall read:

"1. This Convention shall enter into force on the thirtieth day of the month following the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

"2. For each State which becomes a Contracting Party to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the thirtieth day following the expiration of six months after the deposit of the appropriate instrument on behalf of that State.

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

[Withdrawn; see paragraph 34, below.]

(d) *France (A/CONF.89/C.2/L.16)*

Alternative C shall be adopted with the following modifications:

In paragraph 1 of alternative C the figure "15" shall be entered in the first blank space, the figure "5" in the second space and the words "1 million" in the third.

[Withdrawn; see paragraph 34, below.]

(c) *Australia (A/CONF.89/C.2/L.18)*

The first three paragraphs of the article shall read:

"1. This Convention shall enter into force on the first day of the month following the expiration of one year from the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

"2. For each State which becomes a Contracting Party to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

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

[Adopted; see paragraphs 34-35, below.]

Alternatives X and Y(a) *Brazil (A/CONF.89/C.2/L.20)*

The following new alternative Z shall be adopted:

"1. A State which is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall annex to its instrument of ratification, approval, acceptance or accession a notification of denunciation of the 1924 Convention, together with a request that the notification of denunciation be forwarded immediately by the depositary of this Convention to the Government of Belgium as the depositary of the said 1924 Convention so that in respect of the State making the request the denunciation would take effect simultaneously with the entry into force of this Convention in respect of that State.

"2. The provisions of paragraph 1 of this article shall apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924."

[Withdrawn; see paragraph 33, below.]

(b) *Australia (A/CONF.89/C.2/L.21)*

A new article on denunciation of other conventions shall be added, to read as follows:

"New Article []. Denunciation of other conventions"

"1. A State which is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall annex to its instrument of ratification, approval, acceptance or accession a notification of denunciation of the 1924 Convention.

"2. Such State shall deliver the notification of denunciation to the depositary of this Convention at such a time as will enable the depositary of this Convention to deliver the notification to the Govern-

ment of Belgium as depositary of the 1924 Convention on the first day of the month following its receipt by the depositary of this Convention.

"3. On the first day of the month following receipt by the depositary of this Convention of the twentieth instrument of ratification, approval, acceptance or accession, the depositary of this Convention shall deliver all the notifications of denunciation of the 1924 Convention he has received to the Government of Belgium as the depositary of the 1924 Convention.

"4. Thereafter the depositary of this Convention shall deliver each notification of denunciation of the 1924 Convention which he receives on the first day of the month following its receipt by him to the Government of Belgium as depositary of the 1924 Convention.

"5. The provisions of the preceding paragraphs of this article apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924."

[Rejected; see paragraph 33, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

32. The Second Committee considered the article at its 4th to 8th and 11th meetings between 16 and 24 March 1978.

(ii) *Consideration*

33. At the 7th meeting, the amendment by Brazil (A/CONF.89/C.2/L.20) was withdrawn in favour of the amendment by Australia (A/CONF.89/C.2/L.21). At the same meeting, the amendment by Australia (A/CONF.89/C.2/L.21) was rejected and alternative Y in the text prepared by the Secretary-General was adopted.

34. At the 11th meeting, the amendment by France (A/CONF.89/C.2/L.16) was withdrawn and the amendment by Bangladesh, India and Uganda (A/CONF.89/C.2/L.15) was withdrawn in favour of the amendment by Australia (A/CONF.89/C.2/L.18). At the same meeting, the Committee adopted the principle for entry into force contained in alternative A of the text prepared by the Secretary-General, as well as in the amendments by Indonesia (A/CONF.89/C.2/L.2) and Australia (A/CONF.89/C.2/L.18), and thereby rejected the amendment by Japan (A/CONF.89/C.2/L.12). Also at the 11th meeting, the formulation in the amendment by Australia (A/CONF.89/C.2/L.18) was adopted, without reference however to the number of States mentioned therein.

35. At the 11th meeting, the Committee, by a vote of 38 to 14, with 2 abstentions, rejected the oral amendment by Canada that the number of States for entry into force should be 30. At the same meeting, the Committee, by a vote of 27 to 13, with 11 abstentions, rejected the oral amendment by Uganda that the number of States for entry into force should be 25. Also at the 11th meeting, the Committee, by a vote of 40 to 5, with 7 abstentions,

adopted the amendment by Australia (A/CONF.89/C.2/L.18) also in regard of the number of States, 20, proposed therein for entry into force.

ARTICLE [] DOMESTIC CARRIAGE

A. TEXT BY THE SECRETARY-GENERAL

36. The text prepared by the Secretary-General provided as follows:

"A Contracting State may apply, by its national legislation, the rules of this Convention to domestic carriage."

B. AMENDMENTS

37. No amendments were submitted in writing to the article on domestic carriage. However, Norway proposed orally that this article be deleted.

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

38. The Second Committee considered the article at its 6th meeting, on 20 March 1978.

(ii) Consideration

39. At the 6th meeting, the amendment introduced orally by Norway, to the effect that the article be deleted, was adopted.

ARTICLE [] MULTIMODAL TRANSPORT

A. TEXT BY THE SECRETARY-GENERAL

40. The text prepared by the Secretary-General provided as follows:

Alternative A¹

"1. Subject to paragraph 3 of this article the provisions of this Convention shall apply to all contracts for the carriage of goods performance of which requires that the goods be carried by sea between two different States, but shall so apply only to the extent of such sea carriage.

"2. This Convention shall apply to such sea carriage as if that sea carriage were a contract for carriage of goods by sea between ports in two different States within the meaning of article 2, paragraph 1, of this Convention.

"3. The operation of this article may be superseded, in relation to any particular type of contract for the carriage of goods, by the entry into force of any subsequent convention, if it is one regulating that type of contract and if it contains a provision for the supersession of this Convention."

¹ This alternative was proposed by the representative of Australia during the consideration of the draft provisions concerning implementation, reservations and other final clauses (A/CN.9.115 and Add.1) at the ninth session of UNCITRAL.

Alternative B²

"The provisions of this Convention shall not apply to carriage of goods by sea in connexion with a multimodal transport of goods provided that the operator of such transport is liable for the whole transport under an international convention on multimodal transport of goods concluded under the auspices of the United Nations or any of its specialized agencies or under international law giving effect thereto."

Alternative C³

"Nothing in this Convention shall prevent the application of an international convention relating to contracts for carriage of goods by two or more modes of transport concluded under the auspices of the United Nations or any of its specialized agencies."

B. AMENDMENTS

41. Amendments to the article were submitted by, jointly the Federal Republic of Germany and the Netherlands, Japan, Australia, the United Kingdom, jointly India, Iraq, Pakistan, Philippines, Sierra Leone and Uganda, which countries Zaire later joined, France and Sweden.

42. These amendments were to the following effect:

(a) *Federal Republic of Germany and Netherlands (A/CONF.89/C.2/L.11)*

(i) Add the following paragraph to alternative B:

"The provisions of this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of goods by another mode of transport, to a civil liability régime under the provisions of such convention, in so far as those provisions have mandatory application to carriage of goods by sea."

(ii) That if alternative B is not adopted, this paragraph be added to alternative A or C or to any other formulation of the article on multimodal transport.

[Withdrawn; see paragraph 46, below.]

(b) *Japan (A/CONF.89/C.2/L.13)*

The article shall read:

"Notwithstanding the provisions of paragraph 5 of article 1, this Convention shall cease to apply to a contract which involves carriage by sea and also carriage by some other means when and after an international convention regulating such type of contract enters into force, among the State Parties of such convention."

[Withdrawn; see paragraph 46, below.]

(c) *Australia (A/CONF.89/C.2/L.17)*

The article shall read:

"In the event that there comes into force a Convention relating to the rights and duties of parties to contracts for the carriage of goods which involve

² This alternative was similarly proposed by the representative of the Federal Republic of Germany.

³ This alternative was similarly proposed by the representative of Norway.

carriage by sea and also carriage by some other means, this Convention shall not apply to such carriage between States Parties to such Convention provided that the carrier is liable for the whole carriage under such Convention."

[Withdrawn; see paragraph 46, below.]

(d) *United Kingdom (A/CONF.89/C.2/L.19)*

The article shall read:

"This Convention shall not affect the application of any international convention which applies mandatorily to contracts for carriage of goods by two or more modes of transport including sea transport or to the carriage of goods thereunder, or of any national law giving effect to such international convention."

[Withdrawn; see paragraph 46, below.]

(e) *India, Iraq, Pakistan, Philippines, Sierra Leone, Uganda and Zaire (A/CONF.89/C.2/L.22)*

Delete the article.

[Withdrawn; see paragraph 46, below.]

(f) *France (A/CONF.89/C.2/L.23)*

The article shall read:

"Nothing in this Convention shall prevent the application of an international convention which applies mandatorily to [contracts for] carriage of goods by two or more modes of transport, including sea transport, or of any national law giving effect to such a convention."

[Withdrawn; see paragraph 46, below.]

(g) *Sweden (A/CONF.89/C.2/L.25)*

Alternative C shall be adopted, with the following addition: "or an international convention of a regional character relating to carriage of goods by rail".

[Withdrawn; see paragraph 46, below.]

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

43. The Second Committee considered the article at its 7th to 10th meetings between 21 and 24 March 1978.

(ii) Consideration

44. At the 8th meeting, Australia withdrew alternative A in favour of the amendment by Australia (A/CONF.89/C.2/L.17), the Federal Republic of Germany withdrew alternative B in favour of the amendment by the Federal Republic of Germany and the Netherlands (A/CONF.89/C.2/L.11) and Norway withdrew alternative C in favour of the amendment by Sweden (A/CONF.89/C.2/L.25).

45. At the 9th meeting, the Committee decided to include a savings clause for certain existing international or regional conventions and established an *ad hoc* Working Group, composed of the representatives of Cuba, Czechoslovakia, Ecuador, France, the German Democratic Republic, Ghana, India, the Netherlands, Thailand and the United Kingdom, to consider the formulation of such a clause. Also at the 9th meeting, the Committee decided not to include a provision on the relationship of

this Convention to a future convention on multimodal transport.

46. At the 10th meeting, the amendments by the Federal Republic of Germany and the Netherlands (A/CONF.89/C.2/L.11), Japan (A/CONF.89/C.2/L.13), Australia (A/CONF.89/C.2/L.17), the United Kingdom (A/CONF.89/C.2/L.19), India, Iraq, Pakistan, the Philippines, Sierra Leone, Uganda and Zaire (A/CONF.89/C.2/L.22), France (A/CONF.89/C.2/L.23) and Sweden (A/CONF.89/C.2/L.25) were withdrawn in favour of the following draft text (A/CONF.89/C.2/L.27), prepared by the *ad hoc* Working Group:

"Article [] Relationship with other transport conventions

"Nothing contained in this Convention shall prevent the Contracting States from applying any other international convention already in force at the date of entry into force of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision shall also apply to any subsequent revision or amendment of such international convention."

47. At the 10th meeting, the Committee, by a vote of 31 to 11, with 11 abstentions, decided to adopt the substance of the draft article proposed by the *ad hoc* Working Group (A/CONF.89/C.2/L.27). At the same meeting, the Committee, by a vote of 22 in favour, 22 against, and 10 abstentions, did not adopt the oral proposal by the Philippines to delete the second sentence in the text by the Working Group. Also at the 10th meeting, the Committee, by a vote of 21 to 18, with 15 abstentions, decided to adopt the oral amendment by Australia to delete the words "entry into force of" in the first sentence of the text and thus adopted, as amended, the draft article prepared by the *ad hoc* Working Group.

ARTICLE [] DENUNCIATION

A. TEXT BY THE SECRETARY-GENERAL

48. The text prepared by the Secretary-General provided as follows:

"1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

"2. The denunciation shall take effect . . . after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification has reached the depositary."

B. AMENDMENTS

49. No amendments to the article were submitted in writing. However, an oral proposal by the Netherlands, amended orally by Norway, called for the insertion of the words "on the first day of the month following the expiration of one year" in the blank space in paragraph 2 of the article.

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

50. The Second Committee considered the article at its 7th meeting, on 21 March 1978.

(ii) Consideration

51. At the 7th meeting, the text prepared by the Secretary-General, as orally amended by the Netherlands and Norway, was adopted.

NEW ARTICLE []. REVISION AND AMENDMENT

A. PROPOSALS

52. Proposals concerning a new article on revision of the Convention and on effect of amendments of the Convention were submitted by the German Democratic Republic, the United Republic of Tanzania, France and Norway.

53. These proposals were to the following effect:

(a) *German Democratic Republic (A/CONF.89/C.2/L.6)*

"New article []"

"1. The entry into force of any amendment, revision or any other changes of the Convention shall lead to the consequences that this Convention shall cease to have effect also for those member States of this Convention which do not ratify or accede to the new instrument.

"2. Any revision or amendment of this Convention shall enter into force if a two-thirds majority of member States of this Convention have ratified or acceded to the new instrument."

[Withdrawn; see paragraph 54, below.]

(b) *United Republic of Tanzania (A/CONF.89/C.2/L.14)*

Add a new article to the effect that a review conference could be convened three years after the coming into force of the Convention.

[Withdrawn; see paragraph 54, below.]

(c) *France (A/CONF.89/C.2/L.24)*

*"New article []"**"Revision of the amounts of the limit of liability"*

"The amount specified in article . . . of this Convention may be modified in conformity with the following provisions:

"(a) The 'depository Government' convenes the Contracting Parties in a review conference every five years as from the signature of this Convention.

"If the Convention has not entered into force in the five years following its signature, the first review conference will take place within one year from the entry into force of the Convention. The subsequent

review conferences will take place every five years as from that date.

"(b) The sole object of the review conference will be to modify, if appropriate, the amount of the limit specified in article . . . of this Convention.

"(c) If the review conference has adopted by a two-thirds majority a new amount of the limit, the amendment will enter into force in the manner specified below:

"(i) The amendment is communicated by the 'depository Government' to all the Contracting Parties for acceptance and to all the States signatories of the Convention for information.

"(ii) The amendment is deemed to have been accepted on the expiry of six months from its adoption, unless during that period at least one third of the Contracting Parties have communicated an objection to the 'depository Government'.

"(iii) An amendment which has been accepted in the manner aforesaid will enter into force on the sixtieth day after its acceptance with respect to all the Contracting Parties other than those which, before the expiry of this period, have made a declaration stating that they are not bound by the amendment.

"(d) Any State which becomes a party to the Convention after the entry into force of an amendment of the nature described above is bound by the Convention as amended."

[Referred to First Committee; see paragraph 56, below.]

(d) *Norway (A/CONF.89/C.2/L.26)*

"Article [] Revision and amendment"

"1. A conference for the purpose of revising or amending this Convention may be convened by the depository.

"2. The depository shall convene a Conference of the Contracting States to this Convention for revising or amending it at the request of not less than [one third] of the Contracting States.

"3. A decision to amend the Convention shall be taken by a two-thirds majority of the Contracting States present and voting in such Conference.

"4. Any amendment adopted in accordance with the provisions of this article shall enter into force on the first day of the month one year after the deposit of the instruments of ratification, acceptance, approval or accession by [two thirds] of the Contracting States.

"5. [5. After the entry into force of an amendment, the Convention shall cease to have effect for any State party to the Convention which has not ratified, accepted, approved or acceded such amendment.]

"6. [5.] After the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended."

[Withdrawn in part and approved in part; see paragraph 57, below.]

B. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

54. The Second Committee considered the proposals concerning a new article on revision and amendment at its 11th meeting, on 24 March 1978.

(ii) Consideration

55. At the 11th meeting, the proposals by the German Democratic Republic (A/CONF.89/C.2/L.6) and the United Republic of Tanzania (A/CONF.89/C.2/L.14) were withdrawn in favour of the proposal by Norway (A/CONF.89/C.2/L.26).

56. At the 11th meeting, the Committee decided to refer to the First Committee the proposal by France (A/CONF.89/C.2/L.24). At the same meeting, the representative of India submitted the following oral proposal:

"Article []. Revision

"1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

"2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of that request."

57. The oral proposal by India was rejected at the 11th meeting, by a vote of 20 to 11, with 20 abstentions. At the same meeting, after Norway withdrew paragraphs 1, 3, 4 and 5 of its proposal contained in document A/CONF.89/C.2/L.26, the Committee adopted paragraph 2 of that document by a vote of 46 to 1, with 1 abstention, and adopted paragraph 6 of the same document by a vote of 42 to 5, with 7 abstentions.

FINAL FORMAL CLAUSES OF THE CONVENTION

A. TEXT BY THE SECRETARY-GENERAL

58. The text prepared by the Secretary-General provided as follows:

"Done at . . . in a single original, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic."

B. AMENDMENTS

59. No amendments were submitted concerning the final, formal clauses of the Convention.

C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) Meetings

60. The Second Committee considered the final, formal clauses of the Convention at its 7th and 11th meetings, on 21 and 24 March 1978.

(ii) Consideration

61. At the 7th meeting, the Committee decided to fill the blank space in the text prepared by the Secretary-General with the word "Hamburg" and then adopted that text.

62. At the 11th meeting, the Committee decided to add after the word "Hamburg", the words "this thirty-first day of March, one thousand nine hundred and seventy-eight". At the same meeting, the Committee decided to add the following phrase at the end of the Convention:

"IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention."

G. DRAFT PROVISIONS OF THE CONVENTION ON THE CARRIAGE OF GOODS BY SEA APPROVED BY THE DRAFTING COMMITTEE

Documents A/CONF.89/12 and Add. 1-6

Document A/CONF.89/12

[Original: English]
[28 March 1978]

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or part of the carriage, has been entrusted by the carrier, and includes

any other person to whom such performance has been entrusted.

3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.¹

4. "Consignee" means the person entitled to take delivery of the goods.

5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes

¹ This paragraph was approved by the First Committee at its 34th meeting, and was not reviewed by the Drafting Committee.

such article of transport or packaging if supplied by the shipper.

6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage 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 order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, *inter alia*, telegram and telex.

Article 2. Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

- (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
- (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
- (c) one of the optional ports of discharge provided for in the contract of carriage by sea 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 by sea is issued in a Contracting State, or
- (e) the bill of lading or other document evidencing the contract of carriage by sea 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 this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

- (a) from the time he has taken over the goods from:
 - (i) the shipper, or a person acting on his behalf; or
 - (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;
- (b) until the time he has delivered the goods:
 - (i) by handing over the goods to the consignee; or
 - (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
 - (iii) 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 paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or the agents, respectively of the carrier or the consignee.

Document A/CONF.89/12/Add.1

[Original: English]
[29 March 1978]

Article 5. Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

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 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4.(a) The carrier is liable

- (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If 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 is presumed that the loss, damage or delay in delivery was so caused unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

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

8. Where, under paragraph 1 of this article, a carrier is liable for compensation in respect of loss of or damage to the goods, such compensation is to be calculated by reference to the value of such goods at the place and time at which the goods are delivered in accordance with article 4 or should have been so delivered. The value of the goods is to be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

Article 6. Limits of liability

1.(a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an

amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(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.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1(a) of this article, the following rules 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, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in such article of transport are 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. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7. Application to non contractual claims

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

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, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in

article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

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[29 March 1978]

Article 9. Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

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

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or 8, as the case may be.

4. Carriage of goods on deck contrary to express agreement for the carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10. Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier

assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

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

Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no legal proceedings can be brought against the actual carrier before a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence shall rest upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

Document A/CONF.89/12/Add.3

[Original: English]
[29 March 1978]

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, the precautions to be taken. If

the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

(a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and

(b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

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[Original: English]
[29 March 1978]

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

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

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15. Contents of bill of lading

1. The bill of lading must include, *inter alia*, the following particulars:

(a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character 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;

(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 by sea 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 by sea;

(h) the number of originals of the bill of lading, if more than one;

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

(j) the signature of the carrier or a person acting on his behalf;

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

(l) the statement referred to in paragraph 3 of article 23;

(m) the statement, if applicable, that the goods shall or may be carried on deck; and

(n) the date or the period of delivery of goods at the port of discharge if expressly agreed upon between the parties.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must 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 must surrender such document in exchange for a "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 does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph [7] of article 1.

Article 16. Bills of lading, reservations and evidentiary effect

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 or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately 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 or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. When the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

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

(a) the bill of lading is *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 is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k), of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17. Guarantees by the shipper

1. The shipper is 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 must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea 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 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, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless 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 a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case of intended fraud referred to in paragraph 3 of this article, the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18. Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

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PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport 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 consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of joint survey or inspection by the parties, 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 carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's

behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20. Limitation of actions

1. Any action relating to carriage of goods 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 carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

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. An action for indemnity by a person held liable 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 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

(a) the principal place of business or, in the absence thereof, the habitual 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 the port of discharge; or

(d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this article, an action may be instituted before the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. 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 of this article 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 other-

wise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

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

(b) For the purpose of this article, the institution of measures with a view to obtaining enforcement of a judgement is not to 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, or to a court in another country, in accordance with paragraph 2 (a) of this article, is not to be considered as 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 institute an action, is effective.

Article 22. Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a State within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

(ii) 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

(iii) the port of loading or the port of discharge; or

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraphs 3 and 4 of this article

are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea 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. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is 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. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must 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 paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant 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 must, 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 are to be determined in accordance with the law of the State where proceedings are instituted.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants

and agents provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as is either the Paris Convention or the Vienna Convention.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

Article 26. Unit of Account

1. The unit of account referred to in article 6 of this Convention is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the special drawing right, of a Contracting State which is a member of the International Monetary Fund 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 value of a national currency, in terms of the special drawing right, of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article 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 the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

Document A/CONF.89.12 Add. 6

[Original: English]
[29 March 1978]

PART VII. FINAL CLAUSES

Article 27. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 28. Signature, ratification, acceptance, approval, accession

1. This Convention shall be open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 29. Reservations

No reservations may be made to this Convention.

Article 30. Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of one year from the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting Party to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the

first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 31. Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State Party to the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

Article 32. Relationship with other transport conventions

Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 33. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 34. Revision of the limitation amounts and unit of account or monetary unit

[Not considered by the Drafting Committee]

Article 35. Denunciation

1. A Contracting State may denounce this Convention

at any time by means of a notification in writing addressed to the depositary.

2. The denunciation shall take effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification has reached the depositary.

Final, formal clauses

Done at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

H. PROPOSALS AND AMENDMENTS SUBMITTED TO THE PLENARY CONFERENCE

Bangladesh, India, Kenya, Mauritius, Pakistan, Syrian Arab Republic, Uganda and United Republic of Tanzania: proposal for new articles

Document A CONF.89 L.2

[Original: English]
[27 March 1978]

New article []. Revision

1. After the expiration of a period of five years from the date on which this Convention enters into force, a request for the revision of this Convention may be made by any Contracting Party by means of a notification, in writing, addressed to the Secretary-General of the United Nations, and the General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of that request.

2. A review conference shall be convened by the depositary, if a request is received from not less than one third of the Contracting Parties, for reviewing the working of the Convention and to consider and adopt appropriate amendments.

3. The depositary shall, four years from the date on which the present Convention enters into force, seek the views of all States who are Parties to the Convention at that time regarding any need for revision of this Convention and shall, on the basis of the views received, prepare and circulate the proposals to all concerned parties.

New article []. Amendment

1. A decision to amend this Convention shall be taken by a two-thirds majority of the Contracting States.

2. After the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession shall be deemed to apply to the Convention as amended.

NOTE:

- A. The article on "Revision" is based on the conventional texts adopted generally in respect of revision in international conventions and also on the proposal made by Tanzania (A/CONF.89/C.2/L.14).
- B. The article on "Amendment" is based on the proposal made by Norway (A/CONF.89/C.2/L.26) and is in accordance with the general pattern adopted in other international conventions.
- C. Even though a similar proposal for revision and amendment was introduced by India, orally initially and thereafter in writing in accordance with the directions of the Chairman, when the Second Committee considered the proposal the first part of the proposal was put to the vote without the second part being brought to the notice of the Committee. The proposal, obviously incomplete, was rejected in the voting.
- D. Hence this composite proposal (revised) for "Revision" and "Amendment" is before the Plenary Session.

Australia and Hungary: amendment to article 5, paragraph 8***Document A/CONF.89/L.3***

[Original: English]
[29 March 1978]

Add the following text at the end of paragraph 8 of article 5:

"Nothing in this paragraph shall be construed as restricting the right to obtain compensation, in accordance with the provisions of this Convention, for loss additional to the value of goods lost or damaged."

Mauritius, Union of Soviet Socialist Republics and United Kingdom of Great Britain and Northern Ireland: amendment to article 15***Document A/CONF.89/L.4***

[Original: English]
[29 March 1978]

Add to article 15 the following new subparagraph (o):

"(o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6."

Malaysia and Singapore: amendment to article 1, paragraph 7***Document A/CONF.89/L.5***

[Original: English]
[29 March 1978]

Delete the definition of "shipper".

Australia, Germany, Federal Republic of, Ghana, Nigeria, Norway, Singapore, Sweden and Uganda: amendment to article [Revision of the limitation amounts], paragraph 4***Document A/CONF.89/L.6***

[Original: English/French]
[29 March 1978]

Amend the end of the first sentence to read: "by two thirds or 20 of the Contracting States, whichever is the least."

Australia, Brazil, Bulgaria, France, Ghana and Italy: proposal for a new paragraph to article Y***Document A/CONF.89/L.7***

[Original: English/French]
[29 March 1978]

Add the following new paragraph:

"However, in order to enable the transition with the 1924 Convention and the 1968 Protocol, any Contracting State may, upon depositing its instrument of

ratification, acceptance or approval of, or accession to, the new Convention, defer, during a maximum period of five years from this depositing, the denunciation of the Brussels Convention of 1924 or of the Protocol of 1968. During this period, the States concerned will apply to the exclusion of any other one the present Convention to States having ratified it."

The Secretary-General: draft preamble

Document A/CONF.89/L.8

[Original: English]
[29 March 1978]

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

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

Australia and Germany, Federal Republic of: amendment to article 32

Document A/CONF.89/L.9

[Original: English]
[30 March 1978]

Add the following new paragraph 2:

"Nothing in this Convention shall prevent the application of an international convention relating to contracts for multimodal carriage of goods concluded under the auspices of the United Nations."

FINAL ACT OF THE UNITED NATIONS CONFERENCE ON THE CARRIAGE OF GOODS BY SEA

Document A/CONF.89/13

1. The General Assembly of the United Nations, having considered chapter IV of the report of the United Nations Commission on International Trade Law on the work of its ninth session, in 1976, which contained a draft Convention on the Carriage of Goods by Sea,¹ decided, by its resolution 31/100 of 15 December 1976, that an international conference of plenipotentiaries should be convened in 1978 in New York, or at any other suitable place for which the Secretary-General might receive an invitation, to consider the question of the carriage of goods by sea and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, the Secretary-General received and accepted an invitation from the Government of the Federal Republic of Germany that the Conference be convened at Hamburg.

2. The United Nations Conference on the Carriage of Goods by Sea was held at Hamburg, Federal Republic of Germany, from 6 to 31 March 1978.

3. Seventy-eight States were represented at the Conference, as follows: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Colombia, Cuba, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Liberia, Madagascar, Malaysia, Mauritius, Mexico, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Sierra Leone, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Venezuela, Yugoslavia and Zaire.

4. One State, Guatemala, sent an observer to the Conference.

5. The General Assembly requested the Secretary-General to invite representatives of organizations that had received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices, in

the capacity of observers, in accordance with General Assembly resolution 3237 (XXIX) of 22 November 1974; to invite representatives of the national liberation movements recognized in its region by the Organization of African Unity, in the capacity of observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974; and to invite the specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and other interested intergovernmental organizations, and interested non-governmental organizations, to be represented at the Conference by observers. The following intergovernmental and non-governmental organizations accepted this invitation and were represented by observers at the Conference:

Specialized agencies

International Monetary Fund

Intergovernmental Maritime Consultative Organization

United Nations Organs

United Nations Conference on Trade and Development

Economic Commission for Africa

Other intergovernmental organizations

Caribbean Community and Common Market

Central Office for International Railway Transport

Council of Europe

Organization for Economic Co-operation and Development

Non-governmental organizations

Baltic and International Maritime Conference

International Chamber of Commerce

International Chamber of Shipping

International Maritime Committee

International Shipowners' Association

International Union of Marine Insurance

Latin American Association of Shipowners.

6. The Conference elected Mr. Rolf Herber (Federal Republic of Germany) as President.

7. The Conference elected as Vice-Presidents the representatives of the following States: Algeria, Argentina, Australia, Belgium, Canada, Cuba, Denmark, Ecuador, German Democratic Republic, Greece, Indonesia, Iraq, Italy, Nigeria, Pakistan, Philippines, Poland, Senegal, Turkey, Uganda, Union of Soviet Socialist Republics and Venezuela.

¹See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17*. The draft Convention is reproduced above under the symbol A/CONF.89/5.

8. The following Committees were set up by the Conference:

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, and the Chairmen of the First and the Second Committees.

First Committee

Chairman: Mr. Mohsen Chafik (Egypt)

Vice-Chairman: Mr. S. Suchorzewski (Poland)

Rapporteur: Mr. D. M. Low (Canada)

Second Committee

Chairman: Mr. D. Popov (Bulgaria)

Vice-Chairman: Mr. Th. J. A. M. de Bruijn (Netherlands)

Rapporteur: Mr. N. Gueiros (Brazil)

Drafting Committee

Chairman: Mr. R. K. Dixit (India)

Members: Argentina, Austria, Ecuador, France, German Democratic Republic, Hungary, India, Iraq, Japan, Kenya, Norway, Peru, Sierra Leone, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

Credentials Committee

Chairman: Mrs. Helilah Haji Yusof (Malaysia)

Members: Bangladesh, Canada, Czechoslovakia, Ecuador, Madagascar, Malaysia, Nigeria, Syrian Arab Republic and United States of America.

9. The Secretary-General of the United Nations was represented by Mr. Erik Suy, the Legal Counsel of the United Nations, from 6 to 11 March, and subsequently by Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs of the United Nations. Mr. Willem Vis, Chief of the International Trade Law Branch of the General Legal Division of the Office of Legal Affairs of the United Nations, acted as Executive Secretary.

10. The General Assembly, by its resolution 31/100 of 15 December 1976 convening the Conference, referred to the Conference, as the basis for its consideration of the carriage of goods by sea, the draft Convention on the Carriage of Goods by Sea contained in chapter IV of the report of the United Nations Commission on International Trade Law on the work of its ninth session (A/CONF.89/5), the text of draft provisions concerning implementation, reservations and other final clauses prepared by the Secretary-General (A/CONF.89/6 and Add.1 and 2), the comments and proposals by Governments and international organizations (A/CONF.89/7 and Add.1) and an analysis of these comments and proposals prepared by the Secretary-General (A/CONF.89/8).

11. The Conference assigned to the First Committee the text of the draft Convention on the Carriage of Goods

by Sea and the draft provision on reservations from the draft provisions concerning implementation, reservations and other final clauses prepared by the Secretary-General. The Conference assigned to the Second Committee the other draft provisions concerning implementation, reservations and other final clauses.

12. On the basis of the deliberations recorded in the summary records of the Conference (A/CONF.89/SR.1-10), the summary records of the First Committee (A/CONF.89/C.1/SR.1-37) and its report (A/CONF.89/10) and the summary records of the Second Committee (A/CONF.89/C.2/SR.1-11) and its report (A/CONF.89/11), the Conference drew up the United Nations Convention on the Carriage of Goods by Sea, 1978.

13. That Convention, the text of which is annexed to this Final Act (annex 1), was adopted by the Conference on 30 March 1978 and was opened for signature at the concluding meeting of the Conference, on 31 March 1978. It will remain open for signature at United Nations Headquarters in New York until 30 April 1979, after which date it will be open for accession, in accordance with its provisions.

14. The Convention is deposited with the Secretary-General of the United Nations.

15. The Conference also adopted a "Common understanding" and a resolution, the texts of which are also annexed to this Final Act (annexes II and III).

IN WITNESS WHEREOF the representatives have signed this Final Act.

Done at Hamburg, Federal Republic of Germany, this thirty-first day of March, one thousand nine hundred and seventy-eight, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

ANNEXES

Annex 1

United Nations Convention on the Carriage of Goods by Sea, 1978

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

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

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.

3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose

behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

4. "Consignee" means the person entitled to take delivery of the goods.

5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage 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 order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, *inter alia*, telegram and telex.

Article 2. Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

- (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State; or
- (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State; or
- (c) one of the optional ports of discharge provided for in the contract of carriage by sea 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 by sea is issued in a Contracting State; or
- (e) the bill of lading or other document evidencing the contract of carriage by sea 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 this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

- (a) from the time he has taken over the goods from:
 - (i) the shipper, or a person acting on his behalf; or
 - (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;
- (b) until the time he has delivered the goods:
 - (i) by handing over the goods to the consignee; or

- (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

- (iii) 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 paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

Article 5. Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the 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 or 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 at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. (a) The carrier is liable

- (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to 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 is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

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

Article 6. Limits of liability

1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(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.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this article, the following rules 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, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as well as of delay in transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

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

3. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7. Application to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss of or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery 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 carrier, 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 carrier is entitled to invoke under this Convention.

3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9. Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

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

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.

4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10. Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty

under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

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

Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

(a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and

(b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to

contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

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

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15. Contents of bill of lading

1. The bill of lading must include, *inter alia*, the following particulars:

(a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character 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;

(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 by sea 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 by sea;

(h) the number of originals of the bill of lading, if more than one;

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

(j) the signature of the carrier or a person acting on his behalf;

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

(l) the statement referred to in paragraph 3 of article 23;

(m) the statement, if applicable, that the goods shall or may be carried on deck;

(n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and

(o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must 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 must surrender such document in exchange for a "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 does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16. Bills of lading: reservations and evidentiary effect

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 or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately 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 or such other person must insert in the bill of lading a reservation specifying these

inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

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

(a) the bill of lading is *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 is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k), of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17. Guarantees by the shipper

1. The shipper is 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 must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea 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 resulting from the issuance of the bill of lading by the carrier, or by 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, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless 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 a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case of intended fraud referred to in paragraph 3 of this article, the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18. Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport 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 consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, 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 carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20. Limitation of actions

1. Any action relating to carriage of goods 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 carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

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. An action for indemnity by a person held liable 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 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

(a) the principal place of business or, in the absence thereof, the habitual 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 the port of discharge; or

(d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable

rules of the law of that State and of international law. 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 of this article 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 of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

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

(b) For the purpose of this article, the institution of measures with a view to obtaining enforcement of a judgement is not to 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, or to a court in another country, in accordance with paragraph 2 (a) of this article, is not to be considered as 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 by sea has arisen, which designates the place where the claimant may institute an action, is effective.

Article 22. Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a State within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

(ii) 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

(iii) the port of loading or the port of discharge; or

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

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

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea 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. A clause assigning benefit of insurance of goods in favour of the carrier, or any similar clause, is 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. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must 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 paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant 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 must, 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 are to be determined in accordance with the law of the State where proceedings are instituted.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as is either the Paris Convention or the Vienna Convention.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26. Unit of account

1. The unit of account referred to in article 6 of this Convention is the special drawing right as defined by the International Monetary Fund.

The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the special drawing right, of a Contracting State which is a member of the International Monetary Fund 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 value of a national currency, in terms of the special drawing right, of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article 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 the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

PART VII. FINAL CLAUSES

Article 27. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 28. Signature, Ratification, Acceptance, Approval, Accession

1. This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 29. Reservations

No reservations may be made to this Convention.

Article 30. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 31. Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State Party to the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States Parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

4. Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

Article 32. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 33. Revision of the limitation amounts and unit of account or monetary unit

1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 34. Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

*Annex II**Common understanding adopted by the United Nations Conference on the Carriage of Goods by Sea*

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.

*Annex III**Resolution adopted by the United Nations Conference on the Carriage of Goods by Sea**The United Nations Conference on the Carriage of Goods by Sea.*

Noting with appreciation the kind invitation of the Federal Republic of Germany to hold the Conference in Hamburg.

Being aware that the facilities placed at the disposal of the Conference and the generous hospitality bestowed on the participants by the Government of the Federal Republic of Germany and by the Free and Hanseatic City of Hamburg have in no small measure contributed to the success of the Conference.

Expresses its gratitude to the Government and people of the Federal Republic of Germany, and

Having adopted the Convention on the Carriage of Goods by Sea on the basis of a draft Convention prepared by the United Nations Commission on International Trade Law at the request of the United Nations Conference on Trade and Development,

Expresses its gratitude to the United Nations Commission on International Trade Law and to the United Nations Conference on Trade and Development for their outstanding contribution to the simplification and harmonization of the law of the carriage of goods by sea, and

Decides to designate the Convention adopted by the Conference as the: "United Nations Convention on the Carriage of Goods by Sea, 1978", and

Recommends that the rules embodied therein be known as the "Hamburg Rules".

Part II
SUMMARY RECORDS

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st plenary meeting

Monday, 6 March 1978, at 11.30 a.m.

Temporary President: Mr. E. SUY
(The Legal Counsel of the United Nations,
representing the Secretary-General).

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.1

ITEM 1 OF THE PROVISIONAL AGENDA

Opening of the Conference

1. The TEMPORARY PRESIDENT, speaking as the representative of the Secretary-General of the United Nations, thanked the Government of the Federal Republic of Germany for its generous invitation to hold the Conference in its territory and the authorities of the city of Hamburg for their kind hospitality. He also thanked the Minister of Justice and the other dignitaries of the Federal Republic of Germany who were honouring the opening meeting with their presence, thereby demonstrating the importance attached by their country to the work of the Conference. He conveyed the Secretary-General's regrets at not being able to attend the meeting personally, and welcomed all the participants on his behalf.

2. On behalf of the Secretary-General, he declared open the United Nations Conference on the Carriage of Goods by Sea, convened pursuant to General Assembly resolution 31/100 of 15 December 1976, and invited the participants to observe a minute of silence for prayer or meditation.

3. *The Conference observed a minute of silence.*

4. The TEMPORARY PRESIDENT then read out the following message from the Secretary-General to the Conference:

"The United Nations Conference on the Carriage of Goods by Sea, which opens today, is an important event in the activities of the United Nations. When in 1966 the General Assembly established the United Nations Commission on International Trade Law, it did so in the belief that international trade co-operation among States was an important factor in the promotion of friendly relations, and that the interests of all peoples, and particularly those of developing countries, demanded the betterment of conditions favouring the development of world trade. I have little doubt that the work of this Conference, in unifying the legal rules relating to the carriage of goods by sea on the basis of the work of the Commission, will be regarded

as a significant step towards the achievement of these objectives.

"The Conference meets in Hamburg because of the kind invitation extended by the Federal Republic of Germany—an invitation which is itself an acknowledgment of the importance of the work of the Conference.

"During the last session of the General Assembly, many delegations expressed their appreciation of this friendly and generous gesture. It is, however, fitting that, on behalf of the United Nations, I should thank the Federal Republic of Germany again at the opening of the Conference. I have little doubt that everything has been done to make the stay in Hamburg of all the participants as pleasant as possible. I wish the Conference all success in its endeavours."

5. The task of the Conference was to adopt a convention that could replace the International Convention for the Unification of certain Rules relating to Bills of Lading, signed in Brussels in 1924, and the Protocol which amended it, signed in 1968, also in Brussels, for great political, economic and technological advances had occurred since then. Contrary to the practice followed in the case of the Conference that had adopted the Brussels Convention, on the present occasion all States had been invited during the preparatory stages to submit their comments and observations, which had been taken into account in elaborating the basic text currently before the Conference (A/CONF.89/5). Furthermore, the numerous States participating in the Conference were representative of the various regions and of the main legal, political and economic systems of the world at the time. It was therefore to be expected that agreement reached at the Conference would result in the establishment of a new and more equitable international régime for maritime transport.

6. Everyone was aware that international trade was an important means of economic development, particularly for the developing countries, and that sea carriage was the most important means of transport in international trade. The rules which the Conference would adopt were likely to determine the liability of the sea carrier. If the Conference succeeded in unifying the rules of liability so

as to balance the interests of shippers and carriers, to accommodate developments in technology and to achieve a measure of harmonization with the rules governing other means of transport, its success would have a highly beneficial impact on international trade.

7. The draft Convention before the Conference was the product of happy collaboration between two United Nations bodies: the United Nations Commission on International Trade Law (UNCITRAL) and the United Nations Conference on Trade and Development (UNCTAD). After UNCTAD had completed the preparatory studies, the work had been entrusted to UNCITRAL, which had devoted four years to the elaboration of a suitable draft Convention. That draft had been finalized in 1976 and in the same year had secured general acceptance from UNCTAD. The Conference had only four weeks available for its work, and should therefore make every effort to accomplish its task within that time. He extended his best wishes for the success of its endeavours.

8. Mr. VOGEL (Minister of Justice of the Federal Republic of Germany) extended a warm welcome to the participants in the Conference, the first United Nations conference to be held in the Federal Republic of Germany. The invitation extended by his country demonstrated the importance that it attached to the activities of the United Nations in the field with which the Conference was concerned.

9. The rules to be studied by the Conference were rules of private law for world trade: the provisions of the Convention to which the final touches would be put were meant to define anew and more clearly the rights and obligations of the parties to a contract of carriage of goods by sea. The results of the Conference might be less spectacular than those of certain political conferences, but they would be no less important. As all nations were coming closer and closer together in the community in which they existed, it had become a necessity for the different national legal systems to develop in conjunction, especially in the fields that were important for international trade. The Federal Republic of Germany greatly appreciated the work of UNCITRAL which, for the first time in the history of the international unification of rules of law, had prepared the draft on a world-wide basis, an approach which should be very beneficial from both the political and substantive points of view.

10. Ever since States had been endeavouring to unify the rules of international trade law, maritime law had been one of the fields in which their efforts had been most successful. The Hague Rules had governed the carriage of goods by sea for half a century, practically on a world-wide basis. However, there were now good reasons to negotiate a new international convention. An attempt had been made to modernize the Hague Rules through the adoption of the 1968 Brussels Protocol, but those Rules had been modified in certain respects only, without being subjected to a comprehensive review. Since then, the development of the international monetary system had made it necessary for a number of conventions on transport to be revised. Once the special drawing rights of the International Monetary Fund had been completely

separated from the value of gold, it would no longer be practicable to calculate the sums due in liability by relying on the gold standard. If only for that reason, the rules on liability had to be reconsidered.

11. However, their re-examination was necessary for reasons of a more general nature as well. The Hague Rules of 1924 had represented an advance, but they were nevertheless inadequate in many respects, and after half a century of practical application the time had come to consider how far they had proved a success. The question that arose was not only whether they should be amended but whether they should also be supplemented on the many points they left undecided.

12. The adoption of a modern convention on the carriage of goods by sea would be the first important result of UNCITRAL's work, and its effects would be felt throughout the world. But if, after so many years of preparation, the Conference did not succeed in adopting universally applicable rules, that would be a severe setback for the activities of the United Nations in that field and for the unification of rules of law in general.

13. The draft Convention before the Conference differed from the Hague Rules of 1924 on a number of important points. First, its provisions were to apply to all international contracts of carriage of goods by sea, instead of simply to cases in which a bill of lading was drawn up. Secondly, liability under the contract of carriage was to fall not only on the carrier concluding the contract but also, as in the case of the carriage of goods by air, on the actual carrier. Thirdly, the fact that, in the future, liability under the Convention would also extend to deck cargo was of special importance for the carriage of containers. Fourthly, for the first time in the history of international law relating to the carriage of goods by sea, an attempt had been made, in the draft Convention, to set internationally uniform standards for the validity of the shipper's obligations towards the carrier under a letter of guarantee. Fifthly—and the most important provision from the economic point of view—the rules applicable to the shipowner had been made more strict by the draft. Although, in future, the liability of the shipowner was to be governed by the fault principle, the exemption from liability for nautical fault on the part of the shipowner's servants or agents and for damage caused by fire, as provided for in the Hague Rules, would be done away with. That new arrangement had already been the subject of long discussions. In view of its economic importance, it would no doubt be examined thoroughly by the Conference.

14. The draft Convention prepared by UNCITRAL constituted a sound basis, and there were grounds for optimism concerning the Conference's prospects of success. Although differences of opinion continued to exist concerning particular provisions in the draft, it should be possible to devise solutions enabling a universally accepted Convention to be adopted. The international carriage of goods by sea could not do without uniform rules. With that in mind, he hoped that the Conference would prove to be a success.

15. Mr. KLOSE (Mayor of the city of Hamburg), speak-

ing on behalf of the Senate of the city of Hamburg, welcomed the participants in what was the first major United Nations conference to be held in the Federal Republic of Germany. The people and authorities of Hamburg were particularly grateful for the United Nations decision to convene the Conference on the Carriage of Goods by Sea in their city in view of the preamble to the city's Constitution, which stated: "The Free and Hanseatic City of Hamburg, with its international harbour, has a special responsibility assigned to it by history and geography. In the spirit of peace, it is and shall be an intermediary between all continents and nations of the earth." Hamburg strove to act in the spirit of its Constitution and had thus been contributing for many years to détente in Europe and to the maintenance of peace. Hamburg had a tradition of trying to solve problems through negotiations and of not waiting for others to seek solutions. Hamburg was in a position to do so because it was the headquarters of many enterprises, associations and institutions with world-wide connexions and a good knowledge of the international scene in the most diverse fields, and, in particular, in international economic relations.

16. It need not be emphasized that Hamburg, as the biggest centre of manufacturing and service industry in the Federal Republic (shipyards and shipping and insurance companies), had more than an academic interest in all questions associated with the carriage of goods by sea.

17. The problems confronting the Conference were not easy to solve, not only because of the complexity of the subject matter, but also because of the differences of opinion among the participating countries. As Mayor of Hamburg, he could not conceal the fact that the city had a vital interest in a solution which would give due consideration to the concerns of its shipping companies. The industrialized countries could not disregard the fact that the world had undergone a fundamental change since the end of the Second World War. The developing countries, for their part, had a right to have their interests taken into consideration, particularly as they were confronted with extremely difficult problems which they could not overcome without external assistance. But they must not put the industrialized nations in a position which would endanger those nations' efficiency, for instance in regard to the question of raw materials or that of liability in ocean carriage, since by doing so they would ultimately harm themselves. It was therefore important to strike a reasonable and fair balance between the interests of all parties concerned.

18. The criticisms often directed against the United Nations were frequently unjust because they failed to take account of the difficulty of the problems with which the

Organization was confronted. The situations and interests of the parties concerned were often of a contrary nature, and for that reason it was less easy to find solutions in international relations than in other areas. Countries must show a readiness to negotiate and a will to achieve a fair balance, although such a balance could not, of course, be reached overnight.

19. Mr. KLOSE expressed the hope that the spirit of Hamburg would contribute towards creating a climate of balance and tolerance at the Conference.

20. Mr. SUI (the Legal Counsel of the United Nations, representative of the Secretary-General) thanked the Minister of Justice of the Federal Republic of Germany and the Mayor of the city of Hamburg for their words of welcome to the participants in the Conference.

The meeting was suspended at 12.10 p.m. and resumed at 12.15 p.m.

ITEM 2 OF THE PROVISIONAL AGENDA

Election of the President

21. Mr. DIXIT (India) nominated Mr. Rolf Herber (Federal Republic of Germany) for the office of President of the Conference.

22. Mr. SELVIG (Norway), Mr. GUEIROS (Brazil), Mr. SWEENEY (United States of America), Mr. ST. CHORZEWSKI (Poland), Mr. MAITLAND (Liberia), Mr. KHOO (Singapore), Mr. CHAFIK (Egypt), Mr. BYERS (Australia), Ms. OLOWO (Uganda), Mr. WANSEK (United Republic of Cameroon), Mr. RAY (Argentina), Mr. AMOROSO (Italy), Mr. ISIN (Turkey), Mr. CASTRO (Mexico) and Mr. POPOV (Bulgaria) seconded that nomination.

23. Mr. Herber (Federal Republic of Germany) was elected President by acclamation and took the Chair.

24. The PRESIDENT thanked the participants in the Conference for having done his country and him the honour of electing him to the office of President and said that he would do his best to fulfil the task entrusted to him. While the Convention which the Conference was to adopt could not exactly meet the wishes of all States, it should nevertheless be acceptable to all; the preparation of that instrument would be a difficult undertaking, but a failure would leave the sea trade without common rules of liability, would disappoint the countries which had contributed to the preparatory work and would hamper the unification of international trade law in general. He therefore hoped that the Conference could work in a spirit of compromise and understanding.

The meeting rose at 12.40 p.m.

2nd plenary meeting

Monday, 6 March 1978, at 3.15 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.2

ITEM 3 OF THE PROVISIONAL AGENDA

Adoption of the agenda

1. The provisional agenda (A/CONF.89/2) was adopted.

AGENDA ITEM 4

Adoption of the rules of procedure

2. The provisional rules of procedure (A/CONF.89/3 and Corr. 1) were adopted.

AGENDA ITEM 5

Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees

3. The PRESIDENT said he understood that the various groups needed more time to discuss their nominations for the 22 posts of Vice-President and the office of Chairman for each of the two Main Committees. He therefore suggested that the elections for all posts other than that of Chairman of the First Committee should be postponed until later in the week. The latter, however, should be elected by noon on the following day at the latest so that the substantive work of the Conference could begin without delay.

4. Mr. DIXIT (India) said he was agreeable to postponing the election of the Vice-Presidents. However, he would like the Secretariat to explain United Nations practice in regard to the allocation of those and other posts among the different groups. On what basis, for instance, would the General Committee be drawing up its list of 15 candidates for appointment to membership of the Drafting Committee?

5. Mr. VIS (Executive Secretary of the Conference) said that the officers of the Conference would normally be expected to represent the different geographical regions and economic and social systems in the world. That principle applied, *inter alia*, to the posts of Chairman for each of the two Main Committees and to the membership of the Credentials Committee and the Drafting Committee. As the General Committee of the Conference would consist of the President, the 22 Vice-Presidents and the Chairmen of the Main Committees, it, too, should have a balanced regional distribution. The General Committee, which proposed candidates for appointment to membership of the Drafting Committee, would be meeting later in the week and in formulating its proposals

should take into account the need to ensure balanced regional representation. The nine members of the Credentials Committee were nominated by the President, and the Drafting Committee and Credentials Committee elected their own officers.

6. Mr. DIXIT (India) said that, in view of the importance of ensuring balanced regional representation, his delegation felt it would be necessary for the Chairmen of the two Main Committees to be elected together.

7. Mr. CASTRO (Mexico) said that he, too, was concerned to ensure balanced geographical distribution in the allocation of posts. It would seem that 14 of the posts of Vice-President should be filled by nationals of the developing countries and the remainder by nationals of Groups B and D. He understood that the Vice-Presidents would have a say in decision-making and would perform certain specific functions, and the choice of persons to occupy those posts was therefore extremely important. He agreed with the representative of India that it would be preferable to elect the Chairmen of the two Main Committees together; those elections should take place as soon as possible.

8. In view of the need to hold consultations without delay, he suggested that the Group of 77 should be given an opportunity to meet that afternoon and should, if possible, be provided with interpretation facilities.

9. Mr. VIS (Executive Secretary of the Conference) explained that provision had been made for six hours of interpretation a day during the first week of the Conference. If a regional group held a meeting with interpretation facilities, the time that meeting consumed would have to be deducted from the hours available to the Conference and its Main Committees. Such meetings could, of course, be held at any time without interpretation facilities.

10. The PRESIDENT said that, if the present meeting were to be adjourned early, the Group of 77 would be able to hold a meeting, with interpretation facilities, at 5 p.m.

11. Mr. SMART (Sierra Leone) said his delegation felt that the question of the allocation of the posts of Vice-President could be settled in time for the Vice-Presidents also to be elected on the following day. Once all the officers had been elected, it would be easier to proceed with the substantive work of the Conference.

AGENDA ITEM 8

Organization of work

12. The PRESIDENT invited comments on the memorandum by the Secretary-General concerning the

methods of work and procedures of the Conference (A/CONF.89/4).

13. Mr. DIXIT (India) said that his delegation was anxious to know whether provision had been made for the delivery of general statements in plenary meetings of the Conference. It was very important for countries to make their positions clear with regard to the draft Convention, and to indicate what amendments they intended to propose; only in that way would the Conference be able to deal successfully with the complex problems confronting it.

14. The PRESIDENT said that it was for the delegations themselves to decide whether they wished to make general statements in the plenary meetings of the Conference or in the First Committee, once it had been constituted.

15. Mr. SHAH (United Nations Conference on Trade and Development) asked whether observers would also be entitled to deliver general statements, since he wished to make a statement on behalf of the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD).

16. Mr. SARLIS (Greece) asked whether work on other matters would be postponed until all general statements had been made.

17. The PRESIDENT said that the first question to be taken up at the next plenary meeting would be the election of a Chairman for each of the two Main Committees. The Conference would then proceed to hear general statements, including one by the observer for UNCTAD. He personally considered that more detailed comments could well be made in the First Committee, but the final decision on that matter was of course for the delegations to take.

AGENDA ITEM 3

Consideration of the question of the carriage of goods by sea in accordance with General Assembly resolution 31/100 of 15 December 1976

18. Mr. GUEIROS (Brazil), speaking in his capacity as Chairman of the tenth session of the United Nations Commission on International Trade Law (UNCITRAL), said that tribute was due to UNCTAD for the role it had played in the preparation of the draft Convention on the Carriage of Goods by Sea approved by UNCITRAL (A/CONF.89/5). It was the UNCTAD Working Group on International Shipping Legislation which, in February 1971, had expressed the view that the International Convention for the Unification of certain Rules relating to Bills of Lading and the 1968 Brussels Protocol amending that Convention should be revised and amplified and that, if appropriate, a new international convention should be prepared for adoption under United Nations auspices. UNCTAD had invited UNCITRAL to prepare such a convention, the text of which was now before the Conference.

19. The draft Convention made significant changes to the legal régime of 1924, and involved a different scheme of responsibilities and liabilities and different rules on the burden of proof. In UNCITRAL's view, it made for a fairer balance between the interests of all parties concerned in the carriage of goods by sea and reflected the modern ideals of justice that were true to the principles of the United Nations.

20. It was to be hoped that the same spirit of compromise that had pervaded UNCITRAL's work would prevail at the Conference. Carriage of goods by sea—possibly the most important mode of transport between nations—was an enormously important factor in world trade and in the development of friendly relations between States, and the world community would be well served by a set of agreed international rules on the subject.

21. He thanked the authorities of the Federal Republic of Germany and the city of Hamburg for their invitation and expressed the hope that, inspired by the ancient seafaring traditions of the Hanseatic region, the Conference would serve as a new landmark in co-operation between the peoples of the United Nations.

22. Mr. BREZHNEV (Union of Soviet Socialist Republics) congratulated the President on his election and wished him every success in his post. He also expressed his delegation's appreciation of the invitation extended by the Federal Republic of Germany to hold the Conference at Hamburg and of the efforts which had been made to provide conditions enabling the Conference to perform its work effectively.

23. His country had always been in favour of business-like co-operation between States in many spheres—including that of transport, which was important for the strengthening of international trade relations—and therefore attached great importance to the Conference and to the Convention it had met to draw up. On the whole, the draft text before the Conference satisfied the requirements which had led to its preparation and, in particular, provided for a more balanced distribution of the risks of carriage as between the shipper and the carrier. Many countries had already expressed a wide range of opinions and comments on the draft, and his delegation intended to raise a number of questions in connexion with various provisions in it. It was essential that each article be weighed very carefully and that constructive consideration be given to the real interests of the different countries. Provided that that kind of approach was adopted, it would be possible to arrive at a sound compromise even on the most complicated issues presented by the draft and to draw up a truly universal and internationally acceptable instrument. He extended his delegation's good wishes for the success of the Conference, which promised to be an important event in the history of international co-operation.

The meeting rose at 4.15 p.m.

3rd plenary meeting

Tuesday, 7 March 1978, at 10.45 a.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.3

AGENDA ITEM 5

Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees (continued)

Election of the Chairman of the First Committee

1. Mr. CASTRO (Mexico), speaking on behalf of the Group of 77, nominated Mr. M. Chafik (Egypt) for the office of Chairman of the First Committee.
2. Mr. SELVIG (Norway), Mr. CLETON (Netherlands), Mr. FUCHS (Austria), Mr. HONNOLD (United States of America), Mr. DOUAY (France), Mr. BYERS (Australia) and Mr. BENTEIN (Belgium) supported that nomination.
3. Mr. AMOROSO (Italy) associated himself with the previous speakers and proposed that Mr. Chafik should be elected by acclamation.
4. Mr. Chafik (Egypt) was elected Chairman of the First Committee by acclamation.

Election of the Chairman of the Second Committee

5. Mr. PTAK (Poland) nominated Mr. D. Popov (Bulgaria) for the office of Chairman of the Second Committee.
6. Mr. CASTRO (Mexico), Mr. GANTEN (Federal Republic of Germany), Mr. GUEIROS (Brazil), Mr. BREDHOLT (Denmark), Mr. SWEENEY (United States of America), Mr. JOMARD (Iraq), Mr. CARRAUD (France), Ms. OLOWO (Uganda), Mr. BYERS (Australia) and Mr. CHAFIK (Egypt) supported that nomination.
7. Mr. SARLIS (Greece) supported the nomination of Mr. Popov (Bulgaria) and proposed that he should be

elected to the office of Chairman of the Second Committee by acclamation.

8. Mr. Popov (Bulgaria) was elected Chairman of the Second Committee by acclamation.

AGENDA ITEM 7

Appointment of members of the Drafting Committee

9. Mr. CASTRO (Mexico) said that the Group of 77 proposed that the membership of the Drafting Committee should be increased from 15 to 18, divided in the following manner: 9 members from the Group of 77, 6 from Group B and 3 from Group D. The enlarged membership would make the Drafting Committee more representative and, in particular, would take account of the fact that the Conference had five working languages.
10. Mr. AMOROSO (Italy) supported that proposal.
11. The PRESIDENT pointed out that the Conference had adopted its rules of procedure (A/CONF.89/3), which stipulated in rule 44 that the Drafting Committee should consist of 15 Members and in rule 60 that the rules could be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting upon a recommendation of the General Committee. He therefore suggested that the Conference should take note of the proposal put forward by Mexico on behalf of the Group of 77 and should defer consideration of it until the General Committee had met and submitted a recommendation to increase the membership of the Drafting Committee to 18.
12. It was so decided.

The meeting rose at 1.10 p.m.

4th plenary meeting

Wednesday, 8 March 1978, at 3.15 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.4

AGENDA ITEM 5

Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees (concluded)

1. The PRESIDENT informed the Conference that, following discussion among delegations, the following

agreed list of candidates for election to the 22 posts of Vice-President of the Conference had been drawn up: Mr. Henni (Algeria), Mr. Ray (Argentina), Mr. Byers (Australia), Mr. Bentein (Belgium), Mr. Montgomery (Canada), Mr. León Montesino (Cuba), Mr. Bredholt (Denmark), Mr. Ramírez Hidalgo (Ecuador), Mr. Vogel (German Democratic Republic), Mr. Sarlis (Greece),

Mr. Siregar (Indonesia), Mr. Jomard (Iraq), Mr. Amoroso (Italy), Mr. Awodumila (Nigeria), Mr. Massud (Pakistan), Mr. Sumulong (Philippines), Mr. Zylkowski (Poland), Mr. Gueye (Senegal), Mr. Özerden (Turkey), Ms. Olowo (Uganda), Mr. Brezhnev (Union of Soviet Socialist Republics), Mr. Moreno Partidas (Venezuela). He suggested that the candidates named should be elected Vice-Presidents of the Conference by acclamation.

2. *It was so decided.*

AGENDA ITEM 8

Organization of work (concluded)

3. Mr. KERRY (United Kingdom), supported by Mr. CASTRO (Mexico), proposed that the Conference should hear those delegations wishing to make general statements on agenda item 9.

4. *It was so decided.*

AGENDA ITEM 9

Consideration of the question of the carriage of goods by sea in accordance with General Assembly resolution 31/100 of 15 December 1976 (continued)
(A/CONF.89/5, A/CONF.89/6 and Add. 1 and 2, A/CONF.89/7 and Add. 1, A/CONF.89/8)

5. Mr. KERRY (United Kingdom) said that the United Kingdom, as a nation whose livelihood depended largely on sea-borne international trade, considered it important for the new Convention to establish clear, balanced and cost-effective rules to promote such trade. The United Kingdom was well-placed to take an unbiased but informed view of the proposed new rules; its large shipowning interest was complemented and counter-balanced by its substantial cargo and trading interests, while its major insurance interests covered both cargo and carrier liability; it did not seek to promote any of those interests at the expense of others. The United Kingdom was a major provider of shipping services but also a major consumer of them, and its paramount aim was to ensure that such services should be provided as efficiently as possible. That was in the interests of the United Kingdom as a trading nation, but it was also in the interests of the world community.

6. For those reasons, his Government did not wish to see changes in the Hague and Hague Visby Rules, which had been improved and clarified by court decisions over the years, unless there were good economic reasons for such changes. His Government rejected the view that a redistribution of liability away from the cargo insurer and towards the "P and I Club" was desirable on some abstract grounds of equity, and that the Hague Rules were unreasonably biased towards the shipowner. It believed that the present régime of liability insurance was economical and was in the interests of both sets of insurers. That must, indeed, have been one of the factors

that had led the Committee on Invisibles and Financing Related to Trade of the United Nations Conference on Trade and Development (UNCTAD) to conclude, in a study of marine insurance published in 1975,¹ that the existing pattern of cargo insurance was the most economical and advantageous to the particular interests of the developing countries, which were understandably anxious to develop their own insurance industries.

7. Although the Hague Rules had achieved wide acceptance and had been further clarified over the many years of their existence, they were by no means perfect, and the draft text before the Conference was a welcome improvement not only in form and structure but also in some substantive respects. However, his delegation had a number of proposals for further improvement. Firstly, the limits of liability in article 6 should be kept low; he believed there was currently wide agreement on that point. Secondly, the defence of nautical fault should be reintroduced. Thirdly, the circumstances in which the limitation in article 6 could be broken should be restricted so as to exclude pilferage and other causes outside the control of the carrier. Finally, the provisions in the final clauses concerning entry into force should make it clear that the rules laid down in the Convention must have widespread acceptance before they could come into operation.

8. His delegation would be submitting proposals on those and other points during the Conference which, it was to be hoped, would produce a reasonably balanced package acceptable to the great majority of trading countries.

9. Mr. VOGEL (German Democratic Republic) said that his country had considered the draft Convention (A/CONF.89/5) with a view to determining to what extent the harmonization with other international transport conventions, which was essential to the further regulation of multimodal transport, had been achieved, how the draft took new transport technologies into consideration and what changes had been made in the allocation of risks as between the carrier and the shipper. It had concluded that significant efforts had been made to harmonize international transport law, but that modern transport technologies were not sufficiently covered by the present draft. However, the draft text was more systematic than the Hague Rules, and the United Nations Commission on International Trade Law (UNCITRAL) deserved particular commendation on that score.

10. Without wishing to set any pre-conditions for the work of the Second Committee regarding the final clauses, he was concerned that, when the Convention entered into force, there would be three different legal instruments governing the carriage of goods by sea: the Hague Rules, to which 70 States were parties; the Brussels Protocol of 1968, with 10 States parties; and the Convention itself. A provision must therefore be included in the Convention to obviate any further splitting up of maritime law; his delegation would in due course be submitting a proposal to that effect.

¹ TD/B/C.3.120.

11. Mr. EYZAGUIRRE (Chile) said that a suitable instrument which would balance the interests of shipowners, shippers and consignees was vital to the development of import and export trade and, therefore, to the economic development of nations. The developing countries were traditionally consumers of shipping services and, therefore, consideration of the problems arising in connexion with contracts of carriage of goods by sea was of cardinal importance so as to protect the consumer countries with no large merchant fleets of their own which needed to import goods for their own use and for purposes of economic development and to export their raw materials and other products.

12. The important changes to the Brussels Convention of 1924 which were introduced in the draft text before the Conference, and on which UNCITRAL was to be commended, were of great significance for Chile. It was important that there should be clear rules, binding on both parties to a contract of carriage of goods by sea, concerning the form and content of bills of lading, the liability of carriers, the period of responsibility for damage to the cargo, the limits of liability, jurisdiction, arbitration, and other points. The establishment of such rules would be a great step towards ensuring an appropriate balance of interests as between carriers, shippers and consignees and would redound to the benefit of the traditional consumers of shipping services.

13. Mr. MAITLAND (Liberia) said that Liberia, as a developing country and a major exporter of such commodities as iron ore and rubber, strongly advocated the establishment of a new international economic order and supported the draft Convention to the extent that it would advance the economic interests of developing nations. However, it rejected the view that, while the draft might be considered by many nations to have serious defects and thus might not in fact come into force, at least in the foreseeable future, the preparation of the draft rules was nevertheless desirable in itself because it would serve as an example which would produce appropriate economic and legal changes in the system of world maritime commerce. In his opinion, the Convention must be capable of receiving widespread application from the outset.

14. His delegation was not convinced that a true economic balance in the interests of all parties was struck by the present draft. Protection given to shippers and consignees in certain parts of it was taken away in other parts.

15. He shared the views of the United Kingdom delegation regarding certain aspects of the draft, but whether or not a particular delegation agreed with those views, the important thing was the fact that they reflected the thinking of a major maritime nation. The views of other delegations should similarly have weight because they were all relevant to the question of how soon it would be possible to have an instrument which would be binding on the world economic and maritime community.

16. His delegation was specifically concerned with the principle of nautical fault and felt that claims that the present draft would improve the insurance position of shippers and consignees were not necessarily valid. It

might well be that the economic consequences of the new provisions relating to insurance would be slight and that the ultimate cost would fall not on the ocean carrier but on the cargo owner because of the system of freight charges that would continue to exist.

17. His delegation was of the view that the rate of technological change and the increased obsolescence of the bill of lading had made the Brussels Convention somewhat antiquated and might also make the UNCITRAL draft inadequate to deal with the future needs of maritime commerce.

18. He expressed particular concern regarding the following matters: whether the provisions of article 5, concerning delay, would merely serve to generate litigation rather than being of practical value in advancing the legitimate interests of consignees in compensation for delay; the limitation of liability under article 6 and the degree to which it conformed with existing conventions on that subject; and the maritime problems which the United Kingdom representative had mentioned.

19. Mr. CARRAUD (France) said that, in general, his delegation supported the draft Convention currently before the Conference, as it appeared to be logical and equitable and to meet the expectations of the international community and, in particular, of the developing countries. The Brussels Convention of 1924 had certain merits: it had instituted for the first time a system of international agreement in a field which had previously been unregulated, thus making a great contribution to the development of maritime transport and, consequently, of international trade. Since that date, however, technical progress had brought about an extraordinary expansion of trade and had changed relations between nations in general and between the parties to contracts of carriage of goods by sea in particular. It had therefore become desirable to review the relationship between shippers and carriers so as to ensure a better distribution of risks. The importance of the bill of lading had declined, and there was seen to be a need for a set of rules which would cover all aspects of the contract of carriage, including the land phases of maritime transport.

20. The text before the Conference was the result of a compromise between shipowning and ship-using States. He used that classification for convenience, for nearly all States represented in the Conference, including France, had interests both as shipowners and as shippers.

21. Any revision of the Hague Rules should take into account the need to eliminate nautical fault as a ground for exemption from the liability of the carrier and at the same time to establish a relatively low ceiling for liability of the carrier so as not to increase freight charges unduly while still leaving the shipper with the major responsibility for insurance of the goods carried. The provisions on those subjects, together with the provision that the claimant must supply proof of fault in case of fire, formed the basis of the draft. Lack of agreement on those essentials might involve the risk of being unable to agree on the Convention as a whole, and that would be a serious matter.

22. The draft Convention might appear to some to be revolutionary, but, in fact, the effect of its adoption would

be to establish the law concerning the carriage of goods by sea on a basis analogous to that which had already been approved by the international community in the case of many other transport conventions, including those governing carriage by air.

23. Although he thought that some points of detail of the draft could be improved, for example, the wording and possibly the substance of article 8, he hoped that the Conference would not enter into discussions which might have the effect of questioning a construction which had already been approved by UNCTAD and UNCITRAL.

24. Mr. DIXIT (India) expressed his delegation's gratitude to the Government of the Federal Republic of Germany for its invitation to hold the Conference in the historic city of Hamburg.

25. He recalled that the Secretary-General, in his message to the Conference, had pointed out the importance attached by the United Nations and the world as a whole to its outcome. His delegation shared the optimism of the Secretary-General with regard to the establishment of a new and more equitable international régime in maritime transport, but believed that the new rules to be formulated must take account of the emergence of a new economic order.

26. The existing rules on the carriage of goods by sea had been drawn up at a time when most Asian, African and Latin American countries had had no say, and it was common knowledge that those rules had proved to be in the interests of shipowners. The organization of shipping services was in general still determined by the needs of the shipowners, and, as the weaker partner in the contract of carriage, the shipper had to accept the conditions laid down by them. If international trade was to develop, the advantages and burdens had to be shared equitably by all parties concerned, in accordance with General Assembly resolution 31/100.

27. India had a considerable shipping industry, but its primary concern was to give due protection to shippers and consignees. The draft now before the Conference provided a good basis for discussion, but certain aspects would have to be examined closely as they seemed to negate the very purpose of the Conference. One example was liability in case of fire; as the draft was worded at present, it would be very difficult for the claimant to prove fault or neglect on the part of the carrier, his servants or agents. His delegation was prepared, however, to co-operate in the work of the Conference to bring it to a successful conclusion.

28. Mr. KAWADE (Japan) expressed his delegation's gratitude to the Government of the Federal Republic of Germany and to the Free and Hanseatic City of Hamburg for acting as hosts to the present Conference.

29. The draft Convention before the Conference had been elaborated to take account of the need to review and modify the Brussels Convention of 1924 in the light of the development of technologies and shipping practices. Apart from containing a number of new rules on the international carriage of goods by sea, such as those concerning the scope of application, the liability of the carrier and jurisdiction and arbitration, the draft con-

tained provisions which would have a significant influence on laws and practices in related fields, such as insurance and banking. It should be noted that ship navigation still involved special risks, even with the development of new technologies. In that connexion, he would like to emphasize two points, namely, that careful attention should be paid to the balance of interests between carrier and shipper and that the new régime should be workable. In other words, the liability system should be considered in the light of the need to keep the total cost of transportation to a reasonable level: the provisions regarding the limits of liability should take into account the normal value of ordinary cargo and the fact that too high a limit would lead to increases in freight rates.

30. He expressed the hope that the Conference would be successful in its work.

31. Mr. KIM (Republic of Korea) expressed his delegation's gratitude to the Government of the Federal Republic of Germany and to the city of Hamburg for their hospitality and the excellent arrangements which had been made for the Conference.

32. Korea, whose merchant fleet had reached a tonnage of nearly 3.5 million gross tons by the end of 1977 and in that same year had carried 44 per cent of the country's total export and import trade, attached great importance to the Conference. If the Conference was to achieve its goal, it had to balance the allocation of risks as between cargo owners and carriers and remove the existing uncertainties and ambiguities in the rules and practices relating to bills of lading. That was no easy task, and to accomplish it countries must be prepared to co-operate and to adopt a forward-looking attitude.

33. The draft Convention, for which UNCITRAL was to be commended, was, on the whole, acceptable to his delegation, in that it represented a harmonious adjustment between the differing interests and legal systems of the parties concerned, and was also a remarkable improvement on the Brussels Convention of 1924, as amended by the Brussels Protocol of 1968. However, there were a number of points in the individual articles which should be examined with great care. His delegation agreed with the basic principle laid down in article 5, for instance, but suggested that it should be revised so as to exempt the carrier from liability for loss, damage or delay in the delivery of goods resulting from nautical fault, fire or life-saving, if it could be proved that such mishaps were not due to the actual fault or neglect of the carrier.

34. With respect to article 6, his delegation preferred the alternative text providing for the single criterion of the weight of goods to determine the limitation on the carrier's liability. He agreed with other delegations that that text was easier to apply in practice and corresponded to the relevant provisions in other international transport conventions.

35. His delegation was confident that the Conference would represent an important milestone in the history of international shipping legislation and pledged full co-operation in its endeavours.

36. Mr. MASSUD (Pakistan) agreed with the Indian

representative that the Hague Rules had been drawn up at a time when the developing countries had had little say in the formulation of rules of international law and were therefore heavily biased in favour of the carrier rather than the shipper. It was important to remember that the carriage of goods by sea had been a truly risky enterprise at that time but, with the development of technology in the last 50 years, the carrier no longer ran the same risks. Consequently, an effort should be made to establish an equitable balance of rights and liabilities as between shipper and carrier. The draft Convention before the Conference made a number of improvements on the Hague Rules, but not all of the changes were to the benefit of the shipper, and in certain cases, such as that of fire, they were less favourable to him than were the Hague Rules. Similarly, provision was made, for instance, to limit the liability of the carrier under article 6, whereas there was no limitation on the liability of the shipper and, under article 12, the shipper would be held fully liable for loss or damage sustained by the carrier which was caused by the fault or neglect of the shipper. Again, under article 25, the application of the Convention could be limited by the national law of States, which was contrary to the spirit of the Convention. If the rights and liabilities it established could be unilaterally limited by a State or its laws, all certainty would be removed from contracts of carriage of goods by sea.

37. Mr. GANTEN (Federal Republic of Germany) said it was essential to ensure that the draft Convention under consideration was a genuine improvement on the Hague Rules, which had governed international sea trade for nearly 50 years. He thought that in many respects it was, but, as its intention was to facilitate trade between commercial parties, it was important to ask whether it really did so, in other words, whether it offered economic solutions to the problems involved.

38. The Conference must ensure, for instance, that the costs of transport were kept to the minimum, since that was in the interests of all parties concerned. In his delegation's view, some of the provisions, notably articles 5, 6 and 8, did not further that aim and should therefore be amended. His country, which had a sizable shipping industry, had a keen interest in maintaining the costs of sea trade at a reasonable level. To do so would also be in the best interests of the developing countries.

39. Mr. SWEENEY (United States of America) said he would confine his comments on the present occasion to articles 5, 6, 8 and 11 of the draft Convention, which were of great importance for the allocation of risks and should be considered in conjunction with each other so as to achieve a combination that was logically consistent and economically feasible for all parties concerned. All delegations must be prepared to make compromises so as to work out a "package" which would enable the Convention to be adopted by as many States as possible. His delegation considered that there was a wide range of options open with regard to articles 5, 6 and 8, and possibly article 11 as well, but it hoped that its remarks in that respect would not be construed as formal proposals.

40. In the case of article 5, paragraph 4, regarding exemption of liability in case of fire, there seemed to be

three possibilities. That provision could be eliminated altogether and reliance placed on the general exemptions instead; the rule could be stiffened, so as to require the carrier to prove the seaworthiness of the fire-fighting equipment and training of the crew; or it could be lessened so that the cargo owner would be required to prove privity and knowledge on the part of the carrier concerning the negligence of his servants. A "policy-based" defence in the case of negligent navigation and management had not been provided for in the present draft, but there were several ways of dealing with the question. The defence might continue to be eliminated completely, or denied only in the case of negligent management, or the carrier could be accorded the defence where the vessel as well as the cargo were damaged as a result of collision or stranding.

41. In the case of article 8, the unit limitation of liability of the carrier could be breakable or unbreakable. It might be easier if it were unbreakable, but in that case the limit was bound to be dramatically higher than if it were breakable.

42. With regard to the nature of the exemption available if the present draft was maintained, careful consideration had to be given to the amounts involved in the new division of risks. In that respect he wished to emphasize the importance of thinking in terms of the trade-offs that could be made to achieve a logically consistent and economically feasible compromise that would serve the interests of shippers, carriers and insurers alike. On the whole, his Government took a positive view of the draft Convention and concurred with UNCTAD in considering that in general it reflected a new balance between the interests concerned that would be beneficial to international trade and to the developing countries in particular.

43. Mr. GORMAN (Ireland) said that the subject matter of the Conference was of particular interest to Ireland, first because it was an island and sea-borne trade therefore played a vital role in its economy and, secondly, because, in view of the relatively small size of its merchant fleet, most of Ireland's imports and exports were carried in vessels of other countries. The Irish Government, which took cargo interests very much into account, understood that one of the overriding objectives of the framers of the draft Convention had been to strengthen protection for the cargo and the shipper.

44. One point which caused his delegation considerable concern was the suggestion that the over-all effect of the Convention might well be a net increase in the cost of transporting goods by sea; an increase in gross insurance costs would inevitably lead to higher freight rates and ultimately to higher prices for the Irish exporter and consumer. Although there could be no absolute certainty about that forecast, it was a view to which some of those closely concerned with the practical arrangements of trade, as well as certain cargo interests, subscribed.

45. Of the various provisions in the draft Convention, his delegation welcomed in particular those relating to limitation of liability, which updated the existing provisions, and those involving an extension of the period of the carrier's liability. It noted the attempts made to

bring the draft Convention into line with technological advances in the shipping world. It considered, however, that the text should be further developed to bring out more clearly the relationship between the draft Convention and existing regional agreements on multimodal transport—which accounted for a significant proportion of Irish imports and exports—as well as its relationship to any possible future international convention on multimodal transport.

46. Mr. AMOROSO (Italy) stressed that, contrary to the general view of Italy as a country which represented primarily the interests of shipowners, it was in fact representative of a very even balance between those interests and the interests of shippers and consignees. His delegation therefore felt able to voice an objective opinion on the matters at issue.

47. While recognizing the merits of the draft Convention, he considered that it could be improved. The best way of doing so would be to seek to make the necessary changes in a spirit of co-operation. His delegation shared the concern expressed regarding articles 5, 6 and 8, and considered that the exemption from liability based on error in navigation should be reintroduced. Also, while the draft Convention might seem flawless from a legal standpoint, he would urge the need to consider ways of avoiding certain economic consequences. The interests of the shipper, after all, were to pay the least amount possible, to obtain protection, and to secure compensation for any loss or damage to his goods. That was the approach he would commend to the Conference as it sought, in a spirit of co-operation, to improve the draft Convention for the benefit primarily of the shipper.

48. Ms. OLOWO (Uganda) said that the object of the draft Convention was to replace the Hague Rules of 1924 and to assure a fair balance between the interests of the parties to a contract of carriage of goods by sea. For the most part, of course, it was the developed countries which represented the interests of the carrier and shipper: east Africa, for example, had but four small ships.

49. In attempting to establish a new régime, the Conference should be thorough, and should abide by the principles on which a new economic order should be based, for otherwise it would have failed in its duty. Moreover, any convention that ignored those principles would only invite constant amendment. The aim, therefore, should be a realistic convention that would answer the challenges of the day.

50. Referring to specific provisions, she said her delegation considered that, in case of fire, the burden of proof should be shifted to the carrier, since he or his agents were better placed than the shipper to ascertain the causes. It also favoured a unit of account based on the special drawing rights (SDRs) of the International Monetary Fund, to offset the effects of currency fluctuations. Any other basis would be out of keeping with the current economic situation. Further, it considered that the entry into force of the Convention should be based on an agreed number of ratifications or accessions by States, and on no other criterion.

51. Lastly, she expressed the hope that the deliberations of the Conference would be marked by that spirit of

goodwill which would help to achieve the desired ends.

52. Mr. SHAH (United Nations Conference on Trade and Development) said Mr. Gamani Corea, the Secretary-General of UNCTAD, much regretted that he was unable to attend the Conference and express in person his appreciation to UNCITRAL for its ready response to UNCTAD's invitation to prepare the draft Convention. The task of revising the Hague Rules was first broached, intergovernmentally, at the second session of UNCTAD in 1968.

53. The documents submitted to the Conference by UNCTAD included the two reports of the fifth session of the UNCTAD Working Group on International Shipping Legislation—which set forth the views of Governments and observers on the draft Convention—and background reports prepared by the UNCTAD secretariat. UNCTAD's staff had also co-operated with the staff of UNCITRAL in preparing material for the UNCITRAL Working Group, and had assisted in servicing some of its meetings.

54. The most significant fact uncovered in the UNCTAD secretariat study on bills of lading² was that a disproportionately large percentage of cargo claims, though apparently *prima facie* legitimate, were apparently either not pursued or were compromised by virtue of the leverage inherent in the Hague Rules. The draft Convention thus responded to a need to correct deficiencies that had been identified by most UNCTAD and UNCITRAL participants.

55. UNCTAD accepted the draft Convention as a whole, and most of the causes of concern which it had felt about certain provisions had broadly been removed—for instance, in regard to the scope of application of the Convention; liability, including its monetary limitation; burden of proof; the limitation period; effects of delay; jurisdiction at ports of discharge; and indiscriminate use of invalid clauses. UNCTAD's main concern was to ensure that the weaker party to a contract of carriage was not jeopardized, through lack of expertise and resources, in his search for a fair settlement of his claim. Such protection could, of course, only be guaranteed by an equitable and unequivocal law that left little room for abuse. He would venture to suggest that the more conducive the wording was to a clear-cut acceptance or rejection of claims and to a more equitable balance between the parties, the greater would be the service rendered to users and suppliers alike. He trusted that the Conference would not lessen the importance attached by UNCTAD and UNCITRAL to the need to alter the basic rules of liability materially so that they conformed more closely to modern outlooks on shipping. It had rightly been said within UNCTAD that an effective revision of the Hague Rules depended on a few basic issues, and that failure to correct manifest imbalances in the liability régime would be tantamount to dooming the whole exercise to failure.

56. Thanking all who had assisted UNCTAD from within and outside the United Nations system in its first venture into maritime legislation, he hoped that the

² Document E.72.II.D2.

Convention would respond to contemporary needs in the same way as the Hague Rules had done in their day. He would prefer to comment in the First Committee on observations that had been made on a committee decision of UNCTAD relating to marine insurance.

57. Mr. FRANZINI (Observer, Latin American Ship-owners' Association) said that the Association he represented comprised most of the national shipping companies in the States members of the Latin American Free Trade Association (LAFTA). The Association had followed the preparatory work on the draft Convention with the greatest of interest, and had submitted comments on various aspects of it to the Governments of the countries from which its membership was drawn. It considered that, in general, the draft Convention was an improvement on the Hague Rules and that, unlike the Rules, which dealt with only some aspects of the carriage of goods by sea, it covered in a systematic manner all the issues involved.

58. He noted that both UNCITRAL and the UNCTAD Working Group on International Shipping Legislation were of the view that the draft Convention reflected a new balance between the interests of the parties concerned, to the benefit of international trade in general and of the developing world in particular. That, however, was precisely the point which, in the view of his Association, was most open to criticism, for the draft Convention seemed to it to reflect a serious imbalance between the rights of shippers, on the one hand, and of carriers, on the other, to the detriment of the latter.

59. One of the points stressed at the Association's thirteenth General Assembly, held in Argentina in November 1976, was that the new rules on liability—the omission of the defences which, under the existing rules, benefited the carrier—and the limitation of liability, would result in a sharp increase in operational costs as a result of the higher insurance coverage which the ship-owner would require to protect himself against the risks involved. Some delegations at the Working Group had also pointed out that, since insurance markets were

concentrated in a very few areas, the effect would be an increase in the outflows of currency that would affect their countries' balance of payments.

60. He noted from the comments and proposals submitted by Governments on the draft Convention (A/CONF.89/7 and Add.1 and A/CONF.89/8) that a number of countries and international organizations shared the concern which his Association felt on those points. The Association considered that nautical fault should not be omitted as a defence available to the carrier, and that delay should not be included as a ground for liability, particularly in regard to loss and damage. It also had serious doubts about the provisions in article 6 on the maximum limits of liability, and about the provisions in regard to liability for the carriage of live animals, since animals could be of differing characteristics and therefore require different types of care.

61. His Association considered that the draft Convention, while acceptable in general terms, should be carefully reviewed with a view to meeting the points he had raised. It was ready to co-operate in the endeavour to arrive at a satisfactory text.

62. Mr. RAY (Argentina) said that he would not enter into the details of his Government's position on the draft Convention at the current stage, since his delegation intended to submit certain specific proposals concerning the basis of liability, the issues involved in loss and damage, and the jurisdiction of the courts at the port of discharge. Since 1936, a sound body of case law had been developed in Argentina on the competence of the courts at the port of discharge to hear claims in respect of loss and damage of cargo. The principles involved had been embodied in legislation with a view to protecting the interests of Argentinian consignees and insurers.

63. At the same time, his delegation appreciated the need to achieve a balance and to avoid formulae that could result in increased costs—costs that would only fall on the consumer, the owner of the goods and, in the final analysis, the economy of the country.

The meeting rose at 5.45 p.m.

5th plenary meeting

Friday, 10 March 1978, at 3.15 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.5

AGENDA ITEM 7

Appointment of members of the Drafting Committee (concluded)

1. The PRESIDENT said that the General Committee had proposed the establishment of a Drafting Committee consisting of 18 members, instead of the 15 provided for

under rule 44 of the rules of procedure. The members proposed were the representatives of Argentina, Austria, Ecuador, France, the German Democratic Republic, Hungary, India, Iraq, Japan, Kenya, Norway, Peru, Sierra Leone, Singapore, the Union of Soviet Socialist Republics, the United Kingdom, the United Republic of Tanzania and the United States of America.

2. The General Committee had further proposed that

only those representatives should be entitled to vote and to speak on all matters at the Drafting Committee's meetings; that any other representative who had tabled a proposal at a plenary or Main Committee meeting should have the right to speak on that proposal alone in the Drafting Committee; and that other participants should be allowed to attend the Drafting Committee's meetings, but without the right to speak or vote.

3. If there was no objection, he would take it that the Conference agreed that the composition and procedure of the Drafting Committee should be as proposed by the General Committee.

4. *It was so decided.*

AGENDA ITEM 6

Credentials of representatives to the Conference: (a) Appointment of the Credentials Committee

5. The PRESIDENT said that, following consultations with members, he wished to propose that the Credentials Committee to be appointed under rule 4 of the rules of procedure should consist of the representatives of Bangladesh, Canada, Czechoslovakia, Ecuador, Madagascar, Malaysia, Nigeria, Syria and the United States of America. If there was no objection, he would take it that the Conference was agreeable to that proposal.

6. *It was so decided.*

The meeting rose at 3.25 p.m.

6th plenary meeting

Wednesday, 29 March 1978, at 7.40 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.6

AGENDA ITEM 6

Credentials of representatives to the Conference: (b) Report of the Credentials Committee

1. The PRESIDENT drew attention to the report of the Credentials Committee (A/CONF.89/9), and said that if no delegation raised any objection, the report would not be introduced orally.

2. In reply to a question from Mr. BENTEIN (Belgium), Mrs. YUSOF (Malaysia) (Chairman of the Credentials Committee) explained that, as was stated in the Committee's report, any credentials received after its meeting would be taken into account. That was the case of the credentials of the representative of Belgium.

3. The PRESIDENT said that, in the absence of any objections, he would take it that the Conference took note of the report of the Credentials Committee.

4. *It was so decided.*

AGENDA ITEM 10

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (A/CONF.89/12 and Add.1-5, A/CONF.89/L.3, L.5)

DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE

5. The PRESIDENT said that documents A/CONF.89/12 and Add.1-5 contained the draft provisions approved by the First Committee and referred to the Drafting Committee. After those drafts had been considered by the Drafting Committee, the First Committee

had decided to submit them to the plenary. The documents would therefore serve as the basis for the Conference's discussions.

6. The draft articles before the meeting were the outcome of thorough discussion in the two Main Committees and particularly in the First Committee. Some represented compromise solutions and it would be desirable that the Conference should regard it as its function to adopt those drafts definitively and refrain as far as possible from reopening questions of substance. Only if the Conference avoided reopening the discussion on certain problems would it have any chance of reaching a satisfactory conclusion.

7. As far as procedure was concerned, he proposed that the draft articles should be considered one by one. Under the rules of procedure, only written amendments could, in principle, be considered at that stage. However, since some of the draft articles had been circulated late and others had not yet been circulated, the Conference should perhaps entertain oral amendments, in so far as they dealt with essential points or were simple enough to be submitted verbally.

8. As the Drafting Committee had not as yet proposed a title for the Convention, he suggested that article 1 should be considered first.

Article 1

9. The PRESIDENT pointed out that in foot-note 1, referring to paragraph 3 of article 1, in document A/CONF.89/12 above, the word "but" should be replaced by "and" and the word "yet" should be deleted; the paragraph in question had not been referred to, and hence had not been considered by, the Drafting

Committee. Consequently, the square brackets around the text of paragraph 3 should be deleted.

10. He added that the plenary Conference should not refer any provisions back to the Drafting Committee. Any further drafting questions that might arise should, as far as possible, be settled by the plenary itself.

11. Mr. BURGUCHEV (Union of Soviet Socialist Republics), while approving the procedure suggested by the President which would save the Conference's time, felt bound to comment on article 1, paragraph 3, which should after all be taken into consideration by the Drafting Committee. Under the definition as given in that paragraph, "shipper" meant "any person by whom or in whose name or on whose behalf" a contract of carriage of goods by sea was concluded, while "carrier" as defined in paragraph 1 meant "any person by whom or in whose name" such a contract was concluded. It was not clear to him why the two definitions used different terminology and he proposed that the Drafting Committee should bring the wording of paragraph 3 into line with that of paragraph 1 by deleting in paragraph 3 the words "or on whose behalf", the meaning of which he considered obscure.

12. Commenting on article 1, paragraph 5, he noted with regret that that provision had not been amended in the manner he had suggested: the effect of his amendment would have been to debar a claim against the carrier for deterioration of the packaging due to normal wear and tear. Yet the majority of the delegations had seemed to be in favour of that amendment.

13. Mr. KHOO (Singapore) suggested that the amendment submitted jointly by his delegation and the Malaysian delegation (A/CONF.89/L.5) for deleting the definition of "shipper" should be considered.

14. Mr. SMART (Sierra Leone), speaking on a point of order, said that the Conference should consider the oral amendment of the Soviet Union before dealing with any other proposal. The question of the definition of "shipper", like many other questions, had been discussed at length by the First Committee. It was for purely legal reasons that the First Committee had had to be transformed into the plenary, which really meant only a change of presiding officer. If all kinds of questions were to be introduced anew, the Conference's chances of success would certainly be jeopardized.

15. The PRESIDENT said that the reason why he had not objected to consideration of the joint amendment of Malaysia and Singapore was that that amendment went further than the oral amendment of the Soviet Union, since its effect would be to delete the definition of "shipper" altogether. If both amendments were put to the vote, the joint amendment would have to be voted on first. That amendment should therefore be discussed first.

16. Mr. KHOO (Singapore) explained why his delegation had joined the Malaysian delegation in submitting the amendment (A/CONF.89/L.5). He fully appreciated that the definition of "shipper" had caused many difficulties in the First Committee and had been amply discussed. In the end, it had been decided to include the definition in article 1, and attempts to divide it into two parts had not

been successful. The question now was whether the definition drawn up by the First Committee was really acceptable to the Conference. The sponsors of the joint amendment were particularly troubled by the second part of the definition, namely, the passage "any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea." That formula was too vague and might give rise to uncertainty. According to that formulation, a person who merely had the authority to deliver the goods to the carrier would be able to make a claim against him. The proposed definition would be bound to give rise to serious difficulties in the case of carriage of goods on deck referred to in article 9.

17. Those in favour of the definition of "shipper" argued that in the absence of such a definition the shipper would find himself in an uncertain position, particularly with respect to making a claim against the carrier. Yet the term "shipper" did not appear in article 5, the principal provision relating to responsibility. Nor did it appear in article 21, relating to jurisdiction, nor in article 22, relating to arbitration.

18. As for the uncertainties to which the definition might give rise, it had been stated in the First Committee that the forwarding agent could not be regarded as a shipper within the meaning of the definition. In fact, however, from a reading of the definition it manifestly did apply to the forwarding agent, since he was a person who actually delivered the goods to the carrier.

19. Lastly, the argument that a definition of "shipper" was needed because the term "carrier" was also defined had only a superficial appeal. As a matter of fact, it was primarily in order to distinguish between the carrier and the actual carrier that a definition of "carrier" had been drawn up.

20. The aim of any definition was to remove possible doubt about the meaning of the term defined. A definition was useful in so far as it was justified; if a definition raised more problems than it solved, it was better to dispense with it.

21. Mrs. YUSOF (Malaysia) said that her delegation, as co-sponsor of the amendment A/CONF.89/L.5, entirely shared the views of the representative of Singapore. Although her delegation appreciated the efforts made to work out a satisfactory definition, it was unable to accept the proposed definition since its application would still give rise to many difficulties. It was too vague, and any attempt to restrict it might have the effect of excluding certain persons that it should cover.

22. Mr. MORENO PARTIDAS (Venezuela) said that his delegation was opposed to the amendment A/CONF.89/L.5. The definition in question was the result of long discussions in the First Committee. However, it contained an expression which he had difficulty in understanding and which he would prefer to have deleted, as had been proposed by the representative of the Soviet Union. With that reservation, he was in favour of keeping the definition. Articles 12 and 13 were directly concerned with the shipper; article 12 laid down a general rule concerning the liability of the shipper, and

article 13 contained special rules on dangerous goods. For the same practical reasons that a definition of the carrier had been found necessary, a definition of the shipper was also indispensable.

23. Mr. POPOV (Bulgaria) said that he also was in favour of keeping the definition.

24. Mr. DIXIT (India) said that, in his opinion, the arguments put forward by Malaysia and Singapore were unfounded. First of all, the definition in question had been adopted by a large majority and the Working Group that had drawn it up had taken into account all the opinions expressed during the discussions in the First Committee. Even if the term "shipper" did not appear in article 5, it did appear in many other articles. Besides, other definitions had been adopted even though not absolutely necessary and in spite of appreciable differences of views between the common law States and those following the Roman law tradition. The expression "or on whose behalf" in the definition might seem to some delegations to be a repetition, but in reality it was intended to cover a quite definite case. It did not change the substance of the definition and did not conflict with any of the articles of the draft Convention relating to responsibility. The expression had been introduced into the definition in deference to the wishes of certain countries: its actual purpose was to protect the shippers and the consignees of all countries, but in particular those of the developing countries.

25. Mr. SMART (Sierra Leone) said he was opposed to the proposal of the representative of Singapore to delete the definition of "shipper" from article 1. The main argument put forward for the deletion was that, under the second part of the definition, the fact that a person who had only limited powers could deliver the goods to the carrier would involve a risk of the shipper incurring other liabilities. He was not convinced by that argument, since the expression "in whose name or on whose behalf" was enough to cover a situation of that kind.

26. Furthermore, the absence of a definition of the term "shipper" from the Convention would create uncertainties. Since it defined "carrier" and "actual carrier", then logically it should define "shipper". The representative of Singapore had pointed out that the shipper was not mentioned either in article 5 or in the articles relating to jurisdiction and arbitration. But those articles referred to the parties to disputes, and there could be only three such parties: the carrier, the consignee, and the shipper.

27. The representative of Singapore had also said that according to the definition given in article 1, paragraph 3, a forwarding agent could be regarded as a shipper: but surely the use of the term "agent" was sufficient indication that he was not the principal shipper. Accordingly, there was no reason to delete the definition of "shipper" from article 1.

28. He urged the participants in the Conference, and particularly the developed countries, to endeavour to establish equitable relations between the developing countries and the developed countries—between shippers and carriers—and to draw up a convention that would be satisfactory for all countries and that would help to promote peace and international understanding.

29. Mr. LOW (Canada) said that he was in favour of deleting the definition of "shipper". The position of the Canadian Government was that the status of the shipper should be such that he could recover compensation from the carrier, where appropriate. If a definition of "shipper" was incorporated in the convention a number of legal difficulties might ensue; for example, according to article 10, the carrier who used the services of subcontractors might be regarded as the shipper in that he was acting on behalf of the shipper, the port of trans-shipment becoming the port of loading. It would then follow that, in the case of damage caused by the shipper's goods, the actual carrier might institute proceedings against the shipper, who did not even know of the contract concluded on his behalf by the carrier. In that case, the original shipper would be at a disadvantage in the judicial proceedings, for they would be instituted in the courts having jurisdiction in the port of loading and according to the laws of the country in which that port was situated. The shipper would then have to employ lawyers from his own jurisdiction so that they should enter into contact with their fellow lawyers of the competent courts.

30. Mr. NDAWULA (Uganda), speaking on a point of order, moved the closure of the debate under rule 24 of the rules of procedure.

31. The PRESIDENT said that, under rule 22 of the rules of procedure, he must first give the representative of Singapore the right to reply.

32. Mr. KHOO (Singapore) said that the delegations of Singapore and of Malaysia were no less aware of the interests of developing countries than were the delegations of India and Sierra Leone. In the case under discussion, the object was to reach a rational solution. The question was purely a legal and technical one: should the definition of "shipper" stand in the text of the Convention? In his opinion, his objections had not been disposed of by the remark of the representative of Sierra Leone that the expression "any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier" covered the situation of forwarding agents. The long discussion that had taken place on the matter was itself an argument in favour of deleting the definition, which was contrary to the interests of shippers and consignees in the developing countries since it could lead to a great many disputes with carriers.

33. The PRESIDENT put to the vote the proposal by Malaysia and Singapore to delete the definition of "shipper" from article 1, paragraph 3.

34. *The amendment was rejected by 33 votes to 23, with 9 abstentions.*

35. The PRESIDENT said that the Conference still had to take a decision on the oral amendment by the representative of the Union of Soviet Socialist Republics to delete the words "or on whose behalf" in article 1, paragraph 3.

36. Mr. CARRAUD (France) explained that that expression reflected a very precise concept in French, Italian and Belgian law, namely, the status of the forwarding agent who dealt in his own name on behalf of his client, and should be covered by the definition of shipper.

37. Mr. POPOV (Bulgaria) was firmly opposed to reopening a discussion which had already lasted for too long. His delegation had declared in the First Committee that it was in favour of maintaining the definition of shipper, but endorsed the suggestion made by the USSR delegation that the disputed paragraph should be referred back to the Drafting Committee. If the Drafting Committee failed to produce a text that would be satisfactory to all the delegations, it would be preferable not to leave in the Convention a provision that was liable to cause legal dispute.
38. The PRESIDENT pointed out that the Conference had no time to refer proposals back to the Drafting Committee. He asked the representative of the Union of Soviet Socialist Republics if he insisted that his oral amendment should be put to the vote.
39. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he would not insist that his amendment should be put to the vote, but did not see why both of the expressions "in whose name" and "on whose behalf" should be included in paragraph 3 since they had the same meaning.
40. The PRESIDENT said that as the proposal by the representative of the Union of Soviet Socialist Republics did not seem to have received sufficient support, he would take it that it was rejected.
41. He invited the members of the Conference to comment on article 1 as a whole.
42. Mr. SHAH (United Nations Conference on Trade and Development) said that an intergovernmental group, under UNCTAD auspices, was in the course of preparing a convention on multimodal transport whose provisions might conflict with those of article 1, paragraph 6, of the Convention under study with respect to the sea leg of carriage. It was in order to avoid that eventuality that the draft text (A/CONF.89/C.1/L.121) submitted by the *ad hoc* Working Group regarding paragraph 5, which had subsequently become paragraph 6, proposed that a provision should be included in the final clauses of the convention to regulate the relationship between the present Convention and multimodal transport conventions; but that had not been done. As it would be difficult to include a similar provision in the convention on multimodal transport, there were two possibilities: either article 1, paragraph 6, of the present Convention could be amended to indicate that the articles on contracts of carriage by sea would not be applicable if there were conflicting provisions in an international convention on multimodal transport; or a new article could be included, as envisaged in the note to document A/CONF.89/C.1/L.121, whereby no provision of the present Convention would conflict with the implementation of the convention on multimodal transport to be adopted under United Nations auspices.
43. The PRESIDENT asked whether delegations had other questions to put on article 1 as a whole.
44. Mr. BENTEIN (Belgium) suggested that article 1, paragraph 1, should be brought into line with paragraph 3 through the addition of the words "or on whose behalf" between the words "in whose name" and "a contract of carriage".
45. The PRESIDENT pointed out that the Conference had very little time left in which to finish its work and that it was necessary to speed up the discussions. He asked delegations not to repeat arguments and to show restraint in submitting amendments, particularly with regard to articles 1 to 4 which had been thoroughly discussed. He added that amendments could not be adopted in plenary unless they were approved by a two-thirds majority of the members present and voting, and that at that stage in the Conference's work it would be difficult to muster a two-thirds majority unless the question was particularly important or self-evident. He suggested that consideration of the UNCTAD proposal should be deferred until a written text had been prepared.
46. He invited the participants in the Conference to vote on article 1 as a whole.
47. Mr. CLETON (Netherlands) pointed out that several of the definitions in article 1 were a source of problems, and proposed that the article should be voted on paragraph by paragraph.
48. The PRESIDENT said that under rule 37 of the rules of procedure any representative could submit a motion for division. However, under rule 27, basic proposals considered by the Conference should relate to draft articles, not to paragraphs. He would therefore suggest the following procedure: the Conference would, as a general rule, vote on individual articles, but it would be open to delegations to request a separate vote on each paragraph of an article or on a particular paragraph. If objections were raised, the motion for division would be voted upon.
49. Mr. CLETON (Netherlands) said that it was the practice in United Nations plenipotentiary conferences not to consider articles as a whole unless the members of the Conference had unanimously agreed to do so.
50. Mr. KELLER (Liberia) supported the proposal by the Netherlands representative that each paragraph of article 1 should be put to the vote separately. That procedure would apply to article 1 only.
51. Mr. QUARTEY (Ghana), referring to the proposal by the UNCTAD representative, pointed out that it had been decided in the Second Committee that the present instrument would not refer to the provisions of other conventions.
52. Mr. SHAH (United Nations Conference on Trade and Development) explained that his proposal had been intended to prevent overlapping between the present Convention and the convention that was being prepared on multimodal transport. One possibility he had suggested would be to make slight changes in paragraph 6 of article 1; but some delegations apparently considered that paragraph 6 was concerned solely with contracts for multimodal carriage in which the major portion was by sea. To avoid the risk of conflict, it would be preferable to insert a special provision in the final clauses.
53. Mr. NSAPOU (Zaire) said that all the paragraphs of article 1 had been adopted in the Drafting Committee. Accordingly, he agreed with the President that the article should be voted on as a whole and not paragraph by paragraph.

54. Mr. NDAWULA (Uganda) supported the President's ruling that articles and not paragraphs should be voted on, and hoped the President would abide by it.

55. Mr. SMART (Sierra Leone) said that all the work of the Conference might be at risk if the first article was voted on paragraph by paragraph. It was too late to reopen the discussion. Decisions had been taken which could not be undone. The object of the delegations that wanted the article to be voted on in parts was to modify the definition of the term "shipper". If, nevertheless, the Conference should decide to vote on article 1 paragraph by paragraph, the same procedure would have to be adopted for all the articles in the Convention.

56. The PRESIDENT said that he would put article 1 as a whole to the vote unless the Netherlands delegation wished to press its motion for division.

57. Mr. CLETON (Netherlands) said that the Convention should be adopted by a two-thirds majority. Every delegation had the right to submit a proposal of the kind his own delegation had made and which had been seconded by the Liberian delegation. The proposal was procedurally in order.

58. Mr. CASTRO (Mexico), speaking on a point of order, said that the rules should be observed and the Conference should take a vote, which would be an opportunity for the Group of 77 to demonstrate their unity. The vote should be taken paragraph by paragraph.

59. Mr. DIXIT (India) said it would then be necessary to vote on every paragraph of every article of the Convention.

60. The PRESIDENT said that in principle it was preferable to vote article by article, but if the majority preferred to vote by paragraphs he would respect their wishes.

61. Mr. DIXIT (India) said that, as there were two suggestions concerning procedure, the delegation of the Netherlands should be asked if it agreed with that of the President.

62. Mr. CLETON (Netherlands) said that under the rules of procedure he was entitled to ask for a vote by division on specific articles. He therefore proposed that that procedure should be followed in the case of article 1.

63. The PRESIDENT said that, as an exceptional case, under rule 37 of the rules of procedure, article 1 would be put to the vote paragraph by paragraph.

64. Mr. NSAPOU (Zaire) was not in favour of that procedure in view of the large number of paragraphs, and asked the President to rule on the matter.

65. The PRESIDENT replied that he intended to take a vote on the motion for division proposed by the Netherlands representative.

66. Mr. QUARTEY (Ghana), speaking on a point of order, asked whether the Netherlands motion for division concerned article 1 only.

67. The PRESIDENT said that it did. He then put to the vote the Netherlands motion for division.

68. *The motion was rejected by 41 votes to 15, with 10 abstentions.*

69. The PRESIDENT announced that he would put article 1 to the vote.

70. Mr. QUARTEY (Ghana), raising a point of order, said that it was necessary to hear the UNCTAD representative before voting on paragraph 6 of article 1 in order to avoid possible conflicts between the present Convention and the convention which UNCTAD was preparing.

71. The PRESIDENT said that the Conference could return to article 1 when considering the final clauses.

72. Mr. GORBANOV (Bulgaria) said that the plenary's sole function was to verify whether the text drafted by the First Committee was consistent with what had been decided. It would be wrong to reopen the debate.

73. Mr. NDAWULA (Uganda), raising a point of order, said that in the rules of procedure it was expressly provided that once a question had been voted upon no representative could speak on it thereafter.

74. The PRESIDENT put article 1 to the vote.

75. *Article 1 was adopted by 61 votes to none, with 9 abstentions.*

Article 2

76. The PRESIDENT put article 2 to the vote.

77. *Article 2 was adopted by 69 votes to none.*

Article 3

78. The PRESIDENT put article 3 to the vote.

79. *Article 3 was adopted by 69 votes to none, with 2 abstentions.*

Article 4

80. The PRESIDENT put article 4 to the vote.

81. *Article 4 was adopted by 70 votes to none.*

Articles 5-8

82. The PRESIDENT said that articles 5 to 8 represented a compromise solution adopted after long discussion. In view of the considerable effort that had gone into working out the compromise, he suggested that the four articles should be voted upon as a group.

83. Mr. BYERS (Australia) referred to the amendment submitted jointly by Australia and Hungary (A/CONF.89/L.3) to add a sentence to paragraph 8 of article 5. Paragraph 8 did not form part of the package deal and should be voted on separately.

84. Mr. NSAPOU (Zaire) considered that the articles in question should be put to the vote *en bloc*, which would make it possible to cut short the discussion.

85. Mr. KELLER (Liberia) noted that the explanatory paragraph in document A/CONF.89/C.1/L.211 did not form part of the text that was to be put to the vote, and asked if it was to be annexed to the Convention. If so, he too was in favour of voting on the articles as a whole.

86. Mr. CASTRO (Mexico) said he was also in favour of a vote *en bloc*, except for paragraph 8 of article 5, which should be voted on separately.

87. Mr. LOW (Canada) also endorsed the idea of voting on the articles as a group, even though that procedure would not give his delegation an opportunity to indicate which articles it supported most strongly.

88. The PRESIDENT drew attention to the amendment submitted by Australia and Hungary (A/CONF.89/L.3).

89. Mr. BYERS (Australia) said that the purpose of the amendment was to clarify the meaning of loss, so that when the provision came to be implemented it would be clear how the First Committee had construed it.

90. Mr. NDAWULA (Uganda) fully supported the amendment.

91. Mr. KHOO (Singapore) considered that the amendment was useful and a judicious addition to article 5.

92. Mr. SUCHORZEWSKI (Poland) considered that the amendment introduced ambiguities and broke up the package deal. He was unable to understand its intention, for the notion of loss was made sufficiently clear in article 5 as it stood.

93. Mr. GANTEN (Federal Republic of Germany), agreeing with the Polish delegation, likewise considered that paragraph 8 of article 5 was clear enough as it stood.

94. The PRESIDENT put to the vote the amendment by Australia and Hungary and pointed out that a two-thirds majority would be required for its adoption.

95. *There were 32 votes in favour, 19 against, and 2 abstentions. Not having received the necessary two-thirds majority, the amendment was not adopted.*

96. The PRESIDENT, in reply to the Liberian delegation's question concerning the way in which the comments of the First Committee would be presented, expressed the view that they should constitute a separate document to be annexed to the final act.

97. Mr. MÜLLER (Switzerland) considered that the comments were an intrinsic part of the articles. He would be unable to submit to the Swiss Parliament for ratification a text separate from that of the Convention. Consequently, he proposed that the comments should be embodied in an annex to the Convention and not in a document appended to the final act.

98. Mr. CASTRO (Mexico) said that the question should be dealt with clearly. In his opinion, the explan-

atory paragraph in question should not appear in the convention.

99. Mr. DIXIT (India) said that the comment in question would be out of place in the convention, whether in the form of an annex or otherwise, but should simply be reflected in the summary records of the meetings.

100. Mr. CLETON (Netherlands) said he had gathered from the debate on the question at the previous meeting that all delegations were agreed that the text should be annexed to the Convention.

101. Mr. SWEENEY (United States of America) said that, in the course of the deliberations of the consultative group presided over by Mr. Chafik, the question of the carrier's liability for deterioration of the goods or loss due to delay had been raised. The language of paragraph 1 of article 5, "The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery . . ." had been said to cover physical damage to goods as a result of delay. That was also the opinion of his own delegation which had said that, in its view, the terms of article 5, paragraph 1, and particularly of article 6, paragraph 1 (a), which limited the carrier's liability to 2.5 units of account per kilogram of gross weight and to 835 units of account per package, satisfactorily settled the question of physical damage done to goods as a result of delay.

102. Mr. LAVIÑA (Philippines) said that his delegation reserved the right to ask for a separate vote on paragraph 8 of article 5, which did not form part of the package deal.

103. Mr. DIXIT (India) said that his delegation would like paragraph 8 of article 5 to be put to the vote separately.

104. Mr. BURGUCHEV (Union of Soviet Socialist Republics) asked for a separate vote on articles 6 and 8.

The meeting rose at 10.55 p.m.

7th plenary meeting

Thursday, 30 March 1978, at 9.20 a.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.7

AGENDA ITEM 10

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (continued) (A/CONF.89/12 and Add. 1-5, A/CONF.89/L.4, A/CONF.89/C.1/L.211)

DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE

Articles 5-8 (concluded)

1. The PRESIDENT said that the Conference had to

decide where to insert the consensus text adopted by the First Committee as part of the compromise on articles 5, 6 and 8 and which appeared as the last paragraph of document A/CONF.89 C.1/L.211. The text read:

"It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule."

2. Some delegations had made their approval of the

compromise on articles 5, 6 and 8 conditional upon the inclusion in the Final Act of the Conference of the consensus text just read out. Consequently, he suggested that the Conference should decide in principle that the consensus text would become annex II of the Final Act, to follow the text of the convention, which would be annex I. The wording of the text in question could be considered later, simultaneously with the text of the Final Act.

3. Mr. KELLER (Liberia) said that his delegation, which had raised the matter at the previous meeting, supported the solution suggested by the President.

4. *The President's suggestion that the compromise text on articles 5, 6 and 8 should appear in the Final Act as annex II was adopted.*

5. The PRESIDENT recalled that at the previous meeting it had been agreed that the draft Convention would be considered article by article, but that articles 5 to 8 would be considered together, since they had formed the subject of a compromise in the First Committee (A/CONF.89/C.1/L.211). However, some of the paragraphs of article 5 were not covered by the compromise in question; separate votes on paragraphs 6 and 8 had been requested by the USSR, while India had asked for a separate vote on paragraph 8. In deference to delegations which wanted to explain their votes on those paragraphs of article 5 which did not form part of the compromise, he suggested that the Conference should vote separately on paragraphs 6, 7 and 8 of article 5 before voting on articles 5, 6, 7 and 8 as a group.

6. *It was so decided.*

Article 5, paragraph 6

7. *Article 5, paragraph 6, was adopted by 50 votes to none, with 12 abstentions.*

8. Mr. POPOV (Bulgaria), supported by Mr. SARLIS (Greece) and Mr. BURGUCHEV (Union of Soviet Socialist Republics), said that his delegation still considered that the word "reasonable" should not have been used in paragraph 6, since a moral and humanitarian issue was involved.

9. Mr. PTAK (Poland) associated his delegation with that statement.

Article 5, paragraph 7

10. *Paragraph 7 was adopted by 58 votes to 1, with 4 abstentions.*

11. Mr. RAY (Argentina) said that his delegation had abstained because it thought that the wording of the paragraph was rather unfortunate.

12. Mr. MÜLLER (Switzerland) said that he had abstained in the vote because the last part of the sentence, dealing with the amount of the loss, damage or delay in delivery, was unacceptable to his delegation.

Article 5, paragraph 8

13. Mr. LAVINA (Philippines), speaking in explanation of his vote before the voting and supported by Mr. SMART (Sierra Leone), said that, in his delegation's view, paragraph 8 had important repercussions on article 5, paragraph 1, which formed part of the compromise,

and substantially changed the meaning of that paragraph. His delegation would therefore vote against paragraph 8.

14. *There were 31 votes in favour, 21 against, and 12 abstentions. Not having received the necessary two-thirds majority, paragraph 8 was not adopted.*

15. Mrs. YUSOF (Malaysia) said that her delegation had abstained from voting on paragraph 8 because it supported the compromise on articles 5 to 8 and because it thought that the addition of paragraph 8 would have created an uncertain situation.

16. Mr. SANYAOLU (Nigeria) said that he had voted against paragraph 8 because, in his opinion, the formula proposed did not make allowance for all the relevant factors.

Article 5, as amended by the deletion of paragraph 8, and articles 6, 7 and 8 considered together.

17. *Articles 5 (as amended), 6, 7 and 8 were adopted by 57 votes to none, with 10 abstentions.*

18. Mr. MARCIANOS (Greece) said that he had abstained in the vote because the articles on the basis of liability contained no clause exempting the carrier from liability for error of navigation and because there was no provision for the possibility of a special agreement being concluded between the parties to a contract for the carriage of live animals.

19. Mr. POPOV (Bulgaria) said that his delegation had voted in favour of the articles on the basis of liability; nevertheless, he emphasized that the absence of a clause exempting the carrier from liability for error of navigation was particularly serious for countries that wished to develop their merchant marines.

20. Mr. AMOROSO (Italy) said that his delegation had voted in favour of articles 5 to 8, which constituted a compromise, despite the absence of a clause exempting the carrier from liability for error of navigation. In accordance with its instructions, his delegation had strenuously argued for the inclusion of such a clause in the Convention in order to protect the interests of both carriers and shippers, for it was worried about the possible economic consequences of the new wording of article 5. Nevertheless, Italy had decided to join the majority and to support the compromise on the most important points, since it was always prepared to co-operate with all other countries, whether developed or developing, in seeking solutions that took account of the various interests involved. It reserved the right, however, to make a thorough analysis, in a spirit of understanding, of the compromise adopted so as to satisfy itself as to the soundness of the new rules.

21. Mr. PORTELA (Argentina) said that his delegation had abstained in the vote for the reasons stated earlier in the First Committee, namely, that the rule concerning liability established in article 5, paragraph 1, was not satisfactory.

22. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation supported the compromise worked out in the First Committee, but regretted that no clause exempting the carrier from liability for error of navigation was included in the articles concerning

the basis of liability. If there had been a separate vote on that issue, his delegation would have abstained.

23. Mr. BENTEIN (Belgium) said that he agreed with the statement by the Italian delegation.

24. Mr. VIGIL (Peru), speaking in explanation of vote, said that in the First Committee his delegation had argued for the inclusion of error of navigation as a ground for exemption from liability; it continued to hold the view that the absence of such a clause would have adverse implications for the developing countries. Nevertheless, since that position had not been supported by other delegations, almost all of which had reached agreement on what was one of the key provisions of the Convention, his delegation had decided to vote in favour of the compromise, even though in its opinion the possible consequences of those provisions had not been sufficiently appreciated.

Article 9

25. *Article 9 was adopted by 65 votes to none, with 2 abstentions.*

Article 10

26. *Article 10 was adopted by 68 votes to none, with 1 abstention.*

Article 11

27. Mr. MÜLLER (Switzerland) said that his delegation would vote for article 11 if, as the First Committee had been informed, the "through carriage" dealt with by article 11 meant carriage by sea only.

28. Mr. RAY (Argentina) said that, during the discussions in the First Committee, his delegation had announced its intention of submitting an amendment to article 11 in the plenary.

29. The PRESIDENT said that the amendment in question would be an oral one, and it had been decided that the plenary would consider only written amendments.

30. Mr. RAY (Argentina) decided not to submit his amendment.

31. The PRESIDENT put article 11 to the vote.

32. *Article 11 was adopted by 62 votes to none, with 7 abstentions.*

33. Mr. RAY (Argentina), speaking in explanation of vote, said that his delegation had abstained from voting on article 11 because the provisions of that article did not take into account the rights of the consignee in the case of the issue of a through bill of lading.

34. Mr. MARCIANOS (Greece), speaking in explanation of vote, said that his delegation had abstained from voting on article 11 because the inclusion of the word "named" in paragraph 1 might have the effect of preventing the issue of through bills of lading.

35. Mr. BURGUCHEV (Union of Soviet Socialist Republics) pointed out that the last sentence of article 11, paragraph 1, was missing in the Russian version of the article.

36. The PRESIDENT said that the Russian text of article 11 would be rectified accordingly.

Article 12

37. *Article 12 was adopted by 68 votes to none, with 1 abstention.*

Article 13

38. *Article 13 was adopted by 70 votes to none.*

39. Mr. GONDRA (Spain) said that, in the Spanish text of article 13, paragraph 3, there should be a cross reference to paragraph 2 and not to paragraph 3.

40. The PRESIDENT said that the mistake would be corrected.

Article 14

41. *Article 14 was adopted by 69 votes to none.*

Article 15

42. The PRESIDENT invited the representative of Mauritius, the representative of the United Kingdom or the representative of the Soviet Union to introduce the amendment of which they were joint sponsors (A/CONF.89/L.4).

43. Mr. KERRY (United Kingdom) said that the First Committee had considered an amendment proposed by Mauritius and one proposed by the USSR on the increase in the limits of liability established under article 6, the relevant statement to be included in the bill of lading and the legal force of such a statement. Those amendments had been rejected and the problem remained. Under the Hague Rules an increase in the limits of liability had to be reflected in an increase in the declared value and to be mentioned in the bill of lading. The amendment under consideration would make it mandatory to state in the bill of lading the higher limits of liability where agreed in accordance with paragraph 4 of article 6. The proposed provision would solve the main problem, which was that a bill of lading was a negotiable document and that a third party ought to be informed of an important matter affecting his rights. The force of that statement would have to be determined by reference to the ordinary rules of law.

44. Mr. LEÓN MONTESINO (Cuba) and Mr. CHRISTOF (Bulgaria) supported the amendment introduced by the representative of the United Kingdom on behalf of the three delegations.

45. Mr. SUMULONG (Philippines) said that he was unable to support the proposed amendment. In his view, increased limits of liability agreed upon between carrier and shipper should not be mentioned in the bill of lading.

46. The PRESIDENT put the proposed amendment, contained in document A/CONF.89/L.4, to the vote.

47. *The amendment was adopted by 46 votes to 2, with 15 abstentions.*

48. The PRESIDENT put to the vote article 15, as modified by the amendment submitted by Mauritius, the USSR and the United Kingdom.

49. *Article 15, as amended, was adopted by 67 votes to none, with 3 abstentions.*

Article 16

50. *Article 16 was adopted by 68 votes to none, with 1 abstention.*

Article 17

51. Mr. MARCIANOS (Greece) moved that article 17 be voted on paragraph by paragraph.

52. Mr. QUARTEY (Ghana) opposed the motion.

53. The PRESIDENT put the Greek motion to the vote.

54. *The motion was defeated by 35 votes to 25, with 7 abstentions.*

55. Mr. TANIKAWA (Japan) asked for a separate vote on paragraph 3 of article 17.

56. Mr. CASTRO (Mexico) said that the reason why he had abstained from voting on article 16 was that, in his opinion, the provisions of that article should have consisted of paragraph 1 only. So far as the Japanese delegation's request regarding article 17, paragraph 3, was concerned, he considered the request unacceptable, since paragraphs 3 and 4 were interrelated, and if it were agreed to delete paragraph 3, paragraph 4 would be affected.

57. The PRESIDENT put the Japanese request to the vote.

58. *The request was rejected by 43 votes to 11, with 8 abstentions.*

59. The PRESIDENT put article 17 to the vote.

60. *Article 17 was adopted by 57 votes to 4, with 10 abstentions.*

61. Mr. MARCIANOS (Greece) said that article 17, as adopted, might have one regrettable consequence: if the shipper and the carrier should by collusion enter in the bill of lading some false particulars to the detriment of the consignee, the shipper would be protected against the carrier. That was unfair, since in most such cases the initiative in any fraudulent manipulations was traceable to the shipper.

62. Mr. SWEENEY (United States of America) said that he had voted against article 17 because, in his opinion, paragraphs 3 and 4 might lend themselves to fraudulent manipulations damaging to the consignee.

63. Mr. TANIKAWA (Japan) said that he had voted against article 17 for the reasons stated by the representatives of Greece and the United States of America.

Article 18

64. *Article 18 was adopted by 65 votes to 2, with 2 abstentions.*

Article 19

65. Mr. MORENO PARTIDAS (Venezuela) said that he was obliged to speak on the subject of article 19, paragraph 7, which he considered legally inadmissible: the representative of Switzerland had spoken on the same lines at the 32nd meeting of the First Committee. The reason for his opinion was that under paragraph 7 the carrier who considered that he had sustained loss or damage through a consignment which had damaged the vessel or other goods, would be bound to so inform the shipper within 90 days, before he could apply to the courts. Moreover, in the second part of that paragraph, the Working Group which had drafted it had apparently wanted to penalize the carrier by establishing a presumption *juris tantum*.

66. He was not sure what the legal effect of the provision would be. If the carrier informed the shipper that he was going to institute proceedings against him, the onus of proof rested on him. If the carrier did not so inform the shipper, then—in consequence of the presumption *juris tantum*—in that case also he would have to prove loss or damage, with the result that the notice had no effect whatsoever in law. His delegation considered the wording of that paragraph to be defective in that there was no difference between its two parts. He proposed, therefore, that it should be deleted or, if the Conference preferred, that it should be put to a separate vote.

67. Mr. CASTRO (Mexico) said he supported the Venezuelan proposal that paragraph 7 should be deleted, for its wording was confusing and reversed the principle of the presumed fault of the carrier vis-à-vis the shipper or consignee, a principle that was affirmed throughout the convention; as it stood, therefore, the paragraph would primarily benefit shipowners.

68. Mr. NIANG (Senegal) said that, for practical reasons, it should be specified in paragraph 1 that the word "day" meant a working day. So far as the Venezuelan proposal was concerned, he said that his delegation had voted in favour of the principle set forth in paragraph 7 as well as in favour of the text under consideration and would continue to support it, since it considered that it had been drafted in the interests of shippers.

69. Mr. MASSUD (Pakistan), supported by Mr. DIXIT (India), said that the pivotal provision in article 19 was paragraph 7, the principle of which had twice been considered in the First Committee. By virtue of that principle, if the consignee did not advise the carrier of damage, the act of taking over the goods constituted a presumption, in the absence of evidence to the contrary, that they had not sustained any damage. Similarly, if the carrier did not give notice of damage to the shipper, the presumption was, in the absence of evidence to the contrary, that the carrier had not sustained damage. If the Conference was to agree to vote separately on paragraph 7 and then to delete that provision, it would then have to reject the remaining paragraphs of article 19, since paragraph 7 was an integral part of the article which established a balance between the duties of shippers and carriers.

70. Mr. QUARTEY (Ghana) expressed support for the Senegalese proposal that the expression "working day" should be used in article 19, paragraph 1, for the paragraph as it stood might give rise to difficulties in practice. If the paragraph did not spell out the meaning of "day", any issue arising as a consequence would have to be settled by the national courts.

71. Mr. MÜLLER (Switzerland) said that, if the Conference heeded the advice of the representative of Pakistan, it was conceivable that the whole of article 19 might be rejected. Accordingly, he proposed that the article should be voted on paragraph by paragraph, so as to avoid creating a gap in the Convention and leaving it to national legislation to settle the question.

72. Mr. CASTRO (Mexico) said that the other provisions of article 19, apart from paragraph 7, were ac-

ceptable to his delegation. He would prefer the article as a whole to be put to the vote, after a separate vote on paragraph 7, and opposed the Swiss proposal. He also drew attention to the Senegalese proposal that the word "day" should be understood to mean a working day.

73. Mr. QUARTEY (Ghana) said he found it unacceptable that attempts should be made to introduce oral

amendments under the guise of a procedural discussion, the more so as it had been decided that the draft text would be put to the vote article by article. Consequently, he would prefer that the Conference vote on article 19 as a whole.

The meeting rose at noon.

8th plenary meeting

Thursday, 30 March 1978, at 2.15 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.8

AGENDA ITEM 9

Consideration of the question of the carriage of goods by sea in accordance with General Assembly resolution 31.100 of 15 December 1976 (concluded)* (A/CONF.89.5, A/CONF.89.6 and Add. 1 and 2, A/CONF.89.7 and Add. 1, A/CONF.89.8, A/CONF.89.L.8)

DRAFT PREAMBLE SUBMITTED BY THE SECRETARY-GENERAL

1. Mr. VIS (Executive Secretary of the Conference) introduced the draft preamble submitted by the Secretary-General in document A/CONF.89.L.8.

2. In reply to a question by Mr. KHOO (Singapore), he explained that the use of the word "thereto" was in accordance with the practice followed in regard to previous international instruments—for example, the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

AGENDA ITEM 10

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (continued) (A/CONF.89.12 and Add. 1–6, A/CONF.89.L.4, L.7)

DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE

Article 19 (concluded)

3. Mr. VIS (Executive Secretary of the Conference) recalled that at the previous meeting the delegation of Senegal had noted that in paragraph 1 of the article it should be specified that the word "day" meant a working day. It had been suggested that the corresponding amendment to the English text should be made by adding the word "working" before the words "day after"; perhaps, however, the term "business day", frequently

used in texts of the United Nations Commission on International Trade Law (UNCITRAL), should be the English translation of the proposed amendment.

4. Following a discussion in which Mr. CLETON (Netherlands), Mr. KERRY (United Kingdom), Mr. SMART (Sierra Leone), Mr. MOORE (United States of America), Mr. WISWALL (Liberia), Mr. POPOV (Bulgaria), Mr. KHOO (Singapore), Mr. NDAWULA (Uganda), Mr. MASSUD (Pakistan) and Mr. CASTRO (Mexico) took part, the PRESIDENT, having requested a show of hands, noted that there was a clear majority in favour of using the term "working day" in the English text of the proposed amendment.

5. *The amendment was adopted.*

6. The PRESIDENT noted that the Conference had before it two procedural motions: one, by the Venezuelan delegation, for a separate vote on article 19, paragraph 7, to be followed by a vote on article 19 as a whole; and one, by the Swiss delegation, for a separate vote on each paragraph of article 19. He invited the Conference to vote, first, on the Swiss motion.

7. *The motion was rejected by 43 votes to 17, with 11 abstentions.*

8. The PRESIDENT invited the Conference to vote on the Venezuelan motion.

9. *There were 26 votes in favour, 26 against and 17 abstentions and the motion was rejected.*

10. *Article 19 as a whole, as amended by the Senegalese delegation, was adopted by 49 votes to 1, with 16 abstentions.*

Article 20

11. *Article 20 was adopted.*

Article 21

12. Mr. LEÓN MONTESINO (Cuba) noted that the words "of the same ownership", in the English version of article 21, subparagraph 2 (a), appeared as "del mismo armador" in the Spanish text. A number of Spanish-speaking delegations were dissatisfied with that

* Resumed from the 4th meeting.

rendering, since they thought that the correct equivalent of "ownership" was "*propiedad*".

13. In any case, with regard to the text in question, they had felt that the meaning and intention would be more clearly conveyed if the words "*mismo armador*" were replaced by "*demandado*". Those delegations, however, had not pressed for such an alteration by the Drafting Committee, since the majority view in that Committee had been that the matter was not one of substance.

14. Mr. VIS (Executive Secretary of the Conference) said that the word "ownership" was to be found in the original UNCITRAL text (A/CONF.89/5) and had not been modified by the Drafting Committee. The meaning conveyed by the English word "ownership" had always been regarded as correct in the context concerned.

15. Mr. RAY (Argentina) wondered whether the French delegation was satisfied with the word "*armement*" in the French text; if it was, the word "*armador*" could be accepted in the Spanish text.

16. Mr. CARRAUD (France) said that, although the word "*propriété*" was perhaps a better translation of "ownership", his delegation had no difficulty with the word "*armement*" in the text in question.

17. Mr. CASTRO (Mexico) said that the problem, as his delegation saw it, was that a person who was technically a shipowner at a given moment might not be the real owner of the vessel concerned. If the other Spanish-speaking delegations found the same difficulty, he would support the Cuban representative's proposal that the words "*mismo armador*" should be replaced by "*demandado*".

18. Mr. MÜLLER (Switzerland), referring to the French text, thought that the word "*propriétaire*" would be clearly understood to mean owner, whereas the word "*armement*" was less clear. The First Committee's intention had surely been to mean actual ownership and not to refer to the vessel's temporary user; he therefore proposed that the word "*propriétaire*" should be used in the French text.

19. Mr. KALPIN (Union of Soviet Socialist Republics) said that the problem mentioned with regard to the Spanish text occurred in the Russian text also. In the Russian version of the draft Convention, "owner" had been variously translated as "*sobstvennik*" and "*vladelets*"; for the sake of consistency, one word or the other should be used throughout. With regard to the text in question, however, his delegation had suggested, in the Drafting Committee, the use of the word "defendant". The proposal had been rejected; however, since the matter was being raised in plenary session, his delegation wished to renew its proposal.

20. The PRESIDENT said that the replacement of the term "ownership" by the term "defendant", as proposed by the representatives of Cuba and the Soviet Union, was a substantive amendment. He therefore suggested that the term "ownership" should be retained in the English text since it expressed the essential concept involved, and that a more faithful equivalent should be used in the other language versions.

21. Mr. GUEIROS (Brazil) said that a better term would be "defendant", as that would cover the case of charter-

parties and of the actual carrier who became the temporary owner of the carrying vessel.

22. Mr. NIANG (Senegal) said that the term "*armement*" in the French version conveyed the concept of ownership satisfactorily. Its replacement by the term "*propriétaire*" would do nothing to improve matters.

23. Mr. SELVIG (Norway) pointed out that the term "owner" had been used to express the same concept in the 1969 International Convention on Civil Liability for Oil Pollution Damage,¹ and an authenticated translation undoubtedly existed in the other languages. In the French text, the term "*propriétaire*" had been used. What was essential was to retain the concept of ownership, since the subject of the subparagraph was property and the arrest of property. Unless the term "ownership" was maintained, it would not be possible to arrest a vessel that was not operated by the owner.

24. Mr. FILIPOVIĆ (Yugoslavia) said that it was too late to reopen the question of terminology, which could be settled by reference to the English text, although he agreed that there was a distinction to be made between operator and owner. The translation of "ownership" in the French text was closer to the notion of operator in his own language.

25. Mr. SUCHORZEWSKI (Poland) agreed with the representative of Brazil that it would be more appropriate to use the term "defendant".

26. Mr. WAITITU (Kenya) said his delegation fully agreed with the representative of Norway that the concept to be emphasized was that of ownership. It was therefore opposed to the use of the word "defendant".

27. Mr. HONNOLD (United States of America) said that the difficulty was not caused by the concept of the ownership of the carrying vessel, which would necessarily be retained in the text, but the question of what other property was actually owned by the defendant and therefore subject to seizure. His delegation consequently agreed with the suggestion made by the Brazilian representative and the speakers who had preceded him that the term "defendant" should be used in preference to "ownership" since it would be clear, rational and consistent with subparagraph 1 (a).

28. Mr. GONDRA (Spain) said it had become apparent in the course of the discussion that the question was one of substance rather than one of semantics. The origin of the problem lay in the concept of "ownership". He did not agree with speakers who had claimed that the English term was quite clear and that the translation did not present any difficulty, because under maritime law it could be used in the sense of an "owner *pro tempore*", who was a charterer rather than an owner in the meaning of the term "*propietario*" in Spanish. There was also the registered owner, to which the text possibly referred. The International Convention on Civil Liability for Oil Pollution Damage, to which the Norwegian representative had referred, defined the term "owner" in the sense of

¹ See Inter-Governmental Maritime Consultative Organization, *Official Records of the International Legal Conference on Marine Pollution Damage*, 1969, p. 173.

a person or persons registered as owning a vessel, which could be interpreted in a variety of ways, and hence did not throw any light on the problem of definition now before the Conference. The best solution might therefore be to adopt the suggestion made by a number of delegations to replace the term "ownership" by "defendant".

29. Mr. QUARTEY (Ghana) said the text of subparagraph 2 (a) should be clarified, because the reasons for instituting an action in connexion with the arrest of the carrying vessel might not apply in the case of an action against another vessel of the same ownership.

30. Mr. LEÓN MONTESINO (Cuba) said that the problem might be solved if the expression "*otro buque del mismo demandado*" was to be used in the Spanish text.

31. Mr. WISWALL (Liberia) said that his delegation thought that the difficulty now confronting the Conference arose in part from the stipulation that an action "may be instituted" in a port or place where the vessel in question "may have been arrested". It was possible in some jurisdictions to begin an action *in rem* prior to the arrest of a vessel, but he did not know of any jurisdiction in which an action could be begun after a vessel had been arrested. The wording was paradoxical and would be difficult for a court to interpret. Subject to that comment, his delegation was, however, prepared to support the replacement of the term "ownership" by the term "defendant".

32. The PRESIDENT invited the Conference to vote on the proposal to replace the term "ownership" by the term "defendant" in subparagraph 2 (a). He reminded the Conference that the amendment was substantive and a two-thirds majority was therefore required for its adoption.

33. *There were 34 votes in favour, 19 against and 13 abstentions. Not having received the necessary two-thirds majority, the proposal was not adopted.*

34. The PRESIDENT said that the term "ownership" was therefore maintained, and suggested that the 1969 International Convention on Civil Liability for Oil Pollution Damage should be used as a basis for finding equivalents for that term in the other languages.

35. Mr. CHAFIK (Egypt) said that the Arabic version did not present any problem because the notion of ownership could be clearly expressed in Arabic.

36. Mr. CASTRO (Mexico) suggested that the expression used in Spanish might be "*otro buque del mismo propietario*".

37. Mr. KACIĆ (Yugoslavia) said that the notions of "ownership" and "defendant" might perhaps be reconciled by using the expression "or any other vessel under the ownership of the same defendant", as the present text was awkward and of doubtful value.

38. The PRESIDENT regretted that no further amendment could be accepted in view of the decision to retain the term "ownership". He would take it that, if there were no objections, the Spanish-speaking delegations agreed to accept the proposal made by the representative of Mexico.

39. *It was so decided.*

40. Mr. CARRAUD (France) said that his delegation was not convinced of the need to change the term "*armement*" in the French version, since the term "ownership" as used in maritime law did not have the same strict sense as in English common law. Moreover, the whole question had been discussed at length within UNCITRAL and had not caused any problem before.

41. Mr. BENTEIN (Belgium) said his delegation was satisfied with the word "*armement*". He noted that the words "may have been arrested", in the same sentence, were rendered in French as "*a été saisi*". Possibly, therefore, the words "may have" should be replaced by "has".

42. Mr. CLETON (Netherlands) said that, in his view, "*armement*" did not have strictly the same meaning as "*propriétaire*" or "owner". Moreover, "*propriétaire*", and not "*armateur*", was the word used in the 1952 International Convention relating to the Arrest of Seagoing Ships.² Any discrepancy in the various language versions of the Convention would be totally unacceptable to his delegation, since that would inevitably give rise to considerable difficulty for the courts of his country when they came to apply the provisions of the Convention.

43. Mr. RAY (Argentina) said that the question was not simply one of semantics, for the word "*armement*" embodied an entirely different concept than did the term "ownership". He had no doubt that the correct rendering of that term, in the context, was "*propriétaire*" in French and "*propietario*" in Spanish.

44. Mr. SARLIS (Greece) said his delegation considered it essential to avoid any discrepancies between the various language versions of the Convention, particularly bearing in mind its practical application and the fact that it would probably have to be translated into other languages. It might be appropriate for the meeting to be suspended so that informal consultations could be held on the matter.

45. Mr. CARRAUD (France) said he fully agreed on the need for linguistic consistency. If he had indicated a preference for the word "*armement*", it was simply because he felt that it was a more accurate rendering of the sense of the word "ownership".

46. The PRESIDENT said that the meeting would be suspended so as to allow the delegations of France, Greece, the Netherlands, Norway and Switzerland to hold consultations with a view to working out a common position on the matter.

47. *It was so decided.*

48. *The meeting was suspended at 3.45 p.m. and resumed at 4.15 p.m.*

49. Mr. CARRAUD (France) said he understood, from the consultations, that the word "ownership" applied not to use of a vessel but solely to property in it. In view, also, of the terminology used in other maritime conventions, he would have no objection if "ownership" were rendered in French by "*propriété*".

50. The PRESIDENT suggested that, in the Spanish

² See United Nations, *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. II (United Nations publication, Sales No. E.73.V.3), p. 156.

version, the word "armador" should be replaced by "propietario".

51. *It was so decided.*

52. Mr. TANIKAWA (Japan) proposed that a separate vote should be taken on paragraph 2 of article 21.

53. Mr. SWEENEY (United States of America) said that article 21, which had been carefully thought out both in the UNCITRAL Working Group and in the First Committee of the Conference, embodied a series of compromises. Paragraph 2 was designed to meet the concern of a few countries, one being his own, which regarded the *in rem* procedure as absolutely vital in the economic situation with which they were faced. Its purpose was not to impose on any other State a procedure which it did not already have. Consequently, in his view, paragraph 2 should not be singled out, and a vote should be taken on the article as a whole.

54. The PRESIDENT, noting that there was no support for the Japanese proposal, said he would take it that it was rejected. He would therefore put to the vote article 21 as a whole.

55. Mr. POPOV (Bulgaria), speaking in explanation of the vote prior to the vote, said his delegation would abstain in the vote on article 21, since it considered that the multiplicity of jurisdictions provided for under the article would tend to frustrate rather than promote the establishment of a sound and just international legal order.

56. Mr. SUCHORZEWSKI (Poland) endorsed the Bulgarian representative's remarks.

57. Mr. AMOROSO (Italy) said that his delegation, too, would abstain in the vote since, in its view, the provisions of subparagraph 2 (a) conflicted with those of the 1952 International Convention relating to the Arrest of Sea-going Ships, which his country had ratified.

58. Mr. TANIKAWA (Japan) said that his delegation would vote against the article since, as it had already explained in the First Committee, the provisions of article 21, paragraph 2, would make it very difficult for his Government to ratify the Convention.

59. Mr. MARCIANOS (Greece) said that his delegation would vote against both article 21 and article 22, since it considered that those articles would not allow for prior agreement by the parties on an exclusive jurisdiction of their choice. That was often in the interests of the parties concerned, since disputes could then be speedily settled in one of the world commercial centres where legal and other facilities were readily available.

60. *Article 21 was adopted by 50 votes to 4, with 16 abstentions.*

Article 22

61. *Article 22 was adopted by 57 votes to 2, with 12 abstentions.*

Article 23

62. *Article 23 was adopted by 65 votes to none, with 5 abstentions.*

Article 24

63. *Article 24 was adopted by 64 votes to none, with 8 abstentions.*

Article 25

64. *Article 25 was adopted by 70 votes to none, with 2 abstentions.*

65. Mr. MÜLLER (Switzerland), speaking in explanation of vote, said that he had abstained because he had not had time to ascertain from the competent Swiss authorities whether paragraph 2 of article 25 was consistent with existing treaties to which his country was a party.

66. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the Conference might wish to consider whether the single provision under article 32 (Relationship with other transport conventions) could not more appropriately be included as a separate paragraph under article 25.

67. The PRESIDENT suggested that, since the Conference had already adopted article 25, it should deal with that point when it took up article 32.

68. *It was so decided.*

Article 26

69. Mr. MARCIANOS (Greece), referring to the second sentence of paragraph 1, said he understood the words "at the date of judgement" to refer to the date on which the judgement was published. If that understanding were correct, the judges of some countries might have difficulty in determining the value of their national currency at the date of judgement for, while the International Monetary Fund (IMF) published daily the value of 32 national currencies, there was a considerable time differential between Washington and countries such as his own. One possible solution would be to regard the date of judgement not as the date on which the judgement was published but as the date of the last hearing in court. That interpretation could, perhaps, be reflected in the summary record to serve as a guide in construing the provision.

70. Mr. NILSSON (Sweden) said his delegation's understanding of the words "at the date of judgement" was that a judge should use the latest IMF calculation available at the place of the judgement on the day when the judgement was given. That meant that, in certain places of the world, due to the time differential, the calculation used would be that made by IMF on the preceding day.

71. The PRESIDENT suggested that it would suffice to meet the point if the statements of the Greek and Swedish representatives were reflected in the summary record.

72. *It was so decided.*

73. *Article 26 was adopted by 69 votes to none, with 2 abstentions.*

Articles 27-29

74. *Articles 27, 28 and 29 were adopted by 72 votes to none, with 2 abstentions.*

75. Mr. MARCIANOS (Greece), speaking in expla-

nation of vote, said that his delegation had voted in favour of articles 27, 28 and 29 as they had been put to the vote together. Had article 29 been put to the vote separately, his delegation would have voted against it, since it considered that countries should have the possibility of making reservations to the Convention on minor points, and that the article, as adopted, could make it difficult for certain countries to ratify the Convention.

76. Mr. KELLER (Liberia) said his delegation's position on the vote was the same as that of Greece.

Article 30

77. Mr. CLETON (Netherlands) pointed out that in paragraph 2 of the article the term "Contracting Party" was used, and in paragraph 3 "Contracting State". According to article 2 of the Vienna Convention on the Law of Treaties,³ a "contracting State" was a State which had consented to be bound by a treaty, whether or not that treaty had entered into force, whereas a "party" was a State which had consented to be bound by a treaty and for which the treaty was in force. He thought the term "Contracting State" should be used in paragraph 2, and "Contracting Party" in paragraph 3.

78. The PRESIDENT suggested that, for consistency's sake, it might be better to use the term "Contracting State" throughout the text of the Convention.

79. Mr. CLETON (Netherlands) said that that might affect the interpretation of article 33, for example.

80. Mr. WISWALL (Liberia) said that the purpose of the Vienna Convention on the Law of Treaties had been to establish uniform usage with regard to treaties. He supported the Netherlands representative's view that the Convention under study should conform to the Vienna model.

81. Mr. DIXIT (India) said that there was really no difference in substance between a contracting State and a contracting party as far as the Convention under study was concerned.

82. Mr. BYERS (Australia) pointed out that there was no definition in the Convention of the term "Contracting Party", which was generally used in the text.

83. Mr. GANTEN (Federal Republic of Germany) agreed with the Indian representative that there might not be much difference in substance between the two terms as used in the text. He nevertheless felt that the usage in the new Convention should be brought into line with the recommendations of the Vienna Convention. He agreed that the appropriate term to use in paragraph 2 was "Contracting State".

84. Mr. CASTRO (Mexico) said that it would be logical

for the terms used in paragraphs 2 and 3 to be the same.

85. The PRESIDENT suggested that the term "Contracting State" should be substituted for "Contracting Party" in article 30, paragraph 2.

86. *It was so decided.*

87. *Article 30, as amended, was adopted by 65 votes to 1, with 4 abstentions.*

Article 31

88. The PRESIDENT drew attention to the new paragraph proposed by Australia, Brazil, Bulgaria, France and Italy in document A/CONF.89/L.7 to be added to article 31.

89. Mr. CARRAUD (France) said that the sponsors of the proposal, and a number of other delegations as well, were concerned by the serious problem likely to arise in applying a convention which required the automatic denunciation of the 1924 Brussels Convention and the 1968 Protocol. Such a requirement was unprecedented and was likely to create great uncertainty, as between a State which had not ratified the 1978 Convention and a State which had, concerning such matters as what law applied and what courts were competent. It was claimed that common law provided a solution to such problems, but that did not help those countries whose written law was in the Roman tradition. The obligation to denounce was likely to become a serious impediment to ratification on the part of such States, and would thus seriously limit the effectiveness of the Convention. The amendment would not perpetuate a situation in which two conventions were operating side by side, since it merely provided for a transitional period of five years. He earnestly hoped that the amendment would commend itself to the Conference, since the whole future of the Convention might depend on its acceptance.

90. Mr. CLETON (Netherlands), Mr. HONNOLD (United States of America), Mr. BYERS (Australia), Mr. DIXIT (India), Mr. NDAWULA (Uganda), and Mr. SMART (Sierra Leone) raised questions regarding the meaning of the English text of the proposed amendment.

91. Mr. QUARTEY (Ghana) said that, though he agreed with the motives behind the proposal, the English text was drafted in such a manner as to defeat the purpose of the document. He urged that it be redrafted so as to make clear the meaning which it was intended to convey.

92. The PRESIDENT suggested that the sponsors of the proposal contained in document A/CONF.89/L.7 should consult other interested delegations with a view to preparing a revised text for consideration at the next meeting.

93. *It was so decided.*

The meeting rose at 5.35 p.m.

³ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

9th plenary meeting

Thursday, 30 March 1978, at 7.55 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.9

AGENDA ITEM 10

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (concluded) (A/CONF.89/10, A/CONF.89/11, A/CONF.89/12 and Add I-6, A/CONF.89/12.L.1, A/CONF.89/C.1/L.121, A/CONF.89/L.4, L.6, L.7, L.9)

DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE

Article 32

1. The PRESIDENT asked the Conference to consider the proposal by the Federal Republic of Germany and Australia for the addition of a new paragraph to article 32 (A/CONF.89/L.9).

2. Mr. GANTEN (Federal Republic of Germany) said that the new paragraph which his and the Australian delegations were proposing to be added to article 32 was intended to fill a gap: it dealt with the problem of the relationship between the present Convention and any international convention relating to contracts for multimodal carriage of goods that might be concluded under the auspices of the United Nations. The problem had been considered by the Second Committee and by the plenary in connexion with article 1, paragraph 6. The representative of the United Nations Conference on Trade and Development (UNCTAD), speaking on the subject, had referred to the foot-note to document A/CONF.89/C.1/L.121 in which the *ad hoc* Working Group had said that a provision should be included in the final clauses of the Convention regulating the relationship of the Convention to conventions on multimodal transport. The question was what rule would be applicable to the carriage of goods by sea in cases where such carriage was part of a contract for multimodal carriage. According to the provisional definition given by UNCTAD's Intergovernmental Preparatory Group on a Convention on International Multimodal Transport, "international multimodal transport" meant the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract, from a place in one country at which the goods were taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.

3. Evidently there was no problem if the carriage of goods by sea was unimodal, since the Convention was applicable to it in virtue of article 2. But if the carriage of goods by sea formed part of a multimodal carriage, would that carriage be governed by the present Convention or by the possible future convention on multimodal transport? According to the view that the carriage of

goods by sea would invariably be governed by the present Convention whether or not it formed part of a contract of multimodal carriage, there would be no problem. But if a contract of multimodal carriage which included a sea leg was held to be governed by the future convention on multimodal transport, then the present Convention would have to contain a provision allowing for the application of the future convention on multimodal transport to the sea leg of a contract of multimodal carriage.

4. The argument that a convention on multimodal transport did not as yet exist was not convincing, for such a convention would very probably be adopted and would be applicable to all the operations of multimodal carriage, including those with a sea leg. If the Conference did not add a provision to article 32 stipulating that, should an international convention on contracts of multimodal transport be adopted, that convention would apply to the carriage of goods by sea in cases where such carriage formed part of a contract of multimodal carriage, there would be a conflict between the present Convention and the future convention. As it was very likely that the latter convention would contain a rule to that effect, the sea leg of a contract of multimodal carriage would be governed by two different rules. To forestall that eventuality, it should be expressly stated, as proposed by Australia and the Federal Republic of Germany, that no provision in the present Convention would prevent the application of an international convention relating to contracts for multimodal carriage of goods concluded under the auspices of the United Nations. Such a provision was indispensable if a convention on multimodal transport was to be adopted and if the present Convention was to have any impact at all on multimodal transport operations.

5. Mr. BYERS (Australia) said that his delegation had taken part in the negotiations that had led to the adoption of the definition of the "contract of carriage by sea" in article 1, on the recommendation of the *ad hoc* Working Group which had noted the need to regulate the relationship of the present Convention to the future convention on multimodal transport.

6. Mr. SELVIG (Norway) said that the developing countries should not have any fears that a conference held under the auspices of UNCTAD would adopt a convention contrary to their interests. UNCTAD was rightly apprehensive that the present Convention might prevent the Intergovernmental Preparatory Group from drawing up satisfactory rules for international multimodal transport. It was in the interests of all States not to hinder UNCTAD's efforts in that field. The fact that the future convention on multimodal transport would be adopted under the auspices of the United Nations and on the basis

of a draft drawn up by UNCTAD would be sufficient guarantee that such a convention would not be harmful to the interests of the developing countries.

7. Mr. TERASHIMA (Japan) said that he supported the proposal made by Australia and the Federal Republic of Germany.

8. Mr. KRISHNAMURTHY (India) considered it unnecessary to mention the future convention on contracts of multimodal transport in article 32, since nothing in the present Convention would prevent the application of such a new convention. He was therefore firmly opposed to the proposal by Australia and the Federal Republic of Germany.

9. Mr. LAVIÑA (Philippines) also opposed the new paragraph proposed in document A/CONF.89/L.9. He pointed out that at its 10th meeting, when adopting the text proposed by the *ad hoc* Working Group in document A/CONF.89/C.2/L.27, the Second Committee had decided to restrict the scope of article 32 to other international conventions already in force at the date of the present Convention. He considered it bad legal practice to mention in the present Convention a convention which did not yet exist, for the States that would become parties to the present Convention would not necessarily be parties to the future convention on multimodal transport.

10. Mr. SHAH (Observer for the United Nations Conference on Trade and Development) said that, when the issue had been considered by the Second Committee, it might admittedly have been considered unnecessary to include a provision relating to the future convention on contracts of multimodal transport in the final clauses of the present Convention. However, the situation had changed since the adoption of article 1, paragraph 6, which was so worded that it might apply to multimodal carriage. Hence some clause was needed to avoid conflict between that provision and the convention on multimodal transport being prepared by UNCTAD. In his opinion, the proposed new paragraph contained in document A/CONF.89/L.9 would not place the parties under any constraint whatsoever; its purpose was simply to ensure that nothing in the Convention would prejudice whatever provisions were adopted in the future convention on multimodal transport.

11. The PRESIDENT invited the Conference to vote on the amendment to article 32, paragraph 2, contained in document A/CONF.89/L.9.

12. *The amendment was rejected by 27 votes to 23, with 17 abstentions.*

13. Mr. NSAPOU (Zaire) said that he had abstained in the vote because he shared the doubts expressed by the other developing countries about the sincerity of the intentions of the developed countries concerning the future convention on multimodal transport.

14. Mr. LAVIÑA (Philippines) considered that the *ad hoc* Working Group that had drafted article 32 had exceeded its terms of reference in inserting, in the second sentence of that article, the passage "this provision also applies to any subsequent revision or amendment of such international convention". At the 10th meeting of the Second Committee the proposal to delete that sentence

had failed of adoption by a vote of 22 to 22. Accordingly, he requested a separate vote on the second sentence of article 32.

15. Mr. MÜLLER (Switzerland) pointed out that the only real purpose of article 32 was to maintain in force the International Convention concerning the Carriage of Goods by Rail (CIM) signed in Berne on 25 October 1962 which provided for the possibility, in the case of a crossing by ferry-boat, to add part of the sea transport to the rail transport. Article 63 of the CIM Convention incorporated the grounds for exemption from liability of the Hague Rules, which exemptions the Conference had just abolished. If the second sentence of article 32 was not retained, it would be impossible to adapt the arrangements for transport by ferry-boat provided for in the CIM Convention to the future convention. He added that the sentence in question did not relate to future conventions but only to the revision or amendment of an international convention already in force, namely the CIM Convention.

16. He hoped, therefore, that the second sentence of article 32 would not be put to the vote separately and that article 32 would be adopted in the form submitted to the Conference. He supported the Soviet Union's proposal at the previous meeting that article 32 should become paragraph 4 of article 25.

17. The PRESIDENT said he gathered that the great majority of delegations opposed the Philippine motion for a separate vote on part of article 32; the motion could therefore be considered as defeated.

18. *It was so decided.*

19. The PRESIDENT put the contents of article 32 to the vote.

20. *The contents of article 32 was adopted by 60 votes to 1, with 6 abstentions.*

21. Mr. CASTRO (Mexico) explained that his delegation had voted against the contents of article 32 because the second sentence of that article did not refer to universal international conventions but to regional conventions. By adopting that sentence, the Conference had violated a rule of international law. In that respect, he associated himself with the views expressed by the representatives of India and the Philippines.

22. Mr. DIXIT (India) said that his delegation had abstained from voting. In principle, it was opposed to any reference to a future convention, but agreed that the Conference was dealing with a special case. He hoped that, when the international conventions referred to in the contents of article 32 were revised or amended, the provisions of the Convention that was being drawn up would be taken into account.

23. The PRESIDENT noted that no delegation opposed the Soviet Union's proposal that article 32 should become paragraph 4 of article 25, which also dealt with existing conventions. In the absence of any objection, he would take it that that proposal had been accepted, and that the articles succeeding article 32 would be renumbered accordingly.

24. *It was so decided.*

Article 31 (concluded)

25. The PRESIDENT drew attention to the redraft prepared by the Brazilian, Bulgarian, French, Ghanaian and Italian delegations of the new paragraph proposed to be added to article 31 by Australia, Brazil, Bulgaria, France and Italy (A/CONF.89/L.7). The proposed text would read:

"Notwithstanding the provisions of article 2 of this Convention, for the purposes of paragraph 1 of this article a Contracting State may, when it notifies the Government of Belgium that it denounces the 1924 Convention or the 1924 Convention as amended by the 1968 Protocol, declare that, in its relations with the non-contracting States mentioned in that declaration, it will suspend such denunciation for a maximum period of five years from the date of entry into force of this Convention for that State."

26. Mr. QUARTEY (Ghana), introducing the redraft on behalf of its sponsors, said that, while hoping that the Convention being discussed would enter into force as soon as possible, they realized that it might be operative simultaneously with the 1924 Convention and the 1968 Protocol. It was for that reason that in their redraft the sponsors recommended that each State, when ratifying the future Convention and denouncing the other instruments he had mentioned, should inform its trading partners that were not parties to the new Convention that it would suspend its denunciation as far as they were concerned for a period of five years from the date on which it became a party to the new Convention. That solution should be satisfactory to the majority of States.

27. Mr. WISWALL (Liberia) pointed out that under the terms of the proposed clause a State which wished to suspend its denunciation would have to find out which States had not ratified the new Convention and to select from among them those with regard to which it would suspend its denunciation. The denunciation would therefore apply automatically to those States parties to the 1924 Convention or to the 1968 Protocol which had not been specifically named. Apparently, there would consequently be an obligation to suspend the denunciation but no corresponding obligation to suspend the application of the future Convention with regard to those States.

28. Mr. QUARTEY (Ghana) explained that in practice the depositary of the future Convention would circulate particulars of ratifications received. Each State knew perfectly well which were its traditional trading partners, and it was only with regard to them that it would decide to suspend the effects of its denunciation of the existing conventions. The choice should not present any difficulties.

29. Mr. NSAPOU (Zaire) said that the proposal as redrafted was a net improvement over the earlier texts and he was able to support it.

30. Mr. DIXIT (India) said that his delegation was not wholly opposed to the amendment under consideration, but did not understand it very well and would not be able to support it unless the suggestion he was about to make was accepted. If each State was to be free to suspend its

denunciation of existing conventions for a period of five years from the time when the new Convention came into force for it, the simultaneous operation of several international instruments would be prolonged indefinitely in so far as new States availed themselves of that possibility. In the opinion of the Indian delegation, only one transitional period of five years should be provided for, beginning from the time when the new Convention came into force for any State.

31. Mr. AWODUMILA (Nigeria) said that he had never been able to understand why a five-year period had been suggested, on the initiative of the French delegation. He did not see how the proposed solution would benefit international trade nor how it would encourage States to become parties to the future Convention. Unless some convincing explanations were provided, he would not be able to support the proposal.

32. Mr. CLETON (Netherlands) said he appreciated the difficulties which the compulsory denunciation clause created for France. The problem was not easy to solve in spite of the efforts made on all sides and in particular by the *ad hoc* Working Group. However, the solution recommended in the proposal under consideration was unworkable. It was impossible to denounce international conventions partially so that they would apply only to a number of States parties. The proposed solution suffered from still other drawbacks which the representative of India had very clearly pointed out. Furthermore, the wording of the proposal left something to be desired.

33. He pointed out that in many cases the carriage of goods by sea concerned more than two States and that the proposed provision would raise many difficulties in application.

34. It had to be admitted that any new convention necessarily created problems with regard to the application of earlier conventions on the same subject or on a related subject. It was for the States which became parties to the future Convention to act according to their responsibilities and, where necessary, to cease applying existing conventions.

35. Mr. POPOV (Bulgaria), speaking on a point of order, emphasized the advantages of the proposal sponsored jointly by his and other delegations. To save the situation, he would be ready to consult with those delegations with a view to rewording the proposal on the lines suggested by the representative of India.

36. Mr. VIS (Executive Secretary of the Conference) read out the text of the new paragraph to be added to article 31, which had been drafted in consultation with the sponsors of the proposal.¹

37. The PRESIDENT put to the vote the proposal by Brazil, Bulgaria, France, Ghana and Italy, as so amended.

38. *The proposal, as amended, was adopted by 34 votes to 14, with 19 abstentions.*

39. The PRESIDENT put to the vote the whole of article

¹ The text was published subsequently in the Final Act of the Conference (A/CONF.89/13).

31, as amended by the proposal of Brazil, Bulgaria, France, Ghana and Italy.

40. *Article 31, as amended, was adopted by 48 votes to 2, with 16 abstentions.*

41. Mr. WISWALL (Liberia), explaining his vote, said that he had voted against article 31 as amended because it did not allow sufficient flexibility in the application of the Convention during the transitional period. Under the provision as adopted, the States parties to the Convention would have no choice but to apply the provisions of the Convention to all other States, whether or not they were parties to the 1924 Convention. A State party to the 1978 Convention, whether or not it denounced the 1924 Convention, would be bound to apply the provisions of the 1978 Convention. Furthermore, in so far as the provision just adopted required a contracting State to apply the 1978 Convention, to the exclusion of any other instrument, to the other contracting States during the transitional period, the said Convention would apply to States which had deposited their instruments of ratification or accession but had not yet become parties to it.

42. Mr. CLETON (Netherlands) explained that he had abstained in the vote because he did not approve of the procedure followed. Oral amendments, which tended to create confusion, should be disregarded. In the particular instance, the Conference had been forced to vote on a new proposal which it had not had time to consider properly. He associated himself with the remarks made by the representative of Liberia.

*Article 32 (former article 33) and article 33
(former article 34)*

43. The PRESIDENT asked the representative of India whether the amendment co-sponsored by his delegation (A/CONF.89/L.2) should be inserted in the text approved by the Drafting Committee (A/CONF.89/L.2/Add.6), or whether it was meant to replace the latter text.

44. Mr. KRISHNAMURTHY (India) said that India, together with seven other countries, had submitted the amendment (A/CONF.89/L.2) in order to fill a gap in the initial draft Convention which contained no provision concerning possible revision or amendment. The draft provisions approved by the Drafting Committee (A/CONF.89/L.2/Add.6) contained an article 33 relating to the revision and amendment of the Convention, to which he had no objection. It would, however, be advisable to supplement it, and it was for that reason that the sponsors of the proposal had maintained their amendment. In the first three paragraphs relating to revision, paragraph 2 was substantially the same as paragraph 1 of the text drawn up by the Drafting Committee. However, the sponsors of the proposal had considered that the text should be modified by the addition of a provision similar to that of the 1924 Brussels Convention, under which any contracting party could formulate a request for revision. The 1978 Convention would have important international implications, not only for economic but also for political relations, and any State might encounter practical difficulties in its application and so make a request for its revision at any time. The five-year period mentioned was the same as

that provided for in other international transport conventions. The sponsors of the proposals considered also that it would be useful that consultations should take place automatically after a period of four years to obtain the views of the parties on the working of the Convention.

45. In the proposed provision relating to the amendment of the Convention, the rule suggested was that of the two-thirds majority of contracting States, in conformity with the practice in most conventions; paragraph 2 was based on paragraph 2 of the Drafting Committee's text. The provisions appeared equitable to the Indian delegation in that they made it possible for any country, whether shipper or carrier, to express its views and to make proposals. So far as the form was concerned, he explained that the first part of the amendment contained in A/CONF.89/L.2 would replace the former article 33 of the Drafting Committee's text—which would be re-numbered article 32—while the second part relating to the amendment of the Convention would constitute a new article 33, of which there was no equivalent in the Drafting Committee's text.

46. Mr. WAITITU (Kenya) fully agreed with the arguments advanced by the representative of India in support of the proposal.

47. Mr. PTAK (Poland), disagreeing, considered that the proposed text contained contradictions, particularly between paragraphs 1 and 2. It was doubtful that the Conference could give instructions in the Convention to the General Assembly of the United Nations about action to be taken with regard to a request for revision made by a contracting State. According to past practice, any such request would need to be supported by a large number of States if it were to be taken into consideration. Even if such a request were accepted by the General Assembly, the question arose whether the Assembly could decide the terms and conditions for summoning a revision conference, or whether suitable provisions should be made in the Convention itself. Moreover, the period of five years fixed for the request for revision had already been considered by the First Committee, and a majority of States had taken the view that it was too short. For all the reasons he had mentioned, Poland preferred the original text of article 32.

48. Mr. POPOV (Bulgaria) recalled the circumstances under which the Indian proposal had been considered by the Second Committee and which were described in note C to document A/CONF.89/L.2; as Chairman of the Second Committee, he had had no knowledge of the second part of the proposal.

49. His delegation considered that the proposal was not without merit as to substance, but that the same result might be achieved by other means.

50. Mr. KRISHNAMURTHY (India), replying to the representative of Poland, referred to article 13, paragraph 2, of the 1958 Convention on the Continental Shelf,² under which the General Assembly of the United Nations was competent to decide on requests for revision made by the States parties. Other international conventions, too,

² See United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.

provided for a period of five years for the formulation of a request for revision. He added that during the debate in the Second Committee the representative of the Secretary-General of the United Nations had expressed the opinion that in the final analysis any request for revision would be dealt with by the Secretary-General. It had been suggested that the United Nations Commission on International Trade Law (UNCITRAL) should be designated as the appropriate authority but, in view of the cost of organizing a revision conference, it was important that the decision should be taken at the highest level.

51. Mr. GANTEN (Federal Republic of Germany) said that he was unable to support the proposal submitted in document A/CONF.89/L.2. In his opinion, the Drafting Committee's text was quite clear and sufficed to cover all possible requests for revision or amendment. Certainly States might meet difficulties in the practical application of the Convention, but any necessary changes could be introduced by means of a protocol, as had often been done in the past, without any need for summoning a special conference for that purpose.

52. The PRESIDENT put to the vote the new article relating to the revision of the Convention proposed in document A/CONF.89/L.2.

53. *The new article was rejected by 25 votes to 15, with 20 abstentions.*

54. The PRESIDENT put to the vote the new article relating to the amendment of the Convention proposed in document A/CONF.89/L.2.

55. *The new article was rejected by 26 votes to 12, with 22 abstentions.*

56. Mr. SARRIS (Greece), speaking on a point of order, said that the proposed new articles relating to revision and amendment (A/CONF.89/L.2) had not been sufficiently discussed in the Second Committee. A larger number of delegations should have been given the opportunity to express their views concerning them.

57. The PRESIDENT put to the vote article 32 (former article 33) in document A/CONF.89/L.2/Add.6.

58. *Article 32 was adopted by 60 votes to none, with 7 abstentions.*

59. The PRESIDENT drew attention to document A/CONF.89/L.6, in which an amendment was proposed to paragraph 4 of the new article 33.

60. Mr. SELVIG (Norway) said that during the earlier debate on the new article 33 it had been decided that a two-thirds majority of the contracting States would be required in order that an amendment to the Convention should enter into force. That was a very sound rule where there were only a few States, but it was difficult to apply when there were many. For that reason, the sponsors of the amendment were suggesting that the end of the first sentence of paragraph 4 should be altered to read: "by two-thirds or 20 Contracting States, whichever is less".

61. Mr. WISWALL (Liberia) inquired what would happen if the number of States which were informed of an amendment approved by 20 States and which did not approve it were themselves more than 20. In that case would the amendment come into force?

62. Mr. SELVIG (Norway) replied that, in that case, the amendment would indeed enter into force.

63. Mr. MASSUD (Pakistan) said that he approved of the proposed amendment, since it was not always possible to obtain the approval of two thirds of the States.

64. Mr. SUCHORZEWSKI (Poland) considered that the amendment would create many difficulties for a large number of countries; it was inconsistent with the practice of international law, under which a legal instrument adopted by a certain majority, in the present case two thirds, could not be amended by a smaller majority. To disregard that rule would be to invite trouble in the future, for conceivably the 20 States whose approval was necessary for the adoption of an amendment might constitute only a minority. For the reasons he had stated the Polish delegation opposed the amendment.

65. Mr. AMOROSO (Italy) considered the amendment unwise. Would it be reasonable to provide that a convention adopted by two thirds of the States taking part in the Conference could be amended by only 20 of them?

66. The PRESIDENT put to the vote the amendment contained in document A/CONF.89/L.6.

67. *The amendment was rejected by 35 votes to 24, with 5 abstentions.*

68. Ms. BRUZELIUS (Norway) pointed out that the substance of article 33, paragraph 6, was identical with that of article 32, paragraph 2, and suggested that the two paragraphs should be brought into line.

69. Mr. VIS (Executive Secretary of the Conference) said that he had taken note of the suggestion of the representative of Norway.

70. Mr. MÜLLER (Switzerland) remarked that article 33 did not contain an essential clause of the London Convention of 1976 concerning the alteration of the real value of the amounts. The Swiss delegation would be unable to vote for the text if it did not contain such a provision.

71. The PRESIDENT said that it was difficult, at that stage of the proceedings, to accept an oral amendment. Besides, the question raised by the Swiss delegation had already been discussed.

72. Mr. WISWALL (Liberia) said that in paragraph 3 the word "Contracting" was superfluous and should be deleted. He referred to the similar provisions in the text adopted by the 1976 Conference on Limitation of Liability for Maritime Claims which, he said, required a two-thirds majority of the States parties present and voting. In the text under discussion, however, article 33 mentioned only a two-thirds majority of the participating States, which meant that any State that was present and participating, whether or not it was a party to the Convention, could vote to amend it. The provision was contrary to international law and to the law of treaties, and the delegation of Liberia would be unable to agree to it.

73. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the article under consideration should not be adopted without further detailed examination. It was surprising that the First Committee had approved it without the provision mentioned by the

Swiss delegation. That provision was very important and should form part of the article.

74. Mr. CARRAUD (France) said he shared the views of the Swiss and Soviet delegations. The clause must have been forgotten because the Working Group concerned had been pressed for time. Such a provision should now be introduced into the text.

75. The PRESIDENT requested the representative of Switzerland to read out the text of the clause which appeared in the London Convention and which he wished to have incorporated in article 33.

76. Mr. MÜLLER (Switzerland) read out the following text: "An alteration of the amounts shall be made only because of a significant change in their real value." He said that that sentence should be added at the end of paragraph 1.

77. Mr. POPOV (Bulgaria) supported the amendment.

78. Mr. SMART (Sierra Leone) opposed the amendment, for it contemplated a revision of the amounts in the case of devaluation only. The problem was a complex one and involved a great variety of factors.

79. Mr. MASSUD (Pakistan) asked how it would be determined whether or not there had been a "significant change" in the real value of the limitation amounts.

80. The PRESIDENT put the oral amendment of Switzerland to the vote.

81. *The amendment was adopted by 48 votes to 10, with 8 abstentions.*

82. The PRESIDENT put to the vote article 33, as amended.

83. *Article 33, as amended, was adopted by 58 votes to 2, with 8 abstentions.*

84. Mr. NIANG (Senegal) said that his delegation had abstained in the vote on article 33 as a whole (former article 34) because, like the delegation of Pakistan, it wondered how it would be determined whether or not there had been a "significant change" in the real value of the limitation amounts. That question had remained unanswered.

Article 34 (former article 35)

85. Mr. KHOO (Singapore) pointed out that in paragraph 2 of the article two different expressions were used to convey the same idea. In the first sentence the words used were "is received by" and in the second the words "has reached". He proposed that, for consistency, the expression "is received by" should be used in both sentences.

86. *It was so decided.*

87. *Article 34 was adopted by 70 votes to none.*

Final, formal clauses

88. Mr. GANTEN (Federal Republic of Germany) proposed that the title of the final clauses should be deleted; no such title occurred in other conventions and, besides, the final clauses actually began with article 27.

89. Mr. SMART (Sierra Leone) asked how the authenticity of the Chinese text and its concordance with the other language versions were to be verified; so far as he

knew, the Drafting Committee of the Conference had not examined the Chinese text of the Convention.

90. Mr. SLOAN (Representative of the Secretary-General) said that the Chinese Mission to the United Nations had indicated that it would not be taking part in the work of the Conference; that explained why there had been no interpretation or translation into Chinese during the Conference. The Chinese text of the Convention would be prepared later, and any Government that had participated in the Conference and wished to verify the conformity of the Chinese version with the other language versions should inform the Secretariat, which would make the necessary arrangements for it to do so.

91. The PRESIDENT said that, in the absence of objections, he would take it that the Conference decided to delete the title "Final, formal clauses", and to maintain the reference to the Chinese text as authentic.

92. *It was so decided.*

Reports of the First and Second Committees

93. The PRESIDENT invited the Conference to take note of the two reports.

94. *It was so decided.*

Draft Final Act

95. Mr. VIS (Executive Secretary of the Conference) drew attention to a number of amendments to be made in the draft Final Act contained in document A/CONF.89/L.1. In paragraph 3, the words "Seventy-seven States" should be replaced by the words "Seventy-eight States" and the word "Jamaica" should be added in line 7, between "Ivory Coast" and "Japan". In paragraph 5, under the heading "Non-governmental organizations", a reference to the "International Shipowners' Association" should be added underneath "International Maritime Committee". In paragraph 8, under the heading "Drafting Committee", the name of the Chairman should read "Mr. R. K. Dixit" (instead of "Mr. D. K. Dixit"). 96. Furthermore, paragraph 13 should be replaced by the following text: "That Convention, the text of which is annexed to this Final Act (annex I), was adopted by the Conference on 30 March 1978 and was opened for signature at the concluding meeting of the Conference on 31 March 1978. It will remain open for signature at United Nations Headquarters in New York until 30 April 1979, after which date it will be open for accession, in accordance with its provisions."

97. Lastly, after paragraph 14, a new paragraph 15 should be added to read: "The Conference also adopted a 'common understanding' and a resolution, the texts of which are also annexed to this Final Act (annexes II and III)."

98. The PRESIDENT invited the delegations to consider the draft Final Act, paragraph by paragraph.

Paragraphs 1-11

99. *Paragraphs 1 to 11 were adopted.*

Paragraph 12

100. The PRESIDENT, replying to a question by the

Algerian representative, said that the missing symbols of the summary records of the Conference and of the two Committees would be included in the definitive text of the Final Act.

101. *Paragraph 12 was adopted.*

Paragraph 13, as read out by the Executive Secretary

102. *Paragraph 13, as amended, was adopted.*

Paragraph 14

103. *Paragraph 14 was adopted.*

Paragraph 15, as read out by the Executive Secretary

104. *Paragraph 15 was adopted.*

Final, formal clauses

105. *The final, formal clauses were adopted.*

Draft resolution to be annexed to the Final Act, and title of the Convention (A/CONF.89/L.1/Add.1)

106. The PRESIDENT invited delegations to consider and adopt the draft resolution circulated under symbol A/CONF.89/L.1/Add.1, and to take a decision at the same time on the title of the Convention as given in the text.

107. Mr. WISWALL (Liberia) said that the term "simplification" in the fifth paragraph of the draft resolution seemed to him to be exaggerated.

108. Mr. NSAPOU (Zaire) and Mr. LAVINA (Philippines) said they would have liked their countries to be included among the sponsors of the draft resolution.

109. Mr. HENNI (Algeria) suggested that the names of the sponsors of the draft resolution should be deleted, and that it should be regarded as submitted by all delegations.

110. *It was so decided.*

111. Mr. POPOV (Bulgaria) suggested that the draft resolution should be adopted by acclamation.

112. *The draft resolution was adopted by acclamation.*

113. The PRESIDENT pointed out that the common understanding, which would be appended to the Final Act as annex II, had already been adopted and that the resolution which had just been adopted would constitute annex III. He invited the Conference to adopt the text of the Convention as a whole, to be appended to the Final Act as annex I.

114. *At the request of the representative of the Philippines, a vote was taken by roll-call on the draft Convention as a whole.*

115. *Austria, having been drawn by lot by the President, was called upon to vote first.*

In favour: Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Colombia, Cuba, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Ghana, Holy See, Honduras, Hungary, India, Indonesia,

Iraq, Italy, Ivory Coast, Japan, Kenya, Kuwait, Liberia,³ Madagascar, Malaysia, Mauritius, Mexico, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Republic of Korea, Senegal, Sierra Leone, Singapore, Spain, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Venezuela, Yugoslavia, Zaire.

Against: None

Abstaining: Canada, Greece, Switzerland.

116. *The draft Convention on the Carriage of Goods by Sea was adopted by 68 votes to none, with 3 abstentions.*

117. Mr. TANIKAWA (Japan) explained that his delegation had voted for the Convention as a whole even though Japan would have difficulty in becoming a party to it, particularly because of article 17, paragraphs 2 to 4, and article 21, paragraph 2. As the Japanese delegation's proposals concerning a reservations clause relating to those provisions had been rejected, he foresaw that examination of the Convention with a view to its acceptance by Japan would meet with serious difficulties.

118. He still considered that the Convention did not completely solve the difficult problems that existed in practice. However, in view of the fact that the Conference had succeeded in reaching agreement on a package deal concerning the main issues, which represented a fairly satisfactory balance between the interests of the parties concerned, and in view of the strong desire of many of the countries represented to have a Convention, his delegation had decided, in a spirit of co-operation, to vote in favour of the new national instrument—to be known as the "Hamburg Rules". Japan, as a major maritime and trading nation, attached great importance to the Convention, as its active participation in the preparatory work within UNCITRAL had demonstrated. It was in that spirit that it intended to pursue its examination of the Convention.

119. Mr. SARLIS (Greece) explained the reasons for which Greece had abstained in the vote on the draft Convention. In the Greek delegation's opinion the new Convention was not a compromise between carriers' and shippers' interests but an instrument that would upset whatever balance existed between shippers and ship-owners under the system of the Hague Rules. That system was of course far from perfect and should be changed in order to meet the aspirations of shipper countries, which were mainly developing countries, but the new Hamburg Rules would not rectify the shortcomings of the Hague Rules.

120. His country was afraid that the increase in carrier's liability as a result of the new Convention would lead to a rise in the over-all cost of carrier's liability insurance without any substantial advantage for shippers or consignees, who would not pay any less for cargo insurance. It also thought that some of the provisions of

³ The delegation of Liberia subsequently informed the Secretariat that it wished to have its vote recorded as an abstention.

the Convention were detrimental to world trade, notably article 11 which would deter carriers from issuing through bills of lading—to the detriment of shippers' interests—and article 17, paragraphs 3 and 4, which established an arbitrary legal régime that was unfavourable to ship-owners but favourable to shippers in the case of letters of indemnity. Lastly, the Convention lacked flexibility with respect to the carriage of live animals and special cargo.

121. In general, his delegation regretted that most of the participants in the Conference had rejected a number of proposals made by traditional shipper countries while adopting other provisions that were unnecessary or unjustified from a legal or economic point of view and did not offer any particular advantage to shippers. Cases in point were the definitions of "carrier", "shipper" and "contract of carriage", which referred to one another, and contained tautologies, as well as the definition of "actual carrier", which was so general that it could apply to the master and crew of the vessel as well. In Greece, the seamen's unions were very powerful and were likely to oppose those definitions and their implications strongly.

122. Furthermore, the distinction made in article 5, paragraph 6, between "measures to save life" and "reasonable measures to save property at sea" was impractical and incompatible with the professional ethics of seafarers and the obligations arising from the International Convention for the Safety of Human Life at Sea. The same criticisms applied to article 18, paragraph 7 of article 19 and paragraph 1 of article 26. As for articles 21 and 22 on jurisdiction and arbitration, they introduced novel ideas which were difficult to reconcile with the Greek legal system.

123. Lastly, and perhaps most important of all, his delegation deplored that no reservations were permissible to the Convention. The absence of a reservations clause would deter many countries from acceding to the

Convention, whereas they could have done so if they had been able to make reservations on minor matters that were unacceptable to them.

124. For the reasons he had given, particularly the lack of any reservations clauses, his delegation had abstained in the vote on the draft Convention. It hoped, however, that when the Convention had entered into force and become operative the fears he had expressed would prove to be unfounded, and Greece would then be able to accede to the Convention.

125. Mr. CLETON (Netherlands) said that his delegation had voted in favour of the draft Convention because it had accepted the package deal arrived at on the main issues after long and arduous negotiation. However, it was not entirely satisfied because the wording of the text left something to be desired from the legal standpoint. It considered that that aspect of the work had been neglected during the Conference and subordinated to too many political discussions. The result was that the Conference had adopted a text that was unclear in many respects and liable to give rise to unnecessary and costly disputes. It was already possible to foresee the difficulties that courts would have in applying the rules laid down in the new Convention.

126. Mr. CASTRO (Mexico) said that while it did not, perhaps, establish a régime of perfect justice—which was an unattainable ideal—the Convention nevertheless introduced a more equitable régime and represented a considerable advance as far as the interests of the developing countries were concerned.

127. The PRESIDENT, after the usual exchange of courtesies, announced that the Conference had completed its work and that the Convention would be opened for signature at the closing meeting on the following day.

The meeting rose at midnight.

10th plenary meeting

Friday, 31 March 1978, at 12.10 p.m.

President: Mr. R. HERBER (Federal Republic of Germany).

A/CONF.89/SR.10

AGENDA ITEM 11

Signature of the Final Act and of the Convention and other instruments (A/CONF.89/13)

AGENDA ITEM 12

Closure of the Conference

1. The PRESIDENT said that after four weeks of intense effort the Conference had accomplished its task and now had before it the Final Act, annexed to which was the text

of the new United Nations Convention on the Carriage of Goods by Sea, 1978 (A/CONF.89/13).

2. The Convention might not, perhaps, fully satisfy everyone's requirements, but the final voting had shown that all participants had been willing to compromise in order to achieve a modern and universally applicable set of rules that were unquestionably an advance on the Hague Rules, especially in such important aspects as the question of liability, and which would improve the legal position of the shipper while protecting the carrier through the limitation of his risks. He felt sure that countries would find the new Convention an effective instrument for furthering their mutual trade, and a

harmonious body of principles reflecting the new impulse towards world-wide co-operation in maritime law that had first become apparent in the arduous and fruitful work of the United Nations Commission on International Trade Law (UNCITRAL) and the United Nations Conference on Trade and Development (UNCTAD), notably its section on shipping legislation, which had initiated the revision of the Hague Rules. He paid a tribute to the tireless work of the officers of the Conference, particularly the Chairman of the First Committee, and of the Secretariat.

3. He would convey to the Government of the Federal Republic of Germany and to the authorities of the Free and Hanseatic City of Hamburg the gratitude expressed by the Conference for the hospitality shown and for the facilities placed at its disposal.

4. Mr. KHOO (Singapore) said it was most gratifying that the many years of intensive effort in UNCITRAL and UNCTAD had been brought to a successful conclusion, and paid a tribute to all those, such as Mr. Honnold, Mr. Chafik and Mr. Selvig, who had made a particularly important contribution to that work. The new Convention was a compromise and as such could not satisfy everyone, but, as the President had said, it represented a great improvement on the Hague Rules, and he hoped that all the delegations present would recommend their Governments to give it serious consideration. He thanked the Government of the Federal Republic of Germany and the Hamburg municipal authorities for their hospitality and assistance to the Conference.

5. Mr. BREZHNEV (Union of Soviet Socialist Republics) said that the Convention which the Conference had approved as a result of a month's intensive effort would be of the greatest importance to international trade and international shipping. It would, of course, form the subject of very thorough study during the coming period; some time was needed to obtain a full grasp of all its details and all the consequences of the provisions incorporated in it as a result of the participants' joint search for compromise solutions, which had been made possible by the constructive approach that had prevailed throughout the Conference.

6. He thanked the Hamburg city authorities and the Government of the Federal Republic of Germany for their hospitality and consideration, and expressed the hope that the Convention would be favourably received by the interested circles for which it was ultimately intended and would become a landmark in the development of mutually advantageous international co-operation.

7. Mr. CASTRO (Mexico) welcomed the new Convention now before the Conference. Fears had been expressed that it would disrupt the existing legal order in the carriage of goods by sea. He could not subscribe to that opinion, especially as the existing system under the Hague Rules was not beneficial in any way for a developing country like Mexico. At the previous meeting the representative of Greece had made a penetrating analysis of the problems that countries would have to face

in the near future in giving effect to the Convention, but those problems could be surmounted if the international community was prepared to co-operate in advancing towards a new and more equitable international economic order. In that connexion, the Mexican delegation had noted with pleasure that Japan had voted in favour of the new Convention, despite certain points of disagreement, for the sake of furthering international co-operation.

8. He expressed his delegation's thanks to the Government of the Federal Republic of Germany and to the authorities of the city of Hamburg for their hospitality and the facilities made available for the Conference.

9. Mr. SWEENEY (United States of America) said that the adoption of the Final Act and Convention represented a new beginning in a branch of law that was one of the oldest in the world. The fact that countries were now linked together in a world-wide community meant of necessity that they all had to trade with one another, and his delegation firmly believed that the new Convention would make it easier for them to do so, in that, while replacing the Hague Rules, it had nevertheless preserved the time-tested institutions that were important for the improvement of maritime trading conditions. He paid a tribute to UNCITRAL, UNCTAD and the International Maritime Committee, which had played such an important part in the preparatory work leading up to the Convention, and to Mr. Honnold, Mr. Vis (Executive Secretary of the Conference), Mr. Chafik and Mr. Selvig, who had worked effectively and tirelessly to enable the Conference to achieve its objective.

10. He thanked the authorities of the Federal Republic of Germany and the Free and Hanseatic City of Hamburg for their hospitality to the Conference.

11. Mr. SELVIG (Norway), speaking on behalf of the Nordic States, expressed their gratitude to the Government of the Federal Republic of Germany and to the Free and Hanseatic City of Hamburg for the facilities provided, which had greatly contributed to the accomplishment of the Conference's task, and congratulated the United Nations on the adoption, for the first time, of a convention in the field of private maritime law. He hoped that the Convention would achieve its intended purpose by becoming a truly useful instrument for facilitating international trade.

12. Mr. CARRAUD (France) associated his delegation with the sentiments of satisfaction and gratitude expressed by other speakers. The efforts of four weeks had culminated in a good Convention, which not only adapted international maritime law to modern conditions but restored the balance between the different parties involved in the carriage of goods by sea and enlarged the scope of the applicable international rules. The next task was to put the Convention into force. That would not be easy; it would demand much goodwill and the firm resolve not to allow established practices to hamper its implementation. But, in the closing moments of the Conference it had become apparent that there was a genuine desire on the part of many countries to co-operate in unifying the rules of maritime law; he hoped

that their efforts would come to fruition in the not too distant future.

13. Mr. GUEIROS (Brazil), speaking as co-ordinator of the Latin American group of States in the Group of 77 and as the representative of his Government, thanked all those who by their dedicated and scholarly work had contributed to the completion of the new Convention, both in the preparatory stages of the work and at the Conference itself. The Convention was not a general panacea, but represented the willingness of countries to rise above the political and economic issues that divided them in order to solve, in a spirit of compromise, the international problems presented by the carriage of goods by sea. He expressed his delegation's gratitude to the Government of the Federal Republic of Germany and the Hamburg city authorities for their generous hospitality.

14. Mr. CHAFIK (Egypt) thanked the president and other officers for their valiant efforts to bring the Conference to a successful conclusion. He also thanked Mr. Selvig, whom he regarded as the spiritual father of the Convention, and Mr. Sweeney, who had sacrificed much time and effort to help the Conference to reach agreement.

15. Although at times the discussions over which he had presided had been heated, he felt that the participants had genuinely sought to reconcile the interests of the whole international community. The Conference had endeav-

oured to remedy an unjust situation, and if it had not been wholly successful, it had at least established a more equitable system.

16. Mr. RAY (Argentina), Mr. PIAY (Indonesia), speaking on behalf of the Asian group of States, Mr. CLETON (Netherlands), Mr. EYO (Nigeria), Mr. KIM (Republic of Korea), Mr. DIA (Senegal) and Ms. OLOWO (Uganda) expressed their satisfaction with the new Convention despite reservations on certain points, and associated themselves with the gratitude expressed by other delegations to the authorities of the Federal Republic of Germany and the city of Hamburg for their hospitality and efficient services.

17. Mr. SLOAN (Representative of the Secretary-General of the United Nations) said that, on behalf of the Secretary-General, he wished to express his deep appreciation to the Government of the Republic of Germany and the Free and Hanseatic City of Hamburg for the excellent facilities provided, and thanked all those who had contributed to the success of the Conference.

18. The PRESIDENT said he would call on delegations in alphabetical order to sign the Final Act and, if they had the necessary powers, to sign the Convention as well.

19. He declared closed the United Nations Conference on the Carriage of Goods by Sea.

The meeting rose at 2.15 p.m.

SUMMARY RECORDS OF THE MEETINGS OF THE FIRST COMMITTEE.

1st meeting

Tuesday, 7 March 1978, at 3.20 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.1

Adoption of the agenda

1. *The provisional agenda (A/CONF.89/C.1/L.1) was adopted.*

Election of a Vice-Chairman and a Rapporteur

2. Mr. KRESKAY (Hungary) nominated Mr. S. Suchozowski (Poland) for the office of Vice-Chairman.
3. *Mr. Suchozowski (Poland) was elected Vice-Chairman by acclamation.*
4. Mr. SELVIG (Norway) nominated Mr. M. Low (Canada) for the office of Rapporteur.
5. Mr. POPOV (Bulgaria), Mr. DIXIT (India) and Mr. MAITLAND (Liberia) supported the nomination.
6. *Mr. Low (Canada) was elected Rapporteur by acclamation.*

Organization of work

7. Mr. DIXIT (India) said that his delegation was concerned to clarify the status of the comments and proposals contained in documents A/CONF.89/7 and Add. 1 and A/CONF. 89/8. According to rule 27 of the rules of procedure, the proposals which were to form the basis for consideration by the Conference of the Convention on the Carriage of Goods by Sea were the draft articles set out in document A/CONF.89/5 and the draft provisions concerning implementation, reservations and other final clauses prepared by the Secretary-General (A/CONF.89/6).
8. Mr. HONNOLD (United States of America) said it was his delegation's understanding that the comments and proposals contained in documents A/CONF.89/7 and Add.1 and A/CONF.89/8 would be duly considered by the Conference under rule 28 of the rules of procedure. For that reason, it had submitted no conference papers setting out the United States views and suggestions.
9. Mrs. YUSOF (Malaysia) associated herself with the remarks made by the representative of India.
10. Mr. BYERS (Australia), Mr. FUCHS (Austria) and Mr. JOMARD (Iraq) said they shared the understanding of the United States representative.
11. Mr. MARTÍNEZ-MORCILLO (Spain) said that document A/CONF.89/7 contained a number of proposals which his country wished the Conference to

consider. His delegation was anxious to know what criteria would be adopted to determine the order in which proposals were dealt with, in view of rule 40 of the rules of procedure.

12. Mr. VIS (Executive Secretary of the Conference) said that the comments and proposals which had been referred to would in any case form part of the basis for consideration by the Conference of the proposed Convention pursuant to paragraph 4 of General Assembly resolution 31.100.

13. Replying to the Spanish representative's question, he said that there was no general rule governing the priority accorded to proposals; that was a matter of judgement in the light of particular circumstances.

14. Mr. DOUAY (France) said it would assist the Committee in its consideration of the draft Convention if the Secretariat could prepare a document setting out on an article-by-article basis the comments and proposals submitted by Governments (A/CONF.89/7 and Add.1).

15. Mr. VIS (Executive Secretary of the Conference) suggested that delegations should be asked to indicate to the Secretariat which of those comments and proposals they wished to be discussed in the Committee. The Secretariat could then prepare a document on that basis. Unless a comment or proposal were included in that document, it would not be discussed in the Committee.

16. *It was so decided.*

17. Ms. OLOWO (Uganda), supported by Mr. SARLIS (Greece) and Mr. KERRY (United Kingdom), said that it might be better if the general statements which some delegations wished to make on the draft Convention were heard by the Committee before it began to consider the articles individually.

18. Mr. HONNOLD (United States of America), supported by Mr. BYERS (Australia), Mr. POPOV (Bulgaria), Mr. AL-ALAWI (Oman) and Mr. KALBOUSSI (Tunisia), expressed the view that the Committee ought to proceed at once to consider the draft Convention article by article.

19. The CHAIRMAN suggested that the Committee should proceed immediately to consider the draft articles and that delegations wishing to make general statements should be permitted to do so at a suitable moment during such consideration.

20. *It was so decided.*

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.2)

Article 1

21. Mr. ARGYRIADIS (Greece) said that article 1, and in particular the addition of definitions of the terms "actual carrier" and "consignee", was a marked improvement on the corresponding provisions of the Hague Rules. His delegation considered, however, that the term "carrier", which was defined in paragraph 1 by reference to the shipper, required clarification. The term "shipper" was not defined at any point in the draft Convention and, in any event, contracts of carriage by sea were often concluded with persons other than shippers. His delegation therefore proposed that the definition be amended to read: "'Carrier' means any person who by a contract of carriage undertakes to carry goods by sea" (A/CONF.89/C.1/L.2). If that amendment were not acceptable, then his delegation would support the proposal of Austria and Qatar that a definition of "shipper" be included in Article 1 (see A/CONF.89/7).

22. Mr. MAITLAND (Liberia) said that the Greek proposal went some way towards resolving his difficulties regarding the definition of "carrier" in paragraph 1. His delegation, whose position was similar to that of the United States (*ibid.*), felt that, under the law of the United States and possibly also of the United Kingdom, the definition, as drafted, might encourage the issuance of fraudulent bills of lading—a not infrequent occurrence, particularly in the case of finished goods shipped from developed to developing countries. He had himself had experience with bills of lading with signatures which were neither genuine nor authorized by the actual carrier, and where the consignee in the developing country had suffered loss as a result of the resultant non-delivery of the cargo. In many parts of the world, the adoption of such a definition would weaken considerably the force of the criminal penalties available by making it more difficult to detect unlawfully issued bills of lading. To overcome those difficulties, therefore, his delegation proposed that the words "in whose name" in paragraph 1 should be replaced by the words "by whose authority". That amendment would not, in his opinion, operate to the detriment of the growing commerce of the developing countries, for jurisdiction over the carrier and actual carrier, both *in rem* and *in personam*, would continue to be enforceable throughout the world.

23. Mr. BURGUCHEV (Union of Soviet Socialist Republics), referring to the title of the draft Convention, said that, in his delegation's view, its wording was too broad, since the draft Convention dealt with only some and not all of the questions concerning carriage of goods by sea. He reserved the right to revert to the matter subsequently.

24. Mr. SWEENEY (United States of America) explained that the point raised by his Government in the

written comments it had submitted to the Secretariat (*ibid.*) was basically concerned with the law of agency in common law countries. His delegation maintained its preference for the use of the term "by whose authority".

25. Mr. FUCHS (Austria), referring to the Greek proposal, agreed that, if "carrier" was defined to mean any person who concluded a contract of carriage of goods by sea with a shipper, then it was only logical to include in the draft Convention a definition of the term "shipper".

26. He supported the proposal to replace the words "in whose name" by "by whose authority" and endorsed the views expressed by the Liberian representative.

27. Mr. MacANGUS (Canada) pointed out that, in the written comments which it had submitted to the Secretariat, his Government had expressed its agreement with the definitions of the terms "carrier" and "actual carrier" in the draft Convention (*ibid.*). With regard to the Liberian representative's point, his delegation's understanding of the term "in whose name" was that it would not give rise to any fraudulent action. It did not, however, have any strong objection to replacing that term by "by whose authority".

28. Mr. BYERS (Australia) said that the second part of the definition of "carrier" dealt with the written instrument, on the basis of which an action could be initiated. If the expression "by whose authority" was substituted for "in whose name" the whole purpose of that instrument would be undermined, for a shipper would then have to prove not only that the written instrument existed but also that it had been entered into with the authority of the person concerned. That, in his submission, would pose insuperable difficulties, particularly where the offices of the shipper and the carrier, respectively, were located on opposite sides of the world. He therefore favoured the definition of "carrier" as drafted.

29. Mr. SELVIG (Norway) said that the basic idea of the existing text was that a shipper should have a right of action against a person with whom he contracted for the carriage of goods. If he had no such right, then a clear indication must be made at the time when the contract was concluded that it was concluded not in the name of the person negotiating with the shipper but in some other person's name, so that the question became one of agency. The United States proposal to change "in whose name" to "by whose authority" could cause difficulty in a situation in which a person concluding a contract in his own name in fact had authority from a third person of whom the other contracting party had no knowledge.

30. With regard to the Greek proposal for a modified definition of the term "carrier", he pointed out that the Brussels Convention of 1924 had contained no definition of the shipper, yet no great difficulty had arisen on that score.

31. He would prefer the present text to be left unchanged; if however it was decided to include the words "by whose authority", they should be incorporated in addition to, rather than in place of, the term "in whose name".

32. Mr. GUEIROS (Brazil) agreed with the Norwegian representative that the words "by whose authority", if adopted, should be in addition and not in substitution.

33. With regard to the Greek representative's view that the inclusion of the word "shipper" in the definition of "carrier" could cause ambiguity because "shipper" was not defined, he pointed out that Austria had proposed a definition of "shipper" in its comments (*ibid.*). The words "by whose authority" might be incorporated into that proposal, and the amended definition might be inserted between paragraphs 2 and 3 of the present text.

34. Mr. SMART (Sierra Leone) supported the proposal to substitute "by whose authority" for "in whose name" in paragraph 1, because the latter expression would not cover the possibility of someone using a carrier's name without authorization. He also proposed that the words "expressed, implied, ostensible or apparent" be added in parentheses after the word "authority" in the revised draft.

35. He dissented from the Norwegian representative's views on the desirability of adding the words "by whose authority" to the existing formulation ("by whom or in whose name"), since such an addition might make for ambiguity in a case in which an agent failed to disclose whether or not he was a principal.

36. Mr. KERRY (United Kingdom) said that he did not see how it could be successfully pleaded that a contract of carriage existed between a shipper and a person whose name had been used without authority. However, to allay any misgivings concerning the possible interpretation of paragraph 1, he would be prepared to support the amendment proposed by the United States.

37. Mr. SANYAOLU (Nigeria) supported the retention of the existing text of paragraph 1, which in his view presented no difficulty. The words "in whose name" suggested that the name of the principal must be disclosed at the time of concluding the contract, and the amendment proposed by the United States therefore seemed unnecessary.

38. He accepted the Austrian proposal to add a definition of "shipper" to article 1; that could only enhance the clarity of the text.

39. Mr. SOTIROPOULOS (Greece) said that, while it was true that the 1924 Brussels Convention contained no definition of the term "shipper", that Convention was hardly a masterpiece of drafting. The aim of the new Convention was, precisely, to establish a full set of definitions. The object of his delegation's proposal was to find a formulation which would avoid using the word "shipper" in the definition of a carrier. The Austrian solution would be an acceptable alternative; however, the person concluding a contract of carriage with a carrier might not in fact be a shipper but merely a forwarding agent. His delegation had accordingly thought it wiser to obviate the possibility of misunderstanding by avoiding use of the term "shipper" in the new Convention.

40. With regard to the United States proposal, he doubted whether the present draft Convention was the appropriate place to deal with questions of agency, the law on which varied considerably between countries. There was general support among the various legal systems for the proposition that no one could be held liable under a contract entered into in his name but

without his authority, but to raise the matter specifically in the present draft might create new legal problems unnecessarily. His proposal sought to avoid that difficulty.

41. Mrs. RICHTER-HANNES (German Democratic Republic) agreed with the Greek representative that a question of agency law (the protection of third parties) was involved. If a person not authorized to conclude a contract of carriage nevertheless did so and the shipper could not know or did not know that such authority was lacking, the legal consequences might be diverse and would involve issues which would merely burden the draft Convention unnecessarily. She therefore advocated the retention of paragraph 1 as drafted. However, if the majority preferred the Greek definition of "carrier" or the Austrian definition of "shipper", her delegation's position would be flexible. Nevertheless, she was firmly opposed to the United States proposal.

42. Mr. EYZAGUIRRE (Chile) said that, in his view, the existing paragraph 1 would solve the difficulties presented by the corresponding provision in the 1924 Brussels Convention and should therefore be retained unchanged; he pointed out that article 10 of the draft Convention dealt with the liability of the carrier and actual carrier, and that provision was made for claims for damages. The United States proposal might have the effect of placing difficulties in the way of any actions arising in that connexion, and he therefore opposed it.

43. He thought it appropriate to define the term "shipper", since Part III of the draft Convention dealt specifically with the liability of the shipper. He could accept the formulation proposed by Austria.

44. Mr. MASSUD (Pakistan) said that the words "in whose name" implied due authority—if there was no authority, there was no contract, and it was unnecessary to go into questions of agency. To maintain the draft definition in paragraph 1 as it stood would therefore avoid the uncertainty which the use of the phrase "by whose authority" was likely to introduce.

45. Mr. PTAK (Poland) said that a definition of "shipper" should be included in the draft Convention, since the definitions of that term in existing national legislation were not congruent. Moreover, it was strange that the Convention should define only one party to a contract of carriage, and article 12 dealt with various specific matters relating to the liability of the shipper. Consequently, he supported the Austrian proposal, although not necessarily in the exact words in which it was phrased.

46. With regard to the definition of "carrier", he felt that even if the existing text were amended so as to add the term "by whose authority", there would still be a risk of fraud. However, he would have no objection to the insertion of that term after "in whose name".

47. He could not support the proposal of the Greek representative regarding the definition of "carrier"; its substance was already incorporated in article 1, paragraph 5.

The meeting rose at 6 p.m.

2nd meeting

Wednesday, 8 March 1978, at 10.15 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.2

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.2, L.37, L.51)

Article 1 (continued)

Paragraph 1

1. Mr. MATYASSY (Central Office for International Railway Transport) reminded the Conference that it had been agreed that delegations should introduce during meetings the amendments which they had already submitted in writing and which had been incorporated in documents A/CONF.89/7 and Add.1 and analysed in document A/CONF.89/8. The international organizations had not, however, been afforded that possibility and he would therefore draw attention to the common practice whereby representatives put forward in their own names, as proposals, suggestions which had been made by international organizations, so that those suggestions could still be considered.

2. Mr. KHOO (Singapore) said that he had no difficulty in accepting the existing text of article 1, paragraph 1, since the sole purpose of the definition was to indicate the scope of the term “carrier” for the purposes of the Convention, without seeking to deal with the question of whether such a person was or was not empowered by his principal to conclude a contract of carriage. There was no need in the present case to be concerned with questions of agency.

3. Mr. DOUAY (France) said he was in favour of retaining the definition proposed by the United Nations Commission on International Trade Law (UNCITRAL), which was based on the principle that the carrier was the person who concluded the contract of carriage. In that connexion, it was necessary to specify the two parties to the contract, but the Greek proposal (A/CONF.89/C.1/L.2) omitted any reference to the shipper. While his delegation agreed that the shipper might also be the consignee, it considered that the contract of carriage was nonetheless concluded not with the consignee but with the shipper. Secondly, the Greek proposal repeated one of the elements which already appeared in the definition of a contract of carriage in paragraph 5 of article 1. Thirdly, it did not cover cases where the contract of carriage was concluded in the name of the carrier by a third party.

4. The United States proposal (A/CONF.89/C.1/L.51)

modified the accepted rules on agency. It was not for the Conference, however, to introduce a further stipulation into the Convention which would impose on the shipper the burden of proving that the carrier had in fact given authority to his agent. The deletion of the words “in whose name” would dispense with an essential element in a contract of carriage, namely, the undertaking to carry goods from one point to another. The Norwegian compromise proposal had the merit of retaining the words “in whose name”, but it repeated the United States proposal; the settlement of matters relating to a contract of agency was, however, better left to national law.

5. Mr. RAMÍREZ HIDALGO (Ecuador) said he supported the original text of paragraph 1 but considered that it was necessary to define what was meant by “shipper”.

6. Mr. CASTRO (Mexico) supported the definition of the term “carrier” as proposed by UNCITRAL. If certain participants feared it might leave room for fraudulent action, then the time had come to give some further thought to the amendments. Possibly the Drafting Committee would assist in that connexion.

7. Mr. ISIN (Turkey) said he was in favour of retaining paragraph 1 as drafted, but considered it would be advisable to define the term “shipper” in the article.

8. Mr. GONDRA (Spain) said that, in general, he supported paragraph 1 as drafted. He considered, however, that it would be advisable to introduce some further clarification in regard, *inter alia*, to the question of agency and to the conditions in which the statement of an agent bound the carrier. At first sight, the solution proposed orally by Norway at the previous meeting seemed satisfactory, but it did not in fact cover the various situations that might arise between the agent and his principal—for instance, the possibility of ratification *a posteriori* or of a legal presumption of authority. It might therefore be better not to refer to such complex questions of agency in the Convention. Perhaps it would be possible to use less specific legal terminology and to say that “‘carrier’ means any person who on his own or through another has concluded a contract of carriage”.

9. He too agreed on the need to define the term “shipper”, not only for reasons of legal symmetry but also because of the need to specify the other party to the contract, who was not always the shipper in the usual sense of the term, since the shipper could act on behalf of the consignee.

10. Mr. NDAWULA (Uganda) supported the retention of the paragraph as drafted. In his view, it was unnecessary to introduce the idea that the carrier must give his authority. There was also no need to include a definition of the term “shipper”.

11. Mr. SWEENEY (United States of America) said the Committee would have to devote a considerable amount of time to article 1, since definitions could have a significant influence on the fate of a convention. He reminded the Conference that, unlike the definitions adopted under the Hague Rules, which had allowed for the exemption of the carrier from liability in many instances, a definition should consist of a simple explanation or description of the main elements of the object of the definition. In the present case, he supported the proposal made orally by the Norwegian representative at the previous meeting since, in his view, there was a risk that the words "in whose name", read alone, could be interpreted to mean that, as soon as the carrier's name appeared at the top of the bill of lading, he was automatically liable. The phrase "in whose name and by whose authority" could, however, equally well be deleted. In that connexion, he explained that it was United States carriers who, wishing to protect themselves against fraudulent bills of lading, had taken the initiative in regard to his delegation's proposal. As soon as shippers had been apprised of the carriers' concern, they had agreed that the solution envisaged would not require them to comply with any further condition since, in the United States at least, they could bring an action not only against the carrier but also against the ship, and could also avail themselves of the provisions of article 21 of the draft Convention.

12. With regard to the Greek proposal that the term "shipper" should be defined, he said that, since the Convention dealt with the carrier's liability for damage to goods, it would be unwise to define the term shipper; if it seemed awkward to use that term in paragraph 1 without defining it, it would be better to avoid any such reference.

13. Mr. MacANGUS (Canada) said that he was not convinced of the need to define the term "shipper" for, since the adoption of the Hague Rules more than 50 years earlier, the lack of such a definition had never given rise to any difficulty in practice. In point of fact, it seemed more difficult for the shipper to determine the identity of the carrier than vice versa. If the argument that "shipper" should be defined because the shipper and the carrier had no direct contact with one another were accepted, then that again brought up the question of agency. Most speakers had, however, agreed that, so far as the carrier was concerned, that question should not be tackled. Further, any list of persons who might take the shipper's place could give rise to litigation. Such a definition might also have adverse consequences in the case of trans-shipped goods. His delegation therefore considered that, in practice, the proposal would create more difficulties than it would solve problems.

14. Mr. CLETON (Netherlands) said he favoured the text of paragraph 1 as drafted. His delegation could, however, agree to the addition of the words "by whose authority", provided that the words "in whose name" were retained, but it considered that the Convention should not deal with the law of agency.

15. It would be very difficult to find a satisfactory definition of the term "shipper". Austria had proposed a definition that contained a reference to the carrier (see

A CONF.89/7), but that meant going back to the original starting-point. As the Canadian representative had said, it would be unwise to include a definition of "shipper" in the draft Convention, particularly since that might create difficulties when it came to identifying the shipper with a view to establishing his liability under articles 12 and 13.

16. Greece had proposed that the problem should be solved by deleting the reference to the shipper in paragraph 1, but the wording it proposed did not distinguish sufficiently clearly between the various contracting parties concerned in shipping operations, nor did it specify that, in the case of several successive contracts, the contract referred to in article 1 was the last in the series. In conclusion, his delegation was in favour of the text as drafted.

17. Mr. KANG (Republic of Korea) supported the proposal to replace the words "in whose name" by "by whose authority", since the party whose name appeared in the contract might not have given his authority.

18. Mr. DIXIT (India) said that, in his view, the United States amendment did not solve the problem raised in paragraph 1. The words "in whose name" implied that authority had been given. In the event of a contract concluded fraudulently, the shipper's liability vis-à-vis the carrier would be determined under national criminal law. In the shipping world, agents and representatives were generally known in their particular fields and, in order to prevent fraud, it would therefore be enough if a provision were included in the bill of lading stating that the issuance of the bill of lading by an agent was authorized. Moreover, it would be extremely difficult in practice for an agent to seek such authority in every case, particularly in developing countries, where communications were difficult. Contracts concluded by agents were common in maritime transport, and nobody resorted to verification of that kind.

19. It would probably be well to define the term "shipper" in the draft Convention, provided that a sound definition could be devised. It was true that in the absence of a definition the term might be interpreted in different ways. The best solution, however, would be to leave the definition of carrier as drafted and to include in the bill of lading a provision to the effect that the person concluding a contract in the name of the carrier would be presumed to have his authority.

20. Mr. KALBOUSSI (Tunisia) said he did not take a very favourable view of the existing text of paragraph 1, which had to be considered in the general context of the draft Convention. The purpose of the Convention was to reapportion liability as between the parties concerned in transport operations. The carrier and the shipper were not, however, the only parties; there were also the agents, correspondents and shipping representatives who were subject to national law in some countries but not in others. In view of the need to take account of all the interests involved and in view of the importance of the Convention, it was logical to regard the carrier as bound by a contract only if it had been concluded by a person with his authority, acting in his name and on his behalf.

21. The Tunisian proposal (A CONF.89/C.1/L.37) that

the carrier should be defined as "any person by whose authority a contract of carriage of goods by sea has been concluded with a shipper" made the definition far more specific, and was more conducive to international trade; a general authorization might in fact be concerned whereby one person authorized another to conclude contracts of carriage. His delegation considered that, to avoid any ambiguity in the interpretation of the text, the terms "carrier" and "shipper", as well as "goods" and "bill of lading", should be defined in article 1.

22. Mr. MEGHJI (United Republic of Tanzania) supported the definition of the word "carrier" as drafted. Since the word "shipper" had also been used in the definition it was important for the latter term to be defined too. He stated that historically the shipper had been treated as a mere appendage in the total shipping trade transaction. He pointed out that as the word "shipper" appeared in the most crucial paragraphs of the draft text, the need to define the term could not be over-emphasized. On the proposal to add the words "by whose authority", his delegation felt that that would complicate matters as an additional document would have to be produced to certify the validity of the contract, and that seemed unnecessary.

23. Mr. POPOV (Bulgaria) said that he was in favour of paragraph 1 as drafted. In his view, the inclusion of a definition of the term "shipper" in the draft Convention would give rise to the problem of agents and representatives, who were numerous and were subject to different laws according to the country concerned. Such a definition would not be at all productive. His delegation considered that it would be better to follow practice on that point and, like the Canadian delegation, would prefer not to include a definition of "shipper" in the draft Convention.

24. Mr. FAHIM (Egypt) supported paragraph 1 as drafted.

25. Mr. KERRY (United Kingdom), restating his delegation's position, said that, on reflection, it preferred to abide by the existing text of paragraph 1, without change, namely, without adding a definition of "shipper" but also without deleting the word "shipper". Thus, the shipper was any person who concluded a contract of carriage of goods by sea with the carrier.

26. Mr. SELVIG (Norway) said that, strictly speaking, his delegation had not made a proposal but had merely suggested a compromise formula, which consisted of combining the United States proposed amendment (see A/CONF.89/8, para. 18) and the existing wording of paragraph 1 so as to overcome certain difficulties to which that amendment might give rise. His delegation, in fact, prepared paragraph 1 as drafted.

27. Further, it would be difficult to formulate a definition of the term "shipper", for it would have to be a definition that enabled the shipper to be identified for the purposes of, for example, article 14 where he was defined as the person to whom the bill of lading was issued whereas, under article 1, the shipper was the person with whom the contract of carriage was concluded. In practice, that could mean two different persons; it would therefore be

preferable not to lay down any definition of "shipper".

28. Mr. FUCHS (Austria) said his delegation proposed that a definition of "shipper" should be included in article 1 (see A/CONF.89/7), since the Hague Rules had been criticized for that very omission. According to maritime law specialists in various countries, the shipper, though defined as a party to the contract of carriage, could fulfil his obligations through the intermediary of agents or representatives. Consequently, if no definition of shipper were included in the draft Convention, the agent or representative might be taken to be the principal. "Shipper" should therefore be defined. That would not give rise to any difficulty so far as articles 12 and 13 were concerned and, in article 14 and article 15, paragraph 1(d), it would suffice to add the words "and his servants and agents".

29. Mr. MORENO PARTIDAS (Venezuela) considered that it would be preferable to state in paragraph 1 that the carrier was any person "who by a contract of carriage undertakes to carry goods by sea", as proposed by Greece (A/CONF.89/C.1/L.2).

30. The United States representative had rightly stressed the dangers implicit in the words "in whose name", which appeared in the existing text. The change proposed by the Norwegian delegation left a gap since, as pointed out by the Spanish representative, it did not provide for cases where authority was given *a posteriori*. "Carrier" had been defined and it was therefore necessary to include in article 1 a definition of "shipper", since there were two parties to the contract, whose claims and actions, and whose liabilities, were defined further on in the draft Convention.

31. Lastly, if article 1 was adopted, his delegation considered that a drafting group should be entrusted with the task of improving the wording so that the Conference could turn to the following articles without further delay.

32. Mr. ARGYRIADIS (Greece) said his delegation withdrew its proposal, since the majority of delegations apparently felt that there was no need to amend paragraph 1. If the consensus of opinion was in favour of a definition of "shipper" then that task should be entrusted to an *ad hoc* working group.

33. The CHAIRMAN noted that the Committee still had before it the United States and Austrian proposals. In regard to the former, it was clear from the discussion that the majority of delegations favoured the retention of the draft text. In regard to the latter, many delegations seemed to favour the inclusion of a definition of "shipper" in the draft Convention. He would therefore put the question to the vote with a view to appointing an *ad hoc* working group, if necessary.

34. The Committee decided, by 28 votes to 27, with 4 abstentions, that, in principle, a definition of "shipper" should be included in article 1 of the draft Convention.

35. Mr. AMOROSO (Italy) explained that he had abstained from the vote because he considered that, before casting an affirmative vote, he would have to know the content of the definition.

36. The CHAIRMAN observed that the vote had related

only to the principle of including a definition of the shipper. Once the definition had been formulated by an *ad hoc* working group it would be referred to the Committee, which would still be free to reject it.

37. Mr. DIXIT (India) said that, as his delegation understood it, the decision was only one of principle and not on the text of the definition, and that the definition could be rejected. An *ad hoc* working group should therefore be appointed.

38. Mr. CASTRO (Mexico) said that it was necessary to specify whether the working group would be required to refine the drafting of article 1, or to prepare a definition of "shipper".

39. Mr. GUEIROS (Brazil) said that, as the representative of a Roman law country, he was opposed to definitions which, in civil law, presented dangers. He was, however, prepared to agree that the term "shipper" should be defined, in the same way as the term "carrier" had been, since both definitions were needed by those concerned with trade and by arbitrators. Also, in paragraph 1, he would prefer to replace the words "any person by whom or in whose name" by the words "any person by whose authority", or "any person by whom or by whose authority" or again, "any person by whom or in whose name or by whose authority"; the definition of the carrier would then cover the agent.

40. The CHAIRMAN proposed that the *ad hoc* Working Group which was to prepare a definition of the term "shipper" should be composed of the delegations of the following countries: Austria, France, India, Mexico, Union of Soviet Socialist Republics, United Republic of Tanzania and United States of America.

41. *The proposed composition of the ad hoc Working Group was approved, but the Mexican delegation was replaced by the Venezuelan delegation, at the request of the former.*

42. The CHAIRMAN said that, in his view, it would be advisable to refer all the texts to the *ad hoc* Working Group so that it could improve the wording without making any changes of substance. If there was no objection, he would take it that the Committee approved the wording of paragraph 1 of article 1 of the draft Convention on the understanding that it would be examined by the Drafting Committee.

43. *It was so decided.*

Paragraph 2

44. The CHAIRMAN invited the delegations of Iraq and Greece to introduce their amendments contained in documents A/CONF.89/C.1/L.73 and A/CONF.89/C.1/L.2, respectively.

45. Mr. JOMARD (Iraq) said his delegation proposed that, for the sake of clarity, the word "subsequently" should be added before the last word of paragraph 2.

46. The CHAIRMAN observed that the question was perhaps only a matter of drafting.

47. Mr. SOTIROPOULOS (Greece) said that, in his view, paragraph 2 as drafted was not very clear. The words "by the carrier and any other person to whom such performance has been entrusted" added nothing to the meaning, and it would be better to delete them.

48. The CHAIRMAN suggested that that, again, was a matter of drafting.

49. Mr. BYERS (Australia) said he also took the view that the proposal of Iraq concerned a matter of drafting. The Greek proposal, however, narrowed the definition of the actual carrier and, consequently, the scope of article 10. It was therefore an amendment of substance and he was unable to accept it.

50. Mrs. YUSOF (Malaysia) endorsed the Australian representative's remarks.

51. Mr. FUCHS (Austria) supported the proposal of Iraq but, unlike the Greek representative, considered that the last part of paragraph 2 was necessary in cases where there were several carriers.

52. Mr. CASTRO (Mexico) said that, in his opinion, the question should be referred to the *ad hoc* Working Group.

53. Mr. SEVON (Finland) said he did not think that it was simply a matter of drafting; he was unable to accept the proposed Greek amendment.

54. Mr. SMART (Sierra Leone) supported the proposal of Iraq but suggested that the word "and", after "carrier", should be replaced by "or".

55. Mr. CLETON (Netherlands) supported the Greek proposal.

56. Mr. DOUAY (France) said that he, too, found the last part of the definition of "actual carrier" ambiguous, for it was not clear by whom the performance of the carriage was entrusted. There was a risk that an actual carrier might designate another. If "actual carrier" was understood to mean any person to whom the carrier entrusted, in whole or in part, the performance of the carriage of the goods, it would be better to delete the last part of the sentence—namely, the words "and any other person to whom such performance has been entrusted".

57. Mr. SELVIG (Norway) agreed that the Greek proposal concerned a matter of substance. The wording of paragraph 2 should therefore be approved before it was referred to the *ad hoc* Working Group.

The meeting rose at 1.05 p.m.

3rd meeting

Thursday, 9 March 1978, at 10.15 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.3

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.2, L.16, L.37, L.54, L.75, L.86)

Article 1 (continued)

Paragraph 2 (concluded)

1. The CHAIRMAN said that the delegation of Iraq agreed that its draft amendment should be considered as a drafting proposal and referred to the Drafting Committee. Accordingly, all that was left to be dealt with were the amendment submitted in writing by Greece (A/CONF.89/C.1/L.2) and two amendments proposed orally by France and Sierra Leone.

2. Mr. DOUAY (France) said that, to facilitate proceedings, his delegation would withdraw its proposal, but it still hoped that the drafting of paragraph 2 would be improved in such a way that its final passage would provide that the performance of the carriage of goods had been entrusted to an actual carrier by a previous actual carrier. As the point did not touch on substance, he thought that it might be spelled out by suitable wording by the Drafting Committee.

3. Mr. ARGYRIADIS (Greece) said that, even after the amendments proposed by Iraq and France, some difficulties would still remain, for it would still be possible for several actual carriers to have taken part in the transport operation. If, however, that did not give rise to a problem regarding the various provisions of the draft Convention, the Greek delegation would not have any objection to the text of the draft, as amended by the proposals of Iraq and France.

4. Mr. GORBANOV (Bulgaria) said that he endorsed the proposal by France and thought that the proposal by Iraq was justified. He suggested that the Drafting Committee might work out a text taking into account the various amendments proposed.

5. Mr. CASTRO (Mexico) said there might be a whole series of actual carriers, and it was not clear from the proposed wording that ultimately the carrier performing a part of the carriage of goods was an actual carrier, nor that, in that event, the contractual carrier remained liable. The contractual carrier was the one who gave instructions to the actual carrier. If, however, there was more than one actual carrier, any one of them might receive instructions from some other actual carrier, and that was the heart of the problem.

6. Mr. SELVIG (Norway) said that the definition of actual carrier should be read in the light of article 10, which dealt with the liability of the contractual and of the actual carrier. That article laid down two principles: the first (article 10, paragraph 1) was that the contractual carrier was liable for any fault or negligence committed by the actual carrier, which meant that, however many carriers there were, the contractual carrier was responsible for the carriage of goods which he was performing. The second principle (article 10, paragraph 2) was that each of the actual carriers was responsible for that part of the carriage which was performed by him. Those two provisions settled the problem raised by some delegations, for the contractual carrier was responsible for the actual carriers, and each of the actual carriers was responsible for his own carriage of goods. In order that the rules laid down in article 10, paragraph 1, might operate, the definition in article 1 must be sufficiently broad. For that reason, Norway approved the existing text, but thought that the Drafting Committee might elucidate the text in the light of the proposal of the delegation of France.

7. Mr. FUCHS (Austria) considered that a drafting problem was involved and endorsed the comments by the representative of Norway.

8. The CHAIRMAN noted that apparently it was the Committee's wish that paragraph 2 of article 1 of the draft Convention should stand. Accordingly, the text would be referred to the Drafting Committee, which would take into account the drafting proposals made by Iraq, France and Sierra Leone.

Paragraph 3

9. The CHAIRMAN said that no proposal concerning paragraph 3 had been referred to the Committee. In the absence of objections, he would take it that the Committee agreed to refer the text to the Drafting Committee.

10. *It was so decided.*

Paragraph 4

11. Mr. SOTIROPOULOS (Greece), introducing his delegation's amendment to the paragraph contained in document A/CONF. 89/C.1/L.2, said that the carriage of live animals involved the carrier in special risks (e.g., behaviour of the animals, possible disease, looking after the animals) and hence the carrier might find it hard to contract a liability insurance at a reasonable price which would not tend to add to the cost of transport. It was true that the United Nations Commission on International Trade Law (UNCITRAL) had prepared a safeguard clause in article 5, paragraph 5, but that provision was too complicated and would give rise to a good deal of dispute

on the question of whether, in some particular case, the conditions for the carrier's exemption from liability were in fact fulfilled. That was why the delegation of Greece proposed that the carriage of live animals should not come within the scope of the Convention. If the amendment were not accepted, another solution might be to stipulate in article 5 that by contract the carrier of live animals might be exempt from liability.

12. In addition, his delegation would support any amendment, including that submitted by Japan (A/CONF.89/C.1/L.16), the effect of which would be to exclude packaging from the definition of the term "goods".

13. Mr. TANIKAWA (Japan), introducing his delegation's amendment (A/CONF.89 C.1/L.16), said that as packaging was normally intended only to protect the goods, damage to the packaging should not be treated as damage to the goods—hence his delegation's proposal for excluding the packaging from the definition of the term "goods". On the other hand, the definition should include the container, pallet or similar article of transport which could be used over and over again.

14. Mr. KALBOUSSI (Tunisia) drew attention to his delegation's proposal (A/CONF.89 C.1 L.37) which was identical with the Japanese proposal and had been submitted for the same reasons.

15. Mr. GORBANOV (Bulgaria) said that his delegation's amendment (A/CONF.89 C.1 L.54), which was analogous to that of the Japanese delegation, took account of the difference between goods and packaging: as a rule the packaging had no value and could suffer damage without involving the carrier's responsibility.

16. Mr. BURGUCHEV (Union of Soviet Socialist Republics), referring to his delegation's proposal (A/CONF.89/C.1/L.75), said that it should be expressly provided that normal wear of packaging during transport could not engage the carrier's responsibility.

17. Mr. VOGEL (German Democratic Republic), introducing his delegation's amendment (A/CONF.89 C.1/L.86) which dealt both with the matter of the transport of live animals and with the question of packaging, said that in the light of the explanations given in support of excluding live animals from the definition of "goods" he would be able to support the proposals to that effect. His delegation would, however, maintain its amendment proposing that the reference to packaging should be omitted from the definition proposed in paragraph 4.

18. Mr. KERRY (United Kingdom) considered that the proposal by the delegation of Greece was of special importance in commercial operations within the scope of the Convention, for the Convention was intended to cover cases where normally bills of lading were not drawn up. Actually, in the United Kingdom, shippers and shipowners both considered that the new rules should not deal with live animals, for a number of reasons: looking after animals and the behaviour of animals created certain risks; the carrier's liability insurance would be expensive; as it often happened that animals were in the charge of an attendant it was unnecessary to impose the responsibility on the carrier; animals might breed or die

during the transport and the number or condition of the animals at the point of arrival could not be guaranteed; and it was difficult to produce evidence concerning the conditions under which an animal had perished.

19. Mr. GORMAN (Ireland) said that he was all the more in favour of the Greek delegation's proposal as live animals were Ireland's principal export item from the point of view of earnings. Article 5, paragraph 5, made allowance for the special nature of the trade in live animals, but that provision was too complicated and did not really deal sufficiently with the substance, and hence he would prefer that live animals should quite simply be dropped from the scope of operation of the Convention. He added that live animals were often carried on board ships designed and used exclusively for that purpose and that their carriage could hardly be combined with that of other goods.

20. The CHAIRMAN suggested that for the time being delegations should comment solely on the question of whether live animals should be included in the definition and leave the matter of packaging for later consideration.

21. Mr. MASSUD (Pakistan) said that if live animals were omitted from the definition of "goods" the text would simply be restoring the Hague Rules. He added that article 5, paragraph 5, took into account the concern expressed by delegations supporting that solution with respect to the special risks involved in the carriage of live animals.

22. Mr. SANYAOLU (Nigeria) considered that live animals ought to be covered by the definition of "goods" in order that the Convention would constitute a progressive development of the Hague Rules.

23. Mr. SWEENEY (United States of America) said that he supported the existing text of the definition of "goods" since article 5, paragraph 5, disposed of the concern expressed by delegations which had supported the Greek proposal.

24. Mr. DOUAY (France) likewise considered that the reference to live animals should stand in the definition of "goods" in the light of the terms of article 5, paragraph 5. That solution would be preferable, provided that the rule laid down in article 5, paragraph 5, was amended to take account of the specific nature of that kind of transport.

25. Mr. BYERS (Australia) said that he could support the definition in article 1, paragraph 4, since article 5, paragraph 5, laid down a special stipulation in respect of live animals. The Greek proposal would imply that the carrier should be free to carry live animals but on terms to be laid down by himself; in other words, it provided for non-liability, whereas the convention ought to be realistic and should not restore the earlier set of rules.

26. Mr. GANTEN (Federal Republic of Germany) said that in his opinion the substance of the original version of paragraph 4 should stand. If the special provision on live animals was omitted, it might subsequently become necessary to prepare a special separate instrument relating to the carriage of live animals.

27. Ms. OLOWO (Uganda) said that she could support the text of paragraph 4 as it stood.

28. Mr. SMART (Sierra Leone) considered that the text prepared by UNCITRAL should stand as drafted. He pointed out that the carriage of live animals had expanded greatly since the time of the adoption of the Hague Rules, under which carriers could be exempt from liability altogether. The terms of article 5, paragraph 5, should answer the fears of the delegations which considered that the carriage of live animals should be excluded from the scope of the Convention.

29. Mr. MUCHUI (Kenya) considered that, as the carriage of live animals had greatly developed since 1924, the time had come for regulating that kind of transport. The only difference between that and other forms of transport was bound up with the special risks involved, but that was a matter dealt with by article 5, paragraph 5. If the Greek delegation could not buttress its proposal with arguments other than those concerning risks, the delegation of Kenya would still consider that live animals should be covered by the definition.

30. Mr. EYZAGUIRRE (Chile) said that his delegation likewise considered that live animals should be covered by the definition, for the carrier enjoyed adequate guarantees under article 5, paragraph 5. In addition, the Convention should embody regulations that should be as modern as possible and analogous to the regulations laid down in the conventions governing transport by road, inland waterway and rail.

31. Mr. RAY (Argentina) agreed with the view expressed by the foregoing speakers, since the special problems arising in the carriage of live animals were settled in article 5, paragraph 5, though the language of that provision might, if necessary, be improved.

32. Mr. TANIKAWA (Japan) likewise considered that live animals should be covered by the definition of "goods", provided that the terms of article 5, paragraph 5, were neither amended nor deleted.

33. Mr. KHOO (Singapore) said that the Australian delegation had rightly commented that if live animals were not covered by the definition of "goods" the system of the carrier's non-liability would be perpetuated: at the moment, the carriage of live animals was in fact governed by conditions laid down exclusively by the carrier. The second reason why the protection of the Convention ought to be extended to the carriage of live animals was that such animals were carried in ships specially designed for the purpose and that in practice the language of paragraph 4 of article 1 would encourage carriers to take whatever precautions they could. Accordingly, Singapore considered that live animals should be covered by the definition of "goods".

34. Mr. GORMAN (Ireland) explained that his delegation's position with respect to the question of the carriage of live animals was determined not by legal, but by economic considerations. If the existing régime was changed, the Irish exporters of live animals would incur additional expenses. There were no Irish shipowners engaged in the carriage of live animals by sea and consequently his delegation was upholding the point of view of shippers.

35. Mr. FAHIM (Egypt) said that his delegation sup-

ported the text of paragraph 4 of article 1 as it stood.

36. Mr. DIXIT (India) said that his delegation, which had been a member of the Working Group that had prepared the draft, supported the text of paragraph 4 as it stood, for a number of reasons. In general, the trade in live animals was carried on between developing countries and developed countries, and the animals came mainly from the former. Hence the exporters wanted to protect themselves, while at the same time recognizing that transport expenses might rise correspondingly. However, in the case of a horse valued at \$1,000, the shipper should be able to agree to an extra charge of \$2 if, in return, he had the assurance that the animal would be well taken care of during the voyage.

37. Mr. KELLER (Liberia) considered that the definition of goods as contained in paragraph 4 of article 1 should stand, subject to the provisions in article 5, paragraph 5.

38. Mr. BENTEIN (Belgium) said that he would not object to the inclusion of the carriage of live animals in the scope of the Convention, on condition, however, that article 5, paragraph 5—defining the mode of determining the carrier's liability—was retained.

39. The CHAIRMAN, summing up the debate, noted that only three delegations opposed the inclusion of live animals in the definition of goods.

40. So far as packaging was concerned, he noted that Japan (A/CONF.89/C.1/L.16), Tunisia (A/CONF.89/C.1/L.37), Bulgaria (A/CONF.89/C.1/L.54) and the German Democratic Republic (A/CONF.89/C.1/L.86) proposed that packaging should not be included in the definition of "goods". The USSR (A/CONF.89/C.1/L.75) had submitted a drafting proposal the object of which was that goods should be defined in such a way that no claim could be made against the carrier in the case of damage of packaging through normal wear and tear during a transport operation: the USSR proposed that article 15, paragraph 1 (b), should be amended accordingly.

41. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation's proposal might be referred directly to the Drafting Committee.

42. Mr. FUCHS (Austria) said that packaging had an intrinsic value, and the more valuable the goods the more their value depended on the appearance and on the packaging. Besides, many countries which had insufficient storage space were increasingly using greatly improved packaging which made it possible to store goods in the open. Accordingly, Austria was in favour of the definition as it stood, including the reference to packaging.

43. Mr. AMOROSO (Italy) said he could not understand why packaging was mentioned in the definition of "goods". In his opinion there were two distinct kinds of packaging: first, packaging that protected the goods during the transport operation, and secondly, the commercial packaging. If the protective packaging was damaged during transport but had served its purpose, the carrier should not be held answerable for normal wear and tear. The commercial packaging, on the other hand,

formed an integral part of the goods and should be delivered to the consumer with the goods. The second kind of packaging could not be mentioned in the definition for it was really part of the goods. The existing definition was confusing and he suggested that it might be preferable to drop all reference to packaging.

44. In cases where the packaging had a commercial value—as referred to by the representative of Austria—the shipper might specify in the bill of lading that a claim could be made in respect of the packaging in the event of damage. However, to include a reference to packaging in the definition would simply encourage disputes.

45. In addition, he made a specific suggestion for the attention of the Drafting Committee as regards the definition of goods. In his delegation's opinion the definition should state that "goods" includes any article carried, including live animals".

46. Mr. CLETON (Netherlands) said that there was no reason why packaging should be excluded from the definition of goods. The Italian delegation had rightly differentiated the two types of packaging in current use: normal packaging used for the carriage and the packaging of the product as such. The distinction was not easy to apply in practice. There might be two kinds of cases: first, the case where goods were unloaded damaged and the packaging likewise. In that event, the goods would have to be repackaged and the labour would have to be paid for. Hence, the carrier would have to reimburse the expenses for replacing the packaging and the cost of labour. The other case was that in which the packaging was damaged at the end of a voyage and it was to be used once only: in such a case the consignee could hardly claim compensation. In the Netherlands delegation's opinion, a reference to packaging in the definition would forestall disputes.

47. Mr. SELVIG (Norway) expressed support for the

drafting amendment submitted by the USSR (A/CONF.89/C.1/L.75): the carrier could not be held answerable for normal and unavoidable wear and tear of the packaging. The point raised the general principle of the carrier's responsibility, not only with respect to the packaging but also with respect to the goods themselves, including goods that were not packaged. The principle was that the carrier was not responsible for events which he was unable to avoid, as was stated in article 5, paragraph 1. The question of damage in general should, therefore, be considered in conjunction with the terms of article 5, paragraph 1, in order to ascertain whether those provisions were clear enough. The problem of normal wear would have to be considered in all cases and not only in connexion with packaging.

48. His delegation likewise agreed with the Netherlands delegation's view concerning the possible remedy in cases where packaging was damaged in transit and would have to be replaced; the expenses incurred might be reimbursed pursuant to the Hague Rules. Hence that possibility could not be excluded from the new Convention. The amount to be reimbursed would depend on the monetary value of the packaging and of the loss suffered.

49. Lastly, the Norwegian delegation pointed out that, if packaging was excluded from the definition of goods as drafted, that did not mean that it would be impossible to hold the carrier answerable for damage; all it meant was that the shipper's remedy would be governed by the national law instead of by the Convention. Consequently, if the packaging was removed from the scope of the Convention the result would be that the carrier's responsibility for damage to goods would be covered by the Convention, whereas his responsibility for damage to the packaging would be covered by the national law.

The meeting rose at 11.45 a.m.

4th meeting

Thursday, 9 March 1978, at 3.05 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.4

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.2, L.16, L.30, L.31, L.34, L.37, L.51, L.54, L.55, L.75, L.86)

Article 1 (continued)

Paragraph 4 (concluded)

1. Mr. GONDRA (Spain) said that his delegation was in favour of the inclusion of the term "packaging" in the text

of the Convention. It did not share the concern of other delegations over the responsibility of the carrier, as the general principle of liability in article 5, paragraph 1, adequately covered all the different cases that might arise.

2. Under one assumption, if the packaging was "durable" and had been supplied by the shipper, the carrier would naturally become liable for damage to it. In the second, if the packaging was "perishable" and had no intrinsic value, the carrier would not be responsible for any damage to it, since the shipper would not have suffered a loss. Under the last assumption, even if the packaging was "perishable" it might be essential for the handling of the merchandise. One instance of that was sugar which, even if not damaged itself, would have to be

repacked if its packaging was damaged. In that case, the carrier would be responsible for the cost involved.

3. His delegation considered that exclusion of the concept of "packaging" from the Convention might create artificial problems in that there would be two different rules: one for "goods", which would come under the Convention, and another for "packaging", which would be governed by national law.

4. Mr. SANYAOLU (Nigeria) said that for the reasons given by other delegations his delegation was in favour of retaining the term "packaging" in the definition of "goods" in the present text. Its inclusion would not impose strict liability on the carrier, because of the defence of normal wear and tear. His delegation believed that article 5, paragraph 1, also offered the carrier a defence if an action was brought against him for damage to packaging.

5. Mr. HONNOLD (United States of America), referring first to the question whether the carrier was liable for ordinary wear and tear to packaging, in technical terms and in the context of the Convention, said he assumed that the point at issue was whether, under article 5, paragraph 1, normal wear and tear to packaging constituted damage to goods. In his delegation's view it would not do so within the meaning of liability as established in that article. Many goods, such as liquids for example, were subject to normal deterioration which, in certain legal regimes, was known as "inherent vice". In any event, the proper place to deal with the question was in article 5, paragraph 1.

6. With regard, secondly, to the proposal that liability for damage to packaging should be excluded from the Convention, he observed that the applicable provisions of the Hague Rules had given rise to some confusion, since they referred solely to goods. In the opinion of his delegation it would be quite wrong to exclude liability for damage, other than ordinary wear and tear, to packaging that was reusable. Packaging was becoming increasingly valuable and might represent as great a loss to the shipper as other goods. His delegation therefore considered that the reference to packaging in paragraph 4 should be retained.

7. Mr. MAITLAND (Liberia) said that the question was a very complicated one. One cause of confusion was the way the provision was drafted, since it would permit recovery for damage to packaging "if supplied by the shipper". The question had been raised in the past, in discussions in which Liberia had not been represented, as to whether damage to packaging could be recoverable under that heading. Another problem that had given his delegation pause in deciding on its position was the apparent linkage between the inclusion of packaging in article 1 and the limitation of liability. The linkage had evidently also been of concern to the secretariat of the United Nations Conference on Trade and Development, since it had gone into the matter in document TD/B/C.4/ISL/19/Supp. 2, in which the point was made that to include packaging only "if supplied by the shipper" would have repercussions on other articles, in

addition to article 6. His delegation was not clear why that expression had been included at all. Another question he wished to bring up was whether the definition would include items packaged as luggage that did not come under the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

8. Mr. PTAK (Poland) said that in his delegation's view the inclusion of packaging, and especially all types of packaging, in the definition of "goods" was inappropriate. The identification of goods with their packaging was contrary to current practice and to the purpose of packaging as protection of the goods from damage. In the course of cargo-handling operations and in carriage itself, the packaging was bound to be damaged to some extent, however good the stowage in the ship's hold, because of vibration or the normal wear or tear brought about by stowage lashings.

9. As the choice of packaging was made by the shipper and the carrier had no influence on that choice, it was mainly the shipper who should bear the risk of damage to the packaging during sea carriage. In that respect, his delegation endorsed the view of the Italian delegation that a distinction should be made between transport packaging and commercial packaging. To identify the goods with their packaging would cause difficulties and generate litigation, since the reservations in bills of lading referred to the goods themselves. Bills of lading would become non-negotiable under articles 15 and 16, and there would be a need for new court decisions and new trade practices. That was to be avoided since the convention should endeavour to limit the grounds for litigation rather than broaden them.

10. Mr. SMART (Sierra Leone), referring to the view that a sharp distinction should be drawn between packaging that was intended to protect the goods and packaging that was an integral part of them, said that, as the carrier charged for freight on the basis of the weight of the cargo, including packaging, and the space occupied on the ship, the present text should remain as it was. With regard to the fears expressed that ordinary wear and tear would be interpreted as damage, his delegation wished to point out that the two concepts were quite distinct in many national legal systems and that, consequently, wear and tear would not be considered to constitute damage under international law either.

11. Mr. MUCHUI (Kenya) said his delegation was surprised that some delegations experienced difficulty with the present text. When a carrier undertook to carry goods, he pledged to take proper care of them and to accept responsibility for any loss or damage that might occur to them while they were in his charge, and there was no reason why he should not also be expected to take proper care of the packaging of the goods and bear the cost of loss of or damage to it as a result of negligence on his own part or that of his agent. He felt sure that the representative of Sierra Leone had dispelled any misgivings there might be about the inclusion of normal wear and tear in the concept of damage.

12. With respect to article 5, paragraph 1, the last part of that paragraph clearly stated that the carrier should be

liable for the occurrence causing loss of or damage to the goods unless he could prove that he, his servants and agents had taken all measures that could reasonably be required to avoid the occurrence and its consequences. It would surely not be difficult for a carrier to prove that he had taken such measures. The representative of Poland had rightly pointed out that even the most careful carriers were unable to avoid some damage to packaging during loading and unloading. The Kenyan delegation strongly supported the inclusion of packaging in the definition of goods.

13. Mr. COELLO (Honduras) said that his delegation agreed with the views that had been expressed by the Austrian delegation and echoed by other speakers. The question of damage to packaging opened up the possibility that claims might be brought for presumption of damage in ports, customs warehouses or points where the mode of transport changed, with all the consequences that would entail. His delegation agreed with the Kenyan delegation and others that the text should be maintained in its present form.

14. Mr. KALBOUSSI (Tunisia) said that, in submitting its proposal to exclude packaging from the definition of goods (A/CONF.89/C.1/L.37), his delegation had not intended to exclude the carrier's liability in respect of packaging. The carrier should naturally be held liable for damage to packaging that was reusable on the same terms as he was for the goods themselves. His delegation therefore withdrew its proposal and supported the maintenance of the present text.

15. Mr. CARRAUD (France) said his delegation was strongly in favour of maintaining the present definition, since the packaging was often of value and could be reused. It was not necessary to introduce too subtle a distinction between commercial packaging and packaging for transport purposes, as suggested by the Italian representative, since commercial packaging was frequently used nowadays for transport and if it was damaged the goods would lose their commercial value as well. The proposal made by the delegation of the German Democratic Republic that a distinction should be drawn between packaging belonging to the shipper and packaging belonging to the carrier would create added complications, since it was evident that if packaging owned by the carrier sustained damage, he would not claim against himself. He agreed with the delegation of the USSR that it was necessary to differentiate between normal wear and tear and damage sustained in the course of carriage.

16. In his delegation's view, goods and packaging were an indivisible whole, the more so as under the new convention the limits of liability were calculated in terms of "packages" or "units".

17. Mr. AL-ALAWI (Oman) said his delegation believed that the idea of distinguishing between packaging intended to protect goods and packaging that was an integral part of them was worthy of consideration, but was afraid that it would give rise to a great many practical difficulties. The problem should not be resolved by omitting the term "packaging". Packaging was becoming

increasingly important in international trade, since re-packing of goods entailed additional costs. His delegation was therefore in favour of retaining the text as it stood and leaving the question of compensation to be dealt with in article 5, paragraph 1, under which the carrier could avoid liability simply by proving that he or his servants or agents had taken reasonable care to prevent the occurrence causing loss or damage.

18. Mr. BYERS (Australia) said his delegation agreed with the delegations of Norway and the Soviet Union that paragraph 4 should be maintained as it stood.

19. Mr. SUCHORZEWSKI (Poland) pointed out that the value of packaging usually differed from the value of the goods themselves and should not be dealt with on the same footing. Moreover, in article 6 provision had been made for compensation to be calculated on the basis of gross weight or shipping units, whichever was the higher.

20. Mr. EYZAGUIRRE (Chile) agreed with the delegations of France and Norway that the text should be kept as it stood.

21. The CHAIRMAN suggested that, as there appeared to be general agreement to maintain the text of article 1, paragraph 4, in its present form, it should be remitted to the Drafting Committee, which would take into consideration the points made by the USSR delegation in document A/CONF.89/C.1/L.75.

22. Mr. CASTRO (Mexico) pointed out that, as the paragraph had been accepted by a majority of the Committee, the Drafting Committee could do no more than see whether or not it required stylistic amendment. From what the Chairman had said, however, it would appear that the provision was to be revised to take into account the USSR proposal, which went beyond the concept of definitions and would seem more relevant to article 5. He would suggest that the proposal concerned should be taken up when the Committee came to discuss article 5.

23. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in the light of the explanations given by a number of delegations which shared the views of his own delegation, he would not insist on drafting changes in paragraph 4. The proposal contained in document A/CONF.89/C.1/L.75 could therefore be considered in relation to article 5, paragraph 1.

24. Mr. POPOV (Bulgaria) said that he wished to draw attention to the kind of difficulties that were likely to arise in future if packaging were included in the definition of goods. The statements made on the question were further evidence of the existence of schools of thought representing interests of various kinds.

25. The convention would be dealing with bills of lading relating to the carriage of goods by sea. What was normally carried was general cargo, which had to conform to certain established technical standards. Moreover, courts, in dealing with cases of damage to or loss of goods, proceeded on the basis of the fact that there existed definite standards by reference to which the loss or damage could be considered. In the case of general cargo, the standards that governed particular types of goods were common knowledge. That could not be said of

packaging, since different kinds could be used for one and the same item of goods. There was no established rule or court practice in that respect.

26. Mr. DIXIT (India) said that, under the rules of procedure, the Committee could not refer to the Drafting Committee matters on which there were conflicting opinions. He therefore asked the Chairman for a clear-cut decision on paragraph 4. As far as his delegation was concerned, the question of wear and tear did not enter into the definition of goods but, if it had to be dealt with, the appropriate context would be article 5.

27. The CHAIRMAN reaffirmed that the present text of article 1, paragraph 4, had been maintained and would be referred to the Drafting Committee.

Paragraph 5

28. Mr. BYERS (Australia) said that the amendment to paragraph 5 proposed by his delegation (A/CONF.89/C.1/L.31) was designed to meet a situation in which the carriage of goods by sea formed part of a multimodal transport contract. When the Convention came into force, the Hague Rules would cease to apply to the sea leg of such a contract. The appropriate way to deal with the gap thus created would be to make the provisions of the Convention applicable to the sea leg, and only the sea leg, of a multimodal transport operation. If that were not done, there would be no international law to cover such a case until a multimodal transport convention was concluded, and various interests would be free to exempt themselves from any form of liability. He was encouraged to note that the proposals submitted by the United States (A/CONF.89/C.1/L.31) and the United Kingdom (A/CONF.89/C.1/L.34) tended in the same direction as his own thinking.

29. Mr. SWEENEY (United States of America) said he believed that the problem raised by paragraph 5 was one of drafting and not of substance. He recalled that article 4 of the draft Convention, concerning the period of responsibility, had been prepared long before the definitions in article 1 had been formulated; it had certainly not been the intention of those who had framed those definitions to undo the important work which had been done on article 4. Nevertheless it was true, as two international experts in maritime law had pointed out, that on the basis of the definition in article 1, paragraph 5, carriers could easily remove from the scope of application of the Convention a case in which the goods had been taken over anywhere outside the immediate port area, or a bill of lading had been issued at a place inland.

30. The principle laid down in article 4 was valid, and the definition of contract of carriage should be modified. He suggested that as a first step he might attempt to work out, in conjunction with the representatives of Australia and the United Kingdom, a formulation which could then be referred to the Drafting Committee.

31. Mr. KERRY (United Kingdom) said that his delegation's amendment to paragraph 5 (A/CONF.89/C.1/L.34) was partly designed to resolve the difficulties which the United States and Australian representatives had described, but it was also intended to

cover the case in which a carrier only arranged for the carriage of goods by sea but did not undertake to carry the goods himself. However, that was not really a point of substance. He supported the United States suggestion for informal consultations to consider the problems posed by paragraph 5.

32. Mr. FUCHS (Austria) and Mr. GANTEN (Federal Republic of Germany) also supported that suggestion.

33. Mr. KALBOUSSI (Tunisia) said that the modification proposed by his delegation (A/CONF.89/C.1/L.37) was designed to take account of a situation in which carriage by sea was only part of an operation involving other modes of transport. It was a matter which could be left to the Drafting Committee.

34. Mr. SEYON (Finland) said that if a provision of the kind proposed by the Australian and United States delegations was included in the Convention the hands of the drafters of any future convention on multimodal transport would be tied and the end result would be a conflict of legal instruments. Moreover, the proposals concerned would affect the whole Convention, since not only the provisions on liability but also those relating to the time bar, to jurisdiction and so on would be applicable to part of a multimodal transport contract. He did not know how such an arrangement was intended to work in practice. The United Kingdom proposal also caused difficulty. The formulation "that goods will be carried" could, under Roman law, be interpreted as bringing in many of the functions of forwarding agencies. Those considerations led him to the conclusion that the present text should be maintained.

35. Mr. GANTEN (Federal Republic of Germany) agreed with the representative of Finland that the proposals concerning article 1, paragraph 5, would create problems rather than solve them. He interpreted the United Kingdom proposal as meaning that the rules of the draft Convention should apply to all multimodal contracts, whereas the object of the Convention, in his view, was to deal with carriage by sea only. He therefore favoured the retention of the text as it stood.

36. Mr. SELVIG (Norway) endorsed the comments of the Finnish representative concerning the United Kingdom proposal. That and the other proposed amendments raised a number of problems, of which the one relating to article 4, concerning the period of responsibility, was the easiest to solve; however, all the questions which those proposals raised were quite technical and needed further consideration. He suggested the establishment of a small group to try to find a solution, taking into account the fact that there would be an interim to be covered until it was possible to draft a multimodal transport convention.

37. Mr. TANIKAWA (Japan) said that the application of the draft Convention to the sea leg of a multimodal transport operation should not be dealt with in the article under consideration. In general, the application of the Convention to multimodal transport could lead to complications in preparing a future convention covering such transport, and the Conference should not prejudge the matter. He pointed out that the question of multimodal transport was to be examined in connexion with the draft

provisions concerning implementation, reservations and other final clauses (A/CONF.89/6). He therefore favoured the maintenance of the existing text of paragraph 5. However, he could also agree to the Norwegian suggestion concerning the establishment of a small specialized group.

38. Mr. MALELA (Zaire) said he was in favour of leaving the text of article 1, paragraph 5, as it stood, since any change in the wording would only create new problems.

39. Mr. MASSUD (Pakistan) said that, while he had no objection to postponement of the discussion on paragraph 5 pending the preparation of a consolidated amendment by the Australian, United States and United Kingdom representatives, he wished to point out that the problems to which those representatives had addressed themselves were not difficulties in defining the term "contract of carriage" but questions involving the scope of application of the Convention. Whereas the scope of application of the Hague Rules had been confined to contracts covered by bills of lading, it was proposed that the present Convention should cover all contracts of carriage of goods by sea; in his view, however, some of the proposals made involved questions going beyond such carriage. The whole question of the application of the Convention would have to be examined, and he thought that a working group should be established to study the matter thoroughly.

40. Mr. GONDRA (Spain) said he also favoured the establishment of such a group, which should address itself to three questions: the practical scope of application of the Convention and whether it applied to the sea leg of multimodal transport operations; the question of accessory transport by inland waterways; and the question of whether "port" should be taken to include the adjacent area.

41. Mr. DOUAY (France) said that the definition of a contract of carriage given in paragraph 5 might mean that, in the absence of international regulations on multimodal transport, problems would arise to which the Convention being prepared could not be applied because the sea carriage in question had not been effected from port to port. The possibility that the Convention might be inapplicable to certain types of carriage of goods by sea must be avoided; the proposal to prepare a combined text from the working papers submitted by Australia, the United Kingdom and the United States was therefore welcome, provided that the task was done quickly.

42. Mr. CASTRO (Mexico) said that, in his delegation's view, contracts of carriage were adequately defined in paragraph 5 as it stood. The question of possible loopholes in the Convention's application in certain cases of multimodal transport could surely be dealt with later, during consideration of article 25 and the draft final clauses.

43. Mr. KACIC (Yugoslavia) said that his delegation welcomed the suggested formation of a working group with a view to producing a unified text for paragraph 5. For the sake of speed and efficiency in drafting, the working group should include speakers of each of the languages of the Conference.

44. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that it was important to ensure that the Convention covered any sea-carriage portions of multimodal transport operations. The question of relating the Convention to other instruments could be dealt with later by the suggested working group, in whose work his delegation would be glad to take part.

45. Mr. NILSSON (Sweden) said that, in his view, the problem could not be solved in connexion with the draft final clauses, which in any case would not provide the desired scope of applicability until a convention on multimodal transport had come into force. For the sake of speeding up the Committee's work, his delegation supported the suggestion that the three delegations wishing to amend paragraph 5 should meet informally to produce a unified text; if the Committee was not satisfied with that text, however, a working group should be set up to consider the wording.

46. The definition of a contract of carriage should seek to avoid conflict not only with provisions relating to multimodal movements of goods but also with those concerning carriage by road, such as were contained in the Convention on the Contract for the International Carriage of Goods by Road. The Committee must therefore proceed with great caution in considering any wording which would extend the scope of application of the Convention currently under consideration.

47. Mr. KERRY (United Kingdom) said that his delegation intended to proceed exactly as the Swedish representative had suggested.

48. Mr. POPOV (Bulgaria) supported the suggestion made by the representative of the Soviet Union.

49. Mr. SMART (Sierra Leone) shared the Mexican representative's view that the Convention related solely to the carriage of goods by sea and that any extension of its scope of application should be avoided. His delegation supported paragraph 5 as it stood.

50. Mr. KHOO (Singapore) said that his delegation did not regard the three proposed amendments as being designed to extend the Convention's scope of application. Their purpose was to make the Convention applicable to the sea-carriage portion of any movements of goods, some of which might not be covered by the Convention if, for example, the word "port" was too narrowly defined. His delegation thought that the matter should be dealt with along the lines suggested by the Swedish representative.

51. Mr. KALBOUSSI (Tunisia) said that the Committee should bear in mind the implications for other articles, especially article 4, of the definitions currently being considered.

52. The CHAIRMAN said that if there was no objection he would take it that the Committee agreed to postpone further consideration of paragraph 5 until the following Monday morning, by which time the sponsors of the proposed amendments should be able to submit a consolidated text.

53. *It was so decided.*

Paragraph 6

54. Mr. KERRY (United Kingdom) said that his delegation's amendment to article 1, paragraph 6 (A/CONF.89/C.1/L.34), involved a drafting matter which, in his view, could be referred to the Drafting Committee.

55. Mr. HONNOLD (United States of America), introducing the United States amendment to paragraph 6 (A/CONF.89/C.1/L.51), said that the proposal had been intended to broaden the definition of a bill of lading. However, his delegation currently felt that the issues addressed by that proposal could be dealt with during consideration of the relevant parts of the draft Convention rather than in the basic definitions, and it therefore withdrew its amendment to paragraph 6.

56. The text proposed by the United Kingdom might possibly be taken to mean that other documents—for example, warehouse receipts or dock receipts—were evidence of the taking over of goods by the carrier. Perhaps the Drafting Committee could bear that matter in mind.

57. Mr. SEVON (Finland), supported by Mr. GANTEN (Federal Republic of Germany), said he thought that the deletion proposed by the United Kingdom was a matter of substance, not merely of drafting, and would cause difficulties for some delegations.

58. Mr. KERRY (United Kingdom) said that his delegation's proposal had not been intended to affect the substance of paragraph 6. Since the proposal evidently caused difficulties for some delegations, his delegation withdrew it.

Paragraph 7

59. Mr. SUCHORZEWSKI (Poland) said that his

delegation's proposal (A/CONF.89/C.1/L.55) that the word "telegram" should be deleted from paragraph 7, was motivated by the fact that telegrams could easily be sent by unauthorized or unidentified persons.

60. Mr. SANYAOLU (Nigeria) said that the proposed deletion created difficulties for his delegation. The word "telegram" should be retained in the definition, and the word "cablegram" should also be added to it.

61. Mr. FUCHS (Austria) said that his delegation, too, found it difficult to accept deletion of the word "telegram". It was important not to restrict means of communication; telex connexions were occasionally interrupted, and a telegram was sometimes the only suitable means of sending a message. Perhaps the Committee could consider some provision, such as that embodied in Swiss civil law, under which telegrams were deemed evidence in writing when accepted at a post office from a duly identified sender.

62. Mr. ISIN (Turkey) noted that the French text contained the words "télégraphique ou télex", whereas the English text was worded "telegram and telex". The Drafting Committee should be requested to change the word "and" to "or" in the English version.

63. Mr. SELVIG (Norway) agreed that the deletion of the word "telegram" could have the effect of making communication more difficult.

64. The CHAIRMAN said that if there was no objection he would take it that the Committee decided to adopt article 1, paragraph 7, as it stood, subject to consideration by the Drafting Committee of the possibility of adding the word "cablegram" in the text and substituting the word "or" for "and" in the English text.

65. *It was so decided.*

The meeting rose at 6.05 p.m.

5th meeting

Friday, 10 March 1978, at 10.20 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.5

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.35, L.37, L.38, L.52, L.53, L.77, L.96)

Article 1 (continued)

Proposed new paragraphs to be added

1. The CHAIRMAN, noting that the Committee was making rather slow progress, invited delegations to keep

their statements as short as possible and to save time by condensing their arguments.

2. He drew attention to the proposals for the addition of new paragraphs to article 1 submitted by Tunisia in document A/CONF.89/C.1/L.37, by Austria in document A/CONF.89/C.1/L.53 and by the United Kingdom in document A/CONF.89/C.1/L.77. Since, however, the proposals by Tunisia and Austria related to the definition of "shipper", a matter considered by the *ad hoc* Working Group which had made a proposal (A/CONF.89/C.1/L.96), he suggested that the Committee should concentrate on the United Kingdom proposal.

3. Mr. KALBOUSSI (Tunisia) and Mr. FUCHS (Austria) agreed to the Chairman's suggestion.

4. Mr. KERRY (United Kingdom), introducing his delegation's proposal, said it was important to specify that, for the purposes of the Convention, the term "port" had not only the meaning traditionally attached to it in international law, but meant also any place where goods were loaded or discharged.

5. Mr. FUCHS (Austria) said that his delegation's proposal was on much the same lines as that of the United Kingdom. Many articles and paragraphs of the draft Convention, in particular article 2, paragraph 1; article 4, paragraphs 1 and 2; article 5, paragraph 2; article 15, paragraph 1; and article 21, paragraph 1, referred to the ports of loading and of discharge, and at least in the first three articles it was essential to define the meaning of the term, for it vitally affected the duration of the carrier's liability and the basis of that liability. Generally, a port was the place where several modes of transport met, either at the beginning or at the end of a sea voyage; it was a place equipped with all the necessary technical installations. In view, however, of the expansion of new transport techniques (containers, roll-on/roll-off, LASH system, barge carriers and specialized carriers), the definition should be revised. All the new means of transport needed space and special installations at the terminals. Besides, some loading installations were not ports in the traditional sense of the term, but they handled a good deal of sea-borne traffic. Accordingly, if the scope of the Convention was not to be unduly restricted, the meaning of the term "port" should be defined as broadly as possible.

6. The CHAIRMAN asked the representative of Austria whether, in order to save time, he would agree to his proposal being considered together with the United Kingdom's proposal.

7. Mr. FUCHS (Austria) agreed to the suggestion.

8. Mrs. RICHTER-HANNES (German Democratic Republic) said that the United Kingdom's proposal was closely bound up with article 4, paragraph 1, regarding which her delegation had submitted a proposal (A/CONF.89/C.1/L.88). She proposed, therefore, that debate on the United Kingdom's proposal should be deferred until the Committee dealt with article 4, paragraph 1. As to substance, she could not accept the proposal, for its effect would be to introduce into the Convention the "tackle-to-tackle" principle, whereas what mattered was that the Convention should provide that the carrier's liability began at the moment when he took over the goods and not at the time when the goods were loaded on to the ship at the loading port or in the port area.

9. The CHAIRMAN asked the representative of the United Kingdom if he could agree to consideration of his proposal being deferred until the Committee dealt with article 4.

10. Mr. KERRY (United Kingdom) said that he could agree all the more readily that consideration of his proposal be deferred, as requested by the representative of the German Democratic Republic, as the definition proposed by the United Kingdom had a bearing also on article 1, paragraph 5, which was to be reconsidered. A

formula should be worked out that would be workable both in article 4 and in all the other articles of the draft Convention that mentioned ports.

11. The CHAIRMAN invited debate on the draft definition of "shipper" prepared by the *ad hoc* Working Group (A/CONF.89/C.1/L.96).

12. Mr. SELVIG (Norway) said that if the term "shipper" meant any person by whom or in whose name a contract of carriage of goods by sea was concluded with a carrier—as the *ad hoc* Working Group's definition stated—many of the obligations imposed on the shipper by the Convention were clearly applicable to that person, notably those obligations specified in article 12 and in article 13, paragraphs 2 and 3. Other rules of the draft Convention, however, that were applicable to the shipper could not concern the person who had entered into a contractual relation with the carrier. For example, in the case covered by article 13, paragraph 1, the shipper was under a duty to mark or label dangerous goods in the appropriate manner. Similarly, under certain conditions of sale, e.g., sales f.o.b. or ex works, the contract with the carrier was entered into on behalf of the buyer, whereas the goods themselves were delivered to the carrier by the seller. If, therefore, the definition proposed by the Working Group was adopted, article 13, paragraph 1, would have to be revised. Likewise, for the purpose of covering contracts f.o.b. or ex works, article 14 would have to specify that the person delivering the goods—and not the buyer—was entitled to ask the carrier for a bill of lading in order to fix the purchase price. In other words, it ought to be borne in mind that the term "shipper" could mean different persons. That point was furthermore evident from the terms of article 1, paragraph 1, which spoke of a contract concluded with "a" shipper, not "the" shipper; he was in a way the customer of a carrier. Furthermore, article 1, paragraph 6, concerning the bill of lading, did not mention the word "shipper" but only the person to whom goods were to be delivered.

13. Mr. CLETON (Netherlands), associating himself with the Norwegian representative's comments, added that the definition proposed by the Working Group reproduced in inverse order the language of article 1, paragraph 1, and hence was unnecessary.

14. Mr. KERRY (United Kingdom), agreeing with the remarks made by the representatives of Norway and the Netherlands, pointed out furthermore that by introducing the words "by whom or in whose name" the Working Group's proposal actually raised a matter of substance—the question of agents—which was out of place in the definition.

15. Mr. DIXIT (India) considered that the matter should not be complicated unnecessarily. The shipper was responsible for the goods to be carried, whether or not he was the buyer. The shipper's rights and duties, e.g., those relating to packaging, etc., were clearly defined and differed from those of the buyer. Accordingly, the speaker saw no reason why the draft definition proposed by the Working Group should not be adopted.

16. Mr. GORBANOV (Bulgaria) likewise supported the draft definition proposed by the Working Group. He was

not convinced by the argument put forward at the ninth session of the United Nations Commission on International Trade Law (UNCITRAL) that a definition of the term "shipper" might lead to complications in cases where the contract for the carriage of goods was concluded by the buyer or the consignee. It was immaterial who actually carried out the loading operations; what mattered was who was responsible for putting the goods at the carrier's disposal. In law, that person was the shipper, inasmuch as that was the person who had made a contract with the carrier. In the speaker's opinion, the definition proposed by the Working Group was fully in consonance with article 1, paragraph 1, in which the material element was the shipper.

17. Mr. CASTRO (Mexico) said that although originally his delegation had been opposed to the adoption of a definition of "shipper", since it had become necessary to settle once and for all the relationship that was to exist between the parties it considered the definition proposed by the Working Group acceptable.

18. Mr. FUCHS (Austria) said that, after hearing the arguments of the representative of Norway, he had become even more convinced of the need for a definition of the term "shipper". Some of the shipper's obligations were dealt with in articles 14 and 15. Under article 14, paragraph 1, the shipper had the right to ask the carrier to issue a bill of lading, and under article 15, paragraph 1, the shipper's name should be mentioned in the bill of lading. Whoever asked for a bill of lading to be issued or whoever might be the person designated as the shipper, that person—who was often somebody other than the shipper—was acting on the shipper's behalf, and if the shipper was defined it was not necessary to indicate the relationship between that person and the shipper. And yet such a relationship must exist, for it was on the basis of that relationship that the person in question was empowered to ask for a bill of lading or to ask for his name to be entered as the shipper in a bill of lading. Fundamental rights and duties always flowed from the contract of carriage, and it was the shipper who concluded the contract with the carrier. With the aid of such specific provisions, it was possible to settle in practice the problems concerning persons who were not the shipper but were acting on his behalf.

19. Ms. OLOWO (Uganda) said that if the Committee, having decided in principle that a definition of "shipper" should appear in the Convention, was not satisfied with the definition proposed by the Working Group, it could ask the Group to formulate another one. In cases where it appeared that there were two persons who might be the "shipper", viz., the person who had concluded the contract with the carrier and the person on whose behalf the contract was concluded, the Committee might spell out the relevant provision, as it had done in the case of the carrier where it distinguished between "carrier" and "actual carrier". In any case, her delegation was satisfied with the definition proposed by the Working Group.

20. The CHAIRMAN said that, rather than continue to comment on the basic question whether a definition of "shipper" was necessary, delegations should comment on the definition itself.

21. Mr. SEVON (Finland) said that his delegation could not endorse the definition proposed by the Working Group. The function of the bill of lading could hardly be discussed in isolation from the topic of the international sale of goods, since the provisions concerning the bill of lading were formulated in contemplation of the needs of international trade and not only from the point of view of the contract for the carriage of goods. It had been said that the person delivering goods to the carrier invariably acted as the agent of the person who had concluded the contract with the carrier. That argument could not be accepted by his delegation. Article 15, paragraph 1 (a), mentioned certain particulars to be furnished by the shipper. In his delegation's opinion it could hardly be contended that the person giving those particulars was acting as the buyer's agent. If such was the case, the bill of lading could not be used as an international document of international trade, for the buyer would be unable to challenge its accuracy.

22. The Finnish delegation saw further difficulties in the case of f.o.b. sales. If a carrier should surrender the bill of lading to the person who was delivering the goods to him he would be in breach of contract if that person was not identical with the person with whom he had concluded the contract. He would be bound to deliver the bill of lading to the person with whom he had a contractual relationship, in other words, in the case of an f.o.b. sale, to the buyer. How then would he be able to obtain payment for his services? Since in both the cases he had mentioned the definition would not work, the Finnish delegation was unable to accept it.

23. Mr. SMART (Sierra Leone) said he was glad that the Committee had decided in principle that the Convention should contain a definition of "shipper". Unlike other delegations, his delegation took the view that article 13 of the draft Convention did nothing more than create certain obligations for the person acting as shipper. So far as the provisions of article 13 were concerned, calling for certain markings or labelling, he considered that there was no reason why those tasks should not be entrusted to an agent. Article 13 in no way introduced a different legal definition of the term shipper, and his delegation could endorse the draft definition proposed by the Working Group.

24. Mr. SUCHORZEWSKI (Poland) considered it necessary to define the party which entered into the contract of carriage with the carrier. That person would not, however, necessarily have to be called "shipper" since, as the Norwegian delegation had explained, in practice the term "shipper" sometimes denoted different persons. In Polish law, the party making the contract with the carrier was described by a term meaning something like "freighter". In performing his obligations in that capacity, he could delegate to another person known as "shipper" the task of handing over the goods of the carrier. The provisions applicable to the shipper were applicable to the freighter, who himself handed over the goods to the carrier. By means of such provisions the difficulties mentioned by the Norwegian delegation could be overcome. If, however, the party making the contract of carriage with the carrier was not defined it could be

argued that the Convention applied only to the contract of carriage entered into with a shipper and to no other, an interpretation which would exclude the contract of carriage entered into with a seller or a buyer.

25. Mr. SWEENEY (United States of America) considered that the definition of "shipper" proposed by the Working Group did not allow for the problems raised by articles 12, 13 and 17 of the draft Convention, and for that reason he thought that the definition should be referred to the Drafting Committee.

26. Mr. SOTIROPOULOS (Greece) said that the provisions referred to by the Polish delegation had their parallels in other legal systems. It would be difficult to formulate a definition that would be applicable both to the person concluding the contract with the carrier and to the person delivering the goods to the carrier. For that reason, his delegation had hoped that any reference to "shipper" in article 1, paragraph 1, could be avoided. Alternatively, two terms and two definitions would be needed: in one, the shipper would be defined as the person handing over the goods to the carrier, and in the other the party to the contract would be defined as the person making the contract with the carrier. In any case, he considered that the definition should be referred to the Drafting Committee.

27. Mr. MAITLAND (Liberia) agreed with the comments of the Norwegian representative. Any definition tending to restrict the meaning of the terms would give rise to difficulties, notably in connexion with articles 12, 13 and 17 of the draft Convention. It would also restrict the effects of the Convention with regard to the shipment of dangerous goods. Accordingly, he thought that the matter should be referred to the Drafting Committee.

28. Mr. MARTONYI (Hungary) said that, whereas initially he had not been convinced that a definition of "shipper" was necessary, he now thought that such a definition was needed. Apparently, the term "shipper" carried various meanings. In law, the shipper was the person who concluded a contract of carriage with the carrier. From the physical point of view, the shipper was the person who actually handed over the goods to the carrier. In the Hungarian delegation's opinion the shipper was the person entering into the contract with the carrier and, in cases where the person handing over the goods to the carrier was a different one, that person should be regarded as the shipper's agent, in other words, as a person acting on behalf of the shipper in the legal sense. His delegation would be able to accept the definition proposed by the Working Group, but thought that the Drafting Committee should formulate the definitive language.

29. The CHAIRMAN suggested that the definition of "shipper" proposed by the Working Group should be referred to the Drafting Committee.

30. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation had opposed the idea of including a definition of "shipper" in article 1. Besides, the very fact that the text prepared by the Working Group did not satisfy the members of the Committee showed how difficult it was to define the meaning of the term. He

pointed out, moreover, that only the plenary Conference was in a position to refer the text proposed by the Working Group to the Drafting Committee by a two-thirds majority vote, for a question of substance was involved.

31. The CHAIRMAN said that the Committee could not reverse its earlier decision of principle to include a definition of "shipper" in the Convention, and suggested that the draft definition should be referred back to the Working Group, whose membership might be enlarged in order to take into account the various opinions expressed in debate.

32. After an exchange of views in which Mr. DOUAY (France), Mr. SELVIG (Norway) and Mr. DIXIT (India) participated, it was agreed that the representatives of Finland, the German Democratic Republic, Mexico, Sierra Leone and the United Kingdom would also become members of the Working Group.

33. Mr. AMOROSO (Italy) considered that the Committee had decided in principle that the meaning of the term "shipper" should be defined in article 1, provided that the definition was generally acceptable, in other words that the Convention should not include a definition at all costs if it was an unsatisfactory one.

Article 2

Paragraph 1

34. Mr. KERRY (United Kingdom) explained that his delegation's amendment (A/CONF.89 C.1 L.35) to article 2, paragraph 1, was designed to exclude from the scope of the Convention cases where the port of discharge mentioned in the contract of carriage was in a contracting State. In 1967 and 1968 the Conference of Brussels had debated the question at length and had eventually agreed not to adopt provisions like those appearing in paragraph 1 (b) and (c) of the draft Convention under consideration. The object of his delegation's proposal was to take account of commercial and legal convenience, for the two subparagraphs in question would inordinately enlarge the scope of application of the Convention.

35. In the first place, if those provisions were allowed to stand, then, as the Hague Rules were in general applicable in cases where the port of loading was situated in or the bill of lading was issued in a State party to those rules, difficulties might arise for so long as the Convention was not operative universally. It would be regrettable if a situation should materialize where if the port of loading were situated in a State party to the Hague Rules and the port of discharge in a State party to the Convention, and if proceedings were instituted in a country recognizing the law of the port of loading, the competent court would apply the Hague Rules; conversely, if the proceedings were instituted in a State party to the Convention, the competent court would apply the Convention. In the second place, those provisions would make it possible for a contracting State to claim—in cases where the port of discharge was in its territory—that a contract for the carriage of goods concluded between parties not nationals of that country in respect of the carriage of goods

on a foreign ship should be governed by the rules of the Convention, a solution which would be unacceptable.

36. Mr. LARSEN (United States of America) drew attention to the importance of the port of discharge in the chain of transport operations and to the development which had taken place in the carriage of goods since the adoption of the Hague Rules, notably the recent development of multimodal transport. It was a not uncommon practice not to mention the port of discharge in the contract for the carriage of goods, for it was understood that a multimodal transport undertaking would itself choose the most convenient and least expensive port. The amendments proposed by the United States delegation (A/CONF.89/C.1 L.52) would logically mean that the Convention would be applicable in cases where the port of loading or the port of discharge was situated in a contracting State even if those ports were not mentioned in the contract of carriage, with the result that the multimodal transport operator would be free to choose both the port of loading and the port of discharge.

37. Mr. KALBOUSSI (Tunisia) announced that he was withdrawing his delegation's amendment (A/CONF.89/C.1 L.38) in favour of the text proposed by UNCITRAL.

38. Mr. CASTRO (Mexico) stated that his delegation would support the text of paragraph 1 as it stood, for it was not clear just how the United States amendment would enlarge the scope of application of the Convention, and the United Kingdom amendment would not fully dispose of the problem of conflict of laws.

39. Mr. ARGYRIADIS (Greece) said that he would support the United Kingdom proposal.

40. Mr. DUDER (Liberia) considered the United Kingdom amendment acceptable, for while it did not fully remove possible conflicts of laws, at least it greatly reduced that risk.

41. Mr. DIXIT (India) considered that the United Kingdom amendment (A/CONF.89/C.1 L.35) was a step backward compared with the draft Convention and hence could hardly be accepted by the Indian delegation. The United States proposal (A/CONF.89/C.1 L.52), on the other hand, was acceptable for two reasons: first, its language was clear and well drafted, and secondly it was an advance on the UNCITRAL draft.

42. The only point about which the Indian delegation would like to receive some enlightenment concerned the words "goods by sea" in the opening passage of paragraph 1 in the United States amendment. If the only object was to reproduce the language of the title of the Convention, the Indian delegation would not object; it would, however, like to receive assurances that the words in question did not carry a restrictive meaning with regard to the application of the terms of the Convention, for if they did the Indian delegation would reserve its position with respect to the amendment.

43. Mr. EYZAGUIRRE (Chile) expressed support for the text of article 2 as drafted by UNCITRAL, for it filled a gap in the Brussels Protocol of 1968 in that it made the Convention applicable in cases where the port of discharge mentioned in the contract of carriage was situated

in the territory of a contracting State. It was, after all, at the port of discharge that most of the disputes arose and that most of the claims for compensation were made. Furthermore, as it stood in the draft Convention the article was consistent with the terms of article 21 (Jurisdiction) and article 22 (Arbitration) under which the plaintiff could institute proceedings in a court or arbitration proceedings at the port of discharge.

44. Mr. SANYAOLU (Nigeria) said that his delegation supported the text of article 2 as drafted by UNCITRAL. In its opinion, the United Kingdom proposal would tend to limit the scope of application of the Convention, inasmuch as by deleting subparagraphs (b) and (c) of paragraph 1 the United Kingdom proposal would be denying to the consignee the protection of the Convention. The UNCITRAL draft by contrast extended the scope of application.

45. Mr. SMART (Sierra Leone) likewise supported the UNCITRAL text, though he added that he would be able to support the United States amendment because it clarified the text. The United Kingdom proposal, on the other hand, was unacceptable to his delegation, for by dropping provisions dealing with the cases contemplated in paragraph 1, subparagraphs (b) and (c), from the scope of the Convention it would exonerate the carrier from liability for loss or damage to the goods in the port of discharge at a time when they had not yet been handed over to the consignee.

46. Mr. CLETON (Netherlands) said the United States proposal (A/CONF.89/C.1 L.52) was not acceptable to his delegation because in specifying the port of effective discharge for the purpose of delimiting the scope of application of the Convention it might make the Convention operative even in cases where the parties to the contract of carriage had not contemplated its application. If, for example, a ship was obliged to put into and to unload in an emergency port situated in a contracting State, the Convention would become applicable by inadvertence as it were, whereas surely it was for the parties to be able to specify themselves whether the Convention ought or ought not to apply to a contract entered into between them.

47. On the other hand, the Netherlands delegation was able to accept the United Kingdom proposal which was intended to avoid conflicts of laws during the transitional period when several régimes would be in force simultaneously (the Hague Rules of 1924, the Hague Rules as amended by the Brussels Protocol of 1968 and the new Convention). It was for that reason that provision had to be made for the difficulties that might arise during the transitional period. In that connexion, he stressed that the question of the extent of the scope of application of the Convention should be considered in relation to the clauses concerning the number of ratifications required for its entry into force. If the Conference wished to enlarge the scope of application of the Convention, it should stipulate a large number of ratifications for that purpose. Hence it was difficult to decide forthwith on an amendment tending to restrict the scope of application of the Convention while it was not known what the eventual

decision would be concerning the number of ratifications required for the Convention's entry into force.

48. Mr. NSAPOU (Zaire) said that he would endorse the text proposed by UNCITRAL: in his opinion, the amendments proposed might give rise to difficulties in practical application.

49. Mr. MacANGUS (Canada) likewise supported the UNCITRAL draft, though he considered the United States text more elegant; perhaps that text might be referred to the Drafting Committee for incorporation in the draft. The United States proposal was superior to the United Kingdom proposal, for it universalized the scope of application of the Convention, which was precisely the objective of the Conference. Admittedly, Canada had never become a party to the Hague Rules, but those Rules had been embodied in Canadian legislation on maritime transport. The Canadian delegation was not in a position to prejudge the position which the Canadian legislature might take with respect to the Convention.

50. The United Kingdom proposal, on the other hand, was too narrow for, after all, most disputes arose in the port of discharge. It would be odd, therefore, to deny to the consignee the benefit of the protection of the Convention since one of the purposes of the draft was to create a better balance of interests as between the parties to contracts for carriage of goods by sea.

51. Mr. GANTEN (Federal Republic of Germany) said that the provision in article 2 was a salutary one, as was demonstrated by the amendments which it had evoked. The United Kingdom proposal restricted excessively the scope of the Convention and would not, in his opinion, make it possible to settle problems that might arise from conflicts between the regime of the Hague Rules and the regime of the Convention. In addition, however, the question raised by the Netherlands delegation was an important one and deserved close study: the Convention should not be capable of becoming applicable by accident, and a connexion should be established between the contract entered into by the parties and the application of the Convention. In his delegation's opinion the United States proposal should not be adopted.

52. Mr. LARSEN (United States of America), in reply to comments made on his delegation's proposal, stated that the purpose of the proposal was to ensure the broadest possible application of the Convention, even in cases where neither the port of loading nor the port of discharge were mentioned in the contract (see paragraph 1 (b) and (c) of the United States proposal). Hence, the proposal was quite different from the United Kingdom proposal.

53. He added that he could confirm the Indian delegation's understanding of the intention of paragraph 1 of the United States amendment, which was that the Convention should apply "to all contracts for carriage of goods by sea".

54. Mr. AMOROSO (Italy) said that in principle he supported article 2 as drafted by UNCITRAL, for it

tended to unify the international law governing the carriage of goods by sea. No doubt the Drafting Committee would be able to improve the language of the text in the light of the United States proposal: his delegation did not oppose this.

55. He added that, for the purpose of dealing with difficulties that might arise during the initial phase of application of the Convention, it might be conceivable to formulate transitional rules, if necessary, without in substance modifying the scope of the Convention.

56. He drew attention to the words "between ports in two different States" which occurred in article 2, paragraph 1, of the UNCITRAL draft; as yet, no decision had been taken concerning the definition of the "contract of carriage" given in article 1, paragraph 5. He proposed, therefore, that, pending a redraft of the definition by the Working Group concerned, the Committee should suspend debate on the question whether the reference should be to carriage "from one port to another" only, or to carriage "between ports in two different States".

57. Mr. GORMAN (Ireland) said that he would support the United Kingdom amendment for the reasons explained by the sponsoring delegation in introducing the proposal and by the delegations which had spoken in support of it.

58. Mr. NILSSON (Sweden) said that in general his delegation associated itself with the comments made by the Netherlands and the Federal Republic of Germany. The United States proposal might have the effect of making the Convention applicable inadvertently to a contract of carriage in cases where the parties had not intended it to be applicable, as, for example, in the case described by the Netherlands delegation. Such a situation would be unacceptable, since the parties would have made their arrangements concerning the regime applicable to their contract, and since the insurers would have fixed the amount of the insurance premium in the light of the terms of the contract.

59. He added that the United Kingdom delegation had been right in foreseeing the difficulties that might arise during the transitional period when the Convention would be in force at the same time as the Hague Rules, a point which had been stressed by Sweden in its written comments (see A/CONF.89/7). In the Swedish delegation's opinion, however, the problem could not be disposed of by the amendment to article 2 proposed by the United Kingdom, which was a step backwards as compared with the draft Convention, and which the Swedish delegation could not, for that reason, support.

60. Mr. FUCHS (Austria) expressed the hope that the scope of application of the Convention would be as broad as possible, and stated that his delegation would support the United States proposal which had that as its general intent.

The meeting rose at 1 p.m.

6th meeting

Friday, 10 March 1978, at 3.30 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.6

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89 C.1 L.17, L.32, L.35, L.38, L.52, L.87, L.103)

Article 2 (continued)

Paragraph 1 (continued)

1. Mr. CARRAUD (France) said that the United Kingdom proposal contained in document A/CONF.89/C.1 L.35 to delete subparagraphs 1 (b) and (c) would make paragraph 1 too restrictive. The purpose of drafting the new Convention was to improve upon the provisions of the Hague Rules; in that connexion, an endeavour should be made to foresee and, if possible, avoid conflicts of the sort which might arise if, for example, a vessel was unavoidably diverted to a port in a country which was not a contracting State. His delegation preferred paragraph 1 as it stood.
2. Mr. MASSUD (Pakistan) said that his delegation could not accept the United Kingdom proposal, which, if adopted, would make the scope of application of the new Convention no broader than that of the Hague Rules.
3. With regard to document A/CONF.89 C.1 L.52, the United States delegation's declared aim of broadening the Convention's scope of application was commendable, but the wording proposed by that delegation for subparagraph 1 (a) might lead to difficulties in cases where the actual port of loading or discharge was not that provided for in the contract of carriage. The Convention should be so worded as to apply to movements of goods by sea, whether or not the actual port of loading or discharge was the one stipulated in the contract of carriage.
4. Mr. FILIPOVIĆ (Yugoslavia) said that his delegation was strongly against any proposals whose effect would be to restrict the future Convention's scope of application. The Conference should be warned by the present confusion in air transport operations resulting from the proliferation of differing systems. Yugoslavia could support the United States proposal, but was opposed to the United Kingdom proposal.
5. Mr. TANIKAWA (Japan) said that his delegation could not support the United Kingdom proposal, which would restrict unduly the Convention's scope of application. With regard to the final clauses of the Convention, the possibility of ratifying the new instrument without denouncing the Hague Rules of 1924 or the

Brussels Protocol of 1968 should be considered, so that the provisions of the latter two instruments could possibly be applied if one of the contracting parties was not a party to the new Convention.

6. His delegation could not support the United States proposal relating to paragraph 1. The applicable rules must be absolutely clear to the contracting parties at the time the contract was entered into; in that connexion, subparagraph 1 (c) in the version proposed by the United States could lead to serious problems. Moreover, the relationship between subparagraphs (c) and (d) in the text proposed by the United States was not clear.

7. The Japanese delegation supported article 2, paragraph 1, as it stood.

8. Mr. KERRY (United Kingdom) said that, in view of the lack of support for his delegation's proposal concerning subparagraphs 1 (b) and (c) (A/CONF.89/C.1 L.35), that proposal would be withdrawn.

9. However, the problems involved in the scope of application were wider than most speakers had implied. The Committee should bear in mind the points raised by the representatives of the Federal Republic of Germany, Japan and the Netherlands, and particularly the question of the possible overlapping of international instruments.

10. The United Kingdom could not support the United States amendment to article 2, paragraph 1, which, if adopted, would make a bad situation worse.

11. Mr. MORENO PARTIDAS (Venezuela) said that his delegation could support the United States proposal for article 2, paragraph 1, which would give the new Convention a broader scope of application and thus help to unify maritime law and customs.

12. Mr. BREDHOLT (Denmark) said that his delegation supported the text of article 2, paragraph 1, as it stood. It associated itself with the Netherlands representative's remarks concerning the United States amendment to that paragraph, and agreed with the Mexican representative that the present text was itself the result of much work, deliberation and compromise.

13. Mr. KHOO (Singapore) said that his delegation, having reflected on the views expressed by many previous speakers, now shared the misgivings voiced about the proposed amendments and would support the text of article 2, paragraph 1, as it stood.

14. Mr. BYERS (Australia) said that his delegation, too, would support the text as it stood.

15. Mr. MUCHUI (Kenya) said his delegation thought that, contrary to what the United Kingdom representative had said, the textual amendment proposed by the United States would make a good situation better.

16. Ms. OLOWO (Uganda) said that her delegation

agreed with the Kenyan representative, and supported the amendment proposed by the United States.

17. Mr. SEVON (Finland) said that, under article 23, paragraph 3, of the draft Convention, a bill of lading evidencing a contract of carriage must contain a statement that the carriage was subject to the provisions of the Convention. If the text of article 2, paragraph 1, was amended in accordance with the United States proposal, every bill of lading would have to bear such a statement, since it would be impossible to say whether or not the carriage would be subject to the Convention until that carriage had been completed. That consideration was a further reason for preferring the text of article 2, paragraph 1, as it stood.

18. Mr. KANG (Republic of Korea) said that his delegation associated itself with the views expressed by the representatives of India and Sierra Leone in support of the amendment proposed by the United States, which would widen the convention's scope of application.

19. Mr. LARSEN (United States of America), referring to the Japanese representative's observations, said that his delegation had already expressed its willingness to omit subparagraph 1 (d) of its proposed amendment, since subparagraph 1 (c) could be so interpreted as to cover the type of situation envisaged.

20. Mr. LAVINA (Philippines) said that, although his delegation appreciated the United States delegation's concern to improve article 2, it shared the misgivings voiced by previous speakers concerning the United States amendment and would support the text of article 2, paragraph 1, as it stood.

21. Mr. SUCHORZEWSKI (Poland) said that, for the reasons expressed by the French and Netherlands representatives, his delegation supported the text of article 2, paragraph 1, as it stood.

22. Mr. JOMARD (Iraq) said that his delegation, too, supported the text as it stood.

23. Mr. SWEENEY (United States of America) said that the proposal which the United Kingdom delegation had made would have related to a transitional period only, but it was not known how much time it would take for the necessary ratifications of the new Convention to be effected. The purpose of the United States amendment was to broaden the scope of application. His delegation requested a vote on its amendment to article 2, paragraph 1, as contained in document A/CONF.89/C.1/L.52.

24. *The United States amendment to article 2, paragraph 1, was rejected by 34 votes to 26.*

Paragraph 2

25. *Article 2, paragraph 2, was adopted.*

Paragraph 3

26. The CHAIRMAN noted that the proposal submitted by Peru in document A/CONF.89/C.1/L.103 was only a drafting amendment to the Spanish version; he therefore suggested that it should be referred immediately to the Drafting Committee.

27. *It was so decided.*

28. Mrs. RICHTER-HANNES (German Democratic

Republic), introducing document A/CONF.89/C.1/L.87, said that the proposed change in paragraph 3 of article 2 was intended to extend the Convention's scope of application so that it would not be limited to contracts of carriage evidenced by a bill of lading. Her delegation agreed with the delegations of Canada and France that the Convention should apply to contracts not so evidenced. In the national laws of some States, charter-parties were not regarded as contracts of carriage. Her delegation's proposal was not intended to create a conflict with other relationships or to detract from the work of the United Nations Conference on Trade and Development Working Group on International Shipping Legislation. According to the statistics given by the United States, 80 per cent of contracts of carriage involving charter-parties were covered by the Hague Rules; the aim of her delegation's proposal was to apply the new Convention to the remaining 20 per cent.

29. Mr. RAY (Argentina) said that, as the German Democratic Republic was in favour of maintaining the exclusion of time charter-parties, in the interests of consistency it would be necessary to exclude the exception implied by paragraph 3, since it was his understanding that time charter-parties would never be directly regulated by the Convention, unless the shipowner was the actual carrier. Under paragraph 3, the Convention would apply to bills of lading issued for charter-parties provided that the bills of lading were transferred from one party to another—in other words, that the consignee and charterer were not the same. In that respect the meaning of paragraph 3 was perfectly clear, but if it was not intended to give effect to the exception implied by it, the whole of the article should be deleted.

30. Mr. MARTONYI (Hungary) said he wished it to be put on record that his delegation considered the proposal by the German Democratic Republic to be very interesting and in principle well-founded. His delegation was aware that at the present stage of work it would be difficult to extend the new international legislation that was being elaborated to charter-parties as well, but believed that it was necessary for that kind of contract of carriage to be regulated.

31. Mr. SWEENEY (United States of America) said his delegation supported the proposal by the German Democratic Republic.

32. Mr. FILIPOVIC (Yugoslavia) endorsed the remarks made by the representative of Hungary.

33. Mr. MacANGUS (Canada) said he would like to clarify the position of the Canadian Government in supporting the inclusion of charter-parties in the Convention, but would not make a formal proposal on the subject. There were two different kinds of charter arrangements in existence. In the first case, the whole ship was chartered; in that instance, the economic strength of the two parties was more evenly balanced than in the second case, that of space charters, when only part of a ship was chartered. The Convention could be made applicable to the second category only, and, if so, his delegation would support the draft provisions in paragraph 3. It would not wish to see the Hague Rules

repeated in the present Convention. That attitude might seem strange on the part of a country that was anxious to protect the shipper, but his Government believed that a provision to allow for contracting out between carrier and shipper would be helpful in the case of special trades such as the resupply of Canada's northern settlements lying near the Arctic. In that case, the risk for a commercial carrier was too great even under the Hague Rules and it would be even more difficult to find a carrier that would be prepared to accept still greater liability vis-à-vis the shipper. Provision should therefore be made in the Convention for derogation from the rules in the case of special trades.

34. Mr. POPOV (Bulgaria) said he associated himself with the delegations that had supported the proposal by the German Democratic Republic, and agreed that there was no reason why voyage charter-parties should not be regulated by the convention.

35. The CHAIRMAN said that it was his understanding that, in the general opinion of representatives, the proposal of the German Democratic Republic (A/CONF.89/C.1/L.87) should not be adopted.

Paragraph 4

36. Mrs. RICHTER-HANNES (German Democratic Republic) said she wished to withdraw her delegation's proposal concerning paragraph 4 (A/CONF.89/C.1/L.87) in view of the outcome of the Committee's consideration of the preceding paragraph.

37. Mr. TANIKAWA (Japan), explaining his delegation's amendment to article 2, paragraph 4 (A/CONF.89/C.1/L.17), said that under the present text of paragraph 4 the Convention would apply to each shipment made under a quantity or volume contract, but if shipments were made under a charter-party paragraph 3 would be applicable. However, in the case of quantity or volume contracts, the conditions of carriage for each shipment were laid down in the contract, save for a few details, since the charter-party or other special type of contract was drawn up after the detailed conditions of shipment were decided upon. The conditions for each shipment were based on those laid down in the volume or quantity contract, and closely resembled those of charter-parties, but the volume or quantity contract itself was not a contract of carriage in the legal sense. As the present draft did not reflect the actual status of quantity contracts, his delegation had thought it necessary to propose a new text.

38. Lastly, the words "quantity contract, volume contract, frame contract or other similar contract" in his delegation's proposal could, if thought appropriate, be replaced by the expression "a contract providing for future carriage of goods in a series of shipments during an agreed period." That was a drafting matter, however. The substance of the proposal was the exclusion of individual shipments under such contracts from the scope of application of the Convention.

39. Mr. CLETON (Netherlands) said that his delegation strongly supported the Japanese proposal as it had had some misgivings about the existing text of paragraph 4. In

its opinion, volume contracts were established between parties on an equal footing. In that sense charter-parties were not negotiable, which explained why they had been excluded from the Convention and why it would be necessary to exclude volume and other types of contracts as well. A distinction should be made when bills of lading were involved, since they could be transferred to third parties who had to be protected by the Convention. But when shipments were made under a volume contract in which there was no third party concerned, it was unnecessary for the Convention to apply to them as well. It should be made clear that the Convention should not be applicable to volume contracts or shipments made under them unless a bill of lading transferable to a third party was issued. Parties wishing to contract out would have to arrange a separate charter-party for each voyage.

40. Mr. BYERS (Australia) said that, if it was correct, as the Japanese representative had pointed out, that quantity or volume contracts were not legally contracts of carriage, paragraph 4 would not apply to them because it concerned the carriage of goods in series. Consequently, the Japanese proposal would introduce a further exception that was perhaps rather imprecisely defined although the Convention already contained a provision in article 23, which was crucial to the whole Convention, denying parties the right to contract out. His delegation was not unsympathetic to the difficulties experienced by certain delegations, but felt that it was undesirable to replace the present draft by the wording proposed by the Japanese delegation, as paragraph 4 would not be applicable in any event. For that reason his delegation opposed the proposal.

41. The CHAIRMAN said there did not appear to be a majority in favour of the Japanese proposal, which was therefore not adopted.

42. Mr. KERRY (United Kingdom) said that his delegation's proposal concerning paragraph 4 (A/CONF.89/C.1/L.35) was intended to make it clear that the Convention should not apply to frame contracts as such but only to individual shipments made thereunder as and when appropriate under article 2. He did not think that that was sufficiently apparent from the present text of paragraph 4.

43. The CHAIRMAN said the United Kingdom proposal would be referred to the Drafting Committee.

44. Mr. SMART (Sierra Leone) and Mr. CARRAUD (France) said that they had some doubts as to whether that proposal should be referred to the Drafting Committee, since in their view it concerned a matter of substance.

Proposed new paragraphs to be added to article 2

45. Mr. TANIKAWA (Japan) said that his delegation's proposal for the inclusion in article 2 of an additional paragraph (A/CONF.89/C.1/L.17) dealt with special types of carriage—for instance, cases in which the goods carried were of a special nature, such as ice, or the vessel was of a particular kind, such as a nuclear vessel, or went to a special area, such as the Antarctic. It was neither appropriate nor necessary for the Convention to be

applicable to such cases, where the shipper and the carrier agreed that it should not apply to the contract of carriage made by them and where no bill of lading was issued.

46. Mr. SMART (Sierra Leone) said that his delegation considered that the inclusion of the paragraph proposed by the Japanese delegation was unnecessary, since the matter was already covered by article 2, paragraph 1 (e).

47. Mr. SOTIROPOULOS (Greece) said his delegation supported the Japanese proposal on the grounds that the Convention was intended to protect third parties that were unable to negotiate the terms of carriage on an equal footing. Where no bill of lading was issued, the proposed additional provision was necessary in order to allow parties to contract out of the Convention if they wished.

48. The provision referred to by the delegation of Sierra Leone did not fill the gap because it referred to only one of the five cases in which the Convention should apply under article 2, paragraph 1. It was not only in cases where bills of lading or other documents evidenced the applicability of the Convention that its provisions did in fact apply.

49. Mr. BYERS (Australia) said his delegation was in almost total disagreement with the Greek representative concerning the intended scope and application of the Convention, and opposed the Japanese proposal in principle since its purpose was to make contracting out possible in certain cases, whereas article 23 of the Convention clearly denied the right of general contracting out. Moreover, the wording of the Japanese proposal was limited only by its reference to cases in which bills of lading were not issued; however, that might be any contract of carriage, since there was no obligation to issue such bills, and the special, restrictive circumstances mentioned by the representative of Japan had not been specified in the proposal itself. His delegation believed that for the effectiveness of the Convention it was important that the provision on contracting out should remain, in view of the initial disparity between shipper and shipowner in negotiating a contract of carriage.

50. Mr. NIANG (Senegal) said that his delegation disagreed with the Japanese proposal on the grounds that it restricted the scope of the Convention by allowing individual parties to contract out of it, and also reduced the effectiveness with which the Conference was endeavouring to vest that instrument.

51. Mr. KERRY (United Kingdom), referring to the Canadian representative's earlier remarks on the cases in which it would be highly desirable for some form of contracting out to be provided for, said his delegation would not necessarily support the Japanese proposal but urged that further consideration be given to the need for the Convention to cover the possibility of contracting out, since it was not true to say that the rules of the Convention would apply in all circumstances. Indeed, in some cases they might greatly increase the cost of shipment.

52. Mr. SELVIG (Norway) said that, if the Convention were mandatorily limited to cases where bills of lading were issued, a large proportion of trade would fall outside its scope of application, which was obviously not desirable.

53. Mr. DIXIT (India), stressing the need for certainty in the application of the Convention, said he supported article 2 as drafted and was opposed to the Japanese proposal.

54. Mr. CARRAUD (France) said that, if the carrier were able to contract out of his obligations by agreement with the shipper, that would divest the Convention of its character as an instrument of public international law and the way would be paved for any party so wishing to escape its provisions. Such a provision would, moreover, be a step backwards by comparison with article III of the Hague Rules.

55. Mr. MacANGUS (Canada) explained that his delegation's earlier suggestion to the effect that, in certain cases, provision should be made for the parties to a contract of carriage to agree that the provisions of the Convention would not apply did not depend on whether or not a bill of lading was issued. Canada was strongly in favour of the universal application of the Convention and believed that it should apply to all contracts of carriage, howsoever evidenced. There were, however, certain very special trades which in all probability could not be pursued if the full force of the Convention were to apply. In such cases, the shipper could perhaps be allowed to derogate from the provisions of the Convention, possibly on the basis of a permit issued by the administration of the exporting country. That was the essence of his delegation's suggestion which was therefore not identical in all respects with the Japanese proposal.

56. Mr. MARTONYI (Hungary) said he was categorically opposed to the Japanese proposal. The whole purpose of the draft Convention was to lay down a set of rules that would automatically apply to all contracts of carriage by sea, irrespective of the wishes of the parties concerned.

57. Mr. GORMAN (Ireland) said that his delegation could support the Japanese proposal since it would resolve certain difficulties which Ireland would have in applying the Convention to some of the trades that were important to it. Under the opting-out clause of the Hague Rules, a significant proportion of Ireland's sea-borne trade was conducted without bills of lading and it might be of some relevance to note that one particular trade so conducted had been the subject of keen competition among shipping companies, with the result that the increase in freight rates was significantly lower than that in the cost of living in general.

58. The CHAIRMAN noted that the Japanese proposal for the insertion of an additional paragraph in article 2 did not have the support of the majority in the Committee. He invited comments on the United Kingdom proposal for the addition of a new paragraph 5.

59. Mr. KERRY (United Kingdom) said his delegation would withdraw the proposal concerned, since it was very close to the Japanese proposal. He would, however, stress that the matter was one of the utmost importance in that it concerned the acceptability of the Convention as a whole. It would therefore be of assistance if some formula could be devised whereby, in particular trades, the parties

to a contract of carriage could in a limited way contract out of the provisions of the Convention.

60. The CHAIRMAN invited the Norwegian representative to introduce the proposal submitted by Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.32).

61. Mr. SELVIG (Norway) said that the proposal, which concerned the addition of a new paragraph 3 to article 2, was designed to remove any uncertainty and to ensure that, in cases where the lighter aboard ship (LASH) system was used, the Convention applied to the full extent of the carriage, including the carriage of goods by inland waterway in a barge. Without such a provision, it could be argued that the Convention applied only while the barge was on board a seagoing ship.

62. His delegation would prefer the new paragraph to be included under article 2, but would have no objection if the Committee preferred to include it under article 4 (Period of responsibility).

63. Mr. GONDRA (Spain), said that his delegation supported the idea which underlay the Nordic proposal but, in his view, article 2 was not the place for the new paragraph proposed by the Nordic countries. Nor was article 4 an altogether appropriate point for it to be inserted. He would therefore suggest that the matter should be dealt with in the definition of "contract of carriage" (article 1, paragraph 5) and must cover not only the LASH transport but, in general, the transport by inland waterway which, actually, was "ancillary" to carriage by sea.

64. Mr. RAY (Argentina) supported the Nordic proposal. It could either be dealt with in the definition of "contract of carriage", as suggested by the Spanish representative, or it could form a separate paragraph under article 2. That matter could, however, be settled by the Drafting Committee.

65. Mr. HERBER (Federal Republic of Germany) said that he was unable to support the Nordic proposal, since it would be inappropriate to make carriage of goods by inland waterway—where the hazards and conditions were different—subject to the rules governing carriage of goods by sea. The maritime rules did not apply to container traffic on roads, either, and the situation was no different in the case of goods carried onward by barge. Possibly, however, the point could be covered in the draft Convention on the International Multimodal Transport of Goods. He added that, while many States had not developed a law on the carriage of goods by inland waterway, a number of nations, in particular those bordering the Rhine and the Danube, had done so.

66. Mr. NSAPOU (Zaire) said that, in his delegation's view, the amendment contained in document A/CONF.89/C.1/L.32 had no place in a convention on the carriage of goods by sea—that is, from one seaport to another. His delegation was concerned over what it regarded as a further attempt to introduce matters that fell more properly within the scope of a convention on multimodal transport. That concern was heightened by the fact that a third mode of carriage might be involved if the barge had to be transported from the seaport to the river.

67. Mr. MORENO PARTIDAS (Venezuela) voiced his strong support for the Nordic proposal. The LASH system of transport was, in effect, an extension of the sea leg of the carriage. It was a new and growing system and should be regulated, failing which the Convention would fast become obsolete in maritime circles.

68. Mr. VOGEL (German Democratic Republic) said that his delegation also supported that proposal. It had already expressed the view that the draft Convention as a whole did not take sufficient account of modern means of transport.

69. Mr. FILIPOVIĆ (Yugoslavia), also supporting the proposal, said that it would help to ensure that the Convention was as widely applied as possible.

70. Mr. MÜLLER (Switzerland) said he appreciated the desire to treat the LASH system of carriage as incidental to carriage by sea, but considered that the proposal might give rise to problems. In particular, under the Convention as drafted, the owner of the pusher—which pushed the barges in convoy up a river—would automatically become liable as the actual or successive carrier. Consequently, he would be unable to support the proposal unless the sponsors were prepared to amend it. He was, however, ready to co-operate in drafting a new text that would protect the actual carrier who was the owner of the pusher.

71. Mr. FUCHS (Austria) said his delegation supported the proposal, which would broaden the scope of application of the Convention. The LASH system was a modern development and as such should not be excluded from the Convention. He could not agree that there was a direct analogy between the LASH system of transport and container transport, but there was a certain similarity between rivers and the sea, and many ports were situated on rivers.

72. Mr. MAITLAND (Liberia) said that, while sympathetic to the Nordic proposal, he was unable to accept it in the form in which it was presented. There were certain characteristics unique to the carriage of goods by sea which simply did not obtain in the case of carriage of goods by inland waterway in nations with large river systems where LASH barges were used. Also, he very much doubted whether the LASH system of carriage was on the increase, and in fact considered that it would be restricted to nations with large river systems such as the Rhine countries, the United States and Zaire. Possibly, therefore, some consideration should be given to making non-self-propelled vessels, such as LASH barges, the subject of a separate convention or of provisions in an international convention on multimodal transport. It should not be forgotten that, in most river nations, barges and their tow-boats were governed by a variety of different contracts and domestic laws, each with their own unique flavour developed over the years. It would create very serious difficulties if because certain barges happened to originate from LASH vessels they were governed by the Convention while other barges were governed by domestic legislation and by different contracts subject to other conventions.

73. Mr. CLETON (Netherlands), opposing the proposal,

said that there was no difference between LASH transport, which could be regarded as a form of combined transport, and container transport. The inclusion of the proposal in the Convention would give rise to legal problems for his country, where LASH barges were treated as inland vessels and fell under the law governing inland waterways.

74. Mr. MARTONYI (Hungary) supported the proposal, which took account of a new technique and reflected modern practice.

75. Mr. CASTRO (Mexico) said that, while sympathetic to the proposal, he considered that it was first necessary to ascertain whether use of the LASH system of transport was, in fact, on the increase. He understood that in 1976 very few orders for such vessels had been placed with shipyards. He also considered that the proposal could give rise to problems in regard to domestic law governing inland waterways and the position of the actual carrier, which in turn would create difficulty for countries wishing to ratify the Convention.

76. Mr. ZYLKOWSKI (Poland), endorsing the Swiss representative's remarks, said his delegation was unable to support the proposal before the Committee, as it contained a number of imponderables and could give rise to difficulty. It agreed that LASH transport was somewhat similar to container transport and that the issues involved were more relevant to multimodal transport.

77. Replying to a question put by Mr. HONNOLD (United States of America), Mr. SELVIG (Norway) explained that the purpose of the proposal was to delimit the period of the ocean carrier's responsibility, so as to make it clear that it endured from the time that the goods were loaded on to the barge until the time when they were unloaded from the barge.

78. The sponsors of the proposal did not attach any particular importance to the term "inland waterway". They felt, however, that it was appropriate to refer to the term because, while the sea carriage of the barge was covered by article 4, there was an apparent gap in the Convention in the case of the incidental legs of the carriage—before and after the sea stretch—which could give rise to uncertainty in the event that damage occurred.

79. Mr. DIXIT (India) said his delegation was sympathetic to the proposal since it not only involved the question of carriage by inland waterway but also con-

cerned cases where goods were handed over not at the port but some distance away. If such cases were to be excluded, then the Convention would not serve any useful purpose. He would therefore suggest that further discussion of the proposal submitted in document A/CONF.89/C.1/L.32 be postponed until definitions of "port of loading" and "port of discharge" had been agreed.

80. Mr. BYERS (Australia) expressed his support for the Nordic proposal.

81. Mr. GONDRA (Spain) said that, in view of the statement made by the Indian representative, he would like to confirm his delegation's position with regard to the definition of the concept of "contract of carriage". In his delegation's view, the words "from one port to another", which were the main source of difficulty, covered three aspects: first, multimodal transport; secondly, ancillary transport by inland waterway, which was not entirely covered by the Nordic proposal; and, thirdly, the question of the offshore area in the neighbourhood of the port but not within the port itself. If the intention was solely to delimit the period of responsibility, the question could be covered by article 1 or article 4, but his delegation considered that it would be necessary to take a decision on all three questions in connexion with the definition of "contract of carriage" contained in article 1, paragraph 5. With regard to the matter of substance raised by the Nordic proposal, the Spanish delegation thought that it must be extended to cover not only LASH but also all "ancillary" transport by inland waterway. Contracts of carriage by sea would then apply also to the inland waterway stages that were of a purely subsidiary nature.

82. Mr. RAY (Argentina) said that, as the majority of delegations seemed to be in basic agreement on the matter, he thought that it might be referred to the Drafting Committee on the understanding that the transport by LASH of goods previously carried in an ocean-going vessel should be regarded as supplementary to the carriage of goods by sea.

83. The CHAIRMAN invited the Committee to vote on the Indian proposal that a decision on the amendment contained in document A/CONF.89/C.1/L.32 should be postponed.

84. *The Indian proposal was adopted by 38 votes to none.
The meeting rose at 6.25 p.m.*

7th meeting

Monday, 13 March 1978, at 10.15 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.7

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89.5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.3, L.33, L.36, L.39, L.40, L.57, L.76, L.77, L.88, L.107)

Article 3

1. Mr. KERRY (United Kingdom), introducing his delegation's amendment for the deletion of article 3 (A/CONF.89/C.1/L.36), said that, in its opinion, that article was unnecessary and might even, in practice, prove dangerous. The article contained two propositions: the first proclaimed the international character of the Convention, a point which was beyond doubt since it was a convention on the international carriage of goods; the second concerned the need to promote uniformity, which was the very object of the Convention. If that second clause was addressed to judges required to hear cases concerned with carriage by sea, they might become confused as to what extent they should refer to decisions taken by the courts of 100 or so other countries before rendering their own judgement. If that interpretation was not correct, the text of article 3 was then merely a general statement on the object of the Convention and would be better placed in the preamble.

2. Mr. HONNOLD (United States of America) said that he was in favour of retaining article 3 and observed that similar articles were contained in other international instruments already adopted (Convention on the Limitation Period in the International Sale of Goods), or still in draft form (draft convention on the international sale of goods, draft convention on the formation of contracts, the draft on negotiable instruments, etc.). In his opinion, it was necessary to counterbalance the predominant current tendency to consider legislation of international origin in the same way as national legislation. Even if article 3 did not really offer a guarantee of uniformity in the application of the regulations, it served the useful purpose of stating the basic aim of the Convention.

3. The CHAIRMAN, noting that the United Kingdom proposal had received no support, said he took it that that proposal had been rejected and that the Committee approved article 3 of the draft prepared by the United Nations Commission on International Trade Law.

4. *It was so decided.*

Article 4

Paragraph 1

5. Mr. SELVIG (Norway), introducing the proposal submitted by Denmark, Finland, Norway and Sweden relating to paragraph 1 (A/CONF.89/C.1/L.33), said it was proposed to provide in that paragraph that the responsibility of the carrier for the goods should cover the period during which the carrier was in charge of the goods under the contract of carriage; in other words, the sponsors were proposing to delete the reference to the port of loading, the carriage and the port of discharge. At the time when the draft Convention had been prepared, the view had been expressed that the terms "at the port of loading, during the carriage and at the port of discharge" might be unduly restrictive in regard to the delimitation of the period of responsibility of the carrier. Reference had been made, in particular, to cases in which the carrier had a terminal outside the port area and where the removal or delivery of the goods by the shipper occurred at a place which did not exactly correspond to the berth at which the goods were loaded on to the ship or discharged from it. In addition, there were cases in which the goods were delivered to the sea carrier by a connecting carrier. For those reasons, the sponsors of the proposal considered that the use of the terms "port of loading" and "port of discharge" might suggest a restrictive interpretation by which the responsibility of the carrier would be limited to the port area in the technical sense, leaving at each end of the carriage a gap to which national law would apply—in other words, the periods during which the carrier was in charge of the goods but the goods were not in the port area, periods which might not fall within the scope of application of the Convention.

6. He noted that the joint proposal submitted by Denmark, Finland, Norway and Sweden was along similar lines to the proposals of Tunisia (A/CONF.89/C.1/L.40) and the German Democratic Republic (A/CONF.89/C.1/L.88) and that all three proposals were designed to make the definition of the responsibility of the carrier more flexible in cases in which, for various reasons, the carrier did not take over the goods in the port area strictly speaking. The phrase "under the contract of carriage" had been added in document A/CONF.89/C.1/L.33 in order to make it clear that the carrier's responsibility covered the entire period during which he was in charge of the goods under the contract of carriage.

7. Mr. VOGEL (German Democratic Republic) said that the three proposals which had been mentioned

(A/CONF.89/C.1/L.33, L.40 and L.88) were motivated by the same intention and might be merged into a single proposal, provided that the basic idea in them was preserved—namely, that the carrier's responsibility for the goods covered the entire period during which he was in charge of them. Accordingly, the German Democratic Republic, which was the sponsor of the proposal contained in document A/CONF.89/C.1/L.88, supported the substance of the other two proposals.

8. Mr. KALBOUSSI (Tunisia) said that, at the request of the Secretariat, his delegation had expanded its first proposal (A/CONF.89/C.1/L.39) by submitting a second proposal (A/CONF.89/C.1/L.40), which was the one which should be taken as applicable. The problem which arose in connexion with article 4, paragraph 1, was to establish when the carriage by sea began and when it ended and, hence, to define the sea carriage properly speaking. When the Committee had considered the definition of "contract of carriage" in article 1, Tunisia had requested that its proposal on that point (A/CONF.89/C.1/L.37) should be submitted prior to consideration of article 4, since it felt that paragraph 1 of article 4 was linked to the definition of the contract of carriage by sea. In other words, if the Committee first resolved the problem of the definition of the contract of carriage by sea and the definition of port, the question as to when the carrier's responsibility for the goods was assumed and when it was discharged would be merely a drafting matter. Consequently, the other problems should be resolved before the question of the responsibility of the carrier, defined in paragraph 1 of article 4, was taken up.

9. Mr. KERRY (United Kingdom) said that the proposal submitted by Norway on behalf of four delegations (A/CONF.89/C.1/L.33) and supported by the German Democratic Republic caused his delegation some concern. Under the Hague Rules, the responsibility of the carrier applied from rail to rail, whereas the proposed text would extend that responsibility from port to port—from the time when the carrier took over the goods at the port until the time when he delivered them in another port. In the view of his delegation, the carrier's responsibility should not be made so extensive; in the frequent cases in which goods were delivered at a warehouse situated 50 miles away from the port, the responsibility of the carrier should not cover the port-warehouse stage, for that would involve a régime applicable to multimodal carriage, a matter which did not fall within the scope of application of the present Convention.

10. Mr. TANIKAWA (Japan) said that he, too, opposed the idea of extending the application of the Convention beyond the limits of the port area and considered that the Convention should apply solely to the carriage of goods by sea. An attempt to introduce flexibility into a clause concerning the definition of the carrier's responsibility might create some uncertainty concerning the applicability of the Convention. Japan was therefore opposed to the three proposals to that effect (A/CONF.89/C.1/L.33, L.40 and L.88).

11. Mr. GANTEN (Federal Republic of Germany) said he agreed with the representatives of the United Kingdom

and Japan: the proposal submitted by the four Nordic countries (A/CONF.89/C.1/L.33) introduced greater flexibility but also uncertainty. The Convention should not apply to inland transport and, in that connexion, reference should be made to the position taken by his delegation concerning the proposal of those same countries to extend the application of the Convention to carriage by inland waterway in barges subsequently carried on board a ship (A/CONF.89/C.1/L.32). Not to limit the carrier's responsibility to the confines of the port area would be to bring inland transport within the scope of application of the Convention and might give rise to conflicts with other national or international legislation.

12. Mr. FUCHS (Austria) noted that a recurrent problem in connexion with articles 1, 2 and 4 was that of defining the port area to be included within the scope of application of the Convention. A number of delegations were of the view that the port areas used in modern sea carriage, such as container terminals, should be brought within the régime of the Convention, and the proposal contained in document A/CONF.89/C.1/L.33 was to that effect. It should be pointed out that it was the carrier himself who decided on the place at which he was to take over the goods and that that clause did not enable him to evade the responsibility imposed on him by the Convention by requesting that the goods should be delivered in an extension of the port area. In conclusion, he supported the joint proposal submitted by Denmark, Finland, Norway and Sweden.

13. Mr. ARGYRIADIS (Greece) said he was concerned over the consequences of the three similar proposals contained in documents A/CONF.89/C.1/L.33, L.40 and L.88, since their effect would be to extend the carrier's responsibility not only to land carriage but also to the period during which the goods were in a warehouse. In his opinion, that was a matter that should properly be dealt with under a régime applicable to multimodal carriage, which was the subject of another draft Convention. He therefore associated himself with the opinion expressed by the representatives of the United Kingdom and Japan.

14. Mr. MASSUD (Pakistan) recalled that article 2 stipulated that the provisions of the Convention should be applicable to all contracts of carriage between ports in two different States, and observed that the Committee was again confronted with the original problem of defining the two ports concerned—the port of loading and the port of discharge. The Committee had not yet devised a satisfactory definition of those terms.

15. Mr. SMART (Sierra Leone) said that, in his view, the three proposals to extend the responsibility of the carrier were linked to the definition of contract of carriage contained in article 1, paragraph 5, which had been referred to the Drafting Committee. Until a definition of the contract of carriage had been established, it would be premature for the First Committee to consider the three proposals.

16. Mr. BYERS (Australia) said that one possibility would be to expand the membership of the small Working Group composed of the representatives of Australia, the United Kingdom and the United States which had been

requested to consider the question of the contract of carriage and to entrust it with the additional task of examining article 4, paragraph 1.

17. Mr. MATYASSY (Observer for the Central Office for International Railway Transport) said that his organization would like to be able to participate in the work of the enlarged Working Group.

18. The CHAIRMAN said that, if there was no objection, he would take it that the Committee authorized the observer for the Central Office for International Railway Transport to participate in the work of the Working Group.

19. *It was so decided.*

20. After a procedural discussion in which Mr. BYERS (Australia), Mr. SWEENEY (United States of America), Mr. ARGYRIADIS (Greece), Mr. DIXIT (India), Mr. CASTRO (Mexico), Mr. GUEIROS (Brazil), Mr. RAY (Argentina), Mr. LEON MONTESINO (Cuba), Mr. SANYAOLU (Nigeria) and the CHAIRMAN took part, it was decided that the Working Group would be formed by the delegations of the following countries: Australia, Brazil, Bulgaria, Canada, Finland, Greece, Mexico, Nigeria, Pakistan, Sierra Leone, Singapore, the United Kingdom and the United States of America.

Paragraph 2

21. Mr. ARGYRIADIS (Greece) said that the purpose of the amendment proposed by his delegation (A/CONF.89/C.1/L.3) was to clarify the existing text. However, if the Committee were to adopt the proposal of the Nordic countries, the proposal of Tunisia, or the proposal of the German Democratic Republic, he did not see how the Greek proposal could also be approved. Consideration of paragraph 2 should therefore be postponed until the Working Group whose membership had just been enlarged had revealed its position.

22. The CHAIRMAN said that he would take it that the Greek delegation was provisionally withdrawing its proposal.

23. Mr. SELVIG (Norway), introducing the joint proposal of Denmark, Finland, Norway and Sweden (A/CONF.89/C.1/L.33), observed that, while article 4 of the draft Convention contained precise provisions concerning the time when the responsibility of the carrier ceased at the port of discharge, it contained no such provisions concerning the moment when such responsibility commenced at the port of loading. The amendment proposed by the Nordic countries was based on the idea that the point at which the carrier's responsibility began at the port of loading should be determined by applying the same principles as those followed to establish the time when that responsibility ceased at the port of discharge. The adoption of that amendment would make the article clearer. Under the proposal of the Nordic countries, article 4, paragraph 2, of the draft Convention would become paragraph 2(b) of the proposed new text, but the wording of that paragraph would remain unchanged.

24. The CHAIRMAN asked whether the sponsors of the proposal did not regard it as relating more to a question of drafting than to a matter of substance.

25. Mr. SELVIG (Norway) said that, if it was agreed that the beginning and end of the carrier's responsibility should be determined by applying the same principle, the question was perhaps merely one of drafting. The enlarged Working Group might examine that question at the same time as it considered article 4, paragraph 1.

26. Mr. DIXIT (India) said that in his opinion paragraph 2 was the logical continuation of paragraph 1. Since consideration of paragraph 1 had been postponed, examination of paragraph 2 should also be deferred.

27. Mr. SANYAOLU (Nigeria) said that he, too, thought that consideration of article 4, paragraph 2, should be postponed and that, when it came to consider that paragraph further, the Committee should be informed of the proposals of the Working Group concerning the contract of carriage.

28. Mr. NSAPOU (Zaire) endorsed the views expressed by the representatives of India and Nigeria.

29. Mr. CLETON (Netherlands) said that he was somewhat concerned by the proposal to defer consideration of paragraph 2, since the Scandinavian amendment to paragraph 2 had no connexion with paragraph 1 and should be the subject of a separate decision. The question whether the situation with regard to the responsibility of the carrier should be the same at the port of loading as at the port of discharge was distinct from the problems of multimodal transport. His delegation supported the Scandinavian amendment to paragraph 2, since it clarified the idea implicit in the original text.

30. Mr. BYERS (Australia) said he took the view that paragraph 2 raised matters of substance and that any changes to paragraph 1 would pave the way for the interpretation of the ideas set forth in paragraph 2.

31. Mr. MONTGOMERY (Canada) supported the suggestion that consideration of paragraphs 1 and 2 of article 4 should be deferred until the Committee had taken a decision on article 1, paragraph 5. The expression "at a place in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading", which appeared in subparagraph 2 (a) (i) of the Scandinavian amendment, raised certain difficulties for a federal State such as Canada.

32. Mr. GANTEN (Federal Republic of Germany) said that the Greek amendment had the merit of being concise; he could also support the Scandinavian proposal, designed to define clearly the concept of the taking over of the goods, but he would suggest that the words "at the port of loading" should be inserted after the words "has taken over the goods" in subparagraph (a) and that the words "at the port of discharge" should be added after the words "he has delivered the goods" in subparagraph (b). The object of that subamendment was to limit the responsibility of the carrier to the port area, but if the Committee were to take an immediate decision on that point, it should be mindful of the fact that the final wording of paragraph 2 would depend on the outcome of the Working Group's work.

33. Mr. KALBOUSSI (Tunisia) said that, since paragraph 2 indirectly defined the period during which the carrier was in charge of the goods and that period was

also dealt with in paragraph 1, it would be sensible to defer consideration of paragraph 2 until a later stage. In addition, the Committee might also consider merging those two paragraphs.

34. Mr. SELVIG (Norway) observed that the Scandinavian amendment to paragraph 2 was distinct from the amendment relating to paragraph 1; however, he had no objection to consideration of paragraph 2 being postponed until a later stage, since many delegations had supported the Indian suggestion.

35. Mr. SWEENEY (United States of America) said that his delegation would withdraw its amendment to paragraph 2 (A/CONF.89/C.1/L.57) and would support the Ugandan amendment (A/CONF.89/C.1/L.107) and the amendment of the four Nordic countries (A/CONF.89/C.1/L.33), provided that the words "under the contract" in paragraph 1 of their amendment were replaced by the words "in connexion with the contract", since paragraph 1 might be misinterpreted as permitting the contract to limit the scope of the carrier's responsibility as defined in paragraph 2. Moreover, the Drafting Committee might consider the possibility of replacing the words "does not receive" in subparagraph 2 (b) (ii) of the English text of amendment A/CONF.89/C.1/L.33 by the words "fails to receive", as had in fact been proposed by the Ugandan delegation in document A/CONF.89/C.1/L.107.

36. While the draft Convention did not directly concern multimodal carriage, the final clauses should nevertheless deal with the problem of "multimodal interaction"; under United States law, the carrier was invariably held liable for damage to goods from the time when he took them over until the time when he delivered them. His delegation could not support the idea of restricting the scope of the

carrier's responsibility, as had been done by the Hague régime with the "tackle-to-tackle" rule or as was proposed by the delegation of the Federal Republic of Germany in its oral subamendment to the Scandinavian amendment and by the United Kingdom delegation in its amendment (A/CONF.89/C.1/L.76). Nor could it support the idea of holding the carrier liable from the time when the goods left the seller's factory. For that reason, the compromise solution envisaged in the Scandinavian amendment was satisfactory and represented an improvement on the original text. In conclusion, he expressed the view that the Committee would facilitate the Working Group's task by continuing its consideration of article 4.

37. Mr. TANIKAWA (Japan) said that, in his view, the problems dealt with in paragraphs 1 and 2 were quite distinct. He supported the Scandinavian amendment, subject to a few minor drafting changes.

38. Mr. AMOROSO (Italy) said he agreed that, as now drafted, paragraph 2 was unbalanced, since it stipulated the time limit of the carrier's responsibility in regard to delivery but remained vague in regard to the taking over of the goods. The Scandinavian amendment was therefore welcome and his delegation was able to support it. Since paragraph 2 was independent of paragraph 1, the Committee should proceed immediately to take a decision on the Scandinavian amendment, unless it decided to defer consideration of article 4 until a later stage.

39. The CHAIRMAN suggested that the Committee should resume its consideration of article 4 at a later meeting, when the Working Group had completed its work.

40. *It was so decided.*

The meeting rose at 12.10 p.m.

8th meeting

Monday, 13 March 1978, at 3.20 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.8

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.121 and Add.1)

*Article 1 (concluded)**

Paragraph 5 (concluded)

*Article 2 (concluded)***

Paragraph 1 (concluded)

1. The CHAIRMAN invited the Norwegian representative to introduce the revised text of paragraph 5 of article 1, containing the definition of a contract of carriage by sea, and the revised text of the opening clause of paragraph 1 of article 2 (Scope of application), which had been prepared by the *ad hoc* Working Group (A/CONF.89/C.1/L.121).

2. Mr. SELVIG (Norway), referring first to the revised

* Resumed from the 5th meeting

** Resumed from the 6th meeting.

text of paragraph 5 of article 1, pointed out that in the second part of the definition the words "by sea" should be added after the words "contract of carriage". The first part of the definition, up to the semicolon, dealt exclusively with carriage by sea. The possibility of having a separate definition of "port", or of including some reference to the effect that "port" covered other places where ships could load and discharge goods, had been considered, but no decision had been reached owing to lack of time. The second part of the definition, which took account of the proposals made by a number of delegations, including those of Australia, the United Kingdom and the United States, was designed to bring contracts of carriage by sea which involved some other means of carriage within the scope of the Convention.

3. The opening clause of paragraph 1 of article 2 had been revised and simplified as a consequence of the clearer definition of "carriage of goods by sea".

4. The Working Group also considered that a provision should be included in the final clauses to make the Convention subject to any existing or future convention on multimodal carriage. Owing to lack of time, however, it had not been able to draft such a provision.

5. Mr. GANTEN (Federal Republic of Germany) said that despite the added clarity of the revised definition of "contract of carriage" his delegation was unable to accept it. Such a definition, in his delegation's view, should be restricted to contracts concluded as contracts of carriage by sea between the parties and should not be extended to cover contracts concluded as contracts for multimodal or combined transport operations. The revised text, which would conflict with other conventions and with domestic laws, would give rise to many difficulties.

6. Mr. TANIKAWA (Japan) said that his delegation had serious doubts about the revised definition since it extended the scope of application of the Convention. Also, the wording was, in parts, ambiguous. For instance, there was no indication of the kind of contract of carriage by "some other means" that would be deemed to be a contract of carriage by sea, nor was the concept of carriage by sea itself clearly defined. He was therefore unable to support the revised definition.

7. Mr. WUREH (Liberia), agreeing with the remarks made by the representative of the Federal Republic of Germany, said that his delegation was concerned to ensure that the carrier was liable only between one port and another. It could therefore not accept the extension of liability implicit in the words "by some other means."

8. Mr. GONDRA (Spain) said that his delegation supported the idea which underlay the revised definition, but considered that the wording was confused, and did not sufficiently consider carriage by land or river "secondary" with respect to a carriage by sea. Lastly, it was in favour of the inclusion of a definition of the term "port" in article 1.

9. Mr. KALBOUSSI (Tunisia) noted that the first part of the revised definition involved an obligation on the part of the shipper or his servant or agent. To be consistent, it should likewise deal with the obligation of the carrier, not only to perform the contract of carriage but also to do so

on the terms and conditions laid down in the contract. He therefore proposed that the words "on the terms and conditions agreed with the shipper" should be added before the semicolon.

10. The CHAIRMAN said that the Tunisian representative's point would be referred to the Drafting Committee.

11. Mr. JOMARD (Iraq) said his delegation favoured a definition that dealt exclusively with the carriage of goods by sea. For that reason it was unable to accept the words "by some other means", which were too general in their implication.

12. Mr. KERRY (United Kingdom), expressing concern at the reaction of the representatives of the Federal Republic of Germany, Iraq and Japan, said that, if the Convention were to be of any use at all, it would have to cover a multitude of circumstances. In modern conditions, it was not uncommon for what was in effect a contract of carriage by sea necessarily to involve a comparatively minor element of carriage by some other means, by lorry or train for instance, to and from the docks. If the Convention were limited to port-to-port transport, a considerable volume of carriage of goods by sea would fall outside its terms.

13. His delegation trusted that a definition of the term "port" would be introduced and that it would cover all places where goods were loaded or discharged.

14. Mr. DOUAY (France) endorsed the remarks made by the representative of the Federal Republic of Germany. In his delegation's view it would be wise to limit the scope of the definition to the carriage of goods by sea, as had been done at the outset, rather than to anticipate what might be the subject of a multimodal convention and thereby tie the hands of future negotiators. While his delegation therefore agreed to the first part of the definition, up to the semicolon, it considered that the rest should be deleted.

15. Mr. AMOROSO (Italy) said his delegation was unable to support the revised definition for the reasons stated by the representatives of the Federal Republic of Germany and Japan. It endorsed the French representative's suggestion.

16. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in principle, his delegation supported the revised definition. It appreciated, however, that some drafting improvements might be required. It also considered that the point raised with regard to the relationship between the Convention and any future convention on multimodal transport could be taken care of in the final clauses of the Convention.

17. Mr. DIXIT (India) said that his delegation was not altogether satisfied with the revised definition, which contained a number of lacunae. He doubted whether the addition of the words "by sea" after the words "contract of carriage", in the second part of the definition, was an improvement, and would suggest that that phrase be left as it stood. Also, he would suggest that the words "of transport" be added after "by some other means". Lastly, he was not very happy about the phrase "only to the extent that it relates to the carriage by sea", in the last line

of the revised definition, which was somewhat confusing. He reserved the right to revert to the matter later.

18. Mr. MARTONYI (Hungary), supporting the revised definition, said his delegation did not agree that it would in any way impede the development of future international legislation on multimodal transport. The crux of the matter was, rather, whether the Conference wished to lay down clear provisions of the type submitted by the Working Group, or whether it wished to leave such questions to the discretion of the courts which, in the absence of adequate provisions, would simply devise various legal techniques whereby the Convention would be held to apply to the sea leg of multimodal operations. He had in mind, for example, the practice of resorting to analogy and the judicial thinking which would hold that the carrier could not escape the application of a mandatory international Convention solely because he had undertaken an additional obligation, namely, the onward inland carriage. If matters were left as they stood, the result would be legal uncertainty and, in turn, dispute and litigation. That danger could be averted by the adoption of the revised definition—which was, moreover, entirely in keeping with current practice.

19. Mr. NILSSON (Sweden) said his delegation supported the idea underlying the revised definition but had some doubts as to its wording. It could not see the reason for introducing a new term—"contract of carriage by sea"—when it seemed simpler to use the original term—"contract of carriage"—and to define it in a new paragraph. To make the text clearer, his delegation would also suggest that the semicolon should be replaced by a full stop and that the word "however", followed by a comma and the words "if such a contract also involves carriage by some other means, it shall be deemed . . .", should start a new sentence.

20. Mr. BREDHOLT (Denmark) expressed his support for the revised definition.

21. Mr. CASTRO (Mexico) said that, while he agreed that the drafting of the revised definition could perhaps be improved, he would urge the Committee to look less to its wording than to the ideas reflected in it. It was important to make it quite clear that the definition referred not to a contract of carriage by road, rail or any other means, but, in principle, to a contract of carriage by sea. At the same time, it should be recognized that the sea leg of multimodal carriage which was a form of transport encountered in practice, was one issue that the Convention must seek to cover.

22. It would be difficult to agree on a definition of the term "port", and his country had not succeeded in so doing after a year of endeavour. It would therefore be better to follow practice and to regard as a port the customs area or place where the port authority had jurisdiction.

23. Mr. HENNI (Algeria) said he agreed with those who had stressed the need to limit the scope of application of the Convention to only carriage by sea, and was therefore opposed to the expression "by some other means".

24. Mr. FAHIM (Egypt) said that from the outset his delegation had been in favour of retaining the original

definition. It would not, however, object to the inclusion in the Convention of a special provision on multimodal carriage, provided that it was made quite clear that the Convention applied to the sea leg of such carriage only, and not to any other means of carriage.

25. Mr. DIXIT (India) proposed that, in the draft text submitted by the *ad hoc* Working Group relating to article 1, paragraph 5, the words "only to the extent that" should be replaced by "in so far as". If that amendment were made, his delegation would be able to accept the draft text.

26. Mr. JOMARD (Iraq) said that care must be taken to ensure that the articles of the Convention being prepared at the time were precisely worded, in order to avoid confusion with other international instruments, particularly in relation to carriage of goods by other means. In that connexion, the draft definition now under consideration involved certain legal contradictions and was therefore unacceptable to his delegation.

27. Mr. CLETON (Netherlands) said that his delegation was in favour of the draft text contained in document A/CONF.89/C.1/L.121 and hoped that it would be put to a vote.

28. Mr. SELVIG (Norway), referring to previous speakers' observations concerning the words "carriage by some other means" in the proposed revised text of article 1, paragraph 5, said he believed that the problem which had arisen was simply one of drafting. The *ad hoc* Working Group wished only to make it clear that, even in contracts which involved carriage by other means of transport as well as by sea, the Convention would apply solely to the sea carriage movements of goods.

29. Mr. ARGYRIADIS (Greece) said it surprised his delegation that the *ad hoc* Working Group was proposing a text which implied an extension of the Convention's scope of application to means of transport other than carriage by sea. In the proposed text relating to article 1, paragraph 5, the text from the word "only" to the end of the sentence could perhaps be replaced by the words "only in so far as it is effected by sea", in order to conform to the provisions of article 1, paragraph 1.

30. The CHAIRMAN invited the Committee to vote on the draft text submitted by the *ad hoc* Working Group, as contained in document A/CONF.89/C.1/L.121.

31. The draft text submitted by the *ad hoc* Working Group was adopted by 40 votes to 14, with 3 abstentions, and referred to the Drafting Committee.

Article 4 (continued)

32. The CHAIRMAN invited the Executive Secretary of the Conference to read out the draft text for article 4 submitted by the *ad hoc* Working Group and contained in document A/CONF.89/C.1/L.121/Add.1. Since the Group had met immediately before the Committee's present meeting, there had been no time to translate the text from the original English into the other languages of the Conference; the text would therefore be read out by the Executive Secretary of the Conference.

33. Mr. VIS (Executive Secretary of the Conference)

read out the draft text for article 4 submitted by the *ad hoc* Working Group.

34. Paragraphs 1 and 3 of the revised text were identical to the relevant paragraphs of the text presented by the United Nations Commission on International Trade Law (UNCITRAL) (A/CONF.89/5). The proposed text of paragraph 2 corresponded to the wording proposed by Denmark, Finland, Norway and Sweden in document A/CONF.89/C.1/L.33, except for the omission of the words "at a place" in subparagraph 2 (a) (i).

35. Mr. MALELA (Zaire), supported by Mr. HENNI (Algeria), Mr. JOMARD (Iraq) and Mr. KALBOUSSI (Tunisia) said that the Committee should not be expected to discuss texts of any nature until they had been circulated in all the official languages of the Conference.

36. Mr. FUCHS (Austria) said that, in his delegation's view, the proposed new text of subparagraph 2 (a) (i) would gain from the retention of the words "at a place", as contained in document A/CONF.89/C.1/L.33, since those were the very words which would provide flexibility in the new Convention's scope of application. He wondered whether, in view of the submission of the text now before the Committee, document A/CONF.89/C.1/L.33 had been withdrawn.

37. Mr. SELVIG (Norway) said that some members of the *ad hoc* Working Group had voiced objections to the words "at a place", which had therefore been omitted in order to achieve the widest possible measure of agreement.

38. Mr. MORENO PARIDAS (Venezuela) said that the use, in an international convention, of wording as vague as "in accordance with . . . the usage" could create difficulties for countries such as Venezuela which had no legislation, comparable to the Harter Act in the United States, for example, to govern practice and procedures immediately prior to loading and immediately after discharge of goods. The new Convention should contain provisions to cover those periods. It was interesting to note, in that connexion, that in the German Democratic Republic, for example, the problem of covering those periods had been dealt with on a *quid pro quo* basis, by which the carrier granted rights to his loaders and was responsible for their actions. The notion of servant or agent should be so extended as to cover the carrier's liability until the goods had been received by the consignee or his representatives, subject of course to the limits of liability set forth in article 6.

39. Mr. BURGUCHEV (Union of Soviet Socialist Republics) noted that the first part of article 4, paragraph 2, of the UNCITRAL text contained the words "from the time he has taken over the goods". In document A/CONF.89/C.1/L.121/Add.1, however, the corresponding provision had been expanded and included a subparagraph 2 (a) (i) which contained the words "in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading." His delegation wondered whether the *ad hoc* Working Group saw its proposed text as a limitation to the scope of the original wording or simply as an improved and more detailed draft.

40. Mr. BYERS (Australia) said, in reply to the representative of the Soviet Union, that it had not been the intention of the Working Group to narrow the responsibility of the carrier, as referred to in paragraph 1, by the use in paragraph 2 of the words quoted by the Soviet representative. The purpose of paragraph 2 was to explain the concept of responsibility with which paragraph 1 was concerned, but the point raised by the representative of the Soviet Union was an important one. The original intention had been to use the text of paragraph 1 set out in document A/CONF.89/C.1/L.33, but the Working Group had eventually decided on the present wording for the sake of achieving agreement. It had also decided to keep the text of paragraph 2 basically as proposed by the Nordic delegations in that document. Its aim had certainly not been to limit the scope of the wording proposed by UNCITRAL.

41. Mr. KALBOUSSI (Tunisia) said his delegation had no objection in principle to paragraphs 1 and 3, but would like paragraph 1 to be amended so as to include a reference to the terms and conditions agreed upon. Paragraph 2 could be simplified if the wording were kept fairly general; it would be sufficient to qualify the period during which the carrier was deemed to be in charge of the goods as extending from the time he took over the goods until the time he delivered the goods. It should be left to national legislation to define those moments more precisely, since the responsibility of the carrier was allocated in different ways and proportions depending on the particular country concerned.

42. Mr. DONOVAN (United States of America) said that his delegation had the same difficulty as did the Soviet Union delegation with regard to subparagraph 2 (a) (i) of the text under consideration, and more specifically the phrase "in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading", which it would be preferable to delete. He doubted whether the proposed wording of that subparagraph would, for instance, cover the possibility that a carrier might be entitled to act on behalf of the shipper by virtue of the contract of carriage and would take charge of the goods but could not be held responsible for them until they had passed the ship's rail.

43. Mr. CASTRO (Mexico) said he regarded the matter referred to by the United States representative as one of substance. He was not opposed to the suggestion made by that representative, but thought that it might be best to convene a meeting of the *ad hoc* Working Group to discuss the latest proposals that had been made.

44. Mr. MONTGOMERY (Canada) said his delegation shared the concern expressed by other delegations about the wording of subparagraph 2 (a) (i), which was liable to give rise to legal conflicts. In order to avoid that possibility, the provision concerned should be amended to read: "the shipper, or a person acting on his behalf, at the port of loading."

45. Mr. TANIKAWA (Japan) said his delegation supported the draft text as submitted by the *ad hoc* Working Group.

46. Mr. GUEYE (Senegal) said his delegation endorsed

the views put forward by preceding speakers concerning the proposed text for subparagraph 2 (a) (i). The proposed wording made for greater complications and was liable to raise substantive issues that would be difficult to resolve. His delegation would therefore like it to be amended so as to take into account the points that had been raised.

47. He would like to query the reference made there to the shipper, who was not mentioned in the corresponding provision of the UNCITRAL text. If the shipper was to be mentioned in paragraph 2, reference should also be made to him in paragraph 3.

48. Mr. DIXIT (India) said that, after listening to the remarks made by the Soviet and United States representatives, he also felt that the draft submitted by the *ad hoc* Working Group was of doubtful value and might lead to confusion. He therefore strongly supported the UNCITRAL text.

49. Ms. OLOWO (Uganda) said her delegation had understood that the mandate of the Working Group was to consider paragraph 1 of article 4, but it had evidently been extended to the other paragraphs of that article as well. She wondered, in that case, whether the Ugandan amendment in document A/CONF.89/C.1/L.107 had been considered by the Group.

50. The CHAIRMAN said that the Working Group had been authorized to consider the other paragraphs as well, and in doing so had undoubtedly taken the Ugandan proposal into account.

51. Mr. WAITITU (Kenya) said that his delegation supported the draft text submitted by the *ad hoc* Working Group and was concerned that so many delegations had expressed dissatisfaction with the wording of subparagraph 2 (a) (i). It doubted whether the phrase following the words "on his behalf" was likely to cause conflict between the national laws of States and the Convention. If that phrase were deleted, his delegation would have to reconsider its endorsement of the Working Group's text.

52. Mr. KHOO (Singapore) said that his delegation, although a member of the *ad hoc* Working Group, had had little to do with the actual drafting of the text now under consideration, but had tacitly accepted it at the time. However, after listening to the remarks of the United States and Canadian delegations, in particular, it had begun to doubt that text was any improvement on the UNCITRAL draft. His delegation would therefore be for the retention of the UNCITRAL text, but if the majority was in favour of the suggestion made by the Canadian representative, his delegation could endorse that as well.

53. Mr. KELLER (Liberia) said that his delegation supported the proposal to delete the words "in accordance with . . . applicable" in subparagraph 2 (a) (i). The words "at the port of loading" should, however, be retained.

54. Mr. MASSUD (Pakistan) said that, as his delegation felt that the draft text in document A/CONF.89/C.1/L.121/Add.1 raised more problems than it solved, it therefore supported the original UNCITRAL text.

55. Mr. SEVON (Finland) said that, as a member of the

ad hoc Working Group, he was in the same position as the representative of Singapore. He had first thought that the doubts expressed related to a matter of drafting, but was now convinced that the USSR delegation had raised a very valid point. It would therefore like to see subparagraph 2 (a) (i) amended through the deletion of the words "in accordance with . . . applicable", as proposed by the Canadian delegation. If the text was left as it stood, it would be possible for the carrier to insert a clause whereby his responsibilities would begin only when the goods had been taken on board, and that had not been the original intention of the Working Group. However, he hoped the problem could be cleared up in the Committee, without having to be referred back to the Group.

56. Mr. ARGYRIADIS (Greece) said that the intention of the Working Group had been to enunciate, in paragraph 1, the principle that the responsibility of the carrier extended from the port of loading to the port of discharge but no further. Paragraph 2, after specifying the exact moment at which the carrier took charge of the goods and, hence, when his responsibility began, stipulated, in its subparagraph (a) (i), the persons entitled to hand over the goods to the carrier. Both that subparagraph and subparagraph (a) (ii) were necessary, in his opinion. Subparagraph (ii) was needed to ensure that the carrier would not be held responsible while the goods were still in the possession of the port authorities, and represented the only departure from the UNCITRAL text.

57. He had no difficulty in agreeing to the Canadian proposal concerning subparagraph 2 (a) (i). He believed that the draft submitted by the Working Group, thus amended, would be the most acceptable text.

58. Mr. GORMAN (Ireland) said that certain Irish interests were anxious to know what would happen, under the Convention, if either of the parties to a contract of carriage was prevented by reasons beyond his control, such as a strike, from effecting the transfer of the goods.

59. Mr. SMART (Sierra Leone) said that his delegation supported the very clear text submitted by the *ad hoc* Working Group. The deletion of the final part of subparagraph 2 (a) (i) would make the meaning of the article less clear, in that there were cases in which the carrier could take possession of goods other than in accordance with a contract, the law or usage, one instance being that of error. Some national legislation made ample provision for such possibilities.

60. Mr. SUCHORZEWSKI (Poland) pointed out that the nature of the contract mentioned in subparagraph 2 (a) (i) was not defined; the only type of contract defined in article 1 was the contract of carriage.

61. In his view, the words "in accordance with the contract or with the law or with the usage of the particular trade, applicable" should be deleted from that subparagraph.

62. Mr. GORBANOV (Bulgaria) said his delegation agreed with the remarks made by the representative of the Soviet Union, which should be taken into consideration. In the light of those comments, his delegation proposed that the text drafted by the *ad hoc* Working Group should be amended by the insertion of the words "at a place"

before "in accordance with the contract", in order to make the point that, if the shipper delivered the goods at a place other than the designated place, the carrier would not be held responsible. Otherwise, the whole of subparagraph 2 (a) (i) after the words "in accordance with the contract" would have to be deleted.

63. Mr. AMOROSO (Italy) suggested that the discussion should be continued on the following morning, when document A/CONF.89/C.1/L.121/Add.1 should be available in all the working languages.

The meeting rose at 6.05 p.m.

9th meeting

Tuesday, 14 March 1978, at 10.20 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.9

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.3, L.33, L.39, L.40, L.76, L.88, L.107, L.121/Add.1)

Article 4 (concluded)

1. Mr. KACIC (Yugoslavia) expressed support for the text proposed by the *ad hoc* Working Group (A/CONF.89/C.1/L.121/Add.1), as an improvement on the text of the United Nations Commission on International Trade Law (UNCITRAL) in that it specified at what point in time the carrier took over the goods and the time at which the goods ceased to be in his charge. The Yugoslav delegation would be unable to support a text which did not contain such specific provisions. It appreciated why at the previous meeting some delegations had expressed reservations concerning the text, and for that reason it thought that in subparagraphs 2 (a) (i) and (b) (ii) the words "of carriage" should be added after the words "in accordance with the contract". Since that suggestion was in the nature of a drafting amendment, it might perhaps be referred to the Drafting Committee.

2. Mr. HERBER (Federal Republic of Germany) expressed support for the text prepared by the *ad hoc* Working Group but supported the oral amendment proposed by Canada at the previous meeting, viz. the omission of the passage "in accordance with the contract or with the law or with the usage of the particular trade, applicable" from paragraph 2 (a) (i), for the carrier should be held liable for damage to the goods whether or not the taking over of the goods had been in conformity with usage.

3. Mr. TANIKAWA (Japan) said that his delegation had no objection to the amendments made by the *ad hoc* Working Group in paragraph 2 (a) (i), even though it had initially expressed preference for the original draft.

If, however, the passage "in accordance with ... applicable" was omitted, the words "at the port of loading" would likewise have to be dropped, for otherwise the provision would not cover the case where the carrier took over the goods outside the port area and it would be unclear at what point in time his responsibility began. Paragraph 1 and paragraph 2 (a) (i) should be construed to mean that if the carrier took over the goods outside the port area he was responsible for them as from the moment when they entered that area.

4. Mr. EYZAGUIRRE (Chile) said his delegation would be satisfied with the text of article 4 as originally drafted, for in a general way it dealt with the problems concerning the period during which the carrier was deemed to be responsible in that it expressly stipulated that the carrier was responsible as from the time when he took over the goods at the port of loading until he delivered them at the port of discharge. The *ad hoc* Working Group had tried in its text to spell out as from what moment the goods were in the charge of the carrier at the port of loading, and for that reason mentioned the time when the carrier received them from the shipper in accordance with the contract or with the law or with the usage of the particular trade. In that connexion, his delegation thought it would be dangerous to refer to the contract, for such reference would in fact open the possibility of limiting by contractual stipulation the period during which the carrier was responsible. In the light of those considerations the Chilean delegation would be prepared to accept either the original draft of article 4 or the Working Group's formula, provided that the words "with the contract or" were omitted in paragraph 2 (a) (i); the reference to the law and usage, however, was useful in so far as the reference specified the criterion for determining the moment as from which the carrier was or was no longer deemed responsible.

5. Mr. RAMÍREZ HIDALGO (Ecuador) expressed support in principle for the *ad hoc* Working Group's text, but pointed out that the terms of paragraph 2 (a) (i) might give rise to a series of disputes between carriers and shippers, and for that reason he would support the Chilean proposal for deleting the words "the contract or".

6. Mr. SORESEN (Mauritius) said it was surprising that both the UNCITRAL draft and the Working Group's text referred to usage and contractual stipulations. It was surely inappropriate for a convention intended to unify the law to mention usages that had not been codified, that were subject to change and that were open to different interpretations according to the *lex fori* in a particular dispute. It was an additional risk to refer to contract, in so far as such a reference left full latitude to the agreement of the parties, in other words to the will of the carrier. In any case, even if the reference to the contract was dropped and even if it was specified what was meant by "taken over" and "handing over", the parties—which *de facto* meant the carrier—would have full discretion to provide in the bill of lading that the goods would be taken over or handed over on board ship. Many bills of lading provided that goods were taken over when they were in the ship's hold and that they were handed over at the time of the ship's arrival in port, when the goods were still in the hold. He hoped that his comments answered the argument against the proposal for deleting the reference to the contract and usages, and he added that the Convention should, as did the Hague Rules, define the mandatory limits binding the parties to the contract of carriage as regards the beginning and the end of the period during which the carrier was responsible.

7. Referring to the passage in paragraph 2 (c) of the original draft and in paragraph 2 (b) (iii) of the Working Group's text which spoke of port authorities, he pointed out that in Mauritius the administration of the port area was centralized in a single authority which, like those in other countries, had the function of ensuring internal security (control of smuggling), but above all was given the task, because of the limited resources, of ensuring the optimum use of the port infrastructure (optimum distribution of dockers' teams, hangars, etc.). In his delegation's opinion the existence of port authorities had nothing to do with the relationship between shipper and carrier at the time of the taking over of the goods or with the relationship between the carrier and the consignee at the time of delivery. Hence, it could hardly be argued that the presence of such an authority could constitute a special form of delivery, and for that reason he proposed the deletion of paragraph 2 (c) of the original draft, or of paragraph 2 (b) (iii) of the Working Group's text if that should be the text adopted by the Committee.

8. Invoking the last sentence of rule 28 of the rules of procedure, he proposed a redraft of paragraph 2 in terms specifying the mandatory limits governing the sea leg of the transport operation, whatever might be stipulated in the contract, making provision for the case of fault on the consignee's part and taking into account the occurrence of some event not attributable to anybody's fault. He read out the text, which he hoped might contribute to the preparation of an improved definitive version of article 4:

"For the purpose of paragraph 1 of this article, the carrier shall be deemed to be in charge of the goods from the time he has taken over the goods, at the latest before they are loaded on board ship, until the time he has delivered the goods, at the earliest opportunity after their discharge from the ship:

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

"(b) In cases where the consignee does not make an appearance, by placing them at the disposal of the consignee, after duly notifying him, in his warehouses, in the warehouses of an authorized third party chosen by him, or in any other appropriately chosen place; or

"(c) If it should not be possible to identify or to notify the consignee, by placing the goods in the possession of a third party designated by judicial authority, or designated by the laws and regulations applicable in the port of destination."

9. Mr. BYERS (Australia) said that his delegation would have a preference for the original draft of paragraph 2 (a) (i), but if the majority of participants opposed that provision, it would be prepared to support the text of the *ad hoc* Working Group, amended as proposed by the United States delegation at the previous meeting. No provision in paragraph 1 bound the carrier to receive the goods at a particular moment, whereas paragraph 2 made paragraph 1 more flexible in that it provided that the carrier was responsible for the goods as from the moment when, under the contract, the shipper had handed them over to him. Under paragraph 2, the contract was simply a document by virtue of which the carrier obtained possession of the goods; the paragraph provided, for example, for the case where there was no contract and for the case of particular usages in the trade. The reference to the contract in paragraph 2 had the further advantage, both for the shipper and for the carrier, of specifying that, if it had been agreed that the carrier would take possession of the goods at a place outside the port area, he would be responsible for them as from that time. The Australian delegation shared the Japanese delegation's view concerning the retention of the words "at the port of loading" if the passage "in accordance with . . . applicable" was dropped. If the majority of delegations considered that that passage might give rise to ambiguity, it would be preferable, both from the carrier's and from the shipper's point of view, to omit it altogether.

10. Mrs. RICHTER-HANNES (German Democratic Republic) said that the text proposed by the *ad hoc* Working Group in document A/CONF.89/C.1/L.121/Add.1 fell short of expectations, and it would be pointless to refer it back to that Group. The Committee, before it either took a vote on article 4 or referred it to the Drafting Committee, would have to come to a decision regarding paragraph 1, and in that connexion she stated that her delegation would prefer the text which it had proposed (A/CONF.89/C.1/L.88); her delegation's amendment, no more than those of like nature submitted by other delegations, was not intended to alter the substance of paragraph 1, and had been supported by a number of delegations.

11. So far as paragraph 2 was concerned, she said that her delegation was prepared to support the UNCITRAL text but that, if a majority of delegations preferred the Working Group's formula, it would then be desirable to delete the passage "in accordance . . . port of loading." She drew attention to her delegation's comments accompanying document A/CONF.89/C.1/L.88, where it expressed the view that, in order to fill a gap in international

law, the rights and duties of intermediaries who were in contact with the goods before loading and, above all, after discharge ought to be defined. The definition of delivery in paragraph 2 did not dispose of the problem, and in her delegation's opinion, it was essential to prepare a rule giving the carrier a remedy.

12. Mr. SEVON (Finland) said that at the previous meeting his delegation had supported the Canadian proposal for deleting the passage "in accordance with . . . applicable" which occurred in paragraph 2 (a) (i) as drafted by the *ad hoc* Working Group; on further reflection, however, his delegation considered that the United States proposal for deleting that passage and also the words "at the port of loading" would be preferable. Accordingly, his delegation withdrew its support for the Canadian amendment and would support the United States amendment.

13. Ms. OLOWO (Uganda) expressed support for the United States amendment, in so far as it did not depart from the original text, but considered that the proposed deletion should likewise be made in paragraph 2 (b) (ii). At the same time, she referred to her own delegation's amendment (A/CONF.89/C.1/L.107), which added a further specific provision concerning the end of the carrier's responsibility in cases where the consignee did not receive the goods, although she realized that the words "within reasonable time" were perhaps somewhat vague in that context. Accordingly, while maintaining its amendment, her delegation was ready to support any other amendment which disposed of that particular point satisfactorily.

14. Mr. NILSSON (Sweden) said that the idea conveyed by article 4 of the UNCITRAL text, in the proposal by the Scandinavian countries (A/CONF.89/C.1/L.33) and in the text of the *ad hoc* Working Group was the same, namely that the carrier's responsibility began as from the time when he took over the goods. However, the practices for taking over the goods varied from one port to another and from case to case, and were frequently by no means clear. That was why the proposal by the Scandinavian countries was intended to facilitate the interpretation of the relevant clause in article 4 and to ensure consistency of interpretation. If, however, some delegations considered that the words "in accordance with the contract or with the law or with the usage" in paragraph 2 (a) (i) of the Scandinavian proposal were ambiguous and gave rise to more problems than they settled, those words might be deleted, provided that the words "at the port of loading", which were linked to the passage "with the law or with the usage of the particular trade" were likewise deleted. To allow the words "port of loading" to stand would give the subparagraph in question a meaning which it did not originally possess.

15. Mr. BENTEIN (Belgium) expressed support for the Scandinavian amendment, which was, in fact, reproduced in the Working Group's draft. Those proposals rectified an imbalance in the original draft between the definition of the time when the period of the carrier's responsibility ended—which was described in detail—and the description of the time when that period began. Several delegations, however, had criticized the formula "in

accordance with the contract or with the law or with the usage" which appeared in paragraph 2 (a) (i) of both proposals. In that respect, his delegation would point out that a convention ought to lay down principles and could hardly, in the particular case in question, envisage all the elements to be allowed for in determining the time when the carrier took over the goods. The provision under study should be read in the light of some *de facto* and *de jure* considerations, and the formula being criticized should do no more than indicate how the act of taking over goods by the carrier ought to be understood. Secondly, if that formula should give rise to difficulties it might be dispensed with, for it would no longer be fulfilling its purpose, which was to give some indications to the court dealing with a dispute. In practice, in any case, the court would refer to the usages or to the law relating to maritime trade, even if the text did not expressly say so. Lastly, he said that his delegation would support the *ad hoc* Working Group's draft, subject to the omission of the reference to the law or particular usages.

16. Mr. VANDENESCH (France) said that his delegation would support paragraph 2 (a) in the version submitted by the *ad hoc* Working Group, subject to the deletion proposed by the United States at the previous meeting.

17. Mr. DIXIT (India) said that the crucial element in paragraph 2 was the clause providing that the taking over and delivery of goods demarcated the period of the carrier's responsibility; once that point had been settled there should be no more difficulties. The UNCITRAL text was perfectly clear in that respect, for it provided that "the carrier shall be deemed to be in charge of the goods from the time he has taken over the goods until the time he has delivered the goods." The additional language proposed by the *ad hoc* Working Group was unnecessary and merely complicated matters. After all, it was open to the shipper and to the carrier to agree, by contract, that delivery would take place in some other manner, and, in fact, cases occurred where delivery was not effected in the port. Any attempt to make provision for all conceivable cases invited the risk of reverting to the "tackle-to-tackle" principle, and for that reason he considered it preferable not to mention the contract in the provision under consideration. The UNCITRAL draft was clearer, for it contemplated only the fact that the goods had been taken over for the purpose of determining the beginning of the period of the carrier's responsibility.

18. He noted, secondly, that the UNCITRAL draft and the Working Group's draft differed only in one respect, viz., the language of paragraph 2 (a) of the latter text (A/CONF.89/C.1/L.121/Add.1) concerning the definition of taking over the goods. That was, therefore, the provision on which the Committee would have to take a decision.

19. Lastly, his delegation supported the amendment proposed by the German Democratic Republic (A/CONF.89/C.1/L.88) which related to substance and which proposed the deletion of the words "at the port of loading, during the carriage and at the port of discharge", which appeared in the UNCITRAL draft of article 4, paragraph 1—a proposal which clearly indicated that the

only important point in that clause was that the goods should be in the carrier's charge. The amendment proposed by Uganda (A/CONF.89/C.1/L.107) also made a useful contribution towards clearer drafting.

20. Mr. KERRY (United Kingdom) expressed support for the *ad hoc* Working Group's text, amended as proposed by the United States (see 8th meeting, para.42), subject to the explanations given by the Australian delegation, namely that under the proposed paragraph 2 the carrier was deemed to have charge of the goods at the port of loading as soon as he had accepted delivery.

21. His delegation was, on the other hand, opposed to the amendment submitted by the German Democratic Republic, for the effect of that amendment would be to make rules intended for sea-borne traffic applicable to inland transport, whatever might be the national law applicable.

22. Mr. MONTGOMERY (Canada) announced the withdrawal of his delegation's proposal for deleting the words "in accordance with . . . applicable" in article 4, paragraph 2, of the text proposed by the *ad hoc* Working Group and said that his delegation would support the United States amendment which had been supported by other delegations.

23. Mr. NSAPOU (Zaire) expressed the hope that the Working Group's text would be referred back to the Group, together with the proposal made by Mauritius, for final drafting, after which the text would probably meet with the approval of all delegations.

24. Mr. SORENSEN (Mauritius) explained that his delegation had not made a formal proposal but had merely wished to set forth some ideas that might be taken into account during the final drafting of article 4. His delegation's suggestions concerned the mandatory limits for the carrier's responsibility and the misconceived reference to a port authority in subparagraph 2 (b) (iii).

25. The CHAIRMAN said that the suggestions made by Mauritius would be referred to the Drafting Committee.

26. Mr. WAITITU (Kenya) said that his delegation had reconsidered its position since the previous meeting and was now prepared to support the Working Group's text as amended by the United States. The remarks by the representative of India dealing with the connexion between the definition in paragraph 2 and that in paragraph 1 caused the Kenyan delegation some concern; in its opinion the Committee should first come to some agreement on an acceptable formula for paragraph 1 before taking a decision on paragraph 2.

27. Mr. ARGYRIADIS (Greece) said that the proposal by the German Democratic Republic, which would have the effect of extending the carrier's responsibility beyond the port of loading and the port of discharge, had in effect been rejected by the Committee when it had adopted article 1, paragraph 5. At that time the Committee had decided not to extend the carrier's responsibility beyond those two ports, on the grounds that that point should be settled in the context of the preparation of a convention on multimodal transport.

28. He added that some countries, like his own, whose inland transport was governed by mandatory rules, could

not accept the idea that the limits of responsibility fixed by the Convention should be applicable to inland transport as well. For that reason he supported the *ad hoc* Working Group's text, subject to the United States amendment. He did not share the view of the representative of Uganda that if the Committee decided to drop the reference to the law or practices applicable in the port of loading from the subparagraph 2 (a) (i) it ought likewise to drop the corresponding reference in subparagraph (b) (ii), for while it was unnecessary to mention the port of loading, it was by contrast essential to mention the port of discharge.

29. Mr. CASTRO (Mexico) said that he could agree with some of the comments of the representative of India. He thought that the Committee should go back to the original UNCITRAL draft, though he would not oppose a vote on the *ad hoc* Working Group's text with the United States amendment.

30. Mr. AMOROSO (Italy) considered that the proposal by Mauritius could not be referred to the Drafting Committee for it touched on substance and dealt with the minimum mandatory limits and also with the reference to port authorities. It would be asking the Drafting Committee to overstep its terms of reference to take those proposals into account.

31. Mr. GONDRA (Spain) considered that article 4 had given rise to much confusion. The confusion was due to the fact that article 4 was based on two different criteria for the purpose of determining the period of responsibility of the carrier. Paragraph 1 laid down a geographical criterion (port of loading, carriage and port of discharge), whereas paragraph 2, although meant to elucidate paragraph 1, laid down a chronological criterion (taking over and delivery of the goods). Conceivably, however, the two criteria might not coincide; for example, the goods might be taken over outside the port of loading and delivery might take place outside the port of discharge. Hence the confusion was due to the fact that the two criteria adopted—the geographical (port of loading, carriage and port of discharge) and the chronological (taking over and delivery of the goods)—did not necessarily coincide. To remove the confusion it should be clearly specified, if such was the opinion of the Committee, that the geographical criterion set forth in paragraph 1 took precedence over the chronological criterion set forth in paragraph 2, and that the carrier's responsibility would not extend beyond the period during which the goods were in his charge at the port of loading, during carriage and at the port of discharge. Consequently, it would then be necessary, as had already been proposed by his delegation, to define the term "port" in article 1.

32. Ms. OLOWO (Uganda) said that she would not press her delegation's proposal, which was essentially of a drafting nature, provided that it was taken into account by the Drafting Committee.

33. The CHAIRMAN invited the Committee to vote on article 4, paragraph 1, as drafted by UNCITRAL (A/CONF.89/5) and on article 4, paragraphs 2 and 3, as proposed by the *ad hoc* Working Group (A/CONF.89/C.1/L.121/Add.1). He would also put to the vote the German Democratic Republic's amendment to paragraph 1 of the UNCITRAL text (A/CONF.89/

C.1/L.88), the effect of which would be to delete the passage "at the port of loading, during the carriage and at the port of discharge", and also the oral amendment proposed by the United States of America to paragraph 2 (a) (i) of the Working Group's text, the effect of which would be to delete the passage "in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of loading."

34. *The amendment by the German Democratic Republic was rejected by 41 votes to 7, with 9 abstentions.*

35. *Paragraph 1 of article 4 in the UNCITRAL draft was adopted.*

36. *The United States amendment was adopted by 48 votes to 2, with 9 abstentions.*

37. *Paragraph 2, as so amended, and paragraph 3 of article 4 as drafted by the ad hoc Working Group were adopted.*

Principal questions on articles 5 and 6 submitted by the Chairman for consideration by the First Committee (A/CONF.89/C.1/L.132)

38. The CHAIRMAN said that in his opinion article 5 contained the central philosophy of the draft Convention and reflected the compromise whereby UNCITRAL had succeeded in reconciling the various interests involved. In view of the close connexion between article 5 and article 6, he thought they should be considered together. He suggested that the Committee might proceed in the following manner: he would set out in the form of questions the principles on which articles 5 and 6 were based. The Committee would then consider those principles one by one. After any one principle had been considered, the Committee would take a decision on that principle. After those decisions, the Committee would deal with articles 5 and 6, so far as possible paragraph by paragraph and taking account of any amendments submitted.

39. Mr. CASTRO (Mexico) felt that, after considering the principles in articles 5 and 6, the Committee should envisage forming a working group to study the amendments and to determine whether a text that would be generally acceptable could be proposed for those two articles.

40. The CHAIRMAN said that that suggestion should be considered after the Committee had completed its examination of the articles.

41. He read out five questions which, in his opinion, reflected the principles on which articles 5 and 6 were based. Those questions were:

"(1) Should exoneration from liability on grounds of error of navigation be restored?

"(2) Is the Committee in favour of the solution proposed in article 5, paragraph 4, to the effect that, in the event of damage caused by fire, the burden of proof should be on the claimant to show that the fire arose from fault or negligence on the part of the carrier, his servants or agents?

"(3) As regards the limitation of liability, should a double criterion (package and weight) or a single criterion (weight) be adopted? What would be the

amount of the compensation per unit? In what cases should there be unlimited liability?

"(4) Should liability for delay be excluded from the scope of application of the régime or of the Convention? If not, should a special régime be established with respect to this kind of prejudice, or should it be put on the same footing as prejudice suffered by loss? If a special régime should be preferable, on what basis should the limitation of liability be determined: on the basis of the amount of the freight or on the basis of a multiple of the freight?

"(5) How should the unit of account be determined?"

42. He invited delegations which considered that his list was not exhaustive to suggest any other principles which in their opinion ought to be considered.

43. Mr. RAY (Argentina) thought that the questions put to the Committee took account of the fundamental points, but he wished to make two suggestions. In the first place, each delegation should speak in its own name on each of the points. Secondly, a sixth question should be added: delegations would be asked whether they approved the fundamental principle laid down in article 5, paragraph 1, which meant in effect that delegations would be asked whether they were satisfied with the clause concerning exoneration from liability in article 5, paragraph 1. The point was important, as was shown in the amendment submitted by a group of countries which proposed that the principle in article 5, paragraph 1, providing for exemption from liability for absence of fault, should be reversed.

44. The CHAIRMAN asked whether the Argentine delegation would submit in writing the principle which it wished the Committee to consider.

45. Mr. HENNI (Algeria) suggested a further question to be added to those proposed by the Chairman, viz., a question concerning the possibility of leaving to the shipper and the carrier discretion to increase, by agreement, the responsibility of the carrier, and concerning the consequences of such a discretionary clause.

46. The CHAIRMAN said that the point, although important, related not to a principle but to a matter of detail which might be dealt with in the context of the discussion of article 6, paragraph 4.

47. Mr. LAVINA (Philippines) requested that the questions proposed by the Chairman should be circulated in writing.

48. Mr. CLETON (Netherlands) inquired whether the questions put by the Chairman would be dealt with together.

49. The CHAIRMAN explained that they would be considered one after the other. After they had been considered, the general concept of the system would become clearer and the Committee would be able to take decisions by vote on each of the principles. He further suggested that, in order to save time, two or three delegations only should speak for or against any particular principle. Articles 5 and 6 would then be considered later, together with amendments, some of which would be dropped after the discussion on principles. It

would not always be possible to proceed paragraph by paragraph because some decisions on article 5 would depend on decisions on article 6; for example, some delegations would agree to the idea of responsibility for error of navigation if the limitations of the responsibility were reasonable.

50. Mr. RAY (Argentina) approved the procedure proposed by the Chairman. The additional question proposed by his delegation would read: "Does the Committee agree with the formulation contained in article 5, paragraph 1, in other words with the principle of liability based on the fault of the carrier and his exemption from such liability where the absence of fault is proved? What does the Committee suggest for the formulation of this paragraph?"

51. The CHAIRMAN said delegations would still have time during the next meeting to suggest principles for the Committee's consideration.

52. Mr. AMOROSO (Italy) inquired when the Committee would proceed to a vote.

53. The CHAIRMAN, in reply, explained that after the principles had been considered each one would be put to the vote.

54. Mr. SELVIG (Norway) suggested that the third principle referred to by the Chairman should be supplemented by a question concerning the limitation of liability, namely, as regards the amount of compensation per unit, in what circumstances there would be unlimited liability.

55. The CHAIRMAN asked the Norwegian delegation to submit its question in writing.

56. Mr. CASTRO (Mexico) suggested that speakers should be chosen according to the principle of geographical representation in order to enable a majority of members of the Group of 77 to take the floor, because that Group itself could not designate the speakers in a conference of plenipotentiaries and it had been decided that delegations would speak in their own names for or against certain principles.

The meeting rose at 1.05 p.m.

10th meeting

Tuesday, 14 March 1978, at 3.05 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.10

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.113, L.118)

Principal questions on articles 5 and 6 submitted by the Chairman for consideration by the First Committee (continued) (A/CONF.89/C.1/L.132)

1. Mr. RAMBERG (Observer for the International Maritime Committee) said that delegations were doubtless aware of the recommendations on the so-called Hague Rules which had emerged from the 1974 International Maritime Committee (CMI) Conference. Without going into the reasons underlying those recommendations, which were to be found in document A/CONF.89/7, pages 90-96, he would like to address himself to certain matters which were of relevance to the discussion on the possible reintroduction of the defence of error in navigation.

2. At the 1974 CMI Conference there had been considerable opposition to any change in risk allocation of the kind now proposed in article 5 of the draft convention, and an attempt had accordingly been made to work out a more broadly acceptable compromise through the elimi-

nation of the defence of error in the management of the vessel and the maintenance of the defences of navigational error and fire.

3. The CMI assessment of the present situation was that shipowners were afraid that their customers would not be interested in buying more risk cover than was provided for in the Hague Rules and the 1968 Protocol, or in a system that would force them to buy from the shipowners that part of the cover which they now obtained from their cargo insurers. Shippers, for their part, did not think in terms of the necessity for a coherent legal system that would be universally acceptable, but in terms of money, they believed that, in the final analysis, they would have to bear the whole cost of the risk involved, in the form of cargo insurance premiums, and of the part of the freight which related to P and I insurance for shipowners, and that a shift in the balance of the cost of elements involved would run counter to their interests. To begin with, an increase in the recourse possibilities open to cargo insurers would raise the cost of handling claims and thereby increase total "risk costs". Secondly, a shift in risk allocation might be detrimental to the interests of countries that were trying to encourage their importers to buy on so-called "c and f" terms rather than on c.i.f. terms, in order to save on foreign currency by keeping insurance in the domestic insurance market.

4. With respect to the future development of maritime law, he saw various possibilities. The Conference might

be a complete success, as CMI sincerely hoped, and a draft Convention might be adopted which would effectively replace the Hague Rules. If the Conference did not succeed, however, it would be better for it to be a total failure rather than a partial success, since partial success would lead to a situation in which some countries would be applying the Hague Rules, some the 1968 Protocol, others the Convention of the United Nations Commission on International Trade Law (UNCITRAL) and still others none of those instruments. The end result would be a chaotic situation from which only lawyers would profit.

5. Mr. SCHALLING (Observer for the International Union of Marine Insurance) said that he wished to make it clear that the service rendered by marine insurance to international trade would continue, irrespective of the liability system established in a new convention, since marine insurance was flexible enough to adapt itself to changing conditions.

6. The International Union of Marine Insurance (IUMI) had analysed the draft convention on the basis of its knowledge of how the insurance system functioned in practice and with particular reference to the economic implications of the proposed new instrument. In principle, there were two methods of insurance: cargo insurance, which was taken out by the buyer or seller on the basis of the real value of the goods and which remained in force throughout the whole period of carriage; and liability insurance, which protected the carrier. In liability insurance, not only did the extent of the loss or damage have to be ascertained but it also had to be decided whether the carrier was liable under existing legislation or the terms of the contract. It was obvious that both kinds of insurance were necessary.

7. It was important for there to be an economically justified balance between the two kinds of insurance. If liability increased, the cargo insurer would be forced to increase his recourse actions and that would lead to litigation and raise the over-all cost of insurance. The Hague Rules had established a balance between the two insurance systems which kept recourse actions at a tolerable level. Exemption for nautical fault and fire played an important part in that balance, as total losses were usually excluded from liability. Under the proposed new system, the carrier would be held liable in most cases of total loss and the cargo insurers would naturally take recovery action, whereas under the present system total losses were indemnified from cargo insurance and the risk of loss was spread among a large number of insurers.

8. It should be borne in mind that the total costs of production, distribution, transport, insurance and protection of goods would, in the last analysis, fall on the consumer. Cargo and liability had to be insured, and in the circumstances it was difficult to see how a shift in the allocation of risk between cargo owner and carrier would have any effect other than that of changing the insurance coverage.

9. In concluding, he pointed out that it would be easier for developing countries to build up a marine insurance market based on cargo insurance than one based on liability insurance.

10. Mrs. LEGENDRE (Observer for the International Chamber of Commerce) said that in appraising the draft Convention now before the Conference, the International Chamber of Commerce (ICC) had been essentially concerned with the economic consequences of the proposed new system and with the possibility of an increase in transport costs that would, in the last analysis, be borne by the consumers of the goods carried. After holding consultations with carriers, insurers and shippers, ICC had come to the conclusion that such an increase would be an inevitable consequence of the additional burden of responsibility which the proposed Convention would place on the carrier. Its views had been transmitted to UNCITRAL and were to be found in document A/CONF.89/7.

11. If carriers had to take out higher liability insurance than they did at present, the cost to the shipowner would undoubtedly increase. Moreover, as the observer for IUMI had pointed out, no reduction in the cost of cargo insurance could be expected. Those consequences would be more onerous for the developing countries than for countries with a long maritime tradition for two reasons: first, the P and I clubs were the only bodies in practice capable of providing the requisite additional coverage to shipowners, and they were mainly to be found in the developed countries; secondly, the Convention, by modifying the allocation of risks, was likely to hamper rather than promote the activities of the cargo insurance industry emerging in the developing countries as far as the carriage of goods by sea was concerned.

12. Consequently, ICC considered that exemption for nautical fault should be reintroduced into article 5 of the draft.

13. Mr. FRANZINI (Observer for the Latin American Shipowners' Association) said the Association considered that, although in other modes of transport the carrier could be held liable for error, fault or neglect on his part or on the part of his servants or agents, the risks involved in carriage by sea could not be equated with those inherent in other forms of carriage, despite the technical advances that had been made in regard to navigational safety. A variety of factors, such as length of voyage, natural conditions and the various decisions that had to be taken by the master, were beyond the control of the shipowner and justified the maintenance of exemption for nautical fault, as established in the Hague Rules. As far as the allocation of risks between cargo insurance and liability insurance was concerned, the removal of the exemption would not bring added benefit to any of the parties concerned but would raise the shipper's costs and hence the cost of the goods for the consumer.

14. Mr. KERRY (United Kingdom) said that the position taken by his delegation with regard to the very important issue of error in navigation differed in some respects from the views of those who understandably regarded the newly proposed balance of risk as more equitable than the régime established in the Hague Rules, as amended by the Brussels Protocol. He would emphasize, however, that his delegation did not see that there was any conflict of interest between shipping and shipper countries or between developed and developing countries in that respect.

15. In the short run, an increase in the degree of carrier's liability would benefit countries, such as the United Kingdom, with considerable shipowning and liability insurance interests, since it would lead to an increase in freights and hence in liability insurance and eventually benefit the balance of payments as well. Nevertheless, it was the basic view of his delegation that anything that would increase the cost of maritime transport was undesirable both in the national interest and for the international trading community.

16. The transfer to the carrier of liability for errors in navigation would have two obvious effects: firstly, the cost of liability insurance would increase; secondly, the reduction in cargo insurance would not be on a par with that increase. His delegation was therefore of the opinion that the defence of error in navigation should be retained on economic grounds, a view it shared with a number of other delegations which had co-sponsored the proposal contained in document A/CONF.89/C.1/L.113. He would emphasize that his country's position had been adopted after consultation with the commercial interests concerned in the United Kingdom, shipowners and their liability insurers and cargo owners and their insurers, all of whom had been unanimous in the advice they had given.

17. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the arguments advanced by the representatives of the various organizations directly concerned with maritime transport were well-founded. As the problem of exemption for nautical fault had to be considered in its economic as well as its legal aspects, the Conference should not take a final decision on it until all the economic consequences of the exclusion of that defence from the Convention had been weighed. In his delegation's view, one of the consequences would be to raise insurance costs and freight rates, and it hardly seemed fair that shippers, shipowners and carriers, who would suffer in any event from the occurrence of loss or damage, should be held liable in addition for nautical fault on the part of the master or crew of the vessel. His delegation considered it useful for exemption for nautical fault to be introduced into the draft Convention, and had made a proposal to that effect in document A/CONF.89/C.1/L.118.

18. Mr. TANIKAWA (Japan) said that his delegation would like to clarify its position on the question of exemption from liability for nautical fault. To begin with, ocean transport was still vulnerable to special dangers, and compensation for loss and damage was tending to increase while the techniques for preventing such loss and damage had not yet been fully developed. If no exemption was made for nautical fault, more litigation was to be expected. More important still, the extension of the carrier's liability would raise freights, owing to the increase in the cost of liability insurance, which was higher than that of cargo insurance and would be shifted to the shipper and thence to the consumer. The question of nautical fault should therefore be considered carefully in the light of the need to keep total transport costs within reasonable bounds. At the present time, the system of carrier's liability, which was equitable in substance, aimed at minimizing the total cost of the goods.

19. The following points should be borne in mind in proposing to reallocate risk. First, the cost of liability insurance was higher than that of cargo insurance; secondly, any increase in carrier's liability would immediately be reflected in an increase in freight rates, through consultations between liner conferences and shippers' organizations; thirdly, an increase in freight rates would not only place an additional burden on the shipper but would raise the costs for the consumer and might influence the balance of international competition in the export trade; fourthly, the P and I insurance market was limited to a small number of countries, so that any increase in liability insurance costs could have an important influence on national balances of payments, especially in the case of developing countries; fifthly, denial of the exemption for nautical fault would remove the *raison d'être* of the general average system, because at least 90 per cent of general average cases were the result of nautical fault and, if the shipowner were to be held liable, the contributors to the general average would resort to the shipowner for coverage of their contributions. In that situation, the general average system might become meaningless.

20. After weighing the repercussions of denial of the nautical fault exemption, his delegation had come to the conclusion that the exemption should be maintained in the new Convention.

21. Mr. CASTRO (Mexico) said his delegation wished to reaffirm its support for the UNCITRAL text, which eliminated the exemption from liability in the case of nautical fault. Mexico, which was building up its own merchant fleet and was well aware of the need for it to be efficient if it was to contribute successfully to the development of the national economy, was anxious that the allocation of risks in the new Convention should be as equitable as possible. The question of nautical fault had serious implications because, irrespective of whether the loss or damage sustained was recovered from cargo insurance or liability insurance, the actual fact of loss or damage nevertheless affected countries that were trying to develop a merchant fleet. It had been said in the Conference that any change in the allocation of risks would lead to a sizeable increase in freight rates, but according to some studies by the United Nations Conference on Trade and Development (UNCTAD), the increase occasioned by such a change would be in the order of only 1 per cent. That was insignificant compared with the freight rate increases of 5 per cent and more which developing countries had to face yearly or even every six months. It could not be claimed, therefore, that an increase of 1 per cent would have a marked adverse effect on national balances of payments.

22. Mr. RAY (Argentina) said that the question of the elimination or maintenance of the exemption for nautical fault was one of the most controversial issues in the whole Convention. Legislation on the subject went back to 1893, since which time exemption for nautical fault had been observed. Now, however, it was being argued that technology had developed sufficiently to justify the elimination of that defence, although the possibility of human error still remained. He did not wish to enter into a detailed discussion of the possibilities of reducing human

error or of selecting certain techniques that were better than others, but would merely say that the main issue in present-day maritime law was still that of risk and compensation for damage. The question was whether cargo insurers or liability insurers should be responsible for furnishing such compensation. Various organizations, and UNCTAD in particular, had stressed the need for "shipper" countries to maintain the system of cargo insurance, but to extend it to cover some of the risks of carriage as well. That had been the reason traditionally given, from the economic point of view, for maintaining the defence of non-liability for nautical fault. In 1972, when the Working Group on International Shipping Legislation had advocated the elimination of that defence, he had been deeply concerned about the possible effects of its exclusion in cases of general average, collision, or saving of human life. It might be argued in any one of those cases that there had been nautical fault in the events leading up to the occurrence itself, and that would obviously have serious implications for recovery of damages. The shipowner would undoubtedly cover his risks through P and I clubs, but it could not be said that there would be no economic repercussions. Although their magnitude could not be accurately assessed at the present time, despite the efforts made by specialists on the subject, a radical change in carrier's liability would be bound to affect the costs of cargo and vessel insurance.

23. Mr. SHAH (United Nations Conference on Trade and Development) said that he would like to clarify the positions adopted by UNCTAD when article 5 had been discussed, with particular reference to the resolution of the UNCTAD Committee on Invisibles and Financing Related to Trade, which had been cited in plenary.

24. At the fifth session of the UNCTAD Working Group on International Shipping Legislation, representatives of some developed countries had stated that article 5 was unsatisfactory because of the omission of nautical fault as an exception from liability, which they felt might increase total transport and insurance costs. Their views, and views to the contrary of other developed countries, were to be found in paragraphs 6, 8 and 9 of the report of the Working Group on that session.¹

25. Representatives of those same countries had referred to an UNCTAD study on marine cargo insurance² and to resolution 9 (VII) of the Committee on Invisibles and Financing Related to Trade, which endorsed the conclusion in the study that maintaining the present system of cargo insurance was essential and that any radical shift in risk allocation from cargo insurance to carrier's liability would be particularly detrimental to the interests of the developing countries.³ Article 5 was viewed as constituting such a radical shift.⁴

26. The arguments in rebuttal of the developing countries were contained in paragraphs 12–16 of the report. They stated that no contradiction existed between article 5 and resolution 9 (VII), since they considered that the

resolution referred to a "radical" shift of risk allocation as specifically defined in the secretariat study, notably in paragraphs 162, 165, 176 and 183 thereof, where it had been described as a shift from a system of fault liability to a system of absolute liability and an insured bill of lading. As article 5 did not envisage such a change of régime, they did not think it relevant to invoke the resolution in support of the reintroduction of nautical fault as an exception. Cargo insurance would remain as a system and the interests of the developing countries would not suffer. Further, the resolution was directed exclusively to insurance, whereas the UNCTAD Working Group and UNCITRAL had to take an overview of maritime transport as a whole.

27. Representatives of developing countries had also said that, owing to the lack of statistics, there was no certainty that freight rates would automatically rise in all trades. Liner freights rose annually, even under the existing Hague Rules, by large multiple percentages of some 10 to 15 per cent in most trades. Even if rates did increase in some trades by virtue of article 5—and a rise of approximately 0.1 to 0.2 per cent had been estimated in reports to UNCITRAL by two developed countries—they were ready to make "a small sacrifice in view of the added security they would gain from the liability system proposed in the draft Convention." They had also felt that, with the growth of their countries' merchant fleets, liability insurance would absorb a substantial share of local insurance markets. The basic idea of their point of view had been supported by the representatives of some developed countries.⁵

28. Mr. NDAWULA (Uganda) said his delegation considered that, while there might be some marginal increase in insurance costs as a result of the increase in the carrier's liability if the exemption on the grounds of error in navigation were removed, it would not be as high as had been suggested. Liability insurance was, after all, considerably cheaper than cargo insurance, and it was with the former that the carrier would be primarily concerned. As there were still not enough statistics to determine the exact amount of any such increase, it should not be exaggerated by comparison with the losses that would fall on the shipper if the carrier were free to invoke the exemptions available under the existing rules.

29. His delegation had given some thought to the situation where a master of a ship was also the co-owner of the ship—and not simply the servant or agent of the carrier—and to the very difficult position in which the shipper would be placed if that master committed an error in navigation. It had concluded that it would perhaps be better if the carrier were to assume liability for an error in navigation in all cases save where it could be proved that such an error had been caused by a general average element or by act of God.

30. Mr. POPOV (Bulgaria) said that his delegation was in favour of restoring error in navigation as a ground for exemption from carrier's liability. He endorsed the comments made to that effect by a number of other

¹ TD/B/C.4/148.

² TD/B/C.3/130.

³ TD/B/C.4/148, para. 10.

⁴ *Ibid.*, para. 11.

⁵ *Ibid.*, para. 17.

delegations, in particular that of the Soviet Union. He added that, in his view, a vote, though undoubtedly useful on some occasions, would do little if anything to contribute to the solution of the question at issue.

31. Mr. AMOROSO (Italy) reiterated that his delegation was in favour of a new convention which would provide greater protection for the shipper. The general view, of course, was that those countries which had declared themselves in favour of retaining error in navigation as a ground for exemption from carrier's liability were the ones which upheld the interests of carriers. Italy's decision, however, had been arrived at only after due consultation with all the interests concerned, including those of its shippers, who had endorsed that decision. Moreover, despite the volume of Italy's import/export trade, which was among the highest in the world, and the size of its merchant fleet, only 20 per cent of its goods were shipped in Italian vessels, the remaining 80 per cent being carried in vessels flying other flags.

32. Mr. BYERS (Australia) said that his delegation was in favour of the UNCITRAL text and was opposed to the inclusion of an exemption for nautical error. Article 5, paragraph 1, provided for a fair and rational approach to the question of liability as between carrier and shipper by simply stating that the carrier was liable for loss occurring during his period of responsibility unless he showed that such loss was not due to neglect on his part. Conversely, under article 12, the carrier could assert that liability as against the shipper. It was now suggested that a provision should be added whereby, if the carrier could prove carelessness, the shipper should bear the loss; it had not, however, been said that a parallel provision should be inserted in article 12. That seemed, at least at first sight, to be an extraordinary proposition, which flouted both reason and justice. The theory behind it was that the omission of nautical error as an exemption would lead to higher freight rates and costs for the shipper. That was tantamount to saying that the standard of care observed by the carrier was so low that, if he were required to be liable to the same extent as other people, it would impose an extraordinary degree of liability on the shipper. It was indeed strange that countries with long-standing maritime fleets should argue before the Committee that those same fleets were so careless that liability for nautical fault would result in uneconomic shipping. There were no verifiable data or statistics to show that, if the carrier were held liable, the shipper would incur any real additional cost at all. His Government, for its part, was firmly of the opinion that the increase, if any, would be minimal, and that it might even out in future: if the Convention took effect, there would be an economic incentive for the carrier to avoid errors in navigation and, for the first time, he would have to face the fact that, if he was careless, he must pay the cost.

33. Mr. GUEIROS (Brazil), agreeing that exemption from liability on the ground of error in navigation was more of an economic than a legal issue, said that it was only natural, in an era of fast-moving technology, to think in terms of increasing the carrier's liability. Indeed, a precursor of that approach was to be found in article 20,

paragraph 2, of the Warsaw Convention,⁶ which dealt with the even more complex question of air transport.

34. In view of the many factors involved, however, he would first like to hear the views of other representatives before stating his delegation's final position on the inclusion or otherwise in the Convention of an exemption for error in navigation.

35. Mr. EYZAGUIRRE (Chile) said that his delegation supported the basic idea underlying article 5, which provided for a satisfactory system of liability based on fault and for a balanced distribution of risks as between the cargo owner and the carrier. That article also removed much of the uncertainty that stemmed from the provisions in the Hague Rules on duties and obligations, largely because it omitted most of the exemptions laid down in article IV of those Rules,⁷ and in particular the exemption in respect of error in navigation. Those exemptions, for the most part, had responded to the requirements of an era that had passed as a result of advances in shipping, navigation and communications.

36. It should be noted that the limits of liability imposed by the Hague Rules had in fact resulted in an increase in the cost of cargo insurance and had thereby inhibited the access of developing countries' goods to world markets.

37. While it might be generally true that an increase in the carrier's liability would result in an increase in the cost of carriage, he would point out that, under the draft Convention, the carrier could still exclude his liability on such grounds as a *fact of God*, inherent vice in the goods and default or fraud on the part of the shipper. In addition, article 6 placed a monetary limitation on the carrier's liability. It was therefore difficult to accept the contention that the draft Convention would result in a significant increase in freight and insurance costs.

38. The main drawback of the Hague Rules was that the list of exemptions laid down in article IV, paragraph 2, including the exemption for error in navigation, so restricted the carrier's liability that they lent themselves to abuse and gave rise to conflicting decisions by the courts.

39. Under article 5 of the draft Convention, the burden of proof rested on the carrier, in other words, on the person who was in the best position to know what caused the loss or delay in delivery of, or damage to, the goods, and to prove that there was no fault or neglect on his part. That article reflected a positive approach, in keeping with the basic tenets of law.

40. For all those reasons, his delegation was opposed to the various amendments to article 5, paragraph 1, and, in particular, to the inclusion in the draft Convention of error in navigation as a ground for exemption from liability. Moreover, the words "in the navigation or in the management of the ship", which appeared in article IV, paragraph 2 (a), of the Hague Rules, had been the subject of many different and conflicting interpretations, and a

⁶ League of Nations, *Treaty Series*, vol. CXXXVII, p. 11.

⁷ The International Law Association, *Report of the Thirtieth Conference*, vol. II, *Proceedings of the Maritime Law Committee*, London, Sweet and Maxwell, Ltd., 1922, p. 249.

whole range of errors in navigation were confused with commercial errors relating to the care and handling of the cargo.

41. Mr. EL KORASHI (Egypt) said that his delegation supported article 5, paragraph 1, as drafted, and was opposed to the inclusion of error in navigation as a ground for exemption from carrier's liability which would be contrary to the general rules on liability. He also agreed that there was no evidence to show that there would be any significant increase in insurance and freight rates.

42. Mr. DIXIT (India) observed that any change inevitably gave rise to protest. A notable example was the case of seat belts in cars, which had initially provoked an outcry in commercial circles until it had been shown that the effect would be not increased costs but safer driving. All the developing countries wanted, in the existing case, was to ensure that ships would be run in an efficient manner. Any measure to that end which was agreed upon would, of course, be applied in those countries.

43. His delegation was not in favour of including error in navigation as a ground for exemption from the carrier's liability.

44. Mr. HONNOLD (United States of America), supporting the UNCITRAL draft, said that the maintenance of the defence of error in navigation, which had been introduced before the development of modern navigational aids, would be an anachronism. That defence had, moreover, encouraged litigation and resistance to the settlement of fair claims, including claims for contribution under general average.

45. What was required was a powerful incentive to encourage carriers to improve their navigational methods so that cargo could be carried safely and without loss or claims. Studies submitted to UNCITRAL showed that the best way of improving safety standards was to make every carrier realize that he would have to bear the full cost, either directly, or through higher P and I liability. If the exemption for error in navigation were reinstated, all shippers and most carriers would have to bear the risks and costs for the neglect of a few.

46. Mr. ATTAR (Iraq) said that, in his delegation's view, to restore exemption from liability on the ground of error in navigation would be contrary to all the rules of law in developed and developing countries alike. Such exemption would be an inducement to a carrier to neglect his duties in exercising due care in navigation, crew selection and supervision and the maintenance of ship's equipment. Moreover, it was difficult for a claimant to show proof of navigational error. His delegation therefore preferred the text proposed by UNCITRAL.

47. Mr. GANTEN (Federal Republic of Germany) said that his delegation, as a sponsor of document A/CONF.89/C.1/L.113, was in favour of exemption from liability on the ground of error in navigation.

48. The arguments in favour of the original text of article 5 were unconvincing. The rise in freight rates resulting from the application of the text as it stood was unlikely to be as slight as the Mexican representative had suggested. Studies suggested that the rise would be, rather, in the

region of 3 to 4 per cent or even more. Even if freight rates rose by only 2 per cent, the total amount added to insurance bills would be equivalent to several hundred million marks—a consideration which ought to have an important bearing on the Committee's decision.

49. Despite the philosophical reasons adduced by the Australian representative, it was clear that in practice the various parties involved in maritime carriage of goods did not wish to see a liability of the type in question put on the carrier. The basis of the Indian representative's argument concerning the relationship between cost and safety seemed to be that safety was disregarded by carriers. That was not so; in order to be competitive, carriers had to work to high standards of efficiency and responsibility.

50. Mr. CARRAUD (France) said it was important to bear in mind that developments in communications and other branches of technology had greatly reduced the risks of navigation, which thus posed far fewer difficulties to the carrier than in former times. The carrier in any case assumed normal risks as part of his performance under a contract of carriage, and the very notion of a contract implied certain legal obligations from which no international convention should seek to release him. Moreover, an international convention of the type being prepared should look to the future, and it would be short-sighted to legislate only in terms of prevailing conditions.

51. The new Convention should surely aim at establishing a more equitable balance of interests between the shipper and the carrier. It did not seem likely that freight costs would rise significantly as a result of the provisions in the basic text. Although France itself was an important ship-owning nation, some 50 per cent of its maritime trade being carried under the French flag, it did not support the proposal to restore exemption from liability on the ground of error of navigation but preferred to leave the text of paragraph 1, and indeed of article 5 as a whole, as it stood.

52. Mr. SANYAOLU (Nigeria) said that his delegation, too, preferred to retain the text of article 5, paragraph 1, as it stood. That text was the result of a compromise, and past deliberations had shown that the exemption now being discussed was unacceptable.

53. Mr. MacANGUS (Canada) said that his delegation supported the text of article 5, paragraph 1, as it stood.

54. Mr. SUCHORZEWSKI (Poland) said that his delegation would welcome the restoration of exemption from liability on the ground of error of navigation. It was unreasonable to expect only one of two partners to bear the risk of carriage by sea; joint participation in the risks involved was in any case a notion embodied in the maritime laws of many countries.

55. It should be borne in mind, too, that there was more security for the shipper in having his own cargo insurance than in having to seek compensation through the carrier's liability insurance; the former was relatively simple to arrange, whereas the latter normally resulted, in cases of claims, in protracted and complicated

settlements. Moreover, despite some of the views expressed, the inflexible imposition of liability envisaged in the existing text would be bound to result in significant increases in freight rates.

56. Whatever else might be expected of the new Convention, it would have to be practical and widely acceptable if it was to be of real use.

57. Mr. MARCIANOS (Greece) said that his delegation shared the views expressed by the representatives of Poland and the Federal Republic of Germany; it was not convinced that freight rate rises resulting from the proposed additional burden of responsibility on the carrier would be as low as some speakers had maintained, and in any case it saw no merit in creating unnecessary cost increases of any sort, however slight.

58. His delegation agreed that the Committee must adopt a practical approach to the problem. It should not be overlooked that, in practice, cargoes were in any case well insured—indeed, the cargo insurers themselves were not seeking the shift of responsibility which the implementation of the present text would bring about. Likewise, due heed should be paid to navigational hazards, in the face of which those in charge of vessels had to make urgent decisions without having the time for deliberation that the Committee had. The exemption from liability on the ground of navigational error reflected the notion of community of risk—ship and cargo together—which had long been a principle of maritime trade and should be retained in the Convention.

59. Mr. SELVIG (Norway) said that his delegation supported the basic text of article 5. The principle now being discussed was not among those embodied in that text. What the Committee had to consider was the practical effect of the final text in terms of insurance requirements. It was not the purpose of the draft to encourage a liability insurance system to replace cargo insurance. His delegation felt that, in any case, the compensation for cargo losses would remain basically the same, regardless of the final text of the article now being considered.

60. Because of the lack of facts, it was difficult to discuss the cost implications of navigational error. However, the over-all economic effects were likely to be slight, since the navigation risks were insured together with other risks under other so-called FPA risks, at premiums amounting to approximately 0.3 per cent of the value of the goods. One effect of the changes proposed in article 5 was that cargo insurers would recover more from carriers; as a result, their premiums would drop. On the other hand, liability insurance premiums would rise as a result of the increased number of claims. On balance, therefore, over-all insurance costs would remain virtually unchanged. Likewise, general average insurance contributions currently being paid under cargo insurance would be paid under liability insurance instead; it was therefore not a question of whether or not general average insurance would be abolished, but simply of who would pay it.

61. In his delegation's view, the Convention must be acceptable to as many countries as possible, and for that reason alone should include no exemption from liability on the ground of error of navigation.

62. Mr. CASTRO (Mexico), speaking in exercise of right of reply, said that in his earlier statement, to which the representative of the Federal Republic of Germany had referred, he had inadvertently quoted an unduly high figure for the increase in freight rates that was likely to occur as a result of the new Convention. The correct figure was in the order of 0.01 to 0.02 per cent.

63. The CHAIRMAN invited the Committee to consider paragraph II of document A/CONF.89/C.1/L.132.

64. Mr. NDAWULA (Uganda) said that his delegation fully supported the Indian delegation's proposal relating to article 5, paragraph 4 (A/CONF.89/C.1/L.61). That suggestion might seem to involve a departure from the established principle that the burden of proof in law rested upon the claimant. However, the doctrine of *res ipsa loquitur* in cases of alleged negligence required the defendant to show that negligence did not occur. On the premise that vessels adequately prepared for voyages should not catch fire, an outbreak of fire would seem to indicate possible negligence on the part of the carrier, his servants or his agents. In the case of a fire due to an act of God, the carrier could be exempted from liability under a *force majeure* clause. It was the carrier's duty to provide a seaworthy, properly equipped and well-manned vessel and to exercise due diligence in handling, stowing and conveying the cargo, having due regard to the properties of the goods carried. His responsibility normally ended when the goods were delivered from the ship's tackle to an authorized receiver at the port of discharge. The carrier's own interest in his vessel's standard of safety was a further reason why he himself should be required to show, in cases of fire, that negligence was not the cause.

65. In his delegation's view, the proposed shift of the burden of responsibility would not justify an increase in freight rates.

66. Mr. FUCHS (Austria) said that his delegation could not support the text of article 5, paragraph 4, as it stood, for it was unjust in principle and likely to be difficult to apply in practice. Carriers were often called upon to convey goods which by their very nature were prone to catch fire, no matter how high the carrier's safety standards were.

67. His delegation would prefer the deletion of paragraph 4 from article 5, but would be prepared to consider a text which would place the burden of proof on the claimant in cases where the carrier could show that the cargo was of an inherently hazardous nature.

68. Mr. SMART (Sierra Leone) said that his delegation fully endorsed the legal arguments put forward by the Ugandan representative. It was right that the burden of proof in cases of claims should be shifted to the carrier, for the facts of an incident were readily available to the carrier but difficult for a claimant to obtain. If an international convention could omit a reference to the carrier's duty in matters of diligence and seaworthiness of the vessel, it was the carrier who should bear the burden of proof pursuant to such an instrument; otherwise, the carrier could be negligent with impunity. If the facts were in the carrier's favour he could easily disprove negligence.

69. The argument based on the feared rise in freight costs was unconvincing; freight rates had been rising steadily and substantially during the past 50 years for

many reasons, and the effects of the implementation of the present text would make little difference.

The meeting rose at 6.20 p.m.

11th meeting

Wednesday, 15 March 1978, at 10.20 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.11

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8)

Principal questions on articles 5 and 6 submitted by the Chairman for consideration by the First Committee (continued) (A/CONF.89/C.1/L.132)

1. The CHAIRMAN invited delegations to continue the discussion on question 11 in document A/CONF.89/C.1/L.132, relating to article 5, paragraph 4, of the draft Convention.
2. Mr. WAITITU (Kenya) said that it would be unreasonable to impose on the claimant, who in most cases would be the shipper, the burden of proving that, in case of loss due to fire the fire had been caused by the fault or neglect of the carrier or his servants or agents. If a fire occurred on board ship, it was the carrier who was in possession of the evidence. Consequently, it was on him that the burden of proof should rest. To impose it on the claimant would be unfair. Moreover, the Kenyan delegation was not convinced by the financial arguments in support of the text of article 5, paragraph 4, of the draft Convention. For that reason, his delegation associated itself with other delegations which had opposed that paragraph.
3. Mr. MASSUD (Pakistan) said that, in his view, the provisions of article 5, paragraph 4, were even more retrograde than the Hague Rules or even earlier provisions. In a text which sought to improve the position of the shipper and establish a fair balance between the rights and responsibilities of the carrier and the shipper, it was altogether unreasonable and even absurd to impose the burden of proof on the shipper, for it was the carrier who possessed the evidence and it was virtually impossible for the claimant to prove that the fire had been caused by fault or neglect on the part of the carrier.
4. Mr. CLETON (Netherlands) said that fire was one of the main risks involved in sea carriage. Fire was different from error in navigation in that it was often attributable to the characteristics or defects of the goods carried. As more and more dangerous goods were being carried, the fire hazard had been aggravated. Consequently, any

change in the apportionment of risks was bound to have serious repercussions on shipping costs.

5. Under existing maritime law, the institution of general average enabled the pecuniary consequences of the measures taken by the master in the event of peril to save the ship and the rest of the cargo to be spread. If certain goods were deliberately sacrificed in the common interest, their owners received compensation. The deletion of article 5, paragraph 4, would jeopardize the functioning of the general average system since shippers whose goods had arrived safely would refuse to contribute to general average, on the grounds that the carrier must first prove that he was free of any responsibility. If the question of responsibility had to be settled by the courts in all cases of fire, general average settlements would be delayed for several years. The deletion of paragraph 4 of article 5 would therefore affect the legitimate interests of the owner of the cargo which had been sacrificed.

6. The question of the burden of proof in case of fire was not as simple a matter as some delegations claimed. It was not always easy to determine the cause of the fire. If the conclusions of the inquiry were clear, there was no problem, for the party responsible would be identified. However, if the cause of the fire remained undetermined, the burden of proof became merely a matter of the apportionment of risks. It then became necessary to determine whether the carrier should pay damages or whether the risk should rest on the insurer.

7. His delegation firmly supported the text of article 5, paragraph 4, of the draft Convention. That text was the result of a compromise, and if it was amended it would have to be reconsidered in relation to the draft as a whole.

8. Mr. FILIPOVIĆ (Yugoslavia) said that his delegation supported the text of article 5, paragraph 4, of the draft Convention. Many fires were due to the goods carried and, while it was sometimes difficult to determine the cause, there was no doubt that some fires arose from spontaneous combustion, which was not unrelated to the fact that the carrier was often unable to verify the humidity content of certain types of cargo and had to rely entirely on the shipper and his declaration. If the Committee decided to retain paragraph 4 of article 5, his delegation would propose a number of drafting changes.

9. Mr. CARRAUD (France) said that his delegation endorsed the text of article 5, paragraph 4. Even though the solution proposed in that paragraph was not entirely

satisfactory from the legal point of view, the case of fire, unlike the case of error of navigation, was the only one in which risks could be apportioned equitably between the carrier and the shipper. The causes of fire were often very hard to determine. A fire might be due to the negligence of the crew or the malfunctioning of the vessel, but might also be due to the nature, condition and inherent defects of the goods. Fire was a risk of carriage which it would be equally fair to attribute to the goods carried and to the ship. The provisions of article 5, paragraph 4, did not constitute an exemption from liability, but simply reversed the burden of proof in relation to an extraneous and unforeseeable occurrence.

10. Mr. TANIKAWA (Japan) said that, in his view, article 5, paragraph 4, of the draft Convention should be retained. In many cases, fire was caused by the nature of the goods carried; in others, the exact cause could not be determined. It was therefore reasonable that the burden of proof should be upon the claimant. That provision was in keeping with tradition and in no way contrary to justice.

11. Mr. SUCHORZEWSKI (Poland) observed that fires which occurred on board ship were often due to the condition and characteristics of the cargo. The problem of the burden of proof could be avoided by retaining the exemption for fire provided for in the 1924 Brussels Convention. If the Conference was unable to accept that solution, his delegation could agree to article 5, paragraph 4, of the draft Convention.

12. Mr. RŮŽIČKA (Czechoslovakia) said that, for the reasons set out in document A/CONF.89/C.1/L.84, his delegation did not support article 5, paragraph 4. As it stood, the provision gave shippers and consignees the theoretical possibility of proving that the carrier was responsible. In practice, however, no liability would arise in the majority of cases because it would be impossible to prove fault or neglect on the part of the carrier. Moreover, if the general rule of carrier's liability set forth in article 5, paragraph 1, were also applied in case of fire, carriers would be encouraged to take all necessary measures to avoid fire on board vessels. Such measures would make for safe carriage and the limitation of loss. For those reasons, his delegation was opposed to paragraph 4 of article 5.

13. Mr. BREDHOLT (Denmark) said that any convention required a compromise. With that in mind, and without wishing to repeat the arguments advanced by other delegations, his delegation would support article 5, paragraph 4.

14. Mr. COVA ARRIA (Venezuela) supported the proposal of Czechoslovakia (A/CONF.89/C.1/L.84) for the deletion of paragraph 4 of article 5, although he realized that a final decision could not be taken on those provisions until a satisfactory balance between all the interests concerned had been established in the Convention as a whole. If the text remained as drafted, it should be specified that the carrier would be liable for neglecting to take action to extinguish the fire or to prevent it from spreading.

15. Mr. BURGUCHEV (Union of Soviet Socialist

Republics) said that delegations which had not participated in the work of the United Nations Commission on International Trade Law (UNCITRAL) should appreciate that paragraph 4 of article 5 was the result of a compromise reached after lengthy and thorough discussion. He would not attempt to prove the justice or injustice of the provisions of that paragraph, but would mainly request that it should be retained as it stood.

16. Mr. NILSSON (Sweden) said that, after listening to the arguments of those who wished to amend the provisions of article 5, paragraph 4, he felt that the defects of the existing text should not be exaggerated. A fire on board ship was often followed by an inquiry conducted by the official authorities to determine its cause and the other circumstances of the fire. The parties involved were free to participate in the inquiry and its results were at their disposal. The owners of the cargo had every opportunity to prove that the fire was due to the fault or neglect of the carrier. The burden of proof would be important only when the causes of the fire remained undetermined.

17. He stressed that paragraphs 1 and 4 of article 5 represented a compromise between the different interests involved and that each of the elements in that compromise balanced another. It was not possible to eliminate one of the elements without disturbing the balance of the whole, with the consequence that some States might find it difficult to ratify the Convention. Sweden, for its part, was anxious that the Conference should produce a viable Convention. Accordingly, his delegation favoured article 5, paragraph 4, of the draft Convention.

18. Mr. AL-ALAWI (Oman) endorsed the general principle relating to liability of the carrier set out in article 5, paragraph 1, and could see no reason to derogate from it. It was easier for the carrier than for the shipper to produce the necessary evidence concerning the circumstances in which fire had broken out and, furthermore, the carrier knew what action had been taken to avoid such an occurrence. The onus should therefore be on the carrier to prove that there had been no neglect on his part or that the fire had been caused by the nature of the goods. No other transport convention placed the burden of proof in case of fire on the shipper. Furthermore, some delegations had exaggerated the financial implications of the deletion or modification of the provision in question, in particular the risk of higher insurance premiums; his delegation was not convinced that the concern expressed by those delegations was justified.

19. Mr. EYZAGUIRRE (Chile) considered that article 5, paragraph 4, should be deleted because the carrier was in a better position than the shipper to produce evidence concerning both the cause of fire which arose during carriage and the measures taken to prevent it from breaking out and spreading. To place the burden of proof on the shipper would be tantamount to making him defenceless vis-à-vis the carrier. Consequently, his delegation considered that the general liability rule laid down in article 5, paragraph 1, should apply also in the event of fire.

20. Mr. KERRY (United Kingdom) endorsed the principle in article 5, paragraph 4. The representatives of

Czechoslovakia and Venezuela had suggested that, if the shipowner were obliged to prove his innocence in the event of fire, he would make every effort to remove potential causes of fire and would strengthen safety measures on board. Yet surely the ship's master and crew had no desire whatsoever to be burnt alive. On the other hand, there were cases where the carrier undertook to transport goods which, by their nature, represented a fire hazard and actually did cause fire to break out, without the owner of the goods suffering any of the consequences. The whole issue was who should be held responsible in 50 per cent of the cases of fire, namely, where the cause could not be established.

21. Mr. SEVON (Finland) observed that maritime transport involved certain risks which must be apportioned among the various parties concerned, taking into account that those risks were already covered once by insurance. With regard to fire, he said that the only cases which should be taken into consideration were those where the cause could not be established. His delegation had consistently respected the compromise solution concerning liability adopted in 1972, even though all trade interests in Finland had opposed the idea of a reapportionment of risks. Consequently, it could not support any of the proposals which, by modifying the rule set out in paragraph 4, would have an even more radical effect on the apportionment of risks. His Government would find it very difficult to ratify the new Convention if that rule was modified.

22. Mr. MARCIANOS (Greece) endorsed the comments made by those delegations which favoured the existing text of paragraph 4, particularly the financial considerations mentioned by the representative of the Netherlands, the views expressed by the representative of Sweden concerning the burden of proof and the arguments of the representative of the USSR in favour of the compromise reached in UNCITRAL. For the benefit of the representatives who would prefer to retain only the principle of the carrier's liability, he drew attention to another principle which had long prevailed in maritime law, namely, that of the community of risks, which was given practical expression in institutions that did not exist in any other legal sphere, e.g., general average and salvage. Since both vessel and cargo suffered the consequences of nautical fault and fire, which were the main causes of damage, it would not be equitable for the vessel alone to be held responsible. Consequently, endorsement of the existing wording of paragraph 4 did not run counter to the principles.

23. Mr. RAY (Argentina) observed that, in the view of some delegations, the burden of proof should not be shifted to the shipper because, not being on board at the time of the fire, he could not prove fault on the part of the carrier. It might be difficult for the shipowner to prove his innocence in case of fire, but it was even more difficult for the shipper to prove the contrary. Furthermore, the shipowner and crew were the first to suffer from both error of navigation and fire, and to hold the shipowner responsible would neither have any "disciplinary" impact nor contribute to improving safety measures on board. Both cases involved human error against which the

shipowner was powerless, because if it were otherwise he would certainly take all the necessary precautions. The question of liability in case of fire was related to the apportionment of risks and therefore raised a financial problem; it could not be argued that the financial aspect and the risks should be ignored when determining the cost of services.

24. To sum up, the system envisaged in the draft Convention was not very coherent but it was the result of a compromise reached when the Hague Rules had been reformed. In 1972, his delegation had proposed that the shipowner should, after investigation, report on the causes of the fire and be exonerated from liability if his innocence was clearly established in the report, while leaving the possibility open for the claimant to prove that there had in fact been fault on the part of the shipowner. However, that solution had not been accepted and the clause before the Committee was not very satisfactory; the balance between the various components of article 5 should therefore be re-examined.

25. Mr. DIXIT (India) said that the compromise to which reference had been made by several delegations might possibly affect not only article 4 but the entire draft Convention. If that was so, the proponents of the compromise appeared to be jeopardizing the text drawn up by UNCITRAL by submitting a large number of amendments. His delegation had thus far defended the initial text and had only decided to submit an amendment to article 5 when it had become aware of other delegations' attempts to change that text radically. As had been recognized by the representative of France, the provision under consideration was not satisfactory from the legal standpoint. Nor could his delegation accept the contention that it was difficult to establish the cause of a fire. Furthermore, why should the shipper and the consignee be penalized when the carrier had undertaken to transport their goods safely? In that connexion, however, it should be noted that his delegation had never opposed the concept of the apportionment of risks. The financial argument that transport costs might increase if the carrier were held responsible in case of fire was not very convincing. Some representatives had said that the carrier certainly did not want a fire to break out on board; however, if the burden of proof was on the carrier, would he not pay greater attention to the vessel's safety? Finally, with regard to the apportionment of risks, it was not yet clear exactly which risks were affected by article 5; the balance of the draft as a whole was being jeopardized by the sponsors of amendments.

26. In conclusion, he considered that the Committee should either delete article 5, paragraph 4, or adopt the amendment proposed by India (A/CONF.89/C.1/L.61), which placed the burden of proof on the carrier.

27. Mr. NDAWULA (Uganda), referring to the contention that the carrier could not be held responsible for fire because it was often caused by the nature of the goods themselves, drew attention to the provisions of article 13 which contained special rules relating to dangerous goods.

28. Mr. SWEENEY (United States of America) said that the text of paragraph 4 was admittedly the result of a

compromise: it had been agreed to delete the rule concerning exoneration on grounds of error of navigation but to retain that concerning exoneration in case of fire. His delegation now considered that it might be preferable to drop that clause. If that solution was acceptable to the Committee, his delegation would support the adoption of a lower limit of liability than might have been envisaged in article 6. If the Committee decided to retain the existing text of paragraph 4, his delegation would have some drafting amendments to submit.

29. Mr. SMART (Sierra Leone) observed that if article 5, paragraph 4, was a compromise solution, as those who wanted it to stand were saying, what was the point of the amendments submitted by the members of UNCITRAL who had participated in the drafting of the Convention? Some delegations also argued that it was easy for the shipper to establish the cause of a fire when an investigation was conducted at sea; in such a case, it would be even easier for the carrier to produce the necessary evidence. Finally, as had rightly been pointed out by the representative of Uganda, the shipper would not claim any compensation if it was established that the fire had been caused by the dangerous nature of the goods. The carrier would be held responsible only if it was established that the fire was due to fault or neglect on his part.

30. Accordingly, his delegation favoured the deletion of article 5, paragraph 4. Should the Committee decide to retain the paragraph, he would propose that the words "arose from" should be replaced by words such as "broke out or spread as a result of". Fire frequently broke out spontaneously, and the carrier's duty was to prevent it from spreading; any neglect in that respect should involve his liability.

31. The CHAIRMAN invited Committee members to reply to the three questions listed under question III in document A/CONF.89/C.1/L.132, namely: "As regards the limitation of liability, should a double criterion (package and weight) or a single criterion (weight) be adopted? What would be the amount of the compensation per unit? In what cases should there be unlimited liability?"

32. Mr. MARCIANOS (Greece) favoured the adoption of a double criterion, which would be more flexible than a single criterion and would take into account the varying value of goods, particularly bulk cargoes of high weight but low value. The amount of compensation per unit would depend on the decision taken by the Committee.

33. With regard to the last question, he said he could not accept the present text of article 8, to which his delegation had already proposed an amendment, because he considered that liability should be unlimited only in the case of fault on the part of the carrier himself; if liability was unlimited in the case of fault on the part of the master and members of the crew, there would never be any circumstances in which it was limited.

34. Mr. CLETON (Netherlands) said that he would prefer a single criterion based on weight because the double criterion based on weight and shipping unit would perpetuate the difficulties to which interpretation of the

shipping unit criterion gave rise, and lead to many disputes.

35. With regard to the amount of compensation, he said that specific figures were difficult to envisage at that stage since they would be dependent upon the general outcome of the discussions on articles 5, 6 and 8. In any event, the limits set on the amount of compensation should allow for the average value of the sea-borne trade. The study circulated among Committee members by the Canadian delegation contained interesting figures, but those figures related only to Canadian exports and imports and therefore did not give a clear picture of the over-all average value of sea-borne trade throughout the world. That over-all average value would clearly be lower, since Canada was a developed country and the value of its exports and imports was particularly high.

36. The limits set on the amount of compensation should be reasonable and should represent between 70 and 75 per cent of the value of goods carried or between 27 and 35 units of account per kilogram of gross weight of the goods lost or damaged; in other words, they would be similar to those set in the Brussels Protocol of 1968. Local limitations would be applied if the new Convention set limits that were higher than the average limits, because the higher the limits, the easier it would be for shipowners to plead the general limitation of liability; if that became general practice, the limits set in the Convention would become useless. It should be borne in mind that limitation of the amount of compensation was closely related to the over-all limits of liability defined by the Intergovernmental Maritime Consultative Organization (IMCO) in the 1976 Convention on Limitation of Liability for Maritime Claims.

37. The third question related to article 8, which was not acceptable to his delegation as drafted, since any limitation placed on the carrier's liability should have real meaning. The text of article 8 conflicted with the trend of recent conventions adopted in the field of maritime transport, in particular the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 1976 Convention on Limitation of Liability for Maritime Claims, because it introduced exceedable limits which applied also to the carriage of passengers. It would be wrong for goods to receive a higher degree of protection than passengers. Moreover, article 8 might well give rise to disputes in so far as it introduced an unnecessary cost factor in the Convention.

38. Mr. LEE (Korea) said that his delegation favoured a single criterion based on weight, for three reasons: first, such a criterion was simple and easy to apply and likely to establish a balance with other international transport conventions; second, it would not hinder the adoption of a convention on multimodal transport; lastly, the double criterion would involve application of the higher limit, which would be at variance with the purpose of the new Convention.

39. His delegation had not yet made up its mind concerning the amount of compensation per unit, but it favoured the amount adopted in the 1968 Protocol. If a higher amount was fixed, his delegation would propose that it

should be lowered to a reasonable level in the case of bulk cargo.

40. As to the loss of the right to limit liability, his delegation considered that liability should be unlimited only in the case of the carrier's own fault. If the carrier was debarred from claiming the right to limited liability in the case of fault on the part of his servants or agents, the liability system would become meaningless, for in the majority of cases it was the carrier's servants and agents who were involved in the transport operation.

41. Mr. CASTRO (Mexico) said that it was difficult to reply to the questions in document A CONF.89 C.I.L.132 without referring to several articles at once. For instance, to restore exoneration from liability on grounds of error of navigation (first question) would be to introduce in the draft Convention an element which would affect the entire liability system. With regard to the second question, several delegations had said that paragraph 4 should be retained as it stood because it was the result of a compromise concerning not only the paragraph itself but article 5 as a whole and that, even though the provision might be unjustifiable from the legal standpoint, it would serve an economic purpose if exoneration on the grounds of error of navigation were to be excluded. The third question related to article 6, in which two solutions were proposed; the first, which provided for a system applicable to both traditional cargo and containers, was the sound one. Furthermore, the draft Convention could not be considered in isolation from other instruments which limited the liability of shipowners. In that connexion, he observed that the third question was related to article 8, which should serve as the basis for a very clear definition of the loss of the right to limit liability. The wording of article 8 would affect the limit to be set for the unit of account in article 6. The difficulty there would arise not from the fact that the unit of account would be based on special drawing rights, but from the amount of the unit itself. What was needed, therefore, was to establish the relationship between liability and the loss of right to limit liability; that issue might be considered by a special working group before being put to the vote. His delegation would find it difficult to accept the restoration, through a vote, of exoneration on grounds of error of navigation and the adoption of exoneration in the event of fire, since that would mean in effect reverting to the Hague Rules.

42. Mr. AMOROSO (Italy) said that he could not accept the double criterion principle, and considered that it was too soon to determine the amount of compensation per unit, for it would depend on decisions to be taken by the Committee on other questions which it would examine later. Thirdly, in his opinion, liability should be unlimited only in cases of the carrier's own fault, not in cases of fault on the part of the carriers' servants. He therefore favoured amendment of article 8.

43. Mr. BYERS (Australia) favoured adoption of a single criterion; in that way the uncertainties inherent in the double criterion would be avoided. Both parties should, from the beginning of the contract, know their respective liabilities and rights in the event of loss or

damage. It would, however, seem desirable to fix a minimum amount in the case of light cargoes.

44. His delegation considered that determination of the amount of compensation per unit should be based on the very reasonable figures issued by the United Kingdom Government in June 1977, pursuant to the British act on the carriage of goods by sea, in relation to the limits fixed by the Brussels Protocol of 1968.

45. On the question of loss of right to limit liability, his delegation was on the whole in favour of the provision in article 8, paragraph 1. It realized that that provision caused serious difficulty to some delegations and was prepared to reconsider its position in the light of their arguments. It might, for instance, agree to restriction of the number of cases in which limits on the carrier's liability could be waived.

46. Mr. FUCHS (Austria) favoured adoption of a single criterion, by fixing a minimum amount, as proposed by the representative of Australia, or by taking two separate bases—one for bulk cargoes and another for general cargoes—for calculating the amount of liability.

47. It was in the interest of both the carrier and the shipper that the amount of liability per unit should, so far as possible, be limited, because the carrier could economize on his insurance costs and the shipper would be able to insure his goods for their real value.

48. On the third question, he considered, like the Australian representative, that article 8 should be taken as the basis for discussion; another possibility would be to restrict the number of cases in which the carrier would lose the right to limit his liability.

49. Mr. MONTGOMERY (Canada) was in favour of basing the calculation of the carrier's liability on the double criterion of package and weight. The experience of his country showed, however, that of those two elements—package and weight—weight was the more important because it alone was quantifiable. The study circulated to the members of the Committee by his delegation, which showed the value per shipping unit and per weight of all goods carried in Canadian shipping, was particularly useful because it gave separate unit value figures for containerized shipments, which represented the cargoes most susceptible to damage. On the basis of such data, the amount of compensation to be paid to the shipper to indemnify him for loss, in a fair and reasonable proportion, of cargo damageable by the carrier's negligence could be determined.

50. His delegation supported the double criterion method, however, because that system would give greater latitude to the shipper and would be fairer in cases of loss of cargoes of low weight but high value. In any event, the amount of indemnity paid to the shipper would never be greater than the actual value of the cargo lost.

51. The amount of compensation should be decided on the basis of the principle that the shipper should be fully compensated for loss in respect of a fair and reasonable proportion of damageable cargo shipped. According to the figures given in the Canadian study, the amount of compensation was between 70 and 80 per cent of the value of containerized trade—representing approximately 50

per cent of all Canadian trade—which totalled \$22 billion. It could therefore be concluded that the level of compensation should be fixed between \$4.50 and \$10.50 per kilogram.

52. He explained that it was not a question of providing for 70 to 75 per cent coverage for all cargo, including cargo not susceptible to damage, but of dealing properly with cargo which was really damageable, namely containerized cargo. Application to containerized cargo of the 70 to 75 per cent coverage proposed by the delegation of the Netherlands would mean that the limit fixed would be between \$4 and \$5 per kilogram which, according to figures in the Canadian trade study, would coincide with the lower limit of compensation deemed fair by Canada.

53. Turning to the question of loss of right to limit liability, he said that in his delegation's view a carrier should not be entitled to limit his liability where he intentionally caused a loss. It was also of the view that a carrier must take full responsibility for the acts of all persons whose services he used. Accordingly, it denied to the carrier the right to limit his liability if any such person wilfully caused a loss. It could not, therefore, accept the current wording of subparagraph 1 (b) of article 8 which would permit carriers to limit their liability in cases of loss of cargo caused by the wilful misconduct of the master of a member of the crew in the navigation of the ship. There was no logical or moral reason for drawing a distinction between such wilful misconduct and the wilful misconduct of the master or a member of the crew when handling the cargo.

54. Mr. GANTEN (Federal Republic of Germany) said that he, too, favoured adoption of the double criterion, because it seemed necessary to provide for fair compensation for goods of low weight but high value. In his opinion, the double criterion system should not cause difficulties because the Brussels Protocol of 1968 made it possible to deal with any consequential problems. The decision to be taken on that question depended, however, on figures which would be included in the Convention later. It was therefore difficult for his delegation to take a definite decision at the current stage of the discussion.

55. It would also find it difficult at the current stage to propose precise figures for the amount of compensation. It was, however, in favour of fixing moderate limits for the compensation to be paid by the carrier and agreed with the Netherlands delegation that the figures adopted in the Convention should be similar to those contained in the Brussels Protocol of 1968.

56. In the opinion of his delegation, far from solving the problem of the loss of right to limit liability, article 8 would merely complicate the situation and give rise to many disputes. It hoped, therefore, that a clause similar to that contained in the Brussels Protocol of 1968 would be introduced into article 8.

57. Mrs. RICHTER-HANNES (German Democratic Republic) said that, for reasons explained by the representative of the Netherlands, she favoured adoption of a single criterion. The amount of compensation per unit would depend on the final position to be taken by the Committee on the questions of principle currently under

discussion, but her delegation would be prepared to agree to figures similar to those in the 1968 Protocol. On the question of unlimited liability, she endorsed the principle set forth in article 8, paragraph 1.

58. Mr. DOUAY (France) said that, as regards the criterion to be applied for calculating the limitation of liability, it might seem attractive to choose the single criterion, based on weight, which had the advantage of simplicity and which, through the standardization it would introduce, was similar to the criteria applicable in all the other conventions on carriage. Yet the double criterion, which his delegation firmly supported, had greater advantages. In the first place, it took account of the specific nature of carriage by sea. The Brussels Convention of 1924 had, after all, been based on the single criterion of package or unit. By introducing the double criterion, the 1968 Protocol had established a satisfactory compromise between calculation by weight and calculation by unit, only the higher amount being taken into consideration. The double criterion appeared suitable for carriage by sea in that it made it possible to take the container and the packages therein into account as a unit unless otherwise agreed in the bill of lading. In contrast, the disadvantage of a single criterion based on weight would be that it was not suitable for goods of low weight but high value. There was reluctance in such cases to declare the value because the cost might be higher. Moreover, it was more complicated to establish a single figure than to start from the two figures furnished by the double criterion.

59. His delegation considered that, in the shippers' own interest, the amount of the limit of liability should be low because a high figure would raise the carrier's liability insurance and hence the freight rate; it was in the interest of the shippers themselves to cover the value of their goods by cheaper insurance.

60. His delegation considered, therefore, that the figures should be as close as possible to those adopted in the Brussels Protocol of 1968. The figures should, of course, be updated, for they had been adopted 10 years previously and might no longer be valid by the time the Convention entered into force. It would, admittedly, be possible to make certain assumptions and provide in advance for higher amounts, but such a procedure would be somewhat dangerous and arbitrary. It would be preferable, therefore, to provide for review of the amounts of limitation as soon as the Convention entered into force.

61. France's traditional position on the question of unlimited liability was to adopt the criterion of the intentional and inexcusable fault, applying it also to the carrier's servants, as in the Warsaw Convention. Nevertheless, his delegation supported the criteria contained in article 8 concerning servants. It seemed possible to reach a compromise in the matter of loss of right to limit liability, as in the matter of fire and the amount of compensation. It was through compromises that an attempt should be made to settle the problem of liability, not by reintroduction of the error of navigation, which would be out of keeping with the spirit of the Convention.

The meeting rose at 1.10 p.m.

12th meeting

Wednesday, 15 March 1978, at 3 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.12

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8)

Principal questions on articles 5 and 6 submitted by the Chairman for consideration by the First Committee (continued) (A/CONF.89/C.1/L.132).

1. The CHAIRMAN invited the Committee to continue its consideration of the list of principal questions which he had submitted to it (A/CONF.89/C.1/L.132).

2. Mr. TANIKAWA (Japan) said that, with regard to question III, relating to the limitation of liability, his delegation would prefer the adoption of a single criterion, based on weight, which would be simple and practicable to apply and would facilitate harmonization of the liability limitation system in the international régime concerning the carriage of goods. His delegation had no fixed amount of compensation in mind at the time, but felt that the amount should be kept to a reasonable level.

3. With regard to possible cases of unlimited liability, his delegation strongly advocated the reformulation of article 8, paragraph 1, of the draft Convention (A/CONF.89/5) along the lines of the corresponding provisions in article 13 of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, or article 4 of the 1976 London Convention on Limitation of Liability for Maritime Claims. That was the object of the amendment submitted by his delegation in document A/CONF.89/C.1/L.19.

4. Mr. DIXIT (India) said his delegation had no doubt that there was wide acceptance of the existing texts of articles 6 and 8.

5. With regard to the limitation of liability, his delegation thought that a double criterion should be adopted. Experience had shown the merits of such a criterion, which, since it also took into account goods of low weight but high value, would be of benefit to the developing countries, who were increasingly importing high-value goods.

6. With regard to the amount of compensation per unit, his delegation had no fixed sum in mind but would adopt a pragmatic approach. Its final position on that matter would depend on the over-all distribution of risk as between the shipper and the carrier in the draft articles as a whole.

7. The question of unlimited liability raised obvious

difficulties, since the draft Convention provided for the loss of the right to limit liability only in highly exceptional circumstances. Indeed, many delegations feared that the text went beyond the principles of existing jurisprudence in requiring proof that loss, damage or delay in delivery had resulted from an act or omission done not only intentionally or recklessly but also with the knowledge that such loss, damage or delay would probably result. Proof of intent was notoriously difficult to establish. The text did indeed contain some built-in safeguards, and his delegation was prepared to accept it for the time being, but it reserved its position pending the outcome of further deliberations on the article concerned.

8. Mr. SELVIG (Norway) said that a double criterion, such as that contained in the 1968 Brussels Protocol, was already incorporated in the Norwegian Maritime Code and could be accepted by his delegation, although his country had maintained since 1967 that it was simpler to base the limitation of liability on a single criterion. If a single criterion was adopted, he would share the Australian representative's preference (10th meeting) for a minimum limit applicable in all cases.

9. With regard to the amount of compensation per unit, the Brussels Protocol should be taken as a point of departure, bearing in mind the need to compensate for the depreciation in real values since 1968. His delegation would be glad to co-operate in the necessary discussions for that purpose.

10. He agreed with the Mexican representative that the situations in which limitations on liability could be set aside must be very carefully defined. Although the question was clearly the subject of differing views, it was equally clearly a key to the whole future Convention, since a text which enabled such limits to be too easily set aside would surely lose the support of many countries. In his delegation's view, the way to achieve the widest possible acceptance was not to word the text on the lines of draft article 8, but to follow the pattern provided by provisions in other maritime conventions, such as the 1976 London Convention.

11. Mr. SMART (Sierra Leone) said that his delegation preferred the adoption of a single criterion, based on weight, for the limitation of liability. Such a criterion would be consistent with the international conventions governing air transport; moreover, the adoption of a double criterion would involve the difficulty of deciding upon a shipping unit.

12. In that connexion, some Governments advocated the adoption of a double criterion on the grounds that greater liability would thereby be imposed on the carrier, to the benefit of the consignee and the shipper. It was curious that many of the countries in favour of a double criterion

were among those who adduced a possible steep rise in freight rates as a reason for not imposing a further burden of liability on the carrier.

13. His delegation could not at present suggest an amount of compensation per unit, considering that such a decision would depend on the limit of liability to be established. It felt in any case that the amount should be moderate, so as to avoid difficulties for the shipper.

14. In his delegation's view, liability should be unlimited in all cases where the carrier or his agents or servants intentionally committed specific acts leading to loss or delay in delivery of, or damage to, goods. As the Indian representative had pointed out, proof of intention was difficult to obtain; that was why, in many national legal systems, intention was investigated by means of objective tests based on the available evidence.

15. Mr. NDAWULA (Uganda) said that his delegation appreciated the principle of limited liability. The principle was well enshrined in Ugandan legislation; indeed, the absence of a limit of liability would surely give rise to uncertainties and a resultant restraint of trade.

16. Limitation of liability should be based on a double criterion, namely, package and weight, whichever was the higher, and the shipper or consignee should have the right to choose which of the two criteria should apply.

17. His delegation had no fixed views concerning the amount of compensation per unit and would study the progress of further discussions on the subject; it would adopt a flexible approach, insisting only that the interests of the shipper or consignee should not be unduly jeopardized.

18. Uganda could accept the present text of article 8 in a spirit of compromise; however, the carrier should lose the right to a limitation of liability in the instances set forth in article 8. His delegation reserved its right to change that position, in the event that article 5, paragraph 4, was left as it stood.

19. The words "within the scope of his employment" in article 8, subparagraphs 1 (b) and (c) gave rise to misgivings. It should not be made too easy for a carrier to disclaim responsibility for acts committed by his servants and representatives. It was often claimed that an employee had disobeyed or misunderstood instructions; however, the shipper or consignee should not be prejudiced by internal matters stemming from a contract between master and servant. Without wishing to be adamant, therefore, his delegation would be pleased if the words "within the scope of his employment" were deleted from the two subparagraphs in question.

20. Mr. SWEENEY (United States of America) said that his delegation was in favour of the present text of article 6, since it provided for the adoption of a double criterion in respect of limitation of liability, and was thus suitable for all cargoes, whether high-weight and low-value, or low-weight and high-value. His delegation was not in favour of the alternative text for article 6; however, if the Committee saw fit to adopt a criterion based on weight alone, his delegation could accept that with a minimum value, as mentioned by the Australian and Austrian representatives (11th meeting).

21. With regard to the amount of compensation per unit, his delegation proposed that the ideas embodied in the 1968 Brussels Protocol should serve as a basis for calculating the limits. However, it was important to ensure the maintenance of values in real terms, although world-wide inflation and exchange rate fluctuations during recent years had made it difficult to determine the current real value of the figure of 30 Poincaré francs per kilogram established at the time.

22. The United States had prepared tables, contained in documents A/CONF.89/C.1/L.47 and L.131, showing respectively the figures for United States export and import trade by ocean vessels in recent years and the effects of inflation on the limits of liability established in the 1968 Brussels Protocol. It would be seen from document A/CONF.89/C.1/L.131 that there were at least four different methods of evaluating the effect on the Poincaré franc's value since 1967. The United States Government had commissioned a study of the country's foreign trade for the purpose of determining what percentage of the value of United States cargoes would be compensated by a particular unit weight for limitation of liability. In that connexion, the United States was pleased to note that its findings closely resembled those of a similar study carried out in Canada. His delegation hoped that the data would assist the members of the Committee in discussing the unit amount for limitation of liability. For example, the Netherlands delegation (*ibid.*) had proposed that roughly 75 per cent of foreign trade should be completely covered by such a unit amount, and the Canadian delegation (*ibid.*) had proposed, as a lowest figure, \$Can 4 per kilogram; the latter figure was equivalent to roughly 3.3 SDRs per kilogram, which, as could be seen from the table on page 4 of document A/CONF.89/C.1/L.47, corresponded closely to the figure of 76.6 per cent, the cumulative percentage of shipping value — in other words, it was very close to the figure of 75 per cent proposed by the Netherlands delegation. To convert the 1967 value of 30 Poincaré francs to 1977 SDRs would give a figure of roughly 2.5 SDRs, which might possibly be acceptable, although, according to the table just referred to, that figure would cover only some 63 per cent of foreign trade. His delegation felt that the figures revealed were well within a bargaining range and hoped that other delegations would find them useful when deciding what units of limitation would be in their best interests.

23. With regard to the question of unlimited liability, the Hague Rules had contained no provision for breaking the limits; it had obviously been thought that cases of intentional damage would be too few in number to be significant. The new Convention should contain no such reference and the present article 8 should therefore be deleted. His delegation was satisfied that the provisions of the Brussels Protocol were a genuine attempt to solve what for some countries had become a problem, and it could therefore agree to a formulation along those lines. However, it could not accept the notion that a unit limit of liability should be completely "unbreakable"; for that reason, the corresponding formula to be found in the 1974 Athens Convention and the 1976 London Convention

was entirely unacceptable to the United States.

24. His delegation felt sure that there was now a basis for fruitful discussion with a view to achieving a compromise solution acceptable to countries of all economic systems and to shippers, insurers and carriers alike.

25. Next, a member of his delegation from the Department of Commerce would explain the technical details of documents A/CONF.89/C.1/L.47 and L.131, referring to article 6.

26. Mr. JOHNSON (United States of America) said that the figures given in document A/CONF.89/C.1/L.47 reflected United States export and import trade by sea in 1974 and 1975 and exports only in 1976, expressed in terms of shipping value and shipping weight in United States dollars and SDRs per pound and SDRs per kilogram. The conversion from dollars to SDRs had been made at the rate of 1 SDR = \$1.20, which was the average year-end value for 1974 and 1975. The most significant data for purposes of determining liability under the proposed Convention were the cumulative percentages of shipping value given in column 4 of the table attached to that document, since it was value of cargo that was insured.

27. The tables contained in document A/CONF.89/C.1/L.131 were intended to show the effects of inflation on the Visby limits of liability, to give an indication of the level of liability needed in article 6 if real value was to be maintained, and to demonstrate the need to account for future inflation as a factor in maintaining real value as well.

28. The tables had been prepared using four regularly published measures of inflation, two by the United States and two by the United Nations, and gave an indication of the average annual rate of inflation, which ranged from just under 5 per cent for goods only in the United States gross national product to a little over 11 per cent for world-wide exports and imports as calculated by the United Nations Statistical Office. In order to maintain the real 1968 value of Visby, without taking into account other changes in the régime of liability that affected the balance between shipper and shipowner, at those rates of inflation the limits of liability in the new Convention should range from \$US 1.48 per pound (2.72 SDRs per kilogram) to \$US 2.62 per pound (4.82 SDRs per kilogram) and from \$US 1,096 per package (913 SDRs) to \$US 1,947 per package (1,622 SDRs).

29. His delegation emphasized the importance of providing some hedge against inflationary erosion of the limits of liability by an escalation clause, in view of the world-wide decline in real purchasing power and of the problems that would be caused for persons seeking recovery of damages by a deterioration in the real value of those limits. If no such provision was included, the efforts now being made might be rendered meaningless.

30. Mr. MacANGUS (Canada) said that his delegation's analysis of the significance of the United States figures had differed because those figures related to the total value of cargo imported and exported, whereas the arguments advanced by his own delegation had not been in respect of amounts but of a range of values for the kind

of cargo liable to damage, which he had called containerized cargo.

31. Mr. GUEIROS (Brazil) said his delegation preferred the double criterion for the calculation of liability as proposed in the first version of article 6 but had difficulty in accepting either of the expressions in square brackets in subparagraph 1(b). However, while preferring the wording of the first version, it was concerned about certain cases of partial delivery that would require special treatment.

32. With regard to the question of the unit of account, his delegation agreed with the position of the United States delegation as based on the data set out in documents A/CONF.89/C.1/L.47 and L.131. He recalled that the possibility of using SDRs rather than the Poincaré franc as a unit of account had been fully discussed at the fifth session of the Working Group on International Shipping Legislation of the United Nations Conference on Trade and Development (UNCTAD)¹. Some idea could now be obtained from the Canadian and United States statements, and particularly from document A/CONF.89/C.1/L.131, of the values that were necessary, in terms of United States dollars and SDRs per pound and per package, to maintain the real 1968 value of Visby. The 1976 London Convention seemed to offer a solution that would be in keeping with the views expressed at the present Conference, especially by the United States and Canadian delegations. In that case, the value of the national currency of a State party which was not a member of the International Monetary Fund would be calculated in a manner determined by that State.

33. Mr. BREDHOLT (Denmark) said that his delegation was in favour of the double criterion for the limitation of liability. With regard to the amount of compensation per unit, it would prefer to maintain the levels established in the Visby Rules, which had long been a part of national legislation. Moreover, he had been assured by the P and I clubs that the amounts had so far proved to be quite adequate.

34. As far as article 8 was concerned, his delegation was in favour of a formula in keeping with the corresponding provisions in the London Convention and the Athens Convention.

35. Mr. PTAK (Poland) said that, in his delegation's view, the alternative text for article 6, in which the sole criterion used would be gross weight, was not sufficiently flexible. If the liability limit set was fairly low, the owners of cargo that weighed little but was valuable would be unable to cover much of their losses, whereas if the limit was high it would not be applicable to comparatively cheap cargo and the factor of limitation that was so essential to the Convention would never come into play. The damage caused to cargo of that kind would in fact be fully compensated, and that would be contrary to the principles of limitation of liability. Another drawback to the criterion of gross weight was that not all cargoes were weighed.

36. The first version of article 6 was more acceptable to

¹ TD/B/C.4/SL.19/Supp.2, para. 92.

his delegation, since it took into account the differences in the nature and value of cargo and was therefore more flexible. It also appeared to offer greater protection to shippers, who would have a choice with regard to the limits for the coverage of claims in the event of loss of or damage to goods. Moreover, some doubts his delegation had harboured with regard to the exact meaning of the reference to a unit of goods or cargo had been dispelled by the use of the expression "shipping unit" in that version.

37. With regard to the amount of the limitation on carrier's liability, his delegation shared the view expressed in the UNCTAD secretariat study on marine cargo insurance² that there was no need to introduce limits which would be higher than the real value of the ordinary cargo. It therefore considered that the limitation should be based on the amounts established in the 1968 Brussels Protocol, namely, 10,000 Poincaré francs per package or other shipping unit or 30 francs per kilogram of gross weight. Until lately, those amounts had proved sufficiently high to give cargo owners adequate compensation for goods lost or damaged in carriage. If the value of the Poincaré franc was estimated at \$US 0.10, the limit of carrier's liability would be \$US 1,000 per package or shipping unit, or \$US 3,000 per ton of bulk cargo. Those amounts could appropriately be applied for the purposes of the new Convention, subject to a possible adjustment to take account of inflation.

38. As far as carrier's liability for delay in delivery was concerned, it should not exceed the single amount of freight due for the carriage of the goods delayed.

39. With regard to the cases in which unlimited liability should be allowed, his delegation considered that the wording of article 8, paragraph 1, opened the door to dispute and litigation between the parties involved in sea carriage. The rule concerning the carrier's loss of right to limit his liability should be based on the extent of his own fault and not on the fault of his agents or servants. Under article 7, paragraph 2, the servants and agents of the carrier were entitled to avail themselves of the defences and limits of liability accorded to the carrier under the Convention. Consequently, the carrier could not be penalized by being deprived of the right to invoke the limitation of liability because of an intentional act on the part of his agents or servants. The shipowner and carrier were not burdened with unlimited liability for intentional acts or omissions on the part of their servants or agents in any of the more recent international conventions, such as the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, the 1968 Brussels Protocol, the 1974 Athens Convention and the 1976 London Convention. His delegation considered it reasonable to restore the rule relating to the loss of right to limit liability which had been prepared by the Working Group on International Legislation on Shipping of the United Nations Commission on International Trade Law (UNCITRAL).

40. Mr. NILSSON (Sweden) said that his delegation preferred the single criterion of weight for determining the limitation of liability on the grounds that it was a more

clear-cut solution and simpler to apply, but was prepared to consider the matter further.

41. In its view, the question of the amount of compensation should also be discussed further in the light of the amounts established in the 1968 Brussels Protocol.

42. With regard to the third point made in question III, his delegation attached great importance to article 8 and believed that the present text should be brought into line with the corresponding provision in the 1974 Athens Convention, since it introduced an unnecessary cost element that would involve a monetary loss for shippers, consignees and shipowners. It would not only introduce an additional risk that would be difficult to assess and would have to be covered by insurance, thereby undoubtedly raising insurance costs, but would be a source of litigation in the future.

43. He would also like to draw attention to the relation between that article and the provisions on delay. Those provisions could give rise to substantial claims for consequential damage, if, for instance, a vital spare part was delayed. The combination of that kind of rule with the possibility of a breach of limitation could lay an additional burden on shipowners which would be particularly onerous for small shipping companies.

44. The United States representative, in referring to the provision in the 1974 Athens Convention which specified that limitation of liability could be broken in the event of an act or omission by the carrier, had described it as being concerned with unbreakable limits. His delegation did not believe that either that provision or similar provisions in the 1976 London Convention and the 1968 Brussels Protocol were concerned with unbreakable limitations in the true sense of the word, which were to be found only in the 1971 Guatemala City Protocol on transport and the Montreal Protocol No. 3.

45. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his comments would be of a preliminary nature only because the settlement of the problems raised in question III depended on a number of other questions. With respect to the first point, his delegation was in favour of the double criterion of package and weight; and on the question of the unit limitation of liability it considered provisionally that the limit should be related to the amounts established in the 1968 Brussels Protocol, which should serve as the basis for determining compensation. As far as the third point was concerned, his delegation might be prepared to support the proposals made by other delegations, but thought that article 8, paragraph 1, should be amended in order to increase the number of cases in which there was unlimited liability, and that subparagraph (c) of that paragraph should be deleted.

46. Mr. MATHEUS (Venezuela) said that his delegation was in favour of the double criterion of package and weight, since it would give the carrier more flexibility in fixing the freight.

47. With regard to the second point raised in the Chairman's question, the amount of limitation would depend on the decisions reached with respect to liability, while, in so far as the third point was concerned, his

² TD/B/C.3/120, para. 189.

delegation would like to see article 8 maintained as in the UNCITRAL draft. It should not only be an intentional act or omission on the part of the carrier that would deprive him of the benefit of the limitation of liability, but also intentional and serious acts or omissions on the part of his servants or agents in view of the fact that carriage was usually a corporate undertaking. Furthermore, the carrier should also lose the right to limit liability if the freight was not indicated in the bill of lading. His delegation had proposed an amendment to that effect in document A/CONF.89/C.1/L.105, to which it would refer when article 16 was being considered.

48. Mr. GORBANOV (Bulgaria) said that his delegation's answer to the first of the three questions posed under the heading of question IV was in the negative. In its view, liability for delay in the delivery of goods should fall within the scope of the Convention; that was the only logical approach, given the tenor of article 5 as a whole.

49. In answer to the second question, his delegation considered that a special régime should be instituted in regard to the prejudice arising from delay: liability for delay differed from liability for deterioration in, or loss of, goods, since the prejudice suffered by the shipper in the former case was economic.

50. Lastly, in answer to the third question, it favoured the amount of the freight, as opposed to a multiple of the freight, as the basis for determining the limitation of liability if a special régime was instituted.

51. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said his delegation considered, first, that the liability of the carrier for delay in the delivery of the goods should be regulated by the Convention; secondly, that such liability should be subject to a special régime; and, thirdly, that the limitation of liability should be determined on the basis of the amount of the freight.

52. Mr. GUEIROS (Brazil) said that his delegation had already stated its position on the points raised in question IV at the 11th meeting.

53. Noting that a number of amendments had been submitted to article 5, paragraphs 1 and 2, he said that he supported the Polish amendment both to paragraph 1 and to paragraph 2 (A/CONF.89/C.1/L.60) but was unable to accept the United Kingdom's amendments A/CONF.89/L.78 and L.115, including its proposal for a new paragraph 1 *bis*. He also noted that some of the amendments, including the one submitted by the United States (A/CONF.89/C.1/L.58), placed the burden of proving exemption from liability on the carrier. His delegation was prepared to accept that approach, if it were the wish of the Conference. It could not, however, agree to the provision introduced in one amendment whereby the date of the delivery of the goods would have to be specified in the bill of lading or other document evidencing the contract of carriage before the carrier could be made liable. That, in his view, would be most inadvisable in view of all the problems inherent in carriage by sea. It might be a feasible proposition for the Common Market countries, for instance, where distances were not great, but it was not common practice and

should therefore not be made the subject of a provision in the convention.

54. Mr. GRONFORS (Sweden) said his delegation considered that the Convention should govern liability for delay in the delivery of goods, since that was part of the task of unification. It also considered that a special régime was required in view of the difference between liability for loss of or damage to the goods, which was concerned with the goods themselves, and liability for delay, which was concerned with the time-limit allowed a diligent carrier for the performance of his contract of carriage. The basis for determining the limitation of liability—which had some bearing on article 8 (Loss of right to limit liability)—should be the amount of the freight.

55. Lastly, his delegation supported the UNCITRAL draft, which was in complete harmony with other international conventions on liability for surface transport.

56. Mr. SUCHORZEWSKI (Poland), referring to the kinds of loss that might result from delay in the delivery of goods, said that the first kind was possible damage to the cargo due to the prolongation of the voyage, and it was governed by the general rules on the carrier's liability for damage to the goods. The second kind was loss of expected commercial profit by the shipper or consignee, which loss was compensated by reference to the market price at the place of destination of the goods lost or damaged. It was thus clear that the principle of liability for delay was already recognized, and his delegation was therefore in favour of regulating it under the Convention. At the same time, it would have difficulty in accepting any interpretation which extended such liability to more indirect losses—for instance, in respect of the time during which a factory lay idle because of the non-delivery of goods. It therefore saw no need to institute a special régime in respect of such liability, although it was prepared to agree to such a régime if that was the wish of the majority.

57. Further, his delegation considered that the basis for determining the limitation of liability should be the amount of the freight, which represented the carrier's profit and also covered all the expenses incidental to the voyage. For the carrier, loss of freight meant not only that he lost his profit but also that he had to bear all the costs of the voyage as well as the consequences of loss of operating time. The carrier was, after all, the last person who wanted his ship to be delayed, and he would do everything in his power to avoid that happening.

58. Mr. KACIĆ (Yugoslavia) said that, in principle, his delegation was not opposed to the inclusion of liability for delay in the Convention. In view of the different meanings given to the term "delay" in the various legal systems, however, it considered that consequential losses sustained as a result of delay should not be recoverable. Accordingly, a special régime for that category of damage was required. Limitation of liability should be determined on the basis of the amount of the freight payable for the goods whose delivery was delayed.

59. Referring to article 8, he noted that it conferred a higher degree of protection on goods than on passengers—which his delegation could not agree was justified—and

that it adopted a very different approach from that taken in two conventions prepared recently under the auspices of the Intergovernmental Maritime Consultative Organization, namely, the 1976 London Convention and the 1974 Athens Convention. Such an approach, which would encourage litigation, was not conducive to the uniformity of shipping law, one of the aims of the Conference. His delegation would therefore suggest that subparagraphs 1 (b) and (c) of article 8 should be deleted and that the Drafting Committee should be requested to redraft the remainder of the article.

60. Mr. COVA ARRIA (Venezuela), referring to article 5, paragraph 2, noted that liability for delay in the delivery of goods was qualified by the word "reasonable". It therefore added nothing to existing law, under which any such loss had to be dealt with through litigation or by extra-judicial settlement. He further noted that, under the terms of article 5, paragraph 3, liability would arise only after a period of 60 days had elapsed. That period, in his view, should be added to the time agreed upon in bills of lading, as provided for in article 5, paragraph 2, so that loss could be established only after a fairly lengthy delay. Again, the limits of liability as laid down in article 6 would give rise to misinterpretation and litigation. The provisions on liability for delay in the delivery of goods thus contained exceptions which neither clarified nor strengthened the basic principle. His delegation therefore considered that those provisions, in the form drafted, should be deleted.

61. Mr. FRANZINI (Observer for the Latin American Shipowners' Association) said that delay in the delivery of goods was generally caused by errors in the handling of the cargo at the port of loading or discharge — a task performed by persons who, although hired by the shipowner or his representatives, were generally outside the shipowner's control. The point which concerned his Association was that the shipowner, as the party most interested in avoiding delay in delivery, would have to take out insurance to protect himself against liability for acts which were outside his control and which could give rise to very heavy claims. It was therefore firmly of the opinion that the carrier's liability for delay in delivery of the goods should be excluded from the Convention.

62. Mr. FUCHS (Austria) observed that delay in delivery was but one aspect of the issue; delay in arrival could cause the shipper even greater problems.

63. The only criterion for delay laid down in the draft Convention was the time expressly agreed upon in the contract of carriage. In practice, however, such agreements never had existed and never would. In view of all the problems involved and of the possible economic impact on the carrier, his delegation was therefore ready to consider any practical solution, including the deletion of the carrier's liability for delay. If, however, it was decided to retain liability for delay in the Convention, then his delegation would be inclined to favour the amount of the freight as the basis for determining the limitation of liability. If not, it would suggest that the

provisions in article 6 on deviation should be redrafted.

64. Mr. MacANGUS (Canada) said his delegation considered that the inclusion of liability for delay in the scope of application of the Convention would clarify the existing ambiguity under the Hague Rules and the Visby Rules regarding damages for delay. Also, it saw no valid reason for treating damages for delay differently from other types of damage arising under a contract of carriage by sea, since all such types of damage should be compensated. Provided that the provision on delay was carefully drafted, under article 23 the carrier would be prevented from contracting out of his liability.

65. His delegation was not, however, in favour of a special régime to compensate for loss and damage caused by delay. It was but one of a number of causes of damage, all of which should be treated alike. It also saw no need to seek to harmonize, or codify, various national legal provisions in the Convention. If delay was placed on the same footing as other damages, it would make for certainty as to the maximum limitation figure available. A separate limitation figure would cause considerable difficulty, for the parameters of a sliding scale could not be determined in advance with any accuracy. In that connexion, a study on multimodal transport carried out in Canada showed that delay, as a cause of damage, had a minimal economic impact in the relationship between the carrier and the shipper. Another reason militating against a special limitation figure was that, if the figure were to be based on the freight rate, the consignee might not always know in advance what it was. In his delegation's view, a freight rate with a multiple would be very indefinite since it would vary according to the state of the freight market, the distances involved in the voyage, and commodity differentials.

66. Mr. BYERS (Australia) said that, in his delegation's view, liability for delay should not be excluded from the Convention, and liability for prejudice caused by delay should be placed on the same footing as liability for prejudice suffered by loss.

67. Article 5, paragraph 2, clearly stated the basis of liability: if there was an agreement to deliver at a specific time and that agreement was broken, liability arose; if there was no agreement, the carrier was only liable if, having regard to all the circumstances, he had not acted as a diligent carrier. The question then arose whether the party which had sustained the loss should be compensated; the only possible answer was in the affirmative. It followed that, loss having been suffered, it should be compensated in the same way as any other loss, for it was of the same nature, namely, a pecuniary loss. The same régime of liability and the same limitations should therefore apply.

68. The matter should be dealt with by the Conference on the basis of those answers, and there was no need for him to deal with the third point raised in question IV.

The meeting rose at 6 p.m.

13th meeting

Wednesday, 15 March 1978, at 7.40 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.13

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.109, L.114, L.134)

Principal questions on articles 5 and 6 submitted by the Chairman for consideration by the First Committee (*concluded*) (A/CONF.89/C.1/L.132)

1. Mr. DOUAY (France) said that the idea of liability for delay, for which provision was made in the draft Convention (A/CONF.89/5) was an undoubted advance over the Brussels Convention of 1924. It would be a pity to drop such a provision, all the more so as the idea recurred in other conventions relating to the carriage of goods. Besides, the notion of liability for delay which had been introduced into the draft Convention was very reasonable: a delay of delivery could be said to have occurred in cases where the goods were not delivered within the agreed time and, in the absence of such agreement, by a time limit which it would be reasonable to expect a diligent carrier to observe in the light of the circumstances of the case. Accordingly, his delegation considered that liability for delay should not be excluded.

2. For that purpose a special régime should be laid down and compensation for delay should be regarded as a kind of penalty imposed on the carrier. It seemed reasonable to provide for compensation calculated according to the amount of the freight, even in cases where the delayed goods had suffered no damage; in such a case the consignee suffered a *de facto* commercial damage.

3. Mr. TANIKAWA (Japan) considered that provision should be made in the draft Convention for liability for delay, but such liability should be limited to the amount of the freight.

4. Mr. SANYAOLU (Nigeria) said that liability for delay was not provided for in the Hague Rules and seemed to have been treated as coming within the scope of the concept of "consequential" loss. The inclusion of a provision concerning liability for delay in the draft Convention would, therefore, be a welcome progress. His delegation hoped, however, that damage due to delay in delivery would be dealt with in a rule drafted in entirely different terms. In its view, the limitation of responsibility for loss or damage as formulated in the draft Convention would not, if applied to the case of delay, make allowance for what was known in the common law countries as "general damages" which automatically gave rise to a

claim for damages. He was thinking in particular of the rule laid down by the English court in the case of *Hadley v. Baxendale*. If the provision regarding liability for damage or loss was applied to delay in delivery, it would have a bearing only on what was known as "special damages," in which case damages were payable only if the claimant could prove that he had effectively suffered prejudice in consequence of the act complained of. The Nigerian delegation would reserve its position, though it was prepared to consider any proposal that would make adequate allowance for the interests of the carrier and of the consignee.

5. Mr. NDUMBA (Uganda) considered that liability for delay should not be excluded from the Convention, for it would be unfair for the shipper to sustain the full loss or damage resulting directly from the delay even in the absence of any negligence on his part. So far as he was aware, commercial insurance did not cover damage resulting directly from delay in delivery, and the same was no doubt true of policies of cargo insurance other than those based on the British system. Therefore, if under the Convention the carrier was not to be liable for delay, the shipper would invariably suffer the full extent of the consequential damage; nor could he insure against the risk of such damage with his insurer, whereas the carrier could take out a policy to insure against such a risk as part of the general carrier's liability insurance, either on the commercial insurance market or with the P and I clubs. He pointed out that the potential loss suffered by the shipper owing to delayed delivery could be enormous, for the delay might at times involve the loss of an entire cargo; the risk was particularly great in the case of perishable goods.

6. So far as the basis of the limitation of liability was concerned, he considered that the amount of the freight should not be the decisive criterion. In his delegation's opinion, a special and more realistic formula should be worked out entitling the shipper to more equitable compensation.

7. Mr. SWEENEY (United States of America) referred to his Government's elaborate proposals concerning the clauses in the draft Convention dealing with responsibility for delay. His delegation would formally introduce those proposals, contained in document A/CONF.89/7, if the Committee should decide that the future Convention should make provision for such liability. For the time being, he would merely explain that in his delegation's view liability for delay should not be excluded from the Convention and a special régime should be established. At the same time, however, his delegation considered that material damage due to delay in delivery should be approached in the same way as loss or damage to the goods were approached in article 5. As regards the

limitation of responsibility, his delegation had not as yet made up its mind; it might be prepared to accept as a basis either the amount of the freight or a multiple of the freight.

8. Mr. DIXIT (India) said that the Working Group had made great efforts to introduce the notion of liability for delay into the draft Convention. The notion was undoubtedly of interest to all States, and not only to the developing countries; each of them expected an appropriate clause to appear in the future Convention. The developing countries were particularly vulnerable to the risk of delay in delivery in cases where by the time goods arrived in their ports they had lost their commercial value and were no longer marketable. The intention was not to penalize the carrier, for neither the carrier nor the shipper nor the consignee wanted goods to be delivered late. What was really at stake were economic interests. If a country which had made international commitments did not receive the goods on time, its credit might be seriously eroded in the international market.

9. Accordingly, he hoped that the Committee would approve a text more or less closely modelled on that of the draft Convention. He was in favour of a provision concerning liability for delay but had not finally made up his mind whether it would be desirable to lay down a special régime as regards the basis of limitation of liability for delay.

10. Mr. EYZAGUIRRE (Chile) considered that liability for delay should not be excluded from the Convention. His delegation had earlier expressed (10th meeting) support for article 5, paragraph 1, under which delay in delivery was one of the causes of the carrier's liability, and had also supported paragraph 2 of the same article which defined what was meant by delay in delivery. As the concept of delay in delivery occurred in other conventions dealing with the transport of goods, the inclusion of a corresponding provision in the draft Convention under consideration would tend to unify the international transport conventions.

11. He was not convinced that liability for delay should be governed by a special régime. In his opinion, the general principle governing responsibility should apply to cases where damage or loss was due to delay in delivery. So far as financial loss was concerned, however, the amount of the freight might conceivably form the basis for computing compensation.

12. Mr. RAY (Argentina) said that his delegation was in favour of the inclusion in the draft Convention of a provision concerning liability for delay. In its opinion, a special régime would have to be formulated and the liability should be limited to the amount of the freight or to a multiple of the freight. It should not be left to the shipowner to fix an excessively long period for delivery in the bill of lading. Subject to small drafting changes, his delegation considered the relevant provisions in the draft convention acceptable.

13. Mr. RAMÍREZ HIDALGO (Ecuador) said he was in principle in agreement with the idea of including in the Convention a provision concerning liability for delay; that liability should be governed by a special régime, on

condition that the result would not be a heavy increase in freight rates, which would be harmful to international trade.

14. Mr. HENNI (Algeria) considered that the provisions in the draft Convention concerning liability for delay were not very satisfactory. His delegation agreed that the shipper should be compensated for delay in delivery due to the carrier's fault. Not uncommonly, however, the delay was attributable to the situation in a port. As a country having close trade relations with the European countries, Algeria had often suffered from the consequences of strikes paralysing some European ports and also from congestion in its own ports. In such cases the carrier ought to be exempt from liability. The principle of liability should, however, be upheld in cases where the carrier was himself the consignee of the goods and where delayed delivery was due to, for example, delay attributable to one of his consignees.

15. Mr. SEVON (Finland) said that his delegation was in favour of the inclusion of a rule concerning liability for delay and also for the inclusion of a special régime based on the amount of the freight.

16. Mr. CASTRO (Mexico) considered that liability for delay in delivery should not be excluded from the Convention, that that kind of liability should be governed by a special régime and that the limitation of such liability should be determined in the light of the freight.

17. Mr. AMOROSO (Italy) took the view that it was not indispensable to regulate the question of liability for delay in the Convention. Patently, the carrier more than any other party was anxious that the goods should be delivered in good time. In most cases, delay was due to strikes or to port congestion. Moreover, it was often very difficult to determine what would be a "reasonable" deadline within which to demand delivery of the goods.

18. Nevertheless, the delegation of Italy would be prepared to accept the majority view if responsibility for delay was regulated in the new Convention, provided that indirect damage was excluded. Responsibility for delay should be governed by a special régime and limited to the amount of the freight.

19. Mr. KERRY (United Kingdom) considered that responsibility for delay should not be excluded from the Convention, but should not be subject to a special régime. Delay should be treated as a normal cause for damages for breach of contract, having regard to the terms of the contract and the circumstances. In his delegation's opinion that kind of damage should not be subject to any special limitation. The main reason why delay in delivery was mentioned in article 5, paragraph 2, was that it anticipated the provisions of article 6 which dealt with limitation of liability. Since his delegation saw no justification for a special provision concerning limitation of liability, which would complicate matters, it considered that all reference to delay might be omitted.

20. Mr. M'BAH (United Republic of Cameroon) considered that a provision concerning responsibility for delay should appear in the draft convention, provided it was spelt out that the carrier's responsibility would not be involved if he could prove that delay was due to force

majeure. In tropical countries, delay in the delivery of goods might hold up work on a building site for a long time, particularly when goods, instead of being delivered before the dry season, arrived just before the rainy season.

21. In his delegation's opinion, responsibility for delay should be subject to a special régime. It had not, however, made up its mind regarding the delicate problem of the limitation of compensation.

22. Mr. SILARD (International Monetary Fund) introduced the statement submitted by the International Monetary Fund (IMF) (A/CONF.89/C.1/L.109 and Corr.1) commenting on the provisions in article 6 of the draft Convention which related to the unit of account to be used for computing the limit of the carrier's liability. At its ninth session, the United Nations Commission on International Trade Law (UNCITRAL) had envisaged the use of the special drawing right (SDR) of IMF in lieu of the "gold franc", which had originally been proposed, or of the solution in article VII of the Montreal Protocol No. 4 to amend the Warsaw Convention, by which the States members of the Fund had adopted the SDR as unit of account, whereas non-member States had adopted a unit based on gold.¹ That decision to adopt the SDR rather than a unit based on gold had been made in pursuance of an amendment to the Articles of Agreement of the Fund, under which the official price of gold had been abolished for almost all practical purposes, and gold could not be used by the Fund's 133 member States as the common denominator of their exchange arrangements. The price of gold in the markets was a fluctuating price, and for that reason it was not a technically appropriate basis for the uniform valuation of currencies that a unit of account should achieve. For that reason the SDR was incorporated in the clauses of a great variety of treaties dealing with units of account.

23. Since the last UNCITRAL session in 1976, a further development had been made: agreement by the London Conference on Limitation of Liability for Maritime Claims (see A/CONF.89/8, foot-note 31) on a revised version of the formulation used in the Montreal Protocols. The revision was an effort to deal with the problem of the lack of legal assurance of uniformity of valuation as between the currencies of States members and of those not members of the Fund. In order that the calculations and conversions made by non-member States would permit them to express, in their own currency, a "real value" as close as possible to that expressed in units of account, the solution was to require the non-member States to communicate to the depositary the manner of calculation or the result of the conversion, and any change in either. The formula in article 8 of the London Convention was supplemented by article 21, which provided for the possibility of substituting other units of account for the units of account defined in the Convention, namely, the SDR and gold, by decision of a special conference taken by a two-thirds majority of the States parties present and voting.

24. The unit of account provision of the London Convention was, therefore, a clear improvement over that of the Montreal Protocols, because it sought to assure the uniform valuation of the currencies of all States parties whether or not they were members of the Fund. Although "real value" was not defined, and therefore its meaning must depend on actual practice, the negotiators of the London Convention considered that the provision concerning communication of the method of valuation would provide satisfactory assurance that the "same real value" would be achieved as the value calculated on the basis of the SDR.

25. The technical effect of the provision for non-members of the Fund whose law did not permit the valuation of their currencies in terms of the SDR raised a special problem: should they maintain the valuation of their currencies in terms of gold for the purposes of the London Convention? The same problem would arise in the Convention being studied. The London Convention expressly retained a unit of account defined in terms of gold and assumed that States which could not convert their currencies into SDRs would by implication maintain the value of their currencies in gold terms, for the purposes of that Convention, on the basis of a price equivalent to the historic one of SDR 35 an ounce. The problem would arise in cases where there was no longer any international agreement on the price of gold, all reference to which had been eliminated by IMF in the international monetary system. Provision would also have to be made for the case where States whose currency was based on gold and could not be converted into SDRs changed their law: would the convention have to be revised in order to give effect to any such change? In his opinion the technical problem might be dealt with in the same way as in the London Convention, by adding a clause similar to the article 21 he had mentioned earlier.

26. In view of those considerations, he suggested that the Conference might wish to consider another solution that would also respect the position of States not members of the Fund whose law did not permit the application of the SDR unit of account. The solution would be to authorize those States to value their currencies, for the purposes of the Convention, in a manner determined by each such State, but subject to the requirement of achieving the "same real value" as would apply to other Contracting States, along the lines of article 8, paragraph 4, of the London Convention. Such a formulation would not alter the monetary *status quo* for those States, because they could continue to value their currencies formally in terms of gold for as long as they wished, but would provide a flexible technical framework for the possibility of transition to a different method of valuation by them without the need for a revision of the Convention.

27. The draft clauses concerning the unit of account in article 6 as suggested by IMF (see A/CONF.89/C.1/L.109 and Corr.1) was based on the considerations he had mentioned. Paragraph (a) stated that the unit of account meant the special drawing right of the International Monetary Fund and that the amounts referred to in the Convention would be expressed in terms of the national currency of the contracting State in which limitation was

¹ See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, p. 89, para. 9 (c)*.

sought according to the value of that currency on the date of payment in terms of the special drawing right as published by the International Monetary Fund or, if such value was not published, as calculated by reference to the value of another currency that was published.

28. Paragraph (b) stipulated that the value of the national currency of a contracting State that was not a member of the International Monetary Fund and whose law did not permit the application of the method in subparagraph (a) above would be calculated for the purposes of the Convention as determined by that contracting State, provided that the calculation was made in such a manner as to express in the national currency as far as possible the same value as expressed in terms of the unit of account by members of the International Monetary Fund. A contracting State would communicate to the depositary the manner of calculation pursuant to paragraph (b) at the time of signature, and whenever there was a change in the method of calculation.

29. Mr. CARRAUD (France) said that his delegation was in favour of the choice of the SDR as defined by IMF as unit of account, but had not been fully convinced by the suggestions made by the observer for the Fund, for a complex matter was involved. In the French delegation's view, States not members of IMF might simply continue to use the reference to the Poincaré franc, a system which had been adopted in the Convention on Limitation of Liability for Maritime Claims, 1976, and which seemed to be the most reliable. In addition, his delegation proposed an automatic quinquennial review of the amount of the limitation to be laid down by the Convention, for SDRs did not make allowances for the general erosion of the purchasing power of currencies, and the amounts to be specified in the Convention would have to be periodically adjusted, lest they lose annually a substantial portion of their real value. He was not thinking of a systematic indexing. Only the parties to the Convention would meet to carry out the review, which would be concerned solely with the amount of compensation. That procedure might be introduced by tacit agreement and the revaluation would be applicable to all the States parties which had not expressed an objection within six months from its adoption. By means of such periodic reviews it would be possible to check at specified intervals the value of SDRs, but as the value was not to be pegged outright the system would be flexible and, in the context of compensation, it would be possible to rectify the situation in the light of the financial implications of the Convention's provisions—which might be greater or smaller than expected.

30. Mr. LARSEN (United States of America) introduced the new article proposed by seven delegations (Denmark, Finland, Germany, Federal Republic of, Netherlands, Norway, Sweden and United States of America) in document A/CONF.89/C.1/L.114. The sponsors, having noted that the limit of liability could no longer be expressed in terms of Poincaré francs, proposed as unit of account the special drawing right defined by the IMF. The current price of gold was about four times the \$35 an ounce fixed some years earlier. For those States which had not enacted legislation reflecting, in terms of national currency, the limitation of liability provided for in the

Brussels Protocol of 1968, the consequences would be that their carriers would have to take out insurance for an amount well above that established in pursuance of the Protocol. If the limit of the liability was known, the carrier, as well as the shipper, would know for what sum they had to insure themselves; but if the limitation was not clear each one would take out insurance for the highest risk in the event of loss or damage and each one would cover the same risks, which would be an economic and financial waste.

31. Accordingly, the proposal sponsored by the seven delegations fixed a limit of liability in terms of special drawing rights and, as regards the States not members of the IMF, envisaged the possibility for each State to calculate the amount in question in terms of a monetary unit based on gold. That unit would be defined in such a way as to express the same value, so far as possible, as that denominated in units of account based on SDRs. States not members of IMF would communicate to the Secretariat of the United Nations, as depositary, the method used for converting their national currency and any change in that method.

32. The proposal of the seven delegations was based on the formula adopted in the Montreal Protocol of 1975 to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air and was closely modelled on the formula adopted by the London Conference of 1976 on the Limitation of Liability for Maritime Claims.

33. Mr. SANYAOLU (Nigeria) said that his delegation, with a view to internationalizing the scope of the proposed new Convention, was in favour of the adoption of the unit of account that might be supported by every member State wishing to become party to the Convention. Accordingly, his delegation supported the proposal of IMF (A/CONF.89/C.1/L.109 and Corr.1) that a unit of account based on SDRs should be adopted, except in so far as States not members of IMF would have to convert their national currency by special methods of computation for the purposes of the Convention.

34. Mr. TANIKAWA (Japan) said that his delegation was in favour of the adoption of a unit of account based on SDRs and considered that, for the purpose of dealing with the complex problems connected with the conversion of the currencies of States not members of IMF, the formula in article 8 of the London Convention of 1976 concerning the limitation of liability for maritime claims should be used, a formula which also occurred in other international instruments. The London formula seemed to him to be the only practicable one, despite the difficulties mentioned by the observer for IMF. The proposal of IMF, however, introduced a double factor of fluctuation in the method of converting national currencies and, hence, tended to complicate the situation even further. The Japanese delegation considered therefore that the proposal would need further study with a view to working out a more practical solution.

35. Mr. GANTEN (Federal Republic of Germany) thanked the observer for IMF for his enlightening remarks on the point under consideration and, as a co-

sponsor of the draft introduced by the United States on behalf of seven delegations, associated himself with the United States representative's statement.

36. Mr. EYZAGUIRRE (Chile) said that the unit of account referred to in article 6 should be based on the special drawing right for the reasons given in the IMF statement (A/CONF.89/C.1/L.109 and Corr.1). That was the formula adopted for other international instruments, like the Montreal Protocol of 1975, which amended the Convention for the Unification of Certain Rules Relating to International Carriage by Air, the London Convention of 1976 on limitation of liability for maritime claims and the Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea. As regards States not members of IMF, the solutions proposed in the same document might likewise be adopted, and in general the IMF's conclusions met with the Chilean delegation's approval.

37. Mr. NILSSON (Sweden) said that he had little to add to the United States representative's excellent presentation of the proposal by seven delegations, which was modelled on the terms of the London Convention of 1976. It was desirable to harmonize the texts of various conventions as far as possible, and since there were in any case some differences between the Montreal Protocol and the London Convention it was unnecessary to work out a fresh formula, which would merely create ambiguity for the future. He added that, while the IMF's proposal would produce for members of the Fund results very similar to those of the seven delegations' proposal, it might give rise to problems of substance for countries not members of the Fund.

38. Mr. BURGUCHEV (Union of Soviet Socialist Republics) agreed with the Swedish representative's comment. The USSR was not a member of the IMF, and the only solution acceptable for his country with regard to the limitation of the carrier's liability would be to base the unit of account on the value of gold. For that reason, and while thanking the observer for IMF for his explanations, the USSR delegation could not endorse draft article 6 annexed to the IMF document and would prefer provisions modelled on those of the London Convention of 1976 to be introduced into the proposed new Convention.

39. Mr. GUEIROS (Brazil) expressed support for the new article proposed by the seven delegations which reproduced, with some slight changes, the terms of article 8 of the London Convention of 1976. His delegation could not however agree to the passage "without reservation as to ratification, acceptance or approval" which appeared in square brackets in paragraphs 2 and 4 of that text.

40. Mr. DIXIT (India) said that he would favour the adoption of SDRs as the unit of account for the purposes of the draft Convention.

41. Mrs. RICHTER-HANNES (German Democratic Republic) said that her country, not being a member of IMF, would have great difficulty in agreeing to the SDR as the unit of account. Without wishing to repeat earlier arguments against that method which had been expressed at the time when the London Convention of 1976 had

been prepared, she pointed out that the solution adopted in that Convention had succeeded only thanks to a compromise and that the text in that Convention was so vague that it might give rise to disputes concerning the method of calculation employed.

42. Although her country would be unable to agree to the elimination of gold for the purpose of determining the unit of account in the context of the new draft Convention, she thought nevertheless that a compromise might be arrived at on the basis of the text of the London Convention.

43. Mr. KACIĆ (Yugoslavia) said that, as a member of the International Monetary Fund, Yugoslavia would be able to agree to the system of special drawing rights. So far as countries that were not members of IMF were concerned, he thought that the formula used in the London Convention was a workable basis of calculation that might be applied *mutatis mutandis* in the new draft Convention under consideration.

44. Mr. MARCIANOS (Greece) said that, whatever system was adopted, a specific method of calculation should be defined on which courts would be able to rely for the purpose of adjudicating in disputes regarding the limitation of the amount of the carrier's liability. Perhaps the final clauses might contain a provision allowing each State party to determine every month or every six months the value of special drawing rights in relation to its own currency.

45. Mr. RAY (Argentina) said that, as a member of the International Monetary Fund and because Argentine legislation laid down pecuniary limits of liability in terms of gold, Argentina was prepared to support the solution that would be considered most appropriate in the draft Convention.

46. Mr. POPOV (Bulgaria) said that many of the elements of the proposal by the observer for the International Monetary Fund were unfortunately unacceptable to the Bulgarian delegation, which considered that the financial limitation of the carrier's responsibility should be expressed in terms of units of account pegged to the value of gold. Accordingly, his delegation would be able to agree to the London Convention of 1976 on limitation of liability for maritime claims being taken as the basis for the provisions currently under consideration.

47. Mr. KHOO (Singapore) expressed support for the principle that SDRs should be used as the units of account for the purposes of the draft Convention. As regards countries not members of IMF, his delegation might agree that special provisions tailored to their particular requirements might be adopted for the purpose of ensuring equality of their rights vis-à-vis those of countries members of the Fund.

48. Ms. BRUZELIUS (Norway) said that as a member of the International Monetary Fund her country would be unable to use gold as the basis for the unit of account in future conventions. She explained that before coming to the Conference she had been explaining draft legislation in the Norwegian Parliament the object of which was to eliminate gold and to substitute SDRs in the legislation concerning transports.

49. The question before the Committee was merely of a technical nature; the solution adopted in the Montreal Protocols and later refined in the London Convention and protocols was based on purely pragmatic considerations. The issue currently before the Committee was not so much to introduce SDRs as to deal with the problems that such introduction might create for countries not members of the International Monetary Fund. The formula in the London Convention was a compromise taking into account both the interests of member countries and those of non-member countries of IMF, maintaining for non-member countries limitations of the carrier's liability in terms of gold francs. While appreciating the technical quality of the IMF proposal contained in document A/CONF.89/C.1/L.109, she pointed out that, in practice, it would be preferable to model the provision in the new draft Convention on that employed in the London Convention and protocols which had already been accepted by delegations. She agreed, however, with the view of the observer for IMF that it would be desirable to add a clause analogous to that of article 21 of the London Convention in order to allow countries to revise the unit of account in the event of any change concerning SDRs or the value of gold. She was planning to submit a proposal to that effect in the Second Committee.

50. She thought that the French representative's suggestion deserved consideration, namely that provision should be made for the possible inclusion in the draft Convention of a clause enabling States to review periodically the limitation of the amount of liability laid down by

the Convention in order that it could be promptly changed if its value should have been eroded by inflation.

51. The CHAIRMAN inquired whether the Argentine representative wished the Committee to consider forthwith the proposal in document A/CONF.89/C.1/L.134 which related to articles 5 and 6.

52. Mr. RAY (Argentina), in reply, said that as his delegation's proposal was closely related to those of the United Kingdom and some other countries, he would prefer his delegation's proposal to be considered later, for there might be some amendments to it.

53. The CHAIRMAN, summing up, noted that the discussion had been useful in that it had shown a clear majority of delegations in support of the draft text proposed by the seven delegations. Still, opinions were divided on some points. He thought that the first task was to identify on which points there was agreement and to reconcile opinions where there was disagreement. For that purpose, he invited delegations to engage in informal consultations with a view to working out a generally acceptable compromise. For his part, he was thinking of appointing a consultative group to identify points not as yet agreed and to work out a comprehensive text which he would put to the Committee early in the following week. Until then the Committee would deal with articles 7, 9, *et seq.* of the draft Convention.

54. *The Chairman's proposal was accepted.*

The meeting rose at 10 p.m.

14th meeting

Thursday, 16 March 1978, at 10.25 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.14

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.50, L.59, L.63, L.98, L.135)

Article 7

1. The CHAIRMAN invited the Committee to consider article 7 and the two amendments thereto, one submitted by the United States of America (A/CONF.89/C.1/L.59) and the other by Mauritius (A/CONF.89/C.1/L.135).

2. Mr. BOOLELL (Mauritius) said that his delegation's amendment to article 7, paragraph 1, was of a purely drafting nature and was the logical consequence of the changes which Mauritius had proposed to article 5

(A/CONF.89/C.1/L.122) and article 6 (A/CONF.89/C.1/L.127). It would therefore apply only if those amendments were adopted.¹

3. Mr. BENTEIN (Belgium) said that, in his view, the Committee should not take up the Mauritian amendment to article 7, paragraph 1, until it had reached a decision on articles 5 and 6, consideration of which had been postponed and to which the Mauritian delegation had also proposed amendments. Those various amendments were closely linked.

4. Mr. SWEENEY (United States of America) observed that the amendment submitted by his delegation was of a purely drafting nature. He proposed that it should be referred directly to the Drafting Committee.

5. The CHAIRMAN said that, if there was no objection, he would take it that the Committee decided to refer

¹ See below, 34th meeting, para. 71.

the amendments of the United States (A/CONF.89/C.1/L.59) and Mauritius (A/CONF.89/C.1/L.135) to the Drafting Committee, subject, in the case of the Mauritian amendment, to a reservation. He invited the Committee to proceed to consider article 9.

Article 9

Paragraph 1

6. Mr. DOUAY (France) said that, in its amendment to article 9, paragraph 1 (A/CONF.89/C.1/L.50), the French delegation was proposing that "the shipper shall be presumed to be in agreement in the case of shipment in containers." The rule set forth in article 9, paragraph 1, under which the carrier was entitled to carry the goods on deck "only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations" failed to take account of the extremely frequent cases in which goods were carried in containers. Depending on the circumstances of the shipment, such goods might be placed on deck rather than in the hold of the ship, but they were sufficiently well protected by the containers in which they were housed and were not exposed to the same risks as were goods loaded directly on deck without the packaging safeguards offered by containers. To require the shipper to give his agreement in respect of all cargo shipped on deck, even where containers were used, would mean requiring that agreement to be given whenever containers were loaded on board ship, so as to provide for their possible carriage on deck, since the carrier could never know in advance which containers were to be stored in the hold and which were to be shipped on deck.

7. It could, of course, be argued that, under the particular usage of container carriage, containers could equally well be shipped under deck or on deck. However, that was a question of interpretation, which might differ from one legal system to another: under some legal systems, it might be considered that the usage of the container trade enabled containers to be shipped either under deck or on deck, while under other systems the agreement of the shipper might be required. It was therefore useful, in the interests of carrier and shipper alike, to clarify the rule set out in paragraph 1 of article 9 by stipulating that the agreement of the shipper would not be necessary for cargo shipped in containers to be carried on deck, since such agreement would be presumed merely from the fact that containers were used. That clarification would safeguard the interests both of the carrier and of the shipper and would facilitate the carriage of containers on deck.

8. Mr. AMOROSO (Italy) said he supported the French proposal, which seemed to him to be extremely sensible and likely to facilitate relations between the carrier and the shipper.

9. Mr. FUCHS (Austria) said that he found the French proposal extremely useful, since containers were often carried on specialized ships and it was difficult to tell whether or not containers were shipped on deck.

10. Mr. MARCIANOS (Greece) said that he, too, supported the French amendment, which he considered to be logical and equitable.

11. Mr. SELVIG (Norway) said that, in his opinion, the French proposal might conceivably be justified in the case of container ships or where containers were delivered fully loaded by the shipper. However, that proposal seemed to him to be unacceptable in that it involved more than the particular case of container ships. It was also unacceptable when considered in the context of the other provisions of article 9, and particularly paragraph 2. The French amendment would establish a presumption of agreement between carrier and shipper; the rule set forth in paragraph 2 would apply to that presumed agreement. Thus, all bills of lading and other documents relating to the carriage of goods by container would have to stipulate that the goods concerned could be carried on deck, a stipulation that would have serious consequences for cargo insurance. The cargo owner would be obliged to insure all goods carried by container on the same basis as goods carried on deck and would thus have to pay far more than under the normal container insurance system. The French proposal would therefore create insurance problems in the context of article 9, paragraph 2. For that reason, he did not support that amendment.

12. Mr. BYERS (Australia) said he agreed with the representative of Norway that the French amendment to article 9, paragraph 1, would replace a general, flexible rule, which in its present form took account of the wishes both of the carrier and of the shipper, by an absolute rule, the interpretation of which might lead to injustices and which would deprive the parties of their legitimate right to conclude an agreement concerning the carriage of goods on deck. He therefore opposed that amendment.

13. Mr. TANIKAWA (Japan) said that he, too, was unable to support the French amendment, which would eliminate the requirement of agreement between shipper and carrier for the carriage of goods on deck.

14. Mr. DIXIT (India) said that, for the reasons indicated by the representatives of Norway and Australia, he was opposed to the French amendment. Moreover, that amendment would mean that the safety of goods shipped in containers could not be assured, since no international container norms yet existed, and containerized cargo carried on deck might therefore, in certain cases, be badly protected.

15. Mr. GANTEN (Federal Republic of Germany) said that he supported the French amendment. By laying down the principle that containers could be carried on deck, that amendment would solve many of the practical problems associated with that form of carriage, although it might, of course, be considered that that presumption was already established in article 9, paragraph 1, by the phrase "in accordance with . . . the usage of the particular trade", for if a particular trade entailed carriage by containers, the shipper would normally suppose that his containers would be carried on deck.

16. However, he appreciated the difficulties referred to by the representatives of Norway and India and suggested that they might be overcome by adding to the French

amendment the words "on ships specifically designed for the transport of containers."

17. Mr. GORBANOV (Bulgaria) said he was prepared to support the French amendment, but would suggest that the words "save any stipulation to the contrary" should be added at the start or the end of that amendment so as to make it clear that the rule was not absolute and that the parties were free to stipulate the contrary.

18. Mr. DOUAY (France) said that the phrase "the shipper shall be presumed to be in agreement in the case of shipment in containers" expressed a presumption which, by definition, could be rebutted by any stipulation to the contrary in a contract. There was therefore no need to add the words "save any stipulation to the contrary", as proposed by the representative of Bulgaria.

19. Contrary to what had been said by the representative of Norway, it would not be necessary to stipulate, whenever a container was shipped, that that container could be carried on deck. On the contrary, it was possible to be certain—and therein lay the merit of the French proposal—that, where nothing was said, the container could be carried on deck, since agreement was then presumed. That presumption was more reliable than the provision to the effect that the carriage of containers on deck was permissible if such carriage was "in accordance with . . . the usage of the particular trade."

20. Mr. MONTGOMERY (Canada) said that, in his view, the French amendment might raise difficulties of interpretation. For that reason, and also for the reasons given by other delegations, he could not support it. He thought that the wording of article 9 was rather confused and might be a source of litigation. Consequently, in his view, the text of that article should be reformulated.

21. Mr. MASSUD (Pakistan) said that the presumption set forth in the French amendment might run counter to the wishes of the parties, particularly the shipper. In his opinion, the problems with which that amendment was designed to deal were already duly taken into account in article 9, paragraph 1, and particularly in the phrase "in accordance with . . . the usage of the particular trade", which covered the case of container ships. Consequently, he could not support the French amendment.

22. Mr. DUDER (Liberia) said he thought that if the French amendment was adopted any common type of vessel, and not only container ships, would be able to carry containers on deck. Consequently, he could not accept that proposal.

23. Mrs. RICHTER-HANNES (German Democratic Republic) said she fully supported the French amendment, which reflected existing practice. Under article 9, if a court ruled that the deck carriage of containers on a ship of a traditional type was in accordance with the usage of the trade, the carrier would not be liable for damage to goods carried on deck in containers. The French amendment would serve to maintain the liability of the carrier, even if the containers were carried on deck.

24. Mr. MUHEIM (Switzerland) said that he supported the French amendment, although he felt that the phrase suggested by the Federal Republic of Germany should be added to it. To enable carriers to agree to the carriage of

containers under deck, on the basis of the shipper's instructions, it might be appropriate to add the words "unless the shipper gives instructions to the contrary." That would make it clear that instructions to the contrary were essential if the presumption that would be established by the convention were to be rebutted.

25. Mr. SMART (Sierra Leone) said that, in his view, the effect of adopting the French amendment would be to exclude containers from the definition of goods given in article 1, since the term "goods" as used in paragraph 1 of article 9 should have the same meaning as in that definition. The carrier or his servants or agents were able to see the goods before they were shipped, and there was nothing to prevent carrier and shipper from reaching an agreement concerning containers, as provided for in article 9, paragraph 1. His delegation would prefer that article 9, paragraph 1, be maintained in its current form.

26. Mr. CASTRO (Mexico) said it was necessary to safeguard the right of the shipper to give instructions to the carrier, for some cargoes were valuable and must be carried under deck, even if they were housed in containers and transported on a container ship. That was a problem of substance which called for more thorough examination.

27. Mr. WAITITU (Kenya) said he did not support the French amendment. However, the wording of article 9, paragraph 1, caused him some concern, because it reintroduced the concept of usage in certain provisions which should be new. His delegation hoped that the Drafting Committee would reword the entire article so as to give clear expression to the basic idea set forth in paragraph 4.

28. Miss MURO (United Republic of Tanzania) said that she could not support the French amendment, which would deprive article 9, paragraph 1, of its flexibility.

29. Mr. MARTONYI (Hungary) said that he was in favour of maintaining the text of article 9, paragraph 1, as it stood. It would be dangerous to give the carrier virtually unlimited freedom by authorizing him to carry goods on deck without taking into account the type of vessel or the person—shipper or carrier—who had placed the cargo in containers.

30. Mr. ATTAR (Iraq) said that, in his view, the adoption of the French amendment would run counter to an equitable allocation of risks as between shipper and carrier. The risks of sea carriage were more pronounced on deck than under deck, even for cargo housed in containers. It would be unjust to establish a presumption that, where goods shipped in containers were carried on deck, the shipper had given his agreement.

31. The CHAIRMAN noted that the majority of delegations were opposed to the amendment submitted by France.

32. Mr. DOUAY (France) explained that the wording proposed by his delegation would enable containers to be carried on a vessel other than a container ship when the circumstances so required. If the shipper considered his goods to be valuable, he could always stipulate in the contract that the containers must not be carried on deck. No reference would be made to the matter in the bill of

lading unless the shipper ruled out carriage on deck. The object of the French amendment was therefore to introduce greater flexibility into container transport. However, those who interpreted that amendment as running counter to the interests of shippers seemed to fear that it might give rise to complications. For that reason, his delegation would withdraw its amendment.

33. Mr. GANTEN (Federal Republic of Germany) and Mr. MUHEIM (Switzerland) said that they, too, would withdraw their proposals.

Paragraph 2

34. The CHAIRMAN noted that the Committee had before it two amendments. One of them (A/CONF.89/C.1/L.63) was of a drafting nature and would be referred to the Drafting Committee; the other (A/CONF.89/C.1/L.98) related to a question of substance and would be introduced by its sponsor, the Austrian delegation.

35. Mr. FUCHS (Austria) said that, in his opinion, a bill of lading which failed to mention the fact that the carrier and the shipper had agreed that the goods would or could be carried on deck was contrary to the custom of the trade and to the spirit and intent of the convention, which was designed to ensure greater safety in international trade. Moreover, the paragraph downgraded the bill of lading. In international trade, if the bill of lading did not stipulate that goods were to be carried on deck, it was presumed that they had been carried under deck. A third party who relied on that presumption might subsequently discover that the goods had in fact been carried on deck. Insurance companies might also make inaccurate assumptions. It was therefore necessary for bills of lading to include a statement concerning carriage on deck in all cases. For that reason, his delegation proposed the deletion of the second sentence in paragraph 2.

36. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he supported the amendment of the Austrian delegation on that point, as well as on article 9

(see A/CONF.89/8, para. 139), under which the carrier would be required to insert in the bill of lading a statement that the goods were to be carried on deck, not only where such carriage took place in accordance with an agreement between shipper and carrier but in all cases. That idea should perhaps also be expressed in article 15.

37. Mr. BOOLELL (Mauritius) said he supported the Austrian amendment. It should however be pointed out, in the event that that amendment was not adopted, that the last sentence of paragraph 2 made no mention of the consignee, an omission which caused his delegation some concern. It might be concluded from that gap that the carrier could invoke the agreement against the consignee, but not against a third party.

38. Mr. SEVON (Finland) said that, in his view, the second sentence of paragraph 2 was designed to deal with a practical problem. The provisions were so drafted as to apply only to relations between the carrier and the person with whom he had concluded the contract of carriage. If it was necessary to determine whether an agreement had been concluded between them concerning the carriage of goods on deck, the burden of proof would rest upon the carrier. That provision would not introduce any uncertainty into international trade. His delegation would be sorry to see the second sentence of paragraph 2 deleted and preferred the text contained in the draft Convention.

39. Mr. MARCIANOS (Greece) pointed out to the representative of Mauritius that the carrier could not invoke against the consignee an agreement for carriage on deck. The term "third party" should be interpreted to mean any person other than the shipper and the contracting party.

40. Mr. KERRY (United Kingdom) said that he could not accept the amendment proposed by Austria, since the second sentence of article 9, paragraph 2, provided a practical and reasonable solution to the problem involved.

The meeting rose at 11.30 a.m.

15th meeting

Thursday, 16 March 1978, at 3.05 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.15

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.7, L.20, L.21, L.64, L.98, L.143, L.149)

Article 9 (continued)

Paragraph 2 (concluded)

1. The CHAIRMAN invited further comments on the Austrian amendment which proposed the deletion of the second sentence of paragraph 2 of article 9 (A/CONF.89/C.1/L.98).

2. Mr. BYERS (Australia) said that, while he was sym-

pathetic to the Austrian amendment, he considered that in practice it might give rise to a problem. The carrier did not know whether any particular container would be carried above or below deck until or shortly before loading took place, in other words, after the shipping documents had been drawn up. It was likely therefore that the carrier would require each contractual document to bear an endorsement to the effect that a container might be carried above deck, which could mean additional expense. So long as that was a reasonable possibility, he was unable to accept the proposal.

3. Mr. DOUAY (France), opposing the Austrian proposal, said his delegation considered it absolutely essential to retain the second sentence of paragraph 2. The first sentence laid down the general rule that authority to carry goods on deck should be included in the bill of lading. To that general rule the second sentence added a necessary rider, for such authority might be given not in the bill of lading but in another document subsequently agreed between the shipper and the carrier. The only way in which that could be prevented was by amending the first sentence so as to provide that authority could be given solely in the document of carriage. That, however, would be an unwarranted interference with freedom of contract. Consequently, it was necessary to provide for cases where authority was given not in the bill of lading but subsequently. Accordingly, the second sentence placed on the carrier the burden of proving that he had authority to carry goods on deck. To protect third parties, it also provided that a *res inter alios acta*—an agreement concluded between the carrier and the shipper—could not be invoked against a third party who was a holder in good faith of the bill of lading—in other words, against a third party who was a stranger to an agreement which had not been referred to in the bill of lading or document of carriage.

4. Mr. MASSUD (Pakistan) said that the Austrian amendment did not take account of the relationship between paragraphs 1 and 2 of article 9. Paragraph 1 laid down three conditions, each of which, if complied with, would entitle the carrier to carry goods on deck. Paragraph 2, however, only applied where one of those conditions obtained, namely, where there was an agreement between the carrier and the shipper to carry goods on deck. He therefore saw no justification for deleting the second sentence of that paragraph. Further, there was no reason why a consignee who relied on the bill of lading, which under article 1, paragraph 6, was evidence of the contract, should suffer because it did not contain a statement to the effect that the parties had agreed to the carriage of goods on deck.

5. Mr. SMART (Sierra Leone), supporting the Austrian amendment, said his delegation considered that if the holder of a bill of lading—a quasi-negotiable instrument—assigned his interest to a third party, that party should be entitled to all the rights under the bill of lading. Paragraph 2 as drafted, however, would make it impossible for a third party to acquire such rights. Should the Committee decide to retain the second sentence of paragraph 2, his delegation would suggest that the last part be redrafted to make it quite clear that the word

“acquired” referred only to acquisition by purchase as opposed to acquisition by gift or any other means.

6. Mr. SUMULONG (Philippines) said that the second sentence of paragraph 2 was inconsistent with the first. The first sentence provided that, where the carrier and shipper agreed to the carriage of goods on deck, the carrier was under an obligation to insert a statement to that effect in the bill of lading. The second sentence then provided that, even where no such statement was included in the bill of lading, the carrier could still prove that there had been such an agreement. That inconsistency, in his view, would open the door to litigation not only as between the carrier and the shipper but also as between the carrier and a third party who acquired the bill of lading in good faith and in the belief that the cargo he had purchased was being carried under deck. He therefore supported the Austrian amendment.

7. Mr. MacANGUS (Canada) said that his delegation had also had some difficulty with paragraph 2. The first sentence was not clear as to the point at which the carrier should insert in the bill of lading a statement regarding the agreement to carry goods on deck; and the second clause of that sentence was open to the interpretation that the carrier could comply with that obligation by including a general statement in the terms which normally appeared in fine print on the back of the bill of lading or contract of adhesion. That, in his delegation's view, would deprive the shipper of some very necessary protection, and consequently his delegation felt that the clause should be reworded to make it quite clear that, whenever the carriage of goods on deck was agreed, the carrier must include an express statement in the bill of lading. It would therefore propose that the end of the first sentence be amended to read: “the carrier shall insert in the bill of lading or other document evidencing the contract of carriage at the time of issuance thereof, an express statement to that effect.” The Committee might wish to refer that amendment to the Drafting Committee.

8. Mr. DIXIT (India) said that his delegation endorsed the principles embodied in article 9 and consequently was not in favour of the Austrian amendment. The first sentence of paragraph 1 dealt with the basic point that if, by agreement of the parties, goods were carried on deck, the carrier was under a mandatory obligation to state that fact in the bill of lading. The second sentence then provided for the situation where an agreement had been entered into but had not been recorded in the bill of lading. He fully supported the idea underlying that provision, namely that, in such a case, if the bill of lading had been negotiated to a third party who had thereby acquired legal rights under it, that party should not be placed in a position where he might suffer loss or be prejudiced in any way to his disadvantage.

9. Mr. FUCHS (Austria) said that, since the majority in the Committee were not in favour of his amendment, he would withdraw it in favour of the Canadian amendment on the understanding that the latter would be referred to the Drafting Committee.

10. Mr. CASTRO (Mexico) said it seemed to him that the content of the Canadian amendment was already

covered by the first sentence of paragraph 2 as drafted. He feared that any attempt to clarify that sentence would, in fact, only obscure the intent.

11. Mr. AMOROSO (Italy), referring to the first sentence of paragraph 2, proposed that the words "shall insert" should be replaced by "must insert".

12. The CHAIRMAN, noting that there were no further comments, suggested that paragraph 2 of article 9, together with the Canadian and Italian amendments, should be referred to the Drafting Committee.

13. *It was so decided.*

Paragraphs 3 and 4

14. *Paragraphs 3 and 4 were adopted and referred to the Drafting Committee.*

Proposed new paragraphs

15. The CHAIRMAN drew attention to the proposals of Greece (A/CONF.89/C.1/L.7) and Japan (A/CONF.89/C.1/L.20) for the addition of a new paragraph to article 9. He invited the representative of Japan to introduce his proposal.

16. Mr. TANIKAWA (Japan) said that his delegation proposed that a new paragraph should be added to cover cases where loss, damage or delay in delivery resulted from special risks inherent in the carriage. The burden of proof, in such cases, would rest on the carrier. He pointed out that a similar provision, in regard to live animals, appeared in article 5, paragraph 5.

17. Mr. MARCIANOS (Greece) withdrew his delegation's proposal in favour of the Japanese proposal which, broadly speaking, covered the same point.

18. Article 9 provided for cases where goods were carried on deck in breach of the law but was silent as to the lawful carriage of deck cargo. In particular, it was necessary to provide that the carrier should not be liable for damage resulting from special risks inherent in the carriage. His delegation therefore considered that the Japanese proposal, the terms of which were very fair, should be included in the Convention.

19. Mr. SANYAOLU (Nigeria) said he saw no need to include the proposed paragraph in the Convention since its terms were already covered by article 5 (Basis of liability). In particular, the carrier could rely on article 5, paragraph 1, which did not impose strict liability, while negligence on the part of his servants or agents was covered by article 5, paragraph 7.

20. Mr. KERRY (United Kingdom) said that, while the Japanese proposal did not involve a major point of principle, his delegation felt it should be included in the Convention. Provision for the risks inherent in carrying live animals was made in article 5, paragraph 5, and, if a parallel provision on the risks inherent in the carriage of deck cargo were omitted, there was a danger that the courts would draw a contrast between the two types of carriage.

21. Mr. SMART (Sierra Leone), opposing the Japanese proposal, agreed that the point was already covered by article 5 and that there was therefore no need to include a specific reference of the kind proposed.

22. Mr. MASSUD (Pakistan) said that the proposal confused two issues. Basically, the fact that there was an added risk in the carriage of goods on deck had nothing to do with the criteria for determining liability. In the case of deck cargo, the carrier was only liable, under article 5, paragraph 1, to the extent that he failed to take "all measures that could reasonably be required to avoid the occurrence and its consequences". Any added risk was that of the shipper, not of the carrier. He therefore saw no need for the proposal and did not support it.

23. Mr. BYERS (Australia) said that the proposal would introduce a special régime for all deck cargo. He did not agree that any analogy could be drawn between deck cargo and the carriage of live animals. The effect of the first sentence of the proposal, as his delegation read it, would be to relieve the carrier of his liability where loss resulted from any special risks inherent in the carriage of deck cargo. The second sentence then provided that a carrier could discharge that liability, by proving not that the damage was in fact caused by the risks, but that it could have been, unless proof were furnished — presumably by the shipper — that the loss, damage or delay was caused by the negligence of the carrier. Thus, the proposal involved a radical shift in the burden of proof under article 5, paragraph 1. It discharged the carrier of liability where he showed the possibility of damage by reason of special risks, and imposed on the shipper the burden of showing proof that he was in fact unlikely to be able to furnish. That was entirely contrary to the notions embodied in article 5, and his delegation was unable to accept the proposal.

24. Mr. STURMS (Netherlands) said his delegation supported the Japanese proposal and endorsed the underlying idea that, where deck cargo was concerned, the burden of proof should be reversed. He pointed out that a parallel provision was to be found in articles 17 and 18 of the Convention on the Contract for the International Carriage of Goods by Road, 1956.¹

25. Mr. DUDER (Liberia) said he wondered whether the additional paragraph proposed by the Japanese delegation was based on the idea of lower freight rates which might apply in cases of special agreements for the carriage of purpose-built containers on deck, since special agreements were different from on-deck carriage according to normal trade usage. In normal conditions of on-deck carriage in containers, the freight rates would be the same as for below-deck cargo. In his delegation's view, there should not be separate régimes to differentiate between the two forms of carriage.

26. Mr. DIXIT (India) said that his delegation could not support the Japanese proposal since the whole basis of liability had already been dealt with in article 5.

27. Mr. WAITITU (Kenya) said that the régime set forth in the UNCITRAL draft was already favourable to the carrier and that the proposed additional paragraph would serve only to increase the imbalance. The matter was, in any case, adequately covered in other articles, including paragraph 1 of article 9 itself.

¹ United Nations, *Treaty Series*, vol. 399, p. 189.

28. Mr. MONTGOMERY (Canada) said that his delegation opposed the Japanese proposal. In general, if a carrier of deck cargo breached the express provisions agreed upon, his liability should be without defence in so far as the specific risks of the carriage were concerned. The general provisions contained in article 5 should suffice to cover cases where the normal risks of carriage applied and a carrier failed to prove that he had taken all reasonable protective measures.

29. Mr. FILIPOVIĆ (Yugoslavia) said that his delegation supported the adoption of the Japanese proposal, since the additional paragraph would add something new to the Convention, in line with provisions in existing instruments relating not only to road transport, which the Netherlands representative had mentioned, but also to carriage by rail. In the case of an incident relating to goods carried on deck, the burden of proving that such an incident was not attributable to special risks inherent in deck carriage was on the shipper, and if the Conference agreed on that point the matter should be stated explicitly in the new Convention.

30. At the request of Mr. TANIKAWA (Japan), the CHAIRMAN invited the Committee to vote on the proposed additional paragraph to article 9, as contained in document A/CONF.89/C.1/L.20.

31. *The draft additional paragraph to article 9 was rejected by 48 votes to 10, with 5 abstentions.*

Article 10

Paragraph 1

32. Mr. DIXIT (India) said that the purpose of his delegation's amendment (A/CONF.89/C.1/L.143) which proposed the addition of a sentence after the first sentence in article 10, paragraph 1 was simply to make it clear that the contract between the carrier and the actual carrier should be in more or less the same terms as that between the carrier and the shipper.

33. Mr. STURMS (Netherlands) said that his delegation viewed the Indian proposal as involving more than a mere drafting matter. The proposal was not compatible with his delegation's concept of the actual carrier, as defined in article 1, paragraph 2. In cases where there was a chain of consecutive time and voyage charters, the person who actually performed the carriage did not himself enter into a contract with the contracting carrier. The basis of the contract between carrier and actual carrier was adequately covered by article 1, paragraph 2; therefore, his delegation could not accept the amendment.

34. Mr. MUCHUI (Kenya) said that his delegation regarded the Indian amendment as involving an interesting matter of substance. It seemed an attempt to avoid the sort of situation in which a carrier, by contracting with an actual carrier in terms narrower than those of the contract between the carrier and the shipper, contrived to obtain a limitation of liability which he would not otherwise have had in accordance with the existing second sentence of article 10, paragraph 1. However, his delegation thought that a better way to achieve the purpose of the Indian amendment would be to expand the present second sentence so as to provide that the term "scope of their

employment" should have the same meaning in relation to the servants or agents of the actual carrier as in relation to those of the carrier.

35. Mr. SMART (Sierra Leone) agreed that the Indian amendment involved a matter of substance. The contractual relationship between a carrier and an actual carrier had not been clarified in the draft Convention, and for that reason his delegation would welcome the inclusion of a further sentence after the first sentence in article 10, paragraph 1. However, it would prefer a different form of wording from that suggested by the Indian delegation, and proposed that the additional sentence should read: "The actual carrier shall be deemed to be a party to the contract of carriage in so far as the performance of that contract is concerned."

36. Mr. DIXIT (India) said that the discussions in UNCITRAL and in the UNCTAD Working Group on International Shipping Legislation had revealed strong support for the idea of providing, in the future Convention, that a shipper could hold either a carrier or an actual carrier liable under a contract of carriage, as well as a concern to avoid situations in which the actual carrier might not know the precise terms of the contract between the carrier and the shipper and would thus be insufficiently aware of his own responsibilities. The Indian amendment had been proposed only in order to satisfy those feelings and would lead to no conflicts of obligations.

37. His delegation could accept the alternative wording proposed by the representative of Sierra Leone if the Committee preferred it.

38. Mr. MUCHUI (Kenya) said that his delegation, too, could accept the oral amendment made by the representative of Sierra Leone.

39. Mr. KERRY (United Kingdom) said that, in his delegation's view, the effect of article 10 was to impose liability on the actual carrier, although there was no privity of contract between the actual carrier and the shipper. It did not believe it necessary, therefore, to state, as suggested by the representative of Sierra Leone, that the actual carrier was to be deemed to be a party to the contract of carriage; in fact, it might even be dangerous to do so. He suggested that the amendment should be referred to the *ad hoc* Working Group, which might assess whether it had substantive implications of an undesirable nature.

40. Mr. SMART (Sierra Leone) said he wished to make it quite clear that his amendment was not intended to make the actual carrier a party to the contract of carriage, as the United Kingdom delegation appeared to believe. His amendment referred to the performance by the actual carrier of the contract of carriage, during which he would be deemed to be a party to the contract. That was not at all the same thing.

41. Mr. CASTRO (Mexico) said his delegation wished to be very clear about the exact purport of the Sierra Leonean amendment. If its intention was to protect the right of the actual carrier to limit his responsibility to the leg of the contract he himself performed, his delegation would support it, since it was anxious to protect the

interests of the actual carrier. In point of fact, however, the amendment seemed to reopen the debate on article 10 as a whole, although, as his delegation understood it, agreement had been reached on the fact that the contract of carriage was concluded between two parties only, namely, the carrier and the shipper, and that the person of the actual carrier was a natural extension of the carrier deriving from the conditions of maritime transport and should not be regarded as circumscribed to a particular contract. In certain cases, a carrier might delegate part of his responsibilities to a subcontractor, who might then transfer part of them to an actual carrier who might in his turn transfer another portion of them to a second actual carrier. In such cases, a whole series of contracts would be required unless the person of the actual carrier was equated with that of the principal carrier for the purposes of the contract of carriage. The matter was a very delicate one and could not be decided lightly.

42. Mr. NILSSON (Sweden) pointed out that, under rule 28 of the rules of procedure, proposals should normally be submitted in writing and not discussed unless copies had been circulated to all delegations not later than the day before. In view of the complexity of articles 10 and 11 in general, and of the Sierra Leonean proposal in particular, he hoped that rule would be applied in the present instance.

43. Mr. SMART (Sierra Leone) said his delegation had not originally intended to make a formal proposal, but had simply wished to clarify the Indian proposal before the Committee. However, it should be noted that there had been cases at the Conference in which oral proposals had nevertheless been allowed.

44. Mr. KHOO (Singapore), supported by Mrs. YUSOF (Malaysia), MR. MUCHUI (Kenya), Mr. MacANGUS (Canada) and Mr. QUARTEY (Ghana), stressed the need for flexibility in applying rule 28 of the rules of procedure, in the interests of advancing the work of the Conference.

45. Mr. MALELA (Zaire) said he agreed with the representative of Sweden that delegations required more time to consider the proposals concerning paragraph 1.

46. The CHAIRMAN suggested that the delegations of India, Kenya and Sierra Leone, in consultation with the Executive Secretary of the Conference, should endeavour to prepare a common text for circulation to the Committee on the following day, when the discussion on article 10, paragraph 1, would be resumed.

47. Mr. MALLINSON (United Kingdom) said he wished to make a few remarks designed to facilitate the task of the three delegations who had been asked to submit a common proposal. It was his delegation's understanding that the purpose of the Indian proposal was to compel the contracting carrier to inform the actual carrier whether the contract entered into was subject to the Convention or not, and that the Indian delegation would be satisfied with the inclusion of a provision to that effect. However, the carrier, on signing the contract of carriage, was not in a position to say whether the Convention did apply to that contract, since the contract might provide for an optional port of discharge which

would not be known until that port had actually been used.

Paragraph 2

48. Mr. TANIKAWA (Japan) said that his delegation's amendment concerning article 10, paragraph 2 (A/CONF.89/C.1/L.21), was purely a drafting matter and need not be considered in the First Committee.

49. Mr. MacANGUS (Canada) said that his delegation was not convinced that the Japanese amendment was a drafting matter only. On the contrary, it believed it embodied a substantive change in the status of the parties to a contract of carriage.

50. Mr. DOUAY (France) said that the Japanese amendment had seemed innocuous at first glance but, as the carrier was responsible for the whole of the carriage of the goods, while the actual carrier was responsible only for the carriage which he performed, the addition of the phrase proposed by Japan would have the effect of making the actual carrier responsible for the rest of the carriage as well. The proposed addition was therefore a contradiction in terms and had dangerous implications, since the actual carrier could not be held responsible to the same extent as the carrier, except for a particular leg of the voyage.

51. Mr. NIANG (Senegal) and Mrs. YUSOF (Malaysia) said their delegations could not support the proposed amendment, since it might give rise to disputes and procedural errors in the case of claims.

52. Mr. MALELA (Zaire) said he agreed with the views expressed by preceding speakers concerning the Japanese amendment, which would merely lead to confusion in interpreting the existing text. It was necessary to be clear about the functions of the actual carrier, who could not be regarded as one of the parties to the contract of carriage with the shipper, since such contracts were concluded only between the shipper and the principal carrier for the transport of goods to the port of delivery.

53. Mr. M'BAH (United Republic of Cameroon) said that it was important to take into account the practical aspects of the contract of carriage and the cases in which an actual carrier would be involved. An actual carrier might be involved in two cases: that of a space charter and that of trans-shipment of goods. In the case of a space charter, the contract of carriage concluded between shipowner and shipper and embodied in a bill of lading was transferred from the carrier to the actual carrier. In the case of trans-shipment when, for instance, the carrier was unable to enter the port of discharge himself, the bill of lading, representing the contract of carriage, was again transferred to the actual carrier, together with the goods. The shipper could not invoke the legal responsibility of the actual carrier in the event of loss or damage, since in all cases the latter was merely acting on behalf of the carrier, who had signed the contract of carriage with the shipper.

54. Mr. MEGHJI (United Republic of Tanzania) said his delegation had originally considered the Japanese proposal to be a drafting amendment and had opposed it on the grounds that it would introduce complications into

an issue that had already been dealt with by the definition of the actual carrier in the draft Convention. His delegation accepted the reasons given by the French delegation for considering the amendment to be substantive, and opposed it for those reasons as well.

55. The CHAIRMAN said that, as there appeared to be no support for the Japanese amendment (A/CONF.89/C.1/L.21), he would consider it to be rejected. He invited the Committee to consider the United States amendment to paragraph 2 (A/CONF.89/C.1/L.64).

56. Mr. SWEENEY (United States of America) said that the intention of his delegation in submitting its amendment to paragraph 2 had simply been to clarify the fact that the actual carrier was not excluded from the defences and limitations enjoyed by the carrier himself. It had viewed its proposal as a drafting change, but in the light of the discussion that had taken place on the Japanese amendment, which the United States amendment closely resembled, it realized that it might be regarded as a substantive matter by certain delegations and hence be unacceptable to them.

57. Mr. SELVIG (Norway) said that his delegation regarded the United States amendment as superfluous. It would not like to see that proposal accepted, because it might cast doubts on the existing provisions, which made it quite clear that the Convention would apply in

determining the liability of the actual carrier, in other words, that the actual carrier would have the liabilities established in the convention as well as the defences and limitations granted by it.

58. Mr. MacANGUS (Canada) said his delegation was afraid that, from the viewpoint of the potential interests of the shipper, any stipulation that the defences and limitations of the carrier would apply to the actual carrier as well might lead a court, in dealing with a claim in that respect, to infer that liability under the Convention did not apply to the actual carrier. In view of that possibility, his delegation was unable to accept the amendment.

59. Mr. MARCIANOS (Greece) agreed with the representative of Norway that the United States amendment was already covered by the existing wording of the draft convention, but thought it might nevertheless be useful to insert it for the sake of clarification. The point raised by the Canadian delegation was also covered in the draft Convention, where the actual carrier was held responsible for his part of the carriage.

60. Mr. MALLINSON (United Kingdom) also agreed with the Norwegian representative. The insertion of the proposed phrase might have the unfortunate effect of casting doubt on the meaning of the words "responsible, according to the provisions of this Convention" in the draft text.

The meeting rose at 6.05 p.m.

16th meeting

Thursday, 16 March 1978, at 7.35 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.16

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.64, L.90, L.130, L.142, L.148)

Article 10 (continued)

Paragraph 2

1. Mr. HONNOLD (United States of America) explained that the amendment he had proposed in connexion with article 10, paragraph 2 (A/CONF.89/C.1/L.64), had been intended to specify the limitations of liability of the carrier and the actual carrier respectively. In view, however, of the comments made by delegations, and in order not to delay the Committee's work, he was withdrawing the proposal.

2. The CHAIRMAN invited the members of the Committee to consider the amendment proposed by Australia (A/CONF.89/C.1/L.142).

3. Mr. BYERS (Australia), introducing his proposal, said that the present text of paragraph 2 was somewhat ambiguous in relation to the definition of the actual carrier given in article 1, paragraph 2, which stated that the actual carrier meant any person to whom the performance of the carriage of the goods, or part of the carriage, had been entrusted by the carrier, and any other person to whom such performance had been entrusted. Article 10, paragraph 2, however, specified that the actual carrier was responsible for the carriage performed by him, apparently with the implication that, when the carriage was not performed completely by the actual carrier—including, for example, the case of damage or breakdown—he could be exonerated from his liability even if the event had occurred when the goods had been in his charge. Moreover, it would be difficult to determine the circumstances which had prevented performance and the degree of partial performance. In order to avoid such

difficulties, the words "performed by" should be replaced by "entrusted to".

4. The CHAIRMAN said that, if the aim was to bring the text of paragraph 2 into line with the definition of the actual carrier contained in article 1, the matter could perhaps be referred to the Drafting Committee.

5. Mr. KHOO (Singapore) asked whether the comments by the representative of Australia were applicable in the case of the second sentence of paragraph 1, which spoke of the "carriage performed by the actual carrier."

6. Mr. BYERS (Australia) said that the question was pertinent from the point of view of logic, but paragraph 1 was set in a different context, since it related to the liability of the carrier towards the actual carrier. His delegation was concerned more particularly with the liability of the actual carrier, and its amendment sought to spell out the cases in which that liability was engaged.

7. Mr. DOUAY (France) said that the question was not one of great importance. Admittedly, according to the definition contained in article 1, paragraph 2, the actual carrier meant any person to whom the performance of the carriage or part of the carriage had been entrusted by the carrier, but if the liability of the actual carrier was involved, it was obviously not for the carriage which had been arranged but for the carriage which had been performed. In some cases, the word "entrusted" might even lead to ambiguity. For example, if the carrier entrusted part of the carriage to the actual carrier and the latter performed not only the part of the carriage entrusted to him but also an additional part, it might well be asked whether his liability would be engaged for that additional part if the amendment proposed by the representative of Australia was adopted. It was better, therefore, to take into consideration the carriage actually performed rather than the carriage initially entrusted to the actual carrier, which might have changed as a result of unforeseen circumstances. He preferred to keep the text as it stood.

8. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the actual carrier was responsible for the goods entrusted to him, even if he had not performed the carriage. The Australian amendment was in keeping with the purpose of paragraph 2. It improved the text, making it more explicit, and it commanded his support.

9. Mr. TANIKAWA (Japan) said that article 10, paragraph 2, referred exclusively to the carriage which had been performed. The Australian amendment would twist the meaning, and therefore he could not support it.

10. Mr. SANYAOLU (Nigeria) endorsed the view expressed by the representative of Australia. The proposed amendment, however, covered only cases of omission and not cases of an act performed. In order that all situations should be taken into account, he proposed that the text should read: "...entrusted to him or performed by him."

11. Mr. HONNOLD (United States of America) agreed with the representative of Australia that paragraph 2 was not sufficiently precise. It was, however, for the Drafting Committee to make the necessary changes. The words "performed by him" could perhaps be replaced by the words "undertaken by him."

12. Mr. GUEIROS (Brazil) said that he could accept either of the amendments submitted, or even the proposal by Nigeria, although he preferred the original text. The various proposals could be referred to the Drafting Committee.

13. Mr. KHOO (Singapore) said he had no difficulty in accepting the Australian amendment, which was useful because it specified the liability of the actual carrier. He did not share the Japanese representative's interpretation of paragraph 2. The actual carrier was responsible for the goods from the moment they were entrusted to him, regardless of whether or not he performed the carriage.

14. Mr. GONDRA (Spain) said that the change proposed by Australia was much more than a mere question of drafting. It brought the text of article 10, paragraph 2, more into line with that of article 1, paragraph 2, and covered all cases in which liability lay with the actual carrier. For that reason, the amendment had his support.

15. Mr. VINCENT (Sierra Leone) said that it would be advisable to clarify the purpose behind article 10, paragraph 2, before considering the Australian amendment. After all doubts had been dispelled, the text of the amendment could be referred to the Drafting Committee.

16. Mr. LAVIÑA (Philippines) said that he recognized the merit of the Australian proposal, which aligned the text of paragraph 2 with that of the definition of the actual carrier and extended the actual carrier's obligations. Like the representative of the United States, however, he felt that the proposal should be referred to the Drafting Committee.

17. Mr. GRONFORS (Sweden) said that his delegation associated itself with the comments made by the representative of Japan. The purpose was to establish the joint liability of the actual carrier and of any subcontractors he might use to perform a part of the carriage. The underlying principle of paragraph 2 was that the actual carrier was responsible if the carriage was not performed. It was not the purpose of the paragraph to provide for a number of subcontractors who would be liable simply because a part of the carriage had been entrusted to them. Consequently, he considered that the present text of the draft Convention was perfectly clear and was preferable to the Australian amendment.

18. Mr. MALLINSON (United Kingdom) said that while appreciating the Australian representative's concern to harmonize the provisions of paragraph 2 with the definition of the actual carrier, he associated himself with the comments made by the representatives of Japan and Sweden. To hold that the actual carrier to whom a part of the carriage had been entrusted was liable, even if he did not perform that part of the carriage, would destroy the basic principle of the paragraph, which, in seeking to establish that the actual carrier was liable in all cases, even if the goods were placed in the charge of another actual carrier, afforded protection for the shipper in the event of loss or damage. There was no need to extend the actual carrier's liability to cases in which he had not performed the part of the contract entrusted to him. In such instances, it was for the carrier, who had concluded the contract and was liable for the voyage as a whole, to seek redress from the actual carrier.

19. If it was not the intention of the Australian amendment to make the actual carrier liable for the part of the carriage which he had not performed, he could agree to the amendment being referred to the Drafting Committee. There was no point, however, in going any further than the existing text.

20. Mr. MEGHJI (United Republic of Tanzania) observed that the definition of the actual carrier introduced both the concept of performance of the carriage of goods and the concept of a task entrusted to the actual carrier. Those concepts should be reflected in article 10, paragraph 2, by allowing for two possibilities: (1) the actual carrier had not performed the carriage entrusted to him; (2) he had performed it, but there had been loss of or damage to the goods, for which he was liable. Consequently, the expression contained in the Australian amendment should be added to the present text, but the words "performed by" should not be deleted. The Committee should give greater consideration to the problems of liability that might arise under contracts or under the convention when more than one actual carrier had performed parts of the carriage.

21. Mr. DIXIT (India) noted that the actual carrier's obligations derived from the contract concluded with the carrier, as specified in paragraph 1 of article 10. In the first sentence of that paragraph, however, the performance of the carriage was "entrusted" to the actual carrier, whereas the second sentence referred to the carriage "performed" by the actual carrier. Those two expressions should be used in paragraph 2, as some delegations had pointed out, since liability arose only when the actual carrier had performed the part of the contract that he had undertaken to fulfil. Nevertheless, he could not agree to the Australian amendment in its present form.

22. Mr. WAITITU (Kenya) said that the Australian amendment was interesting in that it brought the text of article 10, paragraph 2, more into line with the definition of the actual carrier. It should, however, be referred to the Drafting Committee for consideration in the light of the suggestions made by delegations.

23. Mr. SELVIG (Norway) said it was apparent from the discussion that the Australian amendment raised a question of substance, and the Committee must therefore take a decision on it. As the representative of India had pointed out, the principle underlying article 10, paragraph 2, was that the actual carrier was the person who was in charge of the goods and was liable in the event of loss or damage. That idea was very clearly expressed in article 11, paragraph 2, which stated that the actual carrier was responsible for loss, damage or delay in delivery caused by an occurrence which took place while the goods were in his charge. Consequently, if the existing text of article 10, paragraph 2, created difficulties, that of article 11, paragraph 2, could be invoked. Rather than introduce into the text the words "entrusted to", which would give rise to ambiguity, it would be better to refer draft article 10, paragraph 2, to the Drafting Committee.

24. Mr. YOUN (Republic of Korea) endorsed the opinion expressed by the representative of Japan, with

which a number of delegations had expressed agreement. In the case of a container ship which had to be served by an auxiliary vessel not belonging to the owner of the main vessel, the actual carrier must be in a position to conclude a subcontract at the proper time. If the Australian amendment was adopted, however, it would be difficult to find a subcontractor who would want to take on that part of the carriage, and the clause would in the end work against the interests of the shipper in countries which did not have feeder services. The principle of the collective liability of the carrier who had entered into the contract and of the actual carrier, as enunciated in the existing text of the paragraph under consideration, was enough to afford protection to the shipper.

25. Mr. NIANG (Senegal) said that if the carrier was liable for the entire carriage and for delivery of the goods entrusted to him by the shipper, it was only logical that the actual carrier should be equally liable for his part of the carriage, as should any subcontractors he might use in the course of the voyage without the knowledge of the contractual carrier. To cover those aspects, which might have important consequences for the contractual carrier, the actual carrier's liability should in his opinion be engaged from the moment the goods were entrusted to him, as provided for in the Australian amendment.

26. Mr. MAITLAND (Liberia) said that he shared the Norwegian representative's views. Under article 10, paragraph 1, the carrier was responsible for the entire carriage, even when the performance of all or part of the carriage had been entrusted to an actual carrier. It was quite clear from the existing wording of article 10 that the actual carrier was liable only for the part of the carriage performed by him. Admittedly, the expression "performed by him" might seem clumsy; it could give the impression that the actual carrier was liable only if he had taken the goods on board. Thus the wording of paragraph 2 needed to be altered. But the Australian amendment created some confusion. The expression "entrusted to him" was even more difficult to understand than "performed by him", and the actual carrier's obligations were left ill-defined. The suggestion of the representative of India might make things a little clearer.

27. Mr. GANTEN (Federal Republic of Germany) said that he could not support the Australian amendment, for the reasons advanced by other delegations. In his country, many voices had been raised against article 10, paragraphs 2, 3 and 4, which were considered pointless. Hence, *a fortiori*, his delegation could not agree to such an extension of the scope of one of those provisions as would result from the adoption of the Australian amendment. The suggestion by the representative of India would not be of any great help, since the definition of the actual carrier contained in article 1, paragraph 2, already combined the two notions underlying that suggestion. The Drafting Committee could attempt to improve the wording of paragraph 2, but should take care to avoid altering the substance.

28. The CHAIRMAN noted that some delegations felt that the Australian amendment was simply a drafting matter, whereas others took the view that it dealt with substance. Some were in favour of the amendment, but

others were against it. He therefore put the amendment to the vote.

29. The amendment was rejected by 30 votes to 22, with 7 abstentions.

30. Article 10, paragraph 2, was adopted and referred to the Drafting Committee.

Paragraph 3

31. The CHAIRMAN noted that paragraph 3 was not the subject of any amendment or proposal.

32. Article 10, paragraph 3, was adopted and referred to the Drafting Committee.

Paragraph 4

33. The CHAIRMAN noted that paragraph 4 was not the subject of any amendment or proposal.

34. Mr. MacANGUS (Canada) said that there was an apparent contradiction between article 10, paragraph 4, and article 5, paragraph 7. The Drafting Committee should be asked to consider whether that contradiction was unintentional and, if so, to correct it.

35. Referring to article 10 as a whole, he said that he wished to make a general observation, the relevance of which would be more evident when the Committee dealt with article 23. Several delegations, particularly the delegations of India and Sierra Leone, had already stressed the fact that the shipper or consignee might find it difficult, in view of the relations existing between the carrier and the actual carrier, to determine who was legally liable. Underlying such concern was a basic problem, that of the small transfer clauses, or clauses concerning the identity of the carrier, which were sometimes to be found in bills of lading. Usually, the shippers were not as suspicious as they should be when a bill of lading was established. They expected the entire contract to be performed in a satisfactory manner, and it was only in case of difficulty that they took the advice of legal counsel. It was then that they sometimes realized that the person with whom they thought they had concluded a contract escaped liability under that very contract. That might prove a very serious problem for shippers and consignees.

36. He had brought up that problem during the consideration of article 10 because the provision of that article, in view of the terms of article 1, paragraphs 1 and 2, might allow such transfer clauses to be introduced in bills of lading. It was in article 23, however, that the basic problem should be settled. His delegation intended to submit a written proposal for that purpose.

37. The CHAIRMAN noted that none of the representatives wished to speak on the apparent contradiction between article 10, paragraph 4, and article 5, paragraph 7, to which the Canadian representative had drawn attention. He proposed that the consideration of article 10, paragraph 4, should be postponed until something was known about the global arrangement which was to be reached concerning article 5.

38. It was so decided.

Paragraph 5

39. Mr. HONNOLD (United States), introducing his delegation's amendment to paragraph 5 of article 10 (A/CONF.89/C.1/L.64), stated that its purpose was merely to add a reference to article 8. The mention, in article 10, paragraph 5, of "the limits provided for in this Convention", referred no doubt to the limits of liability laid down in article 6, subject to the possible loss of the right to limit liability which was dealt with in article 8. The reference to article 8 was thus only a matter of form and could be referred to the Drafting Committee.

40. Mr. SELVIG (Norway) said that the point of view expressed by the United States delegation was certainly correct, but the proposed change was one of substance. It was true that the liability of the carrier could not be limited under article 6 if he had committed a fault covered by article 8. Since, however, in such cases action could be brought against the carrier or the actual carrier, it was questionable whether a serious fault committed by one of them meant that the other forfeited the right to limit his liability. Nevertheless, that would be the result of the change proposed by the United States delegation.

41. Mr. HONNOLD (United States) explained that that was not his delegation's intention. Paragraph 5 of article 10 should be changed in such a way that it would not have that result. If article 8 were deleted, there would of course be no need to amend the paragraph under discussion.

42. Mr. GORBANOV (Bulgaria) said that while he had no objection to the United States amendment, he considered it unnecessary since in article 10, paragraph 2, it was stated that the liability of the actual carrier was subject to the provisions of the Convention, particularly the provisions of article 7, paragraphs 2 and 3, and of paragraph 2 of article 8 itself.

43. Mr. SELVIG (Norway) said that in his opinion the matter of liability of the actual carrier and his servants and agents was different from that to which the United States amendment referred. Moreover, he felt that any substantive issues should be discussed by the Committee and that only matters of form should be referred to the Drafting Committee.

44. Mr. BYERS (Australia) observed that the United States amendment, if referred to the Drafting Committee, might also raise difficulties in connexion with article 9, paragraph 4.

45. The CHAIRMAN noted that none of the delegations supported the United States amendment. In the absence of any objections, he would take it that the Committee rejected it.

46. It was so decided.

47. Article 10, paragraph 5, was adopted and referred to the Drafting Committee.

Paragraph 6

48. The CHAIRMAN observed that paragraph 6 was not the subject of any amendment or proposal.

49. Article 10, paragraph 6, was adopted and referred to the Drafting Committee.

50. Subject to the decision to be reached on paragraph 4,

article 10 as a whole was adopted and referred to the Drafting Committee.

Article 11

51. The CHAIRMAN observed that article 11 as a whole was the subject of proposed amendments submitted by the German Democratic Republic and Canada. In addition, Argentina had submitted an amendment covering some points of detail, but there was a mistake in it.

52. Mr. VOGEL (German Democratic Republic), introducing his delegation's amendment (A/CONF.89/C.1/L.90), said that it concerned the deletion of article 11 or its redrafting. In its existing form article 11 was contrary to the idea of through bills of lading. Through bills of lading were extensively used, but under the article as it stood the holder of such a bill of lading would not be sufficiently protected. The interests of the shipper and the holder of the bill of lading were, however, among the things which the Convention should protect. Furthermore, if it were maintained in its current form, article 11 would be contrary to the laws of many countries.

53. The CHAIRMAN noted that the Canadian amendment (A/CONF.89/C.1/L.148) proposed the deletion of article 11.

54. Mr. RAY (Argentina) said that, in his country, a law made the carrier under the contract and the person who delivered the goods jointly and severally liable in the case of a through bill of lading, without prejudice to the actual carrier's liability for that part of the carriage he had performed. The Argentine amendment (A/CONF.89/C.1/L.130) sought a solution which lay midway between that of Argentine law and that contained in article 11. Under paragraph 1 of that article, it was stipulated that the carrier would not be liable for loss, damage or delay in delivery caused by an occurrence which took place while the goods were in the charge of the actual carrier. In that case, the carrier must not issue a through bill of lading. If he did issue one, he must be held liable for the entire carriage, even if part of it was performed by an actual carrier.

55. As to the error which had slipped into the Argentine amendment, it should be corrected by replacing the last sentence of the additional paragraph by the following sentence: "Liability as between the carrier and the person delivering the goods shall be joint and several."

56. The CHAIRMAN invited delegations to state only whether they were in favour of maintaining or deleting article 11.

57. Mr. SWEENEY (United States) supported the amendments of the German Democratic Republic and Canada proposing the deletion of article 11, and drew attention to the clause in paragraph 1 which made the article unacceptable to his delegation: "the contract may also provide that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier." That exemption of the carrier from liability was unacceptable because, when a carrier undertook to perform carriage and received the corresponding

freight, he must assume liability for the entire carriage.

58. The Argentine delegation seemed to have followed substantially the same reasoning in its amendment. The United States delegation, however, could not accept the inclusion of a clause providing for exemption from liability in the bill of lading. It therefore urged the deletion of article 11. If, however, the Committee decided to maintain the article, the United States delegation would propose an amendment to the text to save the shipper from having to look for a ghost carrier in the event of a recourse action.

59. Mr. SIMS (Canada), referring to his delegation's amendment, said he was in favour of the deletion of the whole of article 11, which, in his view, neutralized the substantial advantages of article 10 without offering any real advantages in return, even with the provision in paragraph 2, the value of which was in fact illusory. Article 11 might well open the way to a dangerous practice whereby, in order to evade liability as stated in article 10, the carrier would have recourse to actual carriers, thus depriving the shipper of the protection of article 10. In his delegation's view, there was no basis for the argument that the deletion of article 11 would induce carriers to refuse contracts involving trans-shipment, thus preventing shippers from sending goods to certain parts of the world. In fact, shippers had recourse in such cases to their connexions in commercial circles and to their agents.

60. Mr. NSAPOU (Zaire) said that, as currently worded, article 11 gave the impression that there were three different persons involved: the carrier, a "named person" and the actual carrier. He would like some clarification on that point.

61. Mr. CASTRO (Mexico) said he was in favour of the deletion of article 11, for it enabled the carrier to evade the liability stated in article 10 by including an exemption clause in the contract of carriage. He supported the arguments advanced by the other delegations which had called for the deletion of the article.

62. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he was in favour of the retention of article 11 as it appeared in the UNCITRAL draft, on the grounds that its deletion would discourage carriers and impede the development of world trade.

63. Mr. TANIKAWA (Japan) said that the through transport system operated in favour of the shipper, who asked that a through bill of lading should be issued in order to have in his possession a negotiable instrument enabling him to collect sums of money. If article 11 were deleted the shipper would be deprived of an undeniable advantage. That was why Japan was in favour of retaining the article.

64. Mr. DIXIT (India) called for the deletion of article 11 for the reasons given by Canada and the United States of America.

65. Mr. MALLINSON (United Kingdom) said he shared the opinion of the USSR and Japan that article 11 should be retained because its retention was in the shipper's interest. Articles 10 and 11 were complementary. Article 10 related to cases in which an

ordinary bill of lading was issued and the carrier was therefore liable everywhere and in all circumstances. Article 11, on the other hand, referred to a totally different situation, a situation in which the carrier, although unable to perform the entire carriage himself, issued a through bill of lading which would be of great value to the shipper commercially. The carrier should therefore be given the option of disclaiming liability for those parts of the transport operation — the subsequent carriage — which he could not perform himself. If that option was withdrawn from him in the convention, he would not issue a single through bill of lading, but several bills of lading, which would involve additional expense for everyone.

66. Mr. DOUAY (France) said he shared the view of the representative of the United Kingdom. He wished to point out, however, that the wording of paragraph 1 was unsatisfactory and liable to cause confusion in that it referred to an "actual carrier" not previously defined. Nevertheless, as far as the substance was concerned, France was in favour of the retention of article 11 because it covered a different situation from that referred to in article 10.

67. Article 10 governed the relations between the carrier and the actual carrier. Article 11, on the other hand, covered the case in which a carrier, unable to carry out the contract of carriage himself, was obliged to have recourse to a number of successive carriers. There were then two possibilities. The first was that the carrier issued several bills of lading or transport documents, one for each successive stage of carriage. The second was that he issued a single document, a through bill of lading, specifying that there were several carriers involved, that the first stage of carriage was to be performed by the one who issued the bill of lading, the second by a second carrier, the third by a third carrier, and so on. The second and third carriers named in the contract of carriage would be liable for the part of the transport operation devolving upon them under the same conditions as an actual carrier.

68. The situation of the carrier who had organized the three successive transport operations was then as follows. First, he could enter into contract with the other carriers without making any particular stipulation and be liable for the three transport operations as if they had been one. Second, he could assume liability only for the carriage performed by himself and disclaim liability in respect of the other two possibilities provided for, so as to facilitate that type of operation. The shipper knew that there were three carriers, and consequently he was not adversely affected. But there was only one contract, a single document, and that was an advantage. If, on the other hand, the carrier had to assume liability for the entire carriage, he would refuse to issue a through bill of lading and would perhaps offer to act as the shipper's agent in concluding two other contracts with other carriers.

69. Thus it could be seen that article 11 favoured both the carrier, who could issue a single through bill of lading, and the shipper, who benefited from it. The only link between articles 10 and 11 was that article 11 referred back to article 10 in so far as the definition of liability was concerned by stipulating that the second and third

carriers had the same liability as the actual carrier when successive carriers were in fact involved.

70. Mr. HRISTOV (Bulgaria) said that he supported article 11 as drafted by UNCITRAL since it was in conformity with Bulgarian maritime law and was calculated to promote the development of maritime transport operations.

71. Mr. GUEIROS (Brazil) observed that the through bill of lading would no longer be necessary when the multimodal transport system became widespread and was under proper regulations. Meanwhile, in view of the various arguments advanced during the discussion, he supported the position adopted by the German Democratic Republic and would agree to either the deletion of article 11 or its amendment along the lines proposed in document A/CONF.89/C.1/L.90.

72. Mr. SIREGAR (Indonesia) said he agreed with the French and Japanese delegations that article 11 served the interests of both the shipper and the carrier. He was therefore against its deletion.

73. Mr. NDURU (Uganda) said he would prefer that article 11 be deleted because it created confusion. Paragraph 1 of the article put the shipper in a difficult position, since it attributed liability to a party which was not the party with whom the shipper had concluded the contract of carriage. As to paragraph 2, its contents were already to be found in paragraph 2 of article 10, and it was therefore unnecessary.

74. Mr. LAVINA (Philippines) said that in his opinion article 11 was against the interests of shippers, since it withdrew from them the protection provided by article 10. The Philippines was therefore in favour of its deletion.

75. Mr. FAHIM (Egypt) said that through transport existed already, and would continue to exist, and that trade between Egypt and Latin America took place under through bills of lading. Egypt was therefore in favour of retaining article 11 as it stood.

76. Mr. FUCHS (Austria) said he supported the proposal by the German Democratic Republic that article 11 should be deleted. In practice, ships were becoming larger and larger and could no longer enter the ports, and the use of feeder services was becoming increasingly common; if the carrier could include in the bill of lading a clause in which he disclaimed liability for subsequent carriage the shipper would have to bring a recourse action against the successive carriers. To avoid that, Austria was in favour of deleting article 11.

77. Mr. PTAK (Poland) said he supported the statement by France, and added that the institution of the through bill of lading some years earlier had been welcomed as progress in maritime trade, and that it was only recently that its use had been brought under regulation in maritime legislation. It therefore seemed illogical to strike a blow at that institution, which was now well established, thus checking the development of maritime trade. Pending the preparation of a convention on multimodal transport, Poland was of the opinion that the use of the through bill of lading should be continued, and that article 11 should be retained in the draft convention.

The meeting rose at 10.35 p.m.

17th meeting

Friday, 17 March 1978, at 10.40 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89 C.1 SR.17

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89.5, A/CONF.89.6, A/CONF.89.7 and Add.1, A/CONF.89.8, A/CONF.89 C.1 L.9, L.23, L.41, L.90, L.91, L.99, L.148, L.153, L.154, L.155)

Article 11 (continued)

1. Mr. IRWANS (Indonesia) observed that through carriage was particularly important for archipelagos like Indonesia. Carriers should not therefore be enabled, by the deletion of article 11, to unload goods in a principal port, leaving shippers and consignees to take the necessary steps for forwarding the goods to their final destination, particularly since agreements on the subject generally existed between regular international lines and internal lines. His delegation advocated the retention of article 11, but would be able to accept certain amendments on points which merited clarification.

2. Mr. BYEAS (Australia) reminded the Committee that in UNCITRAL his delegation had already spoken against article 11. It was dangerous to allow a carrier to evade his liability. Furthermore, paragraph 1 did not stipulate contractual relations between the contractual carrier and the persons named in the contract who were responsible for performing part of the carriage; at the time of the conclusion of the contract, the persons named might thus be unaware that their names were included, and the situation was therefore similar to the one provided for in article 10. If the principal carrier, being authorized to disclaim liability, wrote into the contract the name of an actual carrier, and if the goods were damaged during the part of the carriage entrusted to the actual carrier, a shipper's only recourse lay in the provisions of paragraph 2. But if the successive carriers were figureheads whose only property was the chartered ship, the shipper would not know against whom to bring an action. The question therefore was not whether to retain article 11 on the grounds that it dealt with a situation other than that provided for in article 10. The fact was that article 11 did not appear to be adapted to the existing situation. Furthermore, he drew attention to the comments by the United Kingdom and the International Chamber of Shipping in paragraphs 153 and 154 of document A/CONF.89/8 above regarding the word "named". The fact that many delegations wanted to amend the article showed that it was far from satisfactory. In the Australian delegation's view, it created more problems than it solved.

3. Mr. AMOROSO (Italy) said he recognized that the

wording of article 11 might lead to confusion, but thought that its deletion would cause a gap in the Convention. Shipping practice in the last few years should also be taken into account; thus, the contents of through bills of lading had been slightly modified by the insertion of clauses under which, for example, any action had to be brought against that carrier who had the goods in his charge when they were damaged, the carrier who had issued the bill of lading being liable only for damage caused to the goods during the part of the carriage which he himself had performed, and his liability ending when he handed the goods over to the following carrier. The convention should therefore provide that, when handing over the goods to the following carrier, the carrier was acting simply as an agent of the shipper. Lastly, he thought that the French title of article 11 should be brought into line with the English title and use a wording such as "transport cumulatif avec connaissance direct."

4. Mr. SWEENEY (United States of America) said he was astonished to see some delegations predicting the end of through carriage unless the Convention gave carriers the right to include clauses in bills of lading discharging them of all liability during carriage entrusted to an actual carrier. It was absurd to suppose that a highly competitive sector in which there was a great surplus of tonnage was suddenly going to put an end to carriage without transshipment because, under article 23, bills of lading could no longer contain exemption-from-liability clauses. Carriers currently offered to carry the goods of shippers, against payment of freight, to ports which they could not reach directly themselves. If, however, the carrier agreed to accept payment for the entire carriage, he must assume the liabilities inherent in the subsequent carriage. In conclusion, his delegation would prefer to see article 11 deleted, but would propose certain amendments if the Committee decided to retain the article.

5. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that in his opinion it was not true that the deletion of article 11 would have no adverse effects on carriage by sea and the development of international exchanges, for the absence of the provisions of the article would in fact hamper through transport. Furthermore, that article, like the rest of the draft Convention, was the result of a well-balanced compromise. The Soviet delegation was therefore strongly opposed to the deletion of article 11.

6. Mr. DOUAY (France), replying to the United States and other delegations which considered that the practice of successive carriage by a through bill of lading could continue as at present after the Convention's entry into force, said that the situation would be entirely different because of the provisions of article 10. Currently, under

the 1924 régime, which did not provide any rules similar to the one appearing in article 10, it was permissible for a carrier to issue a through bill of lading covering several sea transport operations and to conclude contracts with other carriers whose names did not appear in the bill of lading and whom the shipper did not know. If article 11 were deleted, that would no longer be the case after the entry into force of the Convention, since a carrier who issued a through bill of lading would come under the provisions of article 10 and would be liable for the entire carriage, while the succeeding carriers would be in the position of actual carriers against whom the shipper could take action directly. As to the carrier liable for the entire carriage, he would no longer be able to disclaim liability for the part of the carriage which he did not perform. Consequently, unless provision was expressly made for through carriage by enabling the carrier to disclaim liability for that part of the carriage, article 10 would come into play and the issue of through bills of lading would create problems.

7. Mrs. YUSOF (Malaysia) said that Malaysia was primarily a country of shippers and consignees, and that if, article 11 having been retained, they wished, knowing how difficult it was to take action against an actual carrier, to take action against a principal carrier, they might in fact find themselves face to face with a carrier who was exempt from all liability. On the other hand, in the absence of such a provision any action initiated by a shipper would come under the provisions of article 10, and that could give rise to procedural difficulties. If the Committee was of the opinion that the deletion of article 11 would create more difficulties than it would solve, the Malaysian delegation was ready to consider an amended version of the article.

8. Mr. SIMS (Canada) said he thought that in the very few cases in which a carrier might feel some reluctance to assume the obligations he would incur under article 10, he could, after all, by different means at his disposal, conclude contracts with subsequent carriers on the shipper's behalf. Moreover, the Canadian delegation was afraid that article 11 would create difficulties for the plaintiff, as concerned the choice of venue, for example, even if the plaintiff was aware of the actual carrier's identity.

9. The CHAIRMAN invited the Committee to vote on the Canadian proposal to delete article 11 (A/CONF.89/C.1/L.148).

10. The amendment was rejected by 36 votes to 18, with 8 abstentions.

11. Mr. KHOO (Singapore) said he had hesitated between voting for the Canadian amendment and abstaining, because he did not consider article 11, as then worded, satisfactory. He was prepared, however, to consider a redraft of the article.

12. The CHAIRMAN proposed that a working group should be established to prepare a new text for article 11, taking into account all the amendments submitted (A/CONF.89/C.1/L.8, L.22, L.65, L.79, L.90 and L.130). If there was no objection, he would consider that the Committee agreed that the working group should be composed of the following delegations: Argentina,

Bulgaria, Canada, France, German Democratic Republic, Greece, Indonesia, Philippines, Poland, Sweden, Uganda, and United States of America.

13. It was so decided.

Article 10 (concluded)

14. The CHAIRMAN invited the Committee to resume its consideration of article 10, which had been postponed pending the submission by India, Kenya and Sierra Leone of the amendment to paragraph 1 which was now before the Committee in document A/CONF.89/C.1/L.154.

15. Mr. DIXIT (India) said that under article 10, paragraph 2, the actual carrier was responsible, vis-à-vis the shipper, according to the provisions of the Convention, for the carriage performed by him; it was natural, therefore, that he should be deemed to be a party to the contract of carriage between the carrier and the shipper in so far as his part of the performance of the contract of carriage was concerned. That was the object of the amendment to article 10, paragraph 1, submitted by India, Kenya and Sierra Leone.

16. Mr. TANIKAWA (Japan) said that in his opinion the provisions of article 10, paragraphs 1 and 2, meant only that when performance of the carriage or a part thereof had been entrusted to an actual carrier, the carrier was still liable for the entire carriage, even in the event of loss or damage due to acts or omissions by the actual carrier and by his servants or agents in the exercise of their functions. He saw nothing in those two paragraphs on which to base a contention that the actual carrier was liable. In fact, paragraph 2 simply said that the actual carrier was responsible for the carriage performed by him "according to the provisions of this Convention". But there was no provision in the Convention—apart from that same article 10, paragraph 2—which dealt with the actual carrier's responsibility. Hence, the actual carrier was not liable under that article. He was therefore of the opinion that provisions establishing the actual carrier's liability should be inserted in article 10. He reminded the Committee that at the 15th meeting he had proposed in that connexion a technical and drafting amendment (A/CONF.89/C.1/L.21) which had not been adopted. He still believed that, according to the present text of paragraph 2, the actual carrier's liability was based on the provisions of the Convention and not on the contract concluded between the carrier and the shipper. It would therefore, he thought, be dangerous to assume that a contractual liability was involved, for such an assumption might complicate the relations between the shipper and the actual carrier. His delegation would thus be unable to support the amendment submitted by India, Kenya and Sierra Leone unless the text of article 4 was modified in the way his delegation had indicated.

17. Mr. MARCIANOS (Greece) said he thought that if the actual carrier was responsible vis-à-vis the shipper under article 10, paragraph 2, it was not necessary for him to be a party to the contract of carriage concluded between the carrier and the shipper. In fact, what interested the shipper was not that the actual carrier should be party to the contract of carriage, but that he should be responsible towards him under the Convention.

The amendment submitted by India, Kenya and Sierra Leone was therefore unnecessary.

18. The CHAIRMAN proposed that article 10—except for paragraph 4, consideration of which the Committee had decided to postpone until it had taken a decision on article 5—should be referred to the Drafting Committee. He invited the Committee to turn to article 12 and consider in turn the amendments to that article submitted by Greece, Japan, the German Democratic Republic and the Soviet Union.

Article 12

19. Mr. MARCIANOS (Greece) said that article 12 was worded in terms that were too general and could be interpreted as meaning that for any claim against the shipper the carrier had to prove the shipper's fault or neglect. It might be inferred from the article, for instance, that if the carrier brought an action against the shipper for payment of the freight due to him, he had to prove that the non-payment of the cost of carriage was due to some fault or negligence of the shipper, and that was contrary to all the rules of contract. It was not the purpose of article 12 to place upon the carrier the burden of proof in his claim for the cost of carriage. The point should therefore be made clear by adding at the beginning of the article, as proposed in his delegation's amendment (A/CONF.89/C.1/L.9), the words "Without prejudice to the shipper's liabilities under the contract" or, what came to the same thing, "Without prejudice to the carrier's rights under the contract". He would not, however, press his proposal.

20. Mr. SWEENEY (United States) said that he, like the representative of Greece, thought that the wording of article 12 was perhaps too general. The article was intended, in fact, to cover damage caused to the ship by the cargo, not the shipper's liability for dead freight and failure to hand over the goods to the carrier.

21. Mr. TANIKAWA (Japan) said that, to spare the carrier the problems arising over warehousing costs, it was necessary to specify that the shipper or consignee, as the case might be, was liable for loss, damage or expense incurred by the carrier due to the consignee's failure to take delivery of the goods within a reasonable time. That was the purpose of the amendment to article 12 proposed by his delegation (A/CONF.89/C.1/L.23).

22. Mr. FUCHS (Austria) said that the Japanese amendment was useful since it would offer a solution to a problem which arose very frequently in practice when the consignee did not take delivery of goods within a reasonable time.

23. Mr. NIANG (Senegal) said that in his country, if the consignee did not take delivery within a reasonable time, the goods were put into bond and, under the national law, it was not the owner but the customs authorities who took the responsibility for handling. He could not therefore support the Japanese proposal, which was incompatible with his country's legislation.

24. Mr. WAITITU (Kenya) said he thought that the question could easily be settled in the contract between the carrier and the shipper and it was unnecessary to

include a provision on the matter in the Convention.

25. Mr. SMART (Sierra Leone) said that he was opposed to the Japanese amendment for the reasons indicated by the representatives of Senegal and Kenya. The problem dealt with in the amendment was already satisfactorily settled under article 4, subparagraphs 2 (b) and (c). It was undesirable to introduce a further provision which would enable the carrier to dispose of the goods in a manner clearly contrary to the other provisions of the Convention.

26. Mr. DIXIT (India) said that he, too, opposed the Japanese amendment, being of the opinion that if the consignee did not take delivery of the goods it was for the national authorities, rather than the carrier, to deal with the matter.

27. Mr. M'BAH (United Republic of Cameroon) said that he had difficulty in accepting the Japanese amendment, for the same reasons as Senegal. He was also concerned about the position of the carrier, which might be made difficult if the shipper's instructions were not sufficiently clear or did not reach the carrier within a reasonable time. It would be better, therefore, to leave it to the national authorities, in the case in point the customs authorities, to proceed to the sale of the goods where necessary. That would be a better way of protecting individual interests than giving the carrier complete liberty to dispose of the goods.

28. Mr. MONTGOMERY (Canada) said he could not support the Japanese amendment because the matter it purported to deal with did not fall within the scope of the Convention and was a question to be settled in accordance with national law.

29. Mr. GONDRA (Spain) said that the matter referred to in the amendment did not fall within the scope of article 12, since it was already covered by article 4, subparagraph 2 (b), which provided that "in cases where the consignee does not receive the goods from the carrier", the latter should place them "at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge". That provision dealt with the question which had given rise to the Japanese amendment, for if the consignee did not take delivery of the goods, the carrier was relieved of his obligations.

30. Mr. NDURU (Uganda) said he was strongly opposed to the Japanese amendment, which could not apply to sea transport where the amounts at stake were considerable. The amendment would expose the shipper to enormous losses.

31. Mr. NSAPOU (Zaire) said he could not support the Japanese amendment because it was not compatible with the laws of his country, which had no access to the sea.

32. Mr. SANYAOLU (Nigeria) said he could not support the Japanese amendment for four reasons: first, it did not serve his country's interests; second, his country's law, like the law of Senegal, provided that the national authorities should take charge of the goods on behalf of the consignee; third, the text proposed by Japan gave the carrier too much freedom of action, of which he might take advantage to the detriment of the consignee; and

fourth, the carrier was compensated by demurrage for any expense he might have incurred through the consignee's not taking delivery of the goods within a reasonable time.

33. Mr. CLETON (Netherlands) said he considered that the Japanese amendment offered a solution to a problem which the carrier very often had to face, since it frequently happened that consignees did not take delivery of goods within a reasonable time. The amendment was based on the same principles as those of his country's law, and if it was not adopted the Netherlands would continue to apply its own law in the matter. He felt that it would be better, however, to include such principles in international trade law.

34. Mr. TANIKAWA (Japan) said he would like to clarify a point. If the carrier handed over the goods to the customs office at the port of discharge, he would cease to be liable, and, under article 4, paragraph 2, of the draft Convention, no warehousing costs for the goods could be charged to him. If the Committee felt that those matters could be dealt with in the contract between the carrier and the shipper, his delegation would withdraw its amendment.

35. The CHAIRMAN took note of the withdrawal of the amendment by Japan.

36. Mr. DIXIT (India) said he wished to comment that his delegation did not agree with the Japanese delegation on the legal aspect of the matter, for questions of that kind were governed by national law.

37. The CHAIRMAN invited the delegation of the German Democratic Republic to present its amendment, contained in document A/CONF.89/C.1/L.91.

38. Mrs. RICHTER-HANNES (German Democratic Republic) said that so far as her country's delegation was concerned, it was simply a matter of drafting changes which might perhaps be left to an *ad hoc* working group. To save the Committee's time she withdrew her amendment.

39. The CHAIRMAN invited the delegation of the Soviet Union to present its amendment, contained in document A/CONF.89/C.1/L.153.

40. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the purpose of his delegation's amendment was to word article 12 in an affirmative way, as had been done for article 5. If the members of the Committee agreed, the amendment might be regarded as a matter of form and referred to the Drafting Committee.

41. Mr. DOUAY (France) said he supported the amendment proposed by the USSR; it was a drafting amendment perfectly in harmony with the Convention, wherein the carrier's liabilities were expressed in an affirmative form.

42. Mr. WAITITU (Kenya) took the view that the amendment submitted by the Soviet Union raised a question of substance.

43. The CHAIRMAN pointed out that if any delegations considered that the Soviet Union's amendment raised a question of substance, it would have to be the subject of discussion in the Committee.

44. Mr. KHOO (Singapore) said that in the 1924 Brussels Convention the corresponding provision had almost the same wording as in the draft convention. If the wording of article 12 of the draft Convention were changed by deleting the word "unless", there would be a danger of creating confusion in the minds of judges, who would think that it had implications concerning the burden of proof. The present wording should therefore be maintained.

45. Mr. BYERS (Australia) said that to say the shipper was not liable unless there was neglect on his part or that the shipper was liable whenever there was neglect on his part were two different things. The phrasing advocated by the Soviet Union would make the shipper liable for any loss which could be said to be due to neglect on his part. It therefore went much further than the negative stipulations of the draft Convention. For that reason, the Australian delegation did not support the amendment proposed by the Soviet Union.

46. Mr. GANTEN (Federal Republic of Germany) said that he supported the amendment put forward by the Soviet Union. It was only a matter of drafting, and it was better to adopt a clear and positive wording.

47. Mr. DOUAY (France) said that he understood the hesitations of those who feared seeing a liability similar to that of the carrier established, in other words, a liability based on the presumption of fault save proof to the contrary. But the wording proposed by the Soviet Union introduced the concept of attributability, which meant that it would be necessary to establish by evidence that the damage had been caused by the fault or neglect of the shipper. It was not a matter of an *ipso jure* or presumed liability. Nevertheless, to allay the fears of those delegations which were afraid of a substantive change, the last part of the article might be reworded as follows: "... if it is established that the loss or damage resulted from the fault or neglect of the shipper, his servants or agents." The text would then clearly show that the shipper incurred no liability unless proof was brought by the carrier to show that the damage suffered by the ship had been caused by the fault or neglect of the shipper. That text did not introduce any presumption against the shipper, and, so far as concerned the underlying principles of law, it was completely different from the text on the liability of the carrier.

48. Mr. NDAWULA (Uganda) thought that the amendment put forward by the Soviet Union was not merely one of form. In fact, it was an ingenious attempt to introduce by the back door what could not be brought in through the front door.

49. Mr. GORBANOV (Bulgaria) said he thought that a positive wording was preferable. However, in so far as it touched on the principle of the burden of proof and the principle of presumption of the shipper's fault, it was a matter of substance. The Bulgarian delegation thought that the principle of the presumption of the shipper's fault should be accepted; in other words, the text should be drafted so that the shipper was liable for loss resulting from his acts, unless he proved that such loss was not due to his fault or neglect. Thus, in order to bring the text into line with the principles of contract law, a wording similar

to that of article 5, paragraph 1, concerning the liability of the carrier, should be adopted.

50. The CHAIRMAN observed that the Bulgarian delegation seemed to be proposing an oral amendment, which he could not accept.

51. Mr. GUEIROS (Brazil) said he could not accept the positive wording proposed by the Soviet Union delegation, because that wording introduced a substantive change. On the one hand, it modified the burden of proof. On the other, it weakened the relation between fault and damage by replacing in the English text the words "was caused" by the words "is attributable", and in the French text the words "*ne résultent*" by the words "*sont imputables*".

52. Mr. SMART (Sierra Leone) said he could not accept the amendment proposed by the Soviet Union for the reasons already given by Singapore, Canada and Brazil.

53. Mr. WAITITU (Kenya) said he could not support the amendment submitted by the Soviet Union for the reasons already given by Brazil.

54. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he was surprised that the claim could have been made that the Soviet Union was trying to bring in through the back door what it had failed to introduce through the front. The change proposed was merely a matter of drafting, and he would have been able to accept the wording suggested by the representative of France. However, because of the doubts raised by a number of delegations, the Soviet delegation would withdraw its amendment.

55. The CHAIRMAN said that article 12 of the draft Convention would therefore be referred to the Drafting Committee.

Article 13

Paragraph 1

56. The CHAIRMAN pointed out that the Committee

had before it amendments submitted by Tunisia, Austria and Canada. He invited the delegation of Tunisia to introduce its amendment.

57. Mr. HACHANA (Tunisia) said that his delegation's amendment (A/CONF.89/C.1/L.41) merely concerned a drafting change and was only intended to make paragraph 1 of article 13 somewhat more precise.

58. Mr. MALELA (Zaire) supported the Tunisian amendment.

59. Mr. FUCHS (Austria) expressed the opinion that the Tunisian amendment improved the text. He supported it and withdrew the amendment submitted by Austria (A/CONF.89/C.1/L.99). Moreover, he wished the Drafting Committee to take into account that the present wording of paragraph 1 made no provision for penalties.

60. The CHAIRMAN took note of the fact that Austria had withdrawn its amendment.

61. Mr. SMART (Sierra Leone) said that he thought Tunisia's amendment an excellent one.

62. Mr. SELVIG (Norway) said that in Tunisia's amendment the words "regulations in force" raised a problem. During the discussions in UNCITRAL it had been concluded that it was difficult to use such a wording because it was unknown where the regulations were in force. They might be in force at the port of loading, the port of discharge, or, again, in the country of transit. In fact, the provisions of article 13, paragraph 1, were intended as an addition to the regulations in force, and it was for that reason that they were formulated in general terms. As to penalties, a matter raised by the representative of Austria, it should be noted that they were provided for in paragraph 2 of the same article.

The meeting rose at 1.30 p.m.

18th meeting

Friday, 17 March 1978, at 3.15 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.18

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1; A/CONF.89/8, A/CONF.89/C.1/L.41, L.106, L.111, L.128, L.147)

Article 13 (continued)

1. The CHAIRMAN invited the Committee to continue

its consideration of the Tunisian amendment to article 13, paragraph 1 (A/CONF.89/C.1/L.41).

2. Mr. NIANG (Senegal) said that the Tunisian amendment raised a number of practical problems, since regulations for dangerous goods differed from one port to another and also differed in accordance with the nature of shipping operations—for example, trans-shipment, stopovers, and unloading. In order to avoid those problems, his delegation would prefer the wording of article 13, paragraph 1, to be left as it stood.

3. Mr. GANTEN (Federal Republic of Germany) said that his delegation supported the Tunisian amendment,

since it thought that the present text of article 13, paragraph 1, was too vague. In particular, the obligations imposed on the shipper emerged much more clearly from the words "in a manner that complies with the regulations in force and with the particular practices . . ." than from the expression "in a suitable manner" used in the existing text. Since the Norwegian representative had said that the text of the Tunisian amendment might raise the question as to which place's regulations were applicable, perhaps the words "at the port of loading" could be added to the proposed text.

4. Mr. GUEIROS (Brazil) said that adoption of the suggestion made by the representative of the Federal Republic of Germany would impose on the shipper the extremely difficult task of learning all the rules and regulations applicable at the various ports concerned. His delegation would prefer the existing text of article 13, paragraph 1, to an addition of such substance.

5. Some delegations had expressed concern that article 13, paragraph 1, provided for no penalties in the event that the shipper did not suitably mark or label dangerous goods as dangerous, whereas penalties were prescribed in the case of article 13, paragraph 2. His delegation therefore proposed that paragraph 2 should consist only of the first sentence of the existing text; that paragraph 3 should begin: "If the shipper fails to perform any of the requirements of paragraph 1 or paragraph 2 and the carrier or actual carrier does not otherwise have knowledge of their dangerous character:", which phrase should be followed by subparagraphs (a) and (b) of the existing paragraph 2; that the existing paragraphs 3 and 4 should be renumbered 4 and 5 respectively; and that the reference in the new paragraph 5 to paragraph 2, subparagraph (b) should be changed to read "paragraph 3, subparagraph (b)".

6. Mr. GRONFORS (Sweden) said he thought that article 13 was sufficiently clear when read as a whole. Paragraph 1 was surely meant only as an introduction to the rest of the article, in which the relevant requirements and penalties were clearly set forth.

7. Mr. KHOO (Singapore) said that, in his delegation's view, the Tunisian amendment would clarify the meaning already implicit but inadequately expressed in the existing text of article 13. Although, in that text, paragraph 1 required that the shipper should suitably mark or label dangerous goods, paragraph 2 said only that the shipper should "inform" the carrier of the dangerous character of the goods, without specifying how the carrier was to be informed. Moreover, the second sentence of the existing paragraph 2 contained the words "If the shipper fails to do so", but it was not clear what it was that the shipper failed to do.

8. His delegation shared the Brazilian representative's doubts as to the existing text of article 13 and could support the oral amendment that he had proposed.

9. The CHAIRMAN said that, in the absence of further support for the Tunisian amendment to article 13, paragraph 1 (A/CONF.89/C.1/L.41), he would take it that the Committee rejected that amendment.

10. Mr. QUARTEY (Ghana) said that his delegation

saw no reason why paragraphs 1 and 2 of article 13 could not be combined, so as to require that the shipper must suitably mark dangerous goods as dangerous, declare their dangerous character to the carrier and inform the carrier of any necessary precautions to be taken.

11. His delegation could support the oral amendment proposed by Brazil, which would serve to simplify matters.

12. Mr. AMOROSO (Italy) agreed with previous speakers that the oral amendment proposed by Brazil deserved consideration. Article 13 as it stood was not sufficiently precise; for example, it was not clear whether the shipper would be liable for a loss if he had suitably labelled dangerous goods but had failed to inform the carrier or actual carrier of the dangerous character of the goods.

13. The Brazilian delegation's oral amendment should be circulated in writing so that the Committee could study it with a view to clarifying and possibly combining the provisions of article 13. Alternatively, if the object of that amendment met with the Committee's approval, the Drafting Committee might be instructed to consider how it could best be incorporated in the text of article 13.

14. Mr. FUCHS (Austria) said that the Brazilian delegation's oral amendment was in line with the amendment proposed by Austria with regard to article 13, paragraph 2. The two amendments could perhaps be considered in conjunction with one another.

15. Mr. SELVIG (Norway) said that the subject matter of article 13 was complicated and the existing text of that article represented a carefully considered balance which should not be too lightly disturbed.

16. With regard to penalties, those provided for in the existing subparagraph 2 (b) seemed appropriate enough.

17. Mr. CASTRO (Mexico) said that his delegation was among those which shared the Brazilian representative's concern with regard to article 13, whose provisions must strike a balance acceptable to all parties to a contract of carriage. It was important to ensure that the article's provisions did not favour any party in particular and to bear in mind that a shipper who failed to give sufficient indication and notification of the dangerous character of goods would create risks for everyone concerned.

18. The Committee must decide whether to prescribe penalties for failure to comply with the provisions of article 13, paragraph 1, and the Drafting Committee should be instructed to consider the text accordingly.

19. Mr. SEVON (Finland) said that the Brazilian amendment should be circulated in writing before the Committee considered it.

20. Mr. GUEIROS (Brazil) said that in submitting its amendment orally his delegation had sought only to save time. If, however, the Committee wished to defer further discussion of the matter until its next meeting, a text would be made available in the meantime.

21. The CHAIRMAN said that, if there was no objection, he would take it that the Committee decided to defer consideration of the Brazilian amendment until the next meeting, when it would be circulated in writing.

22. *It was so decided.*

23. The CHAIRMAN invited the Committee to consider the Mauritian amendment to paragraph 2 (A/CONF.89/C.1/L.128).

24. Mr. BOOLELL (Mauritius) said that his comments would be limited to three aspects of the amendment submitted by his delegation. Firstly, his delegation did not intend to press for a definition of the term "dangerous goods", in view of the difficulties involved in devising such a definition. Secondly, its proposal to include a reference to international norms concerning dangerous goods was designed, on the one hand, to give the shipper an indication of what he should do to comply with the obligation to inform the carrier of the nature of the goods he was taking over and, on the other hand, to serve as a guideline for courts in deciding whether a shipper had fulfilled his obligations. A reference of a purely indicative nature would also serve to promote the uniformity advocated in article 3. Thirdly, the words "*à savoir*" in the French version of document A/CONF.89/C.1/L.128 should be replaced by the word "*notamment*", which would convey his delegation's meaning more accurately.

25. Mr. MacANGUS (Canada) said that it was important that a specific reference be made to the need for the shipper to mark dangerous goods as dangerous, in accordance with article 7 of the IMCO International Convention for the Safety of Life at Sea.

26. Mr. SANYAOLU (Nigeria) said that his delegation would have some difficulty in accepting the reference proposed by Mauritius to international norms concerning dangerous goods, since such norms might contain principles of customary international law that would conflict with those embodied in the Convention; that was liable to create difficulties for the courts, unless the meaning of "international norms" was clearly defined.

27. Mr. NIANG (Senegal) said that it was best not to make any reference to international norms, since shippers more often than not knew very little about them.

28. Mr. QUARTEY (Ghana) said he doubted whether it was appropriate to include a definition of the term "international norms". A reference could be made instead to the International Maritime Dangerous Goods Code drawn up by IMCO, which was internationally known and accepted.

29. Mr. MacANGUS (Canada) endorsed the suggestion made by the representative of Ghana, which would be as effective in meeting the need for precision as his own earlier suggestion of a reference to the Convention on the Safety of Life at Sea.

30. Mr. PTAK (Poland) said that a list of the properties of known dangerous goods was kept by IMCO and brought up to date annually, but the task of actually defining such goods would be almost impossible for the Conference to achieve without the aid of specialists familiar with those properties. Consequently, he was opposed to the Mauritian proposal for the elaboration of a definition of "dangerous goods".

31. The second part of the Mauritian proposal was consistent with the draft provision under which the shipper was required to inform the carrier of the dan-

gerous character of the goods: in so doing, the shipper would no doubt refer to the IMCO Dangerous Goods Code or to the international norms in force, since the carrier had to know what precautions to take to protect the cargo. However, the aim of the Mauritian proposal was to ensure that the shipper notified the carrier in every case, and that object could be achieved merely by deleting the words "if necessary" from article 13, paragraph 2.

32. The CHAIRMAN drew the attention of the delegations to the fact that the first part of the Mauritian amendment, concerning the preparation of a definition of "dangerous goods", had been withdrawn.

33. Mr. CASTRO (Mexico) said he wished to point out that the International Convention for the Safety of Life at Sea was not concerned with dangerous goods other than incidentally, in relation to questions of the stowing of bulk cargo, fire prevention and so forth. The inclusion of a reference to the International Maritime Dangerous Goods Code would be more appropriate, but as that Code was updated every year his delegation was afraid that such a mention might cause problems in regard to the ratification of the Convention.

34. Mr. BYERS (Australia) said that his delegation opposed the Polish representative's suggestion to delete the words "if necessary", since the shipper would then be obliged to advise the carrier to take precautionary measures even when such measures were not necessary.

35. Mr. BREDHOLT (Denmark) said it would be a step backwards to adopt either the Mauritian or the Ghanaian amendment; the list of dangerous goods was not exhaustive, and references to other conventions were unfortunate, as later amendments to them might create problems for the application of the Convention at hand.

36. The CHAIRMAN said that he would take it that the Mauritian amendment (A/CONF.89/C.1/L.128) was rejected and that, consequently, the Ghanaian amendment was rejected as well.

37. He invited the Committee to turn its attention to the amendments to article 13, paragraph 2, submitted by Bulgaria (A/CONF.89/C.1/L.106) and Yugoslavia (A/CONF.89/C.1/L.111), both of which entailed the deletion of the words "if necessary".

38. Mr. KACIĆ (Yugoslavia) said that the sole purpose of his delegation's amendment was to help to avoid the harmful consequences and even disasters that might occur in the course of the carriage of dangerous goods by sea, which was still a perilous undertaking. The number of dangerous substances currently carried by sea was enormous, and as they were shipped under a wide variety of names and identification marks only the makers of such substances or specialists were aware of their actual nature. His delegation felt strongly that it was in all cases the responsibility of the shipper, who maintained close relations with the manufacturers of the goods, to inform the carrier of the precautions which should be taken. His delegation's proposal for the deletion of the words "if necessary" from paragraph 2 was dictated by the following considerations: first, the shipper was better qualified than any of the other parties to a contract of carriage to determine the precautions that were needed in handling

dangerous goods; secondly, the deletion of the phrase concerned would obviate cases in which dangerous goods were delivered without the necessary instructions regarding the treatment of such goods; thirdly, the effects of loss of or damage to dangerous goods were not restricted to the goods themselves, but extended to the whole of the cargo and the crew of the vessel as well; fourthly, as the paramount consideration was to achieve maximum security for each shipment, all possibility of dispute as to whether it had been "necessary" or not to take certain precautions should be removed.

39. Mr. GORBANOV (Bulgaria) associated himself with the remarks made by the representative of Yugoslavia. His delegation, too, felt that it was the shipper who was in the best position to know the nature of the goods to be transported and that he should be required to inform the carrier of the risks involved and of the necessary precautions to be taken. The words "if necessary" should therefore be deleted from paragraph 2.

40. Mr. SEVON (Finland) said his delegation opposed the proposed amendment as unnecessarily enlarging the liability of the shipper: the deletion of the words "if necessary" would compel the shipper to inform the carrier of the precautions required, although the carrier might be experienced in that kind of trade and be fully aware of those precautions.

41. Mr. QUARTEY (Ghana) asked if the shipowner, as opposed to the shipper, would in some cases decide whether information on precautions was to be given.

42. Mr. MARCIANOS (Greece) said his delegation was in favour of deleting the words "if necessary" because, if a mishap occurred, a dispute might arise as to whether or not it had been necessary for the shipper to inform the carrier of the precautions to be taken. The shipper could have a printed leaflet available on the nature of the goods and the precautions required.

43. Mr. SANYAOLU (Nigeria) said his delegation, too, was opposed to the deletion of those words, since their inclusion would ensure that the carrier took greater care of the goods.

44. Mr. KHOO (Singapore) said he was opposed to the deletion of the words "if necessary" on the grounds that, although the shipper might be aware of the precautions necessary for the carriage of dangerous goods in general, he might not know how a certain type of goods should be treated in combination with other types of cargo. In such cases, the carrier was more likely to know what precautions should be taken. If special precautions were needed, however, the shipper should inform the carrier accordingly, and that eventuality would be covered by the maintenance of the words "if necessary".

45. Mr. SMART (Sierra Leone) said that his delegation was not in favour of the proposal to delete the words "if necessary", since their deletion would place a greater burden on the shipper, who might not always know what precautions were needed. The carrier was almost invariably well-informed, but the inclusion of those words ensured that the shipper would still be held liable if he failed to advise the carrier of the precautions required.

46. Mr. WAITITU (Kenya) agreed that the carrier was

often in a better position than the shipper to know what precautions were needed. Once the shipper had notified the carrier of the dangerous nature of the goods he was to transport, it was for the carrier to ascertain what precautions were required. If the words "if necessary" were deleted, the shipper would be obliged to give information to the carrier even if the carrier was well aware of what should be done. His delegation therefore opposed the amendments by Yugoslavia and Bulgaria.

47. Mr. MASSUD (Pakistan) said that it was undesirable to delete the words "if necessary" because the shipper was duty-bound to inform the carrier about the dangerous nature of the goods he was shipping, and in many cases the precautions necessary were implicit in the very nature of the goods. If, on the other hand, the shipper failed to give the carrier information on the precautions which were required, the carrier might transfer the goods to an actual carrier who might not be aware of the precautions needed; in that case, the shipper could be held liable in the event of loss or damage.

48. Mr. FUCHS (Austria) said that his delegation, whose primary concern was to promote international trade, agreed with the Yugoslav delegation that the issue involved in paragraph 2 had serious implications and that no one should be given the possibility of evading his obligations.

49. With reference to the question put by the representative of Ghana, his delegation was of the opinion that it was the shipper who should decide what information to give, since he represented the producer or seller and knew what precautions were necessary to avoid danger. If the words "if necessary" were left in the text, they would give rise to disputes if loss or damage occurred, and in the interests of the shipper himself they should be deleted.

50. Mr. FAHIM (Egypt) supported the UNCITRAL text as drafted. If when a carrier accepted dangerous goods he knew of their character, there was no need for him to ask the shipper what precautions were required. If he did not know, then he would ask for further information.

51. The CHAIRMAN noted that the proposal to delete the words "if necessary" from paragraph 2 did not have the support of the majority. He invited the Committee to consider next the three amendments submitted by the United Kingdom (A/CONF.89/C.1/L.147).

52. Mr. MALLINSON (United Kingdom), introducing the United Kingdom amendments, said that the first and third amendments, to paragraphs 2 and 3 respectively, were to be considered together. As drafted, paragraph 2 dealt with a situation arising at the start of the voyage, and paragraph 3 with a situation arising during the voyage. That, in his delegation's view, was an unnecessary duplication which could lead to confusion. It therefore proposed that, in the second sentence of paragraph 2, the phrase "and such carrier or actual carrier does not otherwise have knowledge of their dangerous character" should be deleted; and that that point should be dealt with in paragraph 3 by amending its wording, as proposed by his delegation, to cover all cases in which the carrier would be entitled to rely on subparagraphs 2 (a) and (b).

53. Further, the word "knowledge" in paragraph 3 could give rise to dispute, in view of the many kinds of knowledge. The point was best illustrated by a carrier who took goods into his charge with knowledge of their dangerous character, which knowledge it might not however be reasonable to impute to his handling agent, in a distant port, whose experience of the goods was perhaps very different from that of his principal. His delegation therefore proposed that the term "actual knowledge" rather than "knowledge" should be used. That would restrict the scope of the exclusion clauses under subparagraphs 2 (a) and (b) to persons who, having taken goods into their charge, had actual knowledge of their dangerous character.

54. Lastly, with regard to the second amendment, to subparagraph 2 (a), his delegation considered that the word "shipment" was somewhat inappropriate in the context of a convention dealing with contracts of carriage. It therefore proposed that that subparagraph should be reworded so as to introduce the idea of loss occurring during the carriage while the carrier or actual carrier was in charge of the goods. That was, however, a purely drafting point which could perhaps be referred to the Drafting Committee.

55. Mr. HONNOLD (United States of America) said that, as drafted, the second United Kingdom amendment seemed to suggest that the shipper would be liable for any loss that occurred while the carrier was in charge of the goods, even if there was no causal relationship between such loss and the dangerous character of the goods.

56. Mr. MALLINSON (United Kingdom) said his delegation accepted that point and agreed that it should be referred to the Drafting Committee.

57. Mr. SMART (Sierra Leone) said that he supported the first amendment by the United Kingdom but would point out that the second was not simply a matter of drafting but raised a point of substance, since its effect would be to render the shipper liable for loss not directly connected with the dangerous character of the goods. For example, if through fault on the part of a member of the crew a dangerous animal escaped, causing loss and damage to the property of others, then, under the terms of that amendment, the shipper would be liable.

58. Mr. MARCIANOS (Greece) said he supported all three of the United Kingdom amendments. To clarify the intent of the second amendment, however, he would propose that the words "which occurs" should be replaced by "which is caused by the dangerous nature of the goods".

59. Mr. SMART (Sierra Leone) said he could accept the Greek proposal only if the word "directly" were added before "caused".

60. Mr. SANYAOLU (Nigeria), agreeing with the previous speaker, said that the second United Kingdom amendment extended the shipper's liability beyond the terms of subparagraph 2 (a) as drafted. Unless a more suitable wording could be found, his delegation would prefer to retain the existing text.

61. Mr. SEVON (Finland) said that his delegation could support the United Kingdom amendment to sub-

paragraph 2 (a) provided that it was redrafted to accommodate the United States representative's point.

62. Mr. DOUAY (France) said his delegation was quite unable to accept the first United Kingdom amendment, to paragraph 2. The effect of the deletion of the phrase in question would be to impose a virtually automatic penalty on the shipper, for the mere fact that he failed to comply with the obligation to inform the carrier of the dangerous character of the goods would entitle the carrier, without more ado, to unload, destroy or render innocuous the goods in question. But there might well be instances where, although a shipper did so inform a carrier in the case of a first shipment of dangerous goods, he did not do so in the case of subsequent shipments of the same type of goods, since he knew that the carrier was already well aware of their character. If the amendment were accepted, in such cases the carrier could have recourse to the measures envisaged under subparagraph 2 (b).

63. His delegation did not have any definite position on the United Kingdom amendment to subparagraph 2 (a), which was essentially a matter of drafting, and could agree either to that amendment or to the text as drafted.

64. Lastly, it supported the third United Kingdom amendment, for paragraph 3 as drafted was too restrictive in its terms.

65. Mr. QUARTEY (Ghana), supporting the first United Kingdom amendment, said that he did not agree with the French representative. The second sentence of paragraph 2, as drafted, might enable a shipper who failed to declare that the goods he had handed over to the carrier were dangerous to escape liability. The first sentence of paragraph 2 imposed on the shipper an absolute obligation to make a declaration to the carrier as to the dangerous character of the goods. Even if at the time he did not know that the goods were dangerous, and such goods subsequently became dangerous in transit, he must still be held liable for any resultant loss.

66. Mr. SELVIG (Norway) said that, as far as the substantive points raised by the United Kingdom amendments were concerned, his delegation would prefer to retain the existing text. The principle underlying paragraph 2 was that, if the shipper failed to provide the carrier with the necessary information, he would only be liable if the carrier did not have knowledge of the dangerous character of the goods. Thus, there had to be a causative link between the failure to provide information and the liability. The effect of the proposed deletion, however, would be to suggest that liability could arise in the absence of such a link, although admittedly that problem was to some extent taken care of by the United Kingdom amendment to paragraph 3. His delegation would not, however, like the word "knowledge", which had been the subject of careful consideration, to be replaced by "actual knowledge".

67. His delegation also had difficulty with the second amendment, to subparagraph 2 (a), which, unlike the existing text, did not specify the cause of the damage.

68. He appreciated that some of the points raised in the amendments concerned matters of drafting only, but he

would urge the Committee to take a clear stand in favour of the UNCITRAL text in so far as questions of substance were concerned.

69. Further to a point raised by Mr. KHOO (Singapore), Mr. HONNOLD (United States of America) explained that he had not proposed any specific change in the United Kingdom amendment to subparagraph 2 (a), but had merely drawn attention to the fact that that amendment did not take account of the link between the loss and the dangerous character of the goods. He concurred on the need to agree on the substantive points involved, subject to any drafting changes that might be required.

70. Mr. MASSUD (Pakistan), opposing the first and third United Kingdom amendments, said that the reference to knowledge at the time when the goods were taken in charge would make the scope of paragraph 3 narrower than that of paragraph 2, which was not limited by reference to any time factor. Paragraph 2, unlike paragraph 3, applied where the carrier had knowledge of the dangerous character of the goods at the time of their actual loss or damage. In his view, it would be inequitable if the carrier could hold the shipper absolutely liable because he had knowledge when the loss or damage occurred but not when he took over the goods.

71. The amendment to subparagraph 2 (a) was also unacceptable to his delegation, since it would extend the period of responsibility envisaged under the Convention. In that connexion, he reminded the Committee that a number of delegations favoured a period of responsibility that was restricted on a port-to-port basis and was

not extended to a period lasting from the time when the goods were taken over until the time when they were delivered.

72. Mr. HANKE (German Democratic Republic) said that, in general, his delegation supported the text as drafted. It was, however, prepared to accept the United Kingdom amendment to subparagraph 2 (a), as further amended by the representatives of Greece and Sierra Leone.

73. Mr. KHOO (Singapore) said he could support the United Kingdom amendment to subparagraph 2 (a) provided that it was redrafted to take account of the causative link between dangerous goods and loss. Otherwise, he would prefer to retain the existing text.

74. Mr. DONOVAN (United States of America), noted that, in subparagraph 2 (a), the expression "liable...for all loss" appeared, whereas everywhere else in the Convention the expression used was "liable for loss". He suggested that the Drafting Committee should be asked to consider the possibility of deleting the word "all" from subparagraph 2 (a) to bring the text into line with the rest of the Convention.

75. The CHAIRMAN said that the Drafting Committee would be asked to consider the drafting points raised by the United Kingdom amendments. In so far as the substantive points were concerned, he noted that the consensus of opinion was in favour of retaining the existing text.

The meeting rose at 6 p.m.

19th meeting

Monday, 20 March 1978, at 10.45 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.19

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued)
(A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.80, L.106, L.111, L.147, L.157, L.158, L.162, L.166)

Article 13 (continued)

Paragraph 2

1. The CHAIRMAN invited the representative of Austria to introduce his amendment (A/CONF.89/C.1/L.157).

2. Mr. FUCHS (Austria) said that if the shipper informed the carrier of the dangerous character of the

goods to be shipped only at the time when he handed them over to him, as provided for in the draft Convention, it would then be far too late to take the necessary precautions at the port and on board ship. In order to make the shipper responsible for informing the carrier of the dangerous character of the goods at the time when the contract of carriage was concluded, his delegation proposed that the words "Where the shipper hands over dangerous goods to the carrier or an actual carrier" should be deleted from paragraph 2 of the draft Convention and that the wording for paragraph 2 contained in document A/CONF.89/C.1/L.157 should be adopted.

3. Mr. PALLUA (Yugoslavia) supported the Austrian amendment.

4. Mr. VOGEL (German Democratic Republic) said he could accept the Austrian amendment if subparagraph (a) were to read: "(a) The shipper shall be liable to the carrier

for all loss resulting from the dangerous character of such goods, and".

5. Mr. GORBANOV (Bulgaria) said he supported the Austrian amendment because it eliminated the restrictive requirement laid down in the draft Convention.

6. Mr. SELVIG (Norway) observed that the text of the draft Convention mentioned the carrier and the actual carrier. The idea was that information concerning the dangerous character of the goods should be given to the person to whom the shipper handed over those goods, since it was that person who needed it. If the shipper gave the necessary information to the person to whom he handed over the dangerous goods, he was considered to have performed his obligation. Otherwise, he would have to inform both the actual carrier and the carrier, a procedure which in practice might prove complicated. The principal consideration was that the actual carrier should receive the necessary information. Since the amendment submitted by Austria did not indicate sufficiently clearly that the information should be given to the person who received the dangerous goods, the Norwegian delegation was unable to support it.

7. Mr. BYERS (Australia) endorsed the comments of the representative of Norway and said that he could not accept the Austrian amendment.

8. The CHAIRMAN put the Austrian amendment to the vote.

9. *The amendment was rejected by 32 votes to 4, with 17 abstentions.*

10. The CHAIRMAN invited the representative of Brazil to introduce his amendment contained in document A/CONF.89/C.1/L.166.

11. Mr. GUEIROS (Brazil) said that the amendment of the Brazilian delegation was dictated by a concern to make express provision for penalties in the event that the shipper failed to comply with the obligation to mark or label dangerous goods. That penalty was justified by the importance of marking or labelling on dangerous goods for information purposes.

12. Mr. KHOO (Singapore) supported the amendment submitted by the Brazilian delegation.

13. Mr. SELVIG (Norway) said that the point of view of the Brazilian delegation was understandable but raised difficulties, not only as to principle but also as to application. If the text proposed by Brazil was adopted, the mere fact that the shipper failed to mark dangerous goods, even if he had given the carrier all the necessary information, would impose on him a liability and would give the carrier the right to destroy the goods. That would be too severe a penalty, and the provisions of paragraph 3, subparagraph (b), of the Brazilian amendment should be applicable only where the shipper had given the carrier inadequate information.

14. With regard to the principle of penalizing failure to mark dangerous goods, he observed that in most countries the law provided penalties for negligent shippers which did not need to be made the subject of uniform international rules. Such rules would raise difficulties, and it would be better for those penalties to be adapted to the criminal system of each State. Consequently, his dele-

gation could not support the Brazilian amendment.

15. Mr. BOOLELL (Mauritius) said that, in his view, the Brazilian amendment would clarify the obligations imposed on the shipper and the penalties for failure to perform those obligations. For that reason, he supported the amendment.

16. Mr. POPOV (Bulgaria) said that he endorsed the Brazilian amendment, but with one reservation regarding subparagraph (b), which he would explain when the Committee took up article 13, paragraph 4, of the draft Convention.

17. Mr. AMOROSO (Italy) said that he had supported the Brazilian amendment in principle when it had been made orally, but now experienced difficulties in accepting the amendment in its entirety. The amendment would have the effect of increasing the shipper's liability in the event that he gave the carrier the necessary information but failed to mark dangerous goods. The whole problem arose from the fact that no penalty had been prescribed in connexion with the provisions of article 13, paragraph 1. For that reason, it should be considered whether that paragraph ought to be maintained. It would be possible to delete it for, even without paragraph 1, article 13 still stood up. Moreover, rules relating to marking were already laid down in national laws and in other conventions.

18. The CHAIRMAN observed that the Italian representative had made an oral proposal and asked whether that proposal was acceptable to the Committee.

19. Mr. RAMÍREZ HIDALGO (Ecuador) said he supported the Brazilian amendment as serving to clarify article 13, a clarification which was in the interest of shipper and carrier alike.

20. Mr. MONTGOMERY (Canada) said that there were certain types of dangerous goods which were shipped in bulk and did not lend themselves to marking. The important thing was for the shipper to duly inform the carrier of the dangerous character of the goods shipped. It was where such information was not given that the penalties provided for should be applied. Accordingly, his delegation had certain reservations concerning the Brazilian amendment.

21. Mr. REISHOFER (Austria) observed that, in document A/CONF.89/7, Austria, like the representative of Italy, had proposed the deletion of paragraph 1 of article 13. His delegation therefore supported the Italian proposal. However, if it was not the wish of the Committee to delete paragraph 1, his delegation would support the Brazilian amendment.

22. The CHAIRMAN recalled that at the start of the Conference it had been decided that all proposals made previously by Governments should be resubmitted to the Conference.

23. Mr. PTAK (Poland) said that he found the Brazilian amendment useful in that it clarified the responsibilities of the shipper and the carrier. The marking or labelling of dangerous goods was absolutely essential to prevent accidents, not only during carriage but after unloading. For that reason, his delegation thought that article 13, paragraph 1, should be maintained unchanged in the

draft Convention and that the Brazilian amendment should be adopted in its entirety.

24. Mr. CASTRO (Mexico) supported the Brazilian amendment.

25. Mr. MUCHUI (Kenya) said that the Brazilian amendment raised certain difficulties, since the present text of article 13 already provided that the shipper should indicate on the dangerous goods that they were dangerous, inform the carrier of their dangerous character and, if necessary, specify the precautions to be taken. It would seem to be unjust for a shipper who had informed the carrier of the nature of the goods and the measures to be taken to run the risk of seeing the goods unloaded, destroyed or rendered innocuous, merely because they bore no mark or label indicating that they were dangerous. His delegation was also unable to accept the suggestion made by the Italian delegation, for even if the Brazilian amendment went too far, it was important to retain paragraph 1.

26. Mr. BYERS (Australia) said he could not support the Brazilian amendment, since, as he interpreted the existing text, paragraph 1 required the shipper to mark or label in a suitable manner dangerous goods as dangerous, whereas paragraph 2 strengthened that obligation by being more explicit and prescribing penalties. It was the first sentence of the new paragraph 3 proposed by the Brazilian delegation that raised problems, for that provision would entitle a carrier who had been duly informed of the dangerous character of the goods and the precautions to be taken to destroy the goods merely because the shipper had not labelled them, either by inadvertence or because he had been unable to do so. Such a consequence seemed excessive, and his delegation was therefore in favour of maintaining the text as it stood.

27. Mr. NOVOA IGUZQUIZAR (Cuba) said he supported the Brazilian amendment, for, however stringent the regulations applicable in ports might be, it was not enough to inform the carrier of the dangerous character of particular types of goods; the shipper should be required to affix to dangerous goods a mark or label indicating that they were dangerous, so as to engage the attention of cargo handlers and avoid a disaster.

28. Mr. NDAWULA (Uganda) said he agreed with the views expressed by the Kenyan and Australian delegations in opposing the Brazilian amendment. It would be odd to impose penalties on a shipper who had informed the carrier of the character of the goods and of the precautions to be taken. Moreover, the existing text of article 13 already provided adequate penalties in the event that the shipper failed to perform his obligation.

29. Mr. WUREH (Liberia) said he supported the Brazilian amendment because it was necessary to inform all parties concerned of the dangerous character of the goods so that proper and adequate care could be taken to prevent the dangerous goods from causing damage, not only to the other cargo carried on the same vessel but also to the crew as well as to the vessel itself.

30. Mr. DE FRANCHIS (Observer for the Intergovernmental Maritime Consultative Organization) drew the attention of participants to the International Convention

for the Safety of Life at Sea, to which 97 States were parties. Chapter 7 of that instrument, which contained provisions concerning the procedures to be observed in transporting dangerous goods, set forth rules governing loading, marking and labelling, the documents to be furnished and requirements for the stowage of dangerous goods which currently formed part of the internal law of States parties to that Convention.

31. Mr. GONDRA (Spain) said that, while failure to comply with the requirements of article 13, paragraphs 1 and 2, should be penalized, account should nevertheless be taken of the serious consequences which too strict a provision might have for the shipper. The main consideration was that the carrier should be suitably informed of the dangerous character of the goods; in his delegation's opinion, the marking of the goods was only one means among others of fulfilling that obligation, since, in the case of bulk cargo, for instance, the shipper could not use that procedure. The Brazilian amendment might be acceptable if paragraphs 1 and 2 were merged into a single paragraph, reading as follows: "When he hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper shall inform him in a suitable manner of the dangerous character of the goods, by marking them or by any other appropriate means and, if necessary, shall inform him of the precautions to be taken."

32. Mr. AL-ALAWI (Oman) said that the Brazilian amendment caused difficulties for his delegation. The question arose whether it was permissible to entitle the carrier to unload, destroy or render innocuous bulk cargo on the grounds that it bore no mark or label indicating its dangerous character. The shipper should incur penalties only if he had totally failed to perform his obligation to furnish information.

33. Mr. ATTAR (Iraq) said he supported the Brazilian amendment; the obligation imposed on the shipper under paragraph 1 should be strengthened, for otherwise it would remain a dead letter. Such penalties as might be provided for in article 13 would serve the interests not only of the shipper but also of all other parties concerned in the carriage of the goods in question. It would be a serious matter if the persons in charge of the warehousing of the goods were not advised of the dangerous character of the goods or if the crew did not take the necessary precautions owing to lack of information.

34. Mr. PALMER (United Kingdom) said that the original text as a whole was satisfactory; in any event, it was questionable whether the Brazilian amendment would have the desired effect, since the shipper would be penalized only if "the carrier or actual carrier does not otherwise have knowledge" of the dangerous character of the goods. He was therefore not persuaded that the Brazilian amendment went further than the existing wording of article 13, paragraphs 1 and 2.

35. Mr. GUEIROS (Brazil) said that the modern world was dangerous and that it was therefore necessary to impose on persons responsible for dangerous goods—in the case in point, the shipper—the obligation to take all necessary measures to avoid disasters. It was absolutely essential for persons handling or otherwise coming into

contact with explosives, for instance, to know that they were dealing with dangerous goods, and it was not enough merely to inform the carrier, perhaps by telephone, since he might neglect to advise the other parties concerned. The basic purpose of the Brazilian amendment was to make the provision of paragraph 1 of the present text a true obligation, failure to perform which would entail penalties.

36. The CHAIRMAN invited the members of the Committee to vote on the Brazilian amendment (A/CONF.89/C.1/L.166).

37. *The amendment was rejected by 35 votes to 24, with 7 abstentions.*

38. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved paragraphs 1 and 2 of article 13 and would refer them to the Drafting Committee.

39. *It was so decided.*

Paragraph 3

40. Mr. FILIPOVIĆ (Yugoslavia) said that his delegation would withdraw its amendment to paragraph 3 (A/CONF.89/C.1/L.111) because it was linked to the amendment which his delegation had proposed to paragraph 2, and which had not been adopted.

41. Mr. MALLINSON (United Kingdom) said that the United Kingdom amendment (A/CONF.89/C.1/L.147) had already been the subject of a long discussion at the previous meeting when the United Kingdom amendment to subparagraph 2 (a), contained in the same document, had been considered. Basically, the amendment involved introducing the concept of "actual" knowledge in paragraph 3.

42. Mr. MONTGOMERY (Canada) said he wished to make a number of comments concerning the wording of article 13, paragraph 3, in the draft Convention and in the United Kingdom amendment. Firstly, it was perhaps necessary to specify the identity of the "person" referred to in paragraph 3, so as to indicate whether that person was the carrier or the actual carrier, his servants or agents.

43. Furthermore, he noted that the United Kingdom amendment did not contain the words "during the carriage" which appeared in the draft Convention and which, in his opinion, limited the scope of paragraph 3. In article 4, it had been provided that "the responsibility of the carrier for the goods covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge". It would not appear to be the intention of article 13 to limit the liability of the carrier only during the carriage.

44. Thirdly, he observed that, in both of the texts under consideration, paragraph 3 did not provide for situations in which an actual carrier took over the goods without having actual knowledge of their dangerous character. The carrier, for his part, could invoke the provision of paragraph 2; however, it was not clear what would happen if the actual carrier had not been warned by the carrier of the dangerous character of the goods. Provision should also be made for cases of trans-shipment and cases where several successive carriers were involved. As

drafted, therefore, paragraph 3 contained a gap which the Drafting Committee should endeavour to fill.

45. He explained that his remarks were directed to the Drafting Committee and requested that any decision on the matter should be deferred until other delegations had had the time to reflect on his comments and to give their opinions.

46. Mr. SELVIG (Norway) said he saw no need to add the word "actual" in article 13, paragraph 3, and preferred the existing text.

47. The CHAIRMAN, noting that the United Kingdom amendment to article 13, paragraph 3 (A/CONF.89/C.1/L.147), had received no support, said he would take it that the Committee had rejected that amendment.

48. *It was so decided.*

49. The CHAIRMAN also noted that the Canadian delegation had requested the Committee to defer a decision on paragraph 3 until a later stage.

50. *It was so decided.*

Paragraph 4

51. Mr. POPOV (Bulgaria), introducing his delegation's amendment (A/CONF.89/C.1/L.106), which involved the deletion of the words "as the circumstances may require" from article 13, paragraph 4, said that paragraph 2 gave the carrier or actual carrier the right to unload the goods, destroy them or render them innocuous if he discovered that they were dangerous and he had not been informed of their dangerous character. However, the circumstances which might induce a carrier to dispose of dangerous goods in that manner varied, and there was no clearly defined criterion on the matter. It was proposed that the carrier should be required to prove that the circumstances had rendered necessary the measures which he had taken and that failure to furnish such proof would make him liable for the injurious consequences of his action and to prosecution by the shipper. His delegation found that requirement too severe and felt that the clause contained in paragraph 4 would entail unduly serious legal consequences for the carrier, particularly as he would often have to take a decision on the spur of the moment. In reality, the carrier was not in a position to take the right decision, and it was in consideration of that fact that his delegation proposed the deletion of the words "as the circumstances may require".

52. Mr. SMART (Sierra Leone), supported by Mr. NDAWULA (Uganda), said that he was in favour of maintaining the text of paragraph 4 as it stood because a carrier who discovered that the goods were dangerous had various possible courses of action open to him under paragraph 2 and the words "as the circumstances may require" offered a safeguard against any arbitrary decision on the part of the carrier. Those words should therefore be maintained.

53. Mr. DOUAY (France) said that he also favoured the retention of the phrase concerned, which made the text more flexible and less categorical.

54. Mr. MONTGOMERY (Canada) said that he was in favour of maintaining the existing text, which ensured that the carrier would take a reasonable decision.

55. Mr. SEVON (Finland) said that he, too, supported the original text, which obliged the carrier, when reaching his decision, to take into account the interests of the shipper.

56. Mr. PTAK (Poland) said that he supported the Bulgarian amendment, which allowed greater latitude to the carrier or the master of the ship when required to cope with emergency situations. If the shipper had not marked the goods or informed the carrier of their dangerous character, he should bear the consequences of his neglect or forgetfulness.

57. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in his view, the original text of paragraph 4 placed too heavy a responsibility on the carrier, who was often required to take a decision in difficult circumstances without being able to seek expert advice.

58. Mr. M'BAH (United Republic of Cameroon) said that the expression "as the circumstances may require" introduced a necessary element of balance into paragraph 4, since it left the carrier responsibility for the decision to be taken while obliging him to justify that decision. He was therefore opposed to the deletion of that phrase.

59. Mr. NSAPOU (Zaire) said that he opposed the Bulgarian amendment for the same reasons as those given by the representatives of Sierra Leone, Uganda and France.

60. Mr. MUCHUI (Kenya) said that, in his view, it was not asking too much of the carrier to require him to take a reasonable decision. That was the only demand which the expression "as the circumstances may require" made on the carrier. Moreover, that phrase already appeared in subparagraph 2 (b). Consequently, he favoured its retention.

61. Mr. HACHANA (Tunisia) said that he, too, opposed the deletion of the phrase "as the circumstances may require".

62. Mr. SANYAOLU (Nigeria) said that he was in favour of keeping the words "as the circumstances may require", which enabled the carrier's decision to be assessed on the basis of an objective criterion.

63. The CHAIRMAN said that, if there was no objection, he would take it that the Bulgarian amendment to article 13, paragraph 4 (A/CONF.89/C.1/L.106), was rejected.

64. *It was so decided.*

65. Mr. DOUAY (France) said that the sole purpose of his delegation's amendment (A/CONF.89/C.1/L.80) was to clarify the text of paragraph 4 by replacing the words "If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked," by the words "If, in cases where they have been shipped with the knowledge and consent of the carrier,". He suggested that the words "and of the actual carrier" should be added after the word "carrier". If the members of the Committee agreed that the amendment was of a purely drafting nature, it could be referred forthwith to the Drafting Committee. If the Committee did not so agree, his delegation would withdraw its amendment.

66. Ms. BRUZELIUS (Norway) said that, in her view, the French amendment restricted the scope of paragraph 4, for the words "If, in cases where they have been shipped with the knowledge and consent of the carrier and of the actual carrier" did not exactly reflect the provision contained in paragraph 2, subparagraph (b).

67. Mr. GORBANOV (Bulgaria) said that he, like the representative of Norway, regarded the French amendment as a substantive one and considered that it would limit the application of paragraph 4.

68. Mr. DOUAY (France) withdrew his amendment.

69. *Article 13, paragraph 4, was referred to the Drafting Committee.*

Article 14

Paragraph 1

70. Mr. MALLINSON (United Kingdom) said that he wished to withdraw his amendment (A/CONF.89/C.1/L.162) in favour of the Canadian amendment (A/CONF.89/C.1/L.158), which was identical.

71. Mr. MONTGOMERY (Canada) said that the object of his amendment to article 14, paragraph 1, was to specify that the carrier must issue to the shipper a signed bill of lading.

72. Mr. SMART (Sierra Leone) supported the Canadian amendment.

73. Mr. AMOROSO (Italy) said he wondered whether that amendment was really necessary, since it was stated in subparagraph 1 (j) of article 15 that the bill of lading should set forth, among other things, "the signature of the carrier or a person acting on his behalf".

74. Mr. DOUAY (France) observed that an unsigned bill of lading would not be a contract of carriage, since a contract was valid only if signed. The Canadian amendment seemed to him all the more unnecessary in that, as the Italian representative had observed, subparagraph 1 (j) of article 15 stipulated that the bill of lading must bear the signature of the carrier. He therefore favoured the maintenance of the existing text.

75. Mr. COVA ARRIA (Venezuela) said that he supported the Canadian amendment.

76. Mr. CASTRO (Mexico) agreed with the French representative that the existing text should be allowed to stand.

77. Mr. SANYAOLU (Nigeria) said he supported the Canadian amendment because, in practice, unsigned bills of lading could be issued.

78. Mr. PTAK (Poland) observed that, if the Canadian amendment was adopted, it should be supplemented by an indication as to who was required to sign the bill of lading, since the word "signed" conveyed nothing by itself. It should therefore be specified that the bill of lading must be "signed by the carrier or a person acting on his behalf", in accordance with article 15, subparagraph 1 (j). However, since the latter provision already stipulated

that the bill of lading must bear the signature of the carrier or a person acting on his behalf, there was no need to repeat that fact in article 14, paragraph 1. The Canadian

amendment was therefore unwarranted.

The meeting rose at 1.30 p.m.

20th meeting

Monday, 20 March 1978, at 3.05 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.20

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.10, L.24, L.42, L.66, L.100, L.139, L.158, L.162, L.163)

Article 14 (concluded)

Paragraph 1 (concluded)

1. Mr. TANIKAWA (Japan) said that his delegation was not opposed to the amendments by Canada (A/CONF.89/C.1/L.158) and the United Kingdom (A/CONF.89/C.1/L.162), but saw no real need for the inclusion in article 14, paragraph 1, of a reference to the signing of the bill of lading, since the point was already covered by article 15, subparagraph 1 (j).
2. Mr. GANTEN (Federal Republic of Germany) said that his delegation, too, considered it unnecessary to insert the word “signed” in article 14, paragraph 1. However, the proposed amendments did have a bearing on article 14, paragraph 2, to the first sentence of which his delegation proposed a minor amendment, namely, the replacement of the words “having authority from” by the words “on behalf of”.
3. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that his delegation supported the Canadian and United Kingdom amendments relating to article 14, paragraph 1. Article 15, paragraph 1, specified a number of particulars to be set forth in the bill of lading, but it was not stated that the absence of any of those particulars would affect the bill of lading’s validity under law; by implication, therefore, an unsigned bill of lading could be valid—a possible loop-hole which the proposed change to article 14, paragraph 1, would eliminate.
4. As a corollary, article 15, subparagraph 1 (j), should be deleted as unnecessary, in order to make the texts of articles 14 and 15 consistent as a whole.
5. Mr. GORBANOV (Bulgaria) said that his delegation saw no need to add the word “signed” to the text of article 14, paragraph 1, since paragraphs 2 and 3 of that article made it clear that a signature was a prerequisite for a valid bill of lading. The fact that an unsigned contract would be

invalid was no reason to amend the reference to a document evidencing a contract of carriage by mentioning that the document should be signed; the question of the validity of contract documents was a matter for the courts to decide in individual cases.

6. With reference to article 14, paragraph 3, his delegation thought that a bill of lading, even if unsigned, could be valid if not challenged by the carrier; in any case, there was nothing to prevent the use of such a bill of lading as a valid instrument in contractual relations with the shipper or third parties.

7. The Bulgarian delegation preferred the existing text of article 14, paragraph 1.

8. Mr. MEGHJI (United Republic of Tanzania) said that his delegation agreed with the French representative and other speakers that the question of the signature of a bill of lading was adequately dealt with in article 15, subparagraph 1 (j). Therefore, although his delegation saw no harm in the amendments proposed by Canada and the United Kingdom, it saw no point in supporting them.

9. Mr. SUMULONG (Philippines) said that if the existing text of article 14, paragraph 1, was read in conjunction with paragraphs 2 and 3 of that article and with article 15, it was clear that article 14, paragraph 1, simply provided that the carrier should, on demand of the shipper, issue to the shipper a bill of lading and that the insertion in that paragraph of the word “signed” was unnecessary. The question of signature was adequately covered by article 14, paragraph 3, by article 15, subparagraph 1 (j), and by the definition in article 1, paragraph 6. His delegation preferred, therefore, to leave the text of article 14, paragraph 1, as it stood.

10. The CHAIRMAN invited the Committee to vote on the Canadian and United Kingdom amendments to article 14, paragraph 1 (A/CONF.89/C.1/L.158 and L.162).

11. *The amendments were rejected by 21 votes to 10, with 20 abstentions.*

12. The CHAIRMAN noted that, as a result of the vote just taken, the Canadian amendment to article 14, paragraph 2, as contained in document A/CONF.89/C.1/L.158, was withdrawn.

Paragraph 2

13. Mr. DONOVAN (United States of America), introducing his delegation’s amendment to article 14, para-

graph 2 (A/CONF.89/C.1/L.66), said that the purpose of that paragraph was to provide for signature of a bill of lading by a person other than the carrier himself. However, the present second sentence of the paragraph could give rise to some difficulty, since a master often delegated authority for the signature of ship's papers.

14. His delegation, having reflected further on its proposed amendment, had decided that the words "as an actual carrier" were unnecessary; those words should therefore be deleted from the text in document A/CONF.89/C.1/L.66.

15. Mr. HACHANA (Tunisia) said that the Tunisian amendment to article 14, paragraph 2 (A/CONF.89/C.1/L.42) was very similar in wording to the United States amendment, but the two proposals were aimed at different problems. According to the second sentence of paragraph 2, a bill of lading signed by the master of the ship carrying the goods should be deemed to have been signed on behalf of the carrier. If a shipowner was carrying goods on someone else's behalf, he was normally the party actually involved in the contract with the shipper. However, if the master, or a person authorized by him, signed the bill of lading, it was important that the shipowner should still be responsible, as the actual carrier, for loss or damage—a point which his delegation's proposed amendment to paragraph 2 would take into account.

16. The United States delegation had just orally deleted the words "as an actual carrier" from its amendment; the Tunisian delegation, however, intended to retain those words in the text of its own amendment, which it therefore requested the Committee to consider first.

17. Mrs. RICHTER-HANNES (German Democratic Republic) said that the problem dealt with by the Tunisian and United States amendments was the same as that addressed by her own delegation's amendment (A/CONF.89/C.1/L.92) relating to article 15, subparagraph 1 (c). A bill of lading was usually signed by the carrier's agent or by the master, and if, in such cases, the name was wrong, incorrect or absent, uncertainty might arise as to who should be sued for damages in case of loss or damage, since, according to article 10, it was the contractual carrier who should be sued. The amendment contained in document A/CONF.89/C.1/L.92 was based on a provision in her country's maritime law which had often been referred to during international disputes when there had been difficulty in determining the person of the carrier. Since it was clear from previous discussions that the Committee wished to avoid the introduction of agency law problems into the new Convention, the Committee should proceed to consider her delegation's proposal forthwith. The reference in the Tunisian and United States amendments to authorized signatories of the bill of lading should be deleted.

18. Mr. SMART (Sierra Leone) said that article 14, paragraph 2, was intended to deal solely with the issue of bills of lading and not with their signature. In that connexion, his delegation had intended to introduce arguments in support of the Canadian amendment contained in document A/CONF.89/C.1/L.158, and for that reason had not introduced a proposal of its own;

unfortunately, the Canadian amendment had been withdrawn.

19. Mr. MASSUD (Pakistan) said that the Tunisian and United States amendments had two important aims. First, they sought to clarify the text of article 14, paragraph 2, so as to make the implied authority explicit. Secondly, they would provide that a bill of lading signed by the master of the ship or with his authority should be deemed to have been signed not only on behalf of the carrier but also on behalf of the shipowner as an actual carrier.

20. His delegation could therefore support the amendments contained in documents A/CONF.89/C.1/L.42 and L.66.

21. Mr. MARCIANOS (Greece) said that, whereas the draft Convention had thus far dealt only with relations between the shipper and the carrier, the Tunisian and United States amendments involved a further party, namely, a shipowner who would be liable even if he was neither a carrier nor an actual carrier—for example, in the case of a bareboat charter, under which the master and crew were servants of the bareboat charterer. Such a situation was outside the scope of the present Convention. In cases where a shipowner was a carrier or an actual carrier, his liability was provided for elsewhere in the Convention. The Tunisian and United States amendments were therefore unnecessary, and the Greek delegation could support neither of them.

22. Mr. SELVIG (Norway) said he agreed with the Pakistan representative's analysis of the Tunisian and United States amendments. The first part of the amendments involved a drafting matter, but the second part was undoubtedly substantive, since it would have the effect of authorizing the master to sign the bill of lading on behalf of the shipowner as an actual carrier as well as on behalf of the carrier himself. That would create difficulties in the case of through carriage or successive carriage, because it might happen that a small local carrier had to issue a through bill of lading on behalf of the ocean carrier to whom the goods would later be trans-shipped. The effect of the Tunisian and United States amendments would be to make the local carrier responsible for the ocean carriage as well, although it was doubtful whether that was the intention behind them. He assumed that the amendments had been conceived to meet the case of a voyage performed by a single chartered ship whose owner would then be the actual carrier and would bear responsibility under the bill of lading, but the language of the proposals was much broader than was needed to cover that particular case and would give rise to special difficulties in the case of through carriage. The point was central to article 10, paragraph 2, since, in accordance with that paragraph, the local carrier would only be responsible for the part of the carriage performed by him. Both amendments were therefore quite unacceptable.

23. In his view, the amendment by the German Democratic Republic to article 15, subparagraph 1 (c) (A/CONF.89/C.1/L.92) was contrary to the spirit of article 14, paragraph 2, in which the intention was to make the carrier, not the shipowner, liable under the bill of lading. The proposal by the German Democratic

Republic, on the other hand, would make it possible for the carrier to avoid liability because of an error in the bill of lading. That contradicted the definition of the carrier and actual carrier in the draft Convention and also the system envisaged in article 10. To his mind, the Tunisian and United States amendments were quite different from that of the German Democratic Republic.

24. Mr. SANYAOLU (Nigeria) said that the Tunisian and United States amendments were similar in that they introduced the words "with his authority". In that connexion, he would remind the Committee of the arguments put forward when it had been considering the definition of "carrier" in article 1 of the draft Convention. On that occasion it had been decided not to introduce the concept of agency law, which differed from one legal system to another. He would be prepared, however, to accept the simple proposition that whoever signed the bill of lading on behalf of another person could be presumed to have signed it with that person's authority in the absence of evidence to the contrary. The mention of the shipowner introduced an unnecessary element of confusion, since paragraph 2 should be concerned solely with the signature of the bill of lading by the carrier or a person authorized to sign on his behalf. His delegation was therefore unable to support either the United States or the Tunisian amendment.

25. Mr. MÜLLER (Switzerland) said that, after listening to the Greek and Norwegian representatives, he felt that the United States and Tunisian amendments fell outside the scope of the Convention, which was concerned exclusively with the contractual relations between carrier and shipper and carrier and consignee. What had to be dealt with in paragraph 2 was the question of the actual carrier, not the question of whether a bill of lading signed by the master of the ship or by someone acting on his behalf was binding on the shipowner. The United States delegation was possibly concerned about action *in rem*, but that was a matter for the international conventions for the unification of certain rules relating to maritime liens and mortgages, or national law, and not for the present Convention. His delegation was therefore in favour of keeping the text as it stood.

26. Mr. DOUAY (France) said that, as the two amendments had a common substantive base, he would comment on the two halves of both together. First, the fact that the bill of lading could be signed by the master of the ship or on his behalf with his authority, in the United States amendment, and by the master of the ship or with his authority, in the Tunisian amendment, meant that the master was entitled to delegate the power of signature, and, as the master represented the carrier, a person who signed on his behalf would actually be doing so on behalf of the carrier. However, those provisions were unnecessary since the first sentence of paragraph 2 specified that the bill of lading could be signed by a person having authority from the carrier, and the second sentence illustrated that rule by citing the example of the master. The person who signed on behalf of the master would normally be the agent, but as the agent was usually designated by the carrier himself it was unnecessary for the master to designate anyone. If the master had to

authorize an agent to sign on his behalf without written instructions from the carrier, that agent would nevertheless be acting on behalf of the carrier.

27. With regard to the proposed introduction into the text of a reference to the shipowner, he would merely say, in view of the many pertinent comments that had been made, that the relationship between shipowner and shipper should never be confused with the relationship between shipowner and carrier. It was hardly conceivable that, in a contract of carriage entered into with a carrier, the shipowner should be presumed to have no part to play in the use of his ship. The introduction of a reference to the shipowner would be hazardous for the establishment of clear contractual relations, and his delegation was therefore strongly in favour of retaining the text as it appeared in the draft Convention.

28. Mr. CLETON (Netherlands) pointed out, with regard to the proposed introduction of the person of the shipowner as the actual carrier in the United States and Tunisian amendments, that the actual carrier had already been defined in article 1; it was unnecessary to add the concept of the shipowner, since in some cases he would not be performing the carriage himself. He understood the amendments to mean that the shipowner would constitute a new contractual carrier. That was in contradiction with the system envisaged in the draft Convention, because two contractual carriers would then be established: on the one hand, the person who had actually concluded the contract of carriage with the shipper and, on the other, the shipowner who was also a contractual carrier because the master of the ship had signed the bill of lading on his behalf. Both amendments were therefore quite unacceptable.

29. Mr. AMOROSO (Italy) said that, for the reasons given by the delegations of Greece, Norway and the Netherlands, he opposed the two amendments. In his delegation's opinion, it would be dangerous to include a reference to the shipowner, since the Convention was concerned only with the relationship between shipper and carrier.

30. Mr. MASSUD (Pakistan) said that the aim of the Tunisian and United States amendments could probably be met by including the term "actual carrier" in the text and omitting all reference to the shipowner. The draft Convention as it stood was defective, since a bill of lading signed by the master would be deemed to have been signed on behalf of the carrier alone, without reference to the actual carrier.

31. Mr. DONOVAN (United States of America) said that the amendments before the Committee fell into two parts. The intention of the United States delegation in proposing the addition of the words "or on his behalf with his authority" in the first part of the second sentence of paragraph 2 had been to cover the fact that most bills of lading were signed on behalf of the master of the ship rather than by the master himself. As there seemed to be particular difficulty in accepting the second part of the amendment, introducing the concept of the shipowner as an actual carrier, his delegation had originally thought it would clarify matters if a vote were taken on the two halves of both amendments separately, but was now

prepared to withdraw its own amendment in favour of that of Tunisia, which was virtually identical.

32. Mr. CASTRO (Mexico) said his delegation was unclear as to the object of the amendments in question, since it was generally accepted that a bill of lading could be signed by a person designated by the carrier. The inclusion of the shipowner merely complicated matters since the role of the actual carrier had already been defined in the Convention. Moreover, the proposal that a person other than the master would be entitled to sign a bill of lading on his behalf was unacceptable, since that person would not necessarily be the shipping agent but might be someone with no knowledge of the nature of the goods.

33. *The Tunisian amendment to paragraph 2 (A/CONF.89/C.1/L.42) was rejected by 43 votes to 3, with 15 abstentions.*

34. Mr. REISHOFER (Austria) said that in the Austrian amendment to article 14, paragraph 2 (A/CONF.89/C.1/L.100), the words "and the port agent" should be corrected to read "or the port agent". His delegation did not understand why the present text of paragraph 2 referred only to the master of the ship as having authority to sign a bill of lading on behalf of the carrier and not to the port agent as well. However, it would be prepared to withdraw its amendment provided that mention was made of its position in the final report.

35. Mr. SEVON (Finland), Mr. DIXIT (India) and Mr. VIS (Executive Secretary of the Conference) pointed out that the views of the Austrian delegation would be reflected in the summary record of the meeting.

36. *Paragraph 2 was adopted.*

Paragraph 3

37. Mr. MARCIANOS (Greece), introducing the amendment proposed by his delegation in document A/CONF.89/C.1/L.10, said that the words "if not inconsistent with the law of the country where the bill of lading is issued" were unnecessary, since such an inconsistent method of signature would not be used. However, he would not press the matter.

38. Mr. CASTRO (Mexico) said he agreed that those words were not particularly useful but could accept their retention.

39. The CHAIRMAN said that, as no one had spoken in favour of the proposed amendment, he would consider it to have been rejected.

Article 15

Paragraph 1

40. Mr. MALLINSON (United Kingdom) said that his delegation's amendment contained in document A/CONF.89/C.1/L.163 was intended to amend and shorten the list of particulars given in article 15, paragraph 1, of the draft Convention so as to include only those items that were normally required by bills of lading or could conveniently be included in them. The items he had omitted fell into two groups: those which were required by other provisions of the Convention and were therefore not needed in article 15, and those not generally required

in bills of lading for the purpose of obtaining credit. The only specific item to which he would draw the Committee's attention was the proposed new subparagraph 1 (e), which his delegation regarded as necessary to complement subparagraph 1 (d).

41. Mr. SMART (Sierra Leone) said that his delegation was not in favour of the United Kingdom amendment and more specifically of the intention to delete the words "the general nature of the goods" from subparagraph 1 (a) of the original text and to remove the whole of subparagraphs 1 (e), (f), (g), (j), (k) and (l).

42. With regard to subparagraph 1 (a), while the words "the general nature of the goods" did not appear in the Hague Rules, they should be included in the Convention if it was to improve upon those Rules. It would not be sufficient simply to state the leading marks that would identify the goods, because those marks provided no information as to the character of the goods.

43. With respect to subparagraph 1 (e), it was necessary to refer to the consignee since, if his name was omitted from the bill of lading, there was nothing to prevent the carrier from delivering the goods to a person other than the consignee or endorsee without incurring liability.

44. In the case of subparagraphs 1 (f) and (g), article 1, paragraph 6, presupposed the taking over of the goods by the carrier at a specific port of loading and their subsequent delivery at a specific port of discharge. Both ports should therefore be named in the bill of lading.

45. The provision in subparagraph 1 (j) requiring the signature of the carrier or of a person acting on his behalf to be included in the bill of lading was essential, since that signature represented an important aspect of the contract of carriage and, without it, the defence of *non est factum* could be invoked.

46. He could not understand why the United Kingdom delegation was opposed to the inclusion of subparagraph 1 (f), since it related to article 23, paragraph 3, which was a clause paramount. Moreover, a provision to that effect was included in the 1924 United Kingdom act on carriage of goods by sea. The statement indicated in article 23, paragraph 3, had to be included in bills of lading to ensure that no one could contract out of the Convention.

47. Mr. SANYAOLU (Nigeria) said that his delegation opposed the United Kingdom amendment for the reasons given by the representative of Sierra Leone. To give just one illustration, no provision was made in the amendment for including the signature of the carrier or his representative, although that was an essential part of the bill of lading under article 14, paragraph 3.

48. Mr. CASTRO (Mexico) said he agreed with the views of previous speakers concerning article 15, paragraph 1. The contents of the bill of lading had been established after considerable work in UNCITRAL and UNCTAD and represented a satisfactory compromise solution. The amendment by the United Kingdom raised matters of substance and, under the rules of procedure, such a proposal required a two-thirds majority to be adopted.

49. Mr. KHOO (Singapore) said that his delegation could accept the first line of the United Kingdom

amendment, which was an improvement on the existing text, but not the remainder of the amendment.

50. Mr. KERRY (United Kingdom) said he found it somewhat surprising that his delegation's amendment had received no support, since international trade had flowed freely for 100 years without the wide requirements for a bill of lading laid down in the draft Convention. The purpose of the amendment had been to reduce those requirements to the bare minimum, and thereby reduce the likelihood of legal disputes if one or more elements was lacking. In the circumstances, however, he could only withdraw the amendment.

51. The CHAIRMAN invited the Committee to consider next the amendment proposed by Japan to subparagraph 1 (a) of article 15 (A/CONF.89/C.1/L.24). He drew attention to the explanatory note accompanying that amendment (A/CONF.89/C.1/L.139).

52. Mr. TANIKAWA (Japan), introducing the amendment, said that it related to the phrase "the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed", and was set against the background of the existing practice in liner trade, which was to state in the bill of lading not only the number of packages or pieces but also the weight and frequently even the measurements of the goods, particularly in the case of general cargo. That practice had perhaps developed because freight was calculated on the basis either of weight or of weight/measurements, or because the shipper or consignee required such particulars to be stated in the bill of lading for the purpose of a sales contract. The particulars included were always those furnished by the shipper. On receipt of the goods, the carrier checked only the number of packages or pieces and not the weight and measurements.

53. Under the Convention, the practice would be the same but the carrier could be held responsible, under paragraph 3 of article 16, for the accuracy of the statement given in the bill of lading as to weight and measurements, at least as against an endorsee in good faith. To protect himself, the carrier would therefore have to insist that the weight and measurements of all packages and pieces be closely checked by a competent national authority before the goods were received or loaded on board, and that a certificate as to those particulars be drawn up by such authority before the bill of lading could be issued. In many ports, however, there might be no such authority. Moreover, a procedure of that kind would inhibit the smooth running of the loading and receiving operation and would place an unwarranted financial burden on the shipper and carrier and, ultimately, on the consumer.

54. A further problem would arise if a carrier wished to enter a reservation on a bill of lading under paragraph 1 of article 16. Where the voyage of one vessel involved a large number of shipments and many bills of lading, he would have to enter any such reservation on all three originals in every set of a bill of lading. The administrative work involved would hamper the issuance of bills of lading and would increase the cost of carriage. His delegation considered it neither reasonable nor practicable to require a reservation to be entered into a bill of

lading on each and every occasion. It therefore proposed that subparagraph 1 (a) should be amended to require the carrier to state in the bill of lading either the number of packages or pieces, or the weight or the quantity otherwise expressed, depending on the nature of the goods.

55. Mr. MARCIANOS (Greece) and Mr. GANTEN (Federal Republic of Germany) supported the Japanese amendment.

56. Mr. NOVOA IGUZQUIZAR (Cuba), opposing the amendment, said that, in his delegation's view, it would only lead to confusion. A bill of lading which omitted a statement as to the weight of the goods would be incomplete; moreover, such a statement would not make the carrier responsible for the weight of the goods.

57. Mr. QUARTEY (Ghana), also opposing the amendment, said that he did not see the difficulties to which the Japanese representative had referred. As he read the existing text, a statement as to the weight of the goods was not strictly necessary, since two alternatives were in fact provided for. Thus, depending on their nature, the goods could be described by reference to either the number of packages or pieces, or the weight or quantity otherwise expressed.

58. Mr. CLETON (Netherlands) said that, unlike the previous speaker, he understood the existing text to mean that not only the number of packages but also the weight of the goods had to be stated in all cases, even where the goods could only properly be described by reference to their weight. The existing wording, in his view, was too restrictive and therefore he supported the amendment.

59. Mr. DIXIT (India), endorsing the remarks of the representative of Ghana, said that he, too, was unable to support the amendment.

60. Mr. MacANGUS (Canada) said that he had some difficulty in understanding the rationale of the amendment. If no tally as to weight was included in the bill of lading, there would be little evidence on which the shipper or consignee could rely. Moreover, in purely practical terms, it was extremely unlikely that cargo would be loaded on to a ship without anybody knowing how much it weighed. An examination of the tariffs applicable in the liner trade would no doubt show that the shipper was required to indicate not only the weight of the goods but also their measurements, and the carrier would take whichever was the more favourable in order to secure the best revenue. Weight and measurement were therefore important factors and should be included in article 15.

61. Mr. MARTONYI (Hungary) said that the Japanese amendment was apparently concerned with the evidentiary effect of the bill of lading. That point, however, was already fully covered by paragraph 3 of article 16. He therefore supported the text as drafted.

62. Mr. DOUAY (France) said that, while the proposal was at first sight attractive, his delegation considered that it was absolutely essential to maintain the existing text, bearing in mind the method of calculating limits of liability. If a twin criterion for that calculation was adopted, not only the number of packages but also the weight of the goods would have to be determined. If a single criterion of weight was adopted, then the weight

would have to be determined. It would, however, also be useful to know the number of packages: for example, whether a shipment of goods weighing five tons consisted of one or ten packages. His delegation therefore considered that the text as drafted, which had been the subject of very careful consideration, particularly in regard to the words "and the weight of the goods", should be retained.

63. Mr. NDAWULA (Uganda) endorsed the remarks of those speakers who had voiced their opposition to the amendment.

64. Mr. MARCIANOS (Greece) said that there seemed to be some misunderstanding. It was not the intention of the Japanese amendment to delete all reference to weight, but simply to avoid imposing on the carrier an obligation to indicate both the number of packages and the weight of the goods in each and every bill of lading. That, in fact, was the current practice, but there was no obligation to follow it under the Hague Rules. If it was the wish of the Conference to make it an obligation under the Convention, he would not object, but he would point out that it could give rise to very serious problems for, in order to protect himself, the carrier would have to verify, one by one, the weight of all packages.

65. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he did not understand why some delegations attached so much importance to paragraph 1, whose requirements were not mandatory, since the particulars of a bill of lading, as enumerated in that paragraph, could, under paragraph 3, be excluded in certain circumstances. Therefore, before taking a final position on the amendment, he would like some clarification as to the relationship between paragraphs 1 and 3.

66. Mr. MARCIANOS (Greece) said that the omission of a statement either as to the weight or as to the number of packages would not affect the character of the bill of lading as such, but the carrier could be held liable for damages.

67. Mr. SMART (Sierra Leone) said that there was no inconsistency between paragraphs 1 and 3, but it was

essential to insert certain particulars in the bill of lading — for instance, regarding the apparent condition of the goods or the name of the consignee — to ensure that the carrier could not escape liability.

68. Mr. HONNOLD (United States of America) said his delegation understood the final clause of subparagraph 1 (a), reading "all such particulars as furnished by the shipper", to mean that the carrier was under no obligation to include in the bill of lading any particulars not furnished by the shipper. If that understanding was correct, subparagraph 1 (a) was perhaps not so burdensome as had been supposed. To clarify the intent, however, his delegation would propose that the clause be redrafted to read: "to the extent that such particulars have been furnished by the shipper".

69. Mr. BENTEIN (Belgium) said that his delegation could accept the existing text of subparagraph 1 (a), subject to the amendment proposed by the United States delegation.

70. Mr. BYERS (Australia) said that his understanding of the final clause of subparagraph 1 (a) was the same as that of the United States representative.

71. The CHAIRMAN said that the United States proposal concerned a drafting point and would therefore be referred to the Drafting Committee.

72. Mr. CASTRO (Mexico) said his delegation considered that the bill of lading should include a statement not only as to the number of packages and the weight of the goods, but also as to their measurements, which were sometimes used in calculating freight. It therefore opposed the amendment.

73. The CHAIRMAN, noting that there were no further comments, put to the vote the Japanese amendment to subparagraph 1 (a) of article 15 (A/CONF.89/C.1/L.24).

74. The amendment was rejected by 44 votes to 9, with 11 abstentions.

The meeting rose at 6 p.m.

21st meeting

Tuesday, 21 March 1978, at 10.20 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.21

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.24, L.43, L.92, L.101, L.104, L.144, L.155/Corr.1, L.156, L.164, L.165, L.168, L.169, L.174)

Article 15 (continued)

Paragraph 1 (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of article 15, paragraph 1. He added that only those subparagraphs would be considered in respect of which amendments had been submitted; those not forming the subject of any proposal would be referred directly to the Drafting Committee.

Subparagraph (a)

2. The CHAIRMAN invited the representative of Tunisia to introduce his delegation's amendment (A/CONF.89/C.1/L.43) to subparagraph 1 (a) of article 15.

3. Mr. HACHANA (Tunisia) said that his delegation's amendment proposed that "any particulars as to the dangerous character of the goods" should be included in the bill of lading.

4. Mr. MONTGOMERY (Canada) expressed full support for the Tunisian amendment. His own delegation had submitted an amendment to the same effect (A/CONF.89/C.1/L.155/Corr.1), in the form of the addition of a new subparagraph (n) to paragraph 1; the Canadian delegation would be prepared to withdraw its amendment if the Tunisian amendment was adopted. He added, however, that it might be preferable to add the phrase proposed by Tunisia immediately after the words "the general nature of the goods".

5. Mr. AMOROSO (Italy), supporting the Tunisian amendment, said that it would give third parties the advantage of being informed of the dangerous character of certain goods.

6. Mr. HENNI (Algeria) likewise expressed support for the Tunisian amendment.

7. Mr. MÜLLER (Switzerland) said it was self-evident that the shipper ought to inform the carrier of the dangerous nature of the goods, in pursuance of article 13. To require the shipper to mention in the bill of lading "any particulars as to the dangerous character of the goods" might, however, be risky for the carrier, for the modern trend was to standardize and abridge the forms of bills of lading, and the particulars in question would therefore be very summary. Accordingly, the Swiss delegation was unable to support the Tunisian amendment.

8. Mr. NELSON (Ghana) expressed support for the Tunisian amendment.

9. Mr. NDAWULA (Uganda) likewise expressed support for the Tunisian amendment, but inquired what kind of particulars would be asked for.

10. Mr. NOVOA IGUZQUIZAR (Cuba) pointed out that article 13, paragraph 2, in any case required the shipper to inform the carrier of the dangerous nature of the goods. Hence it was unnecessary to ask the shipper to give further particulars in that respect in the bill of lading. He would not oppose the Tunisian amendment if its sole object was to ensure that the bill of lading mentioned the dangerous nature of the goods, such as by indicating that the goods were explosive or inflammable. To ask for "any particulars as to the dangerous character of the goods" would complicate matters excessively.

11. Mr. REISHOFER (Austria), agreeing with the representative of Switzerland, considered the Tunisian amendment unnecessary and even dangerous.

12. Mr. TANIKAWA (Japan) associated himself with the Swiss representative's view concerning the Tunisian amendment.

13. Mr. SUCHORZEWSKI (Poland) said that he, too, was unable to support the Tunisian amendment, for the

reasons indicated by Switzerland: to restate in article 15 an obligation already laid down in article 13 would merely cause unnecessary confusion.

14. Mr. BENTEIN (Belgium) said he appreciated that some delegations were anxious that the bill of lading should state all necessary particulars. The Tunisian amendment, however, seemed unnecessary inasmuch as subparagraph (a) in any case provided that the bill of lading must indicate "the general nature of the goods" and describe "the leading marks necessary for identification of the goods". If those indications were already at the carrier's disposal, he did not need "any particulars as to the dangerous character of the goods". Accordingly, he was unable to support the Tunisian amendment.

15. Mr. DOUAY (France) said that admittedly article 13, paragraphs 1 and 2, required the shipper to inform the carrier of the dangerous nature of the goods and to indicate any necessary precautions to be taken. He did not, however, consider it unnecessary — from the point of view of a third party, who would only know of the particulars stated in the bill of lading — to stipulate that the bill of lading must specify the dangerous character of the goods. It might, of course, be argued that it was not sufficient to provide that the bill of lading had to indicate "the general nature of the goods". That was precisely the issue, for in practice the bill of lading generally did mention the dangerous nature of the goods. In his opinion, the bill of lading would not become excessively complicated if, in addition to stating the general nature of the goods, it also indicated their dangerous character. He suggested that the passage in question might read "the general nature of the goods and, as appropriate, any particulars as to their dangerous character". Such language would safeguard a third party, for the bill of lading would specify the dangerous character of the goods.

16. Mr. SMART (Sierra Leone) pointed out that article 13, paragraph 2, did not state how the shipper ought to inform the carrier of the dangerous character of the goods. At times, the information might be communicated by word of mouth only and in case of dispute it would be very difficult to determine whether the shipper had really informed the carrier of the dangerous nature of the goods. Hence, those particulars ought to appear in the bill of lading, and for that reason his delegation supported the Tunisian amendment as well as the Canadian proposal.

17. Mr. SEVON (Finland) considered the Tunisian amendment unnecessary, for the particulars regarding the general nature of the goods were surely enough to apprise the carrier of their dangerous character. Where the goods were dynamite, for example, it was really unnecessary to spell out their dangerous nature.

18. In addition, he considered that the Tunisian amendment created a drafting problem: what actually was meant by the phrase "any particulars as to the dangerous character of the goods"? Was it the intention that the general nature of the dangerous goods should be mentioned or the precautions to be taken to avoid damage attributable to the goods in question? In his opinion, the text was somewhat vague and should be spelt out in clearer terms.

19. Mr. WAITITU (Kenya) expressed support for the

Tunisian amendment, for in his opinion particulars of the general nature of the goods might not necessarily include particulars as to their dangerous character. The amendment was all the more useful as it supplemented the provision contained in article 13, paragraph 2, and specified that the particulars to be furnished by the shipper to the carrier regarding the dangerous character of the goods should appear in the bill of lading.

20. Mr. NIANG (Senegal) pointed out that the obligation laid down in article 13 regarding particulars of the dangerous character of the goods applied only in relations between the shipper and the carrier, whereas in the case of a bill of lading more than just a bilateral relationship was involved. Hence, he considered it neither unnecessary nor dangerous to take the Tunisian amendment into account. He thought that the Drafting Committee should be able to find an appropriate way of introducing into article 15 the Tunisian amendment, which apparently caused drafting problems to some delegations.

21. Mr. BOOLELL (Mauritius), while appreciating that article 13 in any case required the shipper to inform the carrier of the dangerous nature of the goods, considered that the Tunisian amendment would strengthen that obligation, for the benefit of all the parties concerned. Accordingly, he supported the amendment.

22. Mr. SUMULONG (Philippines) said that, for the reasons stated by the representative of Finland, he would be unable to support the Tunisian amendment.

23. Mr. WANSEK (United Republic of Cameroon) associated himself with all the delegations that had supported the Tunisian amendment which, in his opinion, improved the terms of article 15 and would satisfactorily supplement the provisions of article 13.

24. The CHAIRMAN put the Tunisian amendment to subparagraph 1 (a) (A/CONF.89/C.1/L.43) to the vote.

25. *The amendment was adopted by 30 votes to 22, with 14 abstentions.*

26. The CHAIRMAN invited the Committee to consider the amendment by Uganda (A/CONF.89/C.1/L.144) to article 15, subparagraph 1 (a).

27. Mr. NDAWULA (Uganda) said that his delegation's amendment was of a purely drafting nature and might, he thought, be referred directly to the Drafting Committee.

28. Mr. KHOO (Singapore) considered that the Ugandan amendment would completely alter the meaning of the final passage of subparagraph 1 (a). The phrase "all such particulars as furnished by the shipper" referred back to all the particulars mentioned previously in the sentence, in other words, particulars concerning the general nature of the goods, the leading marks necessary for their identification, the number of packages or pieces, etc. The addition of the word "and" would mean in effect that the bill of lading would have to mention any other particulars provided by the shipper, in addition to those already mentioned in the subparagraph in question.

29. Mr. BVERS (Australia), agreeing with the representative of Singapore, said that the addition of the word "and" in subparagraph 1 (a) would completely change the meaning. Article 15, paragraph 1, stated the minimum

that the bill of lading should indicate. To add the word "and" would mean that the bill of lading would have to mention, at the least, not only the particulars mentioned in subparagraph (a) but also the particulars furnished by the shipper. Accordingly, he was unable to support the Ugandan amendment.

30. Mr. SMART (Sierra Leone) said that he likewise was unable to support the amendment, for the reasons stated by the representative of Singapore.

31. Mr. GANTEN (Federal Republic of Germany) thought that the amendment submitted by Uganda concerned substance and he was unable to support it.

32. Mr. AMOROSO (Italy) said he also was unable to support the amendment proposed by Uganda.

33. Mr. KRISHNAMURTHY (India) stated that he also was unable to support the amendment.

34. The CHAIRMAN said that, in the absence of objections, he would take it that the amendment submitted by Uganda to article 15, subparagraph 1 (a) (A/CONF.89/C.1/L.144) was rejected.

35. *It was so decided.*

36. The CHAIRMAN drew attention to the amendment by Brazil to subparagraph 1 (a) (A/CONF.89/C.1/L.174).

37. Mr. VASCONCELLOS (Brazil) said that since the Japanese amendment had already been rejected he would withdraw his delegation's amendment.

38. The CHAIRMAN invited the representative of Mauritius to introduce his delegation's amendment to article 15, subparagraph 1 (a) (A/CONF.89/C.1/L.164).

39. Mr. BOOLELL (Mauritius) said that the special instructions to be given by the shipper to the carrier concerning the carriage of live animals were specially important. There was a presumption of non-liability in favour of the carrier where he could prove that he had observed those instructions and that any damage was due to the special risks inherent in that kind of carriage. Because those special instructions were of great importance, his delegation considered that they ought to appear in the bill of lading, and that was the reason underlying the amendment.

40. The CHAIRMAN, noting that no delegation had expressed support for the amendment proposed by Mauritius, said that in the absence of objections he would take it that the Committee rejected the amendment.

41. *It was so decided.*

42. *Article 15, subparagraph 1 (a), as amended, was adopted.*

Subparagraph (c)

43. The CHAIRMAN invited the representative of the German Democratic Republic to introduce her delegation's amendment to article 15, subparagraph 1 (c) (A/CONF.89/C.1/L.92).

44. Mrs. RICHTER-HANNES (German Democratic Republic) said that her delegation's amendment was designed to dispel any uncertainty in the mind of the consignee or other claimant with regard to the identity of the person against whom he might intend to bring a legal action. However, since it was virtually impossible to

improve the text of the draft Convention at the present stage of work, her delegation would withdraw its amendment.

45. *Subparagraph 1 (c) of article 15 was adopted.*

Subparagraph (f)

46. The CHAIRMAN invited the representative of Canada to introduce his delegation's amendment to article 15, subparagraph 1 (f) (A/CONF.89/C.1/L.165).

47. Mr. MONTGOMERY (Canada) said that his delegation proposed the deletion from subparagraph (f) of the words "and the date on which the goods were taken over by the carrier at the port of loading" because it feared that the date stipulated in the bill of lading might not correspond to the date from which the carrier was in charge of the goods, as provided for in article 4. The date stated on the bill of lading might cast doubt on the provisions concerning the taking over of the goods by the carrier.

48. Mr. GANTEN (Federal Republic of Germany) observed that the amendment proposed by the Federal Republic of Germany had the same object as that proposed by Canada. In order to simplify the work of the Committee, his delegation would withdraw its amendment in favour of the Canadian amendment.

49. Mr. MASSUD (Pakistan) observed that article 15 contained no other provision requiring that the date on which the goods were taken over at the port of loading be included in the bill of lading. In order to prevent fraud, it was essential to preserve the provision contained in subparagraph 1 (f).

50. Mr. SELVIG (Norway) emphasized that, for commercial reasons, and particularly in order to enable the shipper to cash a letter of credit, it might be extremely important that the date of the taking over of the goods appear on the bill of lading. The Canadian amendment would have the effect of eliminating vital information from the bill of lading. For that reason, his delegation could not support it.

51. Mr. SMART (Sierra Leone) said that, in his view, it was essential that the date on which the goods were taken over at the port of loading be stated on the bill of lading. Consequently, he could not support the Canadian amendment. He endorsed the existing text of article 15, subparagraph 1 (f) of the draft convention.

52. Mr. SEYON (Finland) said that, in his view, the use of bills of lading in international transactions made it necessary for them to bear the date on which the goods were taken over at the port of loading. Accordingly, he was unable to accept the Canadian amendment.

53. Mr. KERRY (United Kingdom) associated himself with those delegations which had opposed the amendment by Canada. However, he wished to point out that the wording of subparagraph (f) was deficient since it failed to provide for the case in which the carrier took over the goods before they reached the port of loading.

54. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to reject the Canadian amendment and request the Drafting

Committee to take account of the comment made by the representative of the United Kingdom.

55. *It was so decided.*

56. *Subparagraph 1 (f) of article 15 was adopted.*

Subparagraph (k)

57. The CHAIRMAN invited the representative of Japan to introduce his delegation's amendment to subparagraph 1 (k) of article 15 (A/CONF.89/C.1/L.24).

58. Mr. TANIKAWA (Japan) said that, in its amendment, the Japanese delegation proposed the deletion of subparagraphs 1 (k) and 1 (l) of article 15. In view of the links between subparagraph (k) and article 16, paragraph 4, and between subparagraph (l) and article 23, paragraph 3, he would suggest that consideration of those subparagraphs should be deferred until the Committee took up articles 16 and 23.

59. The CHAIRMAN, noting that only the Austrian and Belgian delegations favoured the postponement proposed by the Japanese delegation, said he would take it that the Committee wished to continue its consideration of the amendment.

60. Mr. TANIKAWA (Japan) said that he wished provisionally to withdraw his delegation's amendment to subparagraphs 1 (k) and 1 (l) of article 15.

61. After a procedural discussion in which Mr. AMOROSO (Italy), Mr. CASTRO (Mexico), Mr. REISHOFER (Austria), Mr. TANIKAWA (Japan), Mr. LUCKABU-K'HABOUJI (Zaire) and the CHAIRMAN took part, the CHAIRMAN said he would take it that the Japanese amendment had been withdrawn. If the Japanese delegation wished to raise the point again in connexion with article 16, the Committee would have to take a decision on the matter at that time. In any event, it was understood that any amendment had to be submitted in writing.

62. The CHAIRMAN invited the members of the Committee to consider the Austrian amendment to article 15, subparagraph 1 (k) (A/CONF.89/C.1/L.101).

63. Mr. MARCIANOS (Greece) said he supported the Austrian amendment which was an improvement on the existing wording of subparagraph 1 (k).

64. Mr. SMART (Sierra Leone) said he could not support the Austrian amendment which, in his opinion, changed the substance and not just the form of the original text. It was essential to indicate the amount of freight in the bill of lading, as was provided for in the existing text, in order to prevent the carrier from increasing the freight once the goods had reached their destination.

65. Mr. CASTRO (Mexico) said it was regrettable that no explanations had been given concerning the object of the Austrian amendment. He, too, considered that that amendment would entail a substantive change in the existing text and would impair the structure of the article. For that reason, he was in favour of maintaining the original text. Moreover, he considered that States were entitled to know how much they were spending in freight charges and who benefited from those charges.

66. Mr. DOUAY (France) said that he, too, considered that there was a substantive difference between the Austrian amendment and the original text: the amendment was concerned with clarifying the procedures for the payment of freight, whereas the original text provided for a statement, if applicable, of the amount of the freight when it was payable by the consignee. His delegation preferred the original text, but thought that the Drafting Committee might endeavour to improve its wording by devising a formula other than the words "to the extent".

67. Mr. MATHEUS GONZÁLEZ (Venezuela), speaking on a point of order, said that the Committee also had before it two other amendments concerning subparagraph 1(k) (A/CONF.89/C.1/L.104 and L.168) and that, if the Austrian amendment were voted on and adopted, the Committee could revert to that subparagraph only by the vote of a two-thirds majority. Consequently, he suggested that the vote on the Austrian amendment should be deferred until the other two amendments had been considered.

68. The CHAIRMAN said that the comment made by the representative of Venezuela would be taken into consideration.

69. Mr. MASSUD (Pakistan) said that, as he saw it, the original text dealt with a different matter than that covered by the Austrian amendment, namely the fact that the bill of lading must contain a statement that the freight was payable by the consignee and mention the amount owed by the consignee. For that reason, he could not support the Austrian amendment.

70. Mr. FAHIM (Egypt) said that, in his view, the freight should be stipulated in the bill of lading in all cases, particularly since, under article 6, subparagraph 1(b) of the existing text, the freight served as the basis for calculating the compensation payable by the carrier in the event of delay in delivery. The text of subparagraph 1(k) should therefore be maintained as it stood.

71. Mr. GANTEN (Federal Republic of Germany) said he supported the existing text of subparagraph 1(k), since the Austrian amendment did not seem to offer any advantages. All that was needed was to include in the bill of lading a statement of the amount of freight payable by the consignee.

72. Mr. RAY (Argentina) said that he, too, considered that the freight should always be stipulated in the bill of lading and was therefore unable to support the Austrian amendment.

73. Mr. RAMÍREZ HIDALGO (Ecuador) said that, for the reasons already given, he agreed with those delegations which had opposed the Austrian amendment.

74. The CHAIRMAN said that, in view of the number of delegations which had opposed the Austrian amendment, he would consider it to have been rejected.

75. He invited participants to proceed to consider the amendments to subparagraph 1(k) submitted by Venezuela (A/CONF.89/C.1/L.104) and India (A/CONF.89/C.1/L.168).

76. Mr. COVA ARRIA (Venezuela), introducing his delegation's amendment (A/CONF.89/C.1/L.104), said that, as drafted, subparagraph 1(k) required the freight to be indicated in the bill of lading only where it was payable by the consignee. Such a statement would not, therefore, be mandatory when the freight was payable by the shipper. His delegation considered that, for several reasons, the freight should be stipulated in the bill of lading in all cases, whether it had been paid by the shipper or was to be paid by the consignee. First, since the bill of lading laid down a number of obligations which the contracting parties agreed to perform, it was appropriate that it should specify the most important aspect of the transaction, namely the remuneration received by the carrier in exchange for his services. Secondly, it was necessary to prevent any possible collusion between the shipper and the carrier to the detriment of the consignee. Thirdly, the authorities in many countries needed to know the freight in order to draw up their statistics or calculate customs duties. Finally, he would draw attention to the provisions of article 6, subparagraph 1(b), under which the compensation payable by the carrier in the event of delay in delivery was to be calculated on the basis of the freight. His delegation was, however, prepared to withdraw its amendment in favour of the Indian amendment (A/CONF.89/C.1/L.168).

77. Mr. DIXIT (India) said that the Venezuelan representative had already adduced some of the arguments which he had been intending to put forward in favour of his amendment and drew the attention of participants to the explanatory note attached to that amendment. The Indian amendment was also designed to cover the situation provided for in article 16, paragraph 4, for in the view of his delegation it would be more equitable if the consignee knew whether or not he had to pay the freight and, if so, what its exact amount was. The freight should always be included in the bill of lading and if the freight was payable by the consignee the bill of lading should contain a statement to that effect.

78. Mr. COVA ARRIA (Venezuela) emphasized that the freight should always be mentioned in the bill of lading, regardless of who was required to pay it. Consequently, if it was understood that the Indian amendment made such a statement obligatory, his delegation would support it; if, however, the Indian amendment was open to confusion, his delegation would maintain its own amendment.

The meeting rose at noon.

22nd meeting

Tuesday, 21 March 1978, at 3.05 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.22

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.25, L.81, L.102, L.105, L.145, L.156, L.161, L.168, L.175, L.183)

Article 15 (concluded)

Paragraph 1 (concluded)

Subparagraph (k) (concluded)

1. The CHAIRMAN invited further comments on the Indian amendment to subparagraph 1 (k) of article 15 (A/CONF.89/C.1/L.168).
2. Mr. RAY (Argentina) said his delegation thought that the bill of lading should always stipulate the freight, since freight was the consideration paid in respect of carriage. In his delegation's view, the last part of the Indian amendment, however, was unnecessary since the point was already covered by paragraph 4 of article 16.
3. Mr. SANYAOLU (Nigeria), opposing the Indian amendment, said that his delegation considered that the existing text was clearer and that it was particularly important to retain the phrase "to the extent payable by the consignee".
4. Mr. MALLINSON (United Kingdom) said that, since it was often the practice of a particular trade to include a mention of the freight in the bill of lading, his delegation considered that there was no need for the Convention to stipulate such a requirement. It did not, however, have any objection of substance to subparagraph 1 (k) as drafted and could therefore support it.
5. His delegation could also accept the last part of the Indian amendment, which was similar to, although narrower than, the existing text. With regard to the first part, however, requiring that the freight should always be stated in the bill of lading, he would point out that, where goods were shipped in large quantities with a particular carrier, payment for the carriage was often on a freight-account basis; for administrative reasons, the charges were worked out periodically and the bill was then submitted to the person responsible for payment of the freight. Consequently, in many cases it was not possible to state what the freight for a particular shipment was at the time when the bill of lading was issued. The inclusion in the Convention of the proposed requirement would, in his delegation's view, inevitably result in an increase in the

costs of carriage, since a calculation, based on either the weight or dimensions of the goods, would have to be made on each occasion. His delegation therefore considered that the first part of the Indian amendment would not be very helpful.

6. The note to the Indian amendment suggested that, since the draft Convention provided for a special limit of liability based on freight in respect of damage caused by delay, the freight should be indicated in the bill of lading so that the amount of the relevant limit could be determined. In many instances, however, that information might not be available when the bill of lading was issued. Consequently, while his delegation appreciated the connexion between article 6 and subparagraph 1 (k) of article 15, it did not think that the absence of a provision along the lines proposed would be prejudicial in the event of a claim for delay.

7. Mr. EYZAGUIRRE (Chile) said that his delegation agreed with the principle embodied in subparagraph 1 (k) as drafted, but considered that it was advisable always to indicate the freight in the bill of lading, since payment of the freight was one of the shipper's main obligations under a contract of carriage of goods by sea. It also considered that it was important to specify clearly when payment was to be made by the consignee, not only for statistical reasons but also for reasons connected with customs control and dues and with a country's balance of payments. His delegation therefore supported the Indian amendment, but would suggest that the Drafting Committee might consider ways of improving the wording.

8. Mr. MORENO PARTIDAS (Venezuela) reiterated his delegation's support for the Indian amendment.

9. He asked the United Kingdom representative to explain how the inclusion of the freight in the bill of lading could lead to increased costs of carriage when the freight was generally agreed before the bill of lading was even issued.

10. Mr. SELVIG (Norway) pointed out that prepaid bills of lading were a very useful institution that had been part of commercial practice for many years. Accordingly, his delegation could accept the Indian amendment if the words "unless prepaid" were added after "freight" and before the semicolon.

11. Mr. DIXIT (India), replying to points raised, explained that the last part of his amendment was designed to cover the point already dealt with in the existing text. Possibly, however, its drafting could be improved.

12. He appreciated that it was the practice of many trades to include the freight in the bill of lading, but considered that that practice should nonetheless be embodied in the Convention. In that way custom would become law and would bring uniformity.

13. The clarification which his amendment would introduce would help to promote international trade and would assist developing countries which, it must be remembered, were faced with many restrictions, particularly with regard to foreign exchange and customs procedures.

14. He remained unconvinced by the argument that it might not be possible to make the requisite information available on time. In an age of computerized technology it took only a matter of minutes to calculate freight.

15. Lastly, his amendment would guarantee uniformity.

16. Mr. SMART (Sierra Leone), endorsing the amendment, said that there were two further reasons why the freight should always be included in the bill of lading. First, freight was the consideration which the shipper paid in support of the contract evidenced by the bill of lading and, as such, it was a very important element in the contract; if other terms of the contract were mentioned in the bill of lading there was no reason why the consideration should not be. Secondly, since under article 6 freight was the unit for determining limitation of liability in respect of delay, it should be included so that the parties could determine the extent of any breach that occurred.

17. Mr. SUCHORZEWSKI (Poland) said he did not agree that it was advisable always to include the freight in the bill of lading. In certain instances it could in fact cause difficulties for shippers who sold goods on a c.i.f. or c. & f. basis. Further, the master of a ship might not be in a position to state the exact freight when he issued a bill of lading, for it might still be the subject of negotiation. For those reasons, his delegation considered that the Indian amendment would not be very helpful. The UNCITRAL text afforded a reasonable compromise and should therefore be retained.

18. Mr. SEVON (Finland), agreeing that the text as drafted was a reasonable compromise between two divergent positions, said that his delegation could not accept that a public law approach should be adopted. Admittedly, under the legislation of some countries, a declaration of the freight was required in all cases; equally, under the legislation of others, such a declaration was not permitted.

19. It had been suggested that since, under article 6, freight was a unit for determining limitation of liability, it must necessarily be included in the bill of lading. Such a determination would possibly only have to be made in one out of a thousand cases, and it hardly seemed necessary, on that score, to require that the freight should be stated in each and every bill of lading.

20. Lastly, the inclusion in the bill of lading of a separate statement as to the freight could affect c.i.f. sales—where the freight was included in the price—and that, in his delegation's view, would not be welcomed by commercial interests. For those reasons, it favoured the retention of the existing text.

21. Mr. DOUAY (France) said that his delegation was in favour of the text as drafted. The reason why certain delegations did not want to impose a mandatory obligation in the Convention that the freight should be stipulated in the bill of lading was that contracts of sale

were contracts concluded between private persons. It was contrary to all commercial practice for such contracts—whose terms and conditions were the exclusive concern of the parties—to be circulated openly for all to see. A bill of lading, nevertheless, was a negotiable document which could come into the hands of a third party who was a stranger to the contractual relations between the shipper and the carrier; there was no reason whatsoever why he should know the terms and conditions agreed by them. Moreover, freight was made up of a number of elements including, for instance, discounts and trade concessions, not all of which were known at the time when the bill of lading was issued.

22. Some delegations contended that port dues and customs charges could not be determined unless the freight was stipulated in the bill of lading. But there were other documents issued by the carrier, such as invoices, on the basis of which such dues and charges could be determined. Similarly, freight rates could not be regulated by means of bills of lading. That would have to be done by some other means, for instance by administrative enforcement measures, which fell within the sphere not of private but of public law. The fact that the Convention was designed to introduce a new contractual relationship between the carrier and the shipper did not mean that accepted customs and trade practices should be overturned and a mandatory requirement imposed to declare in the bill of lading a term of a contract that was governed by private law. Indeed, the only effect of such a requirement would be to encourage the inclusion of false statements in the bill of lading, which would be of no help to the authorities in determining dues and charges or in regulating freight rates. It was important not to confuse the issues. The regulation of freight rates and the determination of dues and charges were not matters that could be dealt with by stipulations in a bill of lading, which was evidence of a contract between private persons for whom trade secrecy was the cardinal rule. The UNCITRAL text made a major concession and his delegation supported it.

23. Mr. MASSUD (Pakistan) said that his delegation would have no objection to the Indian amendment if the Indian representative would agree not to insist on the second part of it.

24. Mr. NILSSON (Sweden) said that his delegation could not support the Indian amendment which would entail unacceptable interference with present commercial practice. The amount of the freight was often unknown at the time that the bill of lading was drawn up, and it was common practice for shipper and carrier to agree that the figure to be charged would be calculated later. There were a number of other commercial practices which were likewise incompatible with the proposal in question. In that connexion, his delegation associated itself with the remarks which had been made about the likely impact of the proposed amendment on c.i.f. and c. & f. clauses.

25. The CHAIRMAN invited the Committee to vote on the Indian amendment to article 15, subparagraph 1 (k) (A/CONF.89/C.1/L.168).

26. The amendment was rejected by 35 votes to 16, with 10 abstentions.

27. Mr. MONTGOMERY (Canada), introducing his delegation's amendment to article 15, subparagraph 1 (k) (A/CONF.89/C.1/L.156), said that the purpose of the amendment was to ensure that the consignee was placed on notice of demurrage payable at the port of loading—an important consideration in view of the provisions in the first sentence of article 16, paragraph 4.

28. Mr. CASTRO (Mexico) said that his delegation was prepared to support the Canadian amendment. A number of previous speakers on the subject of bills of lading had expressed the view that the new Convention should not contain too many stipulations which might interfere with established practices in international maritime trade. It should be borne in mind, however, that the developing countries, which were relative newcomers to international trade, were not so familiar with the traditional customs and practices and would derive considerable benefit from express stipulations.

29. Mr. NOVOA IGUZQUIZAR (Cuba) said that his delegation was categorically opposed to the Canadian amendment. The Canadian representative had said that the purpose of the amendment was to draw the consignee's attention to the demurrage that might be payable at the port of loading. In practice, however, the stay of a vessel in a port of loading would normally be paid for by the shipper, not the consignee. The amendment was therefore irrelevant.

30. Mr. NELSON (Ghana) said that, in his delegation's view, the Canadian amendment should be supported for the sake of textual consistency. Since demurrage was mentioned in article 16 it should be mentioned in article 15 also. However, consistency also required that demurrage should again be mentioned after the second reference to freight in article 15, subparagraph 1 (k).

31. Mr. MONTGOMERY (Canada) said that his delegation accepted the observation by the representative of Ghana, which could perhaps be noted by the Drafting Committee.

32. Mr. VIGIL-TOLEDO (Peru) said that his delegation could support the Canadian amendment, which would be useful in view of the existing confusion as to whether demurrage should be regarded as part of the freight or as a separate charge.

33. Mr. KHOO (Singapore) said that his delegation, too, supported the Canadian amendment.

34. Mr. BREDHOLT (Denmark) said that he disagreed with the Ghanaian representative; the reference to demurrage in article 16, paragraph 4, was sufficient, and further references in article 15 were unnecessary. His delegation preferred the text of article 15, subparagraph 1 (k), as it stood, since the entire article was the carefully balanced outcome of protracted consultations and should not be subjected to further alteration.

35. The CHAIRMAN invited the Committee to vote on the Canadian amendment to article 15, subparagraph 1 (k) (A/CONF.89/C.1/L.156).

36. *The amendment was rejected by 32 votes to 17, with 13 abstentions.*

Paragraph 1, new subparagraph

37. Mr. ROSA (Portugal), introducing his delegation's

proposal (A/CONF.89/C.1/L.161) to add a new subparagraph to paragraph 1 of article 15, said that, since the carrier's signature was one of the requirements on a bill of lading, the shipper's signature should be required also. Both the shipper and the carrier could be liable in the event of loss or damage; therefore, they should both signify their agreement to the terms of the bill of lading by signing it.

38. Mr. MARCIANOS (Greece) said that, because of the growth in the number of bills of lading handled, the statutory requirement that the shipper should sign too had perforce been dropped. To reintroduce the requirement by means of the new Convention would lead to considerable complications in practice. The Portuguese amendment should therefore be rejected.

39. Mr. CASTRO (Mexico) said that, although the Greek representative's observation was apt, many delegations nevertheless felt that the signatures of both parties should appear on the bill of lading. His delegation supported the Portuguese amendment.

40. Mr. BYERS (Australia) said that his delegation opposed the amendment.

41. Mr. KHOO (Singapore) said that his delegation saw no practical advantage in the Portuguese amendment and would not support it.

42. The CHAIRMAN, noting the apparent lack of support for the Portuguese amendment which proposed to add a new subparagraph to paragraph 1, said he would take it that the amendment was rejected.

43. Mr. DIXIT (India) introduced his delegation's amendment (A/CONF.89/C.1/L.168) to add a new subparagraph to paragraph 1 of article 15. He thought the amendment was important because, as had already been stressed, the carrier would be responsible in the event of loss or delay and it was therefore in his interest, as well as the shipper's, to have an agreed date expressly stated. The proposed text did not stipulate what the date should be—that was a matter for the parties concerned. It was most important, however, that the date agreed upon between them should appear as an essential part of the bill of lading, and its inclusion would help to bring uniformity to international practice in maritime trade.

44. Mr. SEVON (Finland) agreed that it was important to draw the consignee's attention to the date of delivery of the goods. He therefore supported the Indian amendment.

45. Mr. LEÓN MONTESINO (Cuba) said that his delegation, too, supported the amendment, which would be consistent with the provisions in article 5, paragraph 2, relating to delay in delivery as a basis of liability.

46. Mr. SMART (Sierra Leone) recalled that, during earlier discussion on article 15 (21st meeting), he had stressed the need for the agreed dates of delivery and taking over of the goods to be stated in the bill of lading. Accordingly, his delegation could support the Indian amendment.

47. Mr. KACIĆ (Yugoslavia) said that his delegation endorsed the amendment.

48. Mr. NDAWULA (Uganda) said that his delegation, too, supported the proposed new subparagraph. Where the parties to a contract had agreed upon a time, time

became of the essence and should therefore be expressly indicated in the bill of lading.

49. His delegation still had some reservations with regard to the opening words of article 15, paragraph 1, and preferred the words "The bill of lading shall contain *inter alia* the following particulars:" contained in document A/CONF.89/C.1/L.163, which had been withdrawn. Perhaps the Drafting Committee's attention could be drawn to the matter.

50. *The amendment was adopted.*

Paragraphs 2 and 3

51. *Paragraphs 2 and 3 were adopted.*

Article 16

Paragraph 1

52. *Paragraph 1 was adopted.*

Paragraph 2

53. *Paragraph 2 was adopted.*

Paragraph 3

54. Mr. DOUAY (France), introducing his delegation's proposal, contained in document A/CONF.89/C.1/L.81, to delete from article 16, subparagraph 3 (b), the words "including any consignee", said the amendment was designed to meet situations in which a consignee would have rights as a shipper in claims against the carrier and thus could not be regarded as a third party. For example, in the case where a shipper consigned goods to himself, the shipper and consignee were the same person.

55. Mr. SUCHORZEWSKI (Poland) said that, for the reasons expressed by the French representative, his delegation fully supported the deletion of the words "including any consignee".

56. Mr. BYERS (Australia) said he disagreed with the French and Polish representatives. There were many instances in which the consignee was in fact a third party in respect of a contract of carriage, and it was right, therefore, that the text of subparagraph (b) should contain the words "including any consignee".

57. Mr. MASSUD (Pakistan) said that the existing text of subparagraph (b) clearly referred to a third party who in good faith had acted in reliance on the description of the goods in the bill of lading. The meaning of "third party" was perfectly clear, and his delegation saw no need to amend the existing text.

58. Mr. DIXIT (India) said he wondered whether the difficulty had arisen because of the wording of the French text. With regard to the English text, he agreed with the representative of Pakistan that the existing wording was satisfactory and required no amendment. Perhaps the Drafting Committee should consider a form of wording to deal with cases in which one person was both the shipper and the consignee.

59. Mr. GONDRA (Spain) said that the French amendment raised a difficult and controversial issue, since the legal position of the consignee differed from one legal system to another. In French law, for instance, he was

regarded as the successor to the shipper and a party to the contract of carriage, while other legal systems took the view that he acceded to the contract of carriage without being a party to it. If the consignee was considered to be a third party, he had evidently not been involved in the conclusion of the contract of carriage and was therefore entitled to the protection deriving from his position. In the case postulated by the French representative, when the consignee was also the shipper, the conditions established in subparagraph (b) to protect the consignee who acted in good faith would not apply since in his capacity as shipper he would have been aware of the nature of the goods shipped under the contract of carriage.

60. Mr. SEVON (Finland) asked whether the French delegation would agree to the maintenance of the words "including any consignee" in the draft text in order to avoid creating problems for persons from countries that did not have the same legal system as France.

61. Mr. HONNOLD (United States of America) said that his delegation, too, thought that it would be better to maintain the words in question in order to avoid any controversy as to whether consignees were entitled to protection in the circumstances described in subparagraph (b). It also felt that the word "any" with regard to the consignee might be a source of difficulty, since only consignees who were third parties and had acted in reliance on the description of the goods in the bill of lading were entitled to protection. He therefore suggested the substitution of the word "a" for "any".

62. Mr. DOUAY (France) said that the suggestion by the United States representative was acceptable to his delegation, as it would clarify the case of a consignee who was not a third party.

63. Mr. SUCHORZEWSKI (Poland) suggested that a more universally acceptable solution might be to maintain the words "including any consignee" but add the qualification "not being the shipper".

64. Mr. DOUAY (France) said that the addition proposed by the Polish representative might mean going a little too far, but his delegation was prepared to accept it.

65. Mr. HONNOLD (United States of America) said he continued to think that it would be preferable to change the word "any" to the word "a".

66. *Subparagraph 3 (b), as amended by the United States delegation, was adopted.*

Paragraph 4

67. Mr. VIGIL-TOLEDO (Peru), supported by Mr. RAY (Argentina), said that in the Spanish version of paragraph 4 of the existing text "demurrage" had been incorrectly translated as "*derechos de almacenaje*" instead of "*sobrestadias*".

68. The CHAIRMAN said that that matter had been taken up in the Drafting Committee.

69. Mr. TANIKAWA (Japan), introducing his delegation's amendment (A/CONF.89/C.1/L.25) to delete paragraph 4, said that, according to the existing text, the absence of a statement in the bill of lading that freight and demurrage were payable by the consignee would be regarded as *prima facie* evidence that none was payable by

him. However, that presumption ran counter to the nature of the obligation to pay freight and demurrage if carriage had been performed. Moreover, demurrage was incurred under a charter-party only when lay time had expired, and prepaid freight, without any possible additional charge for demurrage, was based on agreement between the carrier and shipper, whereas the presumption in the text might introduce the principle of prepaid freight even in the case of demurrage. In other words, it was not only contrary to the legal nature of the obligation to pay for freight and demurrage but also to the possibility of doing so in practice, and the potential legal effect of the statement in bills of lading would be determined by the general rule on such matters. In view of those considerations, his delegation was in favour of deleting the paragraph.

70. Mr. DOUAY (France) said that his delegation was in favour of maintaining paragraph 4; that paragraph established a particularly useful presumption in that neither freight nor demurrage would be payable by the consignee if the bill of lading gave no indication of the amount. The interests of the consignee were satisfactorily protected by that rule, which was subject to the exception provided for in the second sentence, namely that proof to the contrary adduced by the carrier would be inadmissible if the bill of lading had been transferred to a third party. Both provisions were excellent and should be maintained.

71. The words "any consignee" in the second sentence should be amended to read "a consignee", to bring them into line with the decision taken on paragraph 3, subparagraph (b).

72. Mr. KHOO (Singapore) said his delegation was strongly in favour of the rule laid down in paragraph 4, which protected carrier, consignee and third parties alike. It protected the carrier by establishing that the evidence would not be considered conclusive, and was of special importance in protecting third parties who acted in good faith in reliance on the bill of lading.

73. The CHAIRMAN said that, in the absence of support for the Japanese amendment (A/CONF.89/C.1/L.25), paragraph 4 would be maintained. He invited the delegations which had proposed modifications to the text of paragraph 4 to introduce their amendments.

74. Mr. REISHOFER (Austria) announced that his delegation would withdraw its amendment to paragraph 4 (A/CONF.89/C.1/L.102) in view of the earlier decision relating to article 15, subparagraph 1 (k).

75. Mr. MORENO PARTIDAS (Venezuela) said that the first of his delegation's amendments in document A/CONF.89/C.1/L.105 related solely to a matter of drafting. It withdrew its second amendment, which proposed to add a new paragraph 4 bis to article 16, since that amendment was connected with the compulsory inclusion of a statement on freight in bills of lading, and was therefore no longer applicable.

76. Mr. NDAWULA (Uganda) said that his delegation's amendment to paragraph 4 (A/CONF.89/C.1/L.145) involved a drafting matter and could be referred directly to the Drafting Committee.

77. Mr. MALLINSON (United Kingdom), introducing

his delegation's amendment to paragraph 4 (A/CONF.89/C.1/L.175), emphasized that it was not normally possible at the time when a bill of lading was issued to know whether any demurrage would be incurred by the consignee and, if so, how much it would be, for the obvious reason that the circumstances giving rise to the obligation to pay would not occur until afterwards. Consequently, his delegation would like the idea of setting forth the demurrage incurred, which implied the statement of an amount, to be replaced by the notion that the rule of *prima facie* evidence in favour of the consignee would be invoked only if the bill of lading did not state that demurrage incurred was payable by him. That would also bring the provision concerning demurrage into line with that on freight.

78. Mr. SELVIG (Norway) said that his delegation could not accept the United Kingdom amendment since a provision similar to the existing text of paragraph 4 already existed in the Scandinavian Maritime Code. It should be remembered that bills of lading were often tendered in commercial transactions; accordingly, unless they gave a clear indication of the amount of demurrage to be expected, the buyer would be in a difficult position and would not know whether to reject the bill of lading outright or simply deduct a suitable amount for demurrage. A carrier wishing to claim demurrage could state the maximum amount payable as a guideline for the consignee.

79. Mr. HONNOLD (United States of America) said that his delegation, too, was unable to support the United Kingdom amendment. A general indication that an unstated amount of demurrage might be payable was of little use to the consignee, since it did not give him the necessary information as to how much he would have to pay before taking possession of the goods. With regard to the further claim that the amendment brought the provision on demurrage into line with that on freight, he would point out that the provision on freight merely required freight to be paid at the place of destination "to the extent payable by the consignee", as provided for in article 15, subparagraph 1 (k).

80. Mr. DIXIT (India) said that the United Kingdom amendment changed the meaning of the UNCITRAL text, which his delegation preferred. It should be stated in the bill of lading the demurrage that was payable by the consignee.

81. Mr. GANTEN (Federal Republic of Germany) said his delegation supported the United Kingdom amendment. It was difficult, if not impossible, to state in the bill of lading the amount of demurrage that would have to be paid, as the shipper would not know what it was likely to be at the time of the issuance of the bill of lading. The absence of any such indication could not, therefore, be regarded as *prima facie* evidence that no demurrage was payable by the consignee.

82. Mr. BYERS (Australia) said that, for the reasons given by the representatives of Norway and the United States, his delegation was in favour of the text as it stood.

83. Mr. RAY (Argentina) said that his delegation was of the opinion that it might be acceptable in certain cases to state the cost of demurrage in the bill of lading, but in

others it was not the general practice and, in the case of bills of lading referring to charter-parties, the amount of demurrage was often left unspecified. Its inclusion would, however, be useful for the consignee.

84. Mr. GORBANOV (Bulgaria) said that his delegation was in favour of the existing text.

85. Mr. SUCHORZEWSKI (Poland) suggested, as a compromise solution, that the words "the extent of demurrage in hours or days" should be inserted in the first sentence. With that amendment, the UNCITRAL text could be adopted.

86. Mr. WATKINS (United Kingdom) said that the suggestion by the Polish representative was helpful but still left unresolved the practical problem that the extent of demurrage would not be known when the bill of lading was issued.

87. Mr. MARTONYI (Hungary) said his delegation was unable to accept the United Kingdom amendment and preferred the UNCITRAL text for the reasons given by the Norwegian and United States delegations. The amount of demurrage was of vital importance for the commercial use of bills of lading and for carriage in general, and not only for the consignee.

88. The CHAIRMAN noted that there was insufficient support for the United Kingdom amendment or for the oral suggestion made by the representative of Poland. He

would therefore consider those amendments to be rejected.

89. Mr. SIMS (Canada) said that his delegation's amendment to paragraph 4 (A/CONF.89/C.1/L.183) was in keeping with the views expressed by the Norwegian and United States representatives concerning the United Kingdom amendment (A/CONF.89/C.1/L.175). The words "set forth the freight" and "set forth demurrage" were in contradistinction with the words "otherwise indicate", and his delegation was afraid that the words "otherwise indicate" might be interpreted in court in such a way that the carrier would merely have to include a standard clause in the general printed terms on the back of the bill of lading. That would frustrate the intention of the Committee to ensure that the necessary information on freight was brought to the attention of the consignee in a way he could not misunderstand, and might be particularly important when both a contract of carriage and a bill of lading existed but specific indications on demurrage or freight were given in the first document only.

90. The CHAIRMAN, noting that no representative wished to speak in favour of the Canadian amendment, said he would take it that that amendment was rejected and that paragraph 4 was approved as it stood.

The meeting rose at 6.05 p.m.

23rd meeting

Wednesday, 22 March 1978, at 10.20 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.23

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.11, L.26, L.67, L.82, L.122, L.159, L.170, L.171, L.176, L.182, L.185)

Article 17

1. The CHAIRMAN noted that no amendment concerning paragraph 1 had been submitted.

2. *Paragraph 1 was adopted.*

3. Mr. TANIKAWA (Japan) explained why his delegation was proposing the deletion of paragraphs 2, 3, and 4 of article 17 (A/CONF.89/C.1/L.26). The practice whereby the carrier issued clean bills of lading, i.e. unconditional ones, in exchange for the letter of guarantee was closely bound up with the practice of letters of credit. What happened in many cases was that, before opening a letter of credit, the bank required a clean bill of lading to

be submitted to it as a guarantee. Actually, the original bill of lading or the master's receipt on which the bill of lading was based for future negotiation contained many remarks concerning the condition of the goods, and those remarks were important for carriage but not for commercial transactions or for the sale of the goods. Carriers and shippers often held different opinions on those remarks, and where that happened the shipper asked for a clean bill of lading in exchange for a letter of guarantee, even though carriers did not like the practice. On the strength of the clean bill of lading the shipper could obtain payment from the bank immediately after the shipment of the goods.

4. In practice, therefore, letters of guarantee affected only the relations between the shipper and the carrier, and in that respect the principle laid down in paragraph 2 was an obvious one and did not have to be spelt out in the Convention. Paragraphs 3 and 4, on the other hand, raised difficulties in that they offered an inequitable, and hence unsound, solution. That being so, his delegation considered that it would be preferable to drop the idea of enacting rules in the Convention governing letters of credit and to rely instead on the rules laid down in national law.

5. Mr. MARCIANOS (Greece), agreeing with the representative of Japan, likewise considered paragraph 2 unnecessary for it stated the obvious. Paragraphs 3 and 4 should be deleted, for in general it was at the request and for the benefit of the shipper that the carrier made out a clean bill of lading, not in his own interest; hence it would be unfair to deny him the possibility of relying on the letter of guarantee subsequently. Accordingly, the Greek delegation proposed the deletion of the three paragraphs in question (A/CONF.89/C.1/L.11).

6. Mr. AMOROSO (Italy) said that he supported the Japanese amendment and also the reasons given by the Japanese delegation.

7. Mr. SWEENEY (United States of America) supported the statements made by the representatives of Greece, Japan and Italy. On further reflection, his own delegation would prefer the deletion of the three paragraphs in question and not merely the deletion of paragraphs 3 and 4 as it had originally proposed (A/CONF.89/C.1/L.67).

8. The essential object of article 17 was to protect the consignee against possible fraudulent manipulations on the part of the shipper and the carrier acting in collusion to draw up a bill of lading that was not consistent with the facts. Reservations or notes appearing on the bill of lading were important, for many disputes arose concerning the condition of the goods, and in particular concerning the date of shipment. In order to protect himself, the shipper asked the carrier for a clean bill of lading in exchange for a letter of guarantee.

9. Admittedly, the letter of guarantee issued by the shipper in exchange for a clean bill of lading might not be the result of any fraudulent intent but be designed merely to facilitate the negotiation of the bill of lading. In practice, however, many cases occurred where letters of guarantee were issued with intent to injure third parties; under United States law such an act was a criminal offence. His delegation would in any case prefer that the question be governed by national law established for the purpose of curbing such practices. Moreover, when disputes arose it was difficult to distinguish cases where letters of guarantee were issued by collusion between shipper and carrier from those where the carrier had acted in good faith. As the letter of guarantee was an undesirable institution and not to be encouraged, it would be preferable not to refer to it in the text of the Convention and to delete paragraphs 2, 3 and 4 of article 17. If, however, the Committee should decide to keep paragraph 2, his delegation would maintain its amendment to that paragraph.

10. Mr. BYERS (Australia) said that he would favour the text proposed by UNCITRAL, for it provided an international sanction for a practice that was treated differently in different national laws or sometimes was not at all regulated by national law. Accordingly, he considered it desirable that an international rule should be laid down governing the practice of letters of guarantee.

11. The representative of Japan had said that in the common law the rule was that the clauses in a contract entered into between two parties were not enforceable vis-à-vis a third party and that for that reason it would be

unnecessary to spell out the rule in paragraph 2 of article 17. That was not, however, a universal rule, and even in common law countries there could be exceptions to the rule. Besides, paragraph 2 went further than the rule in that it provided that in the circumstances contemplated the letter of guarantee would be void and of no effect as against a third party. The real issue was whether the potential victim of fraud should be protected, in other words, whether it should be specified that the documents issued in connexion with the transaction truly reflected the actual situation. It was precisely the object of the paragraphs under discussion to ensure that the bill of lading gave a faithful description of the situation, and in that way the paragraphs tended to strengthen the trust placed in those documents and consequently promoted international trade. The sanctions provided for in paragraphs 3 and 4 were balanced, for the letter of guarantee was valid as between the shipper and the carrier only in those cases where there was no intentional injury.

12. Mr. BURGUCHEV (Union of Soviet Socialist Republics) introducing his delegation's amendment (A/CONF.89/C.1/L.185) said that his delegation proposed the deletion of paragraphs 3 and 4 of article 17 because the matters dealt with in paragraph 3 could be settled according to the rules of national law, without prejudice to the objective of unification, and the matters dealt with in paragraph 4 could be settled quite satisfactorily in accordance with article 8 (see written comments, A/CONF.89/7, p. 59).

13. Mr. PALLUA (Yugoslavia) said that for the reasons given by the delegations of Japan and the United States his delegation would support the Japanese amendment, though he considered that paragraph 2 could stand.

14. Mr. SANYAOLU (Nigeria) stated his support for the argument given by the Australian delegation in favour of paragraphs 3 and 4. Paragraph 4 introduced a justifiable exception, in case of wilful injury, to the rule in article 4 (Period of responsibility of the carrier). In general, his delegation supported paragraphs 3 and 4 because they tended to establish a uniform international régime concerning guarantees given by the shipper.

15. Mr. EYZAGUIRRE (Chile) described the circumstances in which clean bills of lading were issued by carriers to shippers with the object of facilitating the acceptance of the bill by the consignee or by the bank that would open a documentary credit. As a rule, a clean bill of lading was established by the carrier in exchange for a letter of guarantee from the shipper. The fact that no note or reservation appeared in the bill of lading might be due to some disagreement between shipper and carrier concerning the quantity or weight of the goods but might also be due to fraudulent collusion between them to the prejudice of the consignee or some other third party holding the bill of lading. In the light of those considerations, his delegation would prefer paragraphs 2, 3 and 4 of the UNCITRAL text to stand.

16. Mr. YOUN (Korea) said that his delegation had serious reservations concerning paragraphs 3 and 4 of article 17 which, in its opinion, did not create the right balance between the position of the shipper and that of the carrier. If the condition of the goods did not conform

to the description given by the shipper, then the carrier could either issue a clean bill of lading in exchange for the shipper's letter of guarantee, or issue a "foul" bill of lading describing the true condition of the goods. In that event, the carrier would not run the risk referred to in paragraphs 3 and 4 of article 17. Since, however, a bank would not agree to negotiate a "foul" bill of lading, the shipper would normally ask the carrier for a clean bill of lading in exchange for a letter of guarantee, which would offer no advantage to the carrier.

17. For his part, the carrier had to bear the risk of such an arrangement. In the first place, he might not receive full compensation from the shipper in case of dispute because the amount of compensation provided for in the letter of guarantee would be less than the damages claimed. Secondly, a long period of time might elapse between the moment when the carrier received the letter of guarantee and the time when the claim was settled. Lastly, the shipper might have become insolvent in the meantime because he had gone bankrupt, or he might have disappeared. Consequently, the carrier was in a less favourable position than the shipper and his only protection would be to enter reservations and to decline to issue a clean bill of lading. For the purpose of restoring the balance between shipper and carrier, his delegation accordingly proposed the deletion of paragraphs 3 and 4.

18. Mr. DOUAY (France) said that, in his delegation's opinion, article 17 should stand as drafted, for its provisions were as satisfactory as the sole article in French law which dealt with the question. When UNCTAD had considered the revision of the rules governing bills of lading, it had also contemplated the review of certain practices related to bills of lading which, in the past, had not been regulated, and had in that connexion referred to the practice of letters of guarantee.

19. In the French delegation's opinion, it was indispensable to deal with the question of letters of guarantee in the Convention under study, for, although some national laws dealt with the question, others did not. Besides, even if a particular country's law contained legislative provisions regarding letters of guarantee, the court might take the view that those were only subsidiary provisions and might simply apply the Convention. Accordingly, letters of guarantee should be covered by an international rule, and that was also one of the major concerns of the States members of UNCTAD who had decided to review the régime of bills of lading.

20. Article 17, paragraph 2, laid down a rule which might appear elementary but which should be emphasized: the rule that a letter of guarantee was void vis-à-vis third parties. That rule formed the basis of the entire system of guarantees, for the letter of guarantee was a document to which shipper and carrier were parties but which might prejudice a third party holding the bill of lading. Yet the third party should not suffer from the consequences of an agreement that had been entered into between the shipper and the carrier for the sole purpose of obtaining a clean bill of lading in contemplation of the documentary credit. Hence, the rule laid down in paragraph 2 was essential and could not be excluded if the rule laid down in paragraph 1 was accepted.

21. As regards the question of what terms of a letter of guarantee were valid and what terms were not, he explained that the object of paragraph 3 was precisely to spell out the force of the letter of guarantee. Under paragraph 3, the letter of guarantee—even though void vis-à-vis third parties pursuant to paragraph 2—was valid as between shipper and carrier but only in so far as there was no fraudulent intent to damage third parties. Where there was fraud, the letter of guarantee—which was normally valid as between shipper and carrier—became void not only with respect to third parties but also as between the two parties themselves. That explained the reason for the sanction in paragraph 4, under which the carrier lost the right to claim the benefit of limitation of liability with regard to any loss incurred by a third party by reason of the fact that a bill of lading contained no reservations, when the carrier knew perfectly well that there were reservations and that third parties would suffer from such a fraudulent declaration. In his delegation's opinion, the loss of the right to limitation of liability on the carrier's part was the simplest sanction, and that was also the sanction provided for in the relevant French law, which had never given rise to any difficulty—quite the contrary—ever since it had come into force.

22. Lastly, he considered that the question of letters of guarantee should be governed by an international rule in the interests both of the shipper and of the consignee, and for that reason all the provisions of article 17, which formed an organic whole, ought to stand.

23. Mr. SIMS (Canada) said that, for the reasons stated by the representatives of Greece, Japan, Italy and the United States, his delegation would like paragraphs 2, 3 and 4 of article 17 to be deleted. That did not mean that his delegation wanted the practice of letters of guarantee to be abolished; letters of guarantee should continue to be used in so far as commercial practice required. But would it be sensible to attempt to regulate the use of such letters of guarantee in the Convention? In his delegation's opinion, letters of guarantee were but a part of the general law of contract, whereas the Convention would deal exclusively with contract of carriage. Hence, it would be dangerous to try to regulate one part only of the law of contract.

24. His delegation did not agree with those delegations which, while stating that their national laws in any case contained provisions concerning letters of guarantee, nevertheless considered that provisions concerning such letters ought to appear in the Convention. In its view, article 17 would not achieve its objective for it would deal with only part of the topic of letters of guarantee and could not possibly answer all purposes or deal with all situations. The parties concerned would therefore have to rely on national law to fill the gaps in the Convention, and the consequence would be that, far from promoting the uniformity of the relevant rules, the Convention would do no more than create fresh discrepancies.

25. Both in the common law countries and in the Roman law countries the national laws concerning letters of guarantee were much more elaborate than the rule proposed in article 17 and contained much more detailed provisions for dealing with different types of fraud. In the

Canadian delegation's opinion, therefore, the provisions of paragraphs 2, 3 and 4 of article 17 were unnecessary and in any case incomplete.

26. Mr. RAY (Argentina) expressed full support for the UNCITRAL text because it corresponded to the relevant Argentine law. The provisions of article 17 were clearly balanced in favour of shippers, particularly those of exporting countries, in that it made it easier for them to obtain documentary credits. He added that those provisions should be supplemented by comparable provisions existing in the laws of countries of consignees, for the letter of guarantee was a mere agreement between shipper and carrier within the scope of national law and was not enforceable vis-à-vis third parties, including the consignee. If the carrier issued a clean bill of lading he was answerable to the consignee, but that did not mean that the letter of guarantee was worthless. Besides, the carrier would decline to issue a clean bill of lading in cases where the letter of guarantee could be considered as void and of no effect, for the carrier was not covered by his insurance where a letter of guarantee had been issued. The consignee was protected in case of the carrier's fraud, since the letter of guarantee was not enforceable vis-à-vis the consignee.

27. Unlike the representative of Canada, he considered that the problems arising in connexion with letters of guarantee could not be left to be settled by national law and that the relevant rules should be laid down by international law. For those reasons, he would support the provisions of article 17, for they would facilitate relations between carrier and shipper, notably in cases where the shipper was in an exporting country.

28. Mr. DIXIT (India) said he favoured the UNCITRAL text. The provisions of article 17 were designed to eliminate the fraudulent practice whereby the shipper gave the carrier a letter of guarantee in exchange for a clean bill of lading, on the strength of which the shipper could obtain credit facilities from the banks. Such a practice was prejudicial both to the consignee and to the banks which advanced money to the shipper and should therefore be prohibited. The argument that that practice would continue in any case, whether or not prohibited by international law, did not stand up, since it was impossible to guarantee that a law would not be violated. The argument that the matter was already dealt with in the legislation of certain countries was not convincing either, for even if the legislation of all countries contained provisions relating to letters of guarantee—which was not the case—it would still be necessary to have standard international legal provisions on the matter in order to avoid conflicts of laws.

29. It was essential to put an end to the fraudulent use of letters of guarantee, since that practice threatened to undermine the value of those documents and the trust placed in them, and that would certainly be detrimental to international trade. In the interests of international trade, therefore, the provisions of article 17 should be maintained.

30. Mr. TANIKAWA (Japan) observed that, under paragraph 3, if the carrier or the person acting on his behalf issued a clean bill of lading in exchange for a letter

of guarantee with intent to defraud a third party, the carrier could not claim indemnity from the shipper. However, it was at the request of the shipper that the clean bill of lading was issued against the letter of guarantee. Consequently, if the carrier was guilty of fraud, so too was the shipper, and in fact the shipper was the principal tortfeasor. Under such circumstances, the shipper would have no difficulty in proving the intent of the carrier to defraud, since he himself had had the same intent, and he could thus be discharged from his obligation under the letter of guarantee, even though he was the main tortfeasor. Thus, if paragraph 3 was adopted, it would still be possible for the shipper to refuse the carrier the indemnity which the carrier could claim from him under the letter of guarantee. Such an outcome would be unjust and the problems raised by letters of guarantee should not be settled under private law applicable to the relationship between carrier and shipper.

31. Mr. KHOO (Singapore) said he was inclined to think that paragraphs 2, 3 and 4 of article 17 should be deleted, for the reasons given, *inter alia*, by the representatives of Canada, Korea and Japan. Paragraph 2 stated the obvious, and paragraph 3, which dealt in simplistic fashion with a complicated situation, was both redundant and incomplete, as the representative of Canada had rightly remarked.

32. Mr. SMART (Sierra Leone) said that, for the reasons already given by the representatives of Australia, India and Nigeria, paragraphs 2, 3 and 4 of article 17 should be retained as they appeared in the draft Convention.

33. Mr. GANTEN (Federal Republic of Germany) said that, even if national legislation contained rules concerning the validity of letters of guarantee, the international unification of those rules was necessary. The validity of letters of guarantee, the circumstances in which they were no longer regarded as valid, and the circumstances in which the liability of the carrier was unlimited were extremely important matters for international trade, and it was only natural that they should be dealt with in the Convention. Moreover, article 17 represented a compromise between differing concepts. For those various reasons, his delegation felt that paragraphs 2, 3 and 4 of that article should be retained.

34. Mr. LUMSDEN (Ireland) said that, for the reasons already given by other representatives, he supported the Japanese amendment proposing the deletion of paragraphs 2, 3 and 4 of article 17. In particular, he considered that the subject-matter of those paragraphs could more appropriately be dealt with in a convention on the law of contract.

35. Mr. PTAK (Poland) said that, if the practice of maritime trade in regard to letters of guarantee was to be reflected in the Convention, paragraph 2 of article 17 performed that function with clarity and simplicity. However, he wondered whether that was really necessary. Paragraphs 3 and 4 of article 17 should be deleted, because the question of the letter of guarantee was normally dealt with in the legislation of each individual country. It was extremely difficult to determine whether or not a letter of guarantee had been issued in good faith. To make the carrier bear the consequences of a letter of

guarantee issued in bad faith would be unfair and would in no way serve to eliminate the letter of guarantee from maritime commercial practice. Goods were handled so rapidly in modern ports that it was becoming difficult, if not impossible, to check the quantity and condition of the goods loaded. If the carrier wished to avoid breaks in the handling of goods, he often had to issue a clean bill of lading in exchange for a letter of guarantee. The letter of guarantee constituted security only for the carrier. It applied only to relations between shipper and carrier. It was without effect in regard to the consignee or the bearer of a bill of lading containing no reservations, who was sufficiently well-protected by the provisions of paragraph 2 of article 17.

36. Mr. BREDHOLT (Denmark) said that, in his view, paragraph 2 of article 17 should be retained, since it was very important for the protection of third parties. As for the remainder of article 17, his delegation shared the views of the delegation of Singapore and considered that it would be better for the problem to be settled under national legislation, particularly as international rules might not enable the desired standardization to be achieved. Accordingly, his delegation was in favour of deleting paragraphs 3 and 4 of article 17.

37. Mr. GONI (Spain) said that, in his view, the letter of guarantee was one of the matters which was most in need of international standardization, since at the moment the situation in that regard was extremely confused. However, even if such uniformity was achieved, it was difficult to see what objection there could be to adopting a text which dealt with the matter in equitable fashion, as did the draft Convention. In any event, his delegation considered it essential to retain the text of article 17 of the draft Convention in its entirety. In paragraph 3, the expression "any consignee" should be replaced by "a consignee", as had been done in article 16.

38. The CHAIRMAN announced that he would put to the vote the Japanese amendment proposing the deletion of paragraphs 2, 3 and 4 of article 17 of the draft Convention.

39. Mr. AMOROSO (Italy) and Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in their view, it would be preferable to vote on each paragraph individually.

40. The CHAIRMAN requested the Committee to take a decision on the principle of retaining paragraph 2 of article 17. If the Committee decided to keep paragraph 2, the amendments relating to that paragraph would be considered subsequently.

41. *The Committee decided, by 55 votes to 5, with 6 abstentions, to retain paragraph 2.*

42. The CHAIRMAN requested the Committee to take a decision on the deletion of paragraph 3 of article 17.

43. *The Committee decided, by 42 votes to 19, with 6 abstentions, not to delete paragraph 3.*

44. The CHAIRMAN requested the Committee to take a decision on the deletion of paragraph 4 of article 17.

45. *The Committee decided, by 42 votes to 19, with 6 abstentions, not to delete paragraph 4.*

46. The CHAIRMAN invited the members of the Com-

mittee to consider the amendments relating to paragraph 2 of article 17.

47. He said that the Committee would begin by examining the United States amendment (A/CONF.89/C.1/L.67).

48. Mr. SWEENEY (United States of America) said that his delegation had submitted its amendment to paragraph 2 on the supposition that paragraph 4 would be deleted. It had considered it desirable not to deny the benefit of the provisions concerning the limitation of liability to a carrier who, in exchange for a letter of guarantee, refrained from entering reservations on a bill of lading except in respect of loss sustained by a good-faith claimant who had acted in reliance on the description of the goods given in the bill of lading, and not in respect of loss due to other causes. Since that amendment should have been considered before the vote on paragraphs 3 and 4, his delegation would withdraw it.

49. The CHAIRMAN drew the attention of members of the Committee to the French amendment to paragraph 3 (A/CONF.89/C.1/L.82).

50. Mr. DOUAY (France) recalled that, in considering article 16, the Committee had rejected the French amendment for the deletion of a phrase identical to that which his delegation was proposing to delete from article 17, but that it had agreed to replace the words "including any consignee" by the words "including a consignee". His delegation therefore suggested that the same drafting change should be made to paragraph 3 of article 17.

51. Mr. SWEENEY (United States of America) said that, in order to bring article 17, paragraph 4, into line with the provisions of article 8, paragraph 1, article 9, paragraph 3, and article 13, subparagraph 2 (a), the Drafting Committee might consider replacing the words "who has acted" by another expression indicating a causal link.

52. Mr. GONDRA (Spain) observed that the drafting change proposed by the representative of France would bring the French and English texts of article 17 into line with the Spanish version. As proposed by the United States delegation in its amendment (A/CONF.89/C.1/L.67), it would be appropriate to insert in paragraph 4, after the words "including a consignee" the phrase already contained in subparagraph 3 (b) of article 16, namely "who in good faith has acted in reliance on the description of the goods therein".

53. Mr. KHOO (Singapore) said that, as he understood it, the first sentence of paragraph 3 referred to a very specific case, namely that in which the carrier intended to defraud a third party. The use of the expression "If in the latter case" at the start of the second sentence was liable to create confusion. He therefore suggested that those words should be replaced by wording such as "If, in such a case,".

54. Mr. SELVIG (Norway) observed that the first sentence of paragraph 3 was designed to cover two situations: first, the normal situation in which the carrier acted in good faith and, secondly, the case of fraud referred to by the phrase commencing with the words "unless the carrier". Consequently, there was no need to amend the text of paragraph 3.

55. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved the text of paragraphs 3 and 4 of article 17 and would refer those paragraphs to the Drafting Committee, together with the comments made by the representatives of France, the United States of America and Spain.

56. *It was so decided.*

57. The CHAIRMAN informed the members of the Committee that the United Kingdom had withdrawn its amendment to paragraph 3 (A/CONF.89/C.1/L.176) and he invited them to proceed to consider the proposal of the delegation of the Federal Republic of Germany for the addition of a new paragraph to article 17 (A/CONF.89/C.1/L.170).

58. Mr. GANTEN (Federal Republic of Germany), introducing his delegation's amendment, said that the Hague Rules, 1921,¹ had contained a similar provision in article IV, paragraph 5. It was important to stipulate in the Convention that the carrier could not incur liability if the shipper had knowingly made a false statement in the bill of lading. To a certain extent, the new paragraph would be the counterpart of the provision relating to the unlimited liability of the carrier.

59. Mr. BYERS (Australia) said he could not support the amendment of the Federal Republic of Germany, since its effect might be that the carrier could never be held liable.

60. The CHAIRMAN said that if there was no objection, he would take it that the Committee rejected the amendment of the Federal Republic of Germany (A/CONF.89/C.1/L.170).

61. *It was so decided.*

62. Mr. SORESENSEN (Mauritius) drew the attention of participants to his delegation's amendments to articles 5 and 6 (A/CONF.89/C.1/L.122 and L.127), which contained the expression "loss of or damage to, or in connexion with the goods", which was similar to the expression used in the amendment of the Federal Republic of Germany and to that which appeared in the Hague Rules and the Brussels Protocol.² However, he was surprised that it should have been proposed to add a provision limiting the liability of the carrier when the general idea was, rather, to make the carrier liable for foreseeable and direct damage.

Article 18

63. Mr. GANTEN (Federal Republic of Germany), introducing his delegation's amendment proposing the deletion of article 18 (A/CONF.89/C.1/L.171), said that there were many ways of evidencing a contract of carriage

but that an instrument attesting that a contract had been concluded in no way served to prove that the goods had been handed over to the carrier. According to the definition adopted in article 1, a bill of lading evidenced the taking over or loading of the goods by the carrier, but article 18 referred to documents other than bills of lading; consequently, to maintain the assumption made in article 18 would mean that the parties to a contract would be able to issue contract-evidencing documents other than bills of lading only if they agreed that those documents would attest to the taking over of the goods. In the opinion of his delegation, that restriction would be inappropriate, and it would be preferable to delete article 18.

64. Mr. GUEIROS (Brazil) supported the amendment by the Federal Republic of Germany.

65. Mr. MONTGOMERY (Canada) said that he supported the amendment of the Federal Republic of Germany proposing to delete article 18 and cited two examples in support of that proposal. First, when a shipper and a carrier concluded a contract of carriage by telex, it was clear that the second telex sent by the carrier, namely the document other than the bill of lading, could not evidence the taking over the goods. Secondly, in the case covered by article 2, paragraph 4 (carriage of goods in a series of shipments), it was obvious that the carrier would not be taking over all the goods which formed the object of the contract of carriage. His delegation believed that UNCITRAL had included that article in the draft Convention with the aim of helping shippers to assert their rights in the event of loss or damage sustained during carriage. In practice, however, the shipper would have no difficulty in proving that the carrier had taken over the goods—for instance, by calling in the land carrier who had conveyed the goods from the factory to the port. Moreover, the provisions of article 18 might easily conflict with those of article 4, concerning the period of responsibility.

66. He announced that his delegation would withdraw its amendment to article 18 (A/CONF.89/C.1/L.182) in favour of the amendment by the Federal Republic of Germany.

67. Mr. GONDRA (Spain) said that his delegation had serious reservations concerning article 18 as drafted, since from the legal point of view a document evidencing the conclusion of a contract did not necessarily prove that the contract had been performed, except in the case of the bill of lading, which possessed that dual function under article 14, paragraph 1. The Canadian amendment had offered an alternative solution. If, however, the existing text of paragraph 18 was not amended, his delegation would favour its deletion.

68. Mr. SWEENEY (United States of America) drew the attention of the members of the Committee to the amendment submitted by Poland (A/CONF.89/C.1/L.159), which resolved certain drafting difficulties.

The meeting rose at 1 p.m.

¹ See The International Law Association, *Report of the Thirtieth Conference*, vol. II, *Proceedings of the Maritime Law Committee*, London, Sweet & Maxwell, Ltd., 1922, p. 262.

² See *Société du Journal de la Marine marchande, Le Droit maritime français*, 20^e année, No. 235 (July 1968), p. 396. See also United Nations, *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. II, p. 180.

24th meeting

Wednesday, 22 March 1978, at 5.15 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.24

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.93, L.159, L.171)

Article 18 (concluded)

1. The CHAIRMAN asked delegations, and particularly that of the Federal Republic of Germany, whether they would be prepared to waive the rules of procedure and consider the Polish amendment to article 18 (A/CONF.89/C.1/L.159) before that by the Federal Republic of Germany which proposed to delete article 18 altogether (A/CONF.89/C.1/L.171).

2. Mr. GANTEN (Federal Republic of Germany) said that, if the Polish amendment was accepted by the Committee, his delegation would be prepared to withdraw its amendment.

3. Mr. SUCHORZEWSKI (Poland) said that the aim pursued by his delegation in submitting its amendment was not to change the basic idea embodied in article 18 but to improve the formulation of that provision, which was unsatisfactory from the point of view both of law and of logic.

4. In the UNCITRAL text, the carrier was deemed to be in charge of the goods from the time he took them over. There was an essential misconception in the text of article 18, as a distinction should be made between the conclusion of the contract of carriage and the taking over of the goods, which seldom coincided in time since the shipper did not hand over the goods until the contract of carriage had been concluded. The contract of carriage normally took the form of some kind of booking note, but a booking note would never be taken also as confirmation of the taking over of the goods by the carrier, so the document which evidenced both acts would be the bill of lading issued pursuant to the booking note. The bill of lading was therefore the only document to have two simultaneous evidentiary functions, and the draft Convention had not attributed those functions to any other documents, such other documents being merely regarded as evidencing the contract of carriage, not the taking over of the goods as well. The problem could be dealt with either by deleting the article, as proposed by the Federal Republic of Germany, or amending it so as to preserve the original idea but stating clearly that a document other than a bill of lading issued by the carrier to evidence the receipt of the goods to be carried would be *prima facie* evidence of the taking over by the carrier of the goods. It

would then be superfluous to add that such documents simultaneously evidenced a contract of carriage.

5. Mrs. RICHTER-HANNES (German Democratic Republic) referring to her delegation's proposed amendments in document A/CONF.89/C.1/L.93, said that the delegation was prepared to accept the Polish amendment provided it was made clear that a carrier could not issue a document other than a bill of lading to evidence a contract of carriage without the approval of the shipper.

6. Mr. FAHJM (Egypt) said that his delegation had difficulty in accepting the UNCITRAL text, but would not be in favour of deleting article 18 altogether. He supported the Polish amendment, which was in keeping with current practice.

7. Mr. WAITITU (Kenya) said that the Polish amendment changed the meaning of the UNCITRAL text considerably. His delegation was of the opinion that the text as drafted merely established a presumption which could be rebutted by anyone who so desired on the grounds that in a specific case the document other than the bill of lading did not in actual fact evidence the taking over of the goods.

8. Mr. MARCIANOS (Greece) said that the existing text of article 18 was meaningless, since a document other than a bill of lading could not evidence a contract of carriage and also receipt of the goods. He would prefer the article to be deleted altogether but, failing that, he was prepared to accept the Polish amendment.

9. Mr. SMART (Sierra Leone) said that, if he understood article 18 correctly, its intention was that a document other than a bill of lading issued to evidence a contract of carriage should also be accepted as evidencing receipt of the goods by the carrier. That might create difficulties for a carrier who had issued such a document but had not taken possession of the goods. However, as the representative of Kenya had pointed out, the evidence was merely *prima facie* and could be rebutted by the carrier.

10. The characteristics of a bill of lading, as defined in article 1, paragraph 6, were not confined to the two functions referred to by the Polish representative—namely, the evidencing of a contract of carriage and of the taking over of the goods. The bill of lading also embodied an undertaking on the part of the carrier to deliver the goods against surrender of the document. Consequently, it was incorrect to assume that a document fulfilling those first two conditions was necessarily a bill of lading and to extend that assumption to other documents substituting for it. The Polish amendment might be made more generally acceptable if the words "of the contract of carriage and" were inserted after the words "*prima facie* evidence". If it was agreed to add those words, his

delegation would be prepared to support the Polish amendment; otherwise, it would prefer the original text.

11. Mr. SUCHORZEWSKI (Poland) said that his delegation found the addition proposed by the representative of Sierra Leone perfectly acceptable; it would serve to dispel the misgivings of those delegations who believed it necessary to state that the document in question would be evidence of the conclusion of a contract of carriage.

12. Mr. MARCIANOS (Greece) and Mr. FAHIM (Egypt) said that they could accept the Polish amendment, as subamended by the delegation of Sierra Leone.

13. Mr. POPOV (Bulgaria) said that his delegation supported the original Polish amendment, without the addition of the words proposed by the representative of Sierra Leone.

14. Mr. NDAWULA (Uganda) said that his delegation was in favour of retaining the UNCITRAL text of article 18. Its greatest virtue was that it embodied the doctrine of estoppel, whereby a carrier who issued a document other than a bill of lading would be stopped from denying the existence of the contract of carriage or the fact of taking over the goods, as the case might be.

15. Mr. KERRY (United Kingdom) said that his delegation, like that of Bulgaria, preferred the original Polish amendment. The addition proposed by the Sierra Leonean delegation was unsatisfactory, because a document issued to evidence receipt of the goods might simply consist of a bare statement to the effect that the goods had been taken over, and that could not be regarded as *prima facie* evidence of the conclusion of a contract of carriage.

16. Mr. REISHOFER (Austria) agreed with the United Kingdom representative. His delegation had welcomed the statement in the original Polish amendment that a document other than a bill of lading evidenced receipt of the goods to be carried and could therefore be considered *prima facie* evidence of the taking over of the goods, since those two events were analogous. It was unable to accept the subamendment proposed by the representative of Sierra Leone; conclusion of the contract of carriage and taking over of the goods were not comparable, since one could take place without the other.

17. Mr. BURGUCHEV (Union of Soviet Socialist Republics), referring to the amendment by the German Democratic Republic, stressed the importance of stating that a document other than a bill of lading could not be issued without the approval of the shipper.

18. Mr. DIXIT (India) said that the Polish amendment, as subamended by the delegation of Sierra Leone, was acceptable to his delegation; it was a definite improvement on the original text, although it might change the emphasis slightly.

19. Mr. SUCHORZEWSKI (Poland) suggested, in the interests of compromise, that the subamendment of the Sierra Leonean delegation could be amplified to read "of the conclusion of the contract of carriage and". That would reflect the original intention of his own delegation to make it clear that documents other than bills of lading issued to evidence receipt of the goods evidenced the conclusion of the contract as well as the taking over of those goods.

20. Mr. SMART (Sierra Leone) said he could accept the Polish representative's suggestion, which covered precisely the point he had in mind.

21. The CHAIRMAN, noting that the oral suggestions made by the delegations of Sierra Leone and Poland were mutually acceptable to those delegations, said he would take it that the original Polish amendment was no longer before the Committee. He invited members to confine their remarks to the Polish amendment as thus sub-amended.

22. Mr. MALELA (Zaire) supported the Polish amendment in its revised form.

23. Mr. BYERS (Australia) said that, in his view, the original UNCITRAL text adopted a far more logical approach to the question. The amendments which proposed to replace it sought to treat as significant not the fact that a carrier issued a document evidencing the contract, but the fact that he issued a receipt for the goods.

24. Mr. DOUAY (France) said that the difficulty with the UNCITRAL text was that the first clause implied that a document other than a bill of lading could stand as a contract of carriage. To that extent, the original Polish amendment was an improvement on the existing text, and his delegation could support it.

25. With regard to the second clause of the Polish amendment as subamended, his delegation considered it unnecessary to provide that a document other than a bill of lading should be *prima facie* evidence of the contract of carriage. It would be better to omit any such provision, which would only detract from the flexibility that marked current practice in the matter. The main point was to provide that such documents could be *prima facie* evidence of the receipt of the goods.

26. Lastly, on a point of drafting, his delegation considered that the first clause of the revised Polish amendment should be redrafted to refer to a transport document rather than simply to a receipt for the goods. He therefore proposed that the words "When a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried" should be replaced by "When a carrier issues a transport document other than a bill of lading".

27. Mr. HONNOLD (United States of America) said his delegation had welcomed the original Polish amendment and was therefore not in favour of the oral subamendments to it. The effect of those subamendments was to provide that a document which merely evidenced receipt of the goods could, in some manner, become evidence of the contract of carriage. The contents and nature of such a contract, however, were matters that were to be decided by the facts of the case, and not by any such provision. He therefore suggested that the Committee should be invited to vote separately on the original Polish amendment and on its new version. If that suggestion was adopted, his delegation would vote in favour of the former and against the latter.

28. Mr. SMART (Sierra Leone), speaking on a point of order, said that, as he understood the situation, the original Polish amendment was no longer before the

Committee. Members should therefore confine their remarks to the amendment as subamended orally by his delegation and by the Polish representative.

29. Mr. CASTRO (Mexico) supporting the French proposal, pointed out that the whole purpose of article 18, as agreed at the UNCITRAL negotiations, was to provide in the Convention for a transport document other than a bill of lading. It often happened that, where only a small quantity of goods was involved, a kind of open policy and not a bill of lading was issued. That was generally done at the port of destination, or possibly on board ship.

30. Mrs. YUSOF (Malaysia), endorsing the Australian representative's remarks, said that the UNCITRAL text had the added advantage of stressing the evidentiary effect of documents other than bills of lading, both with regard to the conclusion of a contract of carriage and with regard to the taking over of the goods. Sometimes the two were not concurrent and, in her delegation's view, the existing text provided for a form of leverage in that it allowed for a presumption to be raised which could be rebutted on the basis of the facts adduced by the carrier.

31. Mr. WUREH (Liberia) said that his delegation would have difficulty in supporting the Polish amendment in its new revised form, since there might be circumstances in which the carrier was not willing, or refused, to carry the goods. Also, a mere receipt could not serve as the symbol of the conclusion of a contract of carriage.

32. Mr. QUARTEY (Ghana) said that there was a fundamental difference between the UNCITRAL text and the Polish amendment as subamended, in that the stated intention of the former was to evidence a contract of carriage and of the latter was to evidence the receipt of the goods. That could give rise to difficulty with regard to the taking over of the goods by the carrier since a contract of carriage had to list the goods in question. He therefore suggested that the existing text should be amended to provide that a document other than a bill of lading should be *prima facie* evidence of an agreement to carry the goods listed in the document, and not of the actual taking over of the goods by the carrier.

33. The CHAIRMAN invited the Committee to vote on the Polish amendment (A/CONF.89/C.1/L.159), as subamended orally by the representatives of Sierra Leone and Poland.

34. *The amendment, as subamended, was adopted by 21 votes to 15, with 34 abstentions.*

35. Mr. MÜLLER (Switzerland), speaking in explanation of vote, said that, had separate votes been taken on the oral subamendment proposed by Sierra Leone and on the Polish amendment, he would have voted against the former and in favour of the latter.

36. Mr. DOUAY (France) proposed that his earlier oral subamendment to the Polish amendment should be referred to the Drafting Committee.

37. Mr. CASTRO (Mexico), Mr. MARTONYI (Hungary) and Mr. FUCHS (Austria) supported that proposal.

38. Mr. MARCIANOS (Greece) and Mr. SUCHORZEWSKI (Poland) opposed the proposal.

39. The CHAIRMAN invited the Committee to vote on the French proposal.

40. *The proposal was rejected by 22 votes to 18, with 23 abstentions.*

41. Mr. GANTEN (Federal Republic of Germany) said that his delegation had indicated its willingness to withdraw its amendment (A/CONF.89/C.1/L.171) if the Polish amendment as contained in document A/CONF.89/C.1/L.159 was accepted by the Committee. What the Committee had voted upon, however, was not the text set out in that document, but a text modified as a result of oral subamendments made by the delegations of Sierra Leone and Poland. Such being the case, he requested the Committee to vote on his delegation's amendment.

42. Mr. AMOROSO (Italy) said that he supported the request made by the representative of the Federal Republic of Germany, particularly since the large number of abstentions recorded during the vote on the revised Polish amendment meant that the Committee's view on article 18 remained unclear.

43. Mr. SELVIG (Norway) agreed that the pattern of the voting indicated a measure of dissatisfaction among the members of the Committee. On the other hand, the Committee would face procedural difficulties if it acceded to the request made by the representative of the Federal Republic of Germany. Perhaps, therefore, the Committee could appoint a small group comprised of some of its members to try to devise a satisfactory text for the Committee to discuss.

44. Mr. GANTEN (Federal Republic of Germany) said that his delegation could agree to the Norwegian representative's suggestion.

45. Mr. SMART (Sierra Leone) said that, in his delegation's view, any further attempt to discuss the deletion of article 18, as proposed in document A/CONF.89/C.1/L.171, would be inconsistent with the decision already taken by the Committee, which had been to retain article 18 subject to the amendment proposed in document A/CONF.89/C.1/L.159, as orally subamended by the delegations of Sierra Leone and Poland.

46. Following a procedural discussion in which Mr. GUEIROS (Brazil), Mr. GORBANOV (Bulgaria), Mr. GANTEN (Federal Republic of Germany), Mr. SELVIG (Norway), Mr. SLOAN (Representative of the Secretary-General) and Mr. VIS (Executive Secretary of the Conference) took part, Mr. GANTEN (Federal Republic of Germany) said that his delegation would not press for consideration by the Committee of the amendment contained in document A/CONF.89/C.1/L.171, on the understanding that a solution to the difficulty still faced by many delegations with regard to article 18 would be sought by the Conference in a plenary meeting.

47. *It was so decided.*

48. Mrs. RICHTER-HANNES (German Democratic Republic) said that, in view of the time consumed in discussing article 18 and in order to advance the

Committee's work, her delegation would withdraw its amendment (A/CONF.89/C.1 L.93).

The meeting rose at 7.30 p.m.

25th meeting

Thursday, 23 March 1978, at 10.10 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.25

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.12, L.27, L.44, L.46, L.68, L.78, L.136, L.137, L.152, L.181)

Article 13 (concluded)

Paragraph 3

1. Mr. MONTGOMERY (Canada) announced that his delegation no longer had any objection to the adoption of article 13, paragraph 3.
2. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee adopted article 13, paragraph 3, and wished to refer it to the Drafting Committee.
3. *It was so decided.*

Article 19

Paragraph 1

4. The CHAIRMAN invited debate on the Japanese amendment to paragraph 1 (A/CONF.89/C.1/L.27), which was the furthest removed from the original text.
5. Mr. TANIKAWA (Japan) said that paragraph 1 dealt with apparent damage. Under the text as it stood, if the consignee gave the carrier written notice of loss or damage not later than one day after that on which the goods were delivered to him, he could rebut the presumption that the goods had been delivered by the carrier as described in the transport document or, failing such a document, in good condition, in the absence of verification at the time of the handing over. That was why the consignee should check the condition of the goods at the time when they were handed over. If it should be found that the goods had suffered loss or damage, the consignee, or the person acting on his behalf, should notify the carrier before, or at the time of, the delivery of the goods. The text of paragraph 1, as it stood, did not, however, lay down that essential rule.

6. Moreover, if the consignee gave such notice of loss or damage in writing not later than the day after the day of the delivery of the goods, it would be presumed that the loss or damage had occurred at the time of the handing over of the goods, even if the loss or damage had occurred later. It would surely be unfair to require the carrier to prove that he had delivered the goods to the consignee in good condition. In addition, as it was sometimes difficult to give notice in writing at the precise moment of the handing over of the goods, the Japanese amendment provided that the consignee could give oral notice to the carrier and then confirm the oral notice in writing within 24 hours.

7. Mr. MALLINSON (United Kingdom) supported the Japanese amendment because it would make it possible to bring the draft Convention into line with the relevant prevailing rule of international law. Any rule permitting the consignee to give notice of loss or damage after the handing over of the goods would inevitably give rise to disputes about whether the loss or damage covered by the notice had actually occurred before the handing over of the goods, at a time when the carrier was still responsible. He likewise supported the idea of allowing the consignee to give oral notice, followed by written confirmation within 24 hours.

8. Mr. SANYAOLU (Nigeria) said he appreciated the reasons underlying the Japanese amendment, but thought that, for practical reasons, notice of loss or damage should always be in writing; for that reason he would prefer paragraph 1 to stand as drafted.

9. Mr. STURMS (Netherlands) supported the Japanese amendment on the grounds that the carrier ought to be notified promptly of any damage to the goods and, hence, that the consignee should be allowed to give oral notice first.

10. Mr. SMART (Sierra Leone) expressed a preference for paragraph 1 as drafted, for it allowed the consignee some time within which to carry out an inspection of the goods and discover any possible, but not apparent, damage (e.g. to goods carried in containers). Besides, if the consignee received a large quantity of goods at once, he would clearly not be able to inspect them all immediately.

11. Mr. SUMULONG (Philippines) said he would be

unable to agree to the Japanese amendment because it would require a consignee to give oral notice first, and then to confirm it in writing. But how could the consignee prove that he had given oral notice if the carrier did not admit having received such notice? He considered that the proposed provision might give rise to many disputes, whereas the UNCITRAL text called only for written notice by the consignee.

12. Mr. SEVON (Finland) pointed out that the Japanese amendment dealt only with apparent damage, and in that respect did not create any difficulties for the Finnish delegation. Under the existing rules, at the time when the goods were handed over to the consignee, he had to inform the carrier of damage caused to them, whereas the draft Convention dealt with the problem that might arise for the consignee in that respect by allowing him a certain period of time. In reality, however, both the draft Convention and the Japanese amendment might give rise to dispute, because it was a moot point, under the draft, at what time the damage actually occurred and, under the amendment, whether oral notice had really been given. On the whole, he considered the Japanese amendment preferable to the original draft, and his delegation would support it.

13. Mr. QUARTEY (Ghana) said he was unable to support the Japanese amendment because it was too vague.

14. Mr. MASSUD (Pakistan) said he would be unable to support the Japanese amendment because a provision allowing the consignee to give oral notice might give rise to many disputes.

15. Mr. DOUAY (France) said that the Japanese amendment would complicate both the existing system, under which the consignee gave written notice to the carrier on the very day the goods were handed over, and the draft Convention, under which the consignee could give notice to the carrier in writing on the day after the day of the handing over of the goods. In addition, the consignee would have difficulty in proving that he had informed the carrier orally of damage to the goods. The adoption of the Japanese amendment would maintain the existing system in force while potentially inviting disputes. Accordingly, in his opinion, the only solution was that contemplated in the draft Convention.

16. Mr. AMOROSO (Italy) likewise considered the original draft preferable, for the Japanese amendment was even more restrictive than the Hague Rules as regarded the time within which the consignee could check the condition of the goods.

17. Mr. NSAPOU (Zaire) thought that the Japanese amendment would not give rise to difficulties in practice in a country possessing all modern means of telecommunication; in a country like his own, on the other hand, which was a semi-landlocked country, and whose port was thousands of miles away from the industrial centres, the consignee might find it difficult to confirm in writing, within 24 hours, the notice he had given by telephone.

18. Mr. LEE (Republic of Korea) expressed support for the Japanese amendment as a compromise between the Hague Rules and the draft Convention.

19. Mr. WANSEK (United Republic of Cameroon) agreed with the opinion of the representative of France concerning the Japanese amendment, and expressed support for the original text.

20. The CHAIRMAN put the Japanese amendment (A/CONF.89/C.1/L.27) to the vote.

21. *The amendment was rejected by 46 votes to 7, with 9 abstentions.*

22. The CHAIRMAN announced that the United States amendment (A/CONF.89/C.1/L.68) to article 19, paragraph 1, had been withdrawn; he invited debate on the amendment by Uganda to that paragraph (A/CONF.89/C.1/L.152).

23. Mr. NDAWULA (Uganda) said that his delegation's first amendment to paragraph 1 affected the English text only. His delegation's second and third amendments should be read together: they proposed the replacement of the words "document of transport" by "bill of lading", because the document of transport had not been defined and the document contemplated in paragraph 1 seemed to be the bill of lading.

24. Mr. SEVON (Finland) opposed the proposed replacement of "document of transport" by "bill of lading" because such a change might affect article 18; he supported the UNCITRAL text.

25. Mr. DOUAY (France) explained that the UNCITRAL Working Group had intentionally used the term "document of transport", for the purpose of the draft Convention was that it should apply not only to contracts of carriage incorporated in a bill of lading, but also to such contracts embodied in another document. Accordingly, the term "document of transport" had the advantage of being broader and of covering contracts evidenced by a document of transport other than a bill of lading, in other words, precisely the contracts covered by the Convention. For that reason, the expression "document of transport" should stand.

26. Mr. SANYAOLU (Nigeria) supported the UNCITRAL text for the reasons stated by the French and Finnish delegations.

27. Mrs. DIOP (Senegal) also considered that the use of the term "bill of lading" would place too narrow a meaning on paragraph 1 in the light of the terms of article 18, under which a document other than a bill of lading might be issued as evidence of a contract of carriage.

28. The CHAIRMAN noted that the amendment by Uganda had not been supported, and he would therefore take it that it was rejected.

29. *It was so decided.*

30. *Paragraph 1 was adopted unchanged and referred to the Drafting Committee.*

31. Mr. LEBEDEV (Union of Soviet Socialist Republics) drew attention to a drafting point which ought to be taken into account by the Drafting Committee in preparing article 19. Whenever that article referred to the carrier, the reference should, in his opinion, be understood to include also the master of the ship and the carrier's agents as representing the carrier for the pur-

poses of the article. His suggestion was based on article 4, paragraph 3, which stated that, in paragraphs 1 and 2 of that article, "reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants or the agents, respectively of the carrier or the consignee". Article 19 as it stood seemed to be too narrow inasmuch as the carrier alone was mentioned. Perhaps the Drafting Committee might find a more satisfactory wording on the lines he had indicated that would apply to the whole of article 19, for example in the form of an additional paragraph 7.

32. Mr. AMOROSO (Italy), Mr. FUCHS (Austria) and Mr. BYERS (Australia) likewise considered that the text should be more explicit in that respect.

33. Mr. VIS (Executive Secretary of the Conference) read out a text which, he suggested, might be added to article 19 and which was modelled on article 4, paragraph 3: "For the purposes of this article reference to the carrier, the actual carrier or the consignee means, in addition, the servants or agents of the carrier, the actual carrier or the consignee respectively."

34. Mr. CASTRO (Mexico) pointed out that article 4, paragraph 3, dealt with an exception, whereas the Soviet proposal would introduce a general definition that should also be reflected in article 18 and possibly in other provisions.

35. Mr. GONDRA (Spain) thought that the appropriate context for the definition of "carrier", as read out by the Executive Secretary or in other terms, might be article 1 with the other definitions. He added that in some articles the term "carrier" meant the principal transport operator, but it did not have that meaning in other articles.

36. The CHAIRMAN invited the Union of Soviet Socialist Republics delegation to prepare a written text of the provision to be added to article 19; the Committee would revert to the matter at the end of its debate on the article.

37. *It was so decided.*

Paragraph 2

38. The CHAIRMAN noted that all five amendments proposed to paragraph 2 envisaged a change in the time laid down in that paragraph. Before inviting debate on those amendments, he suggested that the Committee should first decide whether it really wished to make a change in the time period provided for in the UNCITRAL text, i.e. 15 days. In the light of the voting, the amendments would then be either considered or dropped.

39. *It was so decided.*

40. *The Committee decided, by 43 votes to 13, with 6 abstentions, not to change the time period laid down in article 19, paragraph 2.*

41. *Paragraph 2 was adopted and referred to the Drafting Committee.*

Paragraph 3

42. The CHAIRMAN invited debate on the two amendments to article 19, paragraph 3, one proposed by the United Republic of Tanzania (A/CONF.89/C.1/L.137)

and the other by Uganda (A/CONF.89/C.1/L.152).

43. Mr. NDAWULA (Uganda) said his delegation proposed that in paragraph 3 the words "the parties" should be replaced by the words "the carrier and the consignee, their servants or agents"; the reason was that the word "parties" had not previously occurred in the draft Convention.

44. Mrs. DIOP (Senegal) pointed out that in the French version the word "parties" did not occur and that the expression "joint survey" implied that both parties, that is the carrier and the consignee, were involved in the inspection. Accordingly, in her opinion, the amendment was unnecessary.

45. Mr. SMART (Sierra Leone) said that he saw some merit in the Ugandan amendment, for the parties might not be simply the carrier and the consignee; rather, their servants or agents might likewise be concerned. Accordingly, he considered the amendment useful in so far as it clarified paragraph 3.

46. The CHAIRMAN suggested that the Ugandan amendment should be referred to the Drafting Committee, as well as the Tanzanian amendment which concerned only the drafting of the English text.

47. *It was so decided.*

Paragraph 4

48. *Paragraph 4 was adopted.*

Paragraph 5

49. The CHAIRMAN invited the Committee to consider the amendments to article 19, paragraph 5, proposed by Greece (A/CONF.89/C.1/L.12), the United Kingdom (A/CONF.89/C.1/L.78) and Canada (A/CONF.89/C.1/L.181).

50. Mr. MALLINSON (United Kingdom) said that his delegation's amendment was one of a series of proposals concerning liability for delay in delivery which were contingent on the Committee's decision regarding the general rule of liability. Accordingly, he thought it might be better not to deal with his delegation's amendment until after the Committee had settled the terms of article 5.

51. Mr. MONTGOMERY (Canada) said that, by stipulating a period of 21 days beyond which a claim for delay in delivery could no longer be lodged by the carrier, paragraph 5 greatly reduced the scope of the other provisions relating to delay in delivery. In a large country like his own or in a land-locked country, a long time could elapse between delivery of the goods at the port of destination and their actual handing over to the consignee. For that reason, he considered the period laid down in paragraph 5 much too short and out of keeping with the spirit of the general provisions regarding delay in delivery. The 60-day period proposed by his delegation might still be too short in some cases, but it would be more reasonable. He pointed out that, unlike other paragraphs of article 19, dealing with the onus of proof, paragraph 5 concerned the loss of the right to claim compensation for delay in delivery, and accordingly he considered it indispensable — if the right to claim was to have any

meaning — that the time period should be extended to 60 days.

52. Mr. MARCIANOS (Greece) said that his delegation's proposal, by contrast, was that the period mentioned in paragraph 5 should be reduced to 10 or 15 days (A/CONF.89/C.1/L.12). The 21-day period mentioned in paragraph 5 as it stood was too long, for it was reckoned to begin to run as from "the day when the goods were handed over to the consignee" and consequently excluded the period between the arrival of the goods at the port of discharge and their delivery to the consignee. Besides, the consignee's only duty was to notify the carrier if his intention was to exercise his right to claim compensation for damage, without specifying what the damage consisted of. In his delegation's opinion, a 12-day period would therefore be ample for a notice of that kind.

53. Mr. NELSON (Ghana) inquired whether the time period proposed by Canada had any bearing on the institution of proceedings for damages or whether it concerned only notice of loss or damage.

54. Mr. MONTGOMERY (Canada) said that the amendment was concerned only with the notice to be given by the consignee to the carrier under paragraph 5.

55. Mr. BYERS (Australia) expressed support for the Canadian amendment. Paragraph 5 made what he considered to be a wholly unjustified distinction between loss resulting from delay in delivery and other kinds of loss. Without wishing to reopen debate on that distinction, which had been hotly discussed in UNCITRAL and which was the outcome of a compromise between the various interests involved, he considered that it would be right, by way of a counterpart, to extend the period beyond which the consignee who had suffered damage owing to delay in delivery would cease to be able to exercise the right to claim compensation for the loss he had actually sustained. In his opinion, it would be reasonable to balance the difference in treatment between damage resulting from delay in delivery and other kinds of damage by prolonging the period during which the consignee could exercise his right to claim compensation in the event of loss or damage resulting from delay in delivery. The period should not only allow the consignee enough time to take delivery of the goods and to estimate the effect of the delay in delivery on his various obligations, but should also make allowance for the time elapsed between delivery of the goods at the port and their handing over to the consignee. Accordingly, he supported the Canadian proposal that the period should be extended to 60 days.

56. Mr. MASSUD (Pakistan) expressed full support for the Canadian amendment for the reasons given by the Australian representative. In his opinion, the correct context for paragraph 5 was rather article 20, in that it stipulated the period beyond which the consignee would no longer be able to exercise the right to make a claim.

57. Mr. REISHOFER (Austria) likewise supported the Canadian amendment for the reasons given by the representatives of Canada and Australia. The 21-day period laid down in paragraph 5 was too short, for in many cases it was difficult to determine the effects of delay in delivery.

58. Mr. LUKABU-K'HABOUJI (Zaire) said that, like Canada, his country was large and in addition suffered from poor communications, and for that reason he thought the 21-day period laid down in paragraph 5 was hardly acceptable. The issue was at what point in time the goods should be deemed to have been delivered: at the time when the owner took possession of the goods or at the time they were handed over to the agent? In view of the problems that might arise in many countries, he thought the Canadian amendment should be adopted, though he felt that the proposed provision should preferably be inserted in article 20, which dealt with the limitation of actions.

59. Mr. KHOO (Singapore) said that the important provision in paragraph 5 was that concerning notice, for, failing notice given to the carrier within the appropriate time, the right to claim compensation for delay was lost. The extension of the period to 60 days would in no way harm the carrier's interests, for he knew perfectly well that the delivery of the goods to the consignee had suffered delay, and the sole object of the notice was to warn the carrier that a claim for the compensation was contemplated. Hence it would be wrong to strictly limit to 21 days the period within which the consignee could give notice in writing to the carrier, and his delegation fully supported the Canadian amendment.

60. Mr. DOUAY (France) said that the time period for notice of a claim for damages for delay could not be laid down without considering the period stipulated in respect of notice of loss or damage under paragraph 1 or the period fixed for giving notice of loss or damage under paragraph 2. If the goods were delayed, the consignee would know of the delay even before they arrived and he would have had the time to think about the loss resulting from the delay. Any prudent consignee could notify the carrier within three days of his intention to bring an action for loss resulting from the delay. In his delegation's opinion, there was not much point in allowing the consignee two months of reflection. In addition, it was important that the carrier should know very soon whether or not a claim would be brought against him by the consignee. In any case, compensation for delay was a significant innovation that was not acceptable to all delegations. If the innovation was accompanied by additional onerous conditions regarding a very long period for the giving of notice concerning possible future proceedings, some delegations would be even more inclined to reject provisions regarding compensation for delay in delivery. In his delegation's opinion, the 21-day period mentioned in paragraph 5 was more than sufficient.

61. Mr. MARCIANOS (Greece) announced that, in order to save the Committee's time, his delegation was withdrawing its amendment (A/CONF.89/C.1/L.12). He pointed out that the period mentioned in paragraph 5 would begin to run not as from the date of the discharge of the goods at the port but as from the date when the goods were handed over to the consignee.

62. The CHAIRMAN took note of the withdrawal of the Greek delegation's amendment.

63. Mr. WALLA (United Republic of Cameroon), as-

sociating himself with the statements by the representatives of Canada, Australia and Zaïre, expressed support for the Canadian amendment.

64. Mr. MÜLLER (Switzerland) said that his delegation could agree to the 21-day period provided for in the draft Convention because that period corresponded to that mentioned in the Warsaw Convention and in the Convention relating to road transport; if paragraph 5 was adopted as drafted, the period would then be uniform for all modes of transport.

65. Mr. NDAWULA (Uganda) said that preferably, and in particular as regards land-locked countries, the consignee should be allowed more than 21 days for giving notice to the carrier. A longer period would make it possible to overcome technical communications difficulties or to reach an out-of-court settlement with the carrier regarding compensation for delay in delivery. For those reasons his delegation fully supported the Canadian amendment.

66. Mrs. YUSOF (Malaysia) said that, if the period mentioned in paragraph 5 was extended, the operation of the Convention could be adjusted to the special circumstances and needs of certain countries, and accordingly her delegation endorsed the Canadian amendment.

67. Mr. POHÚNEK (Czechoslovakia) expressed full support for the Canadian amendment for the reason that for a land-locked country the 21-day period mentioned in paragraph 5 was too short. If the consignee, after the goods had been handed to his agents at the port of discharge, did not give notice in writing to the carrier within the prescribed period he would suffer the loss of any right to claim compensation from the carrier. He added that the International Convention Concerning the Carriage of Goods by Rail (CIM) provided for a 60-day period.

68. Mr. NILSSON (Sweden) considered the 21-day period mentioned in paragraph 5 acceptable, since all that the consignee was expected to do was to give notice of his intention to claim compensation for delay; in fact it would

be open to him, even before the arrival of the goods, to send that notice to the carrier as soon as he had noted a delay.

69. Mrs. RICHTER-HANNES (German Democratic Republic) said that under paragraph 5 the period within which the consignee could send notice to the carrier began to run as from the day when the goods were handed over to the consignee at the port of discharge, for it was at that moment that the carrier's responsibility ended. Hence, the period would begin to run as from the time when an agent of the consignee took over the goods at the port of discharge. If the intention was that the period for giving notice to the carrier should begin to run as from the time when the goods were handed over to the consignee at the inland point where he was to receive them, then the drafting of a number of articles would have to be modified. Not wishing to make an oral proposal, her delegation could only signify its endorsement of the Canadian amendment.

70. Mr. MONTGOMERY (Canada) said that it would be better to prolong the period mentioned in paragraph 5 rather than to think of changing the terms of a number of articles. Besides, the effects of the provisions in paragraphs 1 and 2 of article 19 were not comparable to those in paragraph 5: the two former paragraphs simply shifted the onus of proof without causing the carrier to lose his right to institute proceedings against the carrier. The provision of paragraph 5, on the other hand, would have the effect of taking away the consignee's right to claim compensation if he failed to give notice to the carrier within the prescribed period.

71. The CHAIRMAN put the Canadian amendment to the vote (A/CONF.89/C.1/L.181).

72. *The amendment was adopted by 32 votes to 27, with 9 abstentions.*

73. The CHAIRMAN said that the text of paragraph 5 of article 19, as amended, would be referred to the Drafting Committee.

The meeting rose at 1 p.m.

26th meeting

Thursday, 23 March 1978, at 5.40 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.26

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.13, L.28, L.46, L.172, L.190)

Article 19 (continued)

Proposed new paragraph

1. Mr. MASSUD (Pakistan), introducing his delegation's proposal (A/CONF.89/C.1/L.190) to add a paragraph 7 to article 19, said that under paragraphs 1 and 2 of that article the carrier was entitled to adequate notice in cases of loss of or damage to goods. The purpose of the

proposed new paragraph was to provide the same entitlement for the shipper.

2. Delegations might hold differing views concerning the notification period provided for in the proposed new paragraph. However, the matter was one of drafting; his delegation hoped that the Committee would first of all consider the principle of embodying in article 19 the provision contained in document A/CONF.89/C.1/L.190.

3. Mr. DIXIT (India) said that, in his delegation's view, it was only fair that the shipper, as well as the carrier, should be entitled to due notice of loss or damage. His delegation supported the principle of the additional paragraph proposed in document A/CONF.89/C.1/L.190 and hoped that the Committee as a whole would do so too.

4. Mr. MARCIANOS (Greece) said that the effect of the provisions in the proposed new paragraph would be considerably different from that of the provisions in article 19, paragraphs 1 and 2. Failure by a shipper to give notice of loss or damage within the time limits provided in article 19, paragraphs 1 and 2, meant only that the handing over of the goods would be *prima facie* evidence that the goods had been delivered as described in the document of transport—in other words, the shipper would have to prove that the goods had been lost or damaged. However, the shipper was currently in the same situation even if he did so notify the carrier, because a shipper claiming damages was in any case always required to prove the nature and extent of the damage to or loss of cargo. On the other hand, the effect of the proposed new paragraph would be that a carrier who failed to give notice within the specified period would be presumed to have sustained no loss or damage due to the fault or neglect of the shipper—an unfair imbalance.

5. Fifteen days was not a practical period within which to inspect for damage caused to a vessel by cargo; in the case of liners particularly, it would be impossible to carry out inspections each time an individual shipment was unloaded.

6. The proposed provision was not only too impractical to include in the Convention, but was based on an approach not to be found in any of the world's legal systems. In Continental legal systems in particular, the consignee's obligation to give due notice of damage to the goods had originally had as a consequence that the consignee was precluded from suing if he had not given notice in time; the Hague Rules changed that into a rebuttable presumption that the goods had been delivered in good condition. But no one ever thought of imposing a similar obligation with regard to the ship for the simple reason that, unlike the cargo, the ship was never in the custody of the consignee, and damage to the ship was much more difficult to ascertain than damage to the cargo.

7. The Greek delegation, therefore, could not support the proposal contained in document A/CONF.89/C.1/L.190.

8. Mr. SMART (Sierra Leone) said that the new Convention, as drafted, imposed duties and liabilities on the carrier as well as on the shipper. It was only right,

therefore, that if the Convention was to contain any provisions at all to govern sanctions in the event of failure to comply with duties, those sanctions should apply to the carrier as well as to the shipper. For that reason, his delegation supported the new paragraph 7 proposed by the delegation of Pakistan.

9. Mr. KHOO (Singapore) said that the purpose of serving notice was to enable the other party affected to be aware of an impending claim, so that any available evidence could be preserved. It was only fair that both shipper and carrier should have the benefit of such notice. Therefore, his delegation supported the principle contained in the proposed new paragraph, although it did not necessarily accept the time limits mentioned in document A/CONF.89/C.1/L.190.

10. Mr. HONNOLD (United States of America) wondered whether the words "the carrier shall be presumed", in document A/CONF.89/C.1/L.190, were meant to imply an irrevocable condition, as provided in article 19, paragraph 5.

11. Mr. MASSUD (Pakistan) said they were not. The proposal provided simply for a presumption, which could of course be rebutted.

12. Mr. NDAWULA (Uganda) said that the requirements incumbent on the shipper should likewise be incumbent on the carrier. His delegation therefore supported the Pakistan delegation's proposal to add a paragraph 7 to article 19.

13. Ms. BRUZELIUS (Norway) said that her delegation had no difficulty in accepting the principle of the proposed new paragraph, which was embodied in modern legal systems. However, the proposed notification time of 15 consecutive days meant that the carrier would have no time to lose in order to assist him, therefore, it might be stipulated, in article 15, paragraph 1, that the bill of lading should state the address, as well as the name, of the shipper.

14. Mr. DOUAY (France) said that the type of situation dealt with by the Pakistan delegation's proposal was different from that covered by the provisions of article 19, paragraphs 1 and 2. First, damage to cargo could be ascertained more readily than damage to a ship; secondly, timely contact with the shipper might not be easy, as the Norwegian representative had pointed out. Moreover, a ship might still be at sea 15 days after having discharged a part of its cargo, which meant that discovery and notification of damage within a 15-day period was an impractical requirement.

15. The proposed paragraph would impose too severe a condition on the carrier. If reciprocity of duties as between shipper and carrier was desired, a different form of provision should be sought. The French delegation could not support the proposal contained in document A/CONF.89/C.1/L.190.

16. Mr. NIANG (Senegal) said that his delegation could in principle accept the proposed new paragraph, but thought that further time was needed to study its details because of the problems to be considered in deciding what the notification period should be.

17. Mr. SEVON (Finland) said that his delegation could

accept the Pakistan proposal, on the understanding that the presumption that the carrier had sustained no loss or damage due to the fault or neglect of the shipper could be rebutted.

18. Mr. MEGHJI (United Republic of Tanzania) said that his delegation supported the proposal contained in document A/CONF.89/C.1/L.190, which would provide for an equitable distribution of responsibilities as between the shipper and the carrier.

19. With regard to the supposed difficulty of identifying damage by goods to a ship, it should be pointed out that goods which could cause damage to a vessel would certainly also cause damage to other goods, and that fact ought to be patently obvious, especially at the time of discharge.

20. Mr. MALLINSON (United Kingdom) said that his delegation was opposed to the Pakistan proposal, for the reasons expressed by the French representative. The matter was not simply one of applying reciprocal provisions to those contained in article 19, paragraphs 1 and 2; the nature and circumstances of damage to a vessel could be quite different from those of damage to cargo; damage to a vessel could well remain unapparent for a considerable time, and its investigation could be lengthy and difficult. The proposed new paragraph, if included in the new Convention, would lead to inquiries and investigations at every port of discharge. It was therefore too impractical to be adopted.

21. Mr. AMOROSO (Italy) associated himself with the French representative's observations and said that the adoption of the Pakistan proposal would be inappropriate. The idea underlying that proposal had in fact been considered during discussions within UNCITRAL and it had been decided not to embody it in the text of the present draft Convention, which was a compromise text carefully arrived at.

22. Mr. NILSSON (Sweden) said that, before the Committee took a decision on the Pakistan amendment, the meaning of the presumption provided for in the proposed text must be made quite clear. His delegation inferred that failure by a carrier to give notice to the shipper within 15 consecutive days after loss or damage would be *prima facie* evidence that the carrier had not sustained loss or damage. It therefore proposed that the text of the proposal should be amended so as to provide that the carrier would, subject to proof to the contrary, be presumed to have sustained no loss or damage due to the fault or neglect of the shipper, his servants or his agents. The Committee should likewise bear in mind the problems to which the proposed notification period might give rise, owing to the difficulties, mentioned by previous speakers, in discerning damage.

23. Mr. PTAK (Poland) said that it was difficult to take a firm position with regard to the Pakistan proposal, as it raised a new question which had never been studied by the Working Group or by the other UNCITRAL organs that had been involved in the preparation of the draft Convention. Previously, it had not been the practice for notice of loss or damage to be given by the carrier as required by the proposal. That requirement did not seem

to be necessary and would in any case be difficult to comply with, particularly in the case of a ship that was loaded and on the high seas, because of the very short period allowed to the carrier in which to state whether the ship had sustained loss or damage through the fault or neglect of the shipper, his servants or agents. It was quite another matter for the consignee to determine on land whether the goods delivered had sustained loss or damage and to notify the carrier accordingly.

24. In his delegation's view, the interests of the shipper were adequately protected by the provisions of article 12, under which he was not liable for damage sustained by the ship unless the carrier could prove fault or neglect. The burden of proof then rested upon the carrier. The Pakistan proposal, establishing an additional presumption with regard to the "innocence" of the shipper in the event of damage, was not easy to accept in the present conditions of sea trade. It would be difficult for the carrier to determine in 15 days whether damage had been sustained as a result of the loading operations performed by the shipper, his servants or agents. Until the whole problem had been examined more carefully, his delegation could not accept the Pakistan proposal.

25. Mr. BYERS (Australia) said his delegation assumed that the Pakistan proposal was not intended to create an irrebuttable presumption or to debar any course of action. If that assumption was incorrect, his delegation would have to oppose the proposal, since it felt strongly that there should be no deprivation of the right of action on the grounds of failure to give notice. His delegation had made the same point at the previous meeting in relation to paragraph 5 of article 19. The proposal might give rise to problems in connexion with articles 20 and 21, but no doubt the delegation of Pakistan had already taken them into account or would be doing so. His delegation was prepared to concede the principle that a carrier who wished to institute proceedings against a shipper for fault or breach of contract should be required to give due notice of that fact, provided that the conditions were fairly established, since both carrier and shipper were entitled to just treatment under the Convention, and also provided that the wording of the text was improved.

26. Mr. MASSUD (Pakistan) said he had tried to make it clear from the beginning that discussion of the Pakistan proposal should be confined to the principle enunciated in it. The basic principle laid down in article 19 was that failure on the part of the consignee to notify the carrier of loss of or damage to the goods was *prima facie* evidence that they had been delivered in sound condition; therefore, it was only equitable that a similar presumption should be made in favour of the shipper if no notice was given to him. Some delegations had expressed misgivings about cases in which damage or loss caused to the ship might not be apparent, but the same consideration would apply to goods as well, and he did not therefore regard that argument as very cogent. The question of the distinction between apparent and hidden loss or damage was covered by paragraphs 1 and 2 of article 19. In the case of apparent damage, the period of notice prescribed was only one day, whereas, in the case of damage that was not apparent, it was 15 days. His delegation had chosen

the longer of the two periods for the purposes of its own proposal, but was prepared to accept any reasonable suggestion for extending it. The matter could perhaps be discussed in a working group. With regard to the doubts expressed about the presumption made in the proposal, he pointed out that it was of the same kind as the presumption established in paragraph 1, and the word "presumed" had been deliberately used instead of "deemed" in his delegation's proposal. However, that question could also be further clarified in a small drafting group.

27. The CHAIRMAN invited the Committee to vote on the principle embodied in the Pakistan proposal for the addition of a new paragraph to article 19 (A/CONF.89/C.1/L.190), on the understanding that the wording of the text would be refined.

28. *The proposal was adopted by 27 votes to 19, with 19 abstentions.*

29. Mr. HONNOLD (United States of America), speaking in explanation of vote, said that his delegation considered that the Pakistan proposal enunciated a useful principle but presented too many problems of both style and substance to be referred to the Drafting Committee at that time. It was his delegation's understanding that the text would be reformulated in the light of the comments made during the discussion, and it would like that to be done by a working group headed by the representative of Pakistan.

30. The CHAIRMAN said that a working group would be set up to revise the text of the Pakistan proposal. The definitive text would then be voted on later.

31. A working group might also be formed to discuss the unnumbered proposal made by the USSR delegation to add a new paragraph to article 19. The text that emerged from the group's deliberations could be discussed on the following day.

Article 20

32. Mr. MALLINSON (United Kingdom), introducing his delegation's proposed amendment to paragraph 1 of article 20 (A/CONF.89/C.1/L.177), said that, for obvious reasons, there were differences of opinion concerning the appropriate period within which legal or arbitral proceedings had to be initiated. It was his delegation's opinion that a simple period of one year, as provided for under the existing rules, would tend to discourage or prevent the settlement of disputes between parties and to encourage the institution of legal proceedings towards the end of that period in cases where the parties had not been able to come to an accommodation or collect the necessary evidence in the meantime. Consequently, his delegation proposed that the basic period of prescription should be one year but that if, during that period, the claimant gave the person alleged to be liable written notice of his intention to bring a claim, together with particulars sufficient to identify the claim, the period of prescription should be extended to two years. The proposal reflected commercial practice in a large number of current disputes and would facilitate the institution of legal proceedings and the settlement of disputes.

33. Mr. BURGUCHEV (Union of Soviet Socialist Republics), speaking on a point of drafting, said that it would be advisable to bring the wording of article 20 into line with the corresponding provisions of the Convention on the Limitation Period in the International Sale of Goods, 1974. He suggested that the matter be referred to the Drafting Committee.

34. The CHAIRMAN said that that would be done.

35. Mr. GANTEN (Federal Republic of Germany) said that his delegation supported the United Kingdom proposal, which provided for a reasonable compromise. It was in the interests of both carrier and shipper not to have too long a limitation period, since the parties to a legal action were anxious to secure a speedy settlement. Normally, therefore, a period of one year would suffice but, under the proposal, that period could, if necessary, be extended to two years by means of a written notice.

36. Mr. SUCHORZEWSKI (Poland), Mr. POPOV (Bulgaria), Mrs. RICHTER-HANNES (German Democratic Republic) and Mr. PALLUA (Yugoslavia) also supported the proposal.

37. Mr. BYERS (Australia) said he failed to perceive the benefits that would flow from the proposal, at least in so far as the shipper was concerned. The introduction of the idea that a cause of action would be lost unless notice was given made not for certainty but for uncertainty, since such notice had to be given in due and proper form if the cause of action was to survive. In his view, a certain period of two years was to be preferred to an uncertain period of one year.

38. Mr. HONNOLD (United States of America) said his delegation feared that a time-bar based on written notice would not serve the main purpose of a limitation period, which was to discourage litigation rather than invite it. Moreover, since notice in respect of damage would have to be given under paragraphs 1 and 2 of article 19, the question would always arise whether that notice met the requirements of the further notice provided for under the proposal. For those reasons, his delegation would have difficulty in supporting the proposal.

39. Mr. SMART (Sierra Leone), speaking in favour of the text as drafted, said that, in his view, the United Kingdom proposal would cause considerable difficulty for the claimant. In many instances the claimant had to make his claim through the carrier's agent, whose place of business might be thousands of miles away. The agent then had to contact the carrier and the party against whom the claim was made. As a result, many months might elapse before the claimant knew whether his claim would be settled or whether he would have to take the case to court. In his own country, a number of such claims were still outstanding. He therefore considered that a two-year limitation would be preferable.

40. Mr. DIXIT (India) said that his delegation was firmly opposed to the proposal, for the reasons stated by the Australian and United States representatives. Moreover, all aspects of the matter had already been discussed in detail by the UNCITRAL Working Group, which had concluded that a limitation period of less than two years would not suffice.

41. Mr. GUEIROS (Brazil) observed that prescription was a part of every legal system, its purpose being to provide for stability and certainty in legal relations.

42. The United Kingdom proposal, in his view, afforded a reasonable compromise between the two possible limitation periods, and he could therefore accept it. He would, however, suggest that the last phrase, reading "together with particulars sufficient to identify the claim" should be deleted, since a claimant might not be in a position to furnish all the necessary particulars to identify his claim within the one-year period.

43. Mr. POHOUNEK (Czechoslovakia) said his delegation would prefer to retain the text as drafted, since it considered that the proposal would give rise to uncertainty. Also, the matter had already been thoroughly debated in the UNCITRAL Working Group.

44. Mr. ATTAR (Iraq) said that his delegation, too, would prefer to retain the existing text. In his view, the provision with regard to notice, as introduced in the proposal, would place a burden on the shipper.

45. Mr. DOUAY (France) said that his delegation was unable to accept the United Kingdom proposal which, by imposing an obligation on the claimant within a period of one year to give written notice and furnish particulars sufficient to identify his claim, was tantamount to providing for a limitation period of one year. He did not know whether the proposal was a reflection of the practice followed in the common law countries but, for the civil law countries at any rate, a limitation period that could be decided more or less at the option and suit of the claimant was somewhat of an aberration.

46. His delegation was firmly of the opinion that a limitation period—whether of one or of two years—must be both definite and certain, and was opposed to any hybrid system whereby such a period could be extended on certain loosely defined conditions. Its own preference was for a limitation period of two years, since that would provide the claimant with greater protection and would also be in conformity with the limitation period laid down in a number of other transport conventions.

47. The CHAIRMAN noted that the United Kingdom proposal (A/CONF.89/C.1/L.177) had not received the support of a clear majority. He therefore invited the Committee to vote on that proposal.

48. *The proposal was rejected by 47 votes to 13, with 3 abstentions.*

49. Mr. AVRAMEAS (Greece) said that, in view of the result of the vote on the United Kingdom proposal, he would withdraw his delegation's proposal (A/CONF.89/C.1/L.13) for the establishment of a one-year limitation period.

50. Mr. TANIKAWA (Japan) said that, for the same reason, he would withdraw his delegation's proposal to the same effect (A/CONF.89/C.1/L.28).

51. The CHAIRMAN drew attention to the proposal submitted by Norway (A/CONF.89/C.1/L.46) concerning the addition of a new article 20 *bis*.

52. Ms. BRUZELIUS (Norway) withdrew her delegation's proposal (A/CONF.89/C.1/L.46).

The meeting rose at 8.10 p.m.

27th meeting

Friday, 24 March 1978, at 11.40 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.27

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.14, L.29 and Corr.1, L.45, L.69, L.94, L.156, L.172, L.180, L.187, L.188, L.192, L.195, L.197)

Article 21

Proposal to delete the article

1. The CHAIRMAN invited the delegation of the Soviet Union to introduce its amendment (A/CONF.89/C.1/L.188).

2. Mr. BURGUCHEV (Union of Soviet Socialist

Republics) emphasized that the problems of jurisdiction dealt with in article 21 of the draft Convention were extremely complex and might form the subject of a special convention. In other words, they went beyond the bounds of the draft Convention under consideration, and article 21 should therefore be deleted.

3. Mr. GORBANOV (Bulgaria) supported the Soviet proposal. In view of the difficulties to which the question might give rise, it could appropriately be set aside for the time being and dealt with under the rules of private international law or similar relevant rules.

4. Mr. SUCHORZEWSKI (Poland) said he was convinced that article 21 would give rise to serious complications. A particular ship transporting various cargoes would contain goods despatched by several shippers and covered by different bills of lading. The various shippers or consignees would be able to opt for

different courts, although the occurrence to which the legal proceeding related would be the same. Not only would article 21 be difficult to apply, but the general principle of *pacta sunt servanda* would not be respected. Matters of jurisdiction were too complicated to be settled by the Conference. The best course would be to work out a general solution, but at a later stage and after a more thorough study than it would be possible for the Conference to undertake. For those reasons, his delegation supported the Soviet proposal.

5. Mr. RAY (Argentina) said he favoured the deletion of article 21, since Argentine law contained provisions under which the consignee could in all cases bring an action in the Argentine courts at the port of discharge, even if the bill of lading embodied a jurisdiction clause. If article 21 was retained, Argentina would request that it be amended as proposed in document A/CONF.89/C.1/L.195.

6. Mr. KERRY (United Kingdom) said he endorsed the Soviet amendment. He thought it would be dangerous to include in the Convention provisions relating to jurisdiction. Certain States had concluded jurisdiction agreements *inter se*, and the provisions of those agreements might conflict with the provisions of article 21. If, for instance, an action was brought in a non-contracting State for failure to comply with the rules laid down in the Convention, the contracting State might be obliged to enforce the judgement handed down, even though it might be rendered by a court not covered by article 21. That contracting State would then be in danger of infringing the provisions of article 21, paragraph 3. The deletion of article 21 would eliminate difficulties of that kind.

7. Mr. COVA-ARRIA (Venezuela) said that, if the Convention was to unify the rules of private international law, the UNCITRAL text should be maintained, particularly since it represented a compromise and was favourable to the rights of the consignee. His delegation was therefore opposed to the USSR amendment.

8. Mr. HONNOLD (United States of America) said that article 21 dealt with questions which were currently the subject of considerable uncertainty and injustice. As far as uncertainty was concerned, he referred participants to the detailed statement contained in volume III of the UNCITRAL Yearbook. Concerning the injustice deriving from the existing rules, it arose from the fact that, under the legislation of many countries, the only place in which an action could be brought was one remote from the place in which the occurrences connected with the contract of carriage had taken place and in which the evidence that the goods had reached their destination in damaged condition was to be found. The basic rules laid down by UNCITRAL in article 21 represented a compromise between two extreme positions, the first being that any derogation clause should be regarded as valid, and the other that such clauses should be totally debarred so as to permit the claimant to bring an action against the carrier regardless of where his ship was. It had been sought to avoid those two extremes and to strike a balance which would enable an action to be brought in one of the places linked to the occurrences relevant to the contract of carriage. His delegation considered that

article 21 helped to remedy the deficiencies of the rules currently applicable to sea carriage and therefore supported it.

9. Mr. SEVON (Finland) said that the provisions on jurisdiction were one of the key features of the draft convention. As had already been stated, the existing situation was unacceptable. Nor could it be regarded as acceptable that the provisions of national legislation should prevent article 21 of the draft Convention from being approved. His delegation could not support the USSR amendment.

10. Mr. EYZAGUIRRE (Chile) said that he was in favour of maintaining article 21, which enabled a claimant to apply to the court of his choice within the jurisdiction of which was situated one of the places enumerated in paragraph 1. That article would end the practice of including in bills of lading jurisdiction clauses specifying the courts to which any legal proceedings would be instituted. He emphasized that the Hague Rules and the Brussels Protocol had been criticized for their failure to grant jurisdiction to the courts of the port of discharge, although that was the place where the great majority of claims for loss or damage arose. Under many bills of lading, moreover, provision was made for disputes to be settled under the internal law of a particular country, a law other than that applicable at the port of discharge. Article 21, subparagraph 1 (c) provided that the claimant could bring an action in a court within the jurisdiction of which was situated the port of loading or the port of discharge. His delegation was therefore persuaded that the new formula contained in article 21 represented a reasonable compromise.

11. Mr. AL-ALAWI (Oman) said that, although the transport document was mandatory in nature, the parties to it were not equal since, in the course of the negotiations, it was invariably the shipper who had to submit to the carrier's conditions, particularly in the acceptance of clauses stipulating the courts which would have jurisdiction. For that reason, his delegation supported article 21, which struck a fair balance between the interests of the shipper and those of the carrier.

12. Mr. BYERS (Australia) said he supported the arguments adduced by the representatives of the United States of America and Finland in favour of maintaining article 21. Since the Convention conferred rights and obligations both on the shipper and on the carrier, those rights would, in the event of a dispute, remain a dead letter if the claimant could not assert them in a competent court. Article 21 was therefore designed to ensure respect for the rights laid down in the Convention and, hence, was vitally important. To delete that article would mean doing away with the rights and obligations provided for in the Convention.

13. Mr. CASTRO (Mexico) said that Mexico, as an importer of manufactured goods from highly developed countries, was by and large a country of consignees who were at the mercy of carriers because of the existing system, reinforced by the practice of jurisdiction clauses. It was often impossible for consignees, who were thousands of miles away from the court to which disputes were to be referred, to assert their rights. He recalled that, in

deciding to draw up a convention on the carriage of goods by sea, UNCITRAL had stressed that the inclusion in bills of lading of jurisdiction clauses was one of the practices to be eliminated from maritime trade. Consequently, his delegation opposed the Soviet proposal.

14. Mr. CAVANNA (Italy) said that he would have difficulty in approving the present wording of article 21 which, in his opinion, would establish a régime even more unjust than that adopted in 1924. The adoption of the existing text would be entirely counter to the current tendency towards allowing the parties freedom. He therefore supported the idea of deleting article 21, or at least radically altering the text.

15. Mr. DOUAY (France) recalled that, when the matter had been discussed within UNCITRAL, his delegation had supported the idea of including an article on jurisdiction in the draft Convention. Moreover, when the question of reversing the Hague Rules had arisen within UNCTAD, that body had deemed it necessary to take action to prevent the abuses which could arise from jurisdiction clauses, on the one hand, and, on the other, from the application of national laws which had the disadvantage of differing from country to country and generating uncertainty. UNCITRAL, which had studied the matter in detail, had reached the conclusion that the lack of provisions of the kind contained in article 21 would entail a number of drawbacks.

16. It was Utopian to believe that it would be possible to conclude a general convention on jurisdiction and the enforcement of judgements which would bind the same parties as the Convention under consideration; although instruments on the subject did exist, they were bilateral or regional in nature. To say that the matter should be settled by reference to national laws would be tantamount to deferring to conflict-of-law rules and would leave unresolved the question of which would be the competent jurisdiction. As the representative of Finland had observed, if the legislation of a State party to the Convention was not consistent with the provisions of article 21, that legislation should be amended.

17. In France, the majority of shippers could accept jurisdiction clauses, since they could negotiate freely with the carriers, but the same was not always true in all countries. For many countries, particularly those of the Group of 77, the article was one of the key aspects of the reform of the existing system and, although not one of the provisions forming part of the "package deal", it served the interests of the unification of law and the protection of shippers.

18. Mr. NELSON (Ghana) said that he was unable to support the Soviet proposal; since laws differed from one State to another, it was necessary to bring them into line with one another and to unify practice in regard to jurisdiction. Moreover, carriers were generally in a position of superiority vis-à-vis the shippers, on whom they imposed jurisdiction clauses. The carriers thus selected the courts which were most advantageous from their own point of view, while article 21, by enabling the parties to refer a matter to the competent court in the jurisdiction of which the port of discharge was situated, met the interests

not only of the shipper but also of the carrier, who was generally represented by an agent in the port concerned.

19. The CHAIRMAN put to the vote the Soviet proposal (A/CONF.89/C.1/L.188) to delete article 21.

20. *The proposal was rejected by 50 votes to 11, with 7 abstentions.*

Paragraph 1

21. Mrs. RICHTER-HANNES (German Democratic Republic) introduced her delegation's amendment (A/CONF.89/C.1/L.94) proposing the addition to paragraph 1 of the words "unless the parties have agreed otherwise", a stipulation which was designed to safeguard the principle of freedom of contract. Her delegation considered it contradictory to state, on the one hand, that the action could be brought in any place designated in the contract (subparagraph (d)) and, on the other, to leave the claimant the option of bringing the action in the court of his choice. For that reason, her delegation also proposed the deletion of subparagraph (d) of paragraph 1.

22. Her delegation would not, however, insist on the second part of its amendment, which was designed to reduce the options open to the claimant.

23. Mr. BURGUCHEV (Union of Soviet Socialist Republics) supported the proposal of the German Democratic Republic, which was equitable and was reflected in the USSR amendment to article 21 (A/CONF.89/C.1/L.188). In his opinion, article 21 as proposed by UNCITRAL provided for an excessive number of competent jurisdictions situated in various countries and gave pride of place to the choice of only one party, the claimant, a provision which put the other parties in a position of inferiority and entailed a departure from the principle of equality as between the rights and interests of the parties. All that should be retained of paragraph 1 was subparagraphs (a) and (b), which would apply in cases in which the contract contained no stipulations regarding the competent court.

24. Mr. PALLUA (Yugoslavia) supported the amendment of the German Democratic Republic because of the imbalance which article 21 as drafted created between the two parties involved in a dispute.

25. Mr. DOUAY (France) observed that the amendment submitted by the German Democratic Republic would be tantamount to simply deleting article 21; the mandatory clause contained in article 21 as proposed by UNCITRAL would become a mere supplementary provision which would never be applied in practice, since bills of lading invariably contained a clause designating the court which was competent in the event of a dispute. The amendment of the German Democratic Republic would thus have the same effect as the deletion of article 21, although the Committee had just voted to retain the article. His delegation was firmly opposed to the amendment.

26. Mr. HONNOLD (United States of America) said that he agreed with the representative of France. The words "unless the parties have agreed otherwise" would overturn the protective legislation of certain States which authorized consignees to bring an action in their courts.

27. Mr. RAY (Argentina) said he agreed with the arguments adduced by the representatives of France and the United States in opposing the amendment of the German Democratic Republic, which would have the effect of eliminating the options open to claimants, particularly that of bringing an action in a court within whose jurisdiction was the port of discharge.

28. Mr. GORBANOV (Bulgaria) supported the arguments put forward by the representatives of the USSR and Yugoslavia in supporting the amendment of the German Democratic Republic and said that that proposal was a compromise designed to make the Convention acceptable for the largest possible number of States.

29. Mr. KHOO (Singapore) said he opposed the amendment of the German Democratic Republic, which in his opinion was not conducive to equality as between the parties and was alien to the spirit of article 21.

30. Mr. SMART (Sierra Leone) said that the claimant was very often the consignee and that the clauses of the bill of lading concerning the competent jurisdiction were generally not favourable to him, since they did not entitle him to bring an action at the port of discharge, but rather provided that the competent court should be that of the principal place of business of the carrier. His delegation considered that article 21, as drafted by UNCITRAL, made for greater justice as between the parties and, like the delegations of France and the United States, opposed the amendment of the German Democratic Republic.

31. Mr. NDAWULA (Uganda) said that he, too, considered that the amendment of the German Democratic Republic ran counter to the spirit of article 21.

32. Mr. SUCHORZEWSKI (Poland) said that article 21 vastly increased the number of competent jurisdictions and left the shipper the option of choosing the competent court in the event of a dispute. Moreover, that article involved a departure from the principle of *pacta sunt servanda* by renouncing the principle of the priority of the contractual forum. Finally, it was going too far to regard the shipper as a potential victim of the carrier or of himself, when he himself had concluded the contract with the carrier. Accordingly, his delegation supported the amendment of the German Democratic Republic.

33. Mr. REISHOFER (Austria) said that, in his view, article 21 was balanced, since it provided for several options in regard to the competent jurisdiction; the amendment of the German Democratic Republic, on the other hand, which placed primary emphasis on agreement between the parties to the contract, did not seem to him to be justified.

34. Mr. SANYAOLU (Nigeria) said that he, too, was opposed to the amendment of the German Democratic Republic.

35. Mrs. RICHTER-HANNES (German Democratic Republic), noting that the majority of those who had spoken had opposed her delegation's amendment, withdrew that amendment.

36. The CHAIRMAN said that, as a consequence, the reference to the amendment of the German Democratic Republic contained in paragraph 2 of the USSR amendment (A/CONF.89/C.1/L.188) had become inapplicable.

The meeting rose at 1 p.m.

28th meeting

Friday, 24 March 1978, at 6.10 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.28

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.29 and Corr.1, L.45, L.187, L.188, L.192)

Article 21 (continued)

Paragraph 1 (continued)

1. The CHAIRMAN drew attention to the amendments submitted by Japan (A/CONF.89/C.1/L.29 and Corr.1) and Tunisia (A/CONF.89/C.1/L.45), both proposing the

addition of the word “Contracting” before “State”.

2. Mr. HACHANA (Tunisia) withdrew his delegation's amendment.

3. Mr. MINAMI (Japan), introducing his delegation's amendment, pointed out that, as stated in the foot-note to paragraph 1 of the UNCITRAL text (A/CONF.89/5), a considerable number of delegations in the UNCITRAL Working Group had favoured the addition of the word “Contracting” before “State”.

4. His delegation considered that, since paragraph 1 was not binding on the court of a State not party to the Convention, it was pointless to provide for jurisdiction in non-contracting States. Also, the omission of the word “Contracting” could cause the claimant to think that, because he had brought his case before a court that was competent under the terms of paragraph 1, that court

would apply the Convention, whereas in fact it was under no obligation to do so, being situated in a non-contracting State. Any such misunderstanding, in his delegation's view, would be the fault not of the claimant but of the wording of paragraph 1; had the word "Contracting" been added before "State", the claimant would not have brought his case in a non-contracting State in the first place. To avoid any confusion, his delegation proposed that the addition in question be made.

5. Mr. SUCHORZEWSKI (Poland) voiced his full support for the proposal, which would ensure that the Convention was applied as widely as possible. He reminded the Committee that, during the preparatory work on the draft Convention, the word "Contracting" had been retained until the very last moment, when it had been deleted.

6. Mr. AMOROSO (Italy) said his delegation considered it very necessary to add the word "Contracting" before "State", since the Convention should be binding on contracting States only. As he understood the position, a court was required to apply either national law or an international convention whose provisions had been embodied in national law. He therefore failed to see how a court of a non-contracting State, which had not ratified the Convention, could apply a provision of the Convention when it was not law in that country.

7. Mr. DOUAY (France) said his delegation also supported the proposal, since it considered that to confer jurisdiction on courts in non-contracting States would give rise to two problems. In the first place, it was not at all certain that such courts would apply the provisions of the Convention as the law of contract. Secondly, even if they did, any such application would be, to say the least, defective, since a State not party to the Convention would not have had the opportunity to develop a body of case law on its application and interpretation.

8. It was a mistake to think that it would make for wider application of the Convention if the provisions of paragraph 1 were not confined to courts situated in contracting States. The main point was to ensure that the Convention would definitely be applied, and the only way of doing so was to provide that the court in question should be a court of a State party to the Convention.

9. Lastly, the word "Contracting", which had initially appeared in the UNCTRAL draft, had been deleted only after some difficulties had arisen. He considered that it should now be reintroduced into the Convention.

10. Mr. CANTIN (Canada), opposing the Japanese proposal, said that the provisions of paragraph 1 were based largely on the premise that the party making the most claims would be the consignee. If the word "Contracting" was introduced, then, when goods were dispatched from a contracting to a non-contracting State, the effect would be to deprive the consignee of the possibility of bringing his claim at the port of discharge, since it was situated in a non-contracting State. That would give rise to serious problems involving conflict of laws and jurisdiction. Moreover, it would be inequitable for the consignee and would encourage States to adopt unilateral measures to protect their nationals, rather than

to apply the law of contract through the paramount clause.

11. He noted that no similar requirement was laid down in article 22, relating to arbitration, or in paragraph 5 of article 21, relating to choice of forum. In his view, there was no reason for drawing any such distinction.

12. Paragraph 1 as drafted was in keeping with the terms of article 3 (Interpretation of the Convention), and was thus designed to promote uniformity and the universal application of the Convention. Also, the inclusion of the word "contracting" might lead some States to hesitate to accede to the Convention in view of the problems which that might cause for their trade partners.

13. Mr. SELVIG (Norway), also opposing the proposal, said that, under paragraph 1 as drafted, the claimant had a choice of four places in a contracting or a non-contracting State where he could bring an action. Sometimes his only possibility of bringing an action would be in a non-contracting State, and to provide that a claimant could bring an action only in a contracting State would therefore place an unwarranted restriction on his choice. In that connexion, it should not be forgotten that when the Convention was about to come into force—in the transitional stage—the number of contracting States would be few and there would be instances where jurisdiction was limited.

14. Paragraph 1 was not concerned with the jurisdiction of a non-contracting State—it was for such a State to decide itself whether or not to confer jurisdiction—but it did provide that, where jurisdiction was available, the claimant should have the opportunity of availing himself of it provided that the other criteria laid down in paragraph 1 were met. Nor did the issue concern the application of the Convention: often, the claimant would be in possession of a bill of lading or other document which referred to the Convention, and the non-contracting State would then apply it as a matter of choice of law.

15. Lastly, the question had to be viewed within the context of jurisdiction clauses. If the word "Contracting" was added, clauses could be inserted in a contract of carriage which deprived the claimant of his right to bring an action in places other than those referred to in paragraph 1. That would considerably limit the claimant's options, which, in his delegation's view, was not justified.

16. Mr. MALLINSON (United Kingdom) said that his delegation was strongly in favour of the proposal and considered that it could apply equally to the corresponding clause of article 22.

17. In his delegation's view, it was not for the Convention to provide whether or not a court in a non-contracting State could entertain a claim under the Convention for loss of or damage to goods. He was not suggesting that such an action could not be brought in a court in a non-contracting State, but simply that the question whether it could properly hear the action fell to be decided in accordance with the normal conflict-of-law rules of that State as they derived from international law. Moreover, bilateral or multilateral agreements into which non-contracting States might have entered could prevent them from entertaining an action.

18. The Norwegian representative's position seemed to rest on the assumption that a court in a non-contracting State would look to the Convention when deciding whether it had jurisdiction. His delegation could not accept that assumption, for such a court, being situated in a State that was not a party to the Convention, would apply its own rules. The omission of the word "Contracting" would conflict with that process; its inclusion, on the other hand, would be entirely in keeping with the principle that States should remain free to apply their own rules on jurisdiction, whether or not they were parties to the Convention.

19. Mr. SELVIG (Norway) stressed that he had not said the Convention conferred jurisdiction on a non-contracting State and had in fact stated that paragraph 1 had nothing to do with the jurisdiction of a non-contracting State. His point had been that, where there was jurisdiction under the law of a non-contracting State, then the claimant should be entitled to make use of it.

20. Mr. BYERS (Australia), endorsing the Norwegian representative's remarks, said it was clear from subparagraph 1 (c) of article 2 that the parties—neither of whom might be in a contracting State—could incorporate in the contract the provisions of the Convention as the choice of law they wished to apply. If article 21 was restricted to contracting States, the claimant, whether carrier or shipper, would be denied the right to bring his case before the court of a State which would recognize such a declaration of the parties' intentions as valid and effective under its law. In other words, the effect of adding the word "Contracting" was to deny to the claimant 'the choice of a court which would give effect to the provisions of the Convention, operating *ex contractu* between the parties. Given that the Convention could not bind a State that was not a party to it, and that the parties might incorporate such a declaration in the contract, the question then arose whether a forum which would recognize that bargain could be denied. It seemed to his delegation that there was but one answer, and he therefore supported the text as drafted.

21. Mr. SANYAOLU (Nigeria) said that his delegation opposed the proposal. In its view, the inference to be drawn from the last part of the introductory clause to paragraph 1 was that a court had an inherent right to determine its competence.

22. Mr. GORBANOV (Bulgaria) said that, while a court of a non-contracting State was clearly under no obligation to apply the Convention, it might, when determining which law to apply, decide that in the particular circumstances of the case the provisions of the Convention were applicable—for instance, because the bill of lading had been issued in a contracting State (subparagraph 1 (d) of article 2). The proposal excluded that possibility and, consequently, would restrict the scope of application of the Convention. He was therefore unable to support it and would prefer to retain the text as drafted.

23. Mr. HONNOLD (United States of America) said that there was no question of the new Convention's interfering with the rules of private international law either in contracting or in non-contracting States. The

point at issue was the validity of clauses, embodied in bills of lading, restricting access to courts. If a contract had been made, or a part of its performance effected, in a contracting State, the Convention would be applicable under the rules of private international law of a non-contracting State whose courts might invoke the Convention, which could then be honoured under those rules. Therefore, unless the Convention were made to interfere with access to the courts of non-contracting States, suit could be brought in such courts.

24. On the other hand, insertion of the word "Contracting" in article 21, paragraph 1, could lead to such a restriction of access that it might be impossible to bring certain claims before a suitable forum. His delegation, therefore, did not support the proposed addition.

25. Mr. SMART (Sierra Leone) said that his delegation was opposed to the amendment in question and associated itself with the views expressed by the representatives of Norway, Australia and Nigeria. The United Kingdom representative, who had spoken in favour of that amendment, had adduced an argument which in fact supported retention of the paragraph as it stood. He had said that if the rules of conflict of laws of a State provided for accommodation of suits relating to the Convention, the court concerned should be seized of the suit, but he had doubted whether the situation applied in the case of a non-contracting State. However, the paragraph in question merely said that if, according to a State's laws, the court of that State was competent to rule on matters relating to the Convention, it should do so. There was no difference between the imposition of jurisdiction on a non-contracting State and the assumption of jurisdiction by the non-contracting State on the basis of the competence stemming from its own national law.

26. The real question at issue was that of choice of law. That would not, however, lead to any difficulty in practice, since a non-contracting State could apply the Convention's rules, the provisions of article 23, paragraph 3, being paramount in that connexion; the court of the non-contracting State which was seized of the case would know, from the bill of lading concerned, that the Convention was applicable.

27. Mr. WISWALL (Liberia) said there seemed to be general agreement that article 21, paragraph 1, conferred no jurisdiction on the courts of any State, especially a non-contracting State. In the case of contracting States, a court which, under the applicable laws and procedure, was not competent to hear a case arising under the terms of the new Convention would likewise have no jurisdiction conferred on it by the Convention.

28. The more complex question involved was whether the purpose of article 21, paragraph 1, was to restrict jurisdiction or to ensure compliance with the Convention's rules. His delegation saw the latter purpose as the one intended, and felt that the Committee should view warily the suggestion that, if a plaintiff brought suit in the court of a non-contracting State, on the basis of a bill of lading couched in the Convention's terms, that court would be bound to apply the Convention's provisions. The likelihood in most cases was that a

shipper wishing to bring suit against a carrier would, for want of another place of jurisdiction, take the suit to the carrier's principal place of business; if that place was in a non-contracting State and the shipper brought suit on the basis of a bill of lading couched in terms which invoked the Convention, the court was more likely to apply the *lex fori* than the provisions of the Convention, particularly if one of the parties was a national of that State.

29. Therefore, if the text of article 21, paragraph 1, was left as it stood, an unwary plaintiff might find that the court of the place where he had brought suit would refuse to apply the new Convention even if that instrument was referred to in the bill of lading concerned—a situation of *caveat emptor* which was alien to the Convention's purpose.

30. Mrs. DIOP (Senegal) said that her delegation associated itself with the Australian representative's remarks and supported the retention of article 21, paragraph 1, as it stood. That paragraph would become meaningless if the word "Contracting" was inserted before the word "State".

31. The CHAIRMAN invited the Committee to vote on the Japanese delegation's proposal (A/CONF.89/C.1/L.29 and Corr.1), relating to article 21, paragraph 1.

32. The proposal was rejected by 47 votes to 11, with 6 abstentions.

33. Mr. GÖGER (Turkey), introducing his delegation's proposal (A/CONF.89/C.1/L.192) to add three subparagraphs to article 21, paragraph 1, said that the purpose of the proposal was to improve the plaintiff's position and avoid some of the difficulties that might arise from execution of judgement by a foreign court.

34. The CHAIRMAN, noting that no representative wished to speak in support of the Turkish delegation's amendment, said he would therefore take it that the Committee rejected the proposal.

Paragraph 2

35. Mr. MINAMI (Japan), introducing his delegation's proposal to delete paragraph 2 of article 21 (A/CONF.89/C.1/L.29 and Corr.1), said that the UNCITRAL text presented two problems: first, the admission of an action *in rem* and, secondly, the admission of the removal of an action from one State to another.

36. His delegation was opposed to the acceptance of action *in rem*, as envisaged in the opening sentence of subparagraph 2 (a), firstly because there was no provision for bringing actions *in rem* under the legal systems of a number of countries, including his own, where it would be very difficult to introduce the concept of such actions into the system of civil procedure and, secondly, because subparagraph 2 (a) was incompatible with paragraph 1, in that it failed to establish any restrictions as to the place where the plaintiff could institute proceedings to arrest a vessel owned by the defendant; it was the understanding of his delegation that paragraph 1 was intended to maintain the balance of interests between the plaintiff and defendant by limiting competence to courts situated in places closely connected with the contract of carriage and the parties thereto. The third reason was that the existing

text was liable to introduce "forum shopping" into international civil procedure, since if the competent courts were not restricted to a reasonable number, the plaintiff would have a very wide variety of choices available to him.

37. With respect to the second problem, namely that of permitting actions to be removed from one State to another, the defendant was entitled, under the existing text, to petition for removal. In practice, however, it was virtually impossible for him to secure such removal because of the amount of security required and the lack of special rules on the subject. The 1952 Brussels International Convention relating to the Arrest of Seagoing Ships, for instance, had contained no rules on the matter. In the absence of such rules, one court could not remove a case or another court receive it, so the question had to be regulated by a specific convention. The most difficult problem to solve in that respect concerned the differences in civil procedure between States. Some court systems prohibited the removal of a case after a trial had begun.

38. If paragraph 2 was retained as it stood, Japan would find it extremely difficult to accede to the Convention.

39. Mr. HONNOLD (United States of America) said that his delegation could not support the Japanese amendment to paragraph 2. That paragraph had nothing to do with the question whether ships might be legally arrested; it should be noted that, according to the existing text of paragraph 2, subparagraph (a), an action might be brought before the courts of any port in a contracting State "at which the carrying vessel or any other vessel of the same ownership may have been legally arrested in accordance with the applicable law of that State". The provision would operate only if the law of such a State permitted an arrest, and the State's applicable law would of course include its obligations pursuant to international instruments. The provision would then operate according to the basic compromise embodied in article 21, paragraph 1, under which a plaintiff could institute his action at a place of his choice. Therefore, paragraph 2 would not bring about the problems which some had feared. It should be borne in mind too, from a practical viewpoint, that in some cases the carrier's only asset would be a single vessel, and if the claim was to be realized it might be necessary to direct the action at that sole asset. Although the provision did not create a right of arrest, it would not impede the provisions in those jurisdictions which recognized such a right. It also provided that proceedings must be instituted at, or transferred to, an appropriate place as provided for in article 21, paragraph 1. In his delegation's view, therefore, article 21, paragraph 2, would serve a useful purpose in admiralty litigation and should be retained in the Convention.

40. Mr. WISWALL (Liberia) said that his delegation had some difficulty with the first sentence of subparagraph 2 (a) since, although it was not intended to confer a right of arrest where none already existed, there was a risk that a court interpreting the provisions of that sentence for the first time might take a different view, particularly on account of the words "legally arrested in accordance with the applicable law of that State". In States which permitted arrest *in rem*, the test of the legality of an arrest

was wholly procedural; the sentence in question might therefore be so construed as to presume a substantive right as a result of compliance with procedure.

41. Therefore, if the Committee wished to retain that sentence, it should at least draw the Drafting Committee's attention to the serious potential problem with regard to actions in those States whose jurisprudence had prevented them from ratifying the 1952 Brussels Convention.

42. Mr. BURGUCHEV (Union of Soviet Socialist Republics), Mr. GORBANOV (Bulgaria), Mr. LEON MONTESINO (Cuba), Mr. PTAK (Poland) and Mr. AMOROSO (Italy) expressed support for the Japanese proposal to delete paragraph 2 of article 21.

43. Mr. BYERS (Australia), supported by Mr. VIGIL-TOLEDO (Peru), said that article 21, paragraph 2, should be retained.

44. Mr. HERBER (Federal Republic of Germany) said that, for the reasons already given by a number of delegations, it would be very useful for the shipper to have at his disposal a jurisdiction legally granted in the place where the arrest had been made. His delegation therefore felt that it would be better to adopt one of the amendments contained in, for instance, documents A/CONF.89/C.1/L.172 or L.188 so as to align subparagraph 2 (a) with the 1952 Brussels Convention, rather than to opt for the radical solution of deleting paragraph 2 altogether.

45. The CHAIRMAN invited the Committee to vote on the Japanese proposal to delete paragraph 2 of article 21 (A/CONF.89/C.1/L.29 and Corr.1).

46. *The proposal was rejected by 43 votes to 11, with 9 abstentions.*

47. Mr. TANIKAWA (Japan) said that his delegation reserved its right to propose a reservation clause on the matter.

48. Mr. GORBANOV (Bulgaria), introducing the Bulgarian amendment to subparagraph 2 (a) (A/CONF.89/C.1/L.187), said that his delegation would have preferred paragraph 2 to be deleted altogether. In the circumstances, however, it would like to see the first sentence of subparagraph 2 (a) amended in order to remove the legal and practical difficulties faced by certain States in applying the principle of action *in rem*.

49. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the amended text for the first sentence of subparagraph 2 (a) proposed by his delegation in document A/CONF.89/C.1/L.188 was intended to solve a problem that was of considerable concern to the Soviet Union and, he believed, to a number of other countries as well, namely the reference in that subparagraph to the possibility of arresting ships under the domestic law of the particular State involved. He felt sure that the authors of the draft Convention had not intended the text to be open to misinterpretation, but his delegation could not agree to the adoption of subparagraph 2 (a) as it stood, since it could be construed as enabling a ship to be arrested in accordance with the domestic laws of the State in whose jurisdiction it happened to be, irrespective of the

principles and norms of international law. In order to prevent such a misinterpretation, his delegation was proposing the inclusion of a reference to international law, which he sincerely hoped all delegations would be able to accept.

50. Mr. SELVIG (Norway) said he fully appreciated the importance of the matter for the Soviet Union. Although international law was considered to be a part of domestic law in Norway, his delegation was prepared to support the Soviet amendment, which would meet the point without affecting the interests of other States.

51. Mr. HONNOLD (United States of America) said his delegation, too, was prepared to co-operate in solving the problem which the USSR delegation felt had been raised by the draft text. It therefore supported the basic principle of the proposed amendment, provided that the wording of the proposal could be so formulated as to make clear its sponsor's intention in regard to the relationship between the rules of international law and the rules of the State where the arrest took place.

52. Mr. HERBER (Federal Republic of Germany) said his delegation was also in favour of the Soviet amendment, on the grounds that international law formed part of a State's national rules of law. The text required clarification, however.

53. Mr. DIXIT (India) said that his delegation was prepared to support the proposal by the Soviet Union in principle. It would, however, like the phrase "in accordance with international law and applicable rules of the law of that State" to be amended to read "in accordance with international law and the law of that State", as the qualifying term "applicable" should either be deleted or be made to refer to international law as well.

54. Mr. BENTEIN (Belgium) said that the first sentence of subparagraph 2 (a), as drafted, seemed to run counter to the principle that States should not be compelled to modify their legislation on the arrest of ships. His delegation therefore supported the proposal by the Soviet Union.

55. Mr. DOUAY (France) said that in principle his delegation could accept the Soviet proposal, since the arrest of a vessel should take place in accordance with international law as well as the national law of the State involved.

56. Mr. HENNI (Algeria) said that his delegation supported the proposal made by the Soviet Union for the reasons referred to by previous speakers, and reminded the Committee that at the preceding meeting it had rejected a proposal by the Soviet Union to delete paragraph 21 as a whole on the grounds that international law prevailed over national law. In that connexion, he would point out that Algeria, together with a number of developing countries, was in the process of developing a national merchant fleet which it hoped to see protected in matters of arrest by international law rather than by the national laws of different States.

57. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved in principle the amendment to subparagraph 2 (a) of article 21 proposed by the Soviet Union (A/

CONF.89/C.1/L.188) and was agreeable to the establishment of a small working group to consider the final wording of the text.

58. *It was so decided.*

The meeting rose at 7.40 p.m.

29th meeting

Saturday, 25 March 1978, at 3.15 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.29

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.12, L.15, L.29 and Corr.1, L.49, L.69, L.70, L.150, L.172, L.180, L.192, L.195, L.197, L.202)

Article 21 (concluded)

Paragraph 2 (concluded)

1. The CHAIRMAN invited the Committee to consider the text for subparagraph 2 (a) prepared by the *ad hoc* Working Group appointed to examine the drafting of the Soviet proposal concerning the first sentence of that subparagraph (A/CONF.89/C.1/L.188), a proposal which the Committee had already approved in principle.

2. Mr. HONNOLD (United States of America), speaking on behalf of the Working Group, recalled that some delegations had expressed concern about possible ambiguity arising out of the failure to make it sufficiently clear that arrest could be effected only in accordance with applicable rules of the law of a State, which included the State's international commitments; the underlined text in the *ad hoc* Working Group's proposal was intended to allay that concern. The Japanese delegation maintained its objections concerning matters of substance elsewhere in article 21, paragraph 2 (a).

3. Mr. BYERS (Australia) said that he was happy to support the proposal.

4. Mr. DOUAY (France) said that the proposal caused him no difficulties, but he thought that the Drafting Committee might consider whether the reference to international law should not be placed before the reference to the law of the State.

5. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the text proposed by the *ad hoc* Working Group (A/CONF.89/C.1/L.202) and to refer it to the Drafting Committee.

6. *It was so decided.*

7. The CHAIRMAN invited the Committee to consider the amendment to paragraph 2, subparagraph (a) proposed by the Federal Republic of Germany (A/CONF.89/C.1/L.172).

8. Mr. HERBER (Federal Republic of Germany) said that his delegation was in favour of deleting the second sentence of subparagraph 2 (a), first, because the rule contained in that sentence was not compatible with the 1952 Brussels Convention relating to the Arrest of Seagoing Ships, to which his country was a party, and, secondly, because it did not believe that it was feasible to provide for the removal of an action from a court in one country to a court in another in view of the differences in civil procedural law that still existed between nations.

9. Mr. BENTEIN (Belgium) said his delegation supported the proposal for the reasons given by its sponsor.

10. Mr. KHOO (Singapore) said his delegation was also in favour of the proposal. It foresaw technical difficulty in applying the text of subparagraph 2 (a) as it stood, since international co-operation in judicial matters had not yet reached the stage where a rule of the kind enunciated in the second sentence would be practicable.

11. Mr. WISWALL (Liberia) said the difficulties experienced by his delegation in accepting the second sentence of subparagraph 2 (a) did not derive from the 1952 Brussels Convention, but from the fact that, while a court might have valid *in rem* jurisdiction based on the arrest of the offending vessel, its jurisprudence might not permit it to transfer or sanction the removal of the action. That was true of a number of countries, because jurisdiction *in rem* was based on the existence of the *res*, which was either the arrested vessel or the security given for its bail. Courts had no power to retain the relevant action unless they also retained either the vessel or the security in their jurisdiction; accordingly, transfer of the action would terminate jurisdiction *in rem* and there would be no jurisdiction *eo instanti*. The second sentence of the subparagraph therefore posed a constitutional paradox for a number of countries, and his delegation would prefer it to be deleted. If, however, it was maintained, he would urge the Drafting Committee to include a reference to the overriding jurisprudence of the country where action had been taken on the basis of arrest.

12. Mr. SELVIG (Norway) said he would confine his

remarks to the questions of substance raised by the proposed amendment. The idea behind article 21 was that the claimant should be given a sufficient number of options in regard to jurisdictions connected with the contract of carriage concerned—in other words, the possibility of bringing action in the port of loading, the port of discharge or in any other fixed place associated with the contract of carriage. Ample provision had been made, in his opinion, and he doubted whether it was necessary to add the jurisdiction of the place of arrest as well. The whole question had been extensively discussed by the UNCITRAL Working Group during the preparation of the draft Convention, when it had been decided to adopt an intermediate solution under which, on the one hand, the offending vessel itself or a sister ship could be arrested in a State other than as referred to in paragraph 1, but the defendant, by virtue of subparagraph 2 (a), could have the action removed to one of the jurisdictions stated in paragraph 1. A delicate balance had thus been established between paragraphs 1 and 2 which it was important not to disturb; his delegation considered that the proposal by the Federal Republic of Germany would upset that balance by opening up the possibility of bringing an action in a State that had no connexion with the contract of carriage in question.

13. The representative of the Federal Republic of Germany had referred to the difficulties which might arise in connexion with the 1952 Brussels Convention. That Convention differed from others in that it recognized a number of jurisdictions, including the jurisdiction of arrest, but at the same time accepted the principle of exclusivity of jurisdictions, thus enabling possible proceedings to be limited by agreement to one specific place. The draft Convention under consideration, on the other hand, was based on the principle that it should not be possible for the parties to restrict the choice of jurisdiction by agreement.

14. As to whether the 1952 Brussels Convention and the draft Convention were consistent with one another, his delegation believed that they were, since it considered that all conventions were, in actual fact, the expression of rules which were implied in the contract of carriage and should therefore be considered as implicitly forming part of the contract. That idea was embodied in article 22, paragraph 5. A similar provision might be included in article 21 if other delegations, including that of the Federal Republic of Germany, considered it desirable to do so, although he personally did not regard it as necessary. In view of the fact that the general rules under consideration were to be regarded as part of the contract of carriage, there was no necessity for the second sentence of subparagraph 2 (a) to be deleted.

15. Mr. BYERS (Australia) said that his delegation supported the draft text for the reasons given by the Norwegian representative. In cases where an action was removed, it was a condition of removal that the defendant should be able to furnish security sufficient to ensure payment of any judgement that might be awarded to the claimant. Consequently, when the vessel was removed to another jurisdiction, its equivalent was left within the jurisdiction in question and a balance was established between the respective remedies.

16. The CHAIRMAN invited the Committee to vote on the proposal by the delegation of the Federal Republic of Germany (A/CONF.89/C.1/L.172).

17. *The proposal was rejected by 33 votes to 8, with 21 abstentions.*

18. Mr. HONNOLD (United States of America), introducing his delegation's amendment to subparagraph 2 (a) (A/CONF.89/C.1/L.69), said that the expression "courts of any port" was unacceptable, since a court might not sit at the port in the strict sense of the term, and there were certain cases in which a vessel might not be arrested at the port itself but on a river leading to or from it.

19. Mr. GUEIROS (Brazil) supported the United States proposal.

20. Mr. BYERS (Australia) said that, although his delegation had no difficulty with the expression concerned, it was prepared to support the proposed amendment if the United States delegation believed that the phrase might raise problems in certain jurisdictions.

21. Mr. DOUAY (France) said that the text as drafted did not present any difficulty for the French delegation, since even if there was no court actually in the port of the contracting State, that port must necessarily lie within the jurisdiction of a court belonging to the State. If, however, it was decided to refer the point raised by the United States representative to the Drafting Committee, his delegation would prefer the words "courts of any port" to be replaced by "courts within the jurisdiction of which is situated any port".

22. The CHAIRMAN said that the amendment proposed by the United States delegation would be referred to the Drafting Committee, together with the oral suggestion made by the French representative.

23. Mr. SIMS (Canada), introducing the amendment proposed by his delegation to subparagraph 2 (a) (A/CONF.89/C.1/L.197), said that it would be illogical, as well as inconsistent with the scope and intent of both paragraphs 1 and 2, to leave the word "Contracting" in the first sentence of the subparagraph. Under paragraph 1, a claimant could bring an action in a court in any one of the six places listed, whether or not that court was situated in a contracting State, a provision which meant that one party to a contract of carriage could not unfairly limit the other party's choice of forum. Since the purpose of subparagraph 2 (a) should be to reinforce the rights of shippers and consignees in regard to the jurisdiction they might choose under paragraph 1, the maintenance of the word "Contracting" would frustrate the intention of the drafters. Cases might arise—particularly during the period immediately following the signature of the Convention, when few States had yet become parties to it—in which a consignee wishing to bring a claim for damage that had occurred within the jurisdiction of a contracting State would be unable to do so because the ship had continued its voyage in the meantime and had entered the jurisdiction of a non-contracting State. He would stress that his delegation was not attempting to establish or impose the right of arrest in a jurisdiction where no such right already existed, but simply to remove the barriers to the exercise of that right where it did exist. Its proposal would not disturb the delicate balance between para-

graphs 1 and 2 to which the Norwegian representative had alluded.

24. Mr. RAY (Argentina), Mr. HONNOLD (United States of America), Mr. KHOO (Singapore), Mr. SUMULONG (Philippines), Mr. RUZICKA (Czechoslovakia), Mr. SMART (Sierra Leone), Mr. FAHIM (Egypt), and Mr. NDAWULA (Uganda) supported the Canadian proposal.

25. Mr. DOUAY (France) said that his delegation regretted it was unable to support the proposal. Paragraph 2 was balanced by the basic rule governing jurisdiction as laid down in paragraph 1. Consequently, the measures envisaged in the second sentence of paragraph 2, whereby an action would be removed to one of the jurisdictions referred to in paragraph 1 for the determination of the claim, could only be taken by a court situated in a contracting State. A court situated in a non-contracting State, which was not bound by the Convention, might, however, determine a claim according to its national law or simply by applying the Brussels Convention of 1952. Thus, the effect of the proposal would be to undermine the application of the rules laid down in paragraphs 1 and 2. For that reason, his delegation considered it essential to retain the condition that the arrest of the vessel should have taken place in a contracting State.

26. Mr. SANYAOLU (Nigeria) said that he opposed the proposal for the reasons stated by the French representative. The arguments which his delegation had adduced in opposing the addition of the word "Contracting" before "State", in paragraph 1, did not apply to subparagraph 2 (a), which dealt with a different matter, namely, jurisdiction in the case of the arrest of a vessel. In such cases, jurisdiction should be conferred on contracting States only.

27. Mr. KERRY (United Kingdom), endorsing the French representative's remarks, said that it would be entirely wrong for the Convention to purport to dictate to the courts of a non-contracting State the manner in which they should handle proceedings before them.

28. Mr. SUCHORZEWSKI (Poland) said that he agreed with the representatives of France and the United Kingdom and could not accept that the same arguments applied to paragraph 2 as to paragraph 1. In the latter case, the omission of the word "Contracting" before "State" was justified because the contract of carriage might provide for the application of the Convention even where proceedings were taken in a non-contracting State. In the former case, the position was quite different, since only actions *in rem* were envisaged.

29. Mr. GUEIROS (Brazil) said his delegation also opposed the proposal and agreed that the situation covered by paragraph 1 differed entirely from that dealt with in paragraph 2 which, he would point out, began with an exception. In the latter case, the omission of the word "Contracting" before "State" would only create difficulties for courts and arbitration tribunals.

30. Mr. MASSUD (Pakistan) said that, while his delegation was sympathetic to the proposal, it too considered that the situation dealt with in paragraph 2 differed from that covered by paragraph 1. The latter left the option open to the claimant whereas the second

sentence of the former imposed a mandatory obligation which the courts of a non-contracting State might have difficulty in accepting.

31. Mr. BYERS (Australia) and Mr. KANG (Republic of Korea) expressed their opposition to the proposal.

32. The CHAIRMAN invited the Committee to vote on the Canadian proposal (A/CONF.89/C.1/L.197).

33. *The proposal was rejected by 39 votes to 9, with 17 abstentions.*

34. Mr. SMART (Sierra Leone), referring to the second sentence of subparagraph 2 (a), said that the requirement that, at the petition of the defendant, the "claimant must remove the action" could be understood to mean either that he must transfer the action from one court to another, or that he must discontinue and recommence the action. If understood in the first sense, the expression could give rise to procedural difficulties in cases where the national law did not provide for actions to be transferred from the courts of one country to those of another. The Drafting Committee could perhaps be asked to clarify the intent of those words. Further, if they were understood in the sense of discontinuance of an action—which was the meaning his delegation gave to them—then some further provision would be required regarding payment by the defendant of the costs thus incurred. The question of limitation should likewise be clarified.

35. Mr. SWEENEY (United States of America) explained that the intention of the drafters of the provision was that the word "remove" should cover not only actions transferred within a country, and under its national law, but also actions discontinued in one country and recommenced in another.

36. Mr. WUREH (Liberia) noted that, while under the second sentence of subparagraph 2 (a) as drafted an action could be transferred from the jurisdiction of one country to that of another, the claimant was nonetheless required to furnish security in the country where he had first brought the action. That, in his delegation's view, was a legal inconsistency and could be inequitable for the claimant.

37. Mr. DIXIT (India) said that the representative of Sierra Leone had raised a very valid point regarding limitation. If it were accepted that subparagraph 2 (a) covered the removal of a cause of action from one State to another, then a provision should be included to ensure that the claimant was not placed in a position where his action might become time-barred. Moreover, it was in everybody's interest to make the Convention as clear as possible. He therefore considered that the matter should be referred to the Drafting Committee for clarification.

38. Mr. CASTRO (Mexico) said that his delegation had no difficulty with the existing text, which had already been carefully considered by the UNCITRAL Working Group. If, however, the Committee felt that the wording should be reconsidered, he would suggest that it be referred not to the Drafting Committee but to a specialized group of jurists.

39. Mr. SELVIG (Norway) observed that the questions raised involved matters of procedural law, which varied considerably from country to country. Such matters, particularly as they affected costs, were, in his view, better

left to each contracting State to decide in the light of its national law. Moreover, it would only give rise to difficulties if the Committee discussed further a question that did not really lend itself to uniformity. He would therefore advise against the appointment of a working group. The Drafting Committee might, however, be asked to consider the word "remove" in the light of the explanation furnished by the United States representative.

40. Mr. WUREH (Liberia) said that, in his view, the question, particularly as it related to the posting of security, concerned a matter of substance. The Committee might therefore wish to consider the possibility of deleting the second sentence of subparagraph 2 (a), as his delegation had suggested earlier.

41. Mr. DIXIT (India), referring to the Norwegian representative's remarks, said he did not agree that the question of limitation could be left to municipal law. The matter was already dealt with in article 20, and the Committee should consider its further implications for article 21. Moreover, the second sentence of subparagraph 2 (a) imposed a mandatory obligation on the claimant to remove his action in certain circumstances. Municipal law could perhaps be applied where an action was removed from one court to another in the same State, but that was not necessarily so when it was removed from one State to another. In his view, the question of limitation in that context was highly relevant to the Convention and should be considered by a working group.

42. Mr. GUEIROS (Brazil) said that the Sierra Leonean representative had raised an important point of substance and that, consequently, before a working group was appointed, the general consensus of opinion within the Committee should be ascertained.

43. Mr. SMART (Sierra Leone) said that much of his concern had been dispelled by the United States representative's explanation. He still considered, however, that the existing text was not very clear and should therefore be redrafted to clarify the intent of the word "remove". Also, it was necessary to consider the question of limitation and, in particular, to determine, in cases where an action was discontinued in one jurisdiction and recommenced in another, whether time would start to run against the claimant as from the date of commencement of the first or of the second action.

44. The CHAIRMAN, noting that there were no further comments, proposed that a working group, composed of the representatives of Liberia, Sierra Leone and the United States of America, should be appointed to consider the matters raised by the representative of Sierra Leone and to report back to the Committee.

45. *It was so decided.*

Paragraphs 3 and 4

46. Mr. TANIKAWA (Japan) said that, in view of the result of the vote on his delegation's amendment to paragraph 2 of article 21, it would withdraw its amendments to paragraphs 3 and 4 of the article (A/CONF.89/C.1/L.29 and Corr.1).

47. The CHAIRMAN noted that the Ugandan proposal relating to paragraph 4 (A/CONF.89/C.1/L.150), which in any case dealt only with a drafting matter, had been withdrawn. The Turkish proposal relating to paragraph 4, contained in document A/CONF.89/C.1/L.192, had also been withdrawn in the light of the rejection of the proposal, in that same document, relating to article 21, paragraph 1.

Paragraph 5

48. The CHAIRMAN noted that the Greek amendment to article 21, paragraph 5 (A/CONF.89/C.1/L.14), had been withdrawn, as had the Turkish amendment to that paragraph, contained in document A/CONF.89/C.1/L.192.

49. Mr. RAY (Argentina), introducing his delegation's proposed amendment to article 21, paragraph 5 (A/CONF.89/C.1/L.195), said that, since article 21 provided a number of options for the shipper, it was appropriate that the consignee should be allowed to opt for a hearing at the courts of the port of discharge if he so wished.

50. Mr. MASSUD (Pakistan) thought that the proposal was consistent with the remainder of article 21 and, in fairness to the consignee, should be supported.

51. Mr. COVA-ARRIA (Venezuela) said that his delegation, too, supported the proposal.

52. Mr. GUEIROS (Brazil) said that his delegation could support the proposal on condition that the words "may apply" did not impose a mandatory obligation on the courts.

53. Mr. NDAWULA (Uganda) said that his delegation could support the proposal in principle, subject to the reservation mentioned by the Brazilian representative, but would prefer to have the text referred to the Drafting Committee.

54. Mr. SMART (Sierra Leone) said that his delegation, too, could in principle support the Argentine proposal, which could be of great help to consignees, many of whom had only limited financial resources.

55. Mr. KERRY (United Kingdom) said that his delegation was opposed to the proposal, which would raise a controversial point of legal principle. The draft Convention already made provision for a number of jurisdictions, usually at the consignee's option. Under the Argentine proposal, it would also be possible for a consignee to serve a process and later, if matters were not going in his favour, to transfer the proceedings to another forum.

56. Mr. SUCHORZEWSKI (Poland) noted that under article 21, paragraph 1, a claimant—whether a carrier or a consignee—already had a right of option. His delegation was anxious to know whether the proposal under consideration would remove that right since, in any case, the consignee, when he was a defendant, had the right to opt for jurisdiction at the port of discharge. In order to avoid any imbalance, if the proposal was adopted, article 21, paragraph 1, should be amended so as to allow the consignee an option only if he was a claimant.

57. Mr. DOUAY (France) said that he could not support the proposal contained in document A/

CONF.89/C.1/L.195; he shared the Polish representative's misgivings about the proposal's adverse effect on the provisions of article 21, paragraph 1, which allowed the option of choosing, for the hearing of proceedings, the place where the contract had been concluded or any other place provided for under that contract.

58. Mr. HONNOLD (United States of America) said that the Argentine delegation's proposal, if adopted, could lead to considerable practical problems. Article 2, paragraph 2, provided for a transfer of proceedings at a plaintiff's option. However, the transfer by a defendant, on behalf of a plaintiff, of an action against the defendant himself was—except in the unlikely event of a transfer to a place within the same juridical system—virtually impossible to imagine. Therefore, his delegation thought it prudent to reject the proposal contained in document A/CONF.89/C.1/L.195.

59. Mr. SANYAOLU (Nigeria) said that his delegation was opposed to the proposal. Article 21 as it stood was comprehensive enough, and the existing references to a claimant were intended to relate to consignees as well as to carriers.

60. Mr. SMART (Sierra Leone) said he did not think that the intention of the proposal's sponsor was to permit a defendant to apply for a transfer of proceedings after a suit had been filed. On that understanding, he could support the proposal.

61. Mr. NILSSON (Sweden) said that his delegation, too, had doubts about the implication of the words "may apply". He wondered whether the courts would be obliged to grant such applications and, if so, how the transfer could be made, since no legal machinery existed for such a purpose. He agreed with previous speakers that article 21, paragraph 1, would be adversely affected by the proposal, which his delegation could not support.

62. Mr. RAY (Argentina) acknowledged that his delegation's proposal was not in accordance with the provisions of article 21, paragraph 1. However, the establishment of the opportunity for a consignee to opt for the transfer of proceedings to the jurisdiction of the courts of the port of discharge involved an important principle of public order in Argentine law; in his delegation's view, a way must be found to embody that principle in article 21.

63. The CHAIRMAN invited the Committee to vote on the Argentine proposal.

64. *The proposal was rejected by 46 votes to 6, with 10 abstentions.*

Proposed new paragraph

65. Mr. WISWALL (Liberia), introducing the proposal contained in document A/CONF.89/C.1/L.180, said that its purpose was to take account of the fact that, under certain jurisdictions, defence in regard to questions of liability was held to be a matter for the defendant himself and not for his insurer; that was why the proposed text was couched in negative terms. He hoped that the Committee would approve the proposal in principle. His delegation was, however, quite prepared to let the

Drafting Committee decide whether the proposed text should be amended, or indeed whether the principle which it established should be included elsewhere in the Convention—in article 7, for example.

66. Mr. SWEENEY (United States of America) said that his delegation, although it could appreciate the Liberian delegation's concern, felt that the question was one of direct-action statute and as such should remain outside the scope of the new Convention. It therefore opposed the adoption of the proposed new paragraph.

67. Mr. KERRY (United Kingdom) said his delegation could support the proposal, since the provision it embodied might be needed in some jurisdictions, if only as a measure to prevent courts from allowing direct actions to circumvent limitation proceedings.

68. Mr. CASTRO (Mexico) said that it was for the very reasons mentioned by the United Kingdom representative that the Mexican delegation opposed the proposal.

69. Mr. GUEIROS (Brazil) said that his delegation opposed the proposal because of the negative wording and also because of the need to avoid bringing a further party—the insurer—within the scope of the new Convention.

70. Mr. GORBANOV (Bulgaria) said that his delegation was opposed to the proposal, whose provisions went beyond the intended scope of the new Convention and raised questions which involved insurance law and civil law.

71. Mr. NDAWULA (Uganda) said that his delegation strongly opposed the proposal.

72. Mr. WISWALL (Liberia) noted that the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1976 Convention on Limitation of Liability for Maritime Claims, both of which were then in force, contained provisions similar to the Liberian proposal. However, in view of the general lack of support, he would withdraw the proposal.

Article 22

Paragraph 2

73. Mr. HONNOLD (United States of America), introducing the United States amendment to article 22, paragraph 2 (A/CONF.89/C.1/L.70), said that the purpose of the proposal was to clarify the reference in the existing text to the holder having acquired the bill of lading in good faith. The phrase "without actual knowledge of the arbitration provision" was designed to protect a person who acquired a bill of lading issued pursuant to a charter-party containing an arbitration provision of which that person knew nothing.

74. Mr. WISWALL (Liberia), Mr. BURGUCHEV (Union of Soviet Socialist Republics), Mr. SUCHORZEWSKI (Poland) and Mr. MARTONYI (Hungary) supported the United States proposal.

75. Mr. BYERS (Australia) said that the doctrine of actual and constructive knowledge was one of the complexities of common law and, even if it applied in commercial matters, which he doubted, it should not be introduced into the Convention, since it would be likely to

cause difficulty with regard to other provisions in the text. He thought the expression "in good faith" was sufficient by itself.

76. Mr. SELVIG (Norway) said he agreed with the Australian representative, although he could support the proposed amendment if the word "actual" was deleted.

77. Mr. DIXIT (India) said that he did not think that "knowledge" and "good faith" were the same thing; he was happy with the text as it stood in the UNCITRAL draft.

78. Mr. SUMULONG (Philippines) said that the words "in good faith" in fact implied "without knowledge". It would therefore be better to maintain the UNCITRAL text.

79. Mr. GUEIROS (Brazil) said that in civil and common law the idea of knowledge was usually associated with bad faith rather than good faith. He would therefore prefer to maintain the UNCITRAL text.

80. Mr. KERRY (United Kingdom) supported the United States proposal. It seemed to him possible for a person to acquire a bill of lading in good faith either with knowledge or without knowledge of an arbitration provision. Knowledge and good faith were not exactly the same thing.

81. Mr. DOUAY (France) said that "in good faith" was an expression widely used in legal texts—in the 1968 Protocol, for example. He feared that the use of another, less common expression might cause confusion.

82. Mr. HANKE (German Democratic Republic) said that he would support the United States proposal if the word "actual" was deleted.

83. The CHAIRMAN invited the Committee to vote on the United States proposal concerning article 22, paragraph 2 (A/CONF.89/C.1/L.70).

84. *The proposal was rejected by 32 votes to 17, with 16 abstentions.*

Paragraph 3

85. The CHAIRMAN invited the Committee to consider together the amendments to paragraph 3 of article 22 proposed by Greece (A/CONF.89/C.1/L.15) and by the German Democratic Republic (A/CONF.89/C.1/L.49).

86. Mr. MARCIANOS (Greece) said that, although the Committee had rejected a similar amendment referring to the jurisdiction clauses, he felt that the situation was not the same in the case of arbitration. If the parties agreed to arbitration, they should be free to agree as to where the

arbitration proceedings should be instituted, without the limitation on choice expressed in the UNCITRAL text.

87. Mr. BURGUCHEV (Union of Soviet Socialist Republics) agreed that the provisions of article 22, concerning arbitration, were to be differentiated from those of article 21. The multiple provisions in article 22 concerning the place of arbitration proceedings might lead to a situation in which parties were reluctant to use the arbitration procedure in disputes arising in connexion with the carriage of goods by sea. The arbitration of disputes was a simple and cost-effective procedure in comparison with other forms of legal proceedings, and since the effect of the provisions of article 22, paragraph 3, might be to introduce uncertainty into the arbitration procedure, it would be better to amend the article as proposed by the representatives of Greece and the German Democratic Republic.

88. Mr. SUCHORZEWSKI (Poland) recalled that UNCITRAL itself had recently established a set of rules governing the old and well-established legal tradition of arbitration. The rules were based on the principle that an arbitration agreement was binding on both parties; it was strange, therefore, to see in the Convention a provision which could allow one party to deny fulfilment of an arbitration agreement. He accepted that the option should remain with the plaintiff for choosing between forums, and he could accept the text in the UNCITRAL draft if subparagraph (b) were removed from paragraph 3 and established as a separate paragraph 4.

89. Mr. POPOV (Bulgaria) associated himself with the statement of the USSR representative.

90. Mr. GUEIROS (Brazil) said that the words "Any place designated for that purpose in the arbitration clause or agreement" in paragraph 3, subparagraph (b), made it unnecessary to begin the paragraph with the words "unless the parties have agreed otherwise". He did not agree with the Polish representative that subparagraph 3 (b) should be made into a separate paragraph. In his view, paragraph 3 as it stood in the UNCITRAL text was quite satisfactory.

91. Mr. MASSUD (Pakistan) said that he could not support the proposals of Greece and the German Democratic Republic. In practice, there were standard arbitration clauses, and, if the words "unless the parties have agreed otherwise" were introduced, the effect would be to do away with the options provided in the UNCITRAL text.

The meeting rose at 6.05 p.m.

30th meeting

Monday, 27 March 1978, at 9.15 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.30

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add. 1, A/CONF.89/8, A/CONF.89/C.1/L.30, L.49, L.70, L.83, L.151, L.178, L.189, L.193, L.194, L.196, L.204)

Article 22 (concluded)

Paragraph 3 (concluded)

1. The CHAIRMAN invited delegations to continue their consideration of the German Democratic Republic amendment (A/CONF.89/C.1/L.49) proposing the insertion in paragraph 3 of the words "unless the parties have agreed otherwise".

2. Mr. SELVIG (Norway) said he opposed that amendment because it completely altered the content of the provisions of article 22 relating to arbitration, as had been the case with a similar amendment to article 21 proposed by the same delegation (A/CONF.89/C.1/L.94), which the Committee had rejected. The amendment under consideration would entitle the parties to a contract of carriage to agree on an exclusive forum for arbitration and even to stipulate that disputes should be settled solely by arbitration, a provision which would place the claimant in an inferior position by depriving him of all his options. First, the claimant might be constrained to bring an action in a place unrelated to the contract of carriage and, secondly, the amendment would tend to modify the practice followed in many countries whereby claims for compensation of loss of or damage to goods were brought before the courts.

3. Mr. SWEENEY (United States of America) said that he also opposed the amendment under discussion and supported the UNCITRAL text, which was the result of a compromise.

4. Mr. NELSON (Ghana) said that he, too, was unable to support the German Democratic Republic amendment, which put the carrier in a position of superiority.

5. Mr. DIXIT (India) said that, for the reasons given by the representatives of Norway and Ghana, he favoured the UNCITRAL text.

6. Mr. SUCHORZEWSKI (Poland) observed that paragraph 3 began by stipulating that "The arbitration proceedings shall, at the option of the plaintiff, be instituted . . ." before proceeding, in subparagraphs (a) and (b), to enumerate the various places where that could be done. The situation was thus different from that which had obtained during the consideration of the proposed

amendment to article 21. He would also point out that, although the procedure of settlement by arbitration as between the parties was generally considered to be admissible, article 22 as drafted would tend to do away with the institution of arbitration.

7. Mr. DOUAY (France) said that the German Democratic Republic amendment involved a substantive change to article 22: it would serve to impose on the shipper the jurisdiction referred to in subparagraph (b) to the exclusion of the other jurisdictions mentioned in subparagraph (a), which was not true of the article as drafted by UNCITRAL. The intention of the draft Convention was to leave the claimant the choice of place of arbitration in all cases. France was therefore opposed to the amendment of the German Democratic Republic.

8. The CHAIRMAN invited the Committee to vote on the amendment of the German Democratic Republic to paragraph 3 of article 22 (A/CONF.89/C.1/L.49).

9. *The amendment was rejected by 38 votes to 9, with 8 abstentions.*

10. The CHAIRMAN invited delegations to consider the Ugandan amendment (A/CONF.89/C.1/L.151), which would involve redrafting the beginning of paragraph 3, subparagraph (a) to read: "(a) A State within whose territory is situated:".

11. Mr. NDAWULA (Uganda) said that his delegation's amendment was designed to improve the drafting of subparagraph (a), where the word "place" was to be found both in the introductory phrase and then again in subparagraph (a) (ii), which would mean referring to a "place situated within a place". It would be more correct to refer first to the State, which was the larger unit, and then to the place.

12. Mr. SELVIG (Norway) said that, in his view, that amendment was not merely of a drafting nature. The text proposed by UNCITRAL stipulated that the arbitration proceedings would be instituted at "a place in a State within whose territory", a formulation designed to avoid the excessively vague formula of a mere reference to the State, which would not enable the port of loading or the port of discharge to be specified and might, for instance in countries as vast as the USSR or the United States, lead to the choice of places extremely remote from those ports.

13. The CHAIRMAN, noting that no delegation supported the Ugandan amendment, said he would take it that the Committee wished to reject it.

14. *It was so decided.*

15. The CHAIRMAN invited delegations to consider the United States amendment to paragraph 3, subparagraph (a) (A/CONF.89/C.1/L.70), by which the word "plaintiff" would be replaced by "claimant having suffered loss or damage".

16. Mr. SWEENEY (United States of America) said that his delegation saw its amendment as being merely one of form and thought that it could be referred to the Drafting Committee.

17. Mr. SELVIG (Norway) said that he took a different view. He recalled that the same question had been discussed in relation to article 21 and the Committee had finally decided to retain the word "plaintiff". He thought that the same should be done in the case of article 22. As for the words which followed, namely "having suffered loss or damage", they might have the effect of modifying that provision in substance without improving its drafting; his delegation therefore opposed the amendment.

18. Mr. DOUAY (France) said that the term "*demandeur*" was a classic procedural term which had the advantage of encompassing the meaning of the term "*ayant droit*". Moreover, the term was already used in article 21 and, in the interests of uniformity, should therefore be retained in article 22.

19. Mr. NDAWULA (Uganda) said he supported the first limb of the United States proposal, namely the replacement of the word "plaintiff" by "claimant", since in arbitration proceedings there was no "plaintiff" as such, at least in Uganda, where arbitration was not governed by the law of civil procedure. He therefore supported the first part of the United States amendment and suggested that it should be examined on that basis, the concluding words of the amendment being deleted.

20. Mr. DIXIT (India) said he could not accept the United States amendment as a whole, but could support the beginning of the proposal, as mentioned by the Ugandan representative.

21. Mr. SWEENEY (United States of America) said that he would withdraw his amendment since delegations considered that it involved a matter of substance.

22. The CHAIRMAN invited delegations to give their opinion on the United States amendment as orally subamended by Uganda, namely the proposal to replace the term "plaintiff" by "claimant".

23. Mr. SMART (Sierra Leone) and Mr. SELVIG (Norway) said they had no objection to that new proposal, if the term "claimant" corresponded better to the terminology used in the legislation of certain countries.

24. Mr. DOUAY (France) said that, in any event, the French text should remain unchanged, with the term "*demandeur*" being used.

25. Mr. SIMS (Canada) supported the Ugandan proposal.

26. The CHAIRMAN said that he would therefore take it that the oral amendment of Uganda to replace the term "plaintiff" by "claimant" was adopted.

27. *It was so decided.*

28. The CHAIRMAN said that the second part of the United States amendment to paragraph 3 (A/CONF.89/C.1/L.70) had been withdrawn. The Turkish amendment (A/CONF.89/C.1/L.193), as well as the Argentine amendment (A/CONF.89/C.1/L.196), had also been withdrawn. The Committee had thus completed its consideration of article 22.

29. *Article 22 was approved with the changes agreed and was referred to the Drafting Committee.*

New article 22 bis

30. Mr. BURGUCHEV (Union of Soviet Socialist Republics) introduced the proposal (A/CONF.89/C.1/L.189) submitted by eight countries members of the Council for Mutual Economic Assistance (CMEA) which were parties to the 1972 Moscow Convention on Arbitration, which established mandatory rules for settlement of disputes between economic organizations of those countries, including disputes connected with carriage of goods by sea. He said that the proposed article would apply exclusively to the countries signatories of the Moscow Convention and that judges or arbitrators in the countries concerned which had signed or ratified the Convention under consideration would base themselves on the provisions of the new Convention in so far as arbitration was concerned. Moreover, the provisions of the Convention under review relating to the rights and responsibilities of the parties to a dispute were not affected by the proposed new article.

31. Mr. BYERS (Australia) said that his delegation supported the proposal submitted by the eight countries members of CMEA as being a straightforward procedural stipulation designed to make articles 21 and 22 of the Convention under consideration compatible with the Convention on Arbitration concluded by the countries concerned. His delegation had taken note of the assurance given by the USSR delegation that those provisions of the Convention under review which related to the rights and responsibilities of the parties to a dispute would be applied.

32. Mr. MÜLLER (Switzerland) said he was not opposed to the proposal under discussion but felt that it should be presented in the form of a reservation clause and not as a provision having general application.

33. Mr. BURGUCHEV (Union of Soviet Socialist Republics) noted that the same question had arisen at the 1974 Conference on Prescription (Limitation) in the International Sale of Goods and that it had finally been decided to include a special article instead of a reservation clause. The sponsors of the proposal which he had introduced had therefore based themselves on article 37 of the Convention on Prescription,¹ which read:

"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."

As to substance, the arbitrators of the States concerned would base themselves on the future Convention as far as matters relating to the liability of the parties to a dispute were concerned.

34. Mr. DIXIT (India) said he was not clear as to the real meaning of the proposal submitted by the countries

¹ See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), p. 104, document A/CONF.63/15.

members of CMEA. Articles 21 and 22 dealt exclusively with the places in which an action could be brought, or arbitration proceedings instituted, and not the procedure that would be applied. Since, however, the effectiveness of a convention was assessed in terms of the remedies provided—and in the case in point the remedies laid down in articles 21 and 22 which, according to the proposal under consideration, would not be applicable to certain countries—the Conference should examine the matter closely. If the proposal was really designed to resolve a procedural problem, his delegation would have no objection to it, although it had no great enthusiasm for it either. However, it wished to know what would be the position of the Convention in countries which were parties to conventions of the type referred to in the amendment of the CMEA countries, for failure to apply articles 21 and 22 would undermine the effectiveness of the Convention.

35. Mr. KHOO (Singapore) said he found himself at somewhat of a disadvantage, since he was not familiar with the 1972 Moscow Convention. If that Convention concerned only matters of procedure and jurisdiction, the proposed text would meet its object. If, on the other hand, it dealt with matters of substance connected with the carriage of goods by sea, the proposed text was worded too vaguely. In the latter case, it might perhaps be appropriate to amend the proposal to bring out the idea that only those provisions of the Moscow Convention which dealt with procedural and jurisdictional matters would be unaffected by the present Convention and that the States parties to the two conventions would remain bound by those provisions of the present Convention which conferred on them rights and responsibilities.

36. Mr. SELVIG (Norway) said he also considered that the proposal under consideration was too vaguely worded and seemed to go further than its declared object required; moreover, that proposal was relevant to a number of instruments, not only the 1972 Moscow Convention referred to by the representative of the Soviet Union, and it was therefore difficult to assess its precise scope. One of the objects of articles 21 and 22 was to ensure a degree of uniformity at the international level, and the co-existence of various conventions should therefore be viewed in that context. Moreover, the English version of the proposal did not make it clear that the plaintiff and the defendant should have their principal place of business in States parties to one and the same convention. With regard, finally, to article 37 of the Convention on the Limitation Period in the International Sale of Goods, which the Soviet representative had quoted, he observed that that article was included in part III, entitled "Declarations and reservations", and that, in the Convention under discussion, such a provision could only take the form of a reservation. In the light of those considerations, his delegation found it difficult to accept the proposal as drafted. If the delegations of the countries members of CMEA wished to formulate a reservation expressly referring to the convention they had in mind, they should submit their proposal when the Committee came to consider reservations.

37. Mr. HENNI (Algeria) said that the proposal under

consideration, which stipulated clearly that articles 21 and 22 would not apply when the plaintiff and the defendant were in States linked to each other by a convention, presented no difficulty for his delegation, which could vote for it.

38. Mr. CASTRO (Mexico) said that the wording of the proposal should be modified slightly, although the principle which it embodied was acceptable. In his opinion, it should be stated at the end of the sentence not only that the plaintiff and the defendant had their principal places of business in one of the States concerned, but that they were subject to the law of those States and, above all, were both nationals of States parties to the same convention.

39. Mr. BURGUCHEV (Union of Soviet Socialist Republics) asked whether delegations would agree to the incorporation of a number of clarifications in the draft article proposed in document A/CONF.89/C.1/L.189. The beginning of the article might read as follows:

"To the extent that they determine the place of legal proceedings or arbitration, the provisions of articles 21 and 22 of this Convention do not affect . . .".

The end of the sentence might be amended to read " . . . in the States parties to a particular convention of that kind". It might perhaps be appropriate to set up a working group which would endeavour to work out a text acceptable to all delegations on the basis of the comments made during the meeting.

40. Mr. QUARTEY (Ghana) said he was not opposed to the establishment of a working group, but wished to draw the Committee's attention to the beginning of the draft article under consideration, which referred not only to conventions already concluded but also to conventions which might be concluded in the future. He would like the delegation of the Soviet Union to clarify that point.

41. Mr. LAVIÑA (Philippines) said he wondered whether it would be appropriate to set up a working group, in view of the unfavourable comments made on the draft article under consideration. It should be noted that the Second Committee had rejected the idea of stipulations relating to conventions which might be concluded at a later date.

42. Mr. SWEENEY (United States of America) said that he could agree to the draft article under discussion being referred to a small working group. Such a group should, however, consider whether the provisions of that draft article might not be incorporated in article 25 of the draft Convention.

43. The CHAIRMAN said that the working group would examine the provisions of the proposed new article from the point of view not only of substance but also of form, including the place in the Convention where those provisions might be included.

44. Mr. GUEIROS (Brazil) said that he too considered, in the light of the decision taken by the Second Committee, that future conventions should not be referred to in the draft Convention under consideration. While a small working group could appropriately be established, the provisions which it was to examine should not be inserted after article 22. They should either

be incorporated in article 25 or included in the statements of reservations.

45. Mr. NILSSON (Sweden) said that he was not opposed to setting up a working group, but such a group, if established, should consider whether the provisions contained in document A/CONF.89/C.1/L.189 should form a separate article or, rather, appear as a reservations clause. He thought that the comments made by the representative of Switzerland should be taken into account.

46. Mr. WAITITU (Kenya) said that he would like the working group to take into account the pertinent comments made by the representatives of Norway, Ghana and India. He endorsed the remarks of the United States representative as to whether it would be appropriate to add a separate article to the draft Convention or to incorporate the proposed provisions in article 25.

47. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to set up a working group to study the form and substance of the provisions set forth in document A/CONF.89/C.1/L.189, a group which would be formed of the delegations of the following countries: Algeria, Ghana, India, Sierra Leone, Singapore, Sweden, Union of Soviet Socialist Republics and United States of America.

48. *It was so decided.*

Article 23

Paragraph 1

49. The CHAIRMAN invited the representative of Turkey to introduce his delegation's amendment (A/CONF.89/C.1/L.194).

50. Mr. ÖZERDEN (Turkey) said that the Turkish amendment proposed the deletion of the words "or indirectly" in the first sentence of paragraph 1. Two questions arose: first, whether a distinction could be drawn between direct and indirect derogation, and, secondly, what would be the basis, content and scope of direct and indirect derogations. His delegation would merely point out that it would be virtually impossible to determine indirect derogations, unless they could be given a fairly comprehensive definition. Since the concept of indirect derogation remained indefinite, it would constantly give rise to misunderstandings and varying interpretations, or even to abuses. The simplest solution would be to delete the words "or indirectly", thus enabling a direct derogation to be interpreted as a common and normal derogation. It might even be possible to delete the word "directly". In that way, all the disadvantages would be overcome, and the parties concerned—together, possibly, with the judge—would find it easier to interpret paragraph 1 of the article under consideration.

51. Mr. BYERS (Australia) said he opposed the amendment submitted by the Turkish delegation. The words "directly or indirectly" were designed to prevent a contractual limitation on the rights and responsibilities provided for in the Convention. Direct derogation could occur when the contractual stipulations were contrary to

the provisions of the Convention, and indirect derogation when the contractual stipulations were contrary to the effects of the Convention. Under that interpretation, the expression "derogates, directly or indirectly" was logical. Its purpose was to prevent the parties from concluding a contract contrary to the very Convention which was to regulate relations between them.

52. Mr. SANYAOLU (Nigeria), Mr. MUCHUI (Kenya), Mr. KACIĆ (Yugoslavia), Mr. NDAWULA (Uganda) and Mr. GUEIROS (Brazil) said that they were in favour of retaining paragraph 1 as worded in the draft convention.

53. Mr. REISHOFER (Austria) said that he agreed with the point of view of the Australian delegation, and observed that the deletion of the words "or indirectly" might allow it to be inferred that indirect derogations were acceptable.

54. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to reject the Turkish amendment.

55. *It was so decided.*

56. The CHAIRMAN invited the representative of Iraq to introduce his amendment (A/CONF.89/C.1/L.204).

57. Mr. ATTAR (Iraq) said that his delegation saw its amendment as purely a drafting change.

58. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to refer the Iraqi amendment to the Drafting Committee.

59. *It was so decided.*

Paragraph 2

60. Paragraph 2 was adopted.

Paragraph 3

61. The CHAIRMAN said that the amendments of the Federal Republic of Germany (A/CONF.89/C.1/L.178) and Japan (A/CONF.89/C.1/L.30) both proposed the deletion of paragraph 3 of article 23.

62. Mr. HERBER (Federal Republic of Germany) announced that the Federal Republic of Germany wished to withdraw its amendment.

63. The CHAIRMAN invited the representative of Japan to introduce his amendment.

64. Mr. TANIKAWA (Japan) said that his delegation was proposing the deletion of article 23, paragraph 3, since the provisions which it contained were unnecessary. The Warsaw Convention on carriage by air had contained similar provisions, but they had been omitted from the 1975 Montreal Protocol. It had been noted that those provisions had no meaning in practice. Even if the statement referred to in paragraph 3 was not contained in the bill of lading, the legal effect under paragraph 1 remained the same.

65. Mr. MÜLLER (Switzerland) supported the Japanese amendment.

66. Mr. HERBER (Federal Republic of Germany) said he supported the Japanese amendment because paragraph 3 could present difficulties for the person issuing a bill of lading. Such a person had to determine whether, in

a particular case, the carriage of goods was or was not governed by the provisions of the Convention; as was clear from the discussions which the Conference had had on the scope of application of the Convention, that might prove very difficult. In order to facilitate that person's task, it would be better to delete paragraph 3.

67. Mr. NELSON (Ghana) said he opposed the Japanese amendment. The provisions of paragraph 3 were necessary because they drew attention to the respective rights and responsibilities of all parties.

68. Mr. SMART (Sierra Leone) said that paragraph 3 should be retained in the form in which it appeared in the draft Convention.

69. Mr. SANYAOLU (Nigeria) said that, in his view, the deletion of paragraph 3 would leave room for doubt concerning the provisions applicable to a particular transport operation. He was therefore unable to support the Japanese amendment.

70. Mr. CHRISTOF (Bulgaria) supported the Japanese amendment for the reasons already given by the representatives of Japan and the Federal Republic of Germany.

71. Mr. GUEIROS (Brazil) said he considered that paragraph 3 should be maintained, particularly since it was referred to in subparagraph 1 (f) of article 15, which had already been approved.

72. Mr. SUCHORZEWSKI (Poland) said that, while appreciating the underlying intention of paragraph 3, he wondered whether the provisions of that paragraph were not incompatible with those of article 2, subparagraph 1 (e). In order to eliminate that inconsistency, the Japanese amendment should be adopted.

73. Mr. SUMULONG (Philippines) said he found paragraph 3 to be useful, since it protected the interests of the shipper and of third parties. That paragraph should therefore be retained.

74. Mr. CASTRO (Mexico) said he supported the retention of paragraph 3 for the reasons adduced by the representative of the Philippines.

75. Mr. BYERS (Australia) said he supported paragraph 3 as it appeared in the draft Convention.

76. The CHAIRMAN put the Japanese amendment to the vote.

77. *The amendment was rejected by 45 votes to 14, with 6 abstentions.*

Paragraph 4

78. The CHAIRMAN observed that, since the Japanese delegation's proposal concerning paragraph 3 had been rejected, its amendment to paragraph 4 (A/CONF.89/C.1/L.30) was no longer applicable. He invited the members of the Committee to examine the French amendment in document A/CONF.89/C.1/L.83.

79. Mr. DOUAY (France) said that his delegation's amendment did not affect the substance of the paragraph under consideration and was merely designed to prevent any misinterpretations to which the expression "full compensation" in the first sentence of that paragraph might give rise. That expression could not be held to

imply full compensation without any limitation. The French amendment, on the other hand, did not prevent the provisions of article 8 (Loss of right to limit liability) from taking effect. Consequently, it merely clarified the first sentence of paragraph 4.

80. Mr. SELVIG (Norway) said that, while understanding the concerns of the French delegation, he considered that the expression "in accordance with the provisions of this Convention" would naturally be interpreted as applying to the provisions concerning the limits of liability (article 6). As the Committee had recognized during its consideration of a similar amendment (A/CONF.89/C.1/L.64), which the United States delegation had submitted to paragraph 2 of article 10, the addition of the phrase proposed by the French delegation might place in question the meaning of the expression "in accordance with the provisions of this Convention" in other clauses of the Convention.

81. Mr. GANTEN (Federal Republic of Germany) said he approved the French amendment in substance, but shared the concern expressed by the representative of Norway. The Drafting Committee might perhaps be invited to introduce the necessary clarifications into that paragraph.

82. Mr. CLETON (Netherlands) said that the paragraph under consideration was lacking in clarity owing to the use of the word "full" in the expression "full compensation": that word should be deleted.

83. Mr. HONNOLD (United States of America), supported by Mr. SIMS (Canada) and Mr. NILSSON (Sweden), said that, in order to eliminate any ambiguity from the wording of paragraph 4, it would be appropriate to delete both the word "full" before "compensation" and the word "any" before "loss of or damage to". The Drafting Committee might be requested to make the necessary changes.

84. Mr. MARCIANOS (Greece) endorsed the view expressed by the representative of the Netherlands and suggested that the Committee should request the Drafting Committee to delete the word "full".

85. Mr. DOUAY (France), supported by Mr. MASSUD (Pakistan), said that the deletion of the word "full" would be one of several possible ways of clarifying paragraph 4.

86. Mr. AMOROSO (Italy), supported by Mr. SUCHORZEWSKI (Poland), said that the Swedish proposal to delete the words "full" and "any", which would enable paragraph 4 to be simplified, should be referred to the Drafting Committee.

87. Mr. SMART (Sierra Leone) said that he could not agree with the preceding speakers, since he understood the expression "full compensation in accordance with the provisions of this Convention" to mean compensation which would be no less than that provided for in the Convention. He was therefore in favour of retaining the word "full".

88. Mr. NDAWULA (Uganda) said that paragraph 4 presented no difficulty for his delegation, which considered that the words "full" and "any" did not involve any departure from the provisions relating to the limits of

liability. In the case in point, the word "full" had a purely technical meaning.

89. Mr. BYERS (Australia) said that he had no objection to the deletion of the word "full" but would prefer to maintain the word "any".

90. Mr. GUEIROS (Brazil) said he supported the idea of deleting the word "full", and suggested that that proposal should be put to the vote rather than be referred to the Drafting Committee.

91. Mr. NDAWULA (Uganda) supported the Brazilian representative's suggestion to put the proposal to delete the word "full" to the vote.

92. Mr. AMOROSO (Italy) thought that such a vote could have dangerous consequences, for, if the Committee decided to retain the word "full", paragraph 4 might be interpreted in a way which ran counter to the other provisions of the Convention.

93. Mr. NSAPOU (Zaire) supported the French amendment, but opposed the deletion of the word "full".

94. Mr. DOUAY (France) said he regretted that his amendment had given rise to so many misgivings. Although he shared the Sierra Leonean representative's interpretation of the word "full", he feared that a court whose members had not participated in the preparation of the Convention might take that word literally, without regard for the limits provided for in the Convention. His delegation was merely concerned to clarify the provisions of paragraph 4 and did not think that there was any need to vote on what was purely a drafting matter.

95. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved

article 23 and would refer it to the Drafting Committee together with the comments made concerning paragraph 4, but would not expressly invite it to delete the words "full" and "any".

96. *It was so decided.*

Article 24

97. The CHAIRMAN invited the members of the Committee to consider the Canadian delegation's amendment (A/CONF.89/C.1/L.200) proposing the replacement of the existing text of paragraphs 1 and 2 of article 24 by a new paragraph.

98. Mr. SIMS (Canada) said that his delegation would withdraw its amendment since it raised difficult problems which might give rise to a lengthy discussion. He would, however, explain that his delegation had thought it appropriate to propose a new wording for article 24 for several reasons, one being that it did not wish to prejudge the outcome of the work of the UNCTAD body which would shortly be studying the question of general average. Nor had it regarded it as reasonable, at the current stage, to replace the contractual system in force by a new treaty régime. In addition, the provisions of article 24, paragraph 2, involved a considerable departure from the law currently applicable in regard to general average. His delegation, which had not been convinced of the advisability of those changes, had therefore advocated the maintenance of the Hague Rules, pending the outcome of the deliberations within UNCTAD.

The meeting rose at noon.

31st meeting

Monday, 27 March 1978, at 4 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.31

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1, L.71, L.173, L.205)

Article 24 (concluded)

1. Mr. GONDRA (Spain) said that his delegation shared the concern which had apparently been felt by the Canadian delegation in submitting an amendment (A/CONF.89/C.1/L.200), since withdrawn, to article 24. His delegation feared that, despite the clear statement in article 24, paragraph 1, a strict interpretation of para-

graph 2 could imply interference with the rules of general average adjustment, especially the York-Antwerp Rules. The part of the text from "the provisions of this Convention" to "may refuse contribution in general average" gave cause for particular concern, since, if a carrier's actual liability was not established, his general average contribution should logically be covered by corresponding guarantees from the consignee, which guarantees, it was to be hoped, would not be excluded by the provision in article 24, paragraph 2.

2. Therefore, the Spanish delegation, while not making a formal proposal, suggested that the Drafting Committee might take that consideration into account, possibly by adding, after the words "may refuse contribution in general average", the words "without prejudice to the guarantees that may be required", or some similar

formula. The text, if left as it stood, might lead to interference with the rules of general average as set forth in article 24, paragraph 1.

3. The CHAIRMAN said that the Spanish representative's observations would appear in the summary record of the meeting.

4. Mr. HONNOLD (United States of America) said that his delegation wished to withdraw its amendment to article 24, paragraph 2 (A/CONF.89/C.1/L.71).

Article 25

5. Mr. MASSUD (Pakistan), introducing the amendment proposed by India, Pakistan and Uganda to article 25 (A/CONF.89/C.1/L.205), said that its purpose was to avoid unilateral limitations of the liability of a carrier or actual carrier in situations where such a person was a shipowner also. Such limitations would defeat the purpose of the new Convention.

6. The CHAIRMAN noted that the amendment contained two alternative proposals. He invited the Committee to consider first of all only the first alternative, namely the deletion of the words "or national law" from article 25, paragraph 1.

7. Mr. SWEENEY (United States of America) said that his delegation was against the deletion of those words. At the time the Hague Rules had been prepared, no convention on the limitation of shipowner's liability had existed; the Hague Rules had therefore included a provision to the effect that national law relating to global limitation of liability should remain unaffected. The United States had never been a party to an international convention on the subject, and the effect of the proposed amendment on United States public law would be unacceptable.

8. Mr. MALLINSON (United Kingdom) agreed with the United States representative. Article 25, paragraph 1, reflected a provision in the Hague Rules, as amended, and would not, in his delegation's view, entitle a contracting State to the new Convention to apply different rules with regard to the limitation of carrier's liability than those provided for in the Convention. As his delegation understood it, the paragraph was concerned solely to ensure that rules relating to the limitation of liability of shipowners, in their capacity as such, would be preserved. His delegation saw no conflict of law and no possibility that a contracting State could invoke the article to justify a departure from the new Convention's provisions. The text of article 25, paragraph 1, should therefore be allowed to remain as it stood.

9. Mr. SELVIG (Norway) said that, when the present text of article 25 had been drafted in UNCITRAL, the matter referred to by the United States representative had been given due consideration, and the wording of the existing text took account of the fact that some countries had never been parties to an international convention on the limitation of shipowner's liability. The deletion of key words from the text as drafted would clearly cause great difficulties; therefore, the Norwegian delegation was against the amendment proposed in document A/CONF.89/C.1/L.205.

10. Mr. DIXIT (India) said that the text of the amend-

ment was straightforward and would not affect the provisions of existing international conventions. The purpose of drafting a new convention was, after all, to establish uniform rules; if the Conference tried to take into account all existing national laws it would make no progress at all.

11. Mr. SUMULONG (Philippines) said that limitation of liability was a controversial subject and that it was important not to interfere with national law. His delegation preferred to leave the text of article 25 as it stood, and did not support the proposed amendment.

12. Mr. POPOV (Bulgaria) said that his delegation, too, preferred the text of article 25 as it stood and could not support the proposed deletion.

13. Mr. SANYAOLU (Nigeria) said that his delegation was opposed even to the principle underlying the proposal contained in document A/CONF.89/C.1/L.205. If the proposal was adopted, the new Convention could undermine national law.

14. Mr. NDAWULA (Uganda) said that his delegation had co-sponsored the amendment because the text of article 25 as it stood was contrary to the spirit of the draft Convention.

15. Mr. WAITITU (Kenya) said that his delegation supported the proposal. If the Conference was to regard national law as paramount, all the work carried out thus far on the new Convention would have been fruitless.

16. Mr. GUEIROS (Brazil) said that his delegation would have preferred to discuss document A/CONF.89/C.1/L.205 as a whole; for the moment, it would support the proposal to delete the words "or national law" from article 25, paragraph 1.

17. Mr. DIXIT (India) said that, in view of the lack of support, the sponsors would withdraw the proposals contained in document A/CONF.89/C.1/L.205.

Article 1 (continued)*

18. The CHAIRMAN recalled that, at its 2nd meeting, the Committee had decided in principle to include a definition of the term "shipper" in the draft Convention and had appointed an *ad hoc* Working Group to consider such a definition. The Group's report on its work, which included a possible definition of "shipper", was currently before the Committee in document A/CONF.89/C.1/L.173. He would recall that, under the rules of procedure, a proposal, once adopted, required a two-thirds majority to be reconsidered.

19. Mr. DIXIT (India) said that the draft definition reproduced in the Working Group's report had not commanded the approval of all its members. He suggested that comments for and against the proposed definition should be invited and that, if a decision could not be reached, a further attempt should be made to devise a definition in the light of the discussions at the current meeting.

20. Mr. KHOO (Singapore) endorsed the remarks made by the Indian representative.

* Resumed from the 2nd meeting.

21. Mr. SMART (Sierra Leone) said that, if the Chairman had chosen the participants in the *ad hoc* Working Group from among delegations that were in favour of defining the term "shipper", the Committee would currently have an agreed text before it. Certain delegations had been completely opposed to such a definition but had nevertheless been represented in the Working Group.

22. The CHAIRMAN pointed out that it was not the tradition of UNCITRAL to have working groups composed of persons who represented one point of view only. Moreover, the proposal to include a definition of the term "shipper" had been carried by only 28 votes to 27, and it had therefore been impossible to disregard the large number of delegations which opposed the idea.

23. Mr. WAITITU (Kenya) said that a working group set up to examine a particular question was not necessarily expected to reach a unanimous decision; if the text it submitted represented the opinion of the majority, that text should be considered by the Committee.

24. Mrs. RICHTER-HANNES (German Democratic Republic) said that her delegation had originally voted in favour of defining the term "shipper", but, upon further reflection, was convinced that the term covered too many different types of relations to be defined satisfactorily. That was particularly true of f.o.b. contracts.

25. Mr. AMOROSO (Italy) said it was his delegation's recollection that the Committee had not decided to have a definition of the term "shipper" at all costs, but had merely expressed the wish to have one, provided that the Working Group could devise an acceptable formulation.

26. Mr. DIXIT (India) agreed that the aim had been to formulate a definition that was satisfactory in principle. However, if there had been no intention of arriving at a definition at all, the Working Group would not have been set up in the first place.

27. Mr. SELVIG (Norway) said that, since the term "shipper" appeared in a variety of provisions in the draft Convention, a definition of the term raised difficult problems and could not be discussed in the abstract. Some delegations might feel that the provisions in which reference was made to the shipper should be re-examined, but it was difficult to modify a substantial number of clauses at a late stage in the preparation of a convention. It was apparent from the summary records of the Committee's proceedings that the decision to adopt a definition had been one of principle only; accordingly, the Committee was free to take a fresh position on the matter if it so wished. While it might be preferable to include a definition of "shipper" in the Convention, there was very little time left to assess all the possible consequences of the definition adopted, and he wondered whether it was worth running the risk of devising a definition whose implications could not be fully appreciated. He reminded delegations that the drafters of the UNCITRAL text had themselves failed to solve the problem because of the numerous provisions of the draft Convention in which the term appeared.

28. Mr. SMART (Sierra Leone) said that the bone of contention was not the proposed definition of "shipper" (A/CONF.89/C.1/L.173), but a matter that had already

been decided, namely, the need for a definition at all. There must be very few statutes where one of the parties to a contract was clearly defined but not the other. Yet, while carefully tailored definitions of "carrier" and "actual carrier" had been included in the draft Convention, it had been decided—supposedly because of the complexity of the matter—to omit any definition of "shipper". The Conference, in his view, would be extremely remiss if it did not include such a definition and left the matter to judges and the parties concerned to decide. It was difficult to believe that the Conference, attended as it was by judges, practitioners and jurists, was incapable of defining one of the parties to a contract. The difficulty seemed rather to stem from the fact that certain people wanted to use the omission of such a definition as a lever in any future action, whereby the carrier could claim that he did not recognize the shipper.

29. The definition before the Committee was straightforward, and nobody had pointed to any flaw in it. It had, moreover, been the subject of detailed consideration, and the second limb had been added to cover the situations provided for in articles 12 and 13 (Liability of the shipper). It was therefore regrettable that certain delegations, which had participated in the Working Group and which had initially withdrawn their own definitions in favour of the proposed definition, had, in the final analysis, been unable to support it. The reason, as he saw it, was simply that they were opposed to including any definition of "shipper" in the Convention.

30. Mr. DIXIT (India) pointed out that the first limb of the proposed definition was very similar to that laid down in the Convention on a Code of Conduct for Liner Conferences, 1974, which defined the shipper as a person who had a contractual relationship with the carrier and a beneficial interest in the goods shipped. It was paralleled by the definition of "carrier" in the draft Convention, which referred to the shipper as a person with whom the carrier had entered into a contractual relationship for the carriage of goods by sea. It did not define the shipper's rights and liabilities, which were dealt with specifically elsewhere in the Convention. The second limb of the definition, which had been the subject of detailed consideration, provided that goods could also be delivered by a person other than the shipper.

31. Some delegations from the major ship-owning countries maintained that that definition did not fulfil its purpose and that it was not clear. In his view, their aim in seeking to gloss over the matter was to enable carriers to deny parties who were shippers their due rights. There was nothing objectionable about the definition, which was a natural counterpart to the definition of "carrier" already adopted. If it was omitted, the whole purpose of the Convention, which would then lend itself to misinterpretation, would be defeated. He therefore appealed to the delegations which were opposed to incorporating a definition of "shipper" into the Convention to reconsider their position.

32. Mr. BYERS (Australia) said that his delegation had always been concerned to protect the interests of the shipper. The definition before the Committee, however, raised difficulty when read in conjunction with the articles

which imposed obligations on the shipper and dealt with his liability. For example, if read in the context of article 12, it imposed liability not only on the person who contracted with the carrier but also on those who delivered the goods in performance of the contract on the shipper's behalf. That, of course, was not the intent of the article, which was to impose liability on the shipper alone.

33. Similarly, if the definition were read in the context of paragraph 1 of article 13 (Special rules on dangerous goods), it would mean that not only the real shipper would be held liable but also those who acted for him in delivering the goods to the carrier and who would therefore have a right of recourse against the shipper. The same result would follow in the case of paragraph 2 of article 13. It was therefore at least arguable that the definition imposed an additional liability on the shipper's interests. It was for that reason that his delegation had opposed the proposal to include a definition of shipper in the Convention.

34. Again, paragraph 1 of article 17, when seen in the light of the proposed definition, would seem to suggest that the guarantee in question could extend beyond the shipper to those who worked for him, which, in his delegation's view, was a dangerous extension of the liability the Convention intended to impose on shippers.

35. Consequently, while intellectual rigour might suggest that a definition was desirable, his delegation considered that the effect of one along the lines proposed would be to subject those working in the interests of the shipper to unintended and unexpected liability. For that reason, while grateful to the Working Group for its efforts, his delegation felt impelled to oppose the proposed definition.

36. Mr. DOUAY (France) said that the first part of the definition of "shipper" in the report of the *ad hoc* Working Group was satisfactory as far as it went. However, the second part of the definition would bring in

a whole series of agents of various kinds and impose on them a liability which was not that of the shipper under the Convention. Moreover, in various articles and paragraphs throughout the Convention, the shipper seemed to have been viewed from different angles and in a manner not always in keeping with the Working Group's definition. Finally, to cover instances in which a contract was concluded by a person who was not defined or named, it would be necessary to provide that "shipper" meant any person by whom or in whose name or on whose behalf a contract had been concluded. The second part of the draft definition was unacceptable as it stood; the first part should be amplified, possibly along the lines he had suggested, but lack of time would probably prevent the drafting of a universally acceptable definition.

37. Mr. CASTRO (Mexico) recalled that article 15, subparagraph 1 (d), of the Convention, which had been approved by the Committee, provided that the bill of lading should set forth the name of the shipper. That principle having been accepted, it should suffice to say that "shipper" meant the person named as such in the bill of lading.

38. Mr. SMART (Sierra Leone) said that the members of the *ad hoc* Working Group welcomed constructive suggestions for improving the text of the definition, which had been offered as a basis for consideration.

39. Mr. DIXIT (India) said that his delegation had been satisfied with a definition of the term "shipper" proposed by France; other delegations had added material, which they had later disowned, to that definition.

40. The CHAIRMAN suggested that a working group consisting of the representatives of France, India and Sierra Leone should be appointed to consider further a possible definition of the term "shipper", and to report back to the Committee at its next meeting.

41. *It was so decided.*

The meeting rose at 5.30 p.m.

32nd meeting

Monday, 27 March 1978, at 8.45 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.32

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.8, L.22, L.65, L.79, L.130 and Corr.1, L.186, L.190, L.199)

Article 11 (concluded)*

1. The CHAIRMAN invited the Committee to consider the text of article 11 proposed by the *ad hoc* Working Group (A/CONF.89/C.1/L.186), and drew attention to the note at the end of the text.

* Resumed from the 17th meeting.

2. Mrs. RICHTER-HANNES (German Democratic Republic) said that, when the Committee had first considered article 11 (16th and 17th meetings), it had had before it a proposal by the German Democratic Republic (A/CONF.89 C.1 L.90) for the deletion or amendment of the article. The Committee had decided to retain article 11 with certain changes and had set up an *ad hoc* Working Group for the purpose, which had held two meetings. The Working Group had taken the view that a carrier who had undertaken to perform the entire carriage himself should remain responsible until the goods had been delivered at the port of discharge in accordance with article 10, paragraph 1. At the same time, however, the Working Group had felt that the parties should be left free to stipulate explicitly in the contract of carriage that the carrier would not be liable for loss or damage sustained by the goods during that part of the carriage when they were not in his charge, as provided for in article 11, paragraph 1. In document A/CONF.89/C.1/L.186 the *ad hoc* Working Group proposed two amendments to paragraph 1: first, to insert in the opening sentence the words "while remaining responsible to provide for the proper performance of such part", and secondly, to add, after that sentence, a new sentence reading: "Nevertheless, any stipulation limiting or excluding such liability shall be without effect if no legal proceedings can be brought against the actual carrier before a court competent under paragraph 1 or 2 of article 21."

3. By means of the first amendment, the *ad hoc* Working Group had meant to forestall the difficulties that might arise from the fact that the regulations governing forwarding agents varied from country to country by providing that the carrier continued to be liable even after he had delivered the goods, rather as if he were himself the agent. The object of the second amendment to avoid leaving the injured party without redress—a concern which UNCTAD had expressed in commenting on the draft Convention.¹

4. The Chairman had rightly drawn attention to the note at the end of document A/CONF.89 C.1 L.186. The Working Group had considered that the principle laid down in article 11 was liable to be misinterpreted in practice, for, coming under the heading of "Through carriage", the text might give the impression that the principle applied exclusively to that type of transport operation. Accordingly, in order to avoid any possible misinterpretation, and in view of the close connexion between article 10 and 11, the Working Group had preferred to rearrange and consolidate the two articles and to put the paragraphs in the order suggested in the note. However, that was merely a recommendation since the Working Group's terms of reference concerned article 11 only.

5. The CHAIRMAN said that the question of the amalgamation of articles 10 and 11, as suggested by the *ad hoc* Working Group in the note to document A/CONF.89 C.1 L.186, might be referred to the Drafting Committee.

6. Mr. BYERS (Australia) asked whether the purpose of

the first amendment proposed by the Working Group to article 11, paragraph 1, namely to add the phrase "while remaining responsible to provide for the proper performance of such part", was simply to state the obligation that the actual carrier engaged had to be competent, or whether it was intended to make the carrier responsible for acts committed by the actual carrier.

7. Mrs. RICHTER-HANNES (German Democratic Republic) said that the object of the first amendment proposed by the Working Group was to avoid the difficulties which might arise from the national laws of certain countries, such as France, which differed from the provisions of other laws in their treatment of forwarding agents. Broadly speaking, the first interpretation suggested by the Australian representative was the correct one.

8. Mr. CLETON (Netherlands) said that he would have difficulty in accepting the text proposed by the *ad hoc* Working Group. The first amendment was not very clear, for national laws regarding forwarding agents varied so greatly that as yet it had proved impossible to conclude an international convention on the subject. The second amendment introduced a further element of uncertainty, since the parties had to be able to satisfy themselves promptly that it was possible to arrange for through carriage without being obliged to seek legal advice beforehand to determine whether under the Convention carriage by an actual carrier was permissible in the particular case—a situation that would hamper the conclusion of contracts for through carriage.

9. He was satisfied with the UNCITRAL text on the whole, and believed that the text of the *ad hoc* Working Group would simply create fresh complications for the shipper as well as for the carrier.

10. The CHAIRMAN put to the vote the text of article 11 proposed by the *ad hoc* Working Group (A/CONF.89 C.1 L.186).

11. The text was rejected by 28 votes to 21, with 16 abstentions.

12. The CHAIRMAN invited the Committee to consider the amendment to paragraph 1 of article 11 proposed by Japan (A/CONF.89 C.1 L.22), which was identical with the amendment submitted by Greece (A/CONF.89 C.1 L.8).

13. Mr. TANIKAWA (Japan) proposed that the word "named" should be deleted from article 11, paragraph 1, for two reasons. First, if the word was retained the carrier would be most reluctant to agree to perform a carriage on the basis of a through bill of lading because in most cases he could not know in advance the exact name of the actual carrier when several shipping companies offered their services for the second part of the carriage. In such cases, the carrier would be unable to issue a through bill of lading giving the name of the actual carrier, and hence the through bill of lading could hardly be required to state the name.

14. Secondly, if the name of the actual carrier appeared in the through bill of lading and if several shipping companies offered their services for the second leg of the carriage, goods arriving at the port of trans-shipment

¹ TD.B.C.4 ISL.23.

would have to wait for a ship belonging to the line of the named carrier even if another line offered quicker service. That would not be in the interests of the shipper. The Japanese delegation proposed, therefore, that the word "named" should be deleted.

15. Mr. MARCIANOS (Greece) supported the Japanese amendment, which was identical with that submitted by his own delegation, on the grounds that the maintenance of the word "named" would be prejudicial to the shipper. In his delegation's opinion, a through bill of lading served the interests of the shipper, not those of the carrier, for the carrier would prefer to issue a bill of lading covering only that part of the carriage which he performed himself. It was purely for the shipper's benefit that the first carrier issued a bill of lading covering both his own part of the carriage and that of the second or actual carrier, and in the circumstances it was normal that the first carrier should wish to be relieved of responsibility for any loss, damage or delay in delivery which might occur after he had handed over the goods to the next carrier. As the representative of Japan had pointed out, not infrequently when issuing the bill of lading the contracting carrier did not know who the actual carrier was to be. If the word "named" was retained, the principal carrier would have to issue a bill of lading covering carriage solely up to the time when he handed over the goods to the next carrier, and the shipper or his servants or agents would be obliged to make fresh arrangements with the actual carrier at the port of trans-shipment to cover the second leg of the voyage.

16. If the word "named" was deleted there would be little risk that the provisions of article 10 would not cover the carrier, since the rule in paragraph 1 of article 11 was applicable only if the contract of carriage provided explicitly that a specified part of the carriage covered by the contract shall be performed by a person other than the carrier. Consequently, it was not applicable in cases where the bill of lading contained no such explicit provision or where the entire carriage was to be performed by an actual carrier. In his opinion, therefore, the word "named" should be deleted in the interests of the shipper himself.

17. Mr. QUARTEY (Ghana) supported the proposal made by Japan and Greece on the grounds that the carrier should have some latitude, both in his own interest and in that of the shipper, in choosing the actual carrier. The shipper's principal concern was that the goods should be delivered at the port of discharge in good condition and on time.

18. Mr. BYERS (Australia) thought that without the word "named" the terms of paragraph 1 of article 11 would be substantially the same as paragraph 1 of article 10. What differentiated the situations envisaged in the two provisions was that, in article 10, performance of the carriage or a part thereof was entrusted to an actual carrier "whether or not in pursuance of a liberty under the contract of carriage to do so", whereas in article 11 the contract of carriage "provides explicitly that a specified part of the carriage covered by the contract shall be performed by a named person other than the carrier". It was precisely the purpose of article 11 to state expressly

that the carrier could not escape liability under article 10 unless the shipper was aware of the identity of the actual carrier. Without the word "named" the article would therefore become meaningless, since it would exempt the carrier from the rule in article 10.

19. Mrs. RICHTER-HANNES (German Democratic Republic) said that, for the reasons given by the Australian representative, she would oppose the proposals made by the delegations of Japan and Greece.

20. Mr. SELVIG (Norway) likewise considered that the proposal by the Japanese and Greek delegations would completely alter the meaning of article 11; in his opinion it was very important that the identity of the actual carrier should be known.

21. Mr. GUEIROS (Brazil) said that he was unable to accept the proposals made by the Japanese and Greek delegations because in his opinion it would be wrong on the one hand to give the carrier full discretion to choose the actual carrier without notifying the shipper, and at the same time to provide that "the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier".

22. Mr. BENTEIN (Belgium) agreed with the representative of Australia that the word "named" should stand in the text.

23. Mr. DOUAY (France) said that the reason why he also opposed the Japanese and Greek amendments was that they would destroy the balance of the text. Obviously, it would be giving the carrier great latitude not to require him to state the identity of the actual carrier, but conversely the shipper would then be denied the guarantee of knowing who the actual carrier was.

24. Mr. PTAK (Poland) considered that the name of the actual carrier was of no interest to the shipper. The shipper's primary concern was that the goods should arrive at the port of destination in good condition. If they did not arrive in good condition, the shipper would have a claim against the carrier, who would then be compelled to disclose the name of the actual carrier if it was stipulated in the contract of carriage that "the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier", since the last sentence of article 11, paragraph 1, laid the burden of proof on the carrier. Accordingly, the Polish delegation supported the Japanese and Greek amendments.

25. Mr. KERRY (United Kingdom) expressed support for the Japanese proposal. Even if the word "named" was deleted, article 10 would still be clearly distinguishable from article 11, since the latter would be applicable only if the contract of carriage provided explicitly that a specified part of the carriage would be performed by a person other than the carrier, whereas article 10 was much more general. Besides, if the word "named" was allowed to stand, it might become impossible to issue through bills of lading.

26. Mr. CASTRO (Mexico) said that his delegation supported the UNCITRAL text of article 11.

27. Mr. SUMULONG (Philippines) said that, for the

reasons given by the representatives of Australia and Norway, he opposed the deletion of the word "named". That word was intended to protect the shipper and hence should be maintained.

28. The CHAIRMAN put to the vote the Japanese amendment (A/CONF.89/C.1/L.22).

29. The amendment was rejected by 48 votes to 10, with 9 abstentions.

30. Mr. SWEENEY (United States of America), introducing his delegation's amendment (A/CONF.89/C.1/L.65), explained that it affected the first sentence of article 11, paragraph 1, the second sentence remaining unchanged; it did not affect paragraph 1 as a whole as had been mistakenly indicated in the amendment. He added that the words which his delegation proposed to be added to the first sentence should be simply a subordinate clause preceded by a comma and not a sentence preceded by a full stop.

31. He was glad to note that the *ad hoc* Working Group had reproduced the substance of the United States amendment in the proposed version of article 11 (A/CONF.89/C.1/L.186). It was most important that the shipper should know that he could institute proceedings, and against whom, in cases where the carrier disclaimed all responsibility for the period during which the goods were in the charge of an actual carrier. The purpose of the United States amendment was to establish a just balance in article 11.

32. Mr. MARCIANOS (Greece) expressed the opinion that the Committee should not reconsider an amendment that formed part of a document it had already considered and rejected, namely document A/CONF.89/C.1/L.186.

33. Mr. SWEENEY (United States of America) said that the *ad hoc* Working Group had made considerable stylistic changes in his delegation's amendment when introducing it in document A/CONF.89/C.1/L.186. It might even be said that the United States amendment differed in substance from the corresponding provisions proposed by the *ad hoc* Working Group.

34. Mr. KHOO (Singapore) pointed out that the United States amendment touched on only one aspect of the text of article 11 contained in document A/CONF.89/C.1/L.186. Although that document had met with an adverse vote in the Committee, it was conceivable that the United States amendment might find favour with a majority. Consequently, there was a difference between the United States amendment and the text proposed by the *ad hoc* Working Group.

35. Mr. SUMULONG (Philippines) thought that the United States amendment was equitable for all the parties concerned. If the shipper could not institute proceedings against the actual carrier, he should be able to sue the carrier, who would in turn have a right of action against the actual carrier. The United States amendment gave the shipper a necessary safeguard.

36. Mrs. RICHTER-HANNES (German Democratic Republic) said that her delegation would support the United States amendment.

37. Mr. SUCHORZEWSKI (Poland) said that, while

not objecting to the idea underlying the United States delegation's amendment, he considered that delegation's misgivings to be unfounded. Obviously, the actual carrier would also issue a bill of lading, and that bill of lading would be governed by the provisions of the Convention. It followed that no case could arise where the actual carrier would be immune from judicial proceedings under article 21; hence the United States proposal was superfluous.

38. Mr. CASTRO (Mexico) pointed out that the United States amendment contained a provision that was missing from the UNCITRAL text, namely a provision under which the actual carrier himself could be sued. The Mexican delegation therefore supported the amendment under consideration.

39. Mr. SIMS (Canada) likewise supported the amendment, for the reasons given by other delegations. Paragraph 2 of article 11 did not give the shipper sufficient protection in cases where he did not know whom to sue. The United States proposal was moderate and yet would tend to avoid the complications that might arise in the absence of such a provision.

40. In normal cases, the shipper dealt directly with the carrier. He could choose whichever carrier was most convenient for him, after satisfying himself as to the carrier's repute and the jurisdiction in which proceedings could be instituted if necessary. In the case of through carriage, the shipper did not deal with the "named person" but relied on the contractual carrier. Consequently, he was not in a position to make the same checks or to take the same precautions to protect himself. The United States amendment would offer the shipper a certain amount of security, and the Canadian delegation would support it.

41. Mr. DOUAY (France) considered that the United States amendment was unnecessary inasmuch as article 21 established rules of jurisdiction in the case of legal proceedings concerning a contract of carriage. When part of the carriage was performed by an actual carrier, he could be sued under article 10. However, if the United States delegation wished to press its proposal, the French delegation would not oppose it.

42. Mr. MASSUD (Pakistan) said that his delegation did not object to the amendment submitted by the United States.

43. Mr. KHOO (Singapore), seconded by Mr. LAVIÑA (Philippines), thought that the United States amendment expressed the same idea as the second passage added to paragraph 1 in document A/CONF.89/C.1/L.186: a stipulation limiting or excluding the carrier's liability if some event should occur while the goods were in the charge of the actual carrier was valid only if the shipper could bring a claim against the actual carrier. The amendment was not stating the obvious, as some delegations seemed to think, namely that any carrier who undertook to perform part of the carriage could be sued. His delegation therefore supported the United States amendment. If it was accepted, the Drafting Committee should be asked to redraft it in the light of the corresponding provision in document A/CONF.89/C.1/L.186, which was better worded.

44. Mr. NDAWULA (Uganda) endorsed the United States amendment, subject to the replacement of the words "to suit" by the words "to being sued".

45. Mr. LEÓN MONTESINO (Cuba) said he had no objection to the amendment under consideration, but pointed out that the word "contratante" appeared by mistake in the Spanish version between the words "porteador" and "el contrato podrá disponer".

46. Mr. KACIĆ (Yugoslavia) said that the reason why he opposed the amendment was that he failed to see in what situation it would operate. Under the terms of article 21, subparagraph 1 (a), the actual carrier could always be sued at his principal place of business or ordinary residence.

47. Mr. MÜLLER (Switzerland), referring to the Greek proposal for specifying that article 11 was concerned solely with carriage by sea (A/CONF.89/C.1/L.8), said that if the actual carrier referred to in article 11 was necessarily a sea carrier, the qualification in the United States amendment was superfluous. The rules of jurisdiction laid down in article 21 applied to the sea carrier. If article 11 was to be extended to cover the land carrier as well, who was subject to other rules, particularly those relating to jurisdiction, the Swiss delegation would have the strongest reservations about the United States amendment, under which the land carrier might be liable to suit under the rules of jurisdiction established in article 21. Its attitude to the United States amendment would be all the more negative as the application of other international conventions was expressly reserved under article 25.

48. Mr. MARCIANOS (Greece) said that the Committee's unanimous view seemed to be that the expression "through carriage" meant only the carriage by sea and did not cover the land sections of carriage. The Drafting Committee should therefore be asked to insert the words "by sea" after the term "contract of carriage", in paragraph 1 of article 11, as proposed in the Greek amendment (A/CONF.89/C.1/L.8).

49. Mr. GORBANOV (Bulgaria) said he was unable to support the United States amendment because its object, which was to give the shipper the benefit of the jurisdiction clauses of article 21, was achieved in any case by article 11, paragraph 2, under which the actual carrier was responsible in accordance with article 10, paragraph 2. The actual carrier's responsibility was, in fact, self-evident from all the provisions of the convention. Consequently, it was unnecessary to state expressly in article 11 that it was open to the shipper to exercise the rights mentioned in article 21. The United States amendment simply made the wording of article 11 more cumbersome.

50. Mr. SELVIG (Norway) expressed support for the United States amendment, since its purpose was to make it clear that a stipulation whereby the carrier could disclaim liability was valid only if the possibility of bringing suit against him was not excluded.

51. Mr. GUEIROS (Brazil), while agreeing that the substance of the United States amendment was covered by paragraph 2 of article 11, which referred to paragraph

2 of article 10, said his delegation was nevertheless in favour of the amendment on the grounds that it added a useful proviso for the special case of through carriage. A parallel could be drawn between that kind of carriage and the normal kind, but one should not confuse through carriage with multimodal transport, as some delegations had done.

52. The CHAIRMAN put the United States amendment (A/CONF.89/C.1/L.65) to the vote.

53. The amendment was adopted by 43 votes to 17, with 6 abstentions, and referred to the Drafting Committee on the understanding that the Committee would take into account the Greek proposal for adding the words "by sea".

54. The CHAIRMAN invited the Committee to consider the amendment submitted by France (A/CONF.89/C.1/L.79), and asked the representative of France if his delegation intended to press its amendment.

55. Mr. DOUAY (France) explained that the amendment was not substantive but proposed a drafting improvement in the UNCITRAL text. It was not clear why the term "actual carrier" was used in the draft Convention, since the person concerned was the "carrier" or "a named person other than the carrier". His delegation considered it preferable for the words "named carrier" to be used throughout paragraph 1, and for paragraph 2 to specify that the named carrier would be responsible on the same footing as an actual carrier.

56. He would not press the amendment as it was purely a drafting matter, and suggested that it should be referred to the Drafting Committee.

57. The CHAIRMAN invited the Committee to consider the Argentine amendment (A/CONF.89/C.1/L.130 and Corr.1).

58. Mr. RAY (Argentina) explained that the purpose of his delegation's proposal was to ensure that a through bill of lading would not be issued with a clause giving exemption from liability in cases where the contract provided that part of the carriage would not be performed by the carrier himself. The Working Group had prepared a compromise between the UNCITRAL text and his own delegation's proposal, but the compromise text had been rejected. In the circumstances, his delegation could hardly press its proposal; it would therefore prefer to withdraw it, but asked that it should be considered in plenary.

59. The CHAIRMAN said that there was no objection to that procedure.

Article 19 (continued)*

60. The CHAIRMAN explained that Pakistan proposed an amendment (A/CONF.89/C.1/L.190) under which article 19 would contain a new paragraph 7, the principle of which had been accepted by the Committee. The Working Group had prepared a text (A/CONF.89/C.1/L.199) on the basis of the proposal, and that was the text before the Committee.

61. Mr. BYERS (Australia) explained that the original

* Resumed from the 26th meeting.

proposal by Pakistan and the Working Group's text were both intended to lay the burden of proof on the shipper in the case of loss or damage sustained by the carrier as a result of the shipper's fault or negligence, but that the Working Group's text attempted to strike a balance between the positions of the shipper and carrier in allowing them the same period, namely 90 days, in which to give notice of the loss or damage.

62. The CHAIRMAN invited comment on the text proposed by the Working Group.

63. Mr. DOUAY (France) said that although the principle of the proposal had been accepted by the Committee, his delegation was unable to subscribe to it. While it was fair to provide that the shipper who noted damage to his goods must notify the carrier of the loss, damage or delay in delivery within the period specified in article 19, failing which he would lose his right of action, there was no reason for introducing an analogous provision in the case of damage caused by the shipper to the ship, since the ship was not placed in the charge of the shipper in the same way as goods were put in the charge of the carrier. From the legal point of view, the text was meaningless; it was also unrealistic, since damage often remained undiscovered until after delivery, and the carrier would find it very difficult to establish a causal link between the goods and the damage sustained. In that situation there was no such presumption as existed in the case of the carrier, who was presumed to be responsible for the goods and hence for any damage they suffered.

64. The CHAIRMAN pointed out that the Committee had already taken a decision on the principle of the proposal in document A/CONF.89/C.1/L.199.

65. Mr. DOUAY (France) said he hoped that some delegations would think about the weaknesses of the legal basis of the proposal.

66. The CHAIRMAN said that, under rule 31 of the rules of procedure, a decision of the Committee could not be reconsidered unless a two-thirds majority of the members present and voting so wished.

67. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that, before voting on the proposal, members of the Committee should realize its precise implications. Apparently, the intention was to establish a parallel with article 19, paragraph 1, which stated a presumption of fact. The situation was not the same in the new paragraph 7, which was concerned with a presumption of fault, for it provided that, in the absence of notice of loss or damage given by the carrier to the shipper within 90 days, any allegation of negligence on the shipper's part would be estopped. In other words, the burden of proof would be on the shipper—a rule in direct conflict with article 13, under which the burden of proof would be on the carrier, and complicating the shipper's

position in the event of loss or damage sustained by the carrier. Would such a provision correspond to the Committee's wishes?

68. Mr. GONDRA (Spain), associating himself with the objections voiced by the two preceding speakers, said it was unorthodox from the legal point of view to equate the contractual responsibility of the carrier with the non-contractual responsibility of the shipper under article 13 of the draft Convention. A provision having that effect would upset the balance between the positions of the two parties. Moreover, a provision introducing such a principle into a transport convention was without precedent. Surely the Committee should rather endeavour to harmonize the future convention with the other instruments applicable in the same field.

69. Mr. MASSUD (Pakistan) said he appreciated that the positions of carrier and shipper differed, as did their responsibilities. The object of his delegation's proposal had been to establish for the carrier a presumption analogous to that applicable with respect to the consignee under paragraph 1 in cases where notice of loss or damage was not given in good time. Most of the delegations had endorsed the principle, but the issue would be reopened if the text proposed by the Working Group (A/CONF.89/C.1/L.199) was not approved.

70. Mr. MÜLLER (Switzerland) agreed with the representative of France that the proposal of the *ad hoc* Working Group was not acceptable from the legal point of view.

71. Mr. TANIKAWA (Japan) was equally opposed to the proposal since he did not see that it had any legal meaning.

72. Mr. QUARTEY (Ghana) thought that some of the delegations were confusing the text of the proposal with the underlying principle which had already been accepted and could not be challenged, short of reopening the debate.

73. Mr. DOUAY (France), speaking on a point of order, suggested that, since it was the first time that the text of the Working Group had come before the Committee, the matter might be settled by a simple majority vote, as in the case of article 11.

74. Mr. AMOROSO (Italy), supporting the suggestion, said that at the 26th meeting it had been decided to vote later on the definitive text which the Working Group was to prepare on the basis of the Pakistan proposal.

75. The CHAIRMAN said that all the Committee was concerned with at the moment was the proposed text, and if the principle of the amendment was contested by a two-thirds majority vote, another working group would have to be appointed to reconsider the question.

The meeting rose at 10.35 p.m.

33rd meeting

Tuesday, 28 March 1978, at 10 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.33

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.190, L.198, L.199, L.206, L.212)

Article 19 (continued)

Text proposed by the ad hoc Working Group for article 19, paragraph 7 (A/CONF.89/C.1/L.190), in document A/CONF.89/C.1/L.199

1. The CHAIRMAN said that at its 26th meeting the Committee had adopted the principle stated in the text proposed by the *ad hoc* Working Group.

2. Mr. MASSUD (Pakistan), speaking on a point of order, said that the principle could hardly be described as unorthodox from the legal point of view, as some delegations had called it at the preceding meeting. Delegations should refrain from making inappropriate remarks about a principle which had been endorsed by the majority of participants.

3. The CHAIRMAN put to the vote the text proposed by the *ad hoc* Working Group for article 19, paragraph 7 (A/CONF.89/C.1/L.199).

4. The text was rejected by 28 votes to 24, with 8 abstentions.

5. Mr. MASSUD (Pakistan), supported by Mr. GUEIROS (Brazil), pointed out that although the text had been rejected the principle had been endorsed. Accordingly, he proposed that another working group should be appointed to prepare a new text.

6. Mr. SMART (Sierra Leone) said that the Committee would save time if it considered forthwith how to formulate the principle which it had adopted earlier. He thought that, before voting on the text, the Committee might have been well advised to consider possible amendments; at its 32nd meeting the Committee had admittedly considered the principle, but had not considered the actual text.

7. Mr. CASTRO (Mexico) agreed that at the preceding meeting the discussion had dealt more with the principle than with the text of paragraph 7. Since the Committee's time was running out, however, it should instruct a working group to prepare an acceptable text for that paragraph.

8. Mr. SELVIG (Norway) said that the Committee itself would hardly be able to prepare the text of paragraph 7, for if it attempted to do so it would be faced with a large

number of oral amendments. In his opinion, the Committee could ill afford to use the little time available to it for questions of detail, and hence a working group should be set up to prepare another version of the new paragraph 7.

9. Mr. MASSUD (Pakistan) said that, before appointing another working group, the Committee should study the text of paragraph 7 in order to give guidance to the working group and indicate in what respects the text was defective and how it might be improved. Failing such guidance, the working group would not be able to improve the text, which would again be rejected.

10. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee agreed to establish another working group composed of the representatives of the following countries: France, India, Pakistan, Philippines, Poland, Sierra Leone and Sweden.

11. Mr. DOUAY (France) said that, since his delegation opposed the principle set forth in paragraph 7, it would not be able to make a positive contribution to the formulation of the paragraph and hence would prefer not to be a member of the working group.

12. The suggestion by the Chairman for the establishment of an *ad hoc* Working Group composed of the delegations of India, Pakistan, the Philippines, Poland, Sierra Leone and Sweden was adopted.

Text proposed by the ad hoc Working Group for article 19, paragraph 8, in document A/CONF.89/C.1/L.198

13. Mr. CASTRO (Mexico), introducing the text prepared by the Working Group, said that its object was to answer the apparent need to spell out the meaning of certain terms used in article 19; the term "carrier", for example, as defined in article 1, meant in the strict sense the person who concluded the contract of carriage. Furthermore, the terms of article 3 provided to some extent for an exception to the definitions in article 1 for the sake of ensuring a general and uniform interpretation.

14. Mr. WISWALL (Liberia) and Mr. NSAPOU (Zaire) said that they could not agree to the proposed text without further explanations concerning the words "other officer of the ship", for notice could not be given to the ship's radio officer or to the ship's engineer.

15. Mr. HERBER (Federal Republic of Germany), speaking as a member of the Working Group, explained that the Group had not meant to define the functions of the various officers on board ship, because those functions varied from one country to another. The intention was to ensure that the shipper or the consignee would find on board the ship the person authorized to receive the notice. Consequently, the words "other officer of the ship" meant

any officer on board, since the radio officer, for example, could refer the shipper or the consignee to the competent officer.

16. Mr. MORENO PARTIDAS (Venezuela) said that he shared the view of the representative of Liberia that the proposed text did not reflect the practice usually followed on board ships. He suggested that the words which had been queried should be replaced by some such language as "or the person acting as the master of the ship", for it was hard to visualize how a radio officer or an engineer could accept the notice.

17. Mr. CASTRO (Mexico) said that the Working Group had taken account of practice. The idea suggested by the representative of Venezuela, while acceptable, might perhaps be better expressed by the phrase "or another officer of the ship appointed by him".

18. Mr. NSAPOU (Zaire) said that in his opinion that oral amendment made sense, for the officer in question would, in fact, be acting on the orders of the master of the ship.

19. Mr. DIXIT (India) proposed that, in order to identify the person who delivered the goods to the carrier, the words "or to a person acting on the shipper's behalf" should be replaced by the words "or to the shipper or to his agent acting on his behalf".

20. Mr. AMOROSO (Italy) thought that the problem would be settled if the words "or other officer of the ship" were dropped, for in the master's absence there was always one officer in charge of the ship. Alternatively, he suggested that the Drafting Committee might be asked to consider replacing the words which had given rise to difficulties by wording along the following lines: "or any other officer acting in his stead".

21. Mr. WISWALL (Liberia), supported by Mr. KHOO (Singapore), said that the Mexican and Italian amendments might cause the shipper some difficulties if, in accordance with the Mexican amendment, the shipper gave notice to an officer who was not duly authorized to receive it, thus invalidating the notice, and if, in accordance with the Italian amendment, the master was not on board. He proposed the following wording: "or other officer in charge of the ship".

22. Mr. SWEENEY (United States of America) said that, although that proposal was, in his opinion, satisfactory, he wished to point out that the last lines of the paragraph under consideration would depend on the outcome of the work of the Working Group established to draft a new paragraph 7. If the new paragraph 7 was not adopted, paragraph 8 would no longer be necessary.

23. Mr. AMOROSO (Italy) and Mr. CASTRO (Mexico) supported the amendment proposed by Liberia.

24. The CHAIRMAN said he took it that the Committee agreed to the oral amendment by Liberia to insert the words "in charge" between the words "other officer" and the words "of the ship".

25. Mr. AMOROSO (Italy) suggested that the wording of the paragraph should be amended slightly by deleting the word "other" before the word "officer".

26. The CHAIRMAN said that since several amendments had been proposed it would be advisable to instruct

another small working group to revise the wording of the new paragraph 8 of article 19. The group would be composed of the representatives of the Federal Republic of Germany, Italy, India and Liberia.

27. *It was so decided.*

*New article 22 bis (concluded)**

28. The CHAIRMAN pointed out that the proposal by the *ad hoc* Working Group concerning article 22 *bis* consisted of two parts; he invited the Committee to consider first the text proposed in paragraph 1.

29. Mr. DIXIT (India) introduced the text proposed by the *ad hoc* Working Group established to consider the new article 22 *bis* (A/CONF.89/C.1/L.206), which had originally been proposed in document A/CONF.89/C.1/L.189 by eight delegations of countries members of CMEA which were parties to a convention on arbitration. The provisions of articles 21 and 22 of the draft Convention conflicted with the provisions of that convention on arbitration, which contained mandatory rules for the settlement of disputes between the parties, including disputes connected with the carriage of goods by sea. The proposed text provided that three conditions must be fulfilled in order for the new article to operate: the other convention had to relate specifically to matters dealt with in articles 21 and 22 of the Convention under discussion; it had to contain mandatory provisions; and the dispute must have arisen exclusively between parties having their principal places of business in States members of such other convention.

30. Mr. RAY (Argentina) said that he did not understand why the proposed article would apply exclusively to conventions in force and not to conventions which might be concluded in future.

31. Mr. MÜLLER (Switzerland) said that his delegation, which had some reservations concerning the new provision because of the bilateral treaties concluded by Switzerland with many other countries on the recognition and implementation of judicial decisions relating to civil and commercial matters, feared that the new provision might prevent the States parties to such treaties from giving effect to the Convention. He proposed, therefore, either that the word "multilateral" should be added between the words "any other" and the word "convention", or that the word "expressly" should be added after the word "relating", since such bilateral treaties did not deal expressly with the same matters. Unless the provision was so amended, States parties to such bilateral treaties would have to insert a saving clause at the end of the Convention stating that the new provision would be inoperative so far as those instruments were concerned.

32. Mr. SELVIG (Norway) pointed out that the provisions of articles 21 and 22 were referred to in the proposed new article because they were, on the whole, merely procedural in nature, with the exception of article 22, paragraph 4, which stated that "The arbitrator or arbitration tribunal shall apply the rules of this Convention." In his opinion, the provision contained in that

* Resumed from the 30th meeting.

paragraph should be excluded from the scope of the new article 22 *bis*. Accordingly, he suggested that the words "With the exception of the provisions of article 22, paragraph 4", might be added at the beginning of the proposed text.

33. Mr. BURGUCHEV (Union of Soviet Socialist Republics), speaking as the author of the original proposal, said that he could accept the Swiss representative's proposal to insert the word "multilateral" between the words "any other" and the word "convention" and the Norwegian representative's proposal to add to the new provision a phrase expressly excluding article 22, paragraph 4. He suggested that it might be left to the Drafting Committee to formulate an appropriate text incorporating those two amendments.

34. Mr. BYERS (Australia), Mr. NILSSON (Sweden) and Mr. KHOO (Singapore) supported the two amendments which had just been accepted by the delegation of the Soviet Union.

35. The CHAIRMAN said he took it that the Committee endorsed the text proposed in paragraph 1 of document A/CONF.89/C.1/L.206, with the amendments proposed by Switzerland and Norway. It would be for the Drafting Committee to incorporate those amendments in the text.

36. *It was so decided.*

37. The CHAIRMAN drew attention to paragraph 2 of document A/CONF.89/C.1/L.206, in which the *ad hoc* Working Group proposed that the new text should be inserted as paragraph 2 of article 25. He suggested that the Committee should refer that proposal likewise to the Drafting Committee.

38. *It was so decided.*

Article I (continued)*

Definition of "shipper"

39. Mr. DIXIT (India), introducing the report of the *ad hoc* Working Group that had been instructed to draft a possible definition of the term "shipper", said that the proposed definition had been drafted in the light of the general context of article I and in the light of the definition of the term "carrier", without adding to or taking anything away from the rights and obligations of shippers and carriers provided for in the Convention (first part of the sentence). In addition, the text was so worded as to cover every situation in which the shipper would have to be identified, including those in which it was not the shipper himself but some other person who delivered the goods to the carrier, for example, where the manufacturer had sold dangerous goods "ex factory" and the buyer had instructed a third person to ship the goods. Accordingly, the shipper—the buyer—was defined as any person "by whom or in whose name or on whose behalf" the goods were actually delivered to the carrier (second part of the sentence).

40. Mr. SELVIG (Norway) said that the definitions of shipper proposed earlier had given rise to difficulties because some delegations had considered the conse-

quences of those definitions to be unreasonable. The problem was that many diverse situations could arise in practice. It could be solved if the definition embraced the entire group of persons to be considered but was flexible enough to cover practical situations. The draft definition of shipper contained in document A/CONF.89/C.1/L.212 met those requirements and his delegation therefore endorsed it.

41. Mr. KACIC (Yugoslavia), agreeing with the representative of Norway, said that he endorsed the draft definition of shipper proposed by the *ad hoc* Working Group.

42. Mr. MARCIANOS (Greece) noted that the term shipper had always meant "any person by whom or in whose name or on whose behalf" goods were delivered to the carrier, as was stated in the second part of the definition of the *ad hoc* Working Group. The problem had arisen because, after the term shipper had cropped up in the definition of carrier contained in article I, it had been decided to define the term shipper itself. The solution that had been found was a definition whose second half was correct, but whose first half was tautologous and hence unworthy of being included in a legal text. Although his delegation would not insist on the deletion of the first part of the proposed definition, it wanted to make it quite clear that it had had nothing to do with the drafting of a legal text that was inconsistent with the principles of formal logic.

43. Mr. BYERS (Australia) said that the proposed definition would make it possible to identify the shipper in any of the many situations that arose in practice. His delegation would therefore be prepared to endorse it.

44. Mr. KERRY (United Kingdom) considered that the proposed definition was neither desirable nor necessary in the draft Convention, but he would not oppose it. He suggested, however, that, because a contract of carriage by sea might take effect after the goods had been delivered to the carrier, the words "in performance of the contract" should be replaced by the words "in relation to the contract".

45. Mr. GUEIROS (Brazil) said that he endorsed the draft definition proposed by the *ad hoc* Working Group. After having heard the statement by the representative of the United Kingdom, however, he wondered whether that representative could accept a formula in which the words "in performance of the contract" would be replaced by the words "for performance of the contract".

46. Ms. OLOWO (Uganda) said that, despite its shortcomings, in particular those pointed out by the representative of Greece, the definition by the *ad hoc* Working Group met a need and her delegation therefore endorsed it.

47. The CHAIRMAN inquired whether, in order to speed up the work and the reproduction of the texts necessary for the plenary meetings of the Conference, the Committee could accept the amendments to the proposed definition and agree not to refer it to the Drafting Committee.

48. Mr. DIXIT (India) said that if the definition submitted by the *ad hoc* Working Group and the proposed

* Resumed from the 31st meeting.

amendments were referred to the Drafting Committee, they would receive priority.

49. Mr. AMOROSO (Italy) pointed out that in the *ad hoc* Working Group's definition, the term "shipper" meant any person by whom the goods were actually delivered to the carrier for the purpose of the performance of the contract of carriage. Could the firm through which the shipper sent his goods to the carrier—and by which the goods were actually delivered to the carrier—be considered as the shipper?

50. Mr. SMART (Sierra Leone), in reply to the representative of Italy, pointed out that in the example cited the firm would simply be delivering the goods to the carrier on the shipper's behalf.

51. Mr. CLETON (Netherlands) said that his delegation could not accept the definition proposed by the *ad hoc* Working Group and did not think it was possible to find a sound definition of the term shipper. In its opinion, a definition of shipper would only add to the confusion, not only about the meaning of the term shipper itself, but also about the definition of the term actual carrier. His delegation would not, therefore, be able to take part in the preparation of a legal text defining the term shipper.

52. Mr. POPOV (Bulgaria) said that, in order not to delay the Committee's work and in order to settle the question, his delegation would vote for the adoption of the definition proposed by the *ad hoc* Working Group when that definition was put to the vote.

53. Mr. CASTRO (Mexico) pointed out that the list of definitions in article 1 was preceded by the words "In this Convention", which meant either that the definitions were listed for the purpose of the Convention or that they were definitions designed to give effect to the provisions of the Convention. Any country was of course free to formulate reservations and to try to bring its law into line with the provisions of the Convention. If changes in

practice later called for the amendment of the definition of shipper, there was nothing to prevent such an amendment from being introduced. His delegation therefore endorsed the definition presented by the *ad hoc* Working Group.

54. The CHAIRMAN said that he would put to the vote the definition of shipper proposed by the *ad hoc* Working Group.

55. Mr. AMOROSO (Italy), speaking on a point of order, proposed that the vote on the definition should take place in two stages. First, the Committee would vote on the first part of the definition, reading: "'Shipper' means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier". Subsequently, it would vote on the second part of the definition, which several delegations found confusing. If the second part was rejected and the first part was adopted, there would still be a definition of the term "shipper" and that would satisfy delegations which thought that such a definition was indispensable in article 1.

56. Mr. SMART (Sierra Leone), speaking on a point of order, said that the proposal by the representative of Italy was an oral proposal and therefore inadmissible. Besides, its only purpose was to invite the Committee to vote again on a draft definition which it had already rejected. Either the Committee adopted the definition of shipper proposed by the *ad hoc* Working Group, possibly amended in the manner suggested by the representative of the United Kingdom, or it rejected that definition. It could not, however, accept the Italian proposal, which he considered unproductive.

57. The CHAIRMAN said that the Committee would resume the debate at the next meeting.

The meeting rose at 12.10 p.m.

34th meeting

Tuesday, 28 March 1978, at 2.25 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1/SR.34

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (continued) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.4, L.48, L.74, L.117, L.122, L.123, L.184, L.211, L.212)

Article 1 (concluded)

1. The CHAIRMAN reminded the Committee that, at

the close of the previous meeting, the Italian representative had requested a separate vote on the two parts of the proposed definition of "shipper" (A/CONF.89/C.1/L.212). An objection having been made to that request by the representative of Sierra Leone, he would first put to the vote the motion for division, pursuant to rule 37 of the rules of procedure.

2. The motion was rejected by 33 votes to 14, with 10 abstentions.

3. The CHAIRMAN then put to the vote the proposed definition of "shipper" (A/CONF.89/C.1/L.212), as amended by the United Kingdom proposal (see 33rd

meeting, para. 44) to replace the words "in performance of" by "in relation to".

4. The proposal, thus amended, was adopted by 36 votes to 10, with 12 abstentions.

5. Mr. POPOV (Bulgaria), speaking in explanation of vote, said that his delegation had voted in favour of the proposed definition but persisted in the view that it was a legal conundrum.

6. Mr. KACIĆ (Yugoslavia) said that, as a consequence of the adoption of the definition of "shipper" and in order to avoid any ambiguity, his delegation would suggest that paragraph 1, subparagraph (d) of article 15 be redrafted to include the principal place of business of the shipper. The Committee might wish to refer that suggestion to the Drafting Committee.

7. The CHAIRMAN said that, owing to the lack of time at the Committee's disposal, he was unable to accept any oral amendments at that stage. The point could, if necessary, be raised in plenary.

Title of the Convention

8. The CHAIRMAN invited the Committee to consider the amendment proposed by the USSR delegation to the title of the Convention (A/CONF.89/C.1/L.74).

9. Mr. LEBEDEV (Union of Soviet Socialist Republics), introducing the amendment (A/CONF.89/C.1/L.74), said his delegation considered that the existing title was too broad, since the draft Convention did not cover all matters relating to the carriage of goods by sea. It therefore proposed, as one possible alternative, that the title should be amended to read: "Convention on the Unification of Certain Rules relating to the Carriage of Goods by Sea."

10. Mr. MEGHJI (United Republic of Tanzania) supported the existing title. It was important to adopt a forward-looking approach and to leave room for the scope of the Convention to be broadened, which, he understood, would be one of the objectives of future review conferences. A narrower title of the type proposed would preclude that possibility.

11. Mr. SUMULONG (Philippines) said that his delegation found the existing title to be brief yet comprehensive. It was therefore unable to support the Soviet proposal.

12. Mr. SUCHORZEWSKI (Poland) said his delegation considered that the title proposed by the Soviet delegation would more accurately reflect the content of the Convention, which did not cover all the rules governing maritime transport.

13. Mr. CHRISTOV (Bulgaria) said that, for the reason given by the Polish representative, his delegation also supported the Soviet proposal.

14. Mr. GUEIROS (Brazil) observed that it was difficult for jurists to embody in a code of law all the rules applicable to its subject matter. That was why, in civil law countries, many codes of law had been supplemented and amended by statutes and case law. Consequently, the fact that the Convention did not cover all the rules was not, in his view, sufficient reason for changing its title. A more restrictive title of the type suggested could result in courts

and arbitration tribunals creating parallel rules. He therefore favoured the retention of the existing title, which would indicate the scope of the subject matter covered by the Convention, even if the rules it embodied were not exhaustive.

15. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that, since his delegation's amendment did not have the support of the majority, he would withdraw it.

16. The CHAIRMAN then invited the Committee to consider the amendment to the title of the Convention proposed by the delegation of Turkey (A/CONF.89/C.1/L.184).

17. Mr. ÖZERDEN (Turkey) said his delegation proposed that the title of the Convention be amended to read: "Convention on the Carriage of Goods by Sea between Ports in Two Different States". The reasons for the proposal were given in document A/CONF.89/C.1/L.184.

18. Mr. GUEIROS (Brazil) suggested that the title of the Convention should be amended to read: "Convention on the International Carriage of Goods by Sea". That would be more concise than the wording proposed by the Turkish delegation, and it would also be in line with the titles of other conventions.

19. Mr. CASTRO (Mexico) supported that suggestion.

20. The CHAIRMAN said that he was unable to entertain oral proposals at that stage. Noting that there were no speakers in support of the Turkish proposal, he said he took it that it was rejected.

Article 5, paragraphs 1 to 4 (continued), article 6, paragraphs 1 and 3 (continued)**, article 8 (concluded)** and article 26*

21. The CHAIRMAN, introducing the revised draft of paragraphs 1 to 4 of article 5; paragraphs 1 and 3 of article 6; article 8; and article 26 (A/CONF.89/C.1/L.211), said that it reflected a general compromise arrived at after lengthy and delicate negotiations in the Consultative Group which had been appointed following the discussions in plenary and in the Committee. The Consultative Group had been composed of representatives from each regional group, who had consulted the other members of their particular group before expressing their views. To that extent, therefore, the compromise reflected the general feeling of all members of the Conference.

22. Referring specifically to articles 5, 6 and 8, which together embodied the broad principles on which the Convention was based, he first pointed out that, in article 5, subparagraph 4 (a) of the French text, the word "chargeur" should read "transporteur". The basic rule governing liability in the case of fire had been maintained, but the carrier's liability had been extended to cover cases where loss, damage or delay in delivery resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to

* Resumed from the 10th meeting.

** Resumed from the 13th meeting.

put out the fire and avoid or mitigate its consequences (subparagraph 4 (a) (ii)).

23. In article 6, the twin criterion of weight and shipping units had been taken as the basis for limitation of liability. The Special Drawing Right (SDR), as defined by the International Monetary Fund, had been selected as the unit of account (article 26).

24. Article 8 introduced a substantial change by providing that the carrier would not be entitled to the benefit of the limits of liability under article 6 if it was proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier only.

25. The last paragraph of document A/CONF.89/C.1/L.211 included a statement to the effect that the liability of the carrier under the Convention was based on the principle of presumed fault or neglect. That meant that, as a general rule, the burden of proof would rest on the carrier. In certain cases, however, the provisions of the Convention could modify that rule.

26. As questions of principle had already been discussed in detail, he would suggest that the Committee proceed to a vote.

27. Mr. MONTGOMERY (Canada), speaking in explanation of vote before the vote, pursuant to rule 36 of the rules of procedure, said that his delegation was unable to accept the compromise proposal and in particular the revised version of article 6 (Limits of liability) and article 8 (Loss of right to limit liability), which, in its view, did not afford a satisfactory balance between the interests of shippers, on the one hand, and of carriers, on the other. It would have been able to support the UNCITRAL text and also the compromise proposal, had there been an appropriate increase in the SDR limits of liability. Such an increase, however, had been rejected by the Consultative Group. His delegation also considered that the economic issues underlying the legal regime had not been properly considered. It would therefore vote against the proposal.

28. Mr. SUMULONG (Philippines) pointed out that paragraph 4 of the UNCITRAL text of article 6 (paragraph 3 of the alternative UNCITRAL text) had been omitted from the compromise text.

29. Mr. VIGIL-TOLEDO (Peru) said that his delegation, while recognizing the efforts made by the Consultative Group to arrive at a compromise solution, could not support the text for article 5, paragraphs 1 and 4, proposed in document A/CONF.89/C.1/L.211. Because of its status as a developing country and its geographical situation, Peru had a vital interest in expanding its merchant fleet. Those interests were not well served by the proposed text.

30. First, no provision was made for defence on the grounds of error of navigation. Such an exclusion could possibly be understood, from a strictly theoretical point of view, on the grounds of juridical coherence, since the general rule was that a principal should be held liable for the fault of his agents. However, the economic consequences of such an exclusion for developing countries such as Peru seemed to have been overlooked. Furthermore, it seemed inconsistent, from the same juridical standpoint, to make an exception, in the case of fire, in

favour of the carrier: it would surely have been more consistent to allow error of navigation to stand as a defence, and to include the question of fire under the general rules of liability.

31. Moreover, the proposed provisions would entail a shift in risk coverage from cargo insurance to liability insurance; cargo insurance could be arranged in Peru itself, but liability would have to be insured abroad, with a resultant drain on the country's foreign-exchange reserves.

32. Lastly, it should be noted that the burdens imposed by provisions such as those in the revised article 5, paragraph 1, would fall more heavily on emergent merchant fleets, such as that of Peru, than on merchant marines which were technologically advanced and highly proficient.

33. Mr. DIOP (Senegal) asked for clarification of an apparent inconsistency in the proposed text for article 6, subparagraph 1 (b), which, on the one hand, referred to an amount equivalent to two and a half times the freight payable for the goods delayed and, on the other, to the total freight payable under the contract of carriage.

34. Mr. SELVIG (Norway) said, in reply to the representative of Senegal, that the UNCITRAL text for article 6, subparagraph 1 (b) contained a blank space, for insertion of a figure representing a proportion of the freight payable, followed by two alternative phrases which had been included provisionally pending a decision as to whether, in the case of delay in delivery, the freight payable for the goods delayed or the freight payable under the contract of carriage should be the basis for the limit of liability. It had been suggested during the drafting of document A/CONF.89/C.1/L.211 that the limit should be twice the freight payable for goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea; it had subsequently been agreed that the multiple of the freight payable for the goods delayed should be two and a half instead of two.

35. Mr. CLETON (Netherlands) said that his delegation was prepared to support the texts contained in document A/CONF.89/C.1/L.211, in a spirit of conciliation which he hoped would be demonstrated by other delegations, including those which felt that the compromise offered did not satisfy their requirements.

36. His delegation, like the Philippine delegation, wondered whether paragraph 4 had inadvertently been omitted from the text relating to article 6.

37. Mr. VIS (Executive Secretary of the Conference) said that document A/CONF.89/C.1/L.211 contained only the provisions to be discussed with a view to achieving compromise texts for the articles in question.

38. Mr. REISHOFER (Austria) regretted that his delegation, for the reasons expressed by the Canadian and Peruvian representatives, could not support the text proposed in document A/CONF.89/C.1/L.211. Moreover, it had been opposed from the outset to the reversal of the burden of proof in case of fire.

39. Mr. MASSUD (Pakistan) said that his delegation greatly appreciated the efforts which had been made in order to achieve the compromise texts offered in document A/CONF.89/C.1/L.211. Despite the dissatisfaction ex-

pressed by some delegations, it was clear that the proposals before the Committee would still leave the carrier in a favourable position. His delegation thought that there was an anomaly in the proposed text of article 6, subparagraph 1 (b) in that, if two fifths of the goods covered under a contract of carriage were delayed in shipment, a delay in shipment of the remaining goods covered by that contract would not cause the carrier to incur any further liability.

40. Mr. BENTEIN (Belgium) said that his delegation regretted the exclusion from the proposed provisions of a clause relating to defence on the grounds of error of navigation, and found the arguments in support of that exclusion questionable. Nevertheless, his delegation was prepared to accept the compromise solution offered in document A/CONF.89/C.1/L.211, in the hope that it would be possible to achieve a convention acceptable to the majority of States Members of the United Nations and thereby guarantee the legal security of shipper and carrier. Even if, as a result, some countries had to face greater increases in transport costs than they had expected, the entire shipping community would bear those costs and indeed should be prepared to do so as a fair price for legal security. His delegation associated itself with the Netherlands representative's remarks on the need for compromise, and it hoped that the Committee would seriously consider the possibility of including in the Final Act a declaration of intention in respect of article 5, paragraph 1.

41. Mr. HONNOLD (United States of America) said that his delegation could support the compromise solution proposed. It wondered, however, whether it might still be possible for the Committee to discuss technical or drafting questions relating to the texts concerned, on the understanding that the substance of those texts would not be affected.

42. The CHAIRMAN said that, as he envisaged the procedure to be followed, the Committee should vote on the compromise texts as a whole as contained in document A/CONF.89/C.1/L.211, and all other proposals relating to the provisions concerned would thereupon be deemed to be withdrawn. Despite the lack of time, he would try as far as possible to enable delegations wishing to refer to the compromise texts to do so, provided that no amendments of substance were introduced.

43. Mr. CARRAUD (France) said that, although his delegation had not been altogether satisfied with the UNCITRAL text, it had been ready to support it in a spirit of compromise; it was likewise prepared to accept the texts currently proposed, which were the result of a praiseworthy effort, especially by those countries which, unlike France, did not include both shippers and carriers among their nationals, to achieve a compromise. Although a consensus appeared unlikely, there was clearly a large measure of agreement among the members of the Committee—an encouraging sign of the wish to achieve international understanding on as many points as possible.

44. Turning to a drafting matter, his delegation felt that there was a lack of consistency in the texts of article 5, subparagraphs 4 (a) (i) and 4 (a) (ii); the former contained the words "if the claimant proves", whereas the latter

contained the expression "which is proved by the claimant".

45. Mr. PORTELA (Argentina) said that, although his delegation fully appreciated the difficulties faced by the Consultative Group, it nevertheless shared the dissatisfaction expressed by the Peruvian delegation with regard to the proposed compromise texts, and especially article 5, paragraph 1, and could not support the proposals in document A/CONF.89/C.1/L.211.

46. Mr. BYERS (Australia) felt that the proposed texts could be regarded as generally satisfactory, bearing in mind the diversity of interests involved. His delegation was prepared to support those proposals.

47. Mr. EYZAGUIRRE (Chile) said that his delegation appreciated the efforts made by the Chairman and the Consultative Group to reconcile all the various points of view when preparing the compromise texts, although, in the view of his delegation, the UNCITRAL text itself represented a compromise with regard to all aspects of the revision of the Hague Rules. However, the texts currently before the Committee contained some discrepancies. For example, it had been difficult to determine the monetary limits of liability while the general provisions relating to liability were still under discussion; in the light of subsequent amendments to the liability provisions—for example, the matter of burden of proof in case of fire—the amounts currently proposed were, in his delegation's view, too low. In addition, the deletion of subparagraphs 1 (b) and 1 (c) of article 8 would have extremely adverse consequences for the shipper. Therefore, the Chilean delegation could not support the proposals contained in document A/CONF.89/C.1/L.211.

48. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation had given its support to the proposals currently before the Committee, in a spirit of co-operation and because it was convinced that they were sound. Nevertheless, it felt that the texts could have been further improved by the inclusion of a reservation or condition with respect to nautical fault. He asked for his comments to be reflected in the report.

49. The CHAIRMAN said the Soviet representative's remarks would be reflected in the summary record of the meeting.

50. He invited members of the Committee to propose any possible drafting amendments to the provisions included in the "package deal".

51. Mr. AMOROSO (Italy) suggested that the words "a claimant" at the end of article 5, subparagraph 4 (b) of the revised text should be replaced by the words "the claimant" and that the remaining words in the sentence should be deleted, as the surveyor's report should be made available on demand both to the carrier and to the claimant so that they could be fully informed of the situation.

52. *It was so decided.*

53. Mr. GORBANOV (Bulgaria) said his delegation would like the words "for exemption from liability" to be inserted after the words "the burden of proof" in the second sentence of the wording which it was proposed to include in the report of the First Committee to the plenary

Conference (A/CONF.89/C.1/L.211, page 4).

54. Mr. MALELA (Zaire) said that his delegation considered that the Bulgarian suggestion involved a matter of substance rather than of drafting and hence would call into question the "package deal" worked out.

55. Mr. GORBANOV (Bulgaria) said that since his delegation's suggestion was regarded as involving a matter of substance, he would withdraw it.

56. Mr. KHOO (Singapore) congratulated the Chairman on the text contained in document A/CONF.89/C.1/L.211, which successfully reconciled divergent views. He would remind all those who had hoped to advance more rapidly that progress took place in stages. What had been achieved was a modest but still considerable improvement with respect to the existing régime. A compromise could not satisfy everyone, and his delegation therefore accepted the "package" proposed in said document.

57. Mr. SMART (Sierra Leone) said he was grateful to the Chairman for his efforts to bring about a settlement. There were many aspects of the "package deal" that were not in the interests of his country, but the Conference was dealing with issues on which there would inevitably be a conflict of interests, and compromise was bound to be a matter of give and take. The preservation of the present régime would bring further hardship to shippers, whereas the adoption of the Convention would not worsen their position, and might even improve it a little. His delegation was prepared to accept the "package deal" for the sake of international understanding, although it was to be hoped that, when the time came to review the Convention, greater justice would be done to the shipper.

58. Like the representative of Canada, he felt that the limits of liability established in article 6, subparagraph 1 (a), of the proposed text were not very satisfactory. Without wishing to propose an oral amendment, he felt that it would be desirable to increase slightly the number of units of account provided for in that subparagraph.

59. With respect to article 6, subparagraph 1 (b), he had not clearly understood the explanation given by the representative of Norway in response to the request for clarification made by the representative of Senegal, and would illustrate his difficulty by giving a specific example. If 1,000 United States dollars had been paid in freight for a shipment which had then been considerably delayed, would the sum received by the consignee in compensation for the delay be \$US 1,000 or \$US 2,500? If the answer was \$US 1,000, there was an error in subparagraph 1 (b), since it stated that the consignee would be entitled to two and a half times the freight payable for the goods delayed. The drafters had no doubt had in mind a case of split shipments, with some vessels arriving on time and others being delayed. In such a case, if the bill of lading set forth the entire amount of the freight, the liability of the carrier for the goods delayed would be assessed on a *pro rata* basis. In the case of a single shipment the situation would be different.

60. Mr. HENNI (Algeria) congratulated the Chairman on his efforts in working out a compromise text. With regard to the statements made against that text, his

delegation had been most receptive to the arguments advanced by the representative of Peru, since Algeria was a shipper country endeavouring to build up its merchant marine, which now had a tonnage of over 1.5 million dead-weight tons. However, his delegation was firmly convinced that the global interests of the third world should be given precedence over the interests of any particular country, and therefore appealed to the delegations of Peru and other Latin American countries to accept the compromise solution for the sake of the long-term interests of the third world as a whole. Although his delegation would have liked the "package deal" to be more comprehensive, it realized that no compromise could ever be wholly satisfactory and was therefore prepared to give the proposals before the Committee its full support.

61. Mr. CASTRO (Mexico) said that, while it was true that the limits of liability proposed within UNCITRAL had been much higher and the UNCITRAL text for article 8 had done greater justice to the legitimate desire of the developing countries to achieve a better life for their peoples, the only result of maintaining unyielding opposition to the compromise would be to preserve the present régime, which was certainly no fairer than the solution being offered. His delegation therefore supported the compromise text and associated itself with the delegation of Algeria in appealing to the developing countries to eschew national interests in favour of those of the third world as a whole.

62. The CHAIRMAN invited the Committee to vote on the text of the articles contained in document A/CONF.89/C.1/L.211, as amended by the representative of Italy.

63. *The text of the articles contained in document A/CONF.89/C.1/L.211, as amended, was adopted by 64 votes to 3, with 9 abstentions.*

Article 5, paragraphs 5 to 7 (continued)

64. The CHAIRMAN said that paragraphs 5 to 7 of article 5 were not included in the "package" in document A/CONF.89/C.1/L.211 and were therefore open to amendment. He invited the Committee to consider first the amendments to paragraph 5 proposed by Greece (A/CONF.89/C.1/L.4), the USSR (A/CONF.89/C.1/L.117) and Mauritius (A/CONF.89/C.1/L.122).

65. Mr. MARCIANOS (Greece), introducing the proposal in document A/CONF.89/C.1/L.4, said that the Committee should make provision for special arrangements between the carrier and the shipper in the case of carriage of live animals, since the circumstances of such carriage were too diverse to be amenable to treatment under a general rule.

66. Mr. MUCHUI (Kenya) and Mr. SANYAOLU (Nigeria) opposed the proposal.

67. The CHAIRMAN, noting that there were no speakers in favour of the Greek proposal, said he would consider it to have been rejected.

68. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the second part of paragraph 5 was virtually meaningless because, if the carrier produced

proof that damage was due to special risks, he had *ipso facto* proved that he was not at fault. His delegation's proposal (A/CONF.89/C.1/L.117) would therefore delete entirely the words "and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributable to such risks" and replace the words "was so caused" by "was caused by such risks".

69. Mr. POPOV (Bulgaria) and Mr. MARCIANOS (Greece) supported the Soviet proposal.

70. The CHAIRMAN said that, in the absence of further support for the Soviet proposal, he would consider it to have been rejected.

71. Mr. BOOLELL (Mauritius) withdrew the proposal contained in document A/CONF.89/C.1/L.122. Consequently, he also withdrew the Mauritian proposal regarding article 7, which was dependent on the decision on the former proposal (see 14th meeting, para 2).

72. The CHAIRMAN invited the Committee to consider next the amendments to paragraph 6 proposed by Bulgaria (A/CONF.89/C.1/L.48) and by the USSR (A/CONF.89/C.1/L.117).

73. Mr. GORBANOV (Bulgaria) said that the effect of his delegation's proposal (A/CONF.89/C.1/L.48) to delete the words "from reasonable measures to save" would be to eliminate the distinction between measures to save human lives, on the one hand, and measures to save property, on the other. The reference to "reasonable" measures would put the carrier in the impossible position of having to decide in an emergency whether the action he proposed to take to safeguard property, as was his duty, would in fact be judged to have been reasonable.

74. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation's proposal (A/CONF.89/C.1/L.117) to delete the word "reasonable" from paragraph 6 was based on similar considerations: the expression would create problems in situations in which a ship was in difficulties and both human life and property were equally at risk. The ship's master would have the burden of deciding whether the measures he proposed to take were reasonable, knowing that he could be held liable if they were judged not to be reasonable. There should be only one criterion, namely that loss, damage or delay had resulted from measures to safeguard life or property at sea.

75. Mr. MARCIANOS (Greece) said that he supported the Bulgarian proposal for the reasons stated by the Bulgarian and USSR representatives.

76. Mr. SUCHORZEWSKI (Poland) welcomed the Bulgarian and USSR proposals.

77. Mr. SMART (Sierra Leone) said that the intention of the drafters had been to guard against loss of or damage

to cargo as the result of unreasonable safety measures, as for example, the indiscriminate jettisoning of cargo in an attempt to capture a poisonous snake loose on board. Without making a formal proposal, he suggested that the difficulty might be met if the word "reasonable" were moved to an earlier part of the sentence.

78. Mr. KHOO (Singapore) recalled that the placing of the word "reasonable" had been decided only after considerable discussion in UNCITRAL. He supported the retention of the text as it stood.

79. Mr. WAITITU (Kenya) and Mr. SANYAOLU (Nigeria) agreed with the representative of Singapore that the UNCITRAL text should be retained.

80. Mr. POPOV (Bulgaria) assured representatives that there were no considerations behind his delegation's proposal other than those set forth in document A/CONF.89/C.1/L.48. In view of the lack of support he would withdraw the proposal, albeit with some misgivings. On the basis of the text as it stood, carriers might withhold aid to those in need, and refrain from taking what would in fact be perfectly reasonable measures to save property at sea.

81. Mr. MARCIANOS (Greece) said that, as the representative of a maritime nation of age-old tradition, he could only deplore the abrogation of a moral obligation which had existed over the centuries to give aid in cases of distress at sea.

82. Mr. PTAK (Poland) said that his delegation fully shared the views expressed by the Bulgarian representative.

83. The CHAIRMAN said that, in view of the variety of opinions which had been expressed, he would put the USSR proposal concerning article 5, paragraph 6 (A/CONF.89/C.1/L.117), to the vote.

84. *The proposal was rejected by 32 votes to 11, with 21 abstentions.*

85. Mr. PORTELA (Argentina), referring to the amendment proposed by his delegation to paragraph 7 of article 5 (A/CONF.89/C.1/L.123), said that the apportionment of fault in the event of loss, damage or delay in delivery resulting from multiple causes implied a value judgement and could not properly be done in the manner provided for in that paragraph. Either the final phrase of paragraph 7, beginning with the words "provided that", should be deleted altogether or, if it was maintained, a semicolon should be placed after the word "neglect" and the rest of the sentence should then read "the court shall determine the proportion accounted for by the different causes."

The meeting rose at 5.15 p.m.

35th meeting

Tuesday, 28 March 1978, at 5.15 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A/CONF.89/C.1 SR.35

Consideration of articles 1–25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on “reservations” in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A/CONF.89/5, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89/C.1/L.58 and Corr.1, L.78, L.95, L.123, L.125, L.138, L.203, L.207, L.214)

Article 5 (concluded)

1. Mr. SWEENEY (United States of America) withdrew his delegation's amendment (A/CONF.89/C.1/L.58 and Corr.1).
2. Mr. PALMER (United Kingdom) said that he was ready to withdraw his delegation's drafting amendment to paragraph 7 (A/CONF.89/C.1/L.78).
3. The CHAIRMAN invited debate on the Argentine delegation's amendment to paragraph 7 (A/CONF.89/C.1/L.123).
4. Mr. RAY (Argentina) said that the effect of the existing text of paragraph 7, which dealt with situations where there were two contributory causes of loss and where the share of responsibility attributable to each had to be determined, was to impose a burden of proof that was very difficult to discharge. In the absence of precise determination, it would be arguable that in certain cases the carrier was wholly exempt from liability. If a situation of that kind was to be covered, there were only two possible solutions: either the final passage requiring proof of the amount of the loss or damage attributable to the fault or neglect of the carrier should be deleted, or it should be replaced by the text proposed by the Argentine delegation.
5. Mr. CLETON (Netherlands) said that the representative of Argentina had raised a valid point. If the text of the draft Convention was compared with that of other conventions, and in particular with article 17, paragraph 5, of the CMR Convention on the Contract for the International Carriage of Goods by Road,¹ it could be seen that the language of the latter instruments was much more moderate. Admittedly, the carrier would find it hard to prove the exact amount of the loss that was not attributable to a fault on his part, and preferably the share of responsibility attributable to each of the causes that had contributed to the loss or damage should be determined by the court. Accordingly, the Netherlands delegation would support the Argentine amendment or, if that amendment was not approved, a provision modelled

on that of article 17, paragraph 5, of the CMR Convention on the international carriage of goods by road.

6. Mr. SUCHORZEWSKI (Poland), supported by Mr. MÜLLER (Switzerland) and Mr. KACIĆ (Yugoslavia), likewise spoke in favour of the Argentine proposal, which was reasonable and in conformity with practical needs.

7. Mr. BYERS (Australia) said he was unable to share that opinion. In the case of contributory causes of damage, the only appropriate solution was that offered by the existing text, since the carrier alone was able to indicate the exact share of responsibility for which he was accountable. The amendment proposed by Argentina would have the effect, indirectly, of imposing on the shipper a burden of proof which he could not possibly discharge. For those reasons the Australian delegation would oppose the Argentine amendment.

8. Mr. CHRISTOV (Bulgaria) said that in his opinion the Argentine proposal was equitable and sound; it used language that occurred in other transport conventions and hence was in keeping with the main objective of the draft Convention, which was to harmonize the different instruments on the carriage of goods. He therefore supported that proposal.

9. Mr. RAY (Argentina), replying to the objections expressed by the representative of Australia, pointed out that article 5, paragraph 7, was based on the supposition that two simultaneous elements had contributed to the damage and that the shipper had no evidence as to the carrier's share of responsibility. The purpose of the Argentine proposal was simply to clarify the situation by leaving it to the court to determine the exact share of responsibility attributable to each of the factors. There was no question of imposing any special obligation either on the shipper or on the consignee.

10. Mr. SELVIG (Norway) associated himself with the comments of the representative of Australia. The type of situation described in article 5, paragraph 7, could occur in practice, and even if the final phrase was deleted, the share of the damage due to neglect on the part of the carrier and that resulting from other causes would have to be determined by reference to municipal law.

11. Mr. SWEENEY (United States of America) associated himself with the objections voiced by the representatives of Australia and Norway. In his opinion, the existing paragraph 7 had been drawn up with care and corresponded with the legal situation in many countries. It would therefore be regrettable to delete or amend the final phrase.

12. Mrs. RICHTER-HANNES (German Democratic Republic) stated that her delegation likewise would prefer the existing text of paragraph 7 to stand.

¹ United Nations, *Treaty Series*, vol. 399, p. 189.

13. The CHAIRMAN put the Argentine amendment (A/CONF.89/C.1/L.123) to the vote.

14. *The amendment was rejected by 33 votes to 14, with 9 abstentions.*

15. The CHAIRMAN invited debate on the proposal submitted jointly by Singapore and the United States (A/CONF.89/C.1/L.126) for the addition of a new paragraph 8 to article 5.

16. Mr. HONNOLD (United States of America) said that the joint proposal, the object of which was to define more precisely the meaning of the expression "servants or agents of the carrier", might seem self-evident and hence unnecessary to some delegations, for the law in most countries provided that a carrier who entrusted the performance of part of the obligations resulting from a contract of carriage to an independent firm, such as a stevedoring company, could not, by maintaining that such a firm was not his agent, disclaim the responsibility that he owed under article 4 by reason of having taken over the goods. The principle was analogous to the rule in article 10 of the draft Convention which dealt with the situation where the carriage or some part of the carriage had been entrusted to an actual carrier. However, in some legal systems, a doubt might arise because stevedoring companies were not considered as agents of the carrier but as independent contractors. The United States delegation wished to stress that in its opinion such legal systems were not compatible with the structure of the Convention or with the basic principle of the unification of the various legal systems. It was for that reason that it was proposing to add an extra paragraph to article 5, and it hoped that a large number of delegations would support the proposal in the interests of clarity and harmonization.

17. Mr. SELVIG (Norway) said that he shared the views of the representative of the United States. As interpreted by the Norwegian delegation, the expression "servants or agents of the carrier" in the Convention should be understood to mean all persons whose services were employed by the carrier in performing the carriage or executing the contract of carriage. Consequently, his delegation saw no difficulty in interpreting that expression in the manner proposed by the United States. However, the expression was employed not only in article 5 but in many other articles of the draft Convention, which might create difficulties. For example, in article 4, to which reference was made in the proposal, there was a mention in paragraph 3 not only of the servants or agents of the carrier but also of those of the consignee; the question then arose whether, in the light of the proposed addition to article 5, the similar expression used in article 4 should be given a restricted meaning. To avoid those difficulties, the Committee might consider either drawing up a definition which would apply to all the articles of the Convention and which would be inserted in article 1, or else making it clear in the records of the Conference that the members of the Committee construed the expression "servants or agents of the carrier" to mean all persons whose services were used by the carrier.

18. Mr. SANYAOLU (Nigeria) pointed out that there were close links between article 5 and articles 6 and 8, which were the subject of a package deal adopted by the

Committee by a large majority. The United States proposal affected the limits of the carrier's responsibility as specified in article 8, paragraph 1, and went beyond the provisions adopted in the package deal. The Nigerian delegation was therefore unable to accept it.

19. Mr. GUEIROS (Brazil) considered that the definition of "servants or agents of the carrier" given in the United States proposal was much too broad. It was also superfluous in view of the package deal agreed upon by the Committee.

20. Mr. MORENO-PARTIDAS (Venezuela) said that the United States proposal contained in document A/CONF.89/C.1/L.126 was interesting; but he pointed out that the law on the subject varied from country to country. In Venezuela, a stevedoring company could not be considered as an agent of the carrier in the sense of the definition proposed in the United States amendment. Moreover, that definition would have a bearing on other articles of the Convention. As articles 5, 6 and 8 formed the subject of a package deal, a definition of the expression "servants or agents of the carrier" could hardly be added in article 1. It would nevertheless be useful to indicate in the draft Convention that all the acts performed by companies employed by the carrier, such as stevedoring companies, involved the carrier's responsibility.

21. Mr. MASSUD (Pakistan) said that he interpreted the expression "servants or agents of the carrier" to include also stevedoring companies. However, the representative of the United States had rightly pointed out that under certain legal systems the carrier could escape his responsibility by contending that such companies were "independent contractors" and not his agents. For that reason, his delegation was able to support the United States proposal, but at the same time, in order to avoid any difficulties with regard to the other articles, it would be desirable that the definition contained in that proposal should appear in article 1.

22. Mr. SUCHORZEWSKI (Poland) said he was unable to support the United States proposal because it would destroy the package deal adopted by the Committee with regard to articles 5, 6 and 8 (A/CONF.89/C.1/L.211), and would create problems of interpretation in other articles of the draft Convention. He drew attention in particular to article 7, which provided that the servant or agent of the carrier could avail himself of the same defences as the carrier himself. It was arguable, furthermore, under the definition proposed by the United States, that the shipper was also an agent of the carrier.

23. Mr. CHRISTOV (Bulgaria) said that the definition proposed by the United States should appear at the beginning of the Convention, since the expression it sought to define appeared in a large number of articles. As it stood, the text proposed by the United States might give rise to difficulties of interpretation, and the Bulgarian delegation was unable to support it.

24. Mr. KERRY (United Kingdom) said that he was unable to support the United States proposal because it did not cover all the articles of the draft Convention. Besides, it dealt only with the period of performance of the contract of carriage and not with acts previous to the

carriage. In practice it could happen that the carrier might employ an independent contractor to fit out a ship. Under some legal systems the contractor would be considered as an agent of the carrier, under others as an independent contractor, a situation which would be at variance with the essential purpose of the Convention, which was to achieve uniformity in all legislations. Lastly, in those cases where the United States definition would be applicable it would be too wide since it would in fact cover all the provisions concerning the actual carrier. It would be for the national courts to adjudicate in each specific case, and it was unnecessary to include such a definition in the Convention.

25. Mrs. RICHTER-HANNES (German Democratic Republic) said that in her country there was no need for a definition like that proposed, since under the law all persons whose services were employed by the carrier were regarded as his "agents". On the other hand, the definition might be useful in the common law countries, and it deserved support as it tended to promote the uniformity of the national laws dealing with carriage.

26. Mr. VALLEJO (Colombia) said he was unable to accept the United States proposal since in Colombia independent contractors, such as stevedoring companies, came under the control of the State, which had a monopoly of their services. Consequently, the carrier had no freedom of choice and still less could he control the activities of such companies in Colombia. Under the Convention being considered, the carrier was liable for acts performed by his agents only if he could control them.

27. The CHAIRMAN said that, since all the delegations that had spoken, except the German Democratic Republic, had opposed the United States proposal, he took it that the proposal had been rejected by the Committee. He drew the attention of the Committee to the proposal submitted by the Netherlands for the addition of a new paragraph to article 5 (A.CONF.89 C.I L.95).

28. Mr. CLETON (Netherlands) said that his delegation had made its proposal in order to fill what it considered a gap in the Convention, namely the lack of a provision concerning the method of calculating the amount of the compensation due in respect of damage to goods. The provision which his delegation proposed to fill the gap was similar to one which occurred in other conventions and established objective criteria. The proposal was that the amount of compensation should be calculated by reference to the value of the goods at the place and time they were discharged. Such a rule would be consistent with the law in many countries. A like provision occurred in the 1968 Brussels Protocol to amend the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924, and he believed that the adoption of the proposal should not raise any problems.

29. Mr. WISWALL (Liberia) said that the Committee had recognized that the carrier was exposed to increased risks. In the light of the effects of the Netherlands proposal on contracts of insurance, in the sense that the

insurer would be able to know exactly how much compensation would be payable in case of damage, the Liberian delegation considered the proposal useful and would support it.

30. Mr. GUEIROS (Brazil) said it might be plausible to calculate the amount of compensation according to the current market price or the commodity exchange price, but he failed to see how the normal value of goods of the same kind and quality could form the basis of the calculation.

31. Mr. RAY (Argentina) said he could support the Netherlands proposal, which was in line with a principle adopted in many countries and was based on the 1968 Protocol.

32. Mr. CASTRO (Mexico) subscribed to the remarks of the preceding speaker.

33. Mr. CARRAUD (France) said that it was desirable to include in the Convention a provision concerning the method of calculating the value of goods lost or damaged, and for that purpose the criteria of the 1968 Protocol should be followed. The expression "the normal value of goods of the same kind and quality" was indeed contestable, but it appeared also in the Protocol. The French delegation could therefore support the Netherlands proposal.

34. Mr. BYERS (Australia) said he was unable to support the Netherlands proposal. From his own experience he could say that the clause in the Protocol on which the Netherlands text was modelled had proved difficult to operate in practice. The Australian delegation considered that, within the limits of the liability incurred, the compensation should, as a general rule, cover the total amount of the loss or damage suffered. The criteria indicated in the proposal could lead to an arbitrary estimation which would not enable the shipper to recover the whole of his loss.

35. Mr. MORENO-PARTIDAS (Venezuela) said that a clause providing that "the normal value of goods of the same kind and quality" should be used for determining compensation and should not give rise to serious problems, since products similar to the goods in question could be found on the local market. For example, for certain kinds of imported cereals an approximate price could be fixed by reference to a staple foodstuff.

36. Mr. PTAK (Poland) said that the Netherlands proposal would be very useful, particularly in the case of full compensation. In the absence of such a provision, the assessment of the value of the goods could give rise to disputes.

37. Mr. SANYAOLU (Nigeria) said he was unable to support the Netherlands proposal for two reasons. First, article 5 was concerned solely with the basis for the carrier's liability, and secondly, the Netherlands proposal did not take all the factors into account.

38. Mr. GORBANOV (Bulgaria) likewise doubted whether the proposal would be acceptable. The problem was a crucial one in civil law and one on which learned writers held different opinions. For example, the point in time taken into account for the purpose of calculating the value of the damaged goods might vary from one legal

system to another: it might be the time when the damage was suffered, or the time when legal proceedings were instituted or even the time of the court's ruling. The Bulgarian delegation considered therefore that the problem should be settled only by arbitration and by the national courts.

39. Mr. AMOROSO (Italy) said that at first sight the Netherlands proposal might seem unnecessary since, as the representative of Bulgaria had pointed out, the question it dealt with could be settled under civil law. The proposal had the merit, however, of facilitating relations between the carrier and the shipper and promoting uniformity in the compensation procedure. The Italian delegation could therefore support it.

40. Mr. BREDHOLT (Denmark) expressed support for the new provision proposed by the Netherlands because Denmark, as a party to the 1968 Brussels Protocol, had embodied a like provision in its national legislation which had not given rise to any difficulties. He considered, therefore, that the provision should form part of the future Convention.

41. Mr. VALLEJO (Colombia) said he would be able to accept the Netherlands proposal on condition that it was expressly stated that the proposed method of calculation would not affect the limits of liability already adopted.

42. Mr. MARTONYI (Hungary) said he was unable to support the Netherlands proposal, for the shipper suffered not only a pecuniary loss—the value of the goods—but also incurred other outlays, such as the freight. In his opinion, the Committee had taken sufficient account of the interests of both parties by agreeing on limits of liability based on the weight and the shipping unit. He was therefore firmly opposed to any further limitation of liability which would go beyond the limits established in the package deal.

43. Mr. NILSSON (Sweden) expressed support for the provision proposed by the Netherlands, which had its counterpart in the 1968 Brussels Protocol and in various national laws relating to maritime transport. In his opinion, the inclusion of a provision of that kind in the Convention would tend to unify the method of calculating compensation for loss of or damage to goods.

44. He noted, however, that the Netherlands text referred only to article 5, paragraph 1, whereas the proposed method of calculation should also be applied in the case of loss or damage due to fire. Perhaps the proposed provision should refer also to the new subparagraph 4 (a) of article 5 which had been adopted as part of the package deal.

45. Mr. CLETON (Netherlands) said that his delegation had not meant to limit its proposal to the situation described in article 5, paragraph 1, or to exclude from its scope loss or damage caused by fire. It had considered that the provision concerning fire related to just one particular aspect of the general rule stated in article 5, paragraph 1. It would be a purely drafting matter to add a reference to the provision concerning fire in the text proposed by his delegation.

46. To reassure the representative of Colombia, he stressed that the Netherlands proposal in no way con-

flicted with the provisions of article 6 concerning limits of liability. Contrary to what the representative of Hungary had said, the proposal would not limit the amount of compensation payable by the carrier. As a matter of fact, if the freight was not already included in the value of the goods calculated according to the current market price, it would be taken into account separately in the same way as other consequential losses.

47. The Netherlands proposal could not, therefore, affect the package deal. Its only purpose was to facilitate the calculation of the amount of compensation in respect of the value of the goods, without in any way limiting that amount.

48. Mr. SMART (Sierra Leone) said he would be unable to support the Netherlands proposal, for that provision seemed out of context in article 5, which dealt only with the basis of liability. Nor would its right context be article 6, for it was contrary to the spirit of the package deal. Its effect would be to reduce the limits of liability fixed by the package deal, because the amount of the compensation was always less when it was calculated on the basis of the value of the goods.

49. If, however, the true purpose of the Netherlands proposal was to facilitate the calculation of the value of the goods, he would be in favour of keeping only the second sentence, which he considered acceptable, and deleting the first sentence, which disregarded other expenditure resulting from the material loss of the goods, as had been pointed out by the representative of Hungary.

50. Mr. CLETON (Netherlands) pointed out that the question raised by the representative of Hungary was answered in article 5, paragraph 1. It was in the light of that paragraph that the Netherlands proposal should be interpreted.

51. The CHAIRMAN put the Netherlands proposal (A/CONF.89/C.1/L.95) to the vote.

52. The proposal was adopted by 28 votes to 23, with 15 abstentions.

53. Mr. SELVIG (Norway) said that he had voted for the Netherlands proposal on the understanding that it related only to the calculation of compensation with respect to the value of the goods and did not prejudice in any way the possibility of the shipper's recovering, in addition, compensation for other losses and damage sustained.

54. Mr. NILSSON (Sweden) associated himself with the explanation of vote given by the Norwegian representative.

55. Mr. NSAPOU (Zaire) said that he had abstained in the vote on the Netherlands proposal because under that text the amount of compensation was to be calculated by reference to the value of the goods at the place and time of their discharge. That method of calculation might be valid for exports but was not applicable to imports, since currencies varied in value from one country to another. The Drafting Committee might perhaps improve the wording of the text.

Article 6 (continued)

56. The CHAIRMAN invited the Committee to consider

the amendment to article 6, subparagraph 2 (a), submitted by Denmark, Finland, India, Norway, Sweden and the United States of America (A/CONF.89/C.1/L.138).

57. Mr. SELVIG (Norway) explained that as the Convention would also cover documents of carriage other than the bill of lading, it was necessary to specify in article 6, subparagraph 2 (a), that if a document of carriage other than a bill of lading stated the number of packages or units in a container, pallet or similar article of transport used for grouping goods, that number should also be taken into account in calculating the limit of liability under article 6, paragraph 1. The proposed amendment (A/CONF.89/C.1/L.138) was based on the corresponding article in the 1968 Brussels Protocol. It would fill a gap that was all the more serious in that documents of carriage other than bills of lading were acquiring increasing importance in international trade.

58. Mr. KHOO (Singapore), Mr. GANTEN (Federal Republic of Germany), Mr. QUARTEY (Ghana) and Mr. GORBANOV (Bulgaria) supported the amendment in document A/CONF.89/C.1/L.138.

59. The CHAIRMAN said that, in the absence of objections, he would take it that the amendment was adopted.

60. *It was so decided.*

61. The CHAIRMAN invited the Committee to consider the amendment to article 6, paragraph 4, submitted by the Soviet Union (A/CONF.89/C.1/L.203).

62. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that the object of the amendment was to supplement article 6, paragraph 4, by proposing the addition of a sentence to the effect that, where the value of the goods declared by the shipper was entered in the bill of lading and exceeded the limit of liability provided for under paragraph 1 of that article, the value could be considered as fixed by mutual agreement between the shipper and the carrier with a view to raising the carrier's limit of liability, on condition of course that the declaration corresponded to the actual value of the goods. A provision to the same effect occurred in the 1924 Brussels Convention and was applied in practice in many countries.

63. Mr. GORBANOV (Bulgaria) supported the amendment proposed by the USSR. It was a justifiable assumption that where the parties specified the value of the goods in the bill of lading the reason was precisely that they had intended to set the limit of liability for the carrier above that provided for in the Convention.

64. Mr. MÜLLER (Switzerland) said he could not support the amendment under consideration. Under article 6, paragraph 4, the carrier and the shipper could agree on a limit of liability higher than that provided for in paragraph 1 of that article. From the standpoint of commercial practice, it would be very dangerous to treat any reference to the value of the goods in a bill of lading as an agreement of that kind. The price of the goods, which was fixed between seller and buyer, was frequently mentioned in the bill of lading for administrative and particularly customs purposes, but the value agreed upon between carrier and shipper was never mentioned. Nor

would any such entry mean that the parties intended to raise the limit of liability. If a reference to the value of the goods entered in the bill of lading was regarded as implying an increase in the limit of liability, the carrier would charge freight *ad valorem*, whereas the shipper would be satisfied with the insurance on cargo and with the limits of liability established in the Convention. To regard each and any reference to the value of the goods as an agreement to raise the limit of liability would be prejudicial to trade and at variance with the true intentions of the parties.

65. He might possibly agree to a rule of the kind envisaged in the proposal by Mauritius (A/CONF.89/C.1/L.127), which was much more restrained since it provided that a declaration of value would constitute only *prima facie* evidence.

66. Mr. BYERS (Australia) thought that the proposal by the Soviet Union merited close consideration because it raised a practical point.

67. Mr. CASTRO (Mexico) stressed that under article 6, paragraph 4, it was open to the parties to raise the limits of liability; the provision was, therefore, an exception to the generality of the Convention. The incorporation of the Soviet Union amendment would prejudice their freedom of negotiation. Moreover, the Committee had just adopted a provision establishing a criterion for calculating compensation. What would happen to that provision if the Soviet Union's amendment was adopted? Unless a convincing explanation was given, his delegation would not be able to accept the amendment in question.

68. Mr. NOVOA IGUZZUQUÍZAR (Cuba) endorsed the Soviet amendment on the grounds that it reflected the common practice whereby a shipper who wished to raise the limit of liability stated the value of the goods in the bill of lading.

69. The CHAIRMAN, noting that the Soviet Union's amendment (A/CONF.89/C.1/L.203) was very similar to an amendment proposed by Mauritius (A/CONF.89/C.1/L.127), suggested that the two delegations should confer with a view to working out a joint proposal for submission in the course of the meeting.

70. *It was so decided.*

71. Mr. HENNI (Algeria), introducing his delegation's amendment to article 6, paragraph 4 (A/CONF.89/C.1/L.125), explained the rationale of the amendment. Algeria was a developing country, whose foreign trade was conducted on a more or less monopolistic basis and which dealt with shipowners governed by the rules of free competition. Where Algerian shippers managed to take advantage of that situation to obtain a higher limit of liability from one shipowner than from another, they should not be charged higher freight rates. That was the object of the Algerian proposal.

72. In view of the late hour and the fact that the Committee was running behind schedule, his delegation offered to withdraw its proposal if no other developing country delegation wished it to be pressed to a vote.

73. The CHAIRMAN said that in the circumstances he would take it that the Algerian amendment (A/CONF.89/C.1/L.125) could be considered as withdrawn.

74. *It was so decided.*

*Article 9 (concluded)**

Paragraph 4

75. The CHAIRMAN said that article 9, paragraph 4, was one of the provisions that had been held in abeyance pending the outcome of the consultations on the package deal. Inasmuch as the package deal had materialized, it appeared that the reference to article 8 in article 9, paragraph 4, could stand.

76. *Article 9, paragraph 4, was adopted and referred to the Drafting Committee.*

*Article 19 (concluded)***

Paragraph 5

77. The CHAIRMAN said that the Committee had postponed a decision on article 19, paragraph 5, because the United Kingdom delegation had proposed the deletion of the reference to delay. Since that reference had been maintained in the package deal (A/CONF.89 C.I.L.211), the paragraph in question was not to be amended.

78. *Article 19, paragraph 5, was adopted and referred to the Drafting Committee.*

Paragraph 7

79. The CHAIRMAN recalled that a working group composed of the representatives of India, Pakistan, the Philippines, Poland, Sierra Leone and Sweden had been set up to improve the draft text prepared by another *ad hoc* working group (A/CONF.89 C.I.L.199) on the basis of a Pakistan proposal (A/CONF.89 C.I.L.190). The new working group had prepared a text which was to be found in document A/CONF.89.C.I.L.214.

80. Mr. MASSUD (Pakistan), introducing the new text on behalf of the *ad hoc* Working Group, said that the words "the occurrence causing such loss or damage" had been replaced by the words "the occurrence of such loss or damage" since the occurrence which caused the loss or damage would no doubt precede them. In the English text, the word "such" at the beginning of the paragraph had been replaced by the word "the", and the words "shall be" had been replaced by the word "is" for stylistic reasons. The *ad hoc* Working Group had unanimously adopted the text proposed in document A/CONF.89/C.I.L.214.

81. Mr. DIXIT (India), speaking as a participant in the *ad hoc* Working Group, considered that the rule in the paragraph under consideration was both just and equitable. Article 19 stated first the fundamental principle that the consignee had to give the carrier notice of loss or damage within a certain period in order to be able to institute proceedings against him later, if appropriate. That principle was recognized by every legal system. It was only logical that the shipper, for his part,

should wish to be certain that he could not be held liable once the goods had been delivered. That was the reasoning behind the proposed provision. Within the space of 90 days after the date on which the loss or damage had occurred, or after the delivery of the goods, the carrier must notify the shipper of any damage or loss. The failure to give such notice constituted *prima facie* evidence. In the opinion of the *ad hoc* Working Group, the 90-day period was a reasonable one for the purpose of notice, taking account of the specific circumstances.

82. Mr. MORENO-PARTIDAS (Venezuela) said that the Committee had already approved the principle that proceedings could only be instituted if the notice referred to in the paragraph under consideration had been duly given. That principle was sound, but his delegation was not entirely satisfied with the text prepared by the *ad hoc* Working Group. The carrier, if he notified the shipper within the specified time-limit that he would be making a claim against him, had to furnish evidence of loss or damage sustained through the fault or neglect of the shipper or his servants or agents. After the expiry of the deadline, the presumption was that the carrier had not sustained any loss, and the burden of proof would then be on him. In the final analysis, the carrier's position was the same whether or not he gave notice within the stated time-limit, whereas the basic principle in the paragraph was that notification was a condition *sine qua non* for the institution of proceedings. As it stood, the proposed provision was not fully consistent with that principle.

83. Mr. KALPIN (Union of Soviet Socialist Republics) said that in his delegation's opinion the rule in the paragraph under consideration should not be added to article 19. The *ad hoc* Working Group appeared to have gone much too far in protecting the rights of the shipper. In fact, the rule in the proposed new text would recoil on the shipper, since it tended to weaken the general rule regarding the liability of the shipper laid down in article 12. Article 12 did not raise a presumption of fault or neglect on the part of the shipper but, on the contrary, raised a presumption against the shipper's liability since it placed the burden of proof on the carrier. The proposed new paragraph, on the other hand, raised the presumption, if the carrier failed to give the shipper notice of loss within 90 days, that no loss or damage had been sustained due to the fault or neglect of the shipper. The two provisions were therefore inconsistent. Under article 12, the presumption that the shipper was not at fault became operative as from the moment when damage was found, irrespective of whether the carrier had given notice or not, whereas under the proposed new paragraph there would be no such presumption until after the expiry of 90 days without notice. That rule would manifestly not benefit the shipper, and for that reason his delegation considered it would be wrong to add paragraph 7 to article 19.

84. Mr. KHOO (Singapore) supported the text proposed by the *ad hoc* Working Group, which was a considerable improvement on the earlier texts. Unlike the representative of the Soviet Union, he saw no conflict between article 12 and the proposed new paragraph. Article 12 laid down the general principle of the shipper's liability, whereas the proposed paragraph was concerned only with the notice

* Resumed from the 15th meeting.

** Resumed from the 33rd meeting.

of loss or damage to be given to the shipper. The new text was in keeping with paragraphs 1 and 2 of article 19. None of the delegations which had opposed paragraph 7 of that article had criticized the rule laid down in paragraphs 1 and 2. It was difficult to understand why objections had been raised to a similar rule that would favour the shipper. His delegation strongly supported the text proposed by the *ad hoc* Working Group and considered that it was not even necessary to refer it to the Drafting Committee.

85. Mr. WISWALL (Liberia) commended the excellent work done by the *ad hoc* Working Group. Yet, however elegant the language, the delegations opposed to the principle stated in the paragraph would continue to regard it as debatable. That being so, the matter would have to be settled in plenary. The text should be voted upon without further delay and should in no case be referred to the Drafting Committee.

86. Mr. SMART (Sierra Leone) said he could not see any conflict between article 12 and the paragraph under consideration. Article 12 provided that, in case of fault or neglect on the part of the shipper, he was responsible for damage sustained by the carrier. Paragraph 7 of article 19 stated that the carrier should notify the shipper within 90 days and that, in the absence of such notice, he would be presumed not to have sustained any damage. As none of the delegations that had spoken against that provision had criticized its wording, he thought that the Chairman could assume that the Committee approved it.

87. Ms. OLOWO (Uganda) said that her delegation supported the text of the *ad hoc* Working Group.

88. Mr. MARCIANOS (Greece) observed that the Committee apparently supported the text. As the principle laid down in it had already been accepted, the Committee should now endorse the wording proposed by the *ad hoc* Working Group, and when the question was considered by the Conference in plenary each delegation could raise whatever objections it wished to either the principle or the wording.

89. Mr. GUEIROS (Brazil) said that, after listening to the comments of the representative of the Soviet Union, he had serious doubts about the soundness of the provision under consideration. Some of the principles would need to be carefully reconsidered. What would happen, for instance, if the shipper took no action after having duly received notice within 90 days? Would the carrier institute proceedings? In that event, the onus would be on the shipper to prove, under the Convention, that the goods had been shipped in good condition and that there had been no fault on his part. Unless the *ad hoc* Working Group could clear up those points satisfactorily, his delegation would be compelled to abstain from voting on the proposed new text.

90. Mr. NSAPOU (Zaire) urged that the proposed text be put to the vote. The final decision would be taken by the plenary.

91. The CHAIRMAN put to the vote the text of article 19, paragraph 7, proposed by the *ad hoc* Working Group (A/CONF.89/C.1/L.214).

92. The text was adopted by 25 votes to 22, with 19 abstentions.

Article 21 (concluded)*

93. Mr. SMART (Sierra Leone), speaking on behalf of the *ad hoc* Working Group dealing with article 21, subparagraphs 2 (a) and 4 (c), introduced the amendment proposed by the Working Group (A/CONF.89/C.1/L.208). In response to a question asked by his delegation at the Committee's 29th meeting, it had been explained that the term "removal" should be taken to mean not only the removal of an action to a different court in the same country but its removal to a court in another country as well. The question was important in the context of article 20, concerning the time limitation of actions, for the view had been expressed that, if an action was removed to a court in another country, fresh proceedings might have to be instituted.

94. The *ad hoc* Working Group set up to examine the matter, a Group which had consisted of the representatives of Liberia, Sierra Leone and the United States of America, proposed that article 21, subparagraph 4 (c) should be amended by the addition of the phrase "or to a court in another country, in accordance with paragraph 2 (a) of this article". Worded in that way, the provision should allay the misgivings expressed by some delegations with regard to the application of article 20. From the opening words "For the purpose of this article" of the proposed provision, it was clear that the rule would apply exclusively to article 21.

95. Mr. CASTRO (Mexico) commended the proposal and said that his delegation supported it unreservedly.

96. Mr. WISWALL (Liberia) said he too was in favour of the proposal. He hoped that the Drafting Committee would replace the word "removal" in article 21 by the word "reinstitution", which covered the notions of "removal", "transfer" and "change of venue".

97. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee approved the text proposed by the *ad hoc* Working Group for article 21, subparagraph 4 (c), and agreed to refer it to the Drafting Committee, with the comments made by the representative of Liberia.

98. It was so decided.

Article [] Reservations

99. The CHAIRMAN invited the representative of France to introduce his delegation's amendment to the draft article on reservations.

100. Mr. DOUAY (France) said that his delegation was submitting its amendment contained in document A/CONF.89/C.1/L.207 on a provisional basis only, because it hoped that the plenary Conference would agree to add to article [Y] the paragraph concerning entry into force which appeared in the annex to that document. If it did so, the reservations clause would be unnecessary. But, if the addition to article [Y] was not approved, France

* Resumed from the 29th meeting.

would be obliged to formulate reservations in order to leave itself free not to denounce the 1924 Convention with respect to countries that had not yet become parties to the 1978 Convention. The problem was an important one which had not apparently been fully grasped by the Second Committee. Admittedly, it was the first time that a clause providing for the automatic denunciation of a convention in force appeared in a new convention.

101. If the automatic denunciation clause was maintained, then, after 20 or 25 States had ratified the 1978 Convention and at the same time denounced the 1924 Convention, their reciprocal relations would of course be governed by the new Convention to the exclusion of all others. But it was far from clear what their relations would be with respect to the 60 or more States which, not having ratified the new Convention, would continue to be governed by the 1924 Convention for an indeterminate period—ratification procedures being notoriously protracted. There would be a legal vacuum in international relations, and also uncertainties as a result of conflicts between the applicable national laws, and those conflicts would be settled separately in each particular case, with the consequence that the uncertainty of the law would be further aggravated. In other words, no one would know at the beginning of a shipment what law would be applied on its arrival. Contractual provisions might, of course, make good the deficiency, but surely the object of the new Convention was to replace private law contractual clauses by international rules capable of satisfying the needs of the countries involved in sea-borne trade.

102. Furthermore, it was logical to expect that, of the 20 countries whose ratifications would bring the Convention into force, the majority would be developing countries. Their reciprocal relations would then be governed by the 1978 Convention, but the bulk of the sea-borne trade which they hoped would soon be governed by the new rules was not carried on among those countries, their principal trading partners being the industrialized countries. And what industrialized country would take the risk of ratifying the 1978 Convention in the knowledge that it would thereby be depriving itself of any legal basis for settling possible disputes with respect to the carriage of goods by sea between its own nationals and the nationals of the neighbouring countries that were its main trading partners?

103. Possibly the problem did not arise for the common law countries, because their courts would be able to continue to apply the 1924 Convention, even after it had been denounced, vis-à-vis countries that had not yet ratified the 1978 Convention. But the problem was a very real one for the countries whose law was based on Roman law, notably France and a number of other States whose laws followed the same legal tradition. For those countries, the automatic denunciation clause was an almost insurmountable barrier to ratification, and hence there was a genuine risk that the future Convention might remain a dead letter.

104. In the light of those considerations, a provision was needed under which, during the transitional period only, countries that had ratified the 1978 Convention would be

free to continue to apply the 1924 Convention with respect to countries which had not yet ratified the 1978 Convention, and with respect to those countries only. In his delegation's view, the point was vital to the success of the Conference, for without such a provision its success would be in jeopardy. No country would regret such an eventuality more deeply than France, which had been one of the strongest advocates of a new convention and was anxious that it should enter into force as quickly as possible. In making such reservations, his country was not acting in mere self-interest, but felt that it was acting in the interest of the majority of the countries represented at the Conference.

Article 6 (concluded)

105. The CHAIRMAN invited the representatives of Mauritius and the Soviet Union to introduce their joint proposal concerning article 6, paragraph 4.

106. Mr. BOOLELL (Mauritius) said that his delegation and that of the Soviet Union had agreed on a joint proposal for the addition of the following passage at the end of paragraph 4:

"... provided the value of the goods has been declared in the bill of lading or other document evidencing the contract of carriage by sea before shipment, and accepted as such by the carrier as the limit of his liability for loss of or damage to the goods. Such declaration is deemed to be *prima facie* evidence of an agreement for the purposes of this paragraph that shall not be binding or conclusive on the carrier."

107. Mr. BYERS (Australia) said that the new text proposed by the delegations of Mauritius and the Soviet Union departed considerably from the text originally proposed by the Soviet Union delegation in document A CONF.89 C.1 L.203. In the original proposal, the entry in the bill of lading of the value of the goods as declared by the shipper constituted an agreement limiting the carrier's liability for loss of or damage to the goods to the extent that the shipper's declaration represented the true value of the goods, whereas, under the new proposal, the declaration of the value of the goods would be *prima facie* evidence of an agreement, without, however, being binding on the carrier. Consequently, the Australian delegation would be unable to support the new proposal.

108. Mr. NIANG (Senegal) said he was also unable to support the joint text proposed by the delegations of Mauritius and the Soviet Union since it was inconsistent and failed to make allowance for all aspects of the problem, unlike the UNCITRAL text which left the parties free to raise the limit of liability by mutual agreement. Nor did the new text expressly state that the declared value had to exceed the limits of liability fixed in article 6, paragraph 1 and hence was liable to conflict with the limits stated there. Its drafting also left something to be desired.

109. Mr. SUMULONG (Philippines) said he would be able to agree to the text proposed by Mauritius and the Soviet Union provided that the last part, beginning with the words "Such declaration is deemed...", was

deleted, since it invalidated the first part. If the value of the goods as declared in the bill of lading was accepted by the carrier as the limit of his liability, and if that declaration was regarded as *prima facie* evidence of the existence of an agreement to that effect between the carrier and the shipper, it was inconceivable that the carrier should not be bound by it and that he should be at liberty to challenge it.

110. Mr. QUARTEY (Ghana) was of the same opinion as the representative of the Philippines.

111. Mr. KERRY (United Kingdom) associated himself with the objections raised by the representative of Ghana. The words "whichever is the higher" did not necessarily correspond to the value of the goods; the limit could be fixed at the discretion of the parties. He considered it

undesirable to restate the relevant provision of the Hague Rules. The proposal by Mauritius and the Soviet Union should, in his opinion, be rejected.

112. Mr. MARCIANOS (Greece) and Mr. GUEIROS (Brazil) associated themselves with the view expressed by the United Kingdom representative.

113. Ms. OLOWO (Uganda) said she would be unable to support the proposal by Mauritius and the USSR because the second part of the text contradicted the first, as the representative of Ghana had pointed out.

114. Mr. BOOLELL (Mauritius) announced that his delegation and that of the Soviet Union withdrew their joint proposal.

The meeting rose at 10.55 p.m.

36th meeting

Wednesday, 29 March 1978, at 10.15 a.m.

Chairman: Mr. M. CHAFIK (Egypt).

A CONF.89 C.1 SR.36

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (*continued*) (A CONF.89 5, A CONF.89 6, A CONF.89 7 and Add.1, A CONF.89 8, A CONF.89 C.1 L.179, L.207, L.210)

Article []. Reservations (*continued*)

1. Mr. CARRAUD (France) said that the reason for the French delegation's concern was that the ratification of the new Convention was directly and automatically linked to the denunciation of the earlier one. What would be the position in law of a State which had denounced the earlier Convention and ratified the new one vis-à-vis a State which, having been slower to ratify, remained bound by the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924? The resulting legal vacuum would create uncertainty as to the law. Without a saving clause the new Convention might well be a dead letter. For that reason, France, in its own interest and also in the interest of a number of countries, considered it necessary to make a reservation to article [Y]. As it was not possible to denounce parts of an earlier convention, the language of the French proposal should perhaps be altered. Should difficulties arise, the French proposal would enable States to avoid having to refrain from applying the new Convention. In order that an industrialized country could ratify the new Convention, it must be satisfied that its

trade would not suffer because of uncertainties, complications, or intractable disputes. For common law countries, the difficulties would be less formidable, for even if they had denounced the 1924 Convention their courts would be free to continue to apply its provisions with respect to a party that was unable to accept the application of the new Convention. In the countries with written law, on the other hand, the national law, which varied considerably from one country to another, would have to be applied, and the result would be that, before a cargo was put on board, it would be uncertain what rules would apply to the shipment.

2. Mrs. RICHTER-HANNES (German Democratic Republic) said that the French proposal might give rise to serious difficulties in a number of respects. If a country became a party to the new Convention while remaining a party to the 1924 Convention, there would have to be a double system of insurance for the shipowner and for the cargo, one based on the 1924 Convention and the other on the new Convention, for no one would be able to say beforehand which of the two instruments would be applicable. There might also be some overlapping between the scope of application of the 1924 Convention and that of the new Convention. She said that she was not convinced that the provisions in the final clauses were as defective as was claimed. In any case, the German Democratic Republic was in favour of the text of the draft Convention.

3. Mr. AMOROSO (Italy) considered that the clause concerning the entry into force of the new Convention created a genuine problem for States which had ratified the 1924 Convention; hence the new Convention, which

everyone hoped would be universally applicable, was at risk. He did not feel sure that the French proposal could solve the problem. Perhaps a reservation should be permissible for a transitional period, of a duration to be specified.

4. Mr. POPOV (Bulgaria) said that the question to which France had drawn attention had not been raised either in the documents of the Second Committee or during the debates in that Committee, although it was of considerable importance. The French proposal therefore deserved careful examination. The Bulgarian delegation found it to be of interest but, since the wording would probably be changed, would reserve its position.

5. Mr. KERRY (United Kingdom) agreed with the French and Bulgarian delegations that a genuine problem existed. Because of the mandatory character of the clause concerning denunciation of the 1924 Convention, some States should perhaps be allowed to make reservations safeguarding provisions of domestic law under which transactions governed by the Hague Rules could be recognized. It was doubtful that a State could become a party to the new Convention without denouncing the 1924 Convention and the 1968 Protocol which amended it. But was the mandatory denunciation clause really necessary? He supported the French proposal because it would admit reservations.

6. In national law the problem would remain, whatever measures were taken under international law, because the two systems would have to coexist for some time, namely until the system set up by the Hague Rules had completely ceased to be applied. He announced that the United Kingdom delegation later intended to propose a reservation clause that would enable States to continue to apply both systems in municipal law, even though under international law they would be free only to apply the new system.

7. Mr. LAVIÑA (Philippines) said that he recognized the problem mentioned by the French delegation but shared the views expressed by the delegation of the German Democratic Republic. He would be unable to agree to a proposal for the formulation of reservations concerning the denunciation clause, which was mandatory. Perhaps the problem referred to by the French delegation might be dealt with in the manner suggested in the annex to document A/CONF.89/C.1/L.207.

8. Mr. CLETON (Netherlands) said that in his view there was both a legal problem and a political problem. The legal problem was that many countries would find it hard to apply two different legal systems simultaneously. The political problem was that, because of the mandatory clause concerning the denunciation of the 1924 Convention and the 1968 Protocol, and because the first 20 States to ratify the Convention, thereby bringing it into force, might well find themselves in a legal vacuum, a good many States would hesitate to ratify the new Convention until they could see whether there was any likelihood of its achieving universality. The situation would have been different if the example of the Warsaw Convention had been followed. In any case, the French delegation's proposal, even if amended, would not solve the problem,

for its effect would be to leave States free not to denounce the 1924 Convention. The right solution would be to admit a reservations clause permitting States parties to the 1924 Convention and to the 1968 Protocol to restrict the application of the new Convention. There was no doubt, however, that the problem would have to be solved if the Convention was to enter into force within a reasonable period.

9. Mr. WISWALL (Liberia) drew attention to article 57 of the Vienna Convention on the Law of Treaties,¹ which provided that the operation of a treaty in regard to all the parties or to a particular party may be suspended: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States. A reasonable way of solving the problem under discussion would be to insert in the new Convention a provision based on that article.

10. Mr. BYERS (Australia) said that he agreed that the transitional period created a problem. The solution put forward by the French delegation was not a transitional one and hence was not acceptable to the Australian delegation. The best way of dealing with the problem would be to draft a provision operative for a limited period, as had been suggested by the representative of Italy.

11. Mr. GUEIROS (Brazil) said that the Group of 77 shared the concern of the French delegation. For its part, the Brazilian delegation fully supported the proposed solution, in the form of a reservation. That formula, which envisaged something like a conditional denunciation, would cover the case where one of the parties to a contract of carriage belonged to a State party both to the 1924 Convention and to the new Convention, while the other party was bound only by the 1924 Convention. It had the merit, therefore, of ensuring good relations between the States parties to the 1924 Convention and those ratifying the new Convention.

12. Mr. QUARTEY (Ghana) said that the French proposal presented some interest but would not be very effectual in practice. The entry into force of the new Convention depended on the goodwill of the States which, for the most part, had agreed that it should replace the system established by the 1924 Convention. That being so, the two régimes should not coexist for a long period. With the concurrence of the States parties to the 1924 Convention, a provision should be drafted fixing a date as from which the 1978 Convention would automatically replace the 1924 Convention; without such a provision, States would be under no obligation to leave the system that had been in force since 1924 and to espouse the new Convention.

13. Mr. SWEENEY (United States of America) said that he appreciated the reasons underlying the French proposal, but did not yet know what solution should be adopted. The representative of the German Democratic Republic had rightly drawn attention to the problems

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

arising from the coexistence of several systems, and particularly the risk of competition between carriers working under different régimes of responsibility. Besides, the transitional period might be fraught with some risk because the Convention had not been prepared according to the criterion of a clean slate. The United States had no intention of remaining bound indefinitely by both systems and hoped that the new Convention would enter into force promptly. The transitional period should not therefore be long and should not impede the operation of the 1978 Convention. In that connexion, he said he was informed that about five years had elapsed before the conventions adopted under the auspices of IMCO had come into force, even though most of them had in no way conflicted with other instruments. In the circumstances, he suggested that perhaps the interested delegations might confer with a view to working out a text that would deal with the problem raised by the representative of France.

14. Mr. SELVIG (Norway) said that the issue concerned the 1968 Protocol as much as the 1924 Convention. In many respects the application of the Protocol had given rise to problems similar to those engaging the Committee's attention, because States had found it difficult to be parties both to the Hague Rules and to the Protocol, even though those instruments were of much narrower scope than the new Convention. As the representative of the United Kingdom had remarked, a State could hardly be bound by several instruments dealing with the same subject, and the problems which might arise in that regard had to be settled at the national level.

15. Under the French proposal, the new Convention would bind the States ratifying it; in fact, however, it would not even apply as a matter of course to such States. If, for example, France ratified the new Convention while remaining a party to the Hague Rules, then, in the case of goods carried between France and another State party to the new Convention, on board a ship belonging to a State party only to the Hague Rules, the bills of lading issued in France would come under the Hague Rules which France would be obliged to apply. The Norwegian delegation would consider it regrettable that the system of responsibility applied to the carriage of goods between two States parties to the 1978 Convention should depend on the nationality of the ship on which they were carried, and believed that from the legal point of view the carriage of goods by sea should be governed by one single instrument. It also felt some doubt as to the technique envisaged in the French proposal, under which States would tend to denounce the 1924 Convention with respect only to the States parties to the new Convention. By contrast, he referred to the relevant provision in the 1968 Brussels Protocol under which a State denouncing the 1924 Convention did so with respect to all the other States parties. He added that the essence of the French proposal was not the reservations clause but the text annexed thereto, which his delegation was unable to accept.

16. States obviously had the right to make reservations with regard to their national legislation, in so far as such reservations did not infringe their international obligations, but, unlike the United Kingdom delegation,

he considered it hardly necessary to make provision for a reservation under which States would be able to continue to apply both systems in their municipal law.

17. In any case, the questions under discussion had already been examined in the Second Committee in another context. That Committee had rightly arrived at the conclusion that a State party to the new Convention should cease to apply other instruments, dealing with the same subject, to which it was also a party.

18. Mr. MASSUD (Pakistan) said that he appreciated the arguments cited by the representative of France in support of his proposal, but considered that, as formulated, the proposed text might give rise to difficulties like those mentioned by the representative of the German Democratic Republic. The French delegation's proposal would conflict with the provisions approved by the Second Committee concerning the automatic denunciation of the 1924 Convention and of the 1968 Protocol. As the problem was due to the transitional period, the solution would be to fix the date at which the denunciation would take effect.

19. Mr. CARRAUD (France), replying to the comments made on his delegation's proposal, said that he agreed that a double system could be applied only during a transitional period. His delegation in no way sought to delay the entry into force of the Convention and hoped that no obstacle, such as the automatic denunciation clause, would discourage States carrying on a large international trade from ratifying the Convention. His delegation believed also that the possible competition among carriers would be a factor in favour of the ratification of the Convention, for shippers, knowing that their rights would be better protected under the 1978 Convention, would give preference to carriers belonging to countries that had ratified that Convention. The representative of the German Democratic Republic had said that the proposed formula would complicate matters, particularly so far as insurance was concerned. Admittedly, it might perhaps be necessary to choose the amount and the rate of the insurance according to the port of destination, but the situation would be even more confused if, in the final analysis, it was unclear what law would be applicable to the transaction.

20. When the Second Committee had approved an automatic denunciation clause, he had inquired about the implications of such a provision, but had not received any reaction. It could hardly be said, therefore, that the problem had really been considered by the Second Committee. As regards the contention that a State could not simultaneously be party to several conventions on the same subject, he considered such an argument unrealistic.

21. Although the transitional period should be as short as possible, one must not evade the problem under discussion, for, if it was not dealt with, the Convention might well remain a dead letter. The French delegation did not claim that its proposed formula for the reservation to article [Y] was necessarily the best solution, and was ready to withdraw it in favour of an acceptable compromise. Before submitting the proposal annexed to the reservation to the Conference in plenary meeting, the

French delegation had wished to take the precaution of raising the matter in Committee, but it could give the other members of the Committee the formal assurance that France would make only limited use of that clause.

22. In reply to the comments of the representative of the Netherlands on the legal and political aspects of the matter, he said that France, being a country with written law and not a common law country, was more strictly bound by legislative texts than were the common law countries. At the same time, however, he appreciated that the intent of States with regard to the entry into force of the Convention was indeed a political question. In conclusion, he expressed the hope that the parties would not find themselves prisoners of the clause concerning the automatic denunciation of the 1924 Convention.

23. The CHAIRMAN suggested that, as the Committee was running out of time, the question should be taken up by the Conference in plenary meeting and that in the meantime the interested delegations should endeavour to draft a generally acceptable text.

24. Mr. CARRAUD (France) said that his delegation would prefer the Committee to take a decision on its text before the plenary meeting, especially as it had received the support of several delegations.

25. The CHAIRMAN thought it would be preferable to set up a small working group to improve the text proposed by the French delegation.

26. Mr. AMOROSO (Italy) pointed out that the representative of France had not answered the Italian delegation's comment that it might be preferable to formulate a reservation clause concerning the transitional period between the entry into force of the rules established by the new Convention and the termination of the system established by the 1924 Convention.

27. Mr. CASTRO (Mexico) supported the Chairman's suggestion that the French delegation should be invited to work out a wording, taking account of the opinions expressed, particularly by the Netherlands, the United States, Brazil, the United Kingdom and Italy.

28. Mr. DIXIT (India) said that he understood the reasons behind the French proposal but was unable to support it. He associated himself with the remarks of the representatives of Norway and the German Democratic Republic, and agreed with the representative of Australia that the proposed reservation about the entry into force of the Convention should apply only to a short transitional period, since the desired objective was to avoid the simultaneous coexistence of two systems.

29. The CHAIRMAN suggested that the French delegation, together with the other interested delegations, should endeavour to reformulate the reservation concerning the entry into force of the Convention; the revised version would be submitted to the plenary Conference, to which the matter was referred.

30. *It was so decided.*

31. Mr. TANIKAWA (Japan) said that the Japanese proposal (A/CONF.89/C.1 L.210) made provision for two reservations. The first would exclude the application of paragraphs 2 to 4 of article 17 concerning the letter of guarantee. Japan considered that that practice should be

governed by national law. It would be very difficult to incorporate in Japanese law the provisions of paragraphs 2 to 4, particularly so far as the proposed penalties were concerned.

32. The second reservation would exclude the application of paragraph 2 of article 21 relating to the arrest of vessels and the removal of a case to a jurisdiction other than that in which proceedings were first instituted. In that situation also, the provisions as they stood would raise serious problems, for under Japanese law a Japanese court could not deal with proceedings instituted in another country, even if the case was referred to it by a court of a contracting State.

33. The provisions of paragraphs 2 to 4 of article 17 and of paragraph 2 of article 21 were insurmountable obstacles to the ratification, acceptance or approval of or accession to the Convention by the Japanese Government, even if the Japanese shippers requested it to become a party to the instrument. Consequently, in the absence of a reservation excluding the application of the provisions he had mentioned, Japan would find it impossible to become a party to the new Convention.

34. The CHAIRMAN invited comments on the first reservation proposed by Japan in subparagraph 1 (a) of document A/CONF.89/C.1 L.210, which would make it possible to exclude the application of paragraphs 2 to 4 of article 17.

35. Mr. AVRAMEAS (Greece) said that he supported the proposed reservation which would enable a large number of countries which so wished to accede to the Convention by removing the obstacle which the provisions of paragraphs 2 to 4 of article 17 represented for them.

36. Mr. SWEENEY (United States of America) expressed support for the reservation, since the object of the provisions in question was covered by his country's penal law.

37. Mr. BURGUCHEV (Union of Soviet Socialist Republics) supported the reservation.

38. Mr. BYERS (Australia) opposed the reservation because in his opinion it was essential that the practice of letters of guarantee should be covered by international legislation in order to curb the harmful effects of that practice.

39. Mr. CLETON (Netherlands) said that his delegation opposed the reservation, even though it did not approve of paragraphs 3 and 4 of article 17, since any reservation was an exception to the uniform international rules which the Conference was seeking to establish. In the case in question, the reservation proposed would introduce different rules in the different contracting States, whereas the intention ought to be to harmonize the rules.

40. Mr. NSAPOU (Zaire) said that his country, which was mainly a shipper in sea-borne trade, would not sign the Convention in the absence of the provisions of article 17 which Japan was proposing to exclude.

41. The CHAIRMAN invited the Committee to vote on the reservation clause which would allow States to exclude the application of paragraphs 2 to 4 of article 17.

as proposed by Japan in subparagraph 1(a) of document A/CONF.89/C.1/L.210.

42. *The proposal was rejected by 38 votes to 10, with 10 abstentions.*

43. The CHAIRMAN invited comments on the second reservation clause proposed by Japan in subparagraph 1(b) of document A/CONF.89/C.1/L.210 providing for the possible exclusion of the application of paragraph 2 of article 21.

44. Mr. AMOROSO (Italy) said that for his country such a provision was necessary since the rule in paragraph 2 of article 21 conflicted with the International Convention relating to the Arrest of Seagoing Ships, signed at Brussels in 1952, which had been ratified by Italy and which formed part of Italian law.

45. Mr. CLETON (Netherlands) expressed support for the reservation clause because it would make it possible to avoid any conflict with other existing conventions on maritime transport.

46. Mr. LEÓN MONTESINO (Cuba) supported the proposed reservation for the reasons given by the preceding two speakers.

47. Mr. KANYENYE (United Republic of Tanzania), Mr. NDAWULA (Uganda) and Mr. VINCENT (Sierra Leone) said they were opposed to the reservation on the grounds that it would hamper the standardization of the international rules applicable to the subject.

48. The CHAIRMAN called for a vote on the second part of the Japanese proposal, which would allow States to exclude the application of paragraph 2 of article 21 (subparagraph 1(b) of document A/CONF.89/C.1/L.210).

49. *The proposal was rejected by 27 votes to 19, with 15 abstentions.*

50. Mr. AVRAMEAS (Greece), introducing the three reservations proposed by his delegation in subparagraphs 1(a), 1(b) and 1(c) of document A/CONF.89/C.1/L.179, said that the first reservation provided that the equivalence of the unit indicated in article 6 to the national currency might be fixed by the relevant State from time to time for periods not exceeding six months. The object of

the reservation was to dispose of the very real difficulties that certain countries would face in determining the amount of the carrier's liability under article 6, since that amount had to be calculated in national currency on the basis of special drawing rights. But in some countries the judge or the arbitrator would have no way of finding out what the value of special drawing rights was in terms of local currency on the day when he gave his decision or made his award. The solution proposed by Greece was based on the practice of banks of publishing periodically the rates ruling in the Eurodollar market. However, the proposed solution was not the only possible one; it might also be decided to apply the rate current on the date when the proceedings were instituted.

51. The purpose of the second reservation proposed by Greece was to make it easier for many countries for which the provisions on jurisdiction and arbitration might create difficulties to sign, ratify or accede to the Convention. The argument that reservations conflicted with the objective of harmonizing the law was not convincing, for States which ratified a convention would like as many other States as possible to become parties to it; and it was precisely the presence of a clause admitting reservations that would facilitate accessions.

52. Under the third subparagraph of the reservation clause proposed by Greece, a State would be free to exclude from the application of parts or of the whole of the Convention the carriage of live animals and the carriage of goods of an unusual character or condition, if such carriage was effected outside ordinary commercial operations. The intention was to allow the parties to a contract of carriage by sea which called for special precautions, for instance the transport of an ancient statue which was unique in the world, to contract out of the rules of the Convention, which had obviously not been drafted to deal with such cases. The provision under which the carriage of live animals could be excluded from the application of the Convention seemed to be consistent with the wishes expressed by the countries engaged in that type of carriage.

The meeting rose at 12.10 p.m.

37th meeting

Wednesday, 29 March 1978, at 2.10 p.m.

Chairman: Mr. M. CHAFIK (Egypt).

A CONF.89 C.1 SR.37

Consideration of articles 1-25 of the draft Convention on the Carriage of Goods by Sea, and of the draft article on "reservations" in the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention (concluded) (A/CONF.89/5, A/CONF.89/6, A/CONF.89/7 and Add.1, A/CONF.89/8, A/CONF.89 C.1/L.179, L.201, L.209)

Article[]: Reservations (concluded)

1. The CHAIRMAN invited the Committee to continue its consideration of the article on reservations proposed by Greece (A/CONF.89 C.1/L.179).

2. Mr. PTAK (Poland) said that the reservations provided for in the Greek proposal would be helpful to many States wishing to become parties to the Convention. His delegation was therefore prepared to support the proposed article.

3. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in view of the fate of other proposals relating to reservations, his delegation would suggest that the article on reservations should be deleted altogether.

4. Mr. DIXIT (India) said his delegation had no difficulty in accepting subparagraph 1 (a) of the Greek proposal, provided that it was made clear that the equivalence of the unit indicated in article 6 of the draft Convention was the special drawing right (SDR) and that the value of the SDR would be determined in accordance with the system of the International Monetary Fund (IMF).

5. Mr. AVRAMEAS (Greece) said that his delegation had assumed it was clear that the unit concerned would be the SDR. Its purpose in proposing the reservation in question was to provide for a regular assessment of the equivalence of the SDR to the national currency, so that judges or arbitrators, in making decisions or awards, could easily ascertain the amounts involved.

6. Mr. SWEENEY (United States of America) said that the value of the SDR was declared on a daily basis. His delegation felt that the provision proposed by the Greek delegation might do considerable damage to the monetary system of IMF, and therefore had serious misgivings about it.

7. Mr. GUEIROS (Brazil) agreed with the view expressed by the United States representative. Moreover, the subject had already been dealt with fully in article 26, paragraphs 1 and 2, of the "package deal" (A/CONF.89/C.1/L.211), which covered the case of both members and non-members of IMF. His delegation was unable to accept the first of the reservations proposed by Greece.

8. The CHAIRMAN invited the Committee to vote on subparagraph 1 (a) of the article on reservations proposed by the Greek delegation (A/CONF.89 C.1/L.179).

9. The subparagraph was rejected by 22 votes to 6, with 28 abstentions.

10. Mr. AVRAMEAS (Greece) announced that his delegation would withdraw subparagraph (b) of its proposal.

11. The CHAIRMAN, after inviting comments on subparagraph (c) of the Greek text, said that, in the absence of any expression of support for that provision, he would take it that it was rejected.

12. Mr. SELVIG (Norway) observed that the object of including a provision on reservations had been to make it clear what rule applied under general international law and to establish a uniform practice in the matter. He believed it to be the general feeling among members of the Committee that no reservations to the Convention should be permitted. The article on reservations in the basic text (A/CONF.89/6) provided that a contracting State could make only such reservations as were specifically permitted under paragraph 1 of that article, but the rejection of the Greek proposal suggested that the Committee did not favour such express stipulations. If that was the case, the references in the reservations article to paragraph 1 would no longer have any meaning.

13. Mr. BENTEIN (Belgium) said that the question of including an article on reservations could not be settled until delegations had had an opportunity to study the proposal on the subject, which, he understood, was to be submitted to the plenary Conference by the French delegation.

14. Mr. LAVINA (Philippines) said that he, like the representative of Norway, believed it to be the general wish of members not to include in the draft Convention a provision on reservations.

15. Mr. SMART (Sierra Leone), endorsing the remarks made by the Norwegian representative, said that his delegation was in favour of deleting the whole of the article on reservations contained in document A/CONF.89/6, with the sole exception of the principle embodied in paragraph 2.

16. In reply to a question put by the CHAIRMAN, Mr. SELVIG (Norway) said that, in the light of the views expressed, he wished to propose the deletion of paragraphs 1, 3, 4 and 5 of the article on reservations. If, however, the Conference should decide to permit reservations, a text on the lines of that article as a whole would be required.

17. Mr. GUEIROS (Brazil) said that, pending submission of the French proposal on reservations, the Commit-

tee should follow up part of the Norwegian representative's proposal and delete paragraph 1 and any references made to it in paragraphs 3, 4 and 5.

18. Mr. DIXIT (India) said that one reason why the reservations proposed by the Greek delegation had not been accepted was that the majority of delegations, which had worked very hard on every detail of the Convention, were reluctant to see its provisions whittled down. One consequence of failure to include a provision on reservations would be that the Vienna Convention on the Law of Treaties would apply;¹ article 19 of that instrument provided that a State might formulate a reservation unless, *inter alia*, the reservation was "incompatible with the object and purpose of the treaty". It was unlikely that anybody could say with certainty what the object and purpose of a treaty was when there was no preamble with a stipulation on the matter. Consequently, as many, if not more, reservations would be made if an article on the subject was omitted entirely than if a specific provision on the matter was included. It was only natural that every country would like to see each article suit its convenience but, from the standpoint of a convention designed to secure uniformity and to promote harmonious international trade, such an attitude could only damage the very basis for which the Conference had striven so hard. He urged the Committee to reflect on those points.

19. In his view, only the first part of paragraph 2 of the article, reading "No reservations may be made to this Convention", should be adopted, the remainder of the article being deleted.

20. Mr. TANIKAWA (Japan) supported the Soviet proposal to delete altogether the article on reservations.

21. Mr. MORENO-PARTIDAS (Venezuela) supported the views expressed by the representatives of Sierra Leone and Norway.

22. Mr. GANTEN (Federal Republic of Germany) said that the issue before the Committee was clear and simple: either the article on reservations could be deleted in its entirety, or the provision reading "No reservations may be made to this Convention" could be retained as a separate article. He therefore considered that the Committee should proceed to the vote.

23. Mr. GUEIROS (Brazil) noted that the French proposal (A CONF.89 C.1 L.207) was to be considered in plenary and that the Greek proposal (A CONF.89 C.1 L.179) had not been accepted. In the circumstances, and since he was also unable to accept the Soviet proposal, he would agree that the Committee should propose the inclusion in the Convention of a single provision to the effect that no reservations could be made to it.

24. Mr. NILSSON (Sweden) said his delegation also favoured such a provision.

25. Mr. MASSUD (Pakistan) said he, too, agreed that the provision to the effect that no reservations could be

made to the Convention should be retained, failing which the Vienna Convention on the Law of Treaties would apply. Moreover, the very purpose of the Convention, which was to codify international law in the matter and to introduce uniformity, would be undermined.

26. Mr. NELSON (Ghana) considered that, as all the proposed reservations had been rejected, an express prohibition on reservations should be included in the Convention. The Vienna Convention on the Law of Treaties could be invoked only in the absence of such a provision.

27. Mr. SWEENEY (United States of America) said his delegation was in favour of the retention of paragraph 2.

28. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, in view of the comments made, he would withdraw his delegation's proposal.

29. The CHAIRMAN noted that the consensus of opinion was in favour of deleting the article on reservations, with the exception of the first part of paragraph 2, amended to read: "No reservations may be made to this Convention". He therefore suggested that the Committee agree to delete paragraphs 1, 3, 4, and 5 of the article and to refer paragraph 2, as thus amended, to the Drafting Committee.

30. *It was so decided.*

Article []. *Revision of the limitation amounts and unit of account or monetary unit*

31. The CHAIRMAN drew attention to two proposals, submitted, respectively, by Denmark, Finland, Norway and Sweden (A CONF.89 C.1 L.209) and France (A CONF.89 C.1 L.201), both of which concerned revision of the amounts of the limit of liability. He invited the Norwegian representative to introduce the Nordic proposal.

32. Mr. SELVIG (Norway) said that the proposal contained in document A CONF.89 C.1 L.209 concerned a matter which the Nordic delegations considered to be of the utmost importance for the future of the Convention. Members would recall that, during the Committee's discussion on limits of liability, there had been reference to the depreciation in real terms of the amounts of the limit of liability during the previous 10 years, due mainly to world-wide inflation. It was probable that that phenomenon would persist; consequently, States might at a future stage find that the limits established in the Convention were too low in real terms and would therefore be unable to accede to the Convention. It was clearly desirable to institute some special procedure for the review of limitation amounts and of the unit of account without, however, disturbing the basic structure of the Convention. Under paragraph 1 of the Nordic proposal, the depositary would have authority to convene a conference, under United Nations auspices, of all States, and not of contracting parties only. Paragraph 2 provided that the depositary should convene such a conference either when not less than one quarter of the Contracting States so requested or when UNCITRAL so requested because it found that there had been a significant change in the value of the amounts. It was felt

¹ See *Official Records of the United Nations Conference on the Law of Treaties. Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A CONF.39.27, p. 287.

that UNCITRAL, as it had drawn up the draft Convention, was the appropriate body to undertake the preparatory work for such a conference. Paragraph 3 provided that any amendments thus adopted should take effect upon being accepted by one half of the contracting States.

33. Paragraph 4 dealt with the situation that might arise if some States remained parties to the Convention in its unamended form, while others accepted the amendments adopted. Its basic purpose was to ensure that the latter would be entitled to apply the new limits even in the case of nationals of contracting States which had not accepted the amendments. That would obviate the difficulties that could ensue if, even though the carriage was between two States both of which had accepted the amendment, it was performed by a ship from a State which had not done so, a situation in which the States that had accepted the amendments would, in principle, be bound by the Convention in its old form vis-à-vis both the country of the ship and the ship itself. In the view of the Nordic delegations, paragraph 4 was essential to ensure that no inequality resulted because the parties involved happened to be from different countries.

34. Paragraph 5, which was of a technical nature, was similar to the provision governing ordinary amendments to the Convention.

35. The procedure proposed would afford a remedy to the depreciation in real terms of the value of limitation amounts, which would otherwise pose a threat to the proper implementation of the Convention.

36. The CHAIRMAN noted that the French proposal (A CONF.89 C.I L.201) was similar in content to the Nordic proposal. In the circumstances, he would ask the French representative whether he wished to maintain his proposal.

37. Mr. CARRAUD (France) said that the two proposals could perhaps be combined. The merit of the French proposal, however, was that it provided for an automatic review procedure at intervals of five years, and for the autonomy of the review conference in regard to other organs. It was also very precise. He would not, however, press the proposal if the Chairman did not wish him to do so.

38. Mr. LAVINA (Philippines) said that, while his delegation supported the Nordic proposal, it also agreed with the French proposal for an automatic review procedure. It therefore considered that paragraph 2 of the former should be amended to provide that a review conference would be convened at intervals of five years, or when not less than one quarter of the contracting States so requested.

39. Mr. CASTRO (Mexico) said that the terms of the French proposal appeared very acceptable.

40. His delegation had some difficulty with paragraph 2 of the Nordic proposal, which provided that UNCITRAL would decide whether there had been a significant change in the value of the amounts. UNCITRAL did not cover the whole membership of the United Nations, and some of the contracting parties to the Convention would therefore not be represented at its

meetings when such a decision was taken. Possibly, therefore, paragraph 2 could be amended to provide that a review conference would be convened whenever an appropriate body of the United Nations so requested, pursuant to a decision taken by the majority of the contracting parties. Subject to that reservation, he could support the Nordic proposal.

41. Mr. MARTÍNEZ MORCILLO (Spain), endorsing the preceding speaker's remarks with regard to paragraph 2 of the Nordic proposal, said that the adoption of such a provision would confer on UNCITRAL powers over a convention which should be autonomous in character. The French proposal embodied principles which his delegation could support.

42. Mr. SANYAOLU (Nigeria) said his delegation welcomed the Nordic proposal, which sought to counter the effects of global inflation. So far as paragraph 2 was concerned, it recognized that there might be some difficulty since UNCITRAL could not perhaps request a review conference without the consent of all its members, and not all contracting parties were members of UNCITRAL. Those were not very serious objections, however, and it considered that, since UNCITRAL had prepared the draft Convention, it was the appropriate body to undertake the preparatory work for such a conference. Moreover, any concern it might have felt on that score was dispelled by the clause reading "when not less than one quarter of the Contracting States so request".

43. His delegation's initial reaction to paragraph 4 of the Nordic proposal was that, as drafted, it could be construed as infringing the sovereign rights of a Member State and the treaty principle of *pacta sunt servanda*. He noted, however, that paragraph 4 of article 40 of the Vienna Convention on the Law of Treaties provided that the amending agreement did not bind any State already a party to the treaty which did not become a party to the amending agreement. On reflection, therefore, he felt that the principle underlying paragraph 4 was sound in that it sought to provide for wider acceptance of an amendment made to the original treaty. His delegation was also of the view that a Member State engaging in trade with another Member State that had accepted an amendment should be deemed to have applied the Convention as amended. If that interpretation of paragraph 4 was correct, he would urge the authors of the proposal to clarify the intent.

44. Subject to those remarks, his delegation supported the Nordic proposal.

45. Mr. WANSEK (United Republic of Cameroon) said that the proposals contained in documents A CONF.89 C.I L.201 and L.209 were to a large extent complementary, and that his delegation welcomed the basic idea common to both of them.

46. Mr. GUEIROS (Brazil) welcomed the idea underlying the French and Nordic proposals. Monetary stability was necessary for normal international trade but was extremely difficult to achieve. With reference to the French delegation's proposal, he thought that it would be better to express the five-year interval as a minimum period for a review of the liability amounts. In his

delegation's view, a combination of the two proposals, based mainly on the text of document A CONF.89/C.1 L.209 but containing a stipulation that review conferences could not be convened at intervals shorter than five years, would be a suitable way to ensure stability of limitation amounts.

47. Mr. POPOV (Bulgaria) said that his delegation, while welcoming the idea underlying document A CONF.89/C.1 L.209, found inappropriate the suggestion that UNCITRAL should be empowered to request the depositary Government to convene a review conference; UNCITRAL had no authority to represent sovereign States in such a way. Furthermore, the proposed number of requesting States required to convene a review conference was too small, and should be at least one third of the contracting States. In addition, the number of contracting States mentioned in paragraph 3 of the proposed text did not constitute a majority. For those reasons, his delegation could not support the Nordic proposal as drafted.

48. Ms. OLOWO (Uganda) said that her delegation welcomed the two proposals. With regard to the timing of review conferences, her delegation was in favour of the five-year period mentioned in the French proposal, since it might be difficult for UNCITRAL to obtain agreement from a sufficient number of its members that there was a significant change in the value of the limitation amounts, as proposed in document A CONF.89/C.1 L.209. In that connexion, the word following "whenever UNCITRAL so requests" in paragraph 2 should be "when", not "because". With regard to paragraph 3 of that document, her delegation thought that the text should be amended to the effect that acceptance by 20 contracting States—instead of one half of them—would suffice for entry into force of any amendment, since 20 had been the number agreed upon in the Second Committee for the entry into force of the Convention. As a corollary, the figure of one quarter of the contracting States, mentioned in paragraph 2, should be reduced accordingly so as not to be disproportionate.

49. The CHAIRMAN suggested that the meeting should be suspended and that an *ad hoc* working group, consisting of the representatives of Bulgaria, France, Norway, Philippines, Poland and Uganda, should be formed to work out, during the suspension of the meeting, a consolidated text on the basis of the proposals in documents A CONF.89/C.1 L.201 and L.209.

50. *It was so decided.*

51. *The meeting was suspended at 3.40 p.m. and resumed at 4.55 p.m.*

52. Mr. OKALI (Assistant Secretary of the First Committee) read out the text of a revised proposal prepared by the *ad hoc* Working Group on the basis of the texts contained in documents A CONF.89/C.1 L.201 and L.209. The revised text was as follows:

"1. Notwithstanding the provisions of article [revision and amendment], a Conference only for the purpose of altering the amount specified in article 6 and article 26, paragraph 2, or of substituting either or both of the units defined in article 26, paragraphs 1 and 3, by

other units shall be convened by the depositary in accordance with paragraph 2 of this article.

"2. A revision conference shall be convened by the depositary every five years or when not less than one third of the Contracting States so request.

"3. Any decision by the Conference shall be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting Parties for acceptance and to all the States signatories of the Convention for information.

"4. Any amendment adopted shall enter into force on the first day of the month following one year after its acceptance by one half of the Contracting States. Acceptance shall be effected by the deposit of a formal instrument to that effect, with the depositary.

"5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

"6. The Convention as amended shall be deemed to apply to any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention."

53. Mr. AMOROSO (Italy) said that the revised text still gave his delegation some difficulty because paragraph 2 contained no stipulation about a minimum interval between review conferences. According to the proposed text, a review conference could be convened by the depositary at any time if as few as one third of the contracting States so requested. His delegation could have accepted the idea of an automatic convening every five years, as had been provided for in the original French proposal (A CONF.89/C.1 L.201). The text currently proposed should be amended so as to stipulate a five-year minimum period.

54. The entry into force of amendments should require their acceptance by a clear majority of the contracting States. The number mentioned in the proposed paragraph 4 should therefore be changed from one half to two thirds.

55. Although he appreciated the efforts of the *ad hoc* Working Group and the need to save time, he nevertheless felt that the revised text required some modification if it was to be acceptable to all delegations.

56. Mr. GANTEN (Federal Republic of Germany) said that his delegation could not support the revised proposal. In general, it saw no need to review the limits of liability. If a review period had to be mentioned at all, his delegation could have accepted the proposal contained in document A CONF.89/C.1 L.209. However, it saw no reason for a mandatory five-year review.

57. Mr. CASTRO (Mexico) said that his delegation could accept the revised text proposed by the *ad hoc* Working Group. Paragraph 2 of that proposal would provide for a five-year review, but at the same time the contracting States' sovereign rights would be safeguarded.

58. Mr. QUARTEY (Ghana) thought that compulsory five-year revision conferences would be too expensive for many countries. The five-year provision should be eliminated so that such conferences would be convened solely at the request of one third or more of the Contracting States, who would surely act responsibly when deciding whether to make such a request.

59. Mr. SWEENEY (United States of America) said that he preferred the revised text as it stood; however, if the majority of members favoured the elimination of the requirement for five-yearly revision conferences, the number of requests needed to convene such a conference should be reduced from one third to one quarter of contracting States.

60. Mr. KHOO (Singapore) said that he was against a mandatory quinquennial review conference; that was far too rigid a requirement. He could, however, accept the suggestion that one quarter rather than one third of contracting States should be able to request a review conference.

61. Mr. CLETON (Netherlands) said he agreed with the Ghanaian and Singaporean representatives that it was unwise to make provision for an automatic review conference every five years. Such conferences should be held only when necessary and, in that connexion, he had looked in vain in the *ad hoc* Working Group's proposal for any reference to significant changes in real values. His delegation could accept a revision formula on the lines of that provided by article 21 of the 1976 Convention on Limitation of Liability for Maritime Claims.

62. He also had difficulty with paragraph 4 of the draft in its relation to paragraph 5, since it appeared that, even if only half of the contracting States accepted an amendment, they could impose the revised amounts on other contracting States which failed to specifically notify the depositary that they were not bound by that amendment. It would be difficult to persuade the Netherlands Parliament to agree to such a provision.

63. Mr. BYERS (Australia) said that he supported the revised text as it stood. Members had been canvassed for their opinions concerning a quinquennial review and the majority had seemed to favour a mandatory review period. If there proved to be no need to increase the limitation amounts, the review conference would be a brief one. However, at a time of rapid inflation, it was reasonable to make provision for such a review so as to ensure that the amounts kept pace with the needs of the times.

64. Mr. NDAWULA (Uganda) said that the provision for a mandatory five-year review was based on the reasonable assumption that during such a period there would have been changes in world currency values substantial enough to warrant the convening of a review conference.

65. Mr. QUARTEY (Ghana) said that his delegation had no firm position regarding a reduction of the number of requests needed to convene a review conference from one third to one fourth of the contracting States.

However, he wished formally to propose the deletion of the words "every five years or" from paragraph 2, on the grounds that the contracting States would know when there had been sufficient fluctuations to warrant the convening of a conference. That deletion would eliminate the possibility of calling a conference and finding there was nothing for it to do.

66. Mr. BURGUCHEV (Union of Soviet Socialist Republics) agreed that to provide for the convening of a revision conference at mandatory five-year intervals was unreasonable and unacceptable. With regard to paragraph 4 of the revised text, he agreed with the Italian representative that the number of acceptances required for an amendment to enter into force should be two thirds instead of one half.

67. Mr. LAVIÑA (Philippines) said that, in drafting the revised text, the *ad hoc* Working Group had taken account of what it had believed to be the desire of the majority to include in paragraph 2 a provision along the lines proposed by the representative of France, namely, an automatic review conference every five years.

68. The CHAIRMAN invited the Committee to vote on the suggestions that the words "every five years or" should be deleted from paragraph 2 of the revised text and that the words "one third" should be replaced by "one quarter" in the same paragraph.

69. *Those changes were adopted by 36 votes to 11, with 21 abstentions.*

70. Mr. YÉPEZ (Venezuela) said that his delegation had voted against the proposed amendments, first because it thought that there should be a mandatory revision conference every five years and, secondly, because the matter of the number of requests needed to convene a revision conference was fully covered by a decision of the Second Committee, based on a proposal by Norway (A/CONF.89/C.2.L.26).

71. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he had abstained from the vote since, although he agreed with the proposal to eliminate the requirement for a mandatory quinquennial review conference, he did not agree with the reduction of the number of requests needed to convene a conference from one third to one quarter of the contracting States.

72. The CHAIRMAN invited the Committee to vote on the Italian proposal to replace the words "one half" in paragraph 4 of the revised text by "two thirds".

73. *The proposal was adopted by 32 votes to 27, with 8 abstentions.*

74. *The revised text as a whole, as amended, was adopted by 35 votes to 6, with 23 abstentions.*

Completion of the Committee's work

75. The CHAIRMAN declared the First Committee's work concluded.

The meeting rose at 5.45 p.m.

SUMMARY RECORDS OF THE MEETINGS OF THE SECOND COMMITTEE

1st meeting

Monday, 13 March 1978, at 11.15 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.1

Adoption of the agenda

1. The provisional agenda (A/CONF.89/C.2/L.1) was adopted.

Election of a Vice-Chairman and a Rapporteur

2. The CHAIRMAN suggested that the Committee should defer consideration of the item until a future meeting.
3. It was so decided.

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.2)

4. The CHAIRMAN suggested that, in order to expedite the Committee's work, members should avoid general statements on the draft articles as a whole and concentrate on the substance of each of the proposed draft articles in turn.

5. Mr. KRISHNAMURTHY (India), referring to the penultimate sentence of paragraph 1 of the introduction to document A/CONF.89/6, said that some of the draft final clauses prepared by the Secretariat appeared to be modelled on corresponding provisions in the Convention on a Code of Conduct for Liner Conferences, for example, the draft article on entry into force. His delegation was unable to agree with the general tenor of the final provisions of that Code of Conduct. It was anxious that the draft Convention under discussion should enter into force as soon as possible and suggested, therefore, that the final clauses should be simpler than those of the Convention on a Code of Conduct for Liner Conferences.

6. Mr. LARSEN (United States of America) suggested that it would be wise to draft the final clauses in such a way that the proposed Convention would enter into force when a substantial number of States with a significant percentage of the tonnage of the world's merchant fleets had ratified the instrument.

7. Mr. LAVINA (Philippines) said that he supported the comments made by the representative of India concerning the final clauses of the proposed Convention. His delegation would support the alternative text for the entry into force article proposed by the Indonesian delegation (A/CONF.89/C.2/L.2).

8. Mr. YÉPEZ (Venezuela) said that the entry into force of the proposed Convention should not be dependent on ratification by a certain number of States, the combined tonnage of whose merchant fleets would amount to a certain percentage of world tonnage. In the opinion of his delegation, the final clauses should be as simple as possible in order that the proposed Convention could enter into force as soon as possible.

9. Turning to the question of reservations, he said that if reservations were permitted they should be kept to the minimum in order to avoid the difficulties that arose when some clauses of a convention were applicable to certain States but not to others.

10. Mr. CARRAUD (France) said that his delegation, too, hoped that the final clauses would be as simple as possible. He felt, however, that a compromise would have to be reached between what was desirable and what was practicable. It would seem necessary to provide that the proposed Convention would come into force when it had been ratified by a certain number of States representing a certain percentage of the tonnage of the world's merchant fleets.

11. Mr. TERASHIMA (Japan) said that, as far as the final clauses were concerned, the precedent set in the Convention on a Code of Conduct for Liner Conferences deserved consideration. His delegation might submit a proposal on the question.

12. The CHAIRMAN, reminding members of his request that they should avoid general statements on the draft articles as a whole, suggested that the Committee take up the draft articles one after the other.

13. It was so decided.

Article [1].¹ Depositary

14. Mr. SEMIKACHEV (Union of Soviet Socialist

¹ The numbering of the draft articles is provisional.

Republics) said that his delegation did not in principle object to the draft article, though it considered that it might be amalgamated with the draft article concerning signature, ratification, etc. A proposal to that effect would be submitted in writing.

15. Mr. FAHIM (Egypt) said that his delegation had no objection to the text of the article as drafted, but suggested that the words "in New York" be inserted after the words "United Nations".

16. Mr. LAVINA (Philippines) said that his delegation had no objection to the article as drafted. It noted, however, that an amendment was being submitted by the delegation of the Soviet Union.

17. Mr. KRISHNAMURTHY (India) observed that several international instruments, including the Vienna Convention on the Law of Treaties, contained a specific description of the functions of the depositary. The text of the draft article under consideration was incomplete in that it made no reference to the duties to be discharged by the Secretary-General in respect of the new Convention.

18. Ms. ROCA (Ecuador), agreeing that the functions of the depositary should be specifically mentioned in the Convention, expressed the hope that the representative of India would submit a written proposal in that connexion.

19. Mr. SLOAN (Secretariat) observed that the text before the Committee had been drafted in the simplest form possible because the procedures relating to the functions of the depositary were already well-established under the Vienna Convention on the Law of Treaties.

20. Mr. RAMSEY (United States of America) considered that the text of the draft article should be retained as it stood.

21. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee could agree to defer further consideration of the draft article until the delegation or delegations concerned had submitted amendments in writing.

22. *It was so decided.*

Article [2]. Implementation

23. Mr. CANTIN (Canada) said that his delegation favoured the inclusion of provisions along the lines of those in draft article [2]. However, the final decision on the article would depend largely on whether certain substantive provisions were included elsewhere in the Convention. Consequently, he proposed that consideration of the draft article should be deferred until a later stage.

24. Mr. BELLAMY (Australia) considered that a clause of the type under consideration should not appear in the Convention unless any State felt there was a real need for it. He therefore endorsed the view that consideration of the draft article should be deferred until it had been determined whether or not such a need existed.

25. Mr. KRISHNAMURTHY (India) proposed that the Committee should consider the possibility of deleting the draft article altogether, since the provisions it contained would certainly create both domestic and external problems for States.

26. Mr. SLOAN (Secretariat), replying to a question by Mr. CARRAUD (France), said that he had little to add to the information provided in foot-note 1 to the draft article. A similar provision had been included in the Convention on the Limitation Period in the International Sale of Goods, the first to have been considered under the auspices of UNCITRAL. The Secretariat was not convinced of the draft article's utility, and the text had been placed between square brackets in order to leave the Conference free to decide whether it should be retained or not.

27. Mr. PALMER (United Kingdom) said that his delegation did not hold very strong views on the draft article. There was considerable merit in the suggestion by the representatives of Canada and Australia that the discussion should be deferred until the situation had become more clear.

28. Mr. KRISHNAMURTHY (India) endorsed the comments by the preceding speaker.

29. Mr. LAVINA (Philippines) said that his delegation would have no objection to the deletion of the draft article, but could also agree to defer the decision until a later stage.

30. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that his delegation supported the suggestion for deleting the draft article but would have no objection to deferring the decision until a later meeting.

31. Mr. GANTEN (Federal Republic of Germany) said that his delegation, which represented a federal State, did not consider that the draft article was necessary, but would have no objection to its retention if such was the desire of other States.

32. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished further consideration of the draft article to be deferred until a later stage.

33. *It was so decided.*

Article [3]. Date of application.

34. Mr. KRISHNAMURTHY (India) said it might be better to consider the date of application in connexion with draft article [6], which dealt with entry into force. He proposed, therefore, that the two draft articles, [3] and [6], be considered together at a later date.

35. Mr. DE BRUIJN (Netherlands), Mr. MÜLLER (Switzerland), Mr. NDAWULA (Uganda) and Mr. NIANG (Senegal) supported the Indian representative's proposal.

36. *It was so decided.*

Article [4]. Signature, ratification, [acceptance, approval] accession

37. Mr. TERASHIMA (Japan) proposed that the words "acceptance, approval" be retained throughout the article; their retention would be of advantage to Japan for internal constitutional reasons.

38. Ms. BRUZELIUS (Norway) supported the Japanese proposal on the general ground that anything

which would make it easier for as many States as possible to become parties to the Convention should be accepted.

39. She recalled that the time allowed for signature in certain recent maritime conventions (e.g. the 1976 London Convention) had been too short, and accordingly proposed that the date to be inserted in paragraphs 1 and 3 of the draft article should allow a period of two years for signature.

40. She supported the requirement in paragraph 2 of ratification by the signatory States, and would exclude the alternative of signature with binding effect.

41. Mr. KRISHNAMURTHY (India) said that the words "acceptance" and "approval" were not widely used in United Nations conventions and their meaning was in any case implicit in "ratification". He therefore proposed their deletion from draft article [4].

42. He thought that a signature period of two years was too long in view of the strong desire of many States that the Convention should come into force as soon as possible. He proposed instead that a period of one year should be allowed for signature.

43. Mr. YÉPEZ (Venezuela) said that if some States should prefer the words "acceptance, approval" to stand, he would not press for their deletion. He agreed with the Indian representative that the shortest period practicable should be allowed for signature, since States which did not sign the Convention within the prescribed time could always use the accession procedure.

44. Mr. RAMSEY (United States of America) agreed with the Japanese representative that the words "acceptance, approval" should be retained.

45. Mr. LAVIÑA (Philippines) agreed with the representative of India that the words "acceptance, approval" were redundant, but he had no objection to their retention. He agreed with the suggestion by the representative of India that the period for signature should be set at 12 months.

46. Mr. NDAWULA (Uganda) agreed that the words "acceptance, approval" ought to be deleted as redundant. He suggested that the period for signature should be set at 12 months at most.

47. Mr. MARTÍNEZ MORCILLO (Spain) said that the words "acceptance, approval" were subsumed under "ratification" and therefore redundant, but if some States wished to retain them there should be no great problem. Nor should there be any problem with the period to be allowed for signature, in view of the fact that, once that period had expired, the accession procedure was always available.

48. Mr. PALMER (United Kingdom) agreed that the words "acceptance, approval" should be retained. The length of the period to be allowed for signature would depend partly on whether a final text would be available by the end of the present Conference. He did not agree that a short period for signature would necessarily be the best way of bringing the Convention into force with minimum delay.

49. Mr. KANG (Republic of Korea) agreed that a signature period of one year should suffice.

50. Mr. WUREH (Liberia) said that the words "acceptance, approval" should be retained. A signature period of one year should be sufficient.

51. Mr. POTOMIANOS (Greece) agreed with the Norwegian representative's proposal regarding the period for signature.

52. Mr. CANTIN (Canada) said that he would agree to the retention of the words "acceptance, approval".

53. Mr. YÉPEZ (Venezuela) said that if the text of the Convention was ready by the end of the Conference it could be signed at that time, or there might perhaps be a short signature session in New York. It would be helpful if the United Kingdom representative would submit a formal proposal amplifying his previous statement.

54. The CHAIRMAN reminded delegations that rule 28 of the rules of procedure required proposals to be made in writing and circulated to all delegations not later than the day preceding the meeting at which they were to be discussed.

55. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that he had already proposed the consolidation of articles [1] and [4]. He had prepared a proposal in writing on those lines.² The text was as follows:

"Article []. Signature, ratification, accession

"1. This Convention shall be open for signature by all States until . . . and shall thereafter remain open for accession.

"2. This Convention shall be subject to ratification by the signatory States.

"3. Instruments of ratification and accession shall be deposited with the Secretary-General of the United Nations, who shall be the depositary of this Convention."

The meeting rose at 1 p.m.

² Subsequently circulated as document A/CONF.89.C.2/L.3.

2nd meeting

Tuesday, 14 March 1978, at 10.15 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.2

Election of a Vice-Chairman and a Rapporteur (concluded)

1. Mr. RAMSEY (United States of America) nominated Mr. Th. J. A. M. de Bruijn (Netherlands) for the office of Vice-Chairman.
2. Mr. ROTH (Federal Republic of Germany), Mr. PALMER (United Kingdom) and Mr. GUEIROS (Brazil) seconded the nomination.
3. Mr. de Bruijn (Netherlands) was elected Vice-Chairman by acclamation.
4. Mr. ARREBOLA (Cuba) nominated Mr. N. Gueiros (Brazil) for the office of Rapporteur.
5. Ms. ROCA (Ecuador), Mr. DDUMBA (Uganda), Mr. MURAD (Indonesia), Mr. FAHIM (Egypt), Mr. NIANG (Senegal), Mr. VINCENT (Sierra Leone), Mr. KANYENYE (United Republic of Tanzania), Mr. KRISHNAMURTHY (India), Mr. AMOR (Mexico), Mr. KELLER (Liberia) and Mr. YÉPEZ (Venezuela) seconded the nomination.
6. Mr. Gueiros (Brazil) was elected Rapporteur by acclamation.

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued) (A/CONF.89/6) and Add. 1 and 2, A/CONF.89/C.2/L.3, L.4, L.6-9)

Article [1]. Depositary (concluded)

7. Ms. ROCA (Ecuador), speaking as one of the sponsors of the amendment to the article concerning the depositary (A/CONF.89/C.2/L.9), said that various recent international treaties determined what were the functions of a depositary; although Ecuador had not signed the Vienna Convention on the Law of Treaties,¹ the same provisions regarding depositary functions occurred in other international instruments to which Ecuador was a party. The nature of those functions was widely known and she did not think it necessary to spell them out in detail in the Convention under consideration.
8. Mr. KRISHNAMURTHY (India), speaking as the other sponsor of the amendment, said that the functions of a depositary were set forth in detail in article 77 of the

Vienna Convention on the Law of Treaties. The object of the amendment was to make it clear that those functions would be vested exclusively in the Secretary-General of the United Nations.

9. The CHAIRMAN wondered whether the Conference had the right to inform the Secretary-General that he must perform the functions of a depositary and to tell him what those functions were. The Secretary-General could surely be assumed to know what functions he was expected to perform as depositary.

10. Mr. KRISHNAMURTHY (India) explained that the purpose of the proposed amendment was merely to make it clear who was to discharge the functions of depositary.

11. Mr. TERASHIMA (Japan) drew attention to the proposals submitted by the USSR (A/CONF.89/C.2/L.3) and Uganda (A/CONF.89/C.2/L.4), under which the draft article would be deleted and its provisions merged with those of the draft article concerning signature, ratification, etc. It seemed to him, therefore, that the Committee should first decide whether there was to be a separate article entitled "Depositary". In his opinion, a separate article was required because the depositary's functions were not necessarily limited to acceptance of instruments of ratification and of accession.

12. He had no strong feelings about the amendment proposed by Ecuador and India (A/CONF.89/C.2/L.9), but did not consider that it would change the substance of the draft article as currently worded.

13. Mr. ROTH (Federal Republic of Germany) agreed with the representative of Japan that there should be a separate article entitled "Depositary". If the amendment proposed by Ecuador and India did not facilitate the work of the United Nations Secretariat it would serve no useful purpose.

14. Mr. MARTÍNEZ MORCILLO (Spain) said that the additional words proposed by Ecuador and India were unnecessary in the article. The functions of the depositary were determined by international law, but so far as the matter under discussion was concerned, international law was not very clear. None of the conventions in which the functions of the depositary were spelt out was universally applied. He would prefer, therefore, that the text as originally drafted should be approved.

15. Mr. CARRAUD (France) endorsed the comments made by the representative of Japan: the final clauses should open with a provision designating the Secretary-General as depositary of the Convention.

16. The amendment proposed by the delegations of Ecuador and India would in no way improve the text proposed by the Secretariat.

¹ See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

17. Mr. EYO (Nigeria), supported by Mr. FAHIM (Egypt), proposed that the draft article as prepared by the Secretariat should be retained.

18. Mr. HAROON (Pakistan) agreed with those speakers who had suggested that there should be a separate article entitled "Depositary" and that the amendment proposed by Ecuador and India would serve no useful purpose.

19. Mr. VINCENT (Sierra Leone) said that his delegation endorsed the text prepared by the Secretariat. The additional words proposed by Ecuador and India were unnecessary because the functions of a depositary were well known.

20. Mr. DDUMBA (Uganda) explained that it was in order to avoid unnecessary repetition in the text that his delegation had made the proposal contained in document A/CONF.89/C.2/L.4. He appreciated the views expressed by various delegations concerning the need for a separate article entitled "Depositary", but continued to feel that draft article [1] should be merged with that concerning signature, ratification, etc.

21. Mr. NIANG (Senegal) suggested that draft article [1] as prepared by the Secretariat should be retained. He suggested further that it would be inadvisable to amalgamate that article with the article concerning signature, etc.

22. Mr. KRISHNAMURTHY (India) withdrew the proposal put forward by Ecuador and India (A/CONF.89/C.2/L.9).

23. The CHAIRMAN, observing that the majority of members appeared to be in favour of a separate article "Depositary", suggested that the draft article as prepared by the Secretariat be adopted.

24. *It was so decided.*

Article [2]. Implementation (continued)

25. The CHAIRMAN referred to the Committee's earlier decision to postpone consideration of the draft article pending completion by the First Committee of its consideration of matters connected with the question of implementation.

Article [3]. Date of application (concluded)

26. Mr. LARSEN (United States of America) said it was not clear from the proposal in document A/CONF.89/C.2/L.7 whether the intention was that the draft article should be deleted or its contents be added to another draft article.

27. Mr. KRISHNAMURTHY (India), speaking as one of the sponsors of the proposal, explained that the intention was that the contents of the draft article should be added to the draft article concerning entry into force.

28. Mr. de BRUIJN (Netherlands), Mr. TERASHIMA (Japan), Mr. NIANG (Senegal), Mr. MARTINEZ MORCILLO (Spain), Mr. SEMIKACHEV (Union of Soviet Socialist Republics), Mr. VINCENT (Sierra Leone) and Mr. GUEIROS (Brazil) supported the proposal submitted by the delegations of Ecuador and India.

29. Mr. PALMER (United Kingdom) considered that

the substance of draft article [3], to which his delegation attached particular importance, would not be affected by its status as either a separate article or part of another article. However, as the provision in question had a logical connexion with those relating to entry into force, he could support the proposal of Ecuador and India.

30. Mr. PALLNA (Yugoslavia) said that his delegation could also support that proposal, although it regarded the question as one of drafting rather than of substance.

31. Mr. RAMSEY (United States of America) suggested that the words "by sea" should be inserted after the words "contracts of carriage".

32. Mr. NARVAEZ (Ecuador) suggested that, when considering the draft article "Date of application", the Drafting Committee should take account of the wording used in paragraph 1 of article 2, concerning scope of application, where the words "all contracts of carriage" appeared.

33. Mr. KRISHNAMURTHY (India), referring to the suggestion by the representative of the United States of America, observed that the expression "contract of carriage" would be defined in article 1, "Definitions", which was being discussed by the First Committee. The final wording of the provision under consideration would depend on the definition adopted by the First Committee and would, no doubt, be settled by the Drafting Committee.

34. Mr. ROTH (Federal Republic of Germany), Miss CHIAH (Malaysia) and Mr. BELLAMY (Australia) endorsed the views expressed by the representative of India.

35. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee could agree to leave the final wording of the provision to the Drafting Committee, on the understanding that the text would be inserted in the same article as the provisions relating to the entry into force of the Convention.

36. *It was so decided.*

Article [4]. Signature, ratification, [acceptance, approval, accession (continued)]

37. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) withdrew his delegation's proposal (A/CONF.89/C.2/L.3) in favour of that submitted by the Indian delegation (A/CONF.89/C.2/L.8).

38. Mr. DDUMBA (Uganda) withdrew his delegation's proposal (A/CONF.89/C.2/L.4).

39. Mr. MARTINEZ MORCILLO (Spain) said that he could support the Indian delegation's proposal. However, he considered that the words "for one year" in paragraphs 1 and 3 should be replaced by language specifying a date.

40. Mr. YÉPEZ (Venezuela), Mr. DDUMBA (Uganda) and Mr. HANKE (German Democratic Republic) announced their support for the Indian proposal.

41. Mr. AMOR (Mexico) referred to the comments made at the Committee's previous meeting by the representative of Norway in respect of the period of time for which the Convention should be open for signature, and

proposed that the period should be two years rather than one.

42. Mr. HAROON (Pakistan) supported the Indian proposal subject to the insertion of a specific date in paragraphs 1 and 3. In his view, the period for which the Convention should be open for signature should not exceed one year.

43. Mr. LAVINA (Philippines) endorsed the comments by the preceding speaker.

44. Mr. GUEIROS (Brazil) also considered that one year was a sufficiently long period for States to exercise the privilege of signing the Convention. He shared the view that a specific date should be mentioned in the article.

45. Mr. KANG (Republic of Korea) observed that the problem of the insertion or deletion of the words "acceptance, approval" had not yet been settled. With the exception of that point, however, he could support the text proposed by the Indian delegation.

46. Mr. POTOMIANOS (Greece) considered that the time allowed for signature of the Convention should be two years.

47. Mr. TERASHIMA (Japan) recalled that the suggestion he had made at the Committee's previous meeting to retain the words "acceptance, approval" had received some support. With regard to the time period, he endorsed the view that a specific date should be mentioned in the article, and suggested that a compromise might be sought which would satisfy both the delegations in favour of one year, and those advocating two years. Paragraph 1 of the USSR proposal (A/CONF.89/C.2/L.3), which combined paragraphs 1 and 3 of the Indian proposal, deserved to be taken into consideration even though it had been withdrawn.

48. Mr. TARASYUK (Ukrainian Soviet Socialist Republic) considered that the text proposed by the Indian delegation provided a good basis for discussion. He

observed that the proposal for deleting the words "acceptance, approval" had been supported at the Committee's previous meeting, as had the suggestion that the Convention should be open for signature for a period of one year. The date on which that period should start should be that on which the text of the Convention was adopted.

49. Mr. KRISHNAMURTHY (India) said that the text proposed by his delegation did not differ substantially from that drafted by the Secretariat. The words "acceptance, approval", which appeared in square brackets in the Secretariat's draft, occurred only very rarely in international instruments adopted under the auspices of the United Nations. A one-year period for signature was proposed in deference to the general wish that the Convention should enter into force as early as possible.

50. Mr. VINCENT (Sierra Leone) supported the Indian proposal and endorsed the view that a specific date should be mentioned in the text.

51. Mr. PALMER (United Kingdom) shared the view that a specific date should be inserted, regardless of the actual period of time upon which agreement was reached. He favoured the retention of the words "acceptance, approval", which appeared in both the Convention on a Code of Conduct for Liner Conferences and the London Convention of 1976, since their presence would facilitate matters for certain States. He agreed with the representative of Japan that the attention of the Drafting Committee should be drawn to the possibility of combining paragraphs 1 and 3 of the Indian proposal along the lines of paragraph 1 of the USSR proposal.

52. Mr. EYO (Nigeria) said that his delegation could support the Indian proposal, subject to the insertion of the words "acceptance, approval" as they appeared in the Secretariat's draft.

The meeting rose at noon.

3rd meeting

Wednesday, 15 March 1978, at 10.25 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.3

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued)
(A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.8)

Article [4]. Signature, ratification, [acceptance, approval] accession (concluded)

1. THE CHAIRMAN said it was his understanding that the Committee as a whole was in favour of the amend-

ment proposed by the Indian delegation (A/CONF.89/C.2/L.8), subject to certain corrections and subamendments.

2. Mr. RAMSEY (United States of America) said that his delegation had no objection to the approach adopted in the Indian proposal, but thought that due consideration should be given to the argument put forward by the representative of Japan in favour of the retention of the words "acceptance, approval" which appeared in the Secretariat's draft (A/CONF.89/6). In his view, those words should be retained if it could be demonstrated that their presence in the clause would assist certain States without having any adverse effect for others.

3. Mr. PALMER (United Kingdom) said that his delegation shared the view expressed by the preceding speaker.

4. Mr. ROTH (Federal Republic of Germany), referring to the period during which the Convention should be open for signature, said that his delegation was among those which considered that a specific date should be mentioned in the draft article under consideration. He suggested that the period should run for approximately one year as from the end of April 1978.

5. Mr. GUEIROS (Brazil) considered that if the phrase "according to its constitution" were allowed to stand in paragraph 1 of draft article [2], concerning implementation, and if the words "acceptance, approval" were retained in draft article [4], concerning signature, etc., the Convention would probably be acceptable to all States whatever their legal and constitutional situation might be. With regard to the period for which the Convention should be open for signature, he proposed that the date "30 April 1979" should be inserted in the spaces left blank in paragraphs 1 and 3 of the draft text prepared by the Secretariat.

6. Mr. CARAUD (France) endorsed the views expressed by the representatives of the United States of America, the Federal Republic of Germany and Brazil.

7. Miss CHIAH (Malaysia) said that a distinction should be drawn between the international and domestic aspects of acceptance of a treaty or convention. In her view, the word "ratification" necessarily implied acceptance or approval of the instrument concerned. Consequently, she considered that those two words should not appear in the text under consideration, unless convincing reasons could be given for their inclusion.

8. Mr. LAVINA (Philippines) said that his delegation shared the views expressed by the previous speaker. However, if the deletion of the words "acceptance, approval" should create difficulties for certain States, his delegation would not object to their retention.

9. Mr. KRISHNAMURTHY (India) said that it was certainly not his delegation's intention to create difficulties for countries that might be faced with serious constitutional problems if the words "acceptance, approval" did not appear in the text. The words "ratification", "acceptance", "approval" and "accession" were defined in article 2 of the Vienna Convention on the Law of Treaties as the international act whereby a State signified its consent to be bound by a treaty. In his view, both the word "ratification" and the word "accession" implied prior acceptance and approval of the instrument in question by the State concerned. Consequently, he considered that it would be preferable to delete the words "acceptance, approval", unless their deletion created insurmountable difficulties for any State.

10. He supported the proposal by the representative of Brazil concerning the date until which the Convention should be open for signature.

11. Mr. KELLER (Liberia) endorsed the view that the Convention should be open for signature for one year and that a specific date should be mentioned in the article. He also favoured the retention of the words "acceptance,

approval", since there was no indication that their presence would make it more difficult for any State to ratify the Convention.

12. Mr. SAMPIETRO (Argentina) endorsed the view that the Convention should be open for signature for one year, and considered that a specific date should be fixed in consultation with the Secretariat. Although his delegation would prefer that the article mention only signature, ratification and accession, it would have no objection to the retention of the words "acceptance, approval" as well.

13. Mr. GUEIROS (Brazil) observed that, in the international law of treaties, ratification was always a second step which set the final seal on a State's initial approval or acceptance of an international instrument. Taking account of the different ways in which power was shared between the legislative and the executive in different countries, and bearing in mind that the Convention was an economic and political instrument rather than a purely juridical one, the Committee should seek to reach a compromise with regard to the retention or deletion of the words "acceptance, approval".

14. The CHAIRMAN informed the Committee that among recent international instruments using the words "acceptance, approval" were the 1976 Agreement establishing the International Fund for Agricultural Development (article 13), the Customs Convention on Containers (1972), the Customs Convention on the International Transport of Goods under TIR Carnets (1975), the Convention on a Code of Conduct for Liner Conferences (1974), and various international agreements on coffee, sugar, tin and cocoa.

15. Mr. TERASHIMA (Japan) said that under the Japanese Constitution the process of ratification was a final act of acceptance of a treaty. However, that required an act by the Emperor, and the necessary procedure, though feasible, was long and cumbersome, whereas for the purpose of a procedure of "acceptance" or "approval" the necessary measures could be initiated by the Prime Minister, the procedure was much simpler, and the deposit of Japan's instrument of final acceptance of the Convention would therefore be expedited.

16. Mr. DDUMBA (Uganda) agreed that the date to be inserted in article [4] should allow for a signature period of one year. The delegations which had opposed retention of the words "acceptance, approval" had not mentioned any specific disadvantages in retaining the words, and since some delegations felt that the words were necessary, an appropriate compromise might be to keep those words in the text.

17. Mr. JOMARD (Iraq) said that he supported the proposal for fixing a final date for the signature of the Convention. With regard to the words "acceptance, approval" he said that in international practice ratification was the final act by which a State signified its willingness to consider itself bound by a Convention which it had signed, and therefore necessarily included acceptance and approval, whereas those two terms on their own had no precise meaning in an international context. Indeed, a State which did not ratify its signature

of a Convention would incur no obligations under that Convention. He would, therefore, favour the deletion of the words "acceptance, approval", it being understood that the acts which they denoted were implied in ratification.

18. Mr. CANTIN (Canada) said that if the inclusion of the words "acceptance, approval" would facilitate matters for other delegations, then those words should certainly be included. He had no particular preference regarding a date for signature.

19. Mr. MARTÍNEZ MORCILLO (Spain) pointed out that ratification was the word customarily employed in international practice to designate the act by which States showed that they considered themselves bound by the provisions of a treaty. Moreover, the ratification procedures varied greatly from one country to another, and while "ratification" might not always be the term used, the State's wish to become a party to a convention was evidenced by the appropriate act, whatever the procedure and however the act was described. The word "ratification" should therefore be sufficient to cover the procedures of all States, whatever their systems of constitutional law, and the words "acceptance, approval" were unnecessary; however, their inclusion would not affect the force or scope of the article, and hence he would not oppose their inclusion if some States wished them to stand.

20. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that, if the period during which the Convention should be open for signature was fixed, the blank spaces in the draft article would have to be filled. The Drafting Committee might see to that.

21. He gathered from the Japanese representative's intervention that the Japanese Prime Minister could take a decision to approve the Convention that would have the same effect, as far as the entry into force of the Convention with regard to Japan was concerned, as would ratification; if that interpretation was correct, it was necessary to take the Japanese proposal into account and probably to include the words "acceptance, approval".

22. Mr. GUEIROS (Brazil) said that he did not agree that the date left blank in draft article [4] could be inserted by the Drafting Committee. The date would have to be decided by the Conference itself, in committee or in plenary.

23. Mr. KRISHNAMURTHY (India) pointed out that the words "acceptance, approval" appeared in square brackets on the title page of document A.CONF.89.6, in paragraphs 1, 2 and 6 of the draft article on implementation, in the title and paragraphs 2 and 4 of the draft article under discussion, and in the article on entry into force, as well as in the draft article on reservations. He assumed that whether the Committee decided to delete or to retain the words in question, that decision would affect all the passages in which the words appeared.

24. Mr. VINCENT (Sierra Leone) said that he favoured the inclusion of a specific date in article [4], but the date should be fixed realistically in the light of how soon a final text would be available for signature.

25. He thought the words "acceptance, approval" were

implicit in the term "ratification", but, if their deletion would cause hardship to other States, he would not oppose their retention.

26. Mr. KANG (Republic of Korea) said that he would support inclusion of the words "acceptance, approval" if it would help more States to become contracting parties to the Convention.

27. Mr. KHABDUJI (Zaire) said that the international act by which a State pledged itself to accept the obligations of a treaty was undoubtedly the act of ratification, and he did not think that acceptance or approval carried the same weight. However, he understood that retention of the words "acceptance, approval" would make it easier for certain States to become parties to the Convention and he would not, therefore, oppose the retention of the words, on the clear understanding that the procedure so designated was on the same footing as ratification. With regard to the period to be inserted in article [4], he accepted the date suggested by the representative of Brazil and also agreed with the representative of Sierra Leone that the date would depend partly on how soon all Governments could be provided with copies of the final text of the Convention.

28. Mr. YÉPEZ (Venezuela) pointed out that a date would be appended to the Convention after the phrase "done at Hamburg", etc., after the final article, and to that extent it would seem unnecessary to insert a precise date in article [4]. However, if the majority thought it necessary to specify a period for signature, he would have no objection. Similarly, he had no strong views on the inclusion or deletion of "acceptance, approval", and if retention of those words would make it easier for some States to adhere to the Convention he would not oppose it.

29. Mr. HAROON (Pakistan) said that acts of acceptance or approval always preceded acts of ratification. Nevertheless, if for some countries acts of acceptance or approval were as binding as acts of ratification, his delegation would not object to the retention of the words "acceptance or approval" in the article.

30. He endorsed the suggestion of the representative of Brazil concerning the date until which the Convention would be open for signature.

31. Mr. SLOAN (Secretariat), replying to a question put by the representative of the Philippines, said that in accordance with normal practice the text of the Convention would be open for signature by representatives having full powers to sign on the final day of the Conference at Hamburg. It would then be flown to New York where it would be available for signature until the date specified in the Convention. The authentic text was normally circulated after signatures had been affixed, but there would be a text from the documentary material of the Conference which would be available to all States for consultation. It seemed to be normal practice to provide for a signature period of approximately one year. It was possible, however, to make provision for a shorter or longer signature period.

32. The CHAIRMAN, having consulted the Committee, said he took it that the majority of delegations were in

favour of fixing a definite period for the signature of the Convention, of providing that that period should be one year and of retaining the words "acceptance or approval" in draft article [4].

33. *It was so decided.*

34. Mr. AMOR (Mexico) said that, as he had explained at a previous meeting, Mexico needed and requested a period of two years for the signature of the Convention.

35. Mr. NIANG (Senegal) said that at the current stage of the work of the First and Second Committees his delegation was not in a position to take a decision on the questions to which the Chairman had referred.

36. Mr. VINCENT (Sierra Leone) suggested that, since the Convention would be open for signature at Hamburg, it might be appropriate to replace paragraph 1 of the Indian amendment (A/CONF.89/C.2/L.8) by the beginning of paragraph 1 of the amendment previously proposed by the USSR (A/CONF.89/C.2/L.3).

37. Mr. YÉPEZ (Venezuela) asked whether, since the Convention would be open for signature at Hamburg, it would be necessary to amend paragraph 1 of draft article [4] which referred to the Convention being open for signature at the Headquarters of the United Nations, New York.

38. Mr. SLOAN (Secretariat) said that it was precisely in order to avoid naming the place at which the Convention

would first be open for signature that paragraph 1 referred not to the date on which but to the date until which the Convention would be open for signature. It was normal practice for the text of a convention to become open for signature at the conference at which it had been prepared and to remain open in New York until a given date. He suggested, therefore, that there was no need to amend the text of paragraph 1.

39. Mr. GUEIROS (Brazil) said that, for the sake of uniformity, the words "or accession", which occurred in paragraph 1 of draft article [2], should also be inserted in paragraph 2 of that draft article and in paragraph 2 of draft article [4].

40. Mr. KRISHNAMURTHY (India), drawing attention to the provisions of paragraph 3 of draft article [4], said that, under international law, only non-signatory States acceded to conventions. Accordingly, he could not agree with the representative of Brazil that the words "or accession" should be added to paragraph 2 of draft article [4].

41. Mr. BELLAMY (Australia) agreed with the representative of India. He suggested, however, that the matter should be dealt with by the Drafting Committee.

42. The CHAIRMAN observed that the Committee had completed its work on draft article [4].

The meeting rose at 12.15 p.m.

4th meeting

Thursday, 16 March 1978, at 10.20 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.4

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.2, L.12, L.15, L.16)

Article [6]. Entry into force

1. Mr. SIREGAR (Indonesia) said that his delegation had proposed an alternative text (A/CONF.89/C.2/L.2) for the provision on entry into force for two reasons: first, because in most United Nations conventions entry into force depended on the number of States ratifying, accepting, approving or acceding to the instrument; and, secondly, because if entry into force was to be dependent on ratification by States with a certain percentage of the world's merchant fleets, the proposed new Convention would never, in the opinion of his delegation, come into force.

2. The figure 20 should be inserted before the word "States" in his delegation's proposal.

3. Mr. GUEIROS (Brazil) said that Brazil, as a developing country in the process of building up a merchant marine, could not accept a convention in which the interests of the developing countries were not fairly balanced with those of the big maritime Powers. On the other hand, his delegation realized that a convention that was not acceptable to the big maritime Powers would be virtually meaningless. His delegation's position was, therefore, that the Conference, in plenary, would have to work out a 'package deal' in the form of a text acceptable to all States. In the meantime, his delegation, together with other members of the Group of 77, would support the text proposed by the delegations of Bangladesh, India and Uganda (A/CONF.89/C.2/L.15).

4. Mr. TERASHIMA (Japan) said that his delegation's proposal (A/CONF.89/C.2/L.12) was based on alternative B of the Secretariat's draft (A/CONF.89/6). It was modelled on the similar provision in the 1974 Convention

on a Code of Conduct for Liner Conferences, but the gross tonnage of the world's merchant fleets would be deemed to be that shown in *Lloyd's Register of Shipping, Statistical Tables, 1977* (see A/CONF.89/6 Add.1), not the statistical tables for 1973 as in the Code of Conduct. In the opinion of his delegation, the States that had participated in the Conference on a Code of Conduct for Liner Conferences had approached the question of entry into force with sound common sense. The Convention under discussion would apply to contracts of carriage of goods by sea, which were normally incorporated in bills of lading issued by shipowners. It seemed reasonable, therefore, to provide that its entry into force would depend both on gross tonnage of the world's merchant fleets and on the number of States ratifying the Convention.

5. Under his delegation's proposal, a contracting State's gross tonnage to be taken into account would be exclusive of tankers and bulk carriers; the reason was that bills of lading were normally issued for general cargo and container trade only.

6. Mr. JACOBÆUS (Sweden) said that his delegation hoped that the new Convention would enter into force as soon as possible, and that the article on entry into force would be so constructed that the transitional period between the application of the existing regimes and that of the proposed new régime was kept to the minimum.

7. His delegation's general view was that the only criterion governing entry into force should be the number of States ratifying the Convention. The number of ratifications required should, however, be high enough to ensure that the Convention enjoyed an adequate degree of support. A reasonably high figure would not only shorten the transitional period but would make the Convention more attractive to States which currently preferred the régime established in the Hague-Visby Rules. In that connexion, his delegation supported the proposal submitted by Bangladesh, India and Uganda; the minimum number of ratifications required for entry into force of the Convention should be 20. For bureaucratic reasons, the Convention should not enter into force until at least six months after the deposit of the twentieth instrument of ratification; the depositary would need time to notify States concerned, official documents would have to be prepared and shippers and carriers would have to be informed about the entry into force of the new régime.

8. A provision such as that contained in alternatives X and Y in the text prepared by the Secretariat (A/CONF.89/6) might delay ratification because it implied that relations between a State that had ratified the new Convention and a State that had not yet done so would not be governed by any convention. Trade partners might wait for each other to take the first step and delay ratification until they were sure that the new Convention would be widely applied. It would seem unwise, therefore, to include such a provision in the text. If, however, the majority of delegations was in favour of its inclusion, his delegation would not object.

9. Mr. POTOMIANOS (Greece) said that the main

purpose of the proposed Convention was to broaden the obligations and responsibilities of carriers. It would seem, therefore, that one of the criteria governing entry into force should be the number of shipping countries ratifying the Convention. An instrument rejected by a large number of countries with a substantial tonnage of the world's merchant fleets would serve little purpose. His delegation was therefore in favour of the principle set forth in alternative C of the Secretariat paper. If necessary, however, it could support alternative B. The figures to be inserted in paragraph 1 should be those proposed by the representative of Japan.

10. Mr. KRISHNAMURTHY (India), observing that 54 years had elapsed since the drawing up of the Brussels Convention, said that the rules governing the carriage of goods by sea would have to be revised in the light of General Assembly resolution 3201 (S-VI) concerning the Declaration on the Establishment of a New International Economic Order. The purpose of the proposal submitted by the delegations of Bangladesh, Uganda and India was to ensure that the new Convention would strike an equitable balance between the interests of shippers and of carriers. If, as in the Brussels Convention, shippers were placed at a disadvantage vis-à-vis carriers, the new Convention would serve no useful purpose.

11. The proposal co-sponsored by his delegation was based on alternative A. In accordance with the decision taken at the Committee's 3rd meeting, the words "acceptance, approval" had been included in the text. Under the proposal, for a State becoming a party to the Convention, the Convention would enter into force on the expiry of six months after the deposit of the instrument of ratification, acceptance, approval or accession, not after the expiry of one year as was suggested in alternative A. The sponsors' reasoning was that the State in question could be assumed to have accepted all the provisions of the Convention and to have completed the formalities required under domestic law to bring them into effect. A period of one year therefore seemed excessive. Paragraph 3 of the three-Power proposal was identical with draft article [3].

12. Referring to the Japanese delegation's proposal (A/CONF.89/C.2/L.12), which was modelled on a similar provision in the Convention on a Code of Conduct for Liner Conferences, he said that the provision in the Code had been accepted as a very special case. In the 1976 Convention on Limitation of Liability for Maritime Claims, entry into force had been made dependent only on the number of States ratifying the Convention, and the number had been set at 12.

13. He agreed with the representative of Sweden that the provision in alternatives X and Y should not be included in the text.

14. In conclusion, he said that, rather than draft a provision making the Convention's entry into force dependent on either participation by States with a certain share of the gross tonnage of the world's merchant fleets, as in alternatives B and C, or on participation by States with a certain share of the world's sea-borne trade, as in alternative D, the Committee should choose the simpler

approach of making its entry into force dependent on ratification by 20 States.

15. Mr. YÉPEZ (Venezuela) expressed general support for the proposal put forward by the delegations of Bangladesh, India and Uganda, which took account of the principle of the equality of Member States of the United Nations. He suggested, however, that paragraph 1 of that text should be replaced by the text of the corresponding provision in alternative A of document A/CONF.89/6 because not all months had 30 days.

16. Mr. PALLNA (Yugoslavia) stressed the need both to ensure that the new Convention would be generally acceptable and to avoid a situation in which two different régimes were in force at the same time. With regard to the entry into force of the new Convention, his delegation favoured provisions along the lines of those in the London Convention of 1976 on Limitation of Liability for Maritime Claims and supported the proposal of Bangladesh, India and Uganda, which would make it possible to avoid discrimination based on tonnage and/or trade.

17. Ms. BRUZELIUS (Norway) said that the moment at which the rules being drawn up by the First Committee entered into force would depend to a large extent on the decision taken in respect of the draft article under consideration. In the view of her delegation, it would be almost impossible to work out a formula which took adequate account of all the types of interest involved. Consequently, it would be preferable to retain a simpler criterion based on the number of States that ratified, accepted, approved or acceded to the Convention. In that connexion, she stated that her delegation could accept the figure of 20 proposed by Bangladesh, India and Uganda.

18. Her delegation was in general agreement with the approach adopted by the sponsors of that proposal, but encountered difficulties in respect of certain points. First, the absence of a provision requiring States ratifying the new Convention to denounce the obligations they might have under the Hague Rules and the Visby Rules would certainly give rise to many difficulties and disputes. Secondly, for bureaucratic reasons, the 30-day period proposed by Bangladesh, India and Uganda was too short. Her delegation considered that a longer period should be provided for. Thirdly, in the light of the comment by the representative of Venezuela, she supported the proposal that the reference should be to the first day of the month. Also, she could see no reason why the period preceding entry into force should be longer for the States to which reference was made in paragraph 2 than for those with which paragraph 1 was concerned; in her view, the period specified in paragraph 2 should be the same as that in paragraph 1. Finally, she stated that the text of paragraph 3 would give rise to difficulties unless a provision along the lines of those in alternatives X and Y was incorporated as well.

19. Mr. NIANG (Senegal) said that his delegation, which had originally been inclined to favour the Secretariat's alternative D, now wished to state its support for both the "number of States" criterion in general and the specific figure of 20 proposed in document A/CONF.89/

C.2/L.15. Alternatives B and C submitted by the Secretariat were both unsatisfactory, since the adoption of either one would mean that the new Convention might remain a dead letter even though it had been ratified by a large proportion of the international community.

20. Mr. PALMER (United Kingdom) said that for the moment he would comment only on the provisions concerning entry into force proper, even though alternatives X and Y submitted by the Secretariat raised a number of important issues that would require careful consideration in due course.

21. One of the most important objectives of the Convention was the operational replacement of the Hague Rules and the Brussels Convention of 1924. If the criteria governing entry into force did not achieve that objective, the coexistence of more than one set of rules applying to the carriage of goods by sea would lead to disputes and confusion in the field of international maritime transport. Of the proposals before the Committee, only those by Japan and France would, in his view, make it possible to achieve the desired objective. His delegation preferred that of Japan, which took into account both the number of States ratifying the Convention and the tonnage criterion. It would also be prepared to consider the Secretariat's alternative D which, unlike alternative A, would ensure that the new Convention effectively replaced the existing rules. A provision making ratification by 20 States the only criterion would not suffice, since premature entry into force of the Convention would generate the type of confusion and dispute to which he had referred.

22. Mr. LAVINA (Philippines) said that the Group of 77 in general, and his delegation in particular, did not favour alternative D. Furthermore, both alternative B, on which the Japanese proposal was based, and alternative C, on which the French proposal was based, were discriminatory in that they introduced criteria the effect of which would be to give more weight to some States than to others for the purpose of the entry into force of the Convention. On the other hand, alternative A as amended by Bangladesh, India and Uganda was in consonance with the fifth preambular paragraph of General Assembly resolution 31/100 and took into account the interests of all the parties involved in the carriage of goods by sea.

23. Mr. ARREBOLA (Cuba) supported the proposal by Bangladesh, India and Uganda, which respected the principle of equality of States and made provision for the early entry into force of the Convention.

24. Mr. HAROON (Pakistan) said that although there might have been some justification for adopting the provisions of article 49, paragraph 1, of the Convention on a Code of Conduct for Liner Conferences, on which the Japanese proposal was based, there would be no justification for adopting a similar provision in the Convention currently under consideration. His delegation supported the proposal in document A/CONF.89/C.2/L.15, which struck the necessary balance between the interests of all parties concerned.

25. Mr. KHABDUJI (Zaire) stressed the need to ensure the earliest possible entry into force of the Convention,

considering the various interests at stake. His delegation was in favour of retaining a single criterion, namely, the number of States depositing instruments of ratification, and it could support the proposal by Bangladesh, India and Uganda. Due attention should be paid to the juridical problem mentioned by the representative of Norway, which perhaps could be settled by the insertion in the draft article of an additional paragraph, though not necessarily either alternative X or alternative Y.

26. Mr. CANTIN (Canada) said that there was an inherent danger in adopting for the Convention's entry into force a criterion based only on the number of States ratifying the Convention, namely the risk that the instrument might come into force with no real significance from the point of view of world shipping, commercial transactions and the international carriage of goods by sea. A very large number of ratifications would be required and, even then, the necessary objectives might not be achieved. His delegation had no specific proposal to make at the moment, but saw considerable merit in alternative D. The figures to be inserted in paragraph 1 of that text might be 15 or 20 for the number of States and 25 for the percentage figure. The substantive provisions of the Brussels Convention of 1924 formed part of Canadian domestic legislation, but Canada had not ratified that Convention; consequently, his delegation did not feel any need to comment on alternatives X and Y.

27. Mr. RAMSEY (United States of America) said that early entry into force, equality of nations, and a balance between the interests of shippers, carriers and consignees had been mentioned in the discussion as the three criteria to be considered in connexion with the provisions relating to entry into force. Several delegations seemed to hold the view that a simple formula which took into account only the number of States ratifying the Convention would enable all those criteria to be met. In his view, the onus was on those delegations that had proposed the figure 20 to demonstrate that their proposal would in fact safeguard all the interests at stake. His delegation would refrain from further comment on the number until some explanation was forthcoming in that respect. The proposals of Japan and of France took into account the need to strike a balance between the various interests involved, although the limits set in the Japanese proposal were perhaps a little too high and those in the French proposal a little too low.

28. Mr. ROTH (Federal Republic of Germany) said that if the entry into force of the Convention could be based on a large enough number of ratifications, it might not be necessary to impose any other condition, but the figure of 20 States suggested in A/CONF.89/C.2/L.15 was too low. The object was to ensure that the Convention would come into force only if it gained world-wide acceptance, and to avoid a situation in which a small number of States could bring a new convention into force, in which event several different types of conventions and liability systems would exist side by side. Such a development would complicate rather than facilitate international trade.

29. Consequently, if the figure of 20 ratifications was to be retained, he favoured an additional criterion which could be based on tonnage, as suggested by the Japanese

representative, or on a provision along the lines of alternative D, based on the volume of sea-borne trade; he could support either proposal.

30. Mr. CARRAUD (France) said that his delegation's suggestion was an attempt to find a middle-of-the-road formula. Many delegations had stressed the importance of working out the text of a convention which would be acceptable to the international community as a whole, which would come into force as quickly as possible and which would avoid a situation where several competing regimes would be simultaneously regulating the international carriage of goods by sea. Those objectives could best be achieved by a formula linking the number of States ratifying the Convention with a reasonable tonnage figure. Efforts in the First Committee were currently being directed towards obtaining a package on which a wide measure of agreement could be achieved, and he was confident that his delegation's formula would fit in with such a package.

31. Mr. BELLAMY (Australia) said that he agreed in principle with the proposal submitted by Bangladesh, India and Uganda, although it might give rise to some practical problems. He was opposed in principle to a provision stipulating a tonnage requirement for the Convention's entry into force, for it would in effect give a veto power to the maritime States. The aim should be to balance the interests of shipowners, shippers and carriers; there were various ways of arriving at a balancing formula but they were all complicated, and some would involve recourse to trade statistics which were not always reliable. It seemed to him, therefore, that the provision concerning the Convention's entry into force should be based on the number of ratifications received, and he thought 20 was a reasonable number.

32. A provision such as those set forth in the Secretariat's alternatives X and Y in document A/CONF.89/6 was essential; obligations under the proposed new Convention would be very different from those under the Brussels Convention of 1924, and hence every State becoming a party to the new Convention would have to renounce the Hague Rules. The Convention should include an express obligation to that effect.

33. The stipulation of one year in paragraph 1 of alternative A and again in paragraph 2 was reasonable, inasmuch as it would take at least one year for Governments and those concerned with maritime transport to make the necessary arrangements.

34. In sum, he agreed in principle with the proposal submitted by Bangladesh, India and Uganda, but thought that the period mentioned in paragraph 2 should be 12 months, and that a paragraph should be added expressly requiring States becoming parties to the new Convention to denounce the Brussels Convention and Protocol.

35. Mr. KHOO (Singapore) associated himself with the observations of the Australian representative, and was optimistic that the Conference would produce a convention which would commend itself to the majority of States. He did not think that 20 instruments of ratification as a condition of entry into force was an unreasonably

low number; the Visby Rules of 1968 had needed only 10 ratifications and even then had taken nearly 10 years to come into effect. Moreover, experience with the Code of Conduct for Liner Conferences showed that to stipulate a number of States plus a tonnage requirement for the entry into force of the instrument was not a practical solution.

36. Consequently, he supported the proposal submitted by Bangladesh, India and Uganda as a basic text on which improvements, on the lines suggested by the representative of Norway, for example, could be made. He agreed that States becoming parties to the Convention would have to denounce the Hague Rules, and he therefore supported the suggestion for including in the Convention a text on the lines of alternative X or Y.

37. Mr. KELLER (Liberia) associated himself with the Japanese proposal, which represented a more equitable alternative in the light of the various considerations mentioned in discussion. Any conditions for entry into force of the Convention which did not take account of tonnage or trade figures would be unrealistic.

38. Mr. GUEIROS (Brazil) said that the various alternatives proposed in the draft provisions concerning implementation (A/CONF.89/6) offered several criteria on which entry into force could be based, but the paramount objective was to prepare a convention seen to be fair to all concerned. If the First Committee succeeded in devising a package acceptable to the developing countries, to carriers and to shipowners alike, the proposed figure of 20 ratifications would surely include ratifications by a number of shipowning countries. He agreed that, before accepting the obligations of the new Convention, States should terminate their obligations under previous conventions. Of the various formulae proposed for achieving that effect, he preferred the solution set forth in foot-note 16 to alternative Y of document A/CONF.89/6, though not necessarily in the same language.

39. Mr. KANG (Republic of Korea) said that he supported the proposal by Bangladesh, India and Uganda

for the reasons given by a number of previous speakers, and because it would seem to offer the best prospect of achieving speedy implementation of the Convention. He similarly associated himself with the proposal made by the Australian representative.

40. Mr. JOMARD (Iraq) recalled the statement in article 3 of the draft Convention that in the interpretation and application of its provisions, regard should be had to its international character and to the need to promote uniformity. With that provision in mind, and for reasons given by the representatives of the Philippines, India and others, he supported the proposal put forward by Bangladesh, India and Uganda.

41. Mr. MUCHUI (Kenya) said that there was widespread conviction that the Hague Rules were biased in favour of the maritime nations, and that there was therefore a need for a new convention that would balance the interests of carriers, shipowners and consignees. He agreed that it was undesirable to introduce a double criterion in the requirements for entry into force, and shared the view of the Australian representative that to base entry into force on a formula involving the amount of sea-borne tonnage a signatory possessed would be to present the maritime nations with the power to prevent the new Convention from coming into force, with the result that they could continue to observe the Hague Rules. For those reasons he supported the proposal introduced by Bangladesh, India and Uganda.

42. Mr. VINCENT (Sierra Leone) said that he supported the Secretariat's alternative A. In order that the Convention should come into force as soon as possible, an uncomplicated formula was needed. Entry into force should therefore be simply a function of the number of ratifications received, and he thought 20 was a reasonable figure; thus, he also supported the amendment proposed by Bangladesh, India and Uganda.

The meeting rose at 12.15 p.m.

5th meeting

Friday, 17 March 1978, at 10.50 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.5

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued)
(A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.2, L.12, L.15, L.16, L.18)

Article [6]. Entry into force (continued)

1. The CHAIRMAN invited the Committee to continue consideration of draft article [6] "Entry into force", together with the amendments thereto proposed by Indonesia, Japan, Bangladesh, India, Uganda, France and Australia (A/CONF.89/C.2/L.2, L.12, L.15, L.16 and L.18). He also drew attention to the version of the draft article "Signature, ratification, [acceptance, approval] accession" as referred to the Drafting Committee (A/CONF.89/DC/L.3).

2. Mr. DE BRUIJN (Netherlands) said that the formulation of suitable provisions regarding the Convention's entry into force would depend on decisions still to be taken in the First Committee. He suggested, therefore, that the Second Committee should postpone discussion of the draft article "Entry into force" as such, though there was no reason why the arrangements for denunciation of the Brussels Convention, which were a separate matter, could not be discussed forthwith (A/CONF.89/6, alternatives X and Y, and foot-note 16, which the Committee had agreed to designate as alternative Z).

3. Mr. CARRAUD (France), Mr. RAMSEY (United States of America), Mr. POTOMIANOS (Greece), and Mr. GUEIROS (Brazil) expressed concurring views.

4. *It was so decided.*

5. Mr. DE BRUIJN (Netherlands) proposed that the discussion be confined initially to the question whether delegations accepted the principle that States becoming parties to the new Convention which were parties to the Brussels Convention of 1924 and to the Protocol of 1968 must denounce the earlier instrument. Once the Committee had settled that point it would be able to proceed to the more technical question how entry into force of the new Convention with simultaneous denunciation of the old was to be achieved.

6. *It was so decided.*

7. Mr. PALMER (United Kingdom) said that the object of the various alternative formulations of the provisions concerning the entry into force of the proposed new Convention was to ensure that States becoming contracting parties thereto would denounce the Brussels Convention and Protocol, and that their denunciations

would take effect simultaneously with the entry into force of the new Convention. It was not strictly necessary to include such a provision in the Convention, since any State could be relied on as a matter of course to ensure that it was not a party to conflicting conventions. Nevertheless, the arrangements suggested in the draft article were designed to cover the complex situation that would arise as the new Convention took the place of previous arrangements, and the inclusion of the provision would give all signatories a degree of certainty as to the nature of the arrangements proposed; he therefore supported the inclusion in the draft Convention of provisions along the lines of those suggested in alternatives X, Y and Z.

8. Mr. RAMSEY (United States of America), Mr. DE BRUIJN (Netherlands), Mr. GUEIROS (Brazil), Mr. BELLAMY (Australia), Ms. CHIAH (Malaysia), Mr. LUKABU-KHABDUJI (Zaire), Mr. MUCHUI (Kenya), Mr. VINCENT (Sierra Leone), Mr. FAHIM (Egypt), Mr. DDUMBA (Uganda), Mr. HANKE (German Democratic Republic), Mr. KRISHNAMURTHY (India), Mr. NIANG (Senegal), Mr. KELLER (Liberia), Mr. LAVINA (Philippines), Mr. TCHIBOJA-SOUAMY (Gabon) and Ms. DSANE (Ghana) agreed to the principle of including in the draft article provisions along the lines of those suggested in alternatives X, Y and Z.

9. The CHAIRMAN said he took it that the Committee as a whole accepted that principle.

10. *It was so decided.*

11. The CHAIRMAN said that the next point to be settled was which of the proposed alternatives X, Y and Z was the most suitable.

12. Mr. BELLAMY (Australia), observing that no text had been formally proposed for alternative Z, suggested that any delegations preferring that alternative should be invited to submit a text to the Committee for consideration.

13. Mr. FAHIM (Egypt) said that his delegation favoured a provision along the lines suggested in alternative Z.

14. Mr. CARRAUD (France) said that his delegation also favoured a provision along the lines suggested in alternative Z. If, however, the majority favoured alternative X or alternative Y, his delegation would not object.

15. Mr. PALMER (United Kingdom) suggested that, as the Committee had accepted the principle that a provision along the lines of the alternatives should be included in the Convention, all that remained to be done was to work out a suitable formula to give expression to the principle.

Perhaps the matter should be referred to the Drafting Committee.

16. Ms. BRUZELIUS (Norway) agreed with the representative of the United Kingdom. Perhaps a working group of the Committee should be established to prepare a suitable text.

17. Mr. GUEIROS (Brazil) said that his delegation was unable to endorse the second sentence of the first paragraph of alternative X. It was also unable to endorse alternative Y, which did not take account of the procedure for denunciation of the Brussels Convention established in that Convention. He had therefore prepared a text for alternative Z. He read out the text and said it would be circulated in writing in time for the Committee's next meeting.¹

18. Mr. NARVÁZE (Ecuador) and Mr. MUCHUI (Kenya) said that their delegations would be unable to take a decision on the Brazilian proposal until it had been circulated in writing.

19. Mr. RAMSEY (United States of America), supported by Mr. DE BRUIJN (Netherlands), Mr.

KRISHNAMURTHY (India) and Mr. PALMER (United Kingdom), suggested that a working group should be set up to draft a text for submission to the Committee at its next meeting.

20. Mr. LAVINA (Philippines) said that he was not opposed to the establishment of a working group but, since the Committee had not discussed the various alternatives, he wondered on which alternative the working group would base its text.

21. Mr. KELLER (Liberia), observing that most delegations seemed to be in favour of alternative Z, asked whether the working group would work on that alternative only.

22. Mr. WILSON (Nigeria) suggested that the working group should not be established until the Brazilian proposal had been circulated in writing. His delegation might suggest amendments.

23. The CHAIRMAN said that many delegations seemed to favour alternative Z. The Brazilian proposal would be available in writing in time for the Committee's next meeting. When they had seen that proposal, delegations could decide whether or not a working group was to be established.

¹Subsequently circulated as document A/CONF.89/C.2/L.20.

The meeting rose at 12.10 p.m.

6th meeting

Monday, 20 March 1978, at 3.15 p.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.6

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.20, L.21)

Article [6]. Entry into force (continued)

1. It was agreed that, pending circulation in all working languages of the Australian proposal for a new article "Denunciation of other conventions", consideration of article [6] and of the related Brazilian proposal for a new alternative Z would be postponed until later in the meeting.

Article [7]. Domestic carriage

2. Ms. BRUZELIUS (Norway) considered that action taken by a State at the national level was not the concern of the international community. In the view of her delegation, therefore, the provision of draft article [7] did not come within the scope of application of an international instrument, and some explanation was required of the reason for its inclusion.

3. Mr. DE BRUIJN (Netherlands), agreeing, said that it would not be desirable to create a precedent by including such an article in the new Convention.

4. Mr. FAHIM (Egypt) considered that the article should be deleted unless clear reasons could be given which justified its inclusion.

5. Mr. YÉPEZ (Venezuela), agreeing with the representative of Norway, said that he would be prepared to support a formal proposal for the deletion of the draft article.

6. Mr. BELLAMY (Australia), replying to a question by the CHAIRMAN, said that the purpose of the draft article was to make it possible to apply the same rules to domestic carriage as were applied to international carriage by sea. While unitary States might have no difficulty in ensuring such uniform application, there was at least one federal State which was faced with constitutional problems in that respect. It was for that reason that Australia had initially sought the inclusion in the new Convention of the provision under consideration. However, his Government no longer insisted that the article should be retained, and his delegation would neither seek nor oppose its deletion.

7. Mr. KRISHNAMURTHY (India) said that further clarification was required concerning the advantages or disadvantages of the draft article. If the provision it contained was of assistance to certain States, he could see no reason why it should not be retained.

8. Mr. MUSSO (Peru) endorsed the views expressed by the representative of Norway. Since the representative of Australia would not oppose the deletion of the draft article, there was no need to prolong the discussion.

9. Mr. MARTÍNEZ MORCILLO (Spain) said that it might be possible, by means of an amendment to the article, to accommodate both Australia's desire for the inclusion of such a provision and the concern expressed by the representative of Norway.

10. Mr. GUEIROS (Brazil) fully endorsed the comments by the representative of Norway. It was perfectly clear that any State would be free to apply the rules of the new Convention to domestic carriage if it so wished, but it was equally clear that such a provision could in no way be mandatory.

11. Mr. KHABDUJI (Zaire) said that the constitution of his country, like that of many others, included provision for conforming national law to international obligations accepted under treaty; he saw no reason for including the draft article concerning domestic carriage.

12. Mr. LAVINA (Philippines) said that in his country, too, treaty obligations became part of national law, but nevertheless he saw no reason to discard a provision which might provide useful guidance to States that had no provision for the automatic harmonization of domestic laws with treaty obligations.

13. Mr. KELLER (Liberia) said that there was no reason why any sovereign State could not apply the Convention under its national legislation; it was surely not necessary for States wishing to apply the Convention to obtain United Nations approval for their legislation to that end. He therefore opposed inclusion of the article, which, he thought, might set an undesirable precedent.

14. Mr. KRISHNAMURTHY (India) pointed out that the draft article was not mandatory; if it were, it would constitute interference in domestic affairs. The formulation used was designed merely to achieve a measure of uniformity in application. He asked whether States wishing to adopt principles of the Convention in their national legislation would need to obtain the Secretary-General's permission. If so, he would be in favour of retaining the draft article.

15. Mr. BELLAMY (Australia) said that his delegation was concerned about the assumptions that many representatives appeared to make in respect of the powers of other States, particularly federal States. The powers of many States were subject to constitutional limitations and, in particular cases, States might require special provisions to be inserted in international conventions for the purpose of facilitating the application of those conventions. While his delegation did not press for the retention of the specific clause under discussion, there might be other instances where special clauses might be required to assist particular countries that encountered constitutional difficulties in certain areas.

16. Mr. SLOAN (Representative of the Secretary-General) said States would not require United Nations permission to apply the Convention, which was in the public domain.

17. The role of the Secretariat in drafting the article was explained in foot-note 18 of document A/CONF.89/6. It had been left in the text because the Secretariat had understood that, although the majority of States were indifferent regarding its inclusion or omission, it might be useful to other States, those with federal constitutions for example.

18. The CHAIRMAN said that, in the light of the views expressed, he took it that the Committee agreed to delete draft article [7] "Domestic carriage".

19. *It was so decided.*

Article [6]. Entry into force (continued)

20. The CHAIRMAN invited the Committee to resume consideration of article [6] and, in addition, to consider the proposals by Brazil (A/CONF.89/C.2/L.20) and Australia (A/CONF.89/C.2/L.21).

21. Mr. GUEIROS (Brazil) said that the new alternative Z proposed by his delegation was in fact based very largely on foot-note 16 in document A/CONF.89/6; paragraph 2 of his delegation's proposal extended the text to cover the Protocol of 1968. He thought that the Committee should first of all decide in principle whether it wished to adopt alternatives X or Y or his delegation's alternative Z.

22. Mr. CARRAUD (France) said that in general he would prefer alternative Z, but that the three alternatives were in fact quite similar and all introduced the idea of automatic denunciation of the 1924 Brussels Convention as amended by the 1968 Protocol. After denunciation, therefore, the only convention governing international relations in the carriage of goods by sea would be the 1978 Hamburg Convention. He wondered whether it was wise, when 80 States had ratified the 1924 Convention and 10 the Protocol, to include such a provision for automatic denunciation. He was not clear what the position would be in the case of a dispute between a party to the new 1978 Convention and a party to the 1924 Convention, but it seemed there would be some risk that, in view of the practical problems likely to arise, some countries might delay their ratification of the 1978 Convention until they were satisfied that enough of their trading partners had ratified it. He was at a loss to understand why the three alternatives, differing so slightly, had been submitted, since they had no precedent in international maritime legislation.

23. Mr. DE BRUIJN (Netherlands) said that at its preceding meeting the Committee had already decided to accept the principle contained in alternatives X, Y and Z.

24. Mr. DIETZ (Secretary of the Committee) agreed that that decision had been taken, though of course the Committee could always reconsider it. In reply to the French representative's question, he explained that the object of the Secretariat in proposing alternatives was to forestall a situation where, through oversight, States became bound by two conflicting conventions on the

same subject-matter. He assumed that disputes arising after the entry into force of the 1978 Convention would be settled according to the rules of private international law.

25. Mr. CARRAUD (France) said that he still feared that automatic denunciation would lead to confusion in international relations rather than to harmony, and that the effect would be to encourage States to postpone ratification. Automatic denunciation was not a feature of previous international conventions. Nevertheless, if the majority considered that the principle should be established, he would not object.

26. Mr. GUEIROS (Brazil) said that it was normal practice for a State acceding to a new convention to denounce any previous conventions on the same subject-matter to which it had been a party. He did not think that there would be many cases in which a State, through oversight, would be bound by two conflicting conventions.

27. Mr. KRISHNAMURTHY (India) pointed out that the purpose of the new Convention was to replace the Brussels Convention of 1924. He referred to paragraphs 1 and 2 of article 30 of the Vienna Convention on the Law of Treaties, which dealt with the question of the application of successive treaties relating to the same subject-matter. The interests of all parties would be served by the inclusion in the new Convention of a provision obliging States parties to the new Convention to denounce the 1924 Brussels Convention and the 1968 Protocol. The comprehensive new article "Denunciation of other conventions" proposed by Australia (A/CONF.89/C.2/L.21), which the Indian delegation supported, imposed such an obligation on States parties, and hence should be included in the new Convention.

28. Mr. BELLAMY (Australia) said that it was for reasons of simplicity that his delegation had proposed a new article rather than an addition to the article "Entry into force".

29. It was his recollection that the Committee had decided that the new Convention should contain a provision requiring States parties to the Brussels Convention to denounce that Convention upon becoming parties to the new Convention, and that denunciation of the Brussels Convention should take effect simultaneously with the entry into force of the new Convention. It was necessary, therefore, to ensure that the provision on denunciation included in the new Convention took account of the provisions on denunciation contained in the Brussels Convention and the 1968 Protocol. Those instruments provided that denunciation should take effect one year after receipt of the notification of denunciation by the Government of Belgium. The Brazilian proposal containing alternative Z appeared to have overlooked that requirement, since it provided that notifications of denunciation were to be forwarded to the Government of Belgium immediately upon receipt by the depositary of the new Convention. In effect, what would happen was that on receipt of such notifications by the Government of Belgium the one-year period of notice would begin to run; yet, there was no guarantee that at the end of the one-year period the new Convention would

have entered into force. It was possible, therefore, that there would be a period in which some States were not covered by the Brussels Convention, the 1968 Protocol or the new Convention. To obviate that difficulty, his delegation had proposed that the depositary of the new Convention should not forward notifications of denunciation to the Government of Belgium until the number of instruments of ratification, approval, acceptance or accession required to bring the new Convention into force had been received. In that way, the one-year denunciation period required under the Brussels Convention would expire simultaneously with the entry into force of the new Convention.

30. Paragraph 2 of his delegation's proposal was a mere mechanical provision inserted to ensure that States did not deliver notification of denunciation to the depositary at a time which would make it impossible for the depositary to deliver it to the Government of Belgium on the first day of the month following its receipt.

31. Mr. GUEIROS (Brazil) said that he would be prepared to merge the text proposed by his delegation with that proposed by the Australian delegation. The latter was, indeed, more detailed than the Brazilian text. There appeared, however, to be some inconsistency between the provisions of paragraphs 2 and 3 of the Australian text. According to paragraph 2, notifications of denunciation would be sent to the Government of Belgium on the first day of the month following their receipt by the depositary, whereas, according to paragraph 3, notifications would not be sent to the Government of Belgium until the twentieth instrument of ratification, approval, acceptance or accession had been received. Perhaps the Brazilian and Australian texts should be referred to the Drafting Committee with a view to their merger. The Drafting Committee should also clear up the inconsistency in the Australian text to which he had referred.

32. The CHAIRMAN, replying to questions put by various delegations, said that it was his understanding that at its preceding meeting the Committee had decided that the principles set forth in alternatives X, Y and Z should be included in the new Convention; the Committee as a whole had not, however, expressed a preference for any one of those alternatives. The Committee had further decided that the new Convention should contain a clause requiring contracting States which were parties to the 1924 Brussels Convention and the 1968 Protocol to denounce those earlier instruments and that such denunciation should take effect simultaneously with the entry into force of the new Convention.

33. Mr. PALMER (United Kingdom) said that his delegation shared the Chairman's views about what had occurred at the preceding meeting. In the opinion of his delegation, which had carefully considered the Brazilian and Australian proposals, the best way of dealing with the problem would be to adopt alternative X or alternative Y. Alternative Z presented a number of problems. First, it seemed more appropriate for individual States to discharge their own responsibilities—i.e., to realize that they could not be parties simultaneously to two conflicting conventions—rather than to ask the United Nations to

discharge such responsibilities for them. Secondly, there was a practical difficulty. If a notification of denunciation was received in New York on 30 March, for example, was there any certainty that it would be received in Brussels in time for the denunciation to take effect simultaneously with the entry into force of the new Convention? Thirdly, alternative Z would place an unnecessary burden on the United Nations. After the entry into force of the new Convention, all States becoming parties to it subsequently would know the date on which it would enter into force for them and could send their own instrument of denunciation to Brussels in time for it to take effect simultaneously with the entry into force of the Convention for them.

34. There might be one problem with alternatives X or Y. Normally, it was permissible for a State to extend the period of denunciation of a treaty beyond that specified in the treaty, provided that there were no objections from other contracting States. That idea was not expressed in alternatives X or Y. In substance, however, those alternatives placed responsibility for denouncing the earlier treaty on the individual State itself rather than on a third party. His delegation could, therefore, accept either alternative X or alternative Y, but had a slight preference for alternative Y because it was simpler.

35. Mr. KHABDUJI (Zaire) said that his delegation would prefer alternative Y to be adopted because it was clear and simple. He agreed with the representative of the United Kingdom that it was for the State concerned to ensure that it was not a party simultaneously to two conflicting conventions. He also shared the Brazilian representative's concern about the inconsistency between paragraphs 2 and 3 of the Australian proposal. He suggested, therefore, that the Committee should concentrate on alternative Y.

36. Mr. RAMSEY (United States of America) said that his delegation likewise would prefer alternative Y.

37. Mr. DDUMBA (Uganda) said that he had gained the impression at the Committee's preceding meeting that most delegations favoured the new alternative Z. The

texts proposed by Brazil and Australia were alike in many respects, but the latter was clearer and would receive his delegation's support.

38. Mr. YÉPEZ (Venezuela) said that alternative Y was the most complete and was in line with similar provisions in other international conventions. He suggested therefore, that alternative Y should be adopted.

39. Mr. KELLER (Liberia), referring to paragraph 3 of the Australian proposal, asked whether it had been agreed that the new Convention would enter into force after 20 States had become parties to it.

40. Mr. DE BRUIJN (Netherlands) endorsed the comments made by the representative of the United Kingdom. His delegation would support alternative Y.

41. Mr. VINCENT (Sierra Leone) said that, having carefully studied the alternatives contained in the document prepared by the Secretariat (A/CONF.89/6) and the texts prepared by the Australian and Brazilian delegations respectively, his delegation would support alternative Y.

42. Miss CHIAH (Malaysia), observing that the Committee's concern was that denunciation of the 1924 Brussels Convention should be effected expeditiously, suggested that the Brazilian and Australian proposals should be referred to the Drafting Committee with a request that it prepare a formula which would ensure prompt denunciation of the 1924 Convention.

43. Mr. GORBANOV (Bulgaria) said that, in substance, the texts of the Brazilian and Australian proposals coincided with the text of alternative Y. In either case, the main purpose was to ensure that denunciation of the 1924 Brussels Convention would take effect simultaneously with the entry into force of the new Convention. His delegation was satisfied with alternative Y, which was clear and spelt out the steps to be taken by the depositary of the new Convention in order to ensure denunciation of the 1924 Convention. His delegation would therefore support alternative Y.

The meeting rose at 6.05 p.m.

7th meeting

Tuesday, 21 March 1978, at 3.15 p.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.7

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.5, L.10-13, L.15-23, L.25)

Article [6]. Entry into force (continued)

1. Mr. GUEIROS (Brazil) announced the withdrawal of the Brazilian proposal for a new alternative Z (A/CONF.89/C.2/L.20). His delegation would support the Australian proposal (A/CONF.89/C.2/L.21) but would not object if the majority of delegations favoured alternative Y in the Secretariat draft (A/CONF.89/6).

Article [2]. Implementation (concluded)*

2. The CHAIRMAN asked whether any delegation was in favour of the maintenance of article [2] "Implementation".

3. Mr. CANTIN (Canada) said that his delegation would not press for retention of the article unless another Federal State indicated that the article was really necessary.

4. Mr. RAMSEY (United States of America) said that his delegation had no objection to the deletion of article [2].

5. The CHAIRMAN suggested that draft article [2] should not form part of the draft Convention.

6. *It was so decided.*

Article [9]. Denunciation

7. The CHAIRMAN asked whether any delegation objected to draft article [9] "Denunciation".

8. Mr. DE BRUIJN (Netherlands) said that he had no objection to the draft article, but proposed that the words "on the first day of the month" should be inserted after the word "effect" in paragraph 2, in order that States would be able to co-ordinate their denunciations of the Convention.

9. Ms. BRUZELIUS (Norway) supported the Netherlands suggestion and proposed further that the article should provide for a period of one year to elapse between deposit of the instrument of denunciation and the coming into effect of the denunciation.

10. Mr. BELLAMY (Australia) said that he opposed the amendments suggested by the delegations of the Netherlands and Norway. Paragraph 2 of the draft article as

currently worded was sufficiently flexible to enable States to co-ordinate their denunciations. A provision to the effect that denunciation could only take effect on the first day of a month might cause difficulties for certain States.

11. Ms. BRUZELIUS (Norway) said that her delegation had made its proposal for purely practical reasons. It would make things easier for States if a denunciation took effect on the first day of a month. If the proposal caused difficulties for certain delegations she was prepared to withdraw it.

12. Mr. GUEIROS (Brazil), Mr. KHABDUJI (Zaire), Mr. PAVERA (Czechoslovakia) and Mr. ROTH (Federal Republic of Germany) supported the proposals made by the representatives of the Netherlands and Norway.

13. The CHAIRMAN suggested that the proposals made by the representatives of the Netherlands and Norway should be adopted.

14. *It was so decided.*

Article [6]. Entry into force (continued)

15. Mr. BELLAMY (Australia) said that, so far as the denunciation was concerned, his delegation had at first favoured alternative Y in the Secretariat's draft (A/CONF.89/6). On further reflection, however, it had wondered whether that alternative would achieve the desired result, namely that denunciation of the 1924 Brussels Convention and of the 1968 Protocol should coincide with the entry into force of the new Convention. In the view of his delegation, a State which put a literal interpretation on the provision concerning denunciation which appeared in the 1924 Convention would be unable to guarantee that its denunciation of that Convention would take effect simultaneously with the entry into force for it of the new Convention, unless the new Convention was already in force. Such a State would be unable, therefore, to assist in bringing the new Convention into force. At the previous meeting, however, the representative of the United Kingdom had suggested that the requirement concerning denunciation in the 1924 Convention should not be interpreted literally.

16. The purpose of his delegation's proposal (A/CONF.89/C.2/L.21) was merely to illustrate one means of ensuring that denunciation of the Brussels Convention and the entry into force of the new Convention would occur simultaneously. If, however, the majority of delegations favoured alternative Y, Australia would not object.

17. Mr. PALMER (United Kingdom) agreed that at the preceding meeting he had said that it was his understanding that in international law it was in order for a State to

* Resumed from the 2nd meeting.

extend the period of denunciation of a treaty beyond that specified in the treaty, provided that other contracting States did not object. It would be interesting to hear the Secretariat's views on the question.

18. Mr. CANTIN (Canada) said that his delegation preferred alternative Y because it was the simplest and left the greatest discretion to the countries concerned. In reaching its decision, his delegation had examined article 17, paragraph 4, of the Convention on Limitation of Liability for Maritime Claims (London, 1976), which set out the legal consequences of ratification of that Convention for States parties to the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships (Brussels, 1957) and to the International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels (Brussels, 1924). The denunciation requirements of those two Conventions were similar to those in article 15 of the 1924 Brussels Convention for the Unification of certain Rules relating to Bills of Lading and in article 14 of the 1968 Protocol; yet the drafters of the 1976 Convention had not considered it necessary to draw up complicated rules for the denunciation of other conventions or to make an international organization responsible for discharging the obligations of States.

19. Ms. BRUZELIUS (Norway) said that it was the Committee's task to choose one of the alternatives proposed. It would be interesting to know, in that connexion, whether the Secretariat of the United Nations would be willing to perform the functions it would be required to perform if the Australian proposal was adopted.

20. In conclusion, she said that she failed to understand the arguments against alternative Y advanced by the representative of Australia.

21. Mr. ROTH (Federal Republic of Germany) said that, in view of the comments made by the representative of the United Kingdom at the preceding meeting, his delegation favoured alternative Y. In the first place, the States themselves should see to it that they were not parties simultaneously to two conflicting conventions and, secondly, it would be easier for his Government to forward its instrument of denunciation directly to the Government of Belgium rather than through the United Nations in New York.

22. Mr. HANKE (German Democratic Republic) and Mr. TERASHIMA (Japan) expressed their preference for alternative Y.

23. Mr. PERE (France) said his delegation still considered that certain problems arising from the legal vacuum created by the denunciation clause had not received sufficient attention. Accordingly, it reserved its position in respect of the provisions under discussion.

24. Mr. KRISHNAMURTHY (India) said that his delegation, which had initially regarded a provision along the lines of alternatives X and Y as unnecessary, could now agree in principle that such a provision might be desirable. Having examined the various texts before the Committee, it considered that the Australian proposal was the most satisfactory. However, it would also be prepared to accept alternative Y.

25. Mr. LAVINA (Philippines) said that it would be helpful to hear the Secretariat's comments on the various texts before the Committee.

26. Mr. SLOAN (Representative of the Secretary-General) said that it was not for the Secretariat to express a preference. However, both alternatives X and Y had been regarded as satisfactory from the legal standpoint. The version which had come to be known as alternative Z had been inserted as a foot-note because it had been considered less satisfactory. The Treaty Section of the Office of Legal Affairs at United Nations Headquarters, which had been consulted on the implications of the Brazilian and Australian proposals for alternative Z, had indicated that there would be no difficulty in respect of discharge by the Secretary-General of the functions set out in those proposals. The Belgian Government, which had been consulted as the depositary of the Brussels Convention of 1924, had indicated that the denunciation procedure proposed by the delegations of Brazil and Australia would not create any problems, on condition that the notifications of denunciation were addressed to the Government of Belgium and merely channelled through the United Nations Secretariat.

27. The CHAIRMAN, having consulted the Committee, said he took it that the majority of delegations were in favour of alternative Y.

28. *It was so decided.*

29. Mr. KHABDUJI (Zaire) said that his delegation would like alternative Y to be redrafted so that it was fully consonant with the wording and syntax used in articles [2], [3], [5] and [7]. He read out a text which, subject to the Committee's agreement, might be brought to the attention of the Drafting Committee.

30. Mr. ROTH (Federal Republic of Germany) suggested that the Drafting Committee should be invited to consider the appropriateness of retaining the words "(1924 Convention)" in alternative Y. It might well suffice to retain only the full title of that Convention as it appeared earlier in that provision.

31. Mr. TERASHIMA (Japan), Mr. PALMER (United Kingdom) and Mr. PAVERA (Czechoslovakia) expressed the view that alternative Y should appear as a separate article rather than as part of the article relating to entry into force.

32. The CHAIRMAN suggested that the text of alternative Y should be referred to the Drafting Committee, together with the comments and suggestions that had just been made.

33. *It was so decided.*

34. The CHAIRMAN invited the Committee to deal with the provisions relating to entry into force proper, discussion of which had been postponed at the 5th meeting.

35. Mr. DE BRUIJN (Netherlands) considered that it would be preferable to defer discussion of those provisions until certain related decisions had been taken by the First Committee. Consequently, he suggested that the Committee should take up draft article [8], concerning multimodal transport.

36. Mr. TERASHIMA (Japan), Mr. PERE (France), Mr. KRISHNAMURTHY (India), Mr. PALMER (United Kingdom), Mr. KELLER (Liberia) and Mr. PALLNA (Yugoslavia) expressed concurring views.

37. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished to defer further discussion of draft article [6].

38. *It was so decided.*

Article [8]. Multimodal transport

39. Mr. CANTIN (Canada) observed that his delegation had not yet had an opportunity to examine all the amendments submitted to draft article [8] or to hold informal consultations on the issues involved.

40. Mr. DRISCOLL (United States of America) said that his delegation was in a similar position.

41. Mr. PERE (France) considered that the discussion on the draft article would be facilitated if the observer for the Central Office for International Railway Transport (OCTI) was given the opportunity to make a statement before the Committee took up the three alternatives in the Secretariat's draft and the various proposals submitted by delegations.

42. The CHAIRMAN suggested that the Committee should discuss draft article [8] without prejudice.

43. Mr. LAVINA (Philippines) asked for clarification of the term "without prejudice". If it was meant to reflect the outcome of informal consultations that were proceeding, he doubted very much whether the Group of 77 would agree to an article on multimodal transport being included in the package which was being worked out.

44. The CHAIRMAN said that the object was merely to make full use of the Committee's time.

45. Mr. PALMER (United Kingdom) said that delegations which had proposals regarding the provisions on multimodal transport might introduce them.

46. Mr. PERE (France) said that it would be logical to hear the representative of OCTI as early as possible.

47. Mr. KRISHNAMURTHY (India) announced that Zaire had become a co-sponsor of the amendment proposed by India, Iraq, Pakistan, Philippines, Sierra Leone and Uganda (A/CONF.89/C.2/L.22), the substance of which was to delete entirely the draft article on multimodal transport.

48. He agreed that the Committee should hear the representative of OCTI. He would also wish to hear from the Secretariat why the draft article on multimodal transport had been included at all in the draft Convention.

49. Mr. MATYASSY (Central Office for International Railway Transport (OCTI))¹, speaking at the invitation of the Chairman, said that the question of the relationship between the draft Convention on the carriage of goods by sea and the law governing multimodal transport had been discussed at the ninth session of UNCITRAL² when

various delegations had submitted the proposals forming alternatives A, B and C of draft article [8] contained in document A/CONF.89/6.

50. He recalled that the First Committee had extended the definition of a contract of carriage (article 1, paragraph 5) so that the new Convention would apply not only to sea transport but also to the sea leg of a multimodal transport contract. That extension had at least theoretically made it impossible to evade the new Convention by issuing a single document to cover carriage which was in fact to be by various means of transport. However, it was clear that widening the definition of a contract of carriage could not solve the general problem of the international regulation of multimodal transport, which could not be achieved merely by extending maritime transport legislation to cover land or air transport, nor by merely juxtaposing different sets of rules governing transport. There was no alternative to making express provision for cases in which the place where damage had occurred was unknown, as well as establishing uniform rules to regulate certain procedural matters.

51. It would be recalled that article 31 of the Warsaw Convention, in so far as it related to multimodal transport, contained a clause similar to that in article [1], paragraph 5, of the existing draft Convention, and the serious difficulties which had arisen in the international regulation of multimodal transport was also a matter of common knowledge.

52. Consideration should also be given to the several international conventions in force which contained regulations relating to certain kinds of multimodal transport at the regional level. Fortunately, the drafters of the new definition of the contract of carriage by sea were aware of the difficulties and had included an appropriate note in document A/CONF.89/C.1/L.121.

53. Most amendments before the Committee (A/CONF.89/C.2/L.11, L.13, L.17, L.19 and L.23) had one thing in common, namely the necessity to make special provision in respect of a future international convention on multimodal transport. The proposals in A/CONF.89/C.2/L.11, L.19 and L.23 contained additional elements, extending the special provision to cover not only the future UNCTAD Convention but other international conventions, in particular, the International Convention Concerning the Carriage of Goods by Rail (CIM) and the Convention on the Contract for the International Carriage of Goods by Road (CMR). The former in particular contained provisions relating to certain forms of multimodal transport at the regional and inter-continental levels which contained a maritime or road transport element. The CIM had been in existence for 85 years, and had 32 members, 28 of which were represented at the Conference. Its rules for multimodal transport (rail, sea and road) had a number of great advantages: they provided a single transport contract contained in a single transport document; the conditions of transport were standard, including the rules governing liability and the rules of procedure. The general liability rules of the CIM were more stringent than those of the legislation governing transport by sea, and it was possible

¹ See also comments by OCTI contained in document A/CONF.89/7, pp. 66-68.

² See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17, annex I, p. 160.*

to apply liability rules very similar to those of the Brussels Convention. It was a unified transport system with collective liability so that there was no difficulty for the shipper if the place of damage was unknown, and there was no conflict with the provision of the draft Convention on the carriage of goods by sea which enabled carriers to accept a higher degree of liability (article 6, paragraph 4). The CIM Convention was binding, though only on shipping companies which had expressly accepted its provisions.

54. It would clearly be uneconomic to replace the multimodal CIM system by that of the future UNCTAD Convention, which would be based on the concept of the "multimodal transport operator" (ETM). That concept was less satisfactory from the juridical point of view and would be more costly for international trade than the system of a community of carriers provided by the CIM.

55. The Conference had been convened to undertake a constructive task. If it decided to include an article on multimodal transport which did not cover the CIM, it would threaten the existence of an essential international regional system of rules, without gaining any advantage thereby.

56. The CIM Convention was a treaty binding the contracting parties, and if the draft Convention was not reconcilable with the CIM he did not see how the States parties to the latter could sign the new Convention except with reservations.

57. Consequently, it seemed entirely appropriate to insert in the new draft Convention an article which would take account not only of the future UNCTAD Convention, but also of the existence of the CIM and similar instruments. He suggested that the Committee might first take a decision of principle regarding the inclusion of an article covering the CIM and similar conventions; if that principle was accepted, there should be no great difficulty in drafting a suitable text. The proposals in documents A/CONF.89/C.2/L.11, L.19 and L.23 would provide a good basis for discussion.

58. Mr. DE BRUIJN (Netherlands) agreed that the existence of the CIM and CMR Conventions raised a problem of conflicting interests. If an article like that

proposed by the Federal Republic of Germany and by his own delegation (A/CONF.89/C.2/L.11), or some similar provision, was not accepted, his Government would have problems in ratifying the Convention. Possibly the States concerned could submit a joint proposal.

59. Mr. ARREBOLA (Cuba) asked for a reply to the question raised by the Indian representative as to why the Secretariat had included the draft article in the text.

60. Mr. KRISHNAMURTHY (India) said that, after the Secretariat had replied, a detailed discussion in the Committee would be of great assistance.

61. Ms. BRUZELIUS (Norway) said that she did not see how the Secretariat could answer the question; all it had done was to reproduce proposals made by three delegations at the ninth session of UNCITRAL. It was for the international community to decide whether an article was necessary, and how it should be drafted. She considered it desirable to have an article dealing not only with a future multimodal convention but also with the conflict between that convention and the CIM and CMR Conventions, which applied to certain kinds of carriage of goods by sea. It was necessary to avoid future conflicts of conventions which might make it difficult for some States to become contracting parties to the Convention being prepared by the Conference.

62. Mr. HANKE (German Democratic Republic) said that an article on the lines of draft article [8] was certainly needed. He did not at the moment favour any particular version; he suggested that the Committee should continue its discussion in order to see whether other delegations accepted the principle of the article on multimodal transport. His delegation had a particular interest in the matter, since it was a member of the CIM.

Final, formal clauses

63. The CHAIRMAN proposed that the blank space after the words "Done at" in the text prepared by the Secretary-General should be filled with the word "Hamburg".

64. *It was so decided.*

The meeting rose at 6 p.m.

8th meeting

Wednesday, 22 March 1978, at 10.40 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A CONF.89 C.2 SR.8

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued)
(A.CONF.89.6 and Add.1 and 2, A.CONF.89.C.2.L.11, L.13, L.17, L.19, L.22, L.23, L.25)

Article [6]. Entry into force (continued)

1. The CHAIRMAN said the Committee would eventually have to make a choice from among alternatives A, B, C and D proposed by the Secretariat for draft article [6] (A.CONF.89.6). He suggested that the Committee should not consider alternative D, which proposed tonnage loaded and unloaded as a criterion. Such a basis would be totally unacceptable to many developing countries, particularly land-locked States, and further discussion of it would not advance the Committee's progress towards agreement.
2. Mr. KRISHNAMURTHY (India) and Ms. ROCA (Ecuador) thought that all alternatives for draft article [6] should remain before the Committee.
3. The CHAIRMAN withdrew his suggestion.

Article [8]. Multimodal transport (continued)

4. The CHAIRMAN said that the Committee should decide whether to retain or delete article [8] and, if it decided to retain it, which of the alternatives proposed by the Secretariat it preferred.
5. Mr. KRISHNAMURTHY (India) referred to his request addressed to the Secretariat at an earlier meeting to explain why it had included alternatives A, B and C in the text of draft article [8], and to the comment by the representative of Norway that the Secretariat had merely reproduced proposals made at the ninth session of UNCITRAL by Australia, the Federal Republic of Germany and Norway. It would be helpful if representatives of those countries would comment on the proposals in question.
6. Mr. BELLAMY (Australia) said that alternative A was no longer relevant and need not be further considered, in view of the First Committee's adoption of the amendment to article 1, paragraph 5, of the draft Convention.
7. The Australian proposal, contained in document A.CONF.89.C.2.L.17, referred only to a possible future multimodal convention and did not go into the question of existing transport conventions. There was a fundamental distinction between the relationship of the new draft Convention to existing conventions on the one

hand, and its relationship to possible future conventions on the other.

8. Australia had been represented in the Working Group which had drafted the new text adopted for article 1, paragraph 5, (A.CONF.89.C.1.L.121) and therefore could be regarded as generally supporting the principle of including in the draft Convention an article dealing with its relationship to any possible future conventions. However, his delegation was aware of the dangers of attempting to foretell the future, and such an article would need careful drafting to avoid encroaching on the province of a future diplomatic conference dealing with a multimodal transport convention.

9. Mr. ROTH (Federal Republic of Germany) said that his delegation had an open mind on the question whether the draft article should cover the new Convention's relationships vis-à-vis future conventions. That was a separate matter from relationships vis-à-vis existing conventions, and the Committee must be careful to distinguish between the two. It would be logical to discuss the new instrument's relationships with future conventions first.

10. Ms. BRUZELIUS (Norway) explained that the drafters of the proposed alternative C appeared to have been misinformed as to the status of the Central Office for International Railway Transport (OCTI) and their draft therefore erred in its reference to "specialized agencies". Her delegation's object in proposing the alternative had been to safeguard the possibility of applying existing conventions regulating road and rail transport, including not only those under the auspices of OCTI but the Eastern European road and rail conventions as well; for that reason she supported the amendment proposed by Sweden (A.CONF.89.C.2.L.25).

11. She considered it desirable to include in the draft Convention a safeguard clause regarding future multilateral conventions, if such a clause could be so worded that it would not tie the hands of any group drafting the future convention. If such a clause was not included, the Convention under discussion would have to be reviewed when the later convention to be prepared under the auspices of UNCTAD was opened for accession.

12. Mr. de BRUIJN (Netherlands) supported the view that the Committee should consider separately the Convention's relationship to existing conventions and its relationship to possible future conventions. Delegations which had submitted proposals could save the Committee's time by submitting concerted joint proposals.

13. Mr. LAVIÑA (Philippines) recalled that at the previous meeting all those who had urged the representative of OCTI to speak had been representatives of indus-

trialized and shipowning countries. The representative of OCTI had, not surprisingly, been a willing advocate of the interests of the carriers, and with those interests in mind had tried to persuade the Committee that failure to include in the draft Convention an article dealing with future multimodal conventions would be detrimental to the interests of the "carrier" States in general. In the Philippine delegation's view, the inclusion of such an article would be prejudicial to a far larger number of States, including the developing countries; the proposal of which his delegation was a sponsor (A/CONF.89/C.2/L.22) would accordingly have the effect of removing the article from the draft entirely, for the reasons stated briefly in the note accompanying the proposal.

14. There had been little discussion of the draft article at the 1976 session of UNCITRAL, particularly as to where to include it and whether it was needed at all. To accept the proposed article as it stood would be to enter into a commitment with respect to a future convention whose shape and substance were as yet unknown. The Australian representative had said that he was aware of the dangers of trying to foretell the future, and the representative of the Federal Republic of Germany had said that his delegation had an open mind on the question of the deletion of the draft article. His own delegation's view was more fundamental. To prejudge the application of a future independent convention was unsound, a legal contortion. He thought that the real reason behind the proposals by the supporters of the inclusion of the article—Federal Republic of Germany, France, Japan and Norway, among other developed countries—was that they would prefer to be governed by the future multimodal convention as a means of reducing the impact of the Hamburg Convention which was being brought into existence in order to remove the inequities of the 1924 Brussels Convention. The arguments concerning the difficulties which would arise with regard to relations between the draft convention and the existing unimodal conventions, or future multimodal conventions, were not convincing. Inclusion of the draft article would be legally wrong and prejudicial to the developing countries and he therefore commended to the Committee the proposal that the article be deleted.

15. Mr. ROTH (Federal Republic of Germany), referring to the proposal he had made, asked whether he should confine his comments to the question of the relationship between the 1978 Convention and future international conventions.

16. Mr. LAVINA (Philippines), speaking on a point of order, suggested that the Committee should first take a decision on the proposal to delete the article (A/CONF.89/C.2/L.22).

17. Miss CHIAH (Malaysia), speaking on a point of order, said that there were three questions which the Committee must discuss: whether there was a need for a provision such as that contained in draft article [8]; what would be the relationship between the 1978 Convention and existing regional conventions; and, what would be the relationship between the 1978 Convention and future

international conventions on multimodal transport. All three questions must be discussed.

18. Mr. RAMSEY (United States of America) strongly supported the comments made by the representative of Malaysia.

19. Mr. GUEIROS (Brazil) pointed out that if the majority of delegations were in favour of deletion of the article there would be no need to discuss alternatives A, B and C.

20. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that in the view of his delegation the Convention should contain a provision to the effect that when sea transport was part of a multimodal transport operation, employing different modes of transport, the Convention should apply to the sea leg of the multimodal transport operation; the question of the relationship between the 1978 Convention and future international conventions should be settled in those future conventions.

21. Mr. de BRUIJN (Netherlands), referring to the point made by the Brazilian representative, said that the proposal for deletion of the article was concerned only with future conventions. The proposal by the Federal Republic of Germany and the Netherlands (A/CONF.89/C.2/L.11), on the other hand, was concerned with existing conventions.

22. Mr. KHABDUJI (Zaire) said that his delegation fully supported the comments made by the representative of the Philippines; it hoped the article would be deleted.

23. Mr. PERE (France) pointed out that, in order to be able to take an intelligent decision on the question of maintenance or deletion of the article, delegations must first discuss the substance of the article and the problems to which it might give rise.

24. Mr. MUCHUI (Kenya) said that when amendments to a proposal were considered the normal practice was that the amendment furthest removed from the proposal was voted on first. The Committee should therefore first decide whether the article was to be deleted.

25. The CHAIRMAN suggested that so far as possible votes should be avoided. He would give the floor to all delegations that had requested to speak.

26. Mr. GUEIROS (Brazil) said that it appeared from the statement by the representative of the USSR that that delegation favoured alternative A. Some delegations might question the need for paragraph 2 of alternative A. The paragraph should be included, however, in order to avoid the claim that the Convention governed the carriage of goods by sea between ports in one and the same country. Paragraph 3 of alternative A covered existing regional and international conventions; by existing conventions he meant conventions not yet in force for lack of sufficient ratifications.

27. His delegation was unable to accept alternative C as amended by Sweden (A/CONF.89/C.2/L.25) because in its opinion there was no need to refer to the carriage of goods by rail. The objective of the Norwegian and Swedish delegations could be achieved if the words "or regional" were added after the word "international" in alternative C.

28. Alternative B was unacceptable because adoption of its provisions would give rise to the controversial question of the multimodal bill of lading.

29. In conclusion, he said that his delegation would agree to the deletion of the article if that was the wish of the majority. If the majority was not in favour of its deletion, Brazil would support alternative A.

30. Mr. SEMIKACHEV (Union of Soviet Socialist Republics), in reply to the Brazilian representative and with reference to paragraph 3 of alternative A, was surprised by the desire to prejudge at the present Conference the general position of a future conference on multimodal transport.

The meeting rose at 12 noon.

9th meeting

Thursday, 23 March 1978, at 10.25 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.9

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (continued) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.11, L.13, L.17, L.19, L.22, L.23, L.25)

Article [8]. Multimodal transport (continued)

1. The CHAIRMAN invited the Committee to continue discussion of the draft article relating to multimodal transport. The first matter to be settled was whether such a provision should be included in the new Convention or not. If the answer was in the affirmative, the Committee would have to decide whether the provision should concern future conventions and/or existing international or regional conventions.

2. Mr. GUEIROS (Brazil) said that, given the limited time at the Committee's disposal, every effort should be made to avoid lengthy and complicated procedural discussions. Drawing attention to rule 39 of the rules of procedure, he observed that the proposal to delete the draft article (A/CONF.89/C.2/L.22) was the furthest removed in substance from the original text in the Secretariat's draft. Consequently, the Committee might be able to save time if it concentrated on that proposal before taking up any of the others.

3. Mr. KRISHNAMURTHY (India) observed that alternatives A, B and C of the Secretariat's draft (A/CONF.89/6) all concerned possible but as yet non-existent conventions. As far as he knew, no existing international instrument of the type under discussion contained any reference to future eventualities. On the contrary, the correct procedure under international law would be for the appropriate references to the Hamburg Convention to be included in any subsequent convention. That was why the sponsors of the amendment contained in document A/CONF.89/C.2/L.22, including his own delegation, proposed the deletion of the draft article.

4. It was true that the question of multimodal transport

gave rise to some complex problems. A number of States were parties to the three existing international conventions on different modes of transport, namely the CIM Convention, the CMR Convention and the Warsaw Convention of 1929. It would be useful if the representatives of those States could comment on any difficulties they might encounter in fulfilling their obligations under those instruments if the new Convention remained silent on the question of multimodal transport.

5. Mr. PALMER (United Kingdom) said it had become apparent to his delegation that the Committee was called upon to deal with two separate although closely related problems, the first of which had been clearly explained at the Committee's 7th meeting by the observer for OCTI. It must be emphasized that, if the final clauses did not contain a provision dealing with existing instruments, such as the CIM and CMR Conventions, which contained provisions concerning ancillary sea carriage, many countries, particularly in Europe, would not be able to become parties to the new Convention without breaching their international obligations in respect of those instruments or ceasing to be parties to them. Under the definition of "contract of carriage by sea" which had been adopted in paragraph 5 of article 1 "Definitions", the new Convention would clearly relate to all contracts for the carriage of goods by sea, including contracts under which carriage by sea was only a minor adjunct to carriage by another mode of transport. However, there were existing international and regional land transport conventions ratified by a large number of States which, although they regulated carriage by non-maritime modes of transport, also included mandatory provisions in respect of ancillary sea transport. Thus a situation could arise in which carriage by sea would be subject to the provisions both of an existing convention and of the new Convention. That was a situation which a number of States, including his own, would not be able to allow themselves to create by ratifying the new Convention.

6. The best solution to that very real problem would be to include among the final clauses an article allowing the non-application of the new Convention, but restricted to

circumstances in which another international convention concerning the carriage of goods by another mode of transport, such as the CIM and CMR Conventions, mandatorily imposed the provisions of a civil liability regime on carriage by sea. He trusted that other delegations would agree in principle that such a provision was desirable. His delegation was not wedded to the wording of its proposal (A/CONF.89/C.2/L.19). If agreement was reached on the principle, a small working group might perhaps be established to produce a composite draft provision for consideration by the Committee.

7. Mr. HANKE (German Democratic Republic) fully endorsed the comments by the preceding speaker. His country, which was a party to both the CIM and the CMR Conventions, would have great difficulty in becoming a party to the new Convention unless the latter contained a clause stating that existing conventions of the type to which he had referred would not be affected by its provisions.

8. Mr. TERASHIMA (Japan) said that he would confine his remarks to the relationship between the new Convention and future conventions. His delegation had been opposed to the expanded definition of contract of carriage by sea which had been adopted as paragraph 5 of article 1. The purpose of its proposal in respect of the draft article under consideration (A/CONF.89/C.2/L.13) was to prevent the new Convention from hindering the preparation of a future convention on multimodal transport. The solution suggested by the representative of India, namely that the problem should be settled in that future convention, appeared to his delegation to be unduly complicated. In view of the fact that the draft Convention concerned only the sea-borne part of multimodal transport and that conflict between its provisions and those of the future convention would be only partial, a simpler and more logical solution would be to include an appropriate provision among the final clauses currently under consideration.

9. Mr. JACOBÆUS (Sweden) said that the CMR and CIM Conventions applied, mandatorily in some specific instances, to the case where carriage of goods by sea was undertaken as part of a main transport operation by road or rail, and the carrier's liability under those Conventions was much stricter than under the draft Convention before the Conference. It was essential for Sweden to be able to continue using the CMR and CIM Conventions for its international transport and, indeed, Sweden might have difficulty in becoming a party to the new Convention in the absence of a provision concerning multimodal transport. Furthermore, a multimodal transport convention in the stricter sense might be worked out in future, and his Government did not wish to tie its hands in relation to that future convention. The same view seemed to have been taken by the First Committee in deciding by a large majority that a provision should be included in the final clauses of the Convention regulating its relationship to conventions on multimodal transport (see A/CONF.89/C.1/L.121 and A/CONF.89/C.1/SR.8, para. 31).

10. The draft article should contain a clause such as that in alternative C or in the proposed amendments A/

CONF.89/C.2/L.19, L.23 or L.25. The scope of the article should be limited to widely recognized international conventions, such as those concluded under the auspices of the United Nations or of one of its specialized agencies, or the regional conventions on the carriage of goods by rail. The importance of the OCTI Conventions had already been stressed.

11. The phrase "national law giving effect to such a convention" used in amendments A/CONF.89/C.2/L.19 and L.23 might be misinterpreted, and if a provision of that kind was adopted it should be made clear that the words meant the national law enacted in States parties to a convention in order to implement the convention in question.

12. His delegation's principal object in supporting alternative C, amended as it proposed (A/CONF.89/C.2/L.25), was to avoid any collision between the draft Convention under study and the existing CMR and CIM Conventions; that provision would also forestall collision with a possible future convention on multimodal transport, in line with the decision of the First Committee.

13. The number of proposals was somewhat confusing; he therefore supported the idea of establishing a small informal working group which would try to find a single alternative.

14. Mr. CARRAUD (France) said that he understood that the Indian representative would not oppose a provision safeguarding the application of existing conventions, which were of vital importance to many States, but that that representative doubted the wisdom of including in the Convention under consideration an article in respect of other conventions. He appealed to representatives who took that view to reconsider their position; they would not prejudice any of their political or economic interests by so doing, but they would help to ensure that the Convention would be signed and ratified by as many States as possible.

15. Alternatives A, B and C in draft article [8] reflected three different proposals submitted during consideration of the draft in UNCITRAL. It seemed to him that what was required was a provision to the effect that, while nothing in the Convention would apply to the conclusion of a future convention on multimodal transport, nothing in it prevented the application of existing conventions to carriage implying carriage by sea in combination with other modes of transport. He thought that a small working group might be established to try and draft a text which would consider all points of view.

16. Mr. LAVINA (Philippines) concurred with the view expressed by the representative of India but said that, if the majority of the Committee were convinced that an article relating to multimodal transport conventions was needed, his delegation's position was flexible and he would welcome discussion, possibly along the lines of the alternatives in the draft before the Committee.

17. The CHAIRMAN invited the Committee to state whether it wished such an article or not.

18. Mr. BELLAMY (Australia) and Mr. CANTIN (Canada) said that the relationship of the new Convention to existing conventions, on the one hand, and its

relationship to possible future conventions, on the other, were two distinct problems.

19. Miss CHIAH (Malaysia) said that she shared the reservation expressed by the Australian and Canadian representatives. She accepted the idea that the Convention should contain a provision regarding its relationship to existing conventions, but she reserved her position on the matter of its relationship to future conventions.

20. Mr. YÉPEZ (Venezuela) considered that the Convention should not contain any provision establishing any relationship between it and any existing or future instruments on multimodal transport. The inclusion of an article giving force to existing multimodal transport conventions would be at variance with the spirit of the preamble paragraph of General Assembly resolution 31/100, which stated that the Convention should "contribute to the harmonious development of international trade".

21. Ms. BRUZELIUS (Norway) pointed out that some conventions were unimodal, though they did apply to short sea passages, and some States wanted a decision as to whether the Convention should contain safeguarding language regarding unimodal conventions of that nature. The issue was quite distinct from the question whether the Convention should contain safeguarding language regarding future multimodal conventions. It would make things easier if the term "unimodal transport conventions" was used for those conventions which had some maritime applications, rather than "multimodal transport conventions", which were a separate matter.

22. Mr. KANG (Republic of Korea) said that he supported the amendment proposed in document A/CONF.89/C.2/L.22 because he was confident that all the problems could be dealt with by the Conference on a multimodal transport convention, which was soon to be convened. However, if the majority of delegations wished to include in the Convention a provision concerning multimodal transport, he would prefer alternative C of the Secretariat's draft.

23. Mr. AMOR (Mexico) said he would oppose any proposal for deleting the article on multimodal transport; the Convention must include a provision in respect of the sea leg of such transport. It might be simpler to envisage two articles, one relating to existing international conventions and the other to future conventions.

24. Mr. HAROON (Pakistan) said that his delegation's position regarding the relationship of the Convention to future conventions was reflected in amendment A/CONF.89/C.2/L.22, of which it was a co-sponsor. With regard to the relationship between the Convention and existing conventions, he supported the idea of establishing a small working group to consider the various arguments.

25. Ms. ROCA (Ecuador) agreed that the suggested alternatives might very well be referred to a working group which could discuss the various possibilities and arrive at a concerted text accommodating the different interests.

26. Mr. DDUMBA (Uganda) said that his delegation could agree to an article that dealt only with the Convention's relationship to existing conventions.

27. Mr. BORČIĆ (Yugoslavia) said that the relevant provision, if approved, should be concerned only with the new instrument's relationship to existing conventions; it would be premature to include an article relating to future conventions on multimodal transport.

28. Mr. MARTÍNEZ MORCILLO (Spain) wondered whether the proposed provision should not be amalgamated with article 25 "Other conventions", which was being dealt with by the First Committee. He agreed that it would be useful to establish a working group to prepare a text acceptable to all delegations.

29. Mr. BELLAMY (Australia), supported by Mr. CANTIN (Canada), Mr. RAMSEY (United States of America) and Mr. GUEIROS (Brazil), pointed out that, although several delegations had argued that the proposed article was necessary in order to deal with the relationship of the new instrument to existing conventions, the proposals of none of those delegations were limited to existing conventions. His delegation would oppose any provision which sought to deal with future conventions under the guise of dealing with existing conventions.

30. Mr. KRISHNAMURTHY (India) said that his delegation could agree to the establishment of a working group to prepare a text that would speak only of existing conventions, not of future conventions.

31. Ms. BRUZELIUS (Norway), supported by Mr. GUEIROS (Brazil), suggested that the Committee should decide first whether there should be any relationship between the new Convention and existing unimodal conventions having some connexion with maritime matters; it should then decide whether there should be any relationship between the new Convention and future conventions relating to multimodal transport.

32. The CHAIRMAN, having consulted the Committee, said he took it that the majority of delegations were of the opinion that the new Convention should not contain a safeguarding clause relating to future conventions on multimodal transport.

33. *It was so decided.*

34. The CHAIRMAN, having consulted the Committee, said he took it that the majority of delegations were in favour of the inclusion in the new Convention of a safeguarding clause relating to any existing international or regional conventions.

35. *It was so decided.*

36. The CHAIRMAN suggested that the Committee should set up an informal working group to prepare a text acceptable to the Committee as a whole.

37. *It was so decided.*

38. Mr. LAVIÑA (Philippines) suggested that, as was customary, the various regional groupings should be represented in the working group.

39. After a discussion in which Mr. CARRAUD (France), Mr. KRISHNAMURTHY (India), Mr. PAVERA (Czechoslovakia), Mr. KELLER (Liberia), Mr. VINCENT (Sierra Leone), Mr. DETHLEFSEN (Denmark), Mr. ROTH (Federal Republic of Germany), Mr. FAHIM (Egypt), Ms. ROCA (Ecuador), Ms. BRUZELIUS (Norway), Mr. KHABDUJI (Zaire) and Mr. LAVIÑA

(Philippines) took part, the CHAIRMAN suggested that the representatives of Cuba, Ecuador, Ghana, India, Thailand, France, Netherlands, United Kingdom, Czechoslovakia and German Democratic Republic should serve on the informal working group and that the

representative of France should act as chairman of the group.

40. *It was so decided.*

The meeting rose at 12 noon.

10th meeting

Friday, 24 March 1978, at 11.15 a.m.

Chairman: Mr. D. POPOV (Bulgaria).

A/CONF.89/C.2/SR.10

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (*continued*) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.27)

Article [8]. Multimodal transport (concluded)

1. The CHAIRMAN drew attention to document A/CONF.89/C.2/L.27 entitled "Relationship with other transport conventions", which had been prepared by the *ad hoc* Working Group established at the preceding meeting. He suggested that, in the light of the decision taken at the preceding meeting and of the text in document A/CONF.89/C.2/L.27, all other texts concerning an article on multimodal transport, including those in the Secretariat's draft (A/CONF.89/6) and in documents A/CONF.89/C.2/L.11, L.13, L.17, L.19, L.22, L.23 and L.25, should be considered as superseded or withdrawn.

2. *It was so decided.*

3. Mr. de BRUIJN (Netherlands), referring to the provisions of article 2, subparagraph 1(g), of the Vienna Convention on the Law of Treaties, suggested that the words "Contracting States", should be replaced by the words "Contracting Parties", in document A/CONF.89/C.2/L.27.

4. Mr. KRISHNAMURTHY (India) said that his delegation could agree to that suggestion.

5. Mr. GUEIROS (Brazil) observed that the change should be applied throughout the text of the Convention. He suggested that the matter be referred to the Drafting Committee.

6. Mr. LAVIÑA (Philippines), supported by Mrs. TYCHUS-LAWSON (Nigeria), considered that the second sentence of the text proposed in document A/CONF.89/C.2/L.27 related to future conventions. The Committee had expressly decided that the text should relate only to existing conventions. He proposed, therefore, that the second sentence be deleted.

7. Mr. BELLAMY (Australia) proposed that the words "entry into force of" should be deleted from the text.

8. Referring to the second sentence of the text, he said

that his delegation would not regard as an amendment or revision any amendment or revision which sought to extend the scope of an international convention.

9. Mr. KHABDULI (Zaire) agreed that the words "entry into force of" should be deleted. His delegation would insist on the deletion of the second sentence of the text.

10. Mr. GUEIROS (Brazil) shared the opinion of the representatives of the Philippines and Nigeria concerning the second sentence of the text. The text was, however, an improvement on the Secretariat's draft in that it made it clear that States parties to the International Convention Concerning the Carriage of Goods by Rail (CIM), the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the Warsaw Convention would not have to denounce those Conventions if they ratified the new Convention.

11. Mr. JOMARD (Iraq) said that he failed to see why the text should be included in the Convention, which had nothing to do with multimodal transport. If the provisions of existing conventions were consistent with those of the new Convention there would be no problem; if they were not, it was essential that there should be nothing in the new Convention that would prevent the application of its provisions.

12. Mr. FAHIM (Egypt) asked whether, under the provision proposed in document A/CONF.89/C.2/L.27, the sea leg of a multimodal transport operation would be governed by the provisions of the new Convention. It would be difficult for his delegation to accept the second sentence of the text.

13. Mr. HANKE (German Democratic Republic) said that, if any revision of the CIM Convention was adopted by a two-thirds majority, all other parties automatically became parties to the revised Convention. That was why it was essential for parties to the CIM Convention that the new Convention should contain a provision along the lines of that proposed in the second sentence of document A/CONF.89/C.2/L.27.

14. Mr. PALMER (United Kingdom) said that the text in document A/CONF.89/C.2/L.27 represented a fair solution to the problems faced by European States. For the reasons given by the representative of the German

Democratic Republic, his delegation whole-heartedly supported the second sentence of the text.

15. Mr. KELLER (Liberia) said that his delegation supported the proposed text as it stood. With reference to the title of the proposed provision, he asked whether the question could not be dealt with under article 25 "Other conventions", which was being considered by the First Committee.

16. Mr. TETU (Canada) said that his delegation supported the amendment proposed by the representative of Australia. He suggested that the text might be clearer if the words "with respect to carriage by sea" were inserted after the word "applying" at the beginning of the text.

17. Mr. RAMSEY (United States of America) said that his delegation had no objection to the text in document A/CONF.89/C.2/L.27. If possible, the words "Contracting States" should be retained because they were consistent with the language used in other articles of the Convention.

18. Mr. MATYASSY (Central Office for International Railway Transport (OCTI)), speaking at the invitation of the Chairman, suggested that, in order to remove difficulties, the words "entry into force" might be replaced by the word "signature". The second sentence of the text was necessary. The CIM Convention would be revised in 1980 in order to bring it into line with the new Convention. Currently, the CIM Convention contained provisions, including the provision relating to error of navigation, which were in keeping with those of the 1924 Brussels Convention. If the Convention did not contain a provision permitting amendment of the CIM Convention, the provisions of the latter would conflict with those of the new Convention. In conclusion, he said that Iraq was a party to the CIM Convention. He doubted that Iraq would be satisfied if the CIM rule providing for a single transport contract contained in a single transport document was removed.

19. Ms. BRUZELIUS (Norway), referring to the comments made by the representative of Iraq, pointed out that it was not the purpose of the clause under discussion to deal with the possible conclusion of a multimodal convention. Its purpose was to deal with such modes of transport as rail or road transport involving an ancillary sea leg which, for practical purposes, would be covered by rules governing road or rail transport.

20. Mr. YEPEZ (Venezuela) said that the Working Group appeared to have exceeded its terms of reference. His delegation considered that the second sentence of the text should be so amended as to reflect the consensus reached by the Committee at its preceding meeting.

21. Mr. CARRAUD (France) admitted that the second sentence was not absolutely consistent with what the Committee had agreed at its preceding meeting, since it applied to a possible future situation. The explanation for the inclusion of that sentence had been given by the observer for OCTI. The question was how to make it possible for the CIM and CMR Conventions to be brought into line with the new Convention.

22. Mr. KANG (Republic of Korea) said that the second

sentence definitely related to future conventions and should, therefore, be deleted.

23. Mr. MEGHJI (United Republic of Tanzania) said that the draft text before the Committee was acceptable to his delegation as a compromise solution, although he was inclined to agree with the view that the reference to the date of entry into force of the new Convention was unnecessary. Furthermore, he did not consider that the retention of the second sentence would give rise to any crucial problems, since the provisions of the new Convention would certainly be taken into consideration at the time of any subsequent revision or amendment of existing conventions.

24. Mr. AMOR (Mexico) considered that the second sentence of the proposed text was inappropriate, in view of the Committee's decision that no reference should be made in the draft Convention to any future legal instrument.

25. Ms. DSANE (Ghana) said that her delegation was in favour of the text proposed by the *ad hoc* Working Group.

26. Mr. GUEIROS (Brazil), referring to the comments by the representative of Norway, said it would be quite clear that the provision under discussion applied neither to multimodal transport nor to carriage by sea if the word "primarily" was deleted from the first sentence.

27. Mr. LAVINA (Philippines) suggested that a vote might be avoided if the text were referred back to the *ad hoc* Working Group for further consideration, in the light of the comments made during the discussion.

28. The CHAIRMAN said that, in view of the very limited time at the Committee's disposal, it would not be possible to follow the course suggested by the representative of the Philippines.

29. The problems which had arisen in respect of the Working Group's text could not, in his view, be settled by voting on each of the oral amendments suggested. Accordingly, he intended to put to the vote the draft provision in document A/CONF.89/C.2/L.27, on the understanding that any amendments or corrections proposed by delegations would be considered after the Committee had taken a decision on the text as a whole. In that connexion, he had been given to understand that the proposal by the Australian representative had been withdrawn. The only major proposal on which a decision would have to be taken was, therefore, the proposal for deleting the second sentence.

30. Mr. LAVINA (Philippines) observed that the proposal by the representative of Australia had been supported by a number of delegations and should therefore be put to the vote.

31. Mr. KHABDUJI (Zaire), referring to rule 39 of the rules of procedure, said that the proposal for deleting the second sentence was the furthest removed from the text proposed by the *ad hoc* Working Group and should therefore be put to the vote first.

32. Mrs. TYCHUS-LAWSON (Nigeria) observed that if the first vote showed that there was a majority in favour of the text as it stood, there would be no point in voting afterwards on the deletion of the second sentence.

33. The CHAIRMAN put to the vote the draft provision proposed by the *ad hoc* Working Group (A/CONF.89/C.2/L.27).

34. *The draft provision was adopted by 31 votes to 11, with 11 abstentions.*

35. The CHAIRMAN invited the Committee to consider the proposals for deleting, respectively, the words "entry into force of" from the first sentence, and the entire second sentence.

36. Mr. HANKE (German Democratic Republic) said that since the text had been adopted by 31 votes in favour, he did not see how it could be amended; it should be referred to the Drafting Committee.

37. Mr. AMOR (Mexico) said that he had not understood the force of the Chairman's request that the Committee should vote on the text as it stood. Did that mean in its wording, or in its context with reference to other transport conventions?

38. He agreed that the phrase "already in force at the date of entry into force of this Convention" did not make it clear that conventions in force at the time of signature of the draft Convention were meant. The last sentence of the proposed provision related to further revisions of the conventions already in force; it implied that the force of the present Convention might be affected by subsequent revisions of other conventions, and thus weakened the force of the Convention.

39. Mr. KRISHNAMURTHY (India) said that the object of the text in document A/CONF.89/C.2/L.27 was merely to make it clear that nothing in the provisions of the new Convention dealing with carriage by sea would prevent States from carrying out their obligations under conventions relating to other modes of transport to which they were already parties. The second sentence in the text merely meant that if those other conventions, not relating to sea carriage but to other modes of transport, were subsequently amended, the States parties to them would have no alternative but to apply them as amended. It was not a reference to the future multimodal convention.

40. Mr. HEINZ (Federal Republic of Germany) proposed that, under rule 31 of the rules of procedure, the Committee should reconsider its decision to adopt document A/CONF.89/C.2/L.27. The Committee should then take another vote on that document in accordance with rule 39 of the rules of procedure; then it should vote on whether to delete or retain the second sentence of the document; next on whether to delete the words "already in force at the date of entry into force of this Convention and"; and finally it should vote on the text, as amended, as a whole.

41. Mrs. TYCHUS-LAWSON (Nigeria) said that, to make it clearer what the Committee was voting for, the phrase "at the date of entry into force of this Convention" should be amended to read "at the time the Convention is opened for signature".

42. Mr. CARRAUD (France) said that, in the *ad hoc* Working Group which had drafted the proposal under discussion, some delegations—those of France, the German Democratic Republic, the Netherlands and the

United Kingdom—had taken the view that the Convention should contain such a clause, and the other members of the Working Group had therefore supported them in a compromise proposal. In order that the words relating to entry into force, and the second sentence, should not be suspected of containing surprises to be sprung at a later date, he proposed the deletion of the second sentence of the document, and of the words "already in force at the date of entry into force of this Convention and".

43. Ms. BRUZELIUS (Norway) suggested that the Committee should proceed forthwith to a vote on whether to retain or delete the second sentence of the proposal.

44. The CHAIRMAN invited the Committee to vote on the proposal to delete the second sentence of document A/CONF.89/C.2/L.27.

45. *There were 22 votes in favour, 22 against and 10 abstentions.*

46. *The proposal was not adopted.*

47. Mr. BELLAMY (Australia) said that before the Committee proceeded to the second vote he wished to clarify the situation with regard to conventions already in force. The intention had been to produce a clause referring to conventions in force at a certain date, namely the date when the Convention would be concluded, at the end of the Conference. The clause as it stood, by referring to "the date of entry into force of this Convention", could refer to a date far in the future when sufficient ratifications had been obtained, and some other international conventions might have come into force by that date. He had therefore proposed that merely the words "entry into force of" should be deleted. The words "already in force" were an essential limiting factor and if they were deleted it could be argued that conventions not currently in force were also to prevail over the provisions of the new Convention.

48. The CHAIRMAN put to the vote the proposal for deleting the words "entry into force of" in document A/CONF.89/C.2/L.27.

49. *The proposal was adopted by 21 votes to 18, with 15 abstentions.*

50. Mr. LAVINA (Philippines) said that he had voted for the deletion of the second sentence, and had abstained in the second vote because, in his view, the issue had been decided in disregard of the rules of procedure, in particular rules 34, 37 and 39. His delegation had been denied the opportunity of expressing its views and of effectively participating in the work of the Committee.

51. Mr. MAFALLDIOP (Senegal) said that his delegation had been obliged to abstain in the vote since it had been unable to obtain clarification as to whether the text to be voted on was with or without amendments. He regretted that the proposal of the French representative, which would have avoided a double vote, had not been retained. With regard to the second sentence, he said that his Government might have constitutional difficulties in ratification if the sentence was retained, and for that reason he had voted for its deletion, but he had been denied the opportunity to explain his vote.

52. Mr. KHABDUJI (Zaire) said that the voting had been conducted in the utmost confusion. He had endeavoured to raise a point of order asking for an explanation of what was to be voted on but had been refused the floor. He had voted for the deletion of the second sentence of the proposed text because he believed, as indeed the French representative, who had been Chairman of the *ad hoc* Working Group, believed, that the Group had exceeded its mandate. The proposal by the French representative could have received unanimous support if it had been voted upon. He hoped that in future the rules of procedure of the Conference would be respected.

53. Ms. ROCA (Ecuador) said that her delegation had participated in the *ad hoc* Working Group and had accepted in a spirit of compromise a text which was not completely satisfactory. She had abstained in the first vote because she thought the rules of procedure had been infringed and because she had been confused by elements of the text forming the subject of the vote. She had been refused an opportunity to explain her position. In the second vote, she had voted for the deletion of wording which she believed negated the effect of the text as a whole.

The meeting rose at 12.50 p.m.

11th meeting

Friday, 24 March 1978, at 5.50 p.m.

Chairman: Mr. D. POPOV (Bulgaria).

A CONF.89 C.2/SR.11

Consideration of the draft provisions prepared by the Secretary-General concerning implementation, reservations and other final clauses for the draft Convention on the Carriage of Goods by Sea, with the exception of the draft article on "reservations" (concluded) (A/CONF.89/6 and Add.1 and 2, A/CONF.89/C.2/L.2, L.6, L.12, L.14, L.15, L.16, L.18, L.24, L.26)

*Article [6]. Entry into force (concluded)**

1. The CHAIRMAN invited the Committee to resume its consideration of draft article [6] and to express its preference as between alternatives A, B, C and D proposed for the text of that provision in document A/CONF.89/6.

2. Mr. PAVERA (Czechoslovakia) expressed a preference for alternative A because it was based on the sole criterion of the number of States having deposited instruments of ratification. The criterion of the tonnage of the merchant fleet of contracting States was not acceptable because the entry into force of the future Convention was of interest also to States which did not possess a merchant fleet and to States whose merchant fleet was small. Furthermore, according to studies carried out by UNCTAD, almost 30 per cent of the tonnage of the world's merchant fleet sailed under flags of convenience, with the consequence that States engaging in that practice might materially influence the entry into force of the Convention in one way or another. As the Chairman had remarked at the previous meeting, the volume of sea-borne trade might constitute a criterion, but unfortunately statistics relating to sea-borne trade were insufficient in so far as land-locked countries were concerned.

3. For the reasons he had stated, his delegation could support only the criterion of the number of States, which should be higher than 20 but should not exceed 30.

4. Mr. FAHIM (Egypt) said that the point had been amply discussed at the Committee's 4th meeting, when a majority of delegations had expressed a preference for alternative A. He suggested that, to save time, the Committee should discuss only the question of the number of States.

5. Mr. PALMER (United Kingdom) said that the question of the Convention's entry into force was not a hypothetical one but was of great commercial and legal importance. Like other delegations, his delegation considered that the Convention should not enter into force until it effectively replaced to a large extent the international regulations previously applicable. It would be most risky if four regimes were simultaneously operative, for in that case conflicts of law would inevitably occur. He would be prepared to consider any suggestion which, like the Japanese proposal (A/CONF.89/C.2 L.12), would tend to avoid that risk. The criterion of the number of States was not by itself a sufficient one, and in any case the number of States should be at least 30, as in the case of the Warsaw Convention. Since some States would have to denounce other international instruments before becoming parties to the Convention, it should not enter into force until after the expiry of at least one year after the deposit of the last instrument of ratification necessary for its entry into force.

6. Mr. PERE (France) said that his delegation had proposed the double criterion of tonnage and number of States, that being the solution chosen in other conventions like the London Convention of 1954 on oil pollution, where the two criteria applied were 500,000 tons and 10 States. In view of the development of the international community and of the world merchant fleet, his dele-

* Resumed from the 8th meeting.

gation thought that it had made a reasonable proposal by raising the figures to 1 million tons and 15 States. After consultations with delegations of developing countries, however, his delegation had realized that many of those countries would find it to their advantage that the future Convention should be concluded and enter into force even though their merchant fleet was for the most part a small one. With a view to advancing the Committee's work his delegation would withdraw its proposal (A/CONF.89/C.2/L.16) and would support a proposal based solely on the criterion of the number of States; it considered that the number should be between 20 and 30.

7. Mr. LAVINA (Philippines) said that the majority of delegations had expressed a preference for the single criterion of the number of States. In his delegation's opinion, the other alternatives proposed by UNCITRAL might well be discriminatory. The experience with the Convention on a Code of Conduct for Liner Conferences, signed in Geneva in 1974, was instructive: the entry into force of that Convention depended on the two criteria of the number of States and tonnage.

8. Ms. BRUZELIUS (Norway), speaking on a point of order, said that on an earlier occasion the majority of delegations had expressed a clear preference for one of the alternatives proposed. In her opinion, the current debate should be as short as possible and relate only to the number of States to be chosen as the criterion.

9. The CHAIRMAN confirmed that the vast majority of delegations were in favour of alternative A, based on the sole criterion of the number of States. He invited delegations to indicate what figure they preferred.

10. Mr. TETU (Canada) said that his delegation would have preferred alternative D but would accept the majority view. However, it considered that the number of States should be closer to 30 than to 20.

11. Mr. KRISHNAMURTHY (India) said that the majority of delegations had supported the proposal sponsored by his own delegation and those of Bangladesh and Uganda (A/CONF.89/C.2/L.15). That proposal had later been espoused by the Australian delegation, with certain slight changes (A/CONF.89/C.2/L.18). At its 7th meeting the Committee had expressed its preference for alternative Y in document A/CONF.89/6 and had referred it to the Drafting Committee. As the overwhelming majority had preferred the proposal in document A/CONF.89/C.2/L.15, he considered that that proposal should be put to the vote.

12. Ms. BRUZELIUS (Norway) explained that her delegation had supported the proposal in A/CONF.89/C.2/L.15 subject to some reservations. It had suggested that the Convention should enter into force on the first day of the month after the expiry of one year from the date of the deposit of the twentieth instrument of ratification.

13. Mrs. SANPIETRO (Argentina) said that her delegation would have preferred an alternative other than alternative A. Like the Canadian delegation, her delegation considered that the figure of 20 States was insufficient.

14. Mr. DETHIER (Belgium) said that his delegation

would bow to the wishes of the majority, but would have preferred alternative C; he added that in his delegation's opinion the number should be at least 30 States.

15. Mr. KRISHNAMURTHY (India) said that, after consultations, the Ugandan delegation and his own would accept the amendments proposed by Australia (A/CONF.89/C.2/L.18).

16. Mr. de BRUIJN (Netherlands), Mr. TERASHIMA (Japan), Mr. HANKE (German Democratic Republic), Mr. PALMER (United Kingdom) and Mr. KELLER (Liberia) expressed a preference for the figure of 30 States.

17. Mrs. TYCHUS-LAWSON (Nigeria), Mr. BEL-LAMY (Australia), Mr. LUKABU-KHABDUJI (Zaire), Mr. MUSSO (Peru), Mr. ARREBOLA (Cuba), Mr. DETHLEFSEN (Denmark) and Mr. RAMSEY (United States of America) said that they would be prepared to accept the figure of 25 States.

18. Mr. MUCHUI (Kenya), Mr. HAROON (Pakistan), Mr. DDUMBA (Uganda), Mr. KANG (Republic of Korea), Mr. LAVINA (Philippines), Mr. VINCENT (Sierra Leone), Mr. FARES (Democratic Yemen), Mr. MAFALDIOP (Senegal), Mr. YÉPEZ (Venezuela), Ms. DSANE (Ghana), Mr. HEINZ (Federal Republic of Germany), Mr. NARVAEZ (Ecuador), Mr. WANSEK (United Republic of Cameroon), Mr. GUEIROS (Brazil) and Mr. KANYENYE (United Republic of Tanzania) expressed a preference for the figure of 20 States.

19. Mr. JOMARD (Iraq) said that he would have preferred the number to be 15 States.

20. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that a figure between 15 and 30 would be acceptable to his delegation.

21. The CHAIRMAN, noting that the principal figures mentioned were 20, 25 and 30, suggested that those figures should be put to the vote in the order stated.

22. Ms. BRUZELIUS (Norway) inquired whether a delegation would be able to participate in more than one vote.

23. Mr. KRISHNAMURTHY (India), supported by Mr. LAVINA (Philippines), said that if the Committee voted in favour of the figure of 20 States it would become unnecessary to vote on the other two figures.

24. Mr. PERE (France) said that, as India and Uganda had accepted the Australian proposal which provided for a period of one year, the French delegation would support the figure of 20 States. He thought that, when voting on the Australian proposal, the Committee might settle the two questions of the period and of the number of States by a single vote.

25. Mr. HEINZ (Federal Republic of Germany) said that the Committee should respect the terms of rule 39 of the rules of procedure and vote first on the amendment furthest removed from the original proposal (A/CONF.89/C.2/L.15), in other words, the proposal that 30 instruments of ratification would be necessary for the entry into force of the Convention; the next vote would be on the figure of 25 instruments and the third one on 20 instruments.

26. Ms. BRUZELIUS (Norway) pointed out that there was a clear majority in favour of the one-year period provided for in the Australian proposal, and the only point still in dispute was that concerning the number of ratifications required.

27. Mr. JOMARD (Iraq) disagreed. He said that the Australian proposal was the result of a compromise in that the one-year period had been accepted on condition that the requisite number of instruments of ratification would be 20.

28. Mr. HANKE (German Democratic Republic) considered that the Committee should first vote on the Australian proposal and then according to the procedure proposed by the representative of the Federal Republic of Germany.

29. The CHAIRMAN put the Australian proposal to the vote.

30. *There were 49 votes in favour, 2 against and 2 abstentions.*

31. Mr. HANKE (German Democratic Republic), speaking on a point of order, said that in the light of comments made at the previous meeting he had gathered that the vote had related only to the one-year period provided for in the Australian proposal, and not to the number of ratifications.

32. Mr. DE BRUIJN (Netherlands), Mr. PALMER (United Kingdom) and Mr. TERASHIMA (Japan) supported the view expressed by the representative of the German Democratic Republic.

33. Mr. KRISHNAMURTHY (India), also speaking on a point of order, said that the position was clear: a majority of States had approved the Australian proposal in its totality and hence also the number of 20 ratifications mentioned therein. He considered, therefore, that there was no need to reopen the debate.

34. Mr. GUEIROS (Brazil) said that, under the rules of procedure, proposals could only be divided if the sponsor requested that they be put to the vote separately. In the particular instance, the vote which had just been taken had shown a considerable majority in favour both of the one-year period and of the figure of 20 instruments of ratification.

35. Mr. HEINZ (Federal Republic of Germany) said that before the vote the Chairman had expressed the view that there was no disagreement concerning the one-year period and that that was the issue to be put to the vote first. No objection having been voiced, it could be assumed that the vote had related exclusively to that proposal. That assumption was confirmed by the fact that 49 delegations had voted in favour; such a large number would never have expressed a favourable vote if the delegations had thought that they were voting on the number of ratifications required. The Committee should proceed to vote on the second issue and then on the whole of the Australian proposal.

36. The CHAIRMAN explained that he had asked the Committee to vote on the amendment proposed by Australia, the effect of which was to modify the periods referred to in paragraphs 1 and 2 of the original proposal.

He had not asked the Committee to vote on the whole of the Australian proposal.

37. Mr. BELLAMY (Australia) explained that his delegation had been under the impression that it was voting for the whole of its proposal. In view of the misunderstanding regarding the vote, he considered that another vote should be taken according to the procedure suggested by the representative of the Federal Republic of Germany.

38. Mr. FAHIM (Egypt) supported the Australian suggestion.

39. Mr. RAMSEY (United States of America), referring to rule 28 of the rules of procedure, under which the Chairman could permit the consideration of oral proposals, proposed that the Committee should vote on the motion for dividing the proposal, then vote on the oral amendment for replacing the figure of 20 ratifications by 30, thereafter on the amendment proposing the figure of 25 ratifications, and lastly on the figure proposed in the Australian amendment.

40. Mr. SEMIKACHEV (Union of Soviet Socialist Republics), supported by Mr. JACOBUS (Sweden) and by Mr. HEINZ (Federal Republic of Germany), proposed that the Committee should follow the procedure described in rule 37 concerning the division of proposals. In that case, the Committee would first vote on the whole of the proposal in document A/CONF.89/C.2/L.18 with the exception of the requisite number of instruments of ratification, acceptance, approval or accession, and thereafter on the figure to be inserted.

41. *The proposal of the Union of Soviet Socialist Republics was agreed to.*

42. The CHAIRMAN invited the Committee to vote on the proposal in document A/CONF.89/C.2/L.18 with the exception of the number of instruments of ratification, acceptance, approval or accession.

43. *There were 50 votes in favour of the proposal.*

44. The CHAIRMAN put to the vote separately the figure of 30 instruments of ratification.

45. *The figure of 30 instruments was rejected by 38 votes to 14, with 2 abstentions.*

46. The CHAIRMAN put to the vote the figure of 25 instruments of ratification.

47. *The figure of 25 instruments was rejected by 27 votes to 13, with 11 abstentions.*

48. The CHAIRMAN put to the vote the figure of 20 instruments of ratification.

49. *The figure of 20 instruments was adopted by 40 votes to 5, with 7 abstentions.*

50. Mr. NARVÁEZ (Ecuador) formulated express reservations concerning the voting procedure which had been followed.

Article []. Revision and amendment

51. The CHAIRMAN invited the Committee to consider the proposals by the German Democratic Republic and by Norway concerning the revision or amendment of the Convention.

52. Mr. HANKE (German Democratic Republic), introducing amendment A/CONF.89/C.2/L.6, said that

his delegation considered it necessary to introduce a new article concerning the revision of the Convention and any possible amendment thereof. The provisions in the proposed paragraphs 1 and 2 were motivated by two considerations: first, it should not be possible to revise or amend the Convention except with the concurrence of a substantial proportion of the States parties; secondly, the procedure suggested was the same as that used in the case of the CIM Convention of 1962, namely any revision of the Convention or any amendment thereof would enter into force if two thirds of the States parties to the Convention had ratified or acceded to the new instrument.

53. Ms. BRUZELIUS (Norway), introducing amendment A/CONF.89/C.2/L.26, said that her delegation considered it desirable that the draft Convention should contain a provision concerning revision and amendment.

54. Commenting on the various paragraphs of the proposal, she explained that paragraph 1 was modelled on the opening clauses of other conventions and was self-explanatory. Paragraph 2 provided that the request for the convening of a conference should come from a fairly large number of contracting parties. Paragraph 3, concerning a decision to amend the Convention, proposed a procedure consistent with the rules of procedure of most conferences, namely that the decision should be taken by a two-thirds majority of the contracting States present and voting.

55. Paragraphs 4 and 5, which were interdependent, reflected the substance of the proposal by the German Democratic Republic. Paragraph 4 provided that amendments should be ratified by a sufficient number of contracting States, and paragraph 5 dealt with the case of States not ratifying amendments. If either of those two paragraphs was not accepted, the other one would automatically have to be dropped as well.

56. Her delegation attached special importance to paragraph 6 of the proposal, which contemplated the closing of the Convention on the entry into force of an amendment. In the past, the fact that treaties had remained permanently open to ratification by States, even if the number of parties decreased, had given rise to many difficulties. That was the case with the Hague Rules and the Brussels Protocol, even if they should be superseded by the new Convention, inasmuch as there was nothing in the provisions of the two earlier instruments to prevent countries wishing to do so from acceding to them. It was in the light of that consideration that the London Convention of 1976 concerning the limitation of liability for maritime claims contained a clause providing that on the entry into force of the Protocol it would become impossible for a State to ratify the Convention except in its amended form. Such a clause was very useful for maintaining balanced relationships, and without such a clause confusion might ensue, as had occurred in the case of air traffic, which was governed simultaneously by the Warsaw Convention, the Hague Protocol to the Warsaw Convention, the Guatemala Protocol and the Montreal Protocol No. 4, none of those instruments being closed to participation by States.

57. If a clause on the lines of that proposed by Norway in paragraph 6 of its amendment was appropriate, it should be introduced into the new draft Convention, on the grounds that, if at some time in the future an amending protocol was adopted, only the countries becoming parties thereto would be bound by the new provisions, and the earlier instrument would remain open to ratification by other States.

58. Mr. HANKE (German Democratic Republic) said that, in the light of the Norwegian representative's comments concerning paragraphs 4 and 5 of her delegation's proposal, his delegation would withdraw its amendment (A/CONF.89/C.2/L.6).

59. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) said that his delegation would be prepared to support the Norwegian delegation's proposal on condition that paragraphs 3, 4, 5 and 6 were dropped. It was surely for a future conference called pursuant to paragraph 2 to decide for itself what procedure to follow with regard to amendments and with regard to means of avoiding the overlapping of provisions of different conventions.

60. The CHAIRMAN said that two other proposals were related to those he had mentioned earlier: the proposal in document A/CONF.89/C.2/L.14, submitted by the United Republic of Tanzania, and that in document A/CONF.89/C.2/L.24, submitted by France.

61. Mr. MEGHJI (United Republic of Tanzania) said that his delegation's proposal (A/CONF.89/C.2/L.14) was intended merely to draw attention to the need for a new article regarding the convening of a review conference, without specifying how the conference should operate. His delegation was inclined to favour the Norwegian proposal, but would prefer a provision requiring the convening of such a conference after the expiry of a specific period, say three years; his delegation would further prefer that an amendment of the Convention should not be subject to the requirement of a two-thirds majority decision. If those remarks were taken into account, his delegation would be prepared to withdraw its proposal.

62. Mr. PERE (France) said that his delegation would prefer the solution proposed by the Soviet Union, i.e. the adoption of paragraphs 1 and 2 of the Norwegian proposal, the remaining four paragraphs being dropped. Those four paragraphs were fraught with risk, particularly paragraph 5. A two-thirds majority vote in favour of an amendment to the Convention would mean that the remaining one-third would have no choice but to suffer the loss of the benefit of the Convention. By the operation of the automatic denunciation clause in the 1924 Brussels Convention—regarding which his delegation had already expressed its concern—those States might find themselves in a legal vacuum, since they would be denied the benefit of the existing Convention without any chance of regaining status under the 1924 Convention. Accordingly, apart from the important principle of respect for State sovereignty, there were strong practical arguments in favour of dropping provisions like those in paragraphs 3, 4, 5 and 6 of the Norwegian text.

63. Mr. de BRUIJN (Netherlands) said he could support the Norwegian proposal with the exception of paragraph 1, under which the depositary would have the power to convene a conference—a power that should vest exclusively in the contracting States—and of paragraph 5, which, as the French representative had remarked, would deny to too many States the benefit of the Convention.

64. Mr. NSAPOU (Zaire) said that his delegation could support paragraphs 1 and 2 of the Norwegian proposal but would be unable to support paragraph 3, for it would be better to leave the future conference to settle its own rules. Regarding paragraph 4, he thought that it should be possible to work out an acceptable text. On the other hand, paragraph 5 seemed unacceptable for, as the French representative had remarked, it would exclude an important number of States parties to the Convention. Paragraph 6 might have the effect of forestalling the application of several régimes to the same Convention. In the light of those considerations, he asked for a more thorough study of the Norwegian proposal.

65. The proposal by the delegation of France (A/CONF.89/C.2/L.24) should in his opinion be dealt with by the First Committee.

66. Mr. TERASHIMA (Japan) agreed with the Soviet representative that only paragraphs 1 and 2 of those proposed by Norway should be approved. His delegation would be unable to accept paragraphs 3 and 4 for, in its opinion, the future conference should be free to settle its own rules. For the reasons given by the representative of France, he strongly opposed paragraph 5. The terms of paragraph 6 likewise seemed inappropriate for a convention of that nature. In that connexion he pointed out that the London Convention of 1976 concerning the limitation of liability for maritime claims, which the Norwegian representative had referred to, contained a slightly different formulation. Its article 20, paragraph 3, provided that after the date of the entry into force of an amendment to that Convention, any instrument of ratification, acceptance, approval or accession deposited would be deemed to apply to the Convention as amended, unless a contrary intention was expressed in the instrument.

67. Mr. GUEIROS (Brazil), while expressing support for the Norwegian text, suggested that paragraph 1 should be deleted because it was for contracting States and not for the depositary to convene the conference. The French representative's objection to paragraph 5 had not convinced him for, inasmuch as the Convention could not be amended except by a two-thirds majority of the contracting States, any States that had not ratified the amendment would be a tiny majority. In view of the rapid progress and steady development of international trade it was essential that the Convention should be capable of being amended, and hence he recommended a certain flexibility.

68. Mr. SEMIKACHEV (Union of Soviet Socialist Republics) pointed out that paragraph 1 of the Norwegian proposal said merely that "a . . . conference may be convened by the depositary".

69. Mr. GUEIROS (Brazil), said that even with that language paragraph 1 gave to the Secretary-General of

the United Nations the initiating power to convene a conference, which would be incompatible with paragraph 2, under which the Conference could not be convened except "at the request of not less than one third of the Contracting States".

70. Ms. BRUZELIUS (Norway) said that, in view of the objections which had been voiced, her delegation would withdraw paragraphs 3, 4 and 5 of its proposed text.

71. Mr. HANKE (German Democratic Republic) said that, even after the withdrawal of those paragraphs by the Norwegian delegation, he would not reintroduce his own delegation's proposal (A/CONF.89/C.2/L.6) because it would stand little chance of acceptance.

72. Mr. BELLAMY (Australia) saw considerable merit in the French delegation's proposal (A/CONF.89/C.2/L.24) and thought it should be relatively easy to revise the amount of the limit of liability. At the same time, however, he considered that substantive amendments would call for a more detailed and perhaps a more difficult procedure.

73. Commenting on the Norwegian proposal (A/CONF.89/C.2/L.26), he agreed with the representative of Brazil that paragraph 1 should be deleted, for it gave to the depositary full discretion to convene a conference. He likewise opposed paragraph 6, because after the deletion of paragraphs 3 and 4 there would no longer be any assurance that the amendment would have been approved by a large majority of the contracting States. If, for example, the provision of paragraph 6 were applied to the Hague Rules, it would be found that the 1968 Protocol to amend the Brussels Convention of 1924, which had been ratified by 10 States, would have closed that Convention, a contingency to be avoided at all costs in the case of the new Convention. Moreover, paragraph 6 as drafted might convey the impression that the Convention as amended would apply retroactively to instruments deposited before the entry into force of the amendment, an eventuality likewise to be avoided.

74. Mr. YÉPEZ (Venezuela) said that in principle he could support the Norwegian proposal, for it seemed useful to convene a conference to amend the Convention. He agreed with the Brazilian delegation, however, that paragraph 1 should be omitted, for the authority to convene the conference should be given not to the depositary but to the contracting States. He added that some time should be allowed to elapse between the entry into force of the Convention and the calling of a review conference if such a conference was to serve a useful purpose, and accordingly he proposed that at the beginning of paragraph 2 the words "Three years after the entry into force of the Convention" should be added.

75. Mr. PAVERA (Czechoslovakia) thought that it would be useful to convene a revising or amending conference, and therefore fully supported paragraphs 1 and 2 as proposed by Norway. Those two paragraphs seemed to suffice, for he agreed with the representative of the Soviet Union that all other decisions should be taken by the conference itself.

76. Mr. PALMER (United Kingdom) said that in principle he could accept the Norwegian proposal, though he

shared the French representative's opinion regarding paragraph 5, which had since been withdrawn.

77. So far as the review of the amount of the limit of liability was concerned, he said that the First Committee might well deal with that question in connexion with article 6. The French proposal on that point was hardly acceptable, for it specified excessively strict deadlines for the convening of review conferences and ignored the position of States that did not accept a revision of the amount of the limit of liability. In his opinion, it would be better to provide that review conferences should take place "at the request of the Contracting States".

78. Mr. KRISHNAMURTHY (India) considered that a provision regarding the review of the Convention was necessary. Many such provisions occurred in international conventions, for example, in the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas and the Convention on the Continental Shelf, all signed at Geneva in 1958. The revision clauses in those Conventions were much simpler. All four Geneva Conventions of 1958 on the Law of the Sea contained a revision clause in the following terms:

"1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

"2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request."

That was a standard clause which should be reproduced in the Convention under consideration.

79. Paragraph 6 raised a serious problem: if the Convention should be amended, would States be free to ratify the pre-existing Convention without the amendment, or would they have to ratify the Convention as amended? There was a considerable risk of confusion in the law relating to international transport, for some States would be parties to the original Convention, others to the amended instrument and others to both simultaneously. In the light of those considerations, he considered that it would be preferable to adopt the standard formula used in the Geneva Conventions on the Law of the Sea, which did not give rise to any problem.

80. Mr. JACOBÆUS (Sweden) supported the Norwegian proposal, but like other delegations also had some reservations concerning paragraph 6.

81. Mrs. TYCHUS-LAWSON (Nigeria) supported paragraphs 2 and 6 as proposed by Norway, but agreed with the Brazilian representative that paragraph 1 should be deleted.

82. Mr. HEINZ (Federal Republic of Germany) supported paragraph 2 as proposed by Norway.

83. Mr. MUCHU (Kenya) said that he could likewise support paragraph 2 but would be unable to support paragraph 1 because it would give the Secretary-General

of the United Nations full authority to convene a review conference. He could support paragraph 6 because, after the entry into force of an amendment to the Convention, States should not be free to ratify the original unamended Convention.

84. Mr. de BRUIN (Netherlands) said that after the withdrawal of paragraphs 3, 4 and 5 he would no longer be able to support the Norwegian proposal. With respect to the French proposal (A/CONF.89/C.2/L.24), he had the same reservations as the representative of the United Kingdom, for the proposal did not clearly state whether the amendment would enter into force with respect to all contracting parties or only with respect to those accepting it.

85. Ms. BRUZELIUS (Norway) said that the London Convention of 1976 on the limitation of liability for maritime claims, adopted under the auspices of IMCO, contained in article 20, paragraph 1, a provision similar to that of paragraph 1 of her own delegation's proposal in that it empowered IMCO as depositary to convene a conference to amend or revise the Convention. IMCO had never misused its power, and she was sure that the Secretary-General of the United Nations would not do so either in the case of the Convention under consideration.

86. Mr. PERE (France) pointed out that paragraphs 1, 2 and 6 as proposed by Norway were not novel provisions, for much the same formula occurred in the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. In his opinion those three paragraphs should stand.

87. So far as his own delegation's proposal was concerned, he explained, with reference to subparagraph (c), that States unable to accept the new amounts of the limit fixed by amendments would continue to apply the amounts laid down earlier. There would be no harm in referring that proposal to the First Committee.

88. The CHAIRMAN said that in the absence of objections he would take it that the Committee agreed to refer the new article proposed by France (A/CONF.89/C.2/L.24) to the First Committee.

89. *It was so decided.*

90. Ms. BRUZELIUS (Norway) withdrew paragraph 1 of her delegation's proposal.

91. Mr. DIETZ (Secretary of the Committee) said it was impossible to estimate precisely the financial implications of a conference like that envisaged. The costs of such a conference could not be charged to the budget of the United Nations unless the General Assembly so decided. Failing such a decision, the expenses of the conference would have to be defrayed by the States parties to the Convention.

92. Mr. KRISHNAMURTHY (India) proposed that the Convention should contain an article in the following terms:

"Article [] . Revision

"1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by

means of a notification in writing addressed to the Secretary-General of the United Nations.

"2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of that request."¹

93. The CHAIRMAN put the Indian delegation's proposal to the vote.

94. *The proposal by India was rejected by 20 votes to 11, with 20 abstentions.*

95. The CHAIRMAN put to the vote successively paragraphs 2 and 6 of the Norwegian delegation's proposal (A/CONF.89/C.2/L.26).

96. *Paragraph 2 was adopted by 46 votes to 1, with 1 abstention.*

97. *Paragraph 6 was adopted by 42 votes to 5, with 7 abstentions.*

*Final, formal clauses (concluded)**

98. The CHAIRMAN suggested that after the word "Hamburg" should be added the words "this thirty-first day of March, one thousand nine hundred and seventy-eight" and that the following final clause should be referred to the Drafting Committee:

"IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention."

99. *It was so decided.*

Completion of the Committee's work

100. The CHAIRMAN announced that the Committee had completed its work.

The meeting rose at 8.30 p.m.

¹ Another proposal by India concerning amendments to the Convention was not considered.

* Resumed from the 7th meeting.