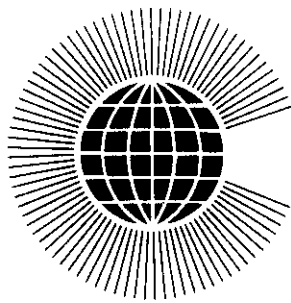


# **United Nations Convention on the Carriage of Goods by Sea**

1978 (Hamburg Rules)



Commonwealth Secretariat

# United Nations Convention on the Carriage of Goods by Sea

1978 (HAMBURG RULES)

Explanatory Documentation prepared for  
Commonwealth Jurisdictions by  
Professor H M Joko Smart in association  
with the Commonwealth Secretariat

**1989**

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## Preface

The concept of the 'accession kit' - a do-it-yourself manual for Governments interested in acceding to selected international conventions and one designed to facilitate the process by providing their legal advisers with a commentary on the conventions and model Bills for any legislative step required as a consequence - is one developed by Professors David McClean (of the University of Sheffield) and Keith Patchett (formerly the University of Wales Institute of Science & Technology) in conjunction with the Commonwealth Secretariat.

A series of such kits has been, and will continue to be, produced but hitherto these have been confined largely to the field of Private International Law.

This 'kit' on the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) has been prepared by Professor Joko Smart of the University of Sierra Leone and is one in the series of several planned for the area of Public International Law.

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CHAPTER I  
THE CONVENTION

INTRODUCTION

- 1.01 The Convention on the Carriage of Goods by Sea, based on a draft prepared by the United Nations Commission on International Trade Law (UNCITRAL) in 1976 was finalised at a Diplomatic Conference held under the auspices of the United Nations General Assembly at Hamburg, from 6 to 31 March 1978, on the invitation of the Federal Republic of Germany. The Conference adopted the Final Act on 31 March 1978, giving two names to the Convention: "The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)" and alternatively The "Hamburg Rules", reminiscent of the Convention which it sought to replace i.e. The International Convention for the Unification of Certain Rules relating to Bills of Lading held in Brussels in 1924 which is also known as The Hague Rules, as amended by the Visby Protocol adopted in Brussels in 1968 and later became known as the Hague/Visby Rules. For this reason, where the context permits in this work, the terminologies "The Hamburg Convention" and the "Hamburg Rules" will be used interchangeably to refer to the 1978 Convention under review; "The Brussels Convention" and the "Hague Rules" as a reference to the 1924 Convention on Bills of Lading, while the term "Hague/Visby Rules" will be used to allude to the amended version of the Hague Rules by the Visby Protocol.
- 1.02 Fourteen States signed the Hamburg Convention on 31 March 1978. Thereafter thirteen other States signed it within the period open for signature which expired on 30 April 1979. (Article 27(1)). The Convention is open for accession by States which were not signatories after 30 April 1979 and it comes into force on the 1st day of the month following the expiration of one year from the date of the 20th instrument of ratification or accession (Article 30 (1)).
- 1.03 Up to June 1989, fourteen States including six Commonwealth countries have ratified or acceded to the Convention. It is hoped that in the not too distant future, six more States will ratify in order to bring the Convention into operation. The following States have either ratified or acceded to the Convention with the dates given for Commonwealth countries.

Barbados	2 February 1981	Nigeria	7 November 1988
Botswana	16 February 1988	Romania	
Chile		Senegal	
Egypt		Sierra Leone	7 October 1988
Hungary		Tunisia	
Lebanon		Uganda	6 July 1979

The States which have only signed the Convention are as follows:- Austria, Brazil, Czechoslovakia, Denmark, Ecuador, Finland, France, Federal Republic of Germany, Ghana, Holy See, Madagascar, Mexico, Norway, Pakistan, Panama, Philippines, Portugal, Singapore, Sweden, United States of America, Venezuela and Zaire.

#### BACKGROUND AND AIM OF THE CONVENTION

- 1.04 As has been mentioned in the introduction, the Hamburg Convention is intended to replace the regime instituted by the Brussels Convention 1924 as amended by the Visby Protocol 1968. The earlier Convention was the brain-child of some shipowning countries which saw the need to harmonise disparate rules in national legal systems concerning carriage of goods by sea. The interests of these countries were paramount in the minds of the framers of a set of rules drawn up in The Hague in September 1921 and finally adopted by the Brussels Convention on 25 August 1924. The Rules weighted heavily in favour of shipowners (who were carriers) at the expense of cargo owners (shippers). By a fortuitous combination of circumstances including colonialism, many countries with cargo owning interests became parties to the Brussels Convention. For example, the United Kingdom ratified the Convention on 2 June 1930, and by 2 December 1930 she had extended its application to her colonies. So with Portugal who ratified on 24 December 1931, and on 2 February 1952 she drew its overseas territories into the fold of the Convention.
- 1.05 As time went on, there was increasing dissatisfaction with the Hague Rules and the Hague/Visby Rules. It was felt that the overall allocation of responsibilities and risks under the Rules was inequitable. Added to this, modern developments in conditions, technologies and practices relating to shipping have rendered many of the provisions of the Rules obsolete and inappropriate in present day ocean transport. Over and above these causes for dissatisfaction, several provisions of the Rules are regarded as ambiguous and uncertain with the result that the diligent shipper incurs higher transportation costs by not only paying the prescribed freight but also insuring against risks which he is not certain whether or not they are covered by the Rules.
- 1.06 With the tide of the New International Order flowing within the precincts of the United Nations General Assembly, the developing countries which are largely cargo owners, seized the opportunity to sweep away the regime of the Hague Rules for one that holds an equitable balance between the interests of shipowners and cargo owners. The delegation of Chile raised the clarion call in the first session of UNCITRAL in 1968. The General Assembly responded and UNCITRAL at its second Session put the matter on its Agenda as one of its priorities. Meanwhile, the United Nations Conference on Trade and Development (UNCTAD) was at the same time studying the law relating to bills of lading and carriage of goods by sea. The



Working Group of UNCTAD set up for this purpose was of the opinion that there should be a careful study of rules and practices relating to bills of lading, including the Hague Rules and the Visby Protocol with a view to revising and removing uncertainties and ambiguities in the existing Rules, and preparing a new International Convention which would be bereft of those inadequacies and which would establish a balanced allocation of the responsibilities and risks between the shippers and carriers. The Working Group recommended that the task should be undertaken by UNCITRAL as it fell within its Mandate under General Assembly Resolution 2205 (XXI).

- 1.07 Although the move for reform was initiated by countries with cargo interests, it would be wrong to conclude that the Hamburg Convention was dominated by the promoters of these interests. At both the Working Group and Diplomatic Conference levels, delegates from many shipowning countries exerted efforts to ensure that the purposes and aspirations of the UNCTAD Working Group were achieved and this was evident from the compromises that were reached in connection with the allocation of responsibilities and risks. It is therefore surprising that none of the big shipowning countries which relentlessly advocated for an equitable legal regime in the ocean transportation of goods has as yet taken measures to ratify the Hamburg Convention.
- 1.08 The principal areas of difference between the Brussels Convention as amended by the Visby Protocol and the Hamburg Convention relate to (i) the scope of operation; (ii) the basis of liability; (iii) the limitation of liabilities; (iv) transport documents; (v) claims and actions; (vi) the relationship between the two Conventions and other Conventions. While highlighting these differences, this work is both a commentary on the Hamburg Convention and a comparison and contrast of this Convention with the Brussels Convention and the Visby Protocol with a view to presenting a case for the adoption of the Hamburg Convention.

#### SCOPE OF OPERATION

- 1.09 In general, the Hamburg Rules are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person. (Article 2(2)). The Hague/Visby Rules contain a similar provision. (Article X(c)). The Hamburg Rules are not applicable to charter parties. However, the Rules apply to a bill of lading issued pursuant to a charter party if the bill of lading governs the relation between the carrier and the holder of the bill of lading other than the charterer. The scope of operation of the Rules can be divided into (a) geographical scope; (b) documentary scope; (c) period of coverage.

(a) Geographical Scope

- 1.10 The geographical scope under the Brussels Convention is narrow. The Convention applies "to all bills of lading issued in any of the Contracting States". (Article X). Difficulties have arisen under national laws with respect to the interpretation of this Article. In one sense, the Article does not specifically limit the application of the Convention to the International carriage of goods by sea. Consequently, some States have interpreted the Article by adopting legislation to include contracts of carriage of goods from one point to another in the same State. (See for example the United Kingdom Carriage of Goods by Sea Act, 1971 section 1 (3)). Other States, among whom are France and Italy have refused to apply Article X to the contracts of an internal character, (see Carver, Carriage of Goods by Sea, 12th Edition, 1971 pp. 1345, 1347). In another sense, Article X can be interpreted to mean that if a bill of lading is issued in a non-Contracting State, the Convention does not apply even if the goods are loaded in a port of a Contracting State. This inadequacy has also led to States adopting legislation ensuring the application of the Convention where it falls short of expectations. A typical example again is section 1 (3) of the United Kingdom Carriage of Goods by Sea Act, 1971. In a third sense, Article X is inapplicable if a bill of lading is issued in a non-Contracting State but the port of discharge is in a Contracting State. This has also given cause to some national legislations to extend the scope of the Convention to port of discharge. In a fourth sense, because of the practical problems posed by Article X, some national systems have found an escape valve by applying the Convention to bills of lading issued in a State which has enacted the provisions of the Convention. This solution too may create more problems than it sets out to surmount. For example, the legislature in one Contracting State may enact that the Convention will apply only to bills of lading issued in its own territory. In this case, the hands of the Courts of this State will be tied to apply the Convention to another Contracting State even if a bill of lading is issued from this second State. Once again, a case in point is section 1 (3) of the United Kingdom Carriage of Goods by Sea Act, 1971 which provides that the Convention will apply where the port of shipment is a "port in the United Kingdom whether or not the carriage is between ports in two different States".
- 1.11 The Visby Protocol 1968 took a step but only a little step forward in ensuring the international character of sea carriage when Article 5 widened the geographical scope of the Convention by making it applicable to bills of lading relating to carriage of goods between ports in two different States if the carriage is from a port in a Contracting State or the contract contained in or evidenced by the bill of lading provides that the rules of the Convention or statutory law of any State giving effect to them are to govern the contract.
- 1.12 The Hamburg Rules, on the other hand, go further than the Visby Protocol to extend the geographical scope of application. While retaining the provisions of the Visby Protocol, the Hamburg Convention for the first time, took cognizance of the port of discharge as provided for in the contract of carriage as a place to

be within the scope of the Convention, if it is located within a Contracting State. (Article 2 (b)). In addition, if the parties have identified an optional port of discharge in the contract of carriage and the goods are actually discharged at that port and it is located in a Contracting State, such port is also governed by the Convention, (Article 2(c)).

(b) Documentary Scope

- 1.13 It should be borne in mind that so far as documents are concerned, the Hague Rules apply only to contracts of carriage covered by a bill of lading or any similar document of title (Article 1(b)). The Visby Protocol left the position unaltered. As the Hague Rules use the expressions "bill of lading" and "any similar document of title" without defining them, difficulties arise as to their precise meaning.
- 1.14 First, with the term "bill of lading". In international shipping practice there are to be found two types of a bill of lading. One does not identify the consignee but is made deliverable to the "order of" a designated person who may be the buyer of the goods, forming the subject matter of the sea transport, or a bank that has issued or confirmed a letter of credit. This type of bill of lading is negotiable and the carrier is obliged to deliver the goods to the endorsee of the bill who becomes the holder after surrender of the bill or after giving an indemnity. This is the ordinary type of a bill of lading. The other type is one in which the identify of the consignee is stated on the bill. This is normally called a "straight" or "non-negotiable" bill of lading. In some jurisdictions like the United States using it, the goods can be delivered to the consignee without the need to surrender the document.
- 1.15 While it is universally accepted that a contract of carriage of goods by sea evidenced by the first type of bill of lading is governed by the Hague Rules, doubts have been expressed as to whether these Rules universally apply to contracts evidenced by the second type. Thus, it has been held that the Rules do not apply to the second type under French law. (See UNCITRAL Year Book Volume V 1974 p. 157). In other jurisdiction like the United States of America, statutory law has made the Hague Rules applicable to "straight" bills of lading even though they are not documents of title. (See 1916 Federal Bill of Lading Act, 49 U.S. CA. 81).
- 1.16 Next, the meaning of "any similar document of title". It is not clear even under national laws what documents fall within the ambit of documents of title similar to bills of lading. In the United Kingdom, for example, a received-for-shipment bill of lading is regarded as a document of title similar to a bill of lading while a document evidencing the contract of carriage by sea such as a way-bill is not. It might well be that a received-for-shipment bill of lading is a bill of lading but one that is temporary or inchoate, which is converted into an actual bill of lading when the goods are shipped. In other jurisdictions, no document other than a shipped bill of lading has been recognised as a document of title to goods for carriage by sea.

- 1.17 The Hamburg Rules have now put an end to the difficulties and speculations surrounding the meaning of "bill of lading" and "any similar document of title".
- 1.18 First, the term "bill of lading" is now defined which according to Article 1(7) 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 documents". Three essential characteristics emerge from this definition: (a) a bill of lading is evidence of the contract of carriage; (b) it is the receipt for the goods; (c) it is the document of title to the goods. It is clear from this definition that "straight" or "non-negotiable" bills of lading are not covered by the definition since these documents are not surrendered in exchange of the goods. However, all is not lost for such bills, because they are within the ambit of the Hamburg Convention since they can be regarded as transport documents under Article 18 of the Hamburg Rules. Their use has, however, been reduced as a result of modern development in the issuance of way-bills.
- 1.19 Secondly, the Hamburg Convention does not contain any reference to the term "any similar document of title". Instead, Articles 2(1)(d), 2(1)(e) and 18 mention "other documents evidencing the contract of carriage by sea" as documents to which the Convention applies. Although these documents are not defined or tabulated the change from "similar document of title" to "document evidencing the contract of carriage by sea" makes the latter documents ascertainable because it is much easier to identify a document as evidencing the existence of a contract than to establish it as a document of title. Thus documents such as way-bills, computer punch cards, and print-out issued by carriers are deemed to be documents evidencing contracts of carriage and not documents of title in sea transport.

#### PERIOD OF COVERAGE

- 1.20 Under the Hamburg Rules the carrier is responsible for the goods from the time he takes charge of them at the port of loading, during the carriage, and at the port of discharge. (Article 4(1)). This is an extended period of responsibility which imposes more liability on the carrier and a secured interest of the cargo owner.
- 1.21 With the Hague Rules, the carrier's responsibility for the goods is from tackle to tackle, that is to say, from the time that the goods are loaded on the ship to the time that they are discharged from the vessel. (Article 1(e)). The Rules do not cover any additional time before loading and after discharge during which the goods are under the control of the carrier. Such additional period of responsibility may be necessary where the goods are kept in a warehouse before loading and after discharge but in the custody of the carrier or his agent. Experience from sea transport indicates that many instances of loss of or damage to goods occur during this period. Under Article VII of the Rules the carrier can by agreement with the shipper relieve himself from liability arising from loss

of or damage to the goods while they are in his custody prior to the loading on, and subsequent to the discharge from the ship, on which the goods are carried. This is an obvious weakness in the Hague Rules so far as the shipper is concerned which the Hamburg Rules seek to cure.

- 1.22 Article 4 of the Hamburg Rules not only provides a wide period of responsibility but also ensures that responsibility exists where not only the carrier but also his agent or servant receives the goods from the shipper or his agent or a third party. Thus the Article stipulates that the carrier is deemed to be in charge of the goods (a) from the time that he or his servant or agent has taken over the goods from the shipper or a person acting on his behalf or an authority or other third party to whom, under the applicable law at the port of loading, the goods are to be handed over for shipment; (b) until he or his servant or agent hands over the goods to the consignee or his agent or by placing the goods at the disposal of the consignee or his agent in accordance with the contract or with the law or with usage of the particular trade applicable at the port of discharge, or by handing over the goods to an authority or other party to whom, pursuant to the applicable law or regulation prevailing at the port of discharge, the goods must be handed over.
- 1.23 It should be noted that the extended period of responsibility of the carrier under the regime of the Hamburg Convention compares favourably with the period prescribed under other international Conventions dealing with carriage of goods by other means of transport and with the practice developing in some liner trades. The tackle-to-tackle principle under the Brussels Convention might suffice in tramp shipping where the carrier often has no facility of his own for storage of the goods before loading or after discharge. But it can hardly be justified in liner trade especially where the carrier is still in possession of the goods outside the period covered by the Hague Rules. As long as these Rules remain in operation, doubt will continue to exist as to what rules should apply with respect to carrier's liability and the extent to which he is entitled to exempt himself from liability under various national laws.

#### BASIS OF LIABILITY OF THE CARRIER

- 1.24 By far the most controversial feature of sea transport is the basis of liability of the carrier. He is the man in complete control of his vessel and the cargo which it carries. In consideration of the freight which he is paid by the shipper or consignee, he is expected to deliver the cargo at the port of discharge to the consignee in the same condition as it was delivered to him for shipment. The risks connected with the carriage, the nature of the goods and the vagaries of fortune may, however, prevent him from performing his own part of the bargain to the satisfaction of the shipper. Who then is to bear the loss, if any? This question can be answered by examining three issues namely, (a) the allocation of risk (b) the nature of liability and (c) the burden of proof, under the Hamburg Convention.

## ALLOCATION OF RISK

- 1.25 The Hamburg Convention is in closer harmony with the international legal regime established for other international modes of transport than the Brussels Convention. The Hamburg Rules effect a more balanced and equitable allocation of risk between carriers and shippers.
- 1.26 By way of contract, under the Hague Rules, the carrier's liability arises only when he fails to exercise due diligence to make his ship seaworthy at the commencement of the voyage (Article III). Once he has discharged this duty before or at the beginning of the voyage, he is free from liability for any loss due to unseaworthiness of the ship arising after the commencement of the voyage. (See for example the United Kingdom case Actic Co Ltd v. Sanko Steamship Co Ltd, The Aquacharm (1982) I.W.L.R. 119 C.A.) The carrier's liability under the Rules is even lightened by Article IV (2) which contains a long list of excepted cases which virtually exculpate a carrier from all loss, damage or delay arising throughout the carriage unless a loss or damage results through the fault, privity or neglect of the carrier or his agent or servant which is difficult to prove in practice. Consequently, in addition to the freight which they pay, cargo owners have to incur increased expenses on insurance in order to be properly covered and protected against risks for which the carrier might not be liable, thus making transporation very costly for shippers.
- 1.27 The Hamburg Convention has now disposed of the long list of exceptions which have hitherto shielded the carrier, and has laid it down that the carrier is liable for loss attributable to his fault or the fault of his servants or agents. Article 5(1) states the position affirmatively as follows:-
- "The carrier is liable for loss resulting from loss 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 consequence".
- 1.28 At the negotiating levels prior to the adoption of the Hamburg Convention, possible harmful consequences of allocating more risks on the carrier and particularly abolishing the nautical fault and fire exceptions were envisaged as follows:-
- (i) that the increase in liability imposed on carriers would force them to take out increased liability insurance which would also lead to increased freight costs;
  - (ii) that total transportation costs of shippers would increase as cargo insurance rates would decrease only to a considerably lesser extent than the increase in the rates for the carrier's liability insurance, because of the cost of recovery actions against the carrier or his liability insurance and the legal uncertainties resulting from the re-allocation of risks between carriers and cargo interests;

- (iii) that the shippers would still take out cargo insurance as they prefer to deal with and be re-imbursed by their own insurers or for complete protection;
- (iv) that the shipper would still be obligated to take out insurance coverage through the carrier, because the latter would protect himself against his increased liability through additional liability insurance, the cost of which he would include in the freight charge;
- (v) that the shift from cargo insurance to liability insurance of carriers would likely hurt the nascent cargo insurance industries in many countries, particularly since carrier liability insurance is concentrated in a small number of maritime countries (see UNCITRAL Year Book Volume VII 1976 pp. 272, 273).

1.29 These harmful consequences are still orchestrated by ship-owning interests. (See the Report on the Colloquium on the Hamburg Rules sponsored by the Comité Maritime International (CMI), Vienna, 8th-10th January 1979.) The basic argument is that shifting a greater risk onto the carrier would result in increased costs of transportation of goods by the shipper. Arguments in support of a change in the interest of cargo owners found a pride of place in the Report by the Secretariat of UNCTAD, 1971, (United Nations Publication, New York, 1971) which heralded the movement for reform culminating in the Hamburg Convention. These are summarised as follows:-

- (i) That the bill of lading under the Hague/Visby Rules fails the test of cost effectiveness in that the costs imposed are too high in relation to the commercial functions which the document performs.
- (ii) That the costs involved in sea transportation already fall more heavily on the cargo owners and only to a limited extent on the carriers; this is the case where even after the payment of freight, the shipper again insures against risks which he is not sure fall on him or on the carrier because of the uncertainties as to the allocation of these risks under the Hague/Visby Rules.
- (iii) That because of the present high cost of transportation borne by cargo owners there is a real income transfer from countries which are more important as cargo owners than as carriers to those which are important as carriers.
- (iv) That the developing countries as a group are the losers in the real income transfer.

1.30 The pros and cons of both sets of arguments may be valid depending on which side of the fence that one sits. But a more realistic approach in assessing the validity of the claim that a change of regime would result in higher costs for transportation was undertaken by a joint Working Group of the Comité Maritime International (CMI) and the International Chamber of Commerce

(ICC). The terms of reference of that Working Group set up in 1974 were to carry out a statistical study on the possible effects of changes in the carrier's liability system on risk costs. The Report of the Working Group suggested that the defences under the Hague/Visby Rules, in particular the "error of navigation" and "fire" defences could be deleted from any future Convention replacing the Brussels Convention and its 1968 Protocol. The Working Group had requested Protection and Indemnity (P & I) and cargo insurers to substantiate with statistical data the assumption that with the deletion of the defences, carrier premiums would go up but that premiums for cargo would not be reduced correspondingly. The insurers were not able to provide the requested statistical information because, in their view, true statistical data could be given only if a new liability rule was in vogue. However, the Working Group gathered information from some other sources which assisted it to reach the conclusion that the abolition of the controversial defences would shift the risk onto the carrier to a considerable extent while at the same time lessen the motivation for the cargo owner to take cargo insurance. As a compromise solution in order to render the Hamburg Convention acceptable to many States, carrier and cargo interests alike, the Hamburg Diplomatic Conference retained the "fire" defence. This defence will be considered more fully later when dealing with burden of proof. A Report by the UNCTAD Secretariat in 1987 on the Economic and Commercial Implications of the entry into force of the Hamburg Rules has reached almost the same conclusion as the joint CMI and ICC Working Group of 1974.

#### NATURE OF CARRIER'S LIABILITY

- 1.31 Under Article 5(1) of the Hamburg Rules, the carrier's liability is for loss of or damage to, as well as delay in delivery of the goods while they are in his charge. Fault on his part is presumed unless he can show that he, his servants or agents took "all means that could reasonably be required to avoid the occurrence and its consequences". There is no doubt that the phrase in quotes, is likely to lead to different interpretations under various national legal systems. The problem is even compounded by the use of the expression "fault or neglect" in Article 5(4)(a)(i) dealing with carrier's liability for the outbreak of fire; in Article 5(4)(a)(ii) which establishes the liability of the servants and agents of the carrier in failing to put out a fire; in Article 5(5) which states the carrier's liability for carriage of live animals; and in Article 5(7) governing the carrier's liability where the loss, damage or delay has been contributed to by a third party. One may, however, hazard the assumption that "fault or neglect" includes every act or omission which results in loss of, damage to and delay in delivery. The expression "fault or neglect" also appears in the Common Understanding annexed to the Convention. The possibility that these phrases and other expressions that may be found dubious in the Convention will lead to different interpretations cannot justifiably be used as an excuse for non-adoption of the Hamburg Rules. Unlike the Hague Rules which were common law orientated, the Hamburg Rules are dominated by Civil law concepts which may be regarded as foreign to common law lawyers. The Hamburg Rules, among other things, aimed at unifying divergent legal systems.



## BURDEN OF PROOF

- 1.32 As we have mentioned earlier, under the Hamburg Rules, fault is presumed on the part of the carrier but he can rebut the presumption by proving that neither he nor his servants or agents are at fault. The carrier can discharge the burden of proof by showing that "he, his servants or agents took all reasonable measures that could reasonably be required to avoid the occurrence and its consequences". We have already hinted on the variety of interpretations to which the phrase in quotes might be subjected under domestic legal systems.
- 1.33 The unified burden of proof imposed on the carrier is a significant departure from the Hague Rules under which, as a result of the several defences in Article IV(2), the burden of proof rules are deemed to be complicated, uncertain and wasteful, with some provisions having their own burden of proof rules. The position is now very much simplified under the Hamburg Convention as the burden is squarely placed on the shoulders of the carrier.
- 1.34 In the case of fire, however, the burden is shifted on to the claimant i.e., the shipper, consignee or third party/transferee, to prove that the loss, damage or delay occurred through the fault of the carrier. (Article 5(4)(a)).
- 1.35 The argument that has been advanced by cargo owning interest groups in opposition to this shift of burden is that it has no equivalent in other international conventions on carriage of goods by means other than sea and that it is unfavourable to the shipper who will not be able to establish the fault of the carrier, his servants and agents, because the incidence of fire occurs at sea and its circumstances will be known only to the Master and crew of the ship. (See the comments by the Governments of Czechoslovakia, Mexico and Sierra Leone on the draft Convention in UNCITRAL Year Book Volume VII 1976 pp. 212, 223, and 230).
- 1.36 A strong argument in favour of the shift is that too much has been given away by carriers with the abolition of the exceptions under Article IV(2) of the Hague Rules and that, in any event, fire that breaks out at sea does not discriminate between cargo and the property of the carrier. In order to prevent a deadlock, a compromise solution was eventually reached at the Hamburg Conference and the outcome was the present wording of Article 5(4)(a).
- 1.37 One country has suggested that a more equitable compromise would have been not to single out "fire" and shift the burden on the shipper but to make it "incumbent on the shipper (sic) (carrier) to establish that the ship had appropriate means of averting the fire and that all measures had been taken to avert it and to limit its consequences" (see Comment of France in UNCITRAL Year Book Volume VII 1976 p.215). This was quite an impressive suggestion but it did not cut ice with the Hamburg Conference. Without altering the burden of proof, it was felt that such equitable solution could still be reached if the shipper avails himself of the provisions of Article 5(4)(b) which enables either the carrier or the claimant

to request a survey in accordance with shipping practices to be held into the cause and circumstances of the fire, and a copy of the survey report to be available on demand by either party, and if the claimant succeeds in his claim the costs of the survey, if met by him, can be recovered from the carrier.

#### LIABILITY FOR DELAY

- 1.38 Liability for delay is one of the numerous innovations introduced by the Hamburg Convention. The Hague/Visby Rules do not contain any express provision on liability for delay. The result is that there is no uniform international rule on delay before the advent of the Hamburg Rules. In some national legal systems, if the delay causes physical damage to the goods, for example, spoilage, reliance has been placed on Article III(2) of the Hague Rules which provides that "the carrier shall properly and carefully load ... carry ... and discharge the goods carried" to impose liability for delay. Under some jurisdiction also, the carrier is liable for delay that results in economic loss to the cargo owner if the claimant can prove that the carrier foresaw the consequences of his delay. Because of this uncertainty, other jurisdictions leave the parties free to contract out of any liability for delay, which they can do by inserting a clause in the bill of lading negating liability.
- 1.39 The Hamburg Convention has now explicitly imposed on the carrier liability for delay in delivery of the goods and has, except for financial limitation of liability, put delay on the same footing as liability for loss of or damage to the goods. (See Article 6(1)(a) and (8b) and Article 5(1)). Thus, the perennial questions whether there is liability for delay and whether that liability covers financial loss to the claimant for both physical damage to his goods and economic loss to him arising from the delay, would now seem to be put to rest with affirmative answers.
- 1.40 Delay is specifically stated in the Convention as occurring "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". (Article 5(2)). With the introduction of liability for delay, the Hamburg Convention has put carriage of goods by sea on the same basis as other means of transport provided for by international conventions except that in its definition of delay, the Hamburg Convention places emphasis on the failure to deliver the goods on the time agreed upon by the parties or within a reasonable time required of a diligent carrier (c/f Article 19 of CMR (Road) Convention).
- 1.41 The Hamburg Convention takes another plunge in enacting that delay in delivery which lasts for more than 60 days entitles the claimant to regard the goods as lost (Article 5(3)). This provision might work to the advantage of the cargo owner because after the lapse of the period herein stated, if the goods happen to arrive he can elect to claim for delay or regard the goods as lost depending on the condition in which the goods arrive and their market value at that time.

## LIABILITY FOR DEVIATION

- 1.42 It was the general view of the UNCITRAL Working Group on Shipping Legislation at its Fourth (Special) Session in 1972 that any future Convention replacing the Hague/Visby Rules should contain no separate provision on deviation but that there should be a provision setting forth a general rule on the saving of life and property at sea. This view prevailed throughout the Sessions of the Working Group and the Commission and it was finally adopted at the Hamburg Conference.
- 1.43 It should be noted, however, that under the Hague/Visby Rules there is specific provision on deviation. Article IV(4) states that the carrier is not liable for loss resulting from "any deviation in saving or attempting to save life or property at sea or any reasonable deviation". While it is universally acceptable that deviation to save life ought not to land the carrier into liability, criticism has been levelled against unqualified immunity if deviation is to save property because the carrier is likely to concern himself with saving property for his own benefit and to the detriment of the cargo in the ship. (See UNCITRAL Year Book Volume IV 1973 p.18). As regards the meaning of "reasonable deviation" different interpretations have been given even within the same legal system. In the United Kingdom, for example, the courts have held that where deviation takes place on the usual route and for purposes connected with the contract of voyage, it is reasonable. (See The Indian City (1939) All E.R. 444). But if the deviation is off the usual route for purposes unconnected with the contract of voyage, it is unreasonable. (See Stag Line Ltd v. Foscolo Mango & Co Ltd (1932) A.C. 328; The Macedon (1955) Lloyd's L.R. 459). What is uncertain from these cases is whether deviation off the usual route for purposes connected with the contract of voyage, for example, bunkering, is reasonable or unreasonable.
- 1.44 The Hamburg Convention has now overcome the difficulties surrounding the interpretation and application of Article IV(4) of the Hague Rules by abolishing the concept of deviation and replacing it with a provision whereby the carrier is exculpated from liability, 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". (Article 5(6)). The inclusion of the concept of "reasonable measures" in respect of saving property at sea, although it might be subject to a variety of constructions, at least allays the fears of the critics that the carrier will be deterred from undertaking measures to save property for his own gain at the expense of the cargo owner.

## LIABILITY FOR CARRIAGE OF LIVE ANIMALS

- 1.45 For the purpose of the provisions of the Hague/Visby Rules, goods do not include live animals. (Article 1(c)). Under these rules live animals are carried at the shipper's risk because they are traditionally regarded as being subject to high risk of loss or damage from natural elements or other causes. The Hamburg Convention, on the other hand, recognizes live animals as goods and

brings the carriage of them within the scope of the Convention. (Article 1(5) and Article 5(5)). As a general rule, the carrier is liable for loss or injury to or for delay in their delivery just like any other goods. An exception, however, is that the carrier is relieved from liability for special risks inherent in the carriage of live animals provided that he proves that the loss he sustains from the loss of, damage to or delay in delivery of the animals, was caused by a special inherent risk involved in the carriage and that he has complied with any special instructions given to him by the shipper with respect to the animal. Once the carrier has discharged this burden of proof, it is presumed, unless fault is attributable to him or his servants or agents, that the loss resulted from the risk involved in that kind of carriage.

- 1.46 In the comments by Governments on the Hamburg draft Convention prior to the Hamburg Conference, it was proposed by some countries that Article 15(5) should be deleted on the ground that where there was loss, damage or delay during the carriage of live animals which was attributable to special risks inherent in that kind of cargo, the carrier would be freed from liability under Article 5(1) since he would be able to prove that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences. (See comments of Byelorussian SSR, Canada and USSR in UNCITRAL Year Book, Volume VII: 1976 pp. 203, 208, 233). It is submitted that with the retention of Article 5(5) the carrier need not discharge the burden of proof required by Article 5(1). All he is required to do is to prove that he had complied with the instructions of the shipper with regard to the animal. Compliance with such instructions can fall short of the degree of care and diligence expected under Article 5(1). Furthermore, once the carrier has complied with the instructions given by the shipper, the burden is shifted onto the shipper to prove fault on the part of the carrier, his servants or agents. There is no burden of proof on the shipper under Article 5(1).

#### CARRIAGE OF DECK CARGO

- 1.47 Historically, carriers have been prone to shirk responsibility for goods carried on deck. The reason is that it was hazardous to carry goods on such locality because they were likely to be lost or damaged from various causes including pilferage and the elements. Nowadays, however, with the incidence of container transportation, goods can now be carried on deck with low risk of loss or damage. Reflecting the old school of thought, Article 1(c) of the Hague Rules by implication provides that goods carried on deck are carried at owner's risk even if the contract of carriage between the carrier and the shipper stipulates that they should be carried on deck. Taking cognizance of recent developments in sea transport, the Hamburg Convention empowers carriers to transport goods on deck without incurring liability for the carriage as such if one of the following conditions is fulfilled: (a) by agreement between carrier and shipper; or (b) if the usage of the particular trade permits; or (c) if it is required by law to do so. (Article 9(1)).

- 1.48 According to the Hamburg Convention, if there is an agreement that goods should 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 that he had agreed with the shipper to carry the goods on deck. If the carrier failed to make this statement, the burden of proof of the existence of the agreement rests on him. He can use the existence of the agreement as a defence against the shipper but not against a third party, including a consignee, who has acquired the bill of lading in good faith. (Article 9(2)). Outside the three permitted situations, and in the case where the carrier is not allowed to invoke against a third party an agreement between him and the shipper to carry the goods on deck, the carrier is liable for any loss arising from loss of, damage to or delay in delivery of the goods resulting solely from the carriage on deck. (Article 9(3).) Article 9(3) applies notwithstanding the provisions of Article 5(1). Thus the carrier cannot escape liability for loss occasioned by carriage of the goods on deck even if he is able to prove that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences which is a defence under the general liability for loss of, damage to or delay in delivery of the goods. The carrier's liability for deck cargo is therefore strict. Specifically, if he carries goods on deck when the express agreement between him and the shipper is that he should carry the goods in the hold of the ship his conduct is an act or omission under Article 8 of the Convention and he loses his right to the limitation of liability (Article 9(4)).

EXTENT OF CARRIER'S LIABILITY FOR AN ACT  
OR OMISSION CONTRIBUTED TO BY A THIRD PARTY

- 1.49 The loss suffered by a claimant in respect of the carriage of his goods may arise from a combination of acts or omissions some of which are attributable to the carrier and others to a third party. The extent to which the carrier is liable in these circumstances is a matter which is not considered by the Hague/Visby Rules. Under the Hamburg Convention, however, the carrier is liable only for the fault attributable to him but the onus is on him to prove the extent of the fault that is not attributable to him. (Article 5(7)). This rule now clarifies the doubtful situation which exists under the Hague/Visby Rules where loss results from a combination of the act or omission of the carrier with that of a third party or with some other cause which falls under the exceptions in Article IV(2). In some jurisdictions, if it is the negligence of the carrier that is the proximate cause of the other fault, the carrier is wholly liable. (See the United Kingdom cases of Industrie Chemiche v. Nea Ninemial Shipping, The Emmanuel C (1893) 1 Lloyd's Reports 310; Seven Seas v. Pacific Union, The Satya Railash and Oceanio Amity (1984) 1 Lloyd's Reports 588). In other jurisdictions, national legislation determines the quantum of liability, if any, attributable to the carrier. (See comments of the Government of the Federal Republic of Germany on draft Article 5(7) of Hamburg Convention: UNCITRAL Year Book, Volume VII: 1976 p. 219).

## FINANCIAL LIMITATION OF LIABILITY

- 1.50 Dissatisfaction with the limitation of liability under the Hague/Visby Rules arose from three factors, namely, the relatively low amount recoverable by the claimant from the carrier for loss that he sustains resulting from the carriage, the difficulties in applying the unit of cargo, and the uncertainty of a universal monetary unit.
- 1.51 Under the Hague Rules the amount recoverable by a claimant was 100 pounds sterling per package or unit or the equivalent of that amount in other currencies. (Article IV (5)). As a result of inflation over the past 44 years, the Visby Protocol 1968 replaced this amount with 10,000 Poincaré francs per package or unit and introduced an alternative limitation based on the weight of the goods; this was 30 francs per kilo of gross weight. According to the Protocol, a franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900. Article IV (5)(d). Perhaps taking the cue from the Hamburg Convention, a second Protocol signed in Brussels in 1979 adopted the Special Drawing Rights (SDR) of the International Monetary Fund (IMF), and changed the amounts to 666.67 SDR and 2 SDRs respectively. This is still considered in cargo interest circles as very low. With regard to the unit of cargo, the use of the term "package or unit" has resulted in divergent classifications of certain types of cargo by the courts in some jurisdictions, since it might be difficult to classify them as a package or unit; for example, bulk cargo, partially encased cargo, uncrated cargo or cargo carried in a container. (See Gulf Italian Co. American Export Lines 263 F 2d. 135 (1959); Mitsubishi International Corp v. SS Palmeto State 311 F 2d. 382 (1962); Aluminios Pozuelo Ltd v. SS Namgatt 277 F. Supp. 1008 (1967)). Furthermore, a unit of cargo can be a "freight" unit which is the unit of quantity, volume or weight on which freight charges for goods are calculated, or a "shipping" unit which is the physical unit in which the cargo is shipped. It is not clear which of these units is intended by the Hague/Visby Rules. So far as a universal monetary unit is concerned, by 1978 it was no longer possible to express limitation amounts in gold units which accompanied the Poincaré franc owing to variations between the official price and the market price of gold. In hindsight, however, and perhaps to rub the grease off the Hamburg Convention, the Brussels Protocol of 1979 abandoned the gold franc for the SDR.

## UNIT OF ACCOUNT

- 1.52 As has already been mentioned, the Hamburg Convention adopted the SDR as the unit of account instead of the Poincaré franc (Article 26). One reason for this change, as has already been stated, is the fluctuation of the price of gold. Another reason is that the amount is easily ascertainable under the uniform SDR. The choice of the SDR fell in line with the Montreal revision of the Warsaw Convention in 1975. Under the Hamburg Convention, the amount recoverable and payable is 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. For a

Contracting State which is not a member of the IMF, the value of its currency in terms of the SDR is to be calculated in a manner to be determined by the State concerned. A special provision is made for those States which are not members of the IMF and whose laws do not permit the application of the SDR, to retain gold as the unit of account. (Article 26(3)).

#### UNIT OF CARGO

- 1.53 The Hamburg Convention adopts the dual criterion of weight and package or other shipping unit in preference to the single criterion of the weight of the goods. (Article 6(1)). The clarification that the Hamburg Convention has made is that the unit of cargo is now undoubtedly the shipping unit. The Convention introduces the word "other" before "shipping unit" and this novelty obviates the problem of interpreting "package" differently from "shipping unit" as has been the case in certain jurisdictions. The dual criterion of weight and package or other shipping unit is deemed to be more equitable from the viewpoint of the cargo owner. (See UNCITRAL Year Book: Volume VII 1976 p.40). The question whether all the goods shipped in a container together with the container itself constitutes one shipping unit or whether each item should be taken separately as a shipping unit which was frequently asked under the Hague Rules and which was partially answered by the Visby Protocol 1968, (Article 2(a)), was brought to finality by the Hamburg Convention. While Article 6(2)(a) of the Convention substantially retains the provisions of Article 2(c) of the Visby Protocol which states that all goods should be regarded as one shipping unit unless such goods are enumerated in the bill of lading or other document evidencing the contract of carriage in which case each is taken as a shipping unit, Article 6(2)(b) goes further to say that the container itself is a separate shipping unit if it is owned or supplied by the carrier.

#### FINANCIAL LIMITS FOR LOSS OR DAMAGE

- 1.54 Article 6(1) of the Hamburg Convention provides that for loss of or damage to the goods the sum recoverable 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 whichever is higher. The low limit is intended to apply to heavy unpacked commodities carried in bulk while the higher limit applies to light items carried in packages or other shipping units. Accordingly, if a package or other shipping unit is under 334 kilograms which is the break-even point, the higher limit applies but if it is above that weight then the lower limit. By agreement between the carrier and the shipper, limits higher than those stipulated in the Convention may apply. (Article 6(4)). In the case of those countries which cannot use the SDR and which are permitted by the Convention to use gold, the limit is 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods. (Article 26(2)). It should be observed that the financial limits for loss of or damage to the goods allowed under the Hamburg Convention are 25% higher than those under the Hague/Visby Rules.

### FINANCIAL LIMIT FOR DELAY

- 1.55 Liability for delay in the delivery of the goods is limited to an amount equivalent to 2½ times the freight payable for the goods delayed, but this amount is not to exceed the total freight payable under the contract of carriage of goods by sea (Article 6(2) (b)).

### REVISION OF THE LIMITS OF LIABILITY

- 1.56 The Hamburg Convention takes cognizance of the fact that global financial conditions do vary from time to time. To this end, Article 33 makes provision for the revision of both the financial limits of account and the substitution of another unit of account through a Conference convened at the request of at least one-fourth of the Contracting States. However, an alteration of the amounts may take place only when there is a significant change in their real value. There is no similar provision in the Hague or Hague/Visby Rules for the revision of the financial limits.

### LOSS OF BENEFIT OF LIMIT OF LIABILITY

- 1.57 Under the Hague/Visby Rules the benefit by the carrier of the limit of liability is lost if it is proved that the damage resulted from his act or omission done intentionally or recklessly or with knowledge that the damage would probably result. (Article 2(e)). He does not lose the benefit if it is the act or omission of his servant or agent that causes the damage in similar circumstances. These persons appear to be independently liable for their own conduct, and under Article IV Bis, rule 4 of the Visby Protocol, they too lose the benefit because of their intentional and wilful wrongdoing. While depriving the carrier and his servants or agents of the benefit each for his own conduct for the same reasons as stated under the Hage/Visby Rules, Article 8 of the Hamburg Rules goes further to provide that the benefit is lost by a servant or agent "even if he proves that he acted within the scope of his employment". By implication, Article 8 does not deprive the carrier of the right to limit liability if loss is occasioned by the wilful and reckless misconduct of his servants or agents.

### LIABILITY OF CARRIER AND ACTUAL CARRIER

- 1.58 The definition of a "carrier" in the Brussels Convention which remained unchanged by the Visby Protocol 1968 "includes the owner of the vessel or the charterer who enters into a contract of carriage with a shipper" (Article 1(a)). This definition is inadequate in some respects in rendering assistance to a shipper if damage is done to his interest which cannot be attributable to the owner or charterer of the ship because they did not enter into the contract of carriage with him. First, the definition does not take into account modern practice whereby a contract of carriage of goods by sea is entered into by intermediaries who neither own nor charter the ship, for example, freight forwarders. Secondly, it does not protect the shipper if damage results from the conduct of



some other person to whom the "carrier" might have delegated the whole or part of the actual performance of the contract of carriage without the intervention of the carrier himself. For this reason, the Hamburg Convention proffers a wider definition of "carrier" and, for the purposes of liability, introduces another personality known as the "actual carrier".

- 1.59 Under the Hamburg Convention, "carrier" is "any person by whom and in whose name a contract of carriage of goods by sea has been concluded by the shipper". (Article 1(1)). An "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." (Article 1(2)). These definitions clearly take into account the situation where one person enters into the contract of carriage and another person who is not a party to it performs at least some part of the contract.
- 1.60 It frequently happens that a carrier who has contracted with a shipper to take his cargo to the port of a prescribed destination is able to carry the cargo only to an intermediate port where it is discharged and loaded on to another ship for onward carriage to the ultimate port. As between the intermediate port and the final destination of the cargo, the carrier employs the services of another shipowner to whom he entrusts the second leg of the journey of the cargo. This third party is the actual carrier of the cargo during the period in which he performs the contract of carriage on behalf of the contracting carrier. The whole transaction whereby the cargo is transferred from the care and control of the contracting carrier to that of the actual carrier is commonly referred to as "transshipment" or "through carriage".
- 1.61 It is important to draw a clear line of distinction between the contracting carrier and the actual carrier in order to be able to locate liability when the shipper has suffered damage. Under the Hague/Visby Rules, as the concept of an actual carrier is legally unknown, it has been common practice for carriers to insert in the bill of lading an exemption clause freeing themselves from liability in the event of loss or damage to the goods occurring while the contract is actually performed by someone else. Consequently, the shipper faces difficulty in legal systems which uphold such an exemption clause; he cannot succeed against the carrier and he is left with the alternative to seek compensation from the actual carrier who himself might have inserted a similar exemption clause in his contract of carriage with the carrier. This actual performer might not even be known to the shipper or, if known, he might not be subject to suit by the shipper because of the absence of privity of contract between them. The Hamburg Convention now affords a practical and equitable solution.
- 1.62 As a general rule, the Convention lays it down that the carrier remains responsible to the shipper for the entire carriage whether he performs the contract himself or he entrusts the whole or any part of it to an actual carrier. (Article 10(1)). The Convention goes further to enact that the actual carrier is responsible for that part of the carriage which he performs himself and that he is

liable for claims resulting therefrom. (Article 10(2)). The liability of the carrier and actual carrier is joint and several where an actual carrier has participated in the performance of the contract but the aggregate amount recoverable by a claimant cannot exceed the limits under the Convention. (Article 10 (5)).

- 1.63 As regards the practice whereby the carrier stipulates in the contract of carriage that he is not to be held responsible for the part of the carriage that is performed by an actual carrier, the Convention regards such stipulation as relieving the carrier only if (a) the actual carrier is named in the contract of carriage; (b) the contract shows the specified part of performance entrusted to the actual carrier, and (c) the claimant is permitted by domestic law to institute judicial proceedings against the actual carrier in a court of competent jurisdiction specified under Article 21(1) or 21(2). (See Article 11(1)). Otherwise, the stipulation will be invalid under Article 23(1) as one which is tantamount to derogating directly or indirectly from the provisions of the Convention.

#### THE RELATIONSHIP BETWEEN THE CARRIER AND ACTUAL CARRIER

- 1.64 We have seen that under the Hamburg Convention the carrier together with the actual carrier is liable for loss or damage resulting from the carriage performed by the actual carrier. The liability of the actual carrier is limited only to the part of the carriage performed by him. If the carrier had by special agreement with the shipper assumed obligations which are not imposed by the Convention or if he had waived rights conferred on him by the Convention, these obligations and waivers are not binding on the actual carrier unless he had agreed to them expressly or in writing. (Article 10(3)). Even if the actual carrier agrees to the obligations and waivers the carrier is still bound by them. Where the carrier incurs liability for which the actual carrier ought to be liable and *vice versa* there is a right of recourse for indemnity. (Article 10(6)). Outside the Convention, the relationship between the carrier and actual carrier, inter se, depends on the agreement into which they have entered.

#### LIABILITY OF THE SHIPPER

- 1.65 It should be recalled that the Hamburg Convention is based on the principle of presumed fault on the part of the carrier. The corollary is that the liability of the shipper is couched in negative terms so as to reflect this principle. Article 12 states the situation quite emphatically that "the shipper is not liable for loss sustained by the carrier or actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper or his servants or agents". This provision does not impose any burden on the shipper to prove that he has acted with due care and diligence in the shipment of his goods. He may, but he need not, prove absence of fault or neglect on his part or on the part of his servants or agent, but if he proves it, he is relieved of liability. He is not even required to

identify any particular occurrence that causes the loss or damage to the carrier or the ship as it is possible that loss or damage might have resulted from more than one occurrence. In comparison with Article 5(1), as we have already noted, the carrier can avoid liability only if he is able to identify the particular occurrence that causes the loss or damage to the cargo and its owner and upon proof that he had not been negligent in taking measures to avoid the particular occurrence which had caused the loss, and the consequences of that occurrence.

### SHIPPER'S LIABILITY FOR DANGEROUS GOODS

- 1.66 Especial provisions are made by the Hamburg Convention for dangerous goods. It is the duty of the shipper to mark or label them in such a manner as to indicate that they are dangerous, (Article 13(1)), to inform the carrier of the dangerous character of the goods and of any necessary precautions to be taken (Article 13(2)); and to make an express statement in the bill of lading concerning the dangerous nature of the goods. (Article 15(1)(a)). As long as the shipper is not in breach of this duty, the carriage is at the carrier's risk and the carrier may dispose of the goods only if they become an actual danger to life or property and not otherwise. Under the Hague/Visby Rules, there is no duty imposed on the shipper in respect of labelling dangerous goods as dangerous. However, the absence of a duty does not confer any advantage on the shipper as goods are carried at his own risk even if he has taken all precautions in ensuring that they are reasonably safe for transportation. Indeed, the Hague Rules empower a carrier with whom dangerous goods are shipped at liberty to land them at any place before their discharge or to destroy or render them innocuous without compensation to the shipper if such goods are shipped and at the time of shipment the carrier does not know of their dangerous character and has not consented to their shipment as such. (Article IV rule 6). But if he knew of the dangerous character of the goods at the time of shipment and he consented to the transportation, the carrier can take these measures only when the goods become a danger to the ship or cargo (Article IV rule 6). In any event, where the carrier has justifiably embarked on this course of action the shipper is liable to him for any damage or expenses arising out of or incurred by him from the shipment. (Article IV rule 6). Although there are similarities between the Hamburg Rules and the Hague Rules in respect of dangerous goods, the point of departure is that under the Hamburg Rules the shipper has a duty to label his goods whereas under the Hague Rules no such duty exists.

### TRANSPORT DOCUMENTS

#### (a) Bill of Lading

- 1.67 Under both the Brussels Convention and the Hamburg Convention, once the carrier has taken the goods in his charge, he must, on demand by the shipper, issue a bill of lading. (Article III(3) of Brussels Convention; Article 14(1) of Hamburg Convention). The Hamburg

Convention requires that the bill of lading must contain information on the leading marks necessary to identify the goods, the number of packages, their quality, weight and their apparent order and condition. The Brussels Convention demands either the number of packages or the weight of the goods. The items for inclusion in the bill of lading are more extensive under the Hamburg Convention. These include particulars on the general nature of the goods, and in the case of dangerous goods, an express statement as to their dangerous character; the names of the shipper, consignee and the carrier together with his principal place of business; the ports of loading and discharge of the goods; the place of issuance of the bill of lading; the date on which the goods are to be delivered; a statement as to whether the goods are to be carried on deck; and a statement to the effect that the carriage is subject to the provisions of the Convention which nullify any stipulation that derogates from the Convention to the detriment of the shipper or the consignee. (Article 15(1)). This additional information is deemed necessary in order to facilitate the implementation of the liability regime under the Convention. The absence of any of the particulars does not affect the legal character of the document as a bill of lading so long as it conforms with the definition of a bill of lading under the Convention. Article 15(3)).

- 1.68 Two other significant innovations brought by the Hamburg Convention in regard to the issue of a bill of lading are (a) what constitutes signature and (b) what is the effect of the signature when made by the master of the ship. With respect to the first, Article 14(3) of the Rules provides that in addition to the traditionally recognised handwritten signature, signature of a bill of lading can be by other means, mechanical, electronic or otherwise. On the second question, Article 14(2) states that if a bill of lading is signed by the master of a ship it is deemed to have been signed on behalf of the carrier. This provision clarifies the present uncertain position of the master which in the absence of a specific rule under the Hague or Hague/Visby Rules, is determined either by divergent national legal systems or by the provisions of the contract. (See the United Kingdom case of Grant v. Norway (1851) 10 CB (N.S.) 665).
- 1.69 Furthermore, following the pattern of the Brussels Convention, the Hamburg Convention provides that after the goods have been loaded on board the ship the carrier must, at the request of the shipper, issue him with a "shipped" bill of lading; alternatively, the carrier may transform a previously issued "received-for-shipment" bill of lading into a "shipped" bill of lading by making the appropriate notation on the earlier document as to the loading of the goods, or he may replace the earlier document with a "shipped" bill of lading. (Article 15(2)).
- 1.70 Nevertheless, in some respects, there are points of differences between the two Conventions in respect of the issue of a bill of lading. One example is that under the Brussels Convention as amended by the Visby Protocol 1968, a bill of lading is prima facie evidence that the goods have been loaded on the ship but the mere receipt of the goods is not conclusive evidence in favour of the

consignee. In order to cure these defects, the Hamburg Convention provides that the issuance of a bill of lading is prima facie evidence of the taking over or, in the case of a shipped bill of lading, the loading by the carrier of the goods, and that this evidence becomes conclusive when the goods have been transferred to a third party, including a consignee who takes it in good faith. (Article 16(3)). The addition of "including a consignee" removes the doubt that has existed in the interpretation of "third party" under Article 1(1) of the Hague/Visby Rules. It is not clear from this Article whether a consignee to whose order a bill of lading was issued is a "third party" who might benefit from its provision because in essence he is not a stranger to the transaction since he is primarily the owner of the goods to whom the document is directed.

- 1.71 Secondly, under the Hague/Visby Rules, the carrier is not bound to acknowledge particulars in the bill of lading which he has reasonable grounds for suspecting to be inaccurate or which he has no reasonable means of checking; and he may issue a bill of lading which states that the cargo was shipped in apparent good order and condition, an information which is misleading to the consignee or third party and which might be detrimental to him if the cargo was attended with circumstances from the time of shipment that it warranted the issue of a claused rather than a clean bill of lading. The Hamburg Convention now provides that in these circumstances, the carrier must insert in the bill of lading a reservation specifying the inaccuracies, grounds of suspicion, or the absence of reasonable means of checking the cargo. (Article 16(1)). He is also required to note on the bill of lading the apparent condition of the goods failing which he is deemed to have made the requisite notation. (Article 16(2)).
- 1.72 Thirdly, it frequently happens that the shipper requests the carrier to issue a clean bill of lading even though the latter knows or has reasonable ground to suspect that the particulars inserted in the bill of lading are inaccurate or when he has not had the opportunity of checking the information. In return, the shipper gives the carrier a letter of guarantee that he will indemnify the carrier for damages which the carrier sustains in consequence of the issue of the bill of lading without a reservation. A letter of guarantee may be issued in two different circumstances. On the one hand, it may be given where the carrier and the shipper honestly disagree about certain matters relating to the goods, for example, their quality or the inadequacy of their packing. On the other hand, it may be accepted when the carrier is aware that the goods are not in apparent good order and condition. In both cases the parties do not want a notation of reservation to appear on the bill of lading that would interfere with its acceptance by a third party. While in the first case, the issue and acceptance of the letter of guarantee is an honest transaction, the second may or may not be motivated by fraud calculated to mislead innocent transferees of the bill of lading. The Brussels Convention does not set out rules concerning the validity of such guarantees and national courts have adjudicated on the matter based on their concepts of public policy. (See the United Kingdom case of Brown, Jenkinson & Co Ltd v. Percy Dalton (London) Ltd. (1989) 2 Q.B. 621.

The Hamburg Convention now expressly provides that letters of guarantee have no effect as against a third party including a consignee to whom the bill of lading has been transferred (Article 17(2)) but they are valid as against the shipper unless the carrier or the person acting on his behalf intends to defraud a third party including a consignee who relies on the description of the goods in the bill of lading. (Article 17(3)). Article 17 paragraph 2 appears to be in line with BROWN's case cited above. Intended fraud is specifically dealt with under Article 17(4) of the Convention which makes the carrier liable to a consignee or third party without the benefit of the limitation of liability under the Convention.

- 1.73 Fourthly, under the Hamburg Convention if the bill of lading does not state the freight or otherwise indicate that freight or demurrage incurred at the port of loading is payable by the consignee, it is prima facie evidence that no freight or demurrage is payable by him; that evidence becomes conclusive when the bill of lading has been transferred to a third party including a consignee who took it in good faith in reliance on the absence of such indication. (Article 16(4)). There is no comparative provision in the Hague/Visby Rules.

(b) Other Transport Documents

- 1.74 There are certain documents used in sea transport which are not documents of title but serve as receipt for the goods delivered to the carrier and are non-negotiable. They are the sea way-bill, Mate's receipt, freight forwarder's certificate of receipt, dock receipt and booking notes. The commonest in use which usually takes the place of a bill of lading is the sea way-bill. In order to facilitate the speedy delivery of goods to a named consignee, in recent years, the practice has developed in sea carriage for the use of a sea way-bill. This practice is borrowed from other means of transport, for example, carriage by air, where the distance between the port of loading and the port of discharge is short in terms of time and the goods arrive long before their documents of title so that if these documents were to be delivered in exchange for the goods, the period of waiting for them might result in undue hardship to the consignee.
- 1.75 A sea way-bill has some but not all of the characteristics of a bill of lading. It serves not only as the receipt for the goods but also as evidence of the contract. However, it lacks the element of negotiability which is peculiar to a bill of lading. Therefore, a sea way-bill cannot be used instead of a bill of lading if the consignee intends to sell the goods while they are in transit nor can it be used in a documentary credit sale in which the issuing bank always demands the document of title as security for the goods. Way-bills are increasingly used where goods are shipped as personal household effects, the shipper and consignee being the same person. They are also used for shipment between branches of multi-national corporations, or where buyer and seller have carried on business for such a long time that confidence has been established between them to such an extent that there is no longer any need for the buyer to open a letter of credit, or for goods shipped in containers by freight forwarders for different named consignees.

- 1.76 Although the use of these other transport documents is now firmly established in sea transport, they are not governed by the Hague/Visby Rules since these Rules relate to only bills of lading. Some national laws, however, have made the Rules applicable to them if the contract of carriage expressly provides as such. (See, for example, section 1(6) of the United Kingdom Carriage of Goods by Sea Act, 1971). Under the Hamburg Convention the contract of carriage to which the Hamburg Rules apply is not limited to a transaction in which a bill of lading has been issued but extends to other transport documents as the ones to which reference has already been made. The relevant provision is Article 18 which states that "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". It can be seen from this Article that any transport document which is a receipt issued by the carrier for the goods to be carried by sea will be regarded under the Convention as prima facie evidence of the contract whereas a bill of lading is presumably conclusive; and a bill of lading is a document of title when these other documents of transport are not. However, the provisions of the Convention apply to them all the same.

#### CLAIMS AND ACTIONS

##### NOTICE OF LOSS, DAMAGE OR DELAY

- 1.77 Under the Hamburg Convention, notice of any loss sustained by the consignee in respect of the carriage of the goods must be given by him to the carrier or actual carrier as the case may be or to their respective agents not later than the working day after the day on which the goods were handed over to the consignee. (Article 19(1); 19(6) and 19(8)). Failure to give the requisite notice is prima facie evidence that the goods were delivered as described "in the document of transport or, if no such document has been issued, in good condition". (Article 19(1)). The period of notice specified by the Hamburg Convention is an improvement on the Hague/Visby Rules which stipulate that notice in similar circumstances must be given before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof, because it allows the consignee more time to ascertain the nature of the loss or damage before giving notice of it. However, it would appear that like under the Hague/Visby Rules, the requirement of notice under the Hamburg Rules is inapplicable in the case of a consignee who has suffered total loss of his goods since the question of the handing over of the goods would not arise and Article 19(1) makes the giving of notice dependent on the goods having been handed over to the consignee. Presumably, the Article envisages the incidence of partial loss when at least some portion of the goods must have been handed over to the consignee.
- 1.78 In contrast with the Brussels Convention which requires that if loss of or damage to the goods is not apparent, notice must be given by the consignee to the carrier within 3 days of the delivery of the goods (Article III(6)), the period of notice under the Hamburg Convention in similar circumstances is 15 consecutive days

after the date of the delivery of the goods to the consignee. (Article 19(2)). Here, as in the case where the loss or damage is apparent, presumably, notice is required only where there is damage to or partial loss of the goods because the giving of notice is again tied up with the handing over of the goods to the consignee.

- 1.79 For loss or damage suffered by the carrier or the actual carrier which is attributable to the shipper, such carrier or actual carrier must give notice to the shipper specifying the general nature of the loss or damage within 90 consecutive days after the occurrence of the loss or damage or after delivery of the goods to the consignee whichever is the later. Failure to give such notice is prima facie evidence that the carrier or the actual carrier has not suffered any loss or damage attributable to the shipper, his servants or agents. (Article 19(7)). This provision is an improvement on the Hague Rules which contain no provision pertaining to the carrier's right to give notice of damage to the shipper, but merely hold the shipper liable for damage caused by dangerous goods without any reference to damage caused by non-dangerous goods. (Article IV (6)).
- 1.80 In the case of delay in the delivery of the goods, the Hamburg Convention provides that the consignee must give notice within 60 consecutive days after the date of delivery of the goods to him if he is to recover compensation for the delay. (Article 19(5)). One significant point on the question of the notice is the method of calculation of the prescribed period. Both the Brussels Convention and the Visby Protocol are silent on it as they do not deal with delay and there is the tendency under some national laws which legislate on delay to exclude or include holidays and non-working days. In these legal systems where these days are included in the computation of time the consignee is left with very little time during which he should give notice. Where the days are included, the carrier is taken unawares about claims which he might have regarded as non-existent after he has completed the contract of carriage and reasonable time has elapsed. To meet the interest of both the consignee and the carrier, the Hamburg Convention allows a 60 days period which should be calculated in consecutive days.
- 1.81 The Hamburg Convention further provides that in the event of actual or apprehended loss or damage, the carrier and consignee must render reasonable facilities to each other for inspecting and tallying the goods (Article 19(4)).

#### JUDICIAL AND ARBITRAL PROCEEDINGS

- 1.82 Judicial actions have always been maintained as a method of settling disputes relating to carriage of goods by sea. But the Hague Rules contain no provision on arbitration while the Visby Protocol has a Rule which is merely sketchy (Article 8). While recognising and retaining the settlement of disputes by judicial action, the Hamburg Convention goes further and expressly permits settlement of disputes by arbitration, and makes extensive provisions in order to achieve this purpose. Under the Convention,



arbitration is permitted if the parties have agreed on it beforehand and the agreement is evidenced in writing. (Article 22(1)). Agreements relating to arbitration made after a claim has arisen are also covered by the Convention, and with the omission of any reference to writing in Article 22(6) it appears that they need not be evidenced in writing. The omission might have been an oversight. It is desirable that such agreement is in writing because many, if not all, arbitration procedural rules require that agreements to which they are applicable are in writing. See for example, UNCITRAL ARBITRATION RULES.

### JURISDICTION

- 1.83 The Hague/Visby Rules do not contain any provision relating to jurisdiction. Consequently, it has been the practice for the parties to stipulate in the bill of lading the place where an action may be instituted which invariably is selected by the carrier thus giving him the advantage to choose a place convenient for him which is usually his place of business without taking into consideration the inconvenience of the cargo owner whose location may be far away. The Hamburg Convention, on the other hand, provides a wide range of jurisdictions in which proceedings can be instituted. For judicial actions, the court selected must be competent according to its domestic law to adjudicate on the matter, the choice of the arbitral tribunal is to be determined by the parties to the dispute. (Articles 21(1) and 22(1)).
- 1.84 Judicial or arbitration proceedings may, at the option of the plaintiff or claimant, be instituted within the jurisdiction of which is situated one of the following places: (a) the principal place of business of the defendant or, in its absence, the habitual residence of the defendant, or (b) the place where the contract was made if the defendant has there a place of business or branch, or (c) the port of loading or the port of discharge, or (d) any place designated for that purpose in the contract of carriage by sea or in the arbitration clause or agreement. (Articles 21(1) and 22(3)). In addition to these places, a judicial action can be brought in the courts of any port or place in a Contracting State at which the carrying vessel or a sister ship has been arrested in accordance with applicable rules of the law of that State and of international law. In such an event, the defendant is at liberty to demand the removal of the action to one of the jurisdictions already mentioned, and his demand may be granted if he gives security to ensure payment of any possible judgement against him. (Article 21(2)).
- 1.85 The retention of the place designated in the contract of carriage as one of the places where an action can be instituted still provides the carrier with an escape channel which he can use to his advantage. However, with the introduction of a wide variety of jurisdictions which are convenient for the cargo owner and which are now expressly laid down, it is hoped that in the event of a prior agreement with respect to jurisdiction the shipper should be able to negotiate favourably with the carrier. For practical purposes, the cargo owner is usually the plaintiff and the wide

range of jurisdictions proffered by the Hamburg Convention now affords him the opportunity to choose a suitable place convenient for him which at the same time is fair to the carrier. Such a place can be the port of loading or the port of discharge to which both parties have an easy access since they are related to the carriage of the goods in question. In order to safeguard against a claimant selecting a place which suits his own convenience and which is not one of the jurisdictions specified in the Convention, Article 21(3) and 22(5) enact that an action or arbitration proceedings cannot be instituted in a jurisdiction which is not covered by the Convention.

### LIMITATION OF ACTIONS

- 1.86 Under the Hamburg Convention an action is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years calculated from the day when the carrier has delivered the goods or part of them, or where no goods have been delivered, from the last day on which the goods should have been delivered. (Article 20(1) and (2)). The person against whom the claim is made may at any time during the running of the limitation period extend it by a declaration in writing to the claimant. (Article 20(4)).
- 1.87 These provisions are designed to solve certain problems connected with the limitation of actions under the Hague/Visby Rules. According to these Rules, the carrier and the ship are "discharged from all liability whatsoever in respect of the goods unless suit is brought within one year of their delivery or of the date when they should have been delivered". (Article 1). With the use of the expression "discharged from all liability whatsoever in respect of the goods", the Hague/Visby Rules broadened the scope of limitation under the Hague Rules which had the expression "discharged from all liability in respect of loss or damage" (Article III(6)) but the modification might still be construed as preserving the implication that claim is to be made only for physical damage to the goods as opposed to economic loss, as was the case under the Hague Rules. Moreover, the concluding phrase "in respect of the goods" can be used as a basis for limiting the scope of the limitation rules in actions in tort. Also, the use of the word "suit" creates a problem of interpretation since in some legal systems a suit may mean either a judicial action or arbitral proceedings while in others the word covers only the former. Even the one year period will prove to be inadequate for the cargo owner whose prospect of recovery on an amicable settlement might have been raised by the carrier to such an extent that he sits by and waits. There are practical instances when some carriers acknowledge receipt of claims, request the cargo owner to hold on until investigation is completed, and finally turn down the claim after the one-year period has expired. With the two-year period introduced by the Hamburg Convention, the claimant should be able to exhaust all avenues for an amicable settlement before he embarks on legal action or arbitral proceedings.

- 1.88 It can be seen that instead of the wording of the Hague and the Hague/Visby Rules which have resulted in problems of interpretation, the Hamburg Convention omits any reference to "loss or damage" of the goods or "liability whatsoever in respect of the goods" but simply pins the limitation period for actions as commencing from the date the goods are delivered or the last day on which they should have been delivered.
- 1.89 A serious problem that usually faces the consignee is when delivery of all or part of his goods is delayed or the goods are lost and a substantial period elapses before the carrier can provide him with information as to the exact state of affairs connected with the goods. In such a situation the cargo owner may not know when time begins to run against him and he is left in a situation of uncertainty. While awaiting information about his goods a substantial part or all of the limitation period might have elapsed without his taking any action for compensation or fearing that time has started to run against him he may prematurely commence an action which later turns out to be unnecessary if the goods eventually arrive. Reference in the Hamburg Convention to the date of delivery of the goods or part of it as the commencement date of the period of limitation brings certainty with respect to damage to or partial loss of the goods. However, the problem probably still remains where no part of the goods has been delivered. While the Hague/Visby Rules stipulate that in such a case the period of limitation begins from the "date when they (the goods) should have been delivered", the Hamburg Convention states that the commencement date is "the last day on which the goods should have been delivered". Both provisions appear to be similar except that in the Hague/Visby Rules the word "date" is used while the Hamburg Convention prefers "on the last day". Unless the courts give a different interpretation to the two expressions it would appear that even the Hamburg Convention does not adequately solve the problem of limitation of actions when none of the goods has been delivered. It is particularly difficult to fix a date on which goods should have been delivered because in liner shipping the contract of carriage does not usually specify a date against which the carrier is obliged to deliver the goods. This is a possible area for consideration in a future revision conference convened under Article 32.

#### RECOURSE ACTION

- 1.90 Sometimes one party to a contract of carriage who has settled a claim with the other party in respect of the goods may have a right to be indemnified by a third party. One way in which this right may arise is where the carrier contracts with an actual carrier for the performance of part of the carriage for which, as we have seen, the carrier remains responsible to the shipper. Another way is where the carrier has insured with a liability insurer against claims arising from the carriage. A claim for indemnity may also be made where the shipper himself becomes liable to the carrier for loss occasioned by the shipment of goods when the shipper had entrusted his obligations under the Convention to a third party, an agent, who failed to discharge it. Invariably, the person claiming

indemnity may not know the exact amount which he is obliged to pay until it is actually presented to him after judgement had been obtained by the claimant. At this point the period of limitation for bringing actions in respect of the same transaction would have elapsed or nearly elapsed so that a subsequent action for indemnity becomes defeated if it falls outside the normal limitation period. In order to overcome this dilemma, the Hamburg Convention provides that an action for indemnity in these circumstances may be brought even after the limitation period for actions between carrier and shipper/consignee has expired provided the action is instituted within the time allowed by the domestic law of the court seized of the case such time not to be less than 90 days from the date when the person bringing the action for indemnity has settled the claim or has been served with process in the action against him. (Article 20(5)).

- 1.91 Both the UNCITRAL Working Group on Shipping and the Hamburg Conference did not see the need for extending the period of recourse action beyond 90 days which was also the period under the Hague/Visby Rules because with the change of the limitation period from one year under the Hague/Visby Rules to two years under the Hamburg Rules, it was felt that sufficient time would be afforded to all parties in order to bring litigation to finality.

#### ELIMINATION OF INVALID STIPULATIONS

- 1.92 In sea transport it is usual for carriers to insert in bills of lading clauses which directly or indirectly derogate from the provisions of international conventions on the carriage of goods by sea. Some of these clauses deal with the limitation of carrier's liability for loss or damage occurring during the carriage and others confer economic benefits on the carrier which in normal circumstances are intended for the shipper, for example, the benefit of an insurance policy on the goods. The inclusion of these clauses in bills of lading causes uncertainty in the minds of cargo owners as to their exact rights and liabilities when carriers seek to enforce them. Usually, cargo owners particularly those who lack the experience and expertise available to large business companies might feel themselves bound by clauses and drop the claims against the carrier which are otherwise valid. Carriers also use the clauses as an excuse for indulging in protracted negotiation of claims which would otherwise have been settled promptly. Insistence on their enforcement when negotiation fails also leads to unnecessary litigation.
- 1.93 The Hague Rules give some comfort, but not wholesome, to cargo owners in dealing with the invalidity of these clauses. Article III (8) stipulates that these clauses are invalid if the intention is to relieve the carrier from liability as provided for under the Rules; a benefit of insurance clauses in favour of the carrier is to be deemed as a clause relieving the carrier from liability. This Article is of limited scope in that (a) it is applicable only when the carrier seeks to relieve himself from liability and does not cover a situation in which a carrier by contract with the shipper seeks to take away a benefit which by some rule of law belongs to

the shipper and has nothing to do with liability; (b) it is uncertain as to the fate of the contract of carriage where an invalid clause is held to be a nullity; (c) there are no sanctions for the use of invalid clauses and carriers take their chances to use them with impunity. The Article is not affected by the Visby Protocol 1968.

- 1.94 The Hamburg Convention, on the other hand, meets these inadequacies. Article 23(1) states that "any stipulation in a 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 the benefit of insurance of goods in favour of the carrier, or any similar clause is null and void". Article 23(4) goes on to deal with the issue of sanctions.
- 1.95 The first sentence of Article 23(1) is not confined to clauses relieving the carrier from liability which he incurs under certain provisions of the Convention but it extends to clauses which impinge on other provisions of the Convention. Thus a stipulation in the contract of carriage whereby the carrier unilaterally chooses a jurisdiction for judicial or arbitral proceedings outside those provided for by the Convention or one which imposes more obligation on the shipper than is warranted under the Convention, would be regarded as an invalid clause.
- 1.96 The second sentence of Article 23(1) is concerned with the effect of an invalid clause on the rest of the contract of carriage. It clearly states that unlike the invalid stipulation which is a nullity, the other provisions of the contract should be judged on their own merits in arriving at a decision whether or not they are void.
- 1.97 The third sentence of Article 23(1) departs from Article III (8) of the Hague Rules in respect of both wording and substance. It drops any reference to "relieving the carrier from liability" but simply states that any stipulation which assigns the benefit of insurance from the shipper to the carrier is a nullity. Thus it is no longer possible for the carrier by contract to take away from the shipper a right that is conferred on him by some rule of domestic law.
- 1.98 Article 23(1) is clearly intended to protect shippers against unscrupulous carriers who might wish to obtain more rights and privileges than provided for under the Convention. However, if the carrier wants to confer more benefits on the shipper than those provided for by the convention, he is at liberty to do so under Article 23(2).

- 1.99 It has already been observed that the Hague and the Hague/Visby Rules do not make any provision for sanctions. Sanctions are therefore left to domestic law leading to different solutions which impair uniformity. Since national laws might impose strict liability on the carrier while others might allow him to escape with impunity. Article 23(4) of the Hamburg Convention now permits a claimant in respect of the goods who has incurred loss as a result of a stipulation in the contract of carriage which is null and void to recover compensation from the carrier to the extent required to compensate the claimant for loss of, damage to or delay in the delivery of the goods. The same right to compensation exists where the carrier fails to insert in the contract of carriage a statement that the carriage is subject to the provisions of the Convention which nullify stipulations derogating from the Convention to the detriment of the shipper or consignee. The carrier is further required to indemnify the claimant for the costs that he incurs in the exercise of his right, such costs to be determined in accordance with the law of the State where proceedings are instituted.
- 1.100 In conclusion, it should be noted that an invalid stipulation is particularly susceptible to abuse if the shipper is not aware of the provision of the Convention which invalidates it. Therefore, it is essential that the contract of carriage should draw attention to the invalidity under the Convention of any agreement that is inconsistent with the mandatory rules of the Convention. This is a vital element that is absent from the Hague/Visby Rules. Aware of this, Article 23(3) of the Hamburg Rules states categorically that a bill of lading or any other document evidencing the contract of carriage must contain a statement that the carriage is subject to the provisions of the Convention which nullify any stipulation derogating from the Convention to the detriment of the shipper or consignee. What stipulation derogates from the Convention? At a certain point during the deliberations that led to the conclusion of the Hamburg Convention, the view was held that in order to achieve greater certainty on the answer to this question, specific stipulations should be itemized and branded as invalid. One basic difficulty with this solution was found to be that a stipulation might be invalid when applied to some factual situation but valid when applied to others. A typical example given in the UNCTAD Secretariat Report on Bills of Lading is that a clause that freight is earned "vessel and/or goods lost or not" is invalid where the carrier is legally responsible for the loss, but valid where the carrier is not legally responsible. Moreover, identifying in the Convention certain stipulations in current use as invalid might lead to crafty legal draftsmen preparing new wording of the stipulations prescribed by the Convention. Consequently, it was resolved to drop the itemization of stipulation that are regarded as invalid but to state in the Convention that any agreement or stipulation in the contract of carriage that is contrary to the substantive provisions of the Convention should be deemed as invalid. The desired intention was achieved in the first sentence of Article 23(1). (For a full report on the debate on the elimination of invalid clauses see UNCITRAL Year Book Vol. V 1974 pp. 163-165).

## RELATIONSHIP WITH THE LAW OF GENERAL AVERAGE

- 1.101 The Convention indicates that the law of General Average will still apply despite the extension of liability of the carrier by the Convention. (Article 24(1)). However, when the consignee is requested to make a General Average contribution and he refuses to do so or pays and later claims indemnity from the carrier, the provisions of the Convention, except limitation of actions, relating to the liability of the carrier for loss of or damage to the goods will have to be examined together with the provisions of the contract of carriage or national law in determining whether or not the consignee is justified in his action. (Article 24(2)). Article 24(2) is in line with Rule D of the York-Antwerp Rules 1974.

## RELATION WITH OTHER CONVENTIONS

- 1.102 The Hamburg Convention determines its relationship with other Conventions and national laws. Specific mention is made of other maritime conventions including the Hague and Hague/Visby Rules, Conventions regulating liability for damage caused by a nuclear incident and Conventions relating to the carriage of passengers and their luggage at sea.
- 1.103 Article 25(1) specifically stipulates that the Convention does not modify the rights or duties of the carrier, the actual carrier and their servants or agents under "international conventions or national law relating to the limitation of liability of owners of sea going vessels". The purpose of this Article is to remove any shadow of doubt as to the effect of the Convention on such other maritime conventions as the International Convention for the Unification of Certain Rules relating to the limitation of the liability of Owners of Seagoing Vessels signed at Brussels on 25 August 1924, which does not concern itself with the relationship of carrier and shipper in the carriage of goods by sea. Article 25(1) is an enlarged and more clarified version of Article VIII of the Hague Rules which uses the phrase "any statute for the time being in force" instead of the wording of Article 25(1) thus giving the impression that only statutes that were in force on 25 August 1924 were affected by Article VIII of the Hague Rules. The present wording of Article 25(1) eliminates this misconception. Moreover, the substitution of the phrase "International Convention or national law" for "statute" removes any suggestion that "statute" might be interpreted to refer to national legislation alone.

### (a) Relationship with Brussels Convention and Visby Protocol

- 1.104 See paragraphs 2.06 and 2.07.

### (b) Relationship with Convention relating to Nuclear Incident

- 1.105 A good many States are already parties to international conventions on the liability for damage resulting from the operation of nuclear installations. In order to encourage these States to become parties to the Hamburg Convention and to ascertain that persons within

their jurisdiction are not exposed to double jeopardy under the existing Conventions and the Hamburg Convention, Article 25(3) of the Convention relieves carriers, or actual carriers or their servants or agents from liability for damage done by a nuclear incident if the operator of the nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or if the operator is liable under national law which provides comparable remedy obtainable under the Paris or Vienna Convention. A similar provision exists in Article IX of the Hague/Visby Rules.

(c) Relationship with Conventions Relating to the Carriage of Passengers and their Luggage at Sea

- 1.106 The Hamburg Convention is inapplicable if the carrier is responsible for loss or damage or delay in delivery under any international Convention or national law relating to the carriage of passengers and their luggage by sea. (Article 25(4)). This Article is by implication referring to the Athens Luggage by Sea Convention, 1974, and to any similar legislation under domestic law. If a party to the contract of carriage of goods by sea can obtain a remedy under any of these laws, he is not permitted to make a claim under the Hamburg Convention. There is no corresponding provision in the Hague/Visby Rules.

(d) Relationship with other Conventions in General

- 1.107 The Hamburg Convention does not affect the application of the mandatory provisions of conventions dealing with the contracts of carriage of goods primarily by a mode of transport other than transport by sea. (Article 25(5)). The Convention accommodates the Warsaw Convention 1929 on carriage by air, the CMR Convention 1956 on road carriage and the CIM Convention 1970 on carriage by rail, together with any subsequent revisions or amendments to these Conventions. (Article 25(5)). It should be noted that under these Conventions, the carrier's liability is greater than under the Hamburg Convention. There is no corresponding provision in the Hague/Visby Rules.
- 1.108 It has been seen that the Hamburg Convention widens the scope of jurisdiction for the institution of actions and arbitral proceedings which might be in conflict with the provisions of other international Conventions. In recognition of this, Article 25(2) of the Convention stipulates that in case of conflict the mandatory provisions of "any other multilateral convention in force at the date of this Convention relating to jurisdiction for court action and arbitral proceedings should apply provided that the dispute is exclusively between parties having their principal place of business in States members of such other Conventions". One such Convention is the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958. The purpose of this Article is to make the provisions of the Hamburg Convention on jurisdiction and arbitration subordinate to mandatory provisions in other international conventions on related matters. It is



unlikely that such a conflict will exist. The reason is that the rules of the Hamburg Convention deal with matters of substance while these other Conventions lay down rules of procedure.

## INTERPRETATION OF THE CONVENTION

- 1.109 The Hamburg Convention enacts that in the interpretation and application of its provisions, regard must be had to its international character and to the need to promote uniformity. (Article 3). This enactment is new in international transport law; there is no similar provision in the Brussels Convention and Visby Protocol or in Conventions dealing with other means of transport. Applied effectively by courts and arbitration tribunals faced with the interpretation of the Convention this Article will lead to some degree of uniformity.
- 1.110 In order to give full effect to the Article, two courses of action will be necessary. First, the need for Contracting States which incorporate the Convention into their legal systems to do so without changing its text. This will reduce divergencies which are already likely to exist in the text arising from the fact that the Convention is in six official languages each of which is equally authentic. (Article 34). Second, the need for courts and arbitration tribunals to be willing to be guided and persuaded by earlier decisions with a view to being in unison with them where the cases are based on the same or similar facts, instead of looking upon the Convention as providing a "wonderful scope for variation of application" leaving them free to decide every case exactly as they like. (See the poignant remark of Lord Diplock in the Report on the CMI Colloquium on the Hamburg Rules p.3). It will require some effort to make these decisions available to these bodies. In this connection, it is necessary to mention a scheme already embarked upon by UNCITRAL whereby court decisions and arbitral awards containing information on the interpretation of provisions of Conventions and model laws emanating from drafts prepared by UNCITRAL Secretariat are to be collected and indexed by the UNCITRAL Secretariat, and if possible, published by commercial publishers. If the scheme materialises, it will help disseminate material, which, if used in a manner envisaged by Article 3, will enhance uniformity. The first meeting of national correspondents consisting of representatives from countries which are Contracting Parties to the UNCITRAL texts was convened during the twenty-second Session of UNCITRAL in Vienna in May-June 1989 to discuss the modus operandi of the scheme.

## FINAL CLAUSES

### (a) Accession

- 1.111 The closing date for signing the Convention expired on 30 April 1979. Thereafter it was open for accession by all States which are not signatory States. (Article 28(3)). Accession is effected by the deposit of instrument of accession with the Secretary-General of the United Nations. (Article 28(4)).

(b) Reservations

- 1.112 On the question of reservation, Article 29 simply states: "No reservation may be made to this Convention". This language might not be considered strong enough to prevent reservations. But it is submitted that the intention is that there should be no reservation for to permit any might defeat the general purpose of the Convention which is to establish an equitable regime in sea transport.

(c) Entry into Force

- 1.113 On the international plane, the Convention enters into force on the first day of the month following the expiration of one year from the date of the 20th instrument of ratification, acceptance, approval or accession. (Article 30(1)). This is in respect of Contracting Parties up to the date of the deposit of the 20th instrument. For those States which become Contracting Parties after that date, the effective date for entry into force is the first day of the year following the expiration of one year after such State had deposited its instrument of ratification or accession (Article 30(2)). For a State Party, the Convention governs all contracts of carriage of goods by sea concluded on or after the date when the Convention enters into force in respect of that State (Article 30(3)).
- 1.114 It should be noted that compared with the Hamburg Convention which requires 20 ratifications for entry into force, the Brussels Convention had no limit. All that was required was that any number of Contracting States should deposit their instruments of ratifications with the Belgian Government. The first deposit of ratification was to be recorded in a procès-verbal signed by the representatives of the States which ratified and by the Belgian Minister of Foreign Affairs. (Article XI). The Convention came into force one year after the date of the procès-verbal which recorded the first deposit of ratification made by the United Kingdom, Hungary and Spain on 2 June 1930. The Visby Protocol required 10 ratifications. It came into force 8 years after its signature and 10 years after being in force it had only 19 Contracting States. This comparison is necessary to show that the Hamburg Convention with the largest number of ratifications required has not fared badly.
- 1.115 On the national plane, legislation will be necessary to give effect to the Convention in many Commonwealth countries. Sierra Leone is one of the Commonwealth countries that has ratified and its legislation is embodied in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Ratification) Act, 1988 which was passed in Parliament in September 1988. This Act incorporated the Convention textually into Sierra Leone Law. The Commencement date of the Act is postponed to a date to be fixed by the President by notice published in the Sierra Leone Government Gazette. It is expected that this date will coincide with the date of the coming into force of the Convention internationally.

(d) Denunciation of the Brussels Convention and Visby Protocol

- 1.116 The Hamburg Convention requires that on becoming a party to it, a State who is a party to the Brussels Convention or the Visby Protocol must notify the Belgian Government as the depositary of these two instruments, that it has denounced them. The notification must be accompanied by a declaration that the denunciation takes effect from the date on which the Hamburg Convention comes into force in respect of that State. (Articles 31(1) and 31 (2)).

However, in order to allow a gradual transition from the regime of the Hague Rules to that of the Hamburg Rules, the Hamburg Convention also allows a Contracting State, if it deems it desirable, to postpone its denunciation for a maximum period of five years from the entry into force of the Convention. (Article 31(4)). During this period of transition, such a State should apply the Hamburg Convention to other Contracting States. (Article 31(4)). The overall effect of Article 31(4), is that a State which defers the denunciation of the Brussels Convention or the Visby Protocol, will have to apply two parallel and distinctive legal systems in its carriage of goods by sea; the Hague System to other States who continue to be parties to the Hague or Hague/Visby Rules, and the Hamburg System to States which are parties to the Hamburg Convention. The existence of two conflicting legal regimes governing sea transport in the same State is likely to result in an inequity which does not exist even under the Hague System, i.e., discrimination between shippers/consignees in the same country with some deriving benefit from the equitable regime under the Hamburg Rules, and others still clinging to the burdens under the Hague and Hague/Visby Rules. In order to avoid this, a good many States should ratify the Hamburg Convention. If this is done, delay in denunciation can be kept to a minimum, if not completely abandoned.

- 1.117 Provision is also made under the Hamburg Convention, for the Secretary-General of the United Nations who is depositary of the Convention to notify the Belgian Government of the Convention's entry into force. When sending the notification, he must submit the names of the Contracting States in respect of which the Convention is in force. (Article 31(2)).

(e) Revision and Amendment

- 1.118 Two categories of amendments are envisaged by the Hamburg Convention. First, general amendments to the Convention. Second, specific amendments relating to the financial limitations and unit of account or monetary unit.
- 1.119 With respect to the first category, Article 32(1) requires the Secretary-General of the United Nations as depositary of the Convention, at the request of at least one-third of the Contracting States, to convene a Conference for revising and amending the Convention. When an amendment has been made, a State which becomes a Party to the Convention thereafter is

deemed to be a Party to the Convention in its amended version (Article 32(3)). The amendment is not binding on a State which was a Party to the Convention before the amendment but which does not ratify it. The number of Contracting States required by the Brussels Convention to request the depositary to convene a Conference for amending the Convention was one. (Article XVI).

1.120

So far as the second category is concerned, in contrast with the Brussels Convention and the Visby Protocol which provided no mechanism for the revision of their limitation amounts, the Hamburg Convention lays down a simplified procedure for the alteration of its limitation amounts and unit of account. First, a revision conference is to be convened by the Secretary-General of the United Nations at the request of at least one-fourth of the Contracting States. (Article 33(2)). Second, any amendment taking place at the conference must be adopted by a two-thirds majority of the participating States. (Article 33(3)). Third, the amendment must be communicated by the depositary to all the States which are signatories of the Convention for their information. (Article 33(3)). Fourth, the amendment must be accepted by two-thirds of the Contracting States which must be effected by the deposit of a formal instrument of acceptance with the U N Secretary-General; it enters into force on the first day of the month following one year after the requisite acceptances. (Article 33(4)). After an amendment enters into force, a Contracting State is entitled to apply it in respect of Contracting States which have not within six months after the adoption of it notified the depositary that they are not bound by it. (Article 33(5)). Compared with the general amendments, which must be ratified by Contracting States before these States are bound by them, the specific amendments are automatically binding on Contracting States unless they adopt the procedure outlined in Article 33(5).

1.121

Ratification to the Convention after an amendment to the financial provisions of the Convention enters into force is deemed to be a ratification of the Convention as amended. (Article 33(6)). An alteration of the amounts stated in the Convention can take place only when it becomes necessary because there is a significant change in their real value (Article 33(1)).

(e) Denunciation of the Convention

1.122

A Contracting State is permitted under Article 34(1) of the Hamburg Convention to denounce the Convention at any time by sending a written notification to the depositary. The denunciation takes effect on the first day following the expiration of a year after the depositary received the notification. The Brussels Convention contains a similar rule. (Article XV). But the Hamburg Convention goes further to allow a Contracting State which denounces the Convention to defer the effective date to a period longer than one year. (Article 34(2)).

## CHAPTER II

### COMMENT

#### "A case for the adoption of the Hamburg Convention"

- 2.01 What I have attempted to do in this commentary is to focus attention on the improvement which the Hamburg Convention has made on the Brussels Convention and the Visby Protocol. I do not hold any brief for the Hamburg Convention that it is a perfect document from either the legal or economic point of view. Indeed no document, not to mention one agreed upon at a diplomatic conference where delegates with fundamental differences and deep-seated conflicts of interest were represented, can be defect free. From the legal standpoint, the main criticisms that have been levelled on the Convention are, (i) that it abandons freedom of contract, (ii) that there will be uncertainty of interpretation of its provisions, and (iii) that it is not likely to lead to real uniformity of application. (See for example, CMI Colloquium Report and Makins, B. "Sea Carriage of Goods Liability which route for Australia", a paper presented at 14th International Trade Law Conference, Canberra, 16 October 1987).
- 2.02 These criticisms are not new; they have been levelled before even against the implementation of the Hague Rules. When these Rules were formulated in 1921, the intention was that they should be voluntarily adopted by the marine industry with the object of securing uniform application. But they were not voluntarily adopted; some shipowning interest refused on the ground that the Rules violated freedom of contract. These interests wanted to continue, among other things, the practice of exemption clauses in bills of lading which exonerated carriers from liability for loss or damage to cargo that they carried. Even though the Rules substantially gave way to their demands with the long list of exceptions in Article IV(2), they still objected. The outcome was that the Rules had to be adopted at a mandatory Convention in 1924. Twenty-six countries including the United Kingdom which also represented the British Dominions, India and Ireland, participated at the diplomatic conference. It took seven years before the Convention entered into force in 1931 with the ratifications of only the United Kingdom, Hungary and Spain on 2 June 1930.
- 2.03 The allegations of uncertainty of interpretation and unlikelihood of uniformity are key issues which are inevitable when there is to be a move from an old to a new order particularly when the change is surrounded by stiff opposition to the new order. But these allegations may prove unfounded if the Convention receives worldwide acceptance textually and the persons on whom the responsibility falls to interpret it do so not merely as individuals responding to their personal hunch but as members of the international community aiming at making the Convention work. This must have been the intention of the framers of the Convention when they dispensed with reservations to the Convention (Article

29) and urged that in the interpretation of the provisions of the Convention attention must be paid to the fact that it is an international document geared towards the promotion of uniformity.

2.04 Adverse judgement on the Hamburg Convention has been heaviest on the economic side. This is also understandable because it is where the conflict of interests between the carriers and shippers manifests itself greatly. The carriers complain that the Convention shifts all risks onto them unless those they are able to prove could have been avoided; that with the new liability regime the cost of sea transportation will increase which will eventually have to be borne by the cargo owners. At one point in the plethora of literature that has emerged in opposition to the Convention, one commentator criticising UNCTAD for sponsoring the Convention on the ground of equity remarked that "in the context of allocation of risk ... perceptions of equity and fairness are irrelevant". (Makins p.14). If there is to be no consideration for equity why the concern for the shipper who is alleged to pay more for the transportation of his goods with the new liability regime? It is submitted that "equity" and "fairness" cannot be ruled out in presenting a case for the adoption of the Hamburg Convention. Certainly the Convention was motivated by the spirit of the New International Economic Order. It must be seen in that light. Once this is done a concerted effort must be made by all concerned for it to work practically, legally and economically.

2.05 The argument has also been canvassed that if the Convention was in the interest of the developing countries why has it not been ratified by them so that it can come into force? The answer does not lie in the fact that these countries now realise that the Convention will not reduce their economic burden and that many of the supposed attractions of it are really superficial. (Makins p.21). On the contrary, the answer can be found in a number of factors which have militated against the Convention. These are ably stated by Stephen Katz in his Article "New Momentum Towards Entry into Force of the Hamburg Rules" (in Press) and I would summarise them as follows:

- (a) Lack of awareness of the Convention and its benefit which arises from the fact that in some developing countries, the Government officials who were familiar with the Convention either retired or were transferred to some other responsibilities and were replaced by persons who knew little about the Convention or were unaware of it.
- (b) Attention being paid to other pressing Government business which left the officials who remained in their positions and who were familiar with the Convention, little time to devote to the Convention.
- (c) Until recently, lack of any organised pressure group by the shippers to present their case effectively for the adoption of the Convention.

(d) The presence of a united front and effective campaign by opponents of the Convention. They include (i) the ocean carriers whose concern is that the shift of the allocation of risk and responsibilities would increase their costs which will not be matched by their returns in a competitive sea transport trade; (ii) the marine cargo insurers who fear that the change would reduce the need for cargo insurance with the resultant reduction of their own turnover and profits; (iii) lawyers who represent the interests of ocean carriers and marine cargo insurers.

- 2.06 There are some developed countries with large merchant fleets which are in favour of the Hamburg Convention. They too have not taken steps to ratify it partly because of the campaign by the adversaries that the Convention is not in their national interest and partly because these countries are trade partners with other countries whose attitude to the Convention has been either hostile or lukewarm, and they wait and see who will take the first step.
- 2.07 With the current interest in the Convention shown by representatives of carriers, shippers and insurers alike who met in Geneva in June 1987 under the joint auspices of the International Chamber of Commerce (ICC) and UNCTAD, and from the agreement they reached that the time is up for the Convention to enter into force and receive widespread application, it is hoped that opposition to it will be minimised, if not completely eradicated.
- 2.08 In keeping with the past when the United Kingdom with her colonies virtually formed the bulk of the countries that were parties to the Brussels Convention in 1931, the Commonwealth can take the lead and set the same example with the Hamburg Convention.





# Appendix 1

## ANNEX VII. CARRIAGE OF GOODS BY SEA

### A. United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)

#### 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 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, 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 shippers**

#### *Article 12. General rule*

The shipper is not liable for loss sustained by the carrier or 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 a 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 and 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 2 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 IV. 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.

**B. 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.





## Appendix 2

### XI.D-3: Carriage of goods by sea

#### 3. UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978

Concluded at Hamburg on 31 March 1978

Not yet in force (see article 30).  
TEXT: A/CONF.89/13.

Note: The Convention was adopted on 30 March 1978 by the United Nations Conference on the Carriage of Goods by Sea, held in Hamburg, Federal Republic of Germany, from 6 to 31 March 1978. The Conference had been convened by the Secretary-General of the United Nations in accordance with resolution 31/100<sup>1</sup> adopted by the General Assembly on 15 December 1976. The Convention was opened for signature at Hamburg on 31 March 1978 and remained open for signature by all States at the Headquarters of the United Nations, New York, until 30 April 1979.

<u>Participant</u>	<u>Signature</u>	<u>Ratification, accession (a), acceptance (A), approval (AA)</u>	<u>Participant</u>	<u>Signature</u>	<u>Ratification, accession (a), acceptance (A), approval (AA)</u>
Austria . . . . .	30 Apr 1979		Nigeria . . . . .		7 Nov 1988 a
Barbados . . . . .		2 Feb 1981 a	Norway . . . . .	18 Apr 1979	
Botswana . . . . .		16 Feb 1988 a	Romania . . . . .		7 Jan 1982 a
Brazil . . . . .	31 Mar 1978		Pakistan . . . . .	8 Mar 1979	
Chile . . . . .	31 Mar 1978	9 Jul 1982	Panama . . . . .	31 Mar 1978	
Czechoslovakia . . . . .	6 Mar 1979		Philippines . . . . .	14 Jun 1978	
Denmark . . . . .	18 Apr 1979		Portugal . . . . .	31 Mar 1978	
Ecuador . . . . .	31 Mar 1978		Senegal . . . . .	31 Mar 1978	17 Mar 1986
Egypt . . . . .	31 Mar 1978	23 Apr 1979	Sierra Leone . . . . .	15 Aug 1978	7 Oct 1988
Finland . . . . .	18 Apr 1979		Singapore . . . . .	31 Mar 1978	
France . . . . .	18 Apr 1979		Sweden . . . . .	18 Apr 1979	
Germany, Federal Republic of . . . . .	31 Mar 1978		Tunisia . . . . .		15 Sep 1980 a
Ghana . . . . .	31 Mar 1978		Uganda . . . . .		6 Jul 1979 a
Holy See . . . . .	31 Mar 1978		United Republic of Tanzania . . . . .		24 Jul 1979 a
Hungary . . . . .	23 Apr 1979	5 Jul 1984	United States of America . . . . .	30 Apr 1979	
Lebanon . . . . .		4 Apr 1983 a	Venezuela . . . . .	31 Mar 1978	
Madagascar . . . . .	31 Mar 1978		Zaire . . . . .	19 Apr 1979	
Mexico . . . . .	31 Mar 1978				
Morocco . . . . .		12 Jun 1981 a			

#### Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession, acceptance or approval.)

#### CZECHOSLOVAKIA

The Czechoslovak Socialist Republic, signing the United Nations Convention on the Carriage of Goods by Sea of 1978, declares, in conformity with the provision of its article 26, that the conversion of the amounts of the limits of liability, referred to in paragraph 2 of that article, into the Czechoslovak currency is made in the ratio of 0.48 Czechoslovak crown /Kcs/ to 1

monetary unit, defined in paragraph 3 of article 26 of the Convention, and the limits of liability provided for in this Convention to be applied in the territory of the Czechoslovak Socialist Republic are fixed as follows:

6,000.--Kcs per package or other shipping unit,  
or  
18.--Kcs per kilogramme of gross weight of the goods.

\*Since the preparation of this document, three further ratification/accessions have been notified, bringing the total to seventeen.

#### NOTES:

1/ Official Records of the General Assembly, Thirtieth Session, Supplement No. 39, (A/31/39), p. 184.



## Appendix 3

### ACT

Supplement to the Sierra Leone Gazette Vol. CXIX No. 65

dated 8th December, 1988

SIGNED this 6th day of December, 1988.

J. S. MOMOH,  
President

No.12

1988

Short title      The United Nations Convention on the Carriage of Goods by Sea, 1978 (Ratification) Act, 1988

Being an Act to ratify and confirm the United Nations Convention on the Carriage of Goods by Sea, 1978

Date of Commence-ment      WHEREAS the United Nations Convention on the Carriage of Goods by Sea was adopted by the United Nations Conference on the Carriage of Goods by Sea in Hamburg, Federal Republic of Germany, on the 30th day of March, 1978;

AND WHEREAS the said Convention was signed on behalf of the Government of the Republic of Sierra Leone on the 15th day of August, 1978;

AND WHEREAS it is desirable that the said Convention should be ratified and confirmed;

BE IT THEREFORE ENACTED by the President and Members of Parliament in this present Parliament assembled, as follows:

Commence-ment      1. This Act shall come into force on such date as the President shall fix by notice published in the Gazette.

Interpret-  
ation

2. In this Act unless the context otherwise requires:

"Convention means the United Nations Convention on the Carriage of Goods by Sea, adopted by the United Nations Conference on the Carriage of Goods by Sea in Hamburg, Federal Republic of Germany on the 30th day of March 1978 as set out in the Schedule.

"Minister" means the Minister for the time being charged with responsibility for matters relating to Transport and Communications.

Confirma-  
tion of  
Convention

3. The Convention set out in the Schedule hereto is hereby ratified and confirmed and all rights and obligations purported to be conferred or imposed thereby are hereby declared valid and shall have the force of law in Sierra Leone.

Power to  
make  
regulations

4. The Minister may make such regulations as are necessary for the purpose of carrying out the Convention or for giving effect to any of the provisions thereof.

Repeal of  
Cap.147.

5. The Carriage of Goods by Sea Act is hereby repealed.

## THE SCHEDULE

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# UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978

## PREAMBLE

### THE STATES PARTIES TO THIS CONVENTION

HAVING RECOGNISED 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 sub-paragraphs (a) and (b) of this paragraph, exceed the limitation which would be established under sub-paragraph (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, 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, sub-paragraph (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 or 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 an 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 a 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 taken 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 preceeding 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:
  - (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 discharging; or
  - (d) any additional place designated for that purpose in the contract of carriage by sea.
2. (a) Notwithstanding the preceeding 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 preceeding paragraph, 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 provision 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 effects 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 cost 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 sea-going 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 State members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of the 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 State 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.

#### 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.

Passed in Parliament this 20th day of September, in the year of our Lord one thousand nine hundred and eighty-eight.

C. B. FOFANA  
Acting Clerk of Parliament

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

C. B. FOFANA  
Acting Clerk of Parliament