

Draft proposal B—alternative (2)

"The carrier shall be liable for all expenses, loss or damage resulting from a clause which is null and void by virtue of the present article."

18. This alternative requires the carrier to bear liability for "all expenses, loss and damage" resulting from the inclusion of an invalid clause and makes a causal connexion between the presence of the invalid clause and the harm done a prerequisite for liability.⁸ For example, under such a Convention provision the carrier would bear the cost of litigation between carriers and cargo owners or between shippers and consignees involving the invalid clause.

E. Requiring the contract of carriage to contain a notice clause regarding invalid clauses

19. A fourth approach responds to the need to direct attention of the cargo owners to provisions in the Convention which invalidate clauses in the contract of carriage. Cargo owners, particularly those cargo owners who do not have the experience and legal advice available to large business establishments, might consider themselves bound by an invalid clause in the contract of carriage whose effect would be to relieve the carrier from the liability established under the Convention.

20. To this end, a provision could be inserted into the Convention requiring the contract of carriage to state that any provision that is inconsistent with the Convention will not be given effect. It would appear, however, that such specific requirement would have little effect unless it were accompanied by sanctions.⁹

21. A provision requiring notice that the Convention is applicable and setting forth a sanction for the non-inclusion of such notice in the contract of carriage might read as follows:

Draft proposal C

"1. Every [bill of lading] [contract of carriage] shall contain a statement that: (a) the carriage is subject to the provisions of this Convention, and, (b) that any clause of the [bill of lading] [contract of carriage] shall be null and void to the extent that it derogates from the provisions of this Convention."

"2. If the [bill of lading] [contract of carriage] does not contain the statement specified in para-

graph 1 (a) and (b) the carrier shall not be entitled to the benefit of the limitation of liability provided for in article () of this Convention."

22. Paragraph 1 (a) of draft proposal C is aimed at making the cargo owner aware that the contract of carriage is governed by the Convention. This approach has been taken in both the Warsaw (Air) Convention and in the Convention on Carriage by Road (CMR).¹⁰ Moreover, a number of national enactments of the Brussels Convention of 1924 have incorporated such a clause into the text of the Convention.¹¹

23. Paragraph 1 (b) of draft proposal C is aimed at alerting the cargo owner to the fact that the Convention provides protection against certain types of bill-of-lading clauses.

24. Paragraph 2 of draft proposal C responds to the need for stating the consequences of failing to include the prescribed statement in the contract of carriage. It would appear that in the absence of express sanctions the carrier would have little, if any, incentive to include such a statement.

25. In the absence of a Convention rule imposing specific penalties, the application of sanctions for not including the required statement in the contract of carriage would be left to national law, leading to varying solutions and thereby impairing the uniform application of this provision of the Convention. Solutions under national law could range from imposing strict liability upon the carrier to not applying any sanction at all.

26. In examining paragraph 2 of draft proposal C, the Working Group may wish to consider the following: (a) the feasibility of including a provision in the contract of carriage giving notice to the cargo owner of the applicability of the Convention to the carriage and of the invalidity of clauses inconsistent with the Convention; (b) the limited scope of the sanction, which would make the carrier liable for the actual loss or damage to the cargo owner resulting from the carrier's fault.

27. If the Working Group should adopt a provision along the lines of draft proposal C, the Working Group may wish to consider at a later stage whether the provision should be added to the article on the required contents of the contract of carriage (article 3 (3) of the Brussels Convention of 1924).

⁸ Second report of the Secretary-General, part six, paragraphs 11 and 12 and foot-note 12; UNCITRAL Yearbook, Vol. IV: 1973, part two, IV, 4.

⁹ *Ibid.*, paras. 13-15; UNCITRAL Yearbook, Vol. IV: 1973, part two, IV, 4.

¹⁰ Second report of the Secretary-General, part six, foot-note 2; UNCITRAL Yearbook, Vol. IV: 1973, part two, IV, 4.

¹¹ United Kingdom Carriage of Goods by Sea Act, 1924 (14 and 15 Geo. 5, c. 22), Section 3; United States Goods by Sea Act, 46 U.S.C.A. 1300-1315, Section 13.

3. Study on carriage of live animals (A/CN.9/WG.III/WP.11) *

*Note by the Secretariat. In accordance with a request made by the United Nations Commission on International Trade Law at its fifth session (1972),** the International Institute for the Unification of Private Law (UNIDROIT) has prepared a study on the carriage by sea of live animals, which is attached hereto.*

* 27 December 1973.

** Report of the United Nations Commission on International Trade Law on the work of its fifth session (1972), *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717)*; UNCITRAL Yearbook, vol. III: 1972, part one, II, A, para. 50.

It will be noted that the conclusions in the study regarding the history and practice on the subject of the carriage of live animals are set forth in paragraphs 99 to 106. Three alternative proposals are made in the study (proposal I at paragraph 108; proposal II at paragraph 113; proposal III at paragraph 118).

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FORWARD

At its third session (31 January-11 February 1972), the UNCITRAL Working Group on International Legislation on Shipping (hereinafter referred to as "the Working Group"), during its discussion of carrier's responsibility for deck cargoes and live animals, agreed to the suggestion made by the observer for the International Institute for the Unification of Private Law (UNIDROIT) that UNIDROIT should prepare a study on the rules which should apply to the carriage of live animals (A/CN.9/63, para. 34*). The scope of the study was subsequently defined in an agreement between the two secretariats as follows: "Preparation of a study on the issue of the inclusion of the carriage of live animals within the scope of application of the Hague Rules, including concrete alternative proposals

dealing with treatment of the problems of the carriage of live animals, and the reasons therefor, based *inter alia* on: (1) any particularly helpful national legal rules and practices, statistics, or other relevant information regarding the ocean carriage of live animals, and (2) practice and law with respect to the handling of this problem in other modes of transportation."

Accordingly, this study, after outlining the problem and describing the difficulties encountered in the course of research, endeavours to define live animals, as the subject of this form of carriage, and also discusses the statistical and health aspects. The study goes on to consider how the carriage of live animals by all modes of transport, with particular emphasis on carriage by sea, is dealt with in the Convention, legislation and practice. After considering the status of the attendant and multimodal transport of live animals, the study concludes with a number of specific proposals for con-

*UNCITRAL Yearbook, Vol. III: 1972, part two IV.

sideration by the Working Group in the context of the revision of the Hague Rules.

I. PRELIMINARY CONSIDERATIONS

Background of the question

1. Almost a century ago the *Pandectes Belges* (*Animal*, No. 6) noted that, although considerable space was devoted to animals in legislation, the provisions concerning them were associated with the most disparate subjects, bearing little relationship to each other. The conclusion was: "This is undoubtedly the reason for the absence of any treatise containing a compilation of all regulations relating to the status of animals in modern law, and particularly in our modern positive law." That observation is still true today. Research carried out by specialists in civil law rarely leads them into the field of transport law; in matters involving animals, they confine themselves to questions of ownership, or of civil liability for damage caused by animals. Even specialists in transport law seldom turn their attention to the transport of animals, which are considered simply as one of the many types of goods which may be the subject of a contract of carriage. Transport circles prefer to concern themselves with the more usual and "safe" types of goods, the carriage of which holds the fewest surprises. Their reaction to animals, which cannot be carried as either freight or passengers, is to give this—to use a fashionable term—hazardous cargo unfavourable treatment or, as in the case in carriage by sea, to treat animals as outlaws in the strict meaning of the word. Yet animals can be goods of considerable economic value, in view of their impact on trade balances, particularly in the developing countries.¹

2. The corollary, inadequate protection of animals being transported, can often be attributed to lack of diligence on the part of those to whose care they are consigned. The high mortality of animals during transport (injured or sick animals almost invariably have to be slaughtered or thrown overboard), an argument which is often invoked to justify reduced liability, is generally due to lack of care on the part of one of the parties to the contract of carriage. The shipper may pack the animals badly, or fail to provide a competent attendant or to give the necessary instructions; the carrier, who is protected almost completely by exemption clauses, may fail properly to man or equip the vehicle to be used for this particular type of transport or to take proper care of the cargo when he assumes responsibility for it. Thoughtless laxity on one side and abdication on the other; stricter regulations might make the parties more aware of their responsibilities, thus avoiding economically unjustifiable trade losses and preventing the animals from being subjected to inhumane treatment.

3. Public opinion can also, over the long term, influence the setting of standards, particularly at present, when the protection of animal species is associated with the protection of natural resources and the environment. The suffering of animals which have been

treated brutally—not too strong a word—has aroused as much indignation and recrimination as did the transport of slaves in slave-ships long ago. Vigorous campaigns to remedy this state of affairs have been launched by the World Federation for the Protection of Animals, the International Union for the Conservation of Nature and Natural Resources and, in England, by the Royal Society for the Prevention of Cruelty to Animals (RSPCA).

4. This introduction would be incomplete if it did not mention the first result—one whose repercussions may be widespread—achieved at the intergovernmental level by these efforts: the European Convention for the Protection of Animals During International Transport (Paris, 13 December 1968) (hereinafter referred to as "the Paris Convention"), which is based on a draft prepared by the World Federation for the Protection of Animals.² The immediate aims of the Convention may not be exactly the same as those of UNCITRAL in its revision of the Hague Rules,³ in which the transport of animals is not the most important element. But the aim of the Paris Convention, as stated in its preamble, is "to safeguard, as far as possible, animals in transport from suffering". Since such suffering almost always involves damage (death, injury, depreciation), the purpose is almost identical to that of the sponsors of the revision, i.e. to prevent the ocean carrier from disclaiming responsibility unless he "proves that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences".⁴ Similarly, the conviction, also stated in the preamble, "that the requirements of the international transport of animals are not incompatible with the welfare of the animals" will be shared by those who undertook the revision with a view to improving the handling of the goods.

5. The Paris Convention is of a general nature, since it can be acceded to by States which are not members of the Council of Europe (article 49). It may also influence other Conventions on transport law. Resolution (68) 23 of the Committee of Ministers of the Council of Europe recommended that the States parties to that Convention should not only act upon its principles in preparing measures in this connexion, but also take into account its provisions in any "multilateral agreement they may make with States not bound by the said Convention, where these agreements contain clauses relating to the international transport of animals".

Difficulties

6. A number of serious difficulties were encountered in gathering information for this study, which may ex-

² As of 1 June 1973, this Convention had been ratified by Denmark, Iceland, Luxembourg, Norway, Sweden and Switzerland; it has been signed (and is in the process of being ratified) by Austria, Ireland, Italy and the United Kingdom.

³ The expression "the Hague Rules" is used by the Working Group to refer to the Brussels Convention of 25 August 1924 for the Unification of Certain Rules Relating to Bills of Lading. In this connexion, possible confusion with "the Hague Rules, 1921" is immaterial, since the same provision excluding live animals from the definition of "goods" occurs in both the Convention of 1924 and the 1921 Rules.

⁴ See paragraph (1) of the new text on carrier's responsibility prepared by the Drafting Party of the Working Group (fourth session), document A/CN.9/74, para. 28; UNCITRAL Yearbook, Vol. IV: 1973, part two, IV, 1.

¹ Statement by Dr. N. Singh (Chairman, UNCITRAL Working Group on International Legislation on Shipping), introduction of the report on International Legislation on Shipping, *India News* (Permanent Mission of India to the United Nations).

plain some of its deficiencies. In respect of the international carriage of live animals by rail and road, the task was made easier by the existence of specific international regulations, even though they are not of worldwide application: these are the International Convention Concerning the Carriage of Goods by Rail (CIM), the Agreement on the International Transport of Goods (SMGS) in the socialist countries, and the Convention on the Contract for the International Carriage of Goods by Road (CMR). As yet, the literature has not gone very deeply into the questions raised by these forms of carriage. As for judicial precedents, the clarity of the procedures laid down in the international regulations appears to have left little room for litigation.⁵ It should be pointed out that the International Union of Railways (UIC) is currently preparing a "Register" of applicable regulations (other than the provisions of the Conventions) whether mandatory or in the form of recommendations, concerning the obligations of shippers, attendants, agents and railways.⁶

7. As far as air transport is concerned, the Warsaw Convention of 12 October 1929, as amended by the Hague Protocol of 28 September 1955 does not distinguish between live animals and other goods. A provision added by the Hague Protocol (article 23, paragraph 2) makes certain exemption clauses of the type sometimes applied to live animals in explicit contractual stipulations, permissible. However, air carriers also seem to have realized that the key to the problem lies in defining more precisely the diligence to be exercised by all parties to the contract with respect to this specific type of goods, rather than in sheltering behind the psychologically and commercially questionable defence of exemption clauses. Their trade association, the International Air Transport Association (IATA), established a special organ, the Live Animals Board, to prepare and keep up to date a "Live Animals Manual", which is a comprehensive code covering the packing, handling and careful carriage of 231 different animal species, ranging from insects and fish to elephants and whales.⁷

8. The fact that the Hague Rules exclude the transport of live animals by sea has caused them to be over-

⁵ The Central Office for International Railway Transport (OCTI) very kindly consulted its records for summaries of relevant court decisions in connexion with CIM international rail carriage of live animals; there have been hardly more than a dozen such decisions since the beginning of the century (see annex I). With regard to carriage by road under CMR, which is relatively recent, no significant precedents appear to have been established as yet.

⁶ The preamble of the UIC draft register states that, since "in international traffic, railways account for a substantial proportion of all shipments of live animals . . . , (they) must endeavour to protect the animals being transported and to spare them unnecessary suffering by applying standard guidelines consistent with the international conventions and the national regulations of the various countries".

⁷ "This manual is intended as a guideline for use by Member Airlines and shippers concerned with the transport of live animals by air." It covers the aspects which must be considered to ensure that animals are carried without harm to themselves or to the handling personnel." (IATA Live Animals Manual, third edition, page 6.) The third edition of this manual came into effect on 1 June 1973. IATA intends gradually to raise the status of the specifications contained in it from that of recommended practice to that of mandatory resolutions; meanwhile, IATA is taking steps to obtain official government recognition of this manual. Two extracts from the manual appear in annex II.

looked in the literature. Judicial precedents are few, since the injured parties and their insurers (when the animals are insured), faced with the carriers' almost total exemption from liability, generally feel it to be futile to initiate potentially unprofitable legal proceedings. This silence, occasionally broken by decisions designed to protect the shipper,⁸ conceals an unhealthy situation which those involved appear willing to tolerate out of either resignation or self-interest. Attempts to obtain information on contracts, documents and practices in this field, or to secure statistics or even opinions on the question, met with resistance, which indicates the existence of a very real problem and of apprehensions with regard to efforts to find a solution. Until the courageous step taken by UNCTAD to undertake a critical review of the Hague Rules, hardly anyone had attempted to lift the veil. However, the goodwill shown towards this research in many circles made it possible to overcome many obstacles. Special thanks for their help are due to the Government of Australia, FAO, IMCO, the United Nations regional commissions (in particular ECAFE and ECA), OCTI, UIC, IATA, IRU, the Hong Kong International Chamber of Commerce and its Secretary, Mr. R. T. Griffiths, to Mr. F. G. Pemberton, member of the United Kingdom delegation on the UNCITRAL Working Group, and the zoological gardens of Rome and Naples.

II. DEFINITIONS AND RELATED MATTERS

Animal

9. One obstacle from the outset was the difficulty of defining the word "animal", although people generally claim to know perfectly well what it means. Whereas it is easy for man to find a criterion to distinguish between himself and the animal in terms of the faculty of reason,⁹ or of etymology,¹⁰ the dividing line between animal and vegetable is not absolutely clear-cut.¹¹ Certain plants (myxomycetae) have the power of motion, others (the sensitives) respond to tactile stimuli. For the purposes of this research, an FAO expert gave the following—somewhat circular—definition of an animal: "any living being which, according to biological taxonomy, is considered as belonging to the animal kingdom". At the legal level, "an animal may be broadly defined as any living creature typically capable of self-movement; the legal definition restricts 'animal' to creatures other than man. . . . In the language of the law, the term ordinarily includes all living creatures not human or rational and endowed with the power of voluntary self-motion, unless the statute or other contract in which the word is employed

⁸ See, for example, Paris Court of Appeal, 12 February 1964, *Droit maritime français*, 1965, p. 151.

⁹ "In its common acceptation the word 'animal' includes all irrational beings", *Commonwealth v. Turner*, 14 N. E. 130, 145 Mass. 296. "In legal terminology the word 'animal' includes all animate beings not endowed with reason, and therefore excludes man" (*Novissimo Digesto Italiano*, "Animali" para. 1).

¹⁰ In Latin, *animal* = living, animate being: from *anima*, meaning breath, life.

¹¹ "The present state of science makes it impossible to give a definition which distinguishes in a few words between animal and vegetable; it is even debatable whether this distinction is worth preserving in the case of the most primitive organisms". (A. Lalande, *Vocabulaire technique et critique de la Philosophie*, fifth edition, Paris.)

indicates that it should be given another or more restricted meaning".¹²

10. In Roman law animals were classified as *fera* (wild), *mansueta* (tame) and *mansuefacta* (domestic).¹³ This distinction has retained its importance in contemporary systems of law, particularly in transport law, in which the risks involved are assessed according to the degree of "tamelessness" of the animal, thus following the customary approach which stresses the special dangers of this cargo due to the inherent vice of the animal's excitability¹⁴ or simply affirms that it is generally recognized that the transport of animals entails special risks which cannot be dealt with by standard controls embodied in legislation.¹⁵ A different approach to the problem is based more specifically on the rights and obligations of the parties—the shipper, who is necessarily aware of the type of goods being carried, i.e. the animal, and must present them for transport accordingly, and the carrier, who, though under no obligation to carry this or any other goods, must, once he has agreed to carry it, ensure that, like any other goods, it reaches its destination safe and sound. The problem then presents itself as a specific application of the general principles relating to the diligence to be exercised by each of the parties for the protection of the goods carried.

The term "live animals"

11. The standard terminology of transport legislation refers to "live animals",¹⁶ the term used in the title of this study. In this terminology no attempt is made to clarify the meaning of this term, although the French "*vivant*" and the English "live" may not have exactly the same meaning. This lack of concern may be explained by the fact that the literature (notably in the field of Anglo-American law where the idea of exemption originated) has neglected to define the term more accurately. At a time when the need to respect life in all its forms is being impressed upon us, it may seem ironical that the fact that the goods are "live" is invoked in order to claim reduced responsibility, or no responsibility at all, for them.¹⁷

¹² 3 *Corpus Juris Secundum*, "Animals", para. 1 and decision cit.

¹³ Paras. 12-16, I. *De rer. div.* 2.1., and in D. II, 1-6; *de acquir. rer. dom.* 41, 1.3, paras. 14-16, *de acquir. vel amit.* poss., 41, 2.

¹⁴ Carver (by Colinvaux), *Carriage by Sea*, eleventh edition, 1963, para. 15 ("injuries arising from their own vice or timidity").

¹⁵ Knauth, *The American Law of Ocean Bills of Lading*, third edition, 1947, page 194.

¹⁶ With the exception of the Paris Convention, in which it was not felt necessary to specify, since the word "protection" appeared in the title, that the animals to which it relates are live animals (Explanatory Report on the European Convention for the Protection of Animals during International Transport, Council of Europe, Strasbourg, 1969, title and p. 8).

¹⁷ It was in reaction to the disastrous consequences of this approach that the RSPCA launched its SELFA (Stop the Export of Live Food Animals) campaign. In a report (meeting of 17 October 1972, page 2), the RSPCA shows that the trade in animals intended for slaughter is conducted in conditions "which will shock the minds and stir the consciences of every human person" and concludes that "the export carcase trade should be encouraged and developed to the point where the export of live animals for food is totally eliminated". The Explanatory Report of the Paris Convention (page 7, para. 1) recognized that this solution would be ideal from the point of view of the

12. This ambiguous term gives rise to confusion, for to stress the fact that the animals are "live" inevitably leads to the conclusion that they are perishable. The concept of "perishable" goods, although undoubtedly close to that of "live" goods is nevertheless entirely different from it and must not be confused with it. The term has been used from time to time, however, notably in modes of transport other than shipping, in cases of damage to an animal during transport.¹⁸ At any rate, perishable goods transported under ocean bill of lading were definitely not excluded from the Hague Rules;¹⁹ at the very most, these rules might, if put to the test, lead to an exemption being granted in favour of the ocean carrier on the grounds of the "inherent vice" of such goods.

13. Closer analysis of this ambiguous term reveals the idea of "*vivacité*", of "restlessness", of "vitality of the freight",²⁰ and of the "*nature vivante de l'animal*". This brings us to the truly typical characteristic of the animal as a special transport hazard—its capacity for irrational self-movement²¹ which enables it to give outward expression to its "intrinsic qualities and propensities".²² Because of the consequences, which are often unpredictable and uncontrollable, the fear aroused in animals by the unfamiliar experience of transport constitutes a specific risk which is related to the natural disposition of the animal and distinguishes it from inanimate goods and which, in the very nature of things and by virtue of its character, makes it more akin to a passenger than to an inanimate bale of cotton.²³ It was this indisputable fact that led a celebrated author,²⁴ criticizing a decision of the Commercial Court of Marseilles²⁵ which extended the live animal concept, for the purposes of exemption, to cover oysters transported in baskets, to ask whether it was legitimate to give a general and absolute sense to the term "live animals" and whether it might not be better to take account only

protection of animals. This state of affairs is also made possible by the fact that the transport of live animals is conducted in conditions of total freedom from responsibility.

¹⁸ See *American and English Encyclopedia of Law*, volume II, ed. 1887, Bill of lading, page 237; Willes J. in *Blower v. Great Western Railway*, L. R. 7 C. P. 655. See also, on aviation law, the discussion of article 23, para. 2 of the Warsaw Convention, as amended at The Hague.

¹⁹ At The Hague Conference in 1921, a proposal was made to include perishable goods in the exceptions mentioned in article 1 (c) of the 1921 Rules, because of the special danger involved in transporting them. The proposal was rejected only because the Committee felt that they would be covered by the provisions of article V (article 6 of the Brussels Convention of 1924) (International Law Association, Report on thirtieth Conference, volume II, *Proceedings of the Maritime Law Committee on the Hague Rules*, 1921, page 79).

²⁰ Hutchinson, *The Law of Carriers*, ed. 1906, Sect. 336, p. 343.

²¹ The judges noted, in *Kansas, etc. R. Co. v. Reynolds*, 8 Kan. 623, that "the voluntary motion of the stock introduces an element of danger in the transportation against which neither reason nor authority requires that the carrier insure . . .".

²² See *American and English Encyclopedia of Law*, volume III, ed. 1887, "Carriers of Livestock", p. 8, and the cases cited of "injuries arising from intrinsic qualities of livestock", all injuries caused in one way or another by the mobility of the animals.

²³ Hutchinson, op. cit., sect. 35, emphasizes the difference between this type of transport and the transport of ordinary goods.

²⁴ G. Ripert, *Droit Maritime*, Paris, 1952, II, p. 686, footnote 1.

²⁵ Court of Marseilles, 9 November 1948, *Revue Scapel*, 1948, 43.

of the criterion of the mobility of animals in deciding whether the discriminatory treatment prescribed in the Rules should be applied to them. Another author,²⁶ in his analysis of this term, concluded that it applied only to "animals for which an attendant is generally provided, or which have at least some freedom of movement", adding that, in both French law and the Hague Rules, "in practice, it is mainly the carriage of cattle which is contemplated".

14. The literature is not the only source of doubts about the scope to be given to this term. The Paris Convention did not consider all animal species, but concentrated on those which made up the majority of international shipments,²⁷ endeavouring in particular to specify the protective measures necessary for "domestic solipeds and domestic animals of the bovine, ovine, caprine and porcine species".²⁸ It devotes only a brief general article to cold-blooded animals (article 46) and excludes from its specific frame of reference many creatures which, according to biological taxonomy, are classified as animals, while holding that "in principle, humane treatment should extend to all species of animals".²⁹

15. A similar observation is called for in the light of the varied aspects of current practice. The accidents involving animals during transport which are reported in the press relate mainly to animals transported in groups (cattle, sheep, equidae, pigs, rodents—rabbits, hares—and poultry), all of which are capable of self-movement. Court precedents, too, relate almost exclusively to these species. The decisions communicated by OCTI (see annex I), for instance, relate to the following species: bovidae (2), horses (2), pigs (2), dogs (2), poultry (2), rabbits (1). Those quoted in the *American and English Encyclopedia of Law*, under "Carriage of Livestock (loc. cit.) are concerned predominantly with cattle, horses, donkeys and mules, sheep, pigs and dogs. The *per capita* limitations laid down in certain standard contracts or national railway tariffs also relate to these species.³⁰ In addition, the way in which standard bills of lading are worded also indicates reluctance to give a general application to the term "live animals", since, in many cases, other

²⁶ F. Sauvage, *Manuel pratique du transport de marchandises par mer*, Paris, 1955, p. 36. In non-international transport, the French Act of 1966 does not exclude live animals, but allows the ocean carrier to exempt himself by contract from his liability for them. On the same subject, see S. Calero, *El contrato de transporte marítimo de mercancías*, Rome-Madrid, 1957, p. 33 and foot-note 46.

²⁷ Domestic solipeds and domestic animals of the bovine, ovine, caprine and porcine species; domestic birds and domestic rabbits, other mammals and birds; cold-blooded animals (article 2).

²⁸ Explanatory report on the European Convention for the Protection of Animals during International Transport, Council of Europe, Strasbourg, p. 7, para. 3.

²⁹ *Ibid.*, p. 7, para. 2.

³⁰ As in the British Charge Scheme, in which upper limits are specified for: horses, bovidae, pigs, sheep, donkeys, mules, dogs, deer, goats, poultry and other birds, rabbits and other small quadrupeds. The same is true of the General Conditions for the Carriage of Livestock of the Australian Commonwealth Railways (horses, cattle, mules, camels, donkeys, sheep, pigs, dogs or other small animals) and in East Africa, e.g. in Kenya, in the East African Railways and Harbour Act (art. 31: horses, mules, cattle with and without horns, donkeys, sheep, goats, dogs and any other small animals).

species are listed by name beside this term.³¹ One bill of lading which illustrates these doubts quite clearly is the Regular Long Form Inward Bill of Lading of United States Lines, which stipulates that "the term 'live animals' shall include birds, reptiles, fish and all animate things other than human beings". The Standard Conditions of Carriage of Goods printed on the back of the Contract for Conveyance of Livestock of the Belfast Steamship Co. Ltd. (see annex III), which set out the conditions governing the transport of cattle between Northern Ireland and the United Kingdom, carefully stipulate that "the expression 'animal' includes livestock, domestic and wild animals, birds, fishes and reptiles". Even in statistics the term is not given universal scope. The limited number of species on which there are statistics corresponds approximately to those listed above (cattle, sheep, pigs, poultry, horses, donkeys, mules) with, from time to time, more generic headings such as "live animals for food" (see statistics of ECAFE and Australia).

16. Neither this nor any other similar term occurs in the original Warsaw Convention or in the version amended at The Hague. It does, however, appear frequently in air waybills, in which it is customarily followed by a precise indication of the animal species concerned, in the space provided for "type and description of the goods".

17. Royer notes with approval³² an observation made by Schadee that, under the terms of article 1, paragraph (c) of the Hague Rules, live animals should be taken to mean animals which were alive on delivery for transport. The death of such animals during transport would not have the effect of invalidating any exemption clauses stipulated in respect of them by the carrier in the contract of carriage.

18. To sum up, the term "live animals", which was originally coined for the negative purpose of describing an exception to the range of goods which can be carried by sea, proves to be ambiguous and difficult to define precisely when an attempt is made to make a positive general statement of its substance. Furthermore, in practice, most of the animals transported belong to a limited number of animal species, whose capacity for self-movement may give rise to special hazards, a feature live animals share with other goods (perishable, dangerous, nuclear, etc.) that no one has ever dreamed of excluding from the mandatory framework of standard international rules.

19. This introduction would be incomplete without a brief review of the problem of statistics on the

³¹ As in clause 8 of the Uniform North Atlantic Bill of Lading Clauses, 1937 (Knauth, op. cit., first ed., 1937, p. 80: standard bill of lading still widely used in, for example, Italian shipping) deals separately with "live animals, birds and fish", while the version used in the Warship-Lading Form 1942 (Knauth, op. cit., third ed., p. 95) adds "reptiles". Clause 8 of the bill of lading of the Holland-Amerika Lijn relates to: "Live animals including reptiles and crustacea . . .". Clause 11 of the bills of lading of the Holland-West Afrika Lijn and of the Holland-Afrika Lijn and clause 9 of the bill of lading of the Australia West Pacific Line refer to "Deck cargo, livestock and plants"; the same formula is found in clause 9 of the Conline Bill 1950-1952 and of the bill of lading of Spain's Naviera Eco.

³² S. Royer, "Le transport sous connaissance en droit néerlandais", in *Le transport maritime sous connaissance à l'heure du Marché Commun*, Paris, 1966, p. 97.

transport of animals and of the health and veterinary aspects of transport of this kind.

Statistics

20. Statistics on the international transport of animals is another area in which it has been found difficult, and sometimes impossible, to gather pertinent information.³³ It is apparent from the information gathered from various sources that the available data must be treated with caution. Analysis of those data shows up their deficiencies and imperfections, which are attributable to, among other things: the lack of uniform criteria for compiling and evaluating the data, the discrepancy between the exports from one country to another and the imports of the latter country, and the incomplete, indeed misleading, nature of these data as a reflection of actual sales and shipping operations. In the last-mentioned context, a trade transaction may follow a course which is, in effect, entirely different from that anticipated and declared in good faith by the informants for statistical purposes. Others are influenced in making declarations by the fear that the information provided may be used for other purposes (taxes, customs, exchange controls), or may deliberately falsify them in order, for example to conceal a destination which they do not wish to reveal and which will be disclosed to the master of the vessel when he is at sea. In addition, cases of completely illegal transport of goods, particularly by sea, are by no means uncommon. An eloquent example of such a case is provided by the RSPCA in its report mentioned above.³⁴ Towards the end of 1970, the RSPCA learned of the signing of a £1 million contract for the shipment of cattle from Ireland to North Africa. Knowing of the inhumane conditions prevailing in such shipments and in the slaughtering process at the point of destination, and suspecting that a considerable proportion of the cattle would come "illegally" from sources in Northern Ireland, the RSPCA carried out an inquiry in co-operation with its Irish counterpart. In March 1971 it was discovered that cargoes of calves were being shipped regularly to North Africa from Greenore, a port in the Republic of Ireland, situated a few miles from the border with Northern Ireland. The producers of these cattle received a substantial subsidy, the cost of which was borne by the British taxpayer and which was intended to protect domestic meat producers against competition from foreign meat.³⁵ These large shipments of animals will undoubtedly not have been reflected in the statistics. In the same report, the RSPCA condemns the common practice of declaring a final consignee who is not the true final consignee, in order to conceal contraventions of the 1957 Balfour Assurances on cattle export from the United Kingdom to continental Europe and the Republic of Ireland.

21. In any event the statistics³⁶ confirm the information regarding the considerable volume and the value

of such shipments; this is true of the numerous intra-continental shipments³⁷ and of the continental or inter-continental coastal trade, both import and export. Statistics often show, in the case of the developing countries, that the purpose of the imports is to improve livestock breeding, while exports consist of animals for slaughter, or so-called "exotic" animals. In this connexion, it is difficult to isolate in the figures provided transactions involving single animals or small groups of animals shipped to zoological gardens, circuses or pet dealers, the value of which exceeds that of animals transported in bulk. Details of such transactions would be interesting, in view of their financial importance to the exporting countries, in terms of the balance of trade.

Health and veterinary measures

22. Sanitary and veterinary controls play a major role in the transport of animals. They are of decisive importance in the initiation and completion of such transport—in, for example, identifying the animals, guaranteeing their fitness for carriage and, especially, preventing epizootic diseases. The veterinary officer may therefore be called upon to inspect prior to shipment the fittings of the vehicle used and its stocks of drinking-water and feeding stuffs, and to take steps at any time during carriage to treat or slaughter ill or injured animals, or to take appropriate measures in case of an epidemic. This is expressly provided for in the Paris Convention (articles 3, 12, 32). In principle, animals intended for international transport are not accepted for loading in the exporting country without a certificate³⁸ identifying them and guaranteeing that they are fit for transport and healthy and that there have been no epidemics at the place of origin for a certain period prior to their shipment. Since such carriage is often multimodal, the issue of certificates must usually be repeated at each break in transport. In the case of carriage by sea, a new veterinary inspection will take place before shipment. Ocean carriers require a veterinary health certificate before animals are loaded, as a guarantee against a refusal to allow unloading at the destination, a refusal which would constitute an obstacle to delivery.³⁹ At the destination the animals

³⁷ See the study by Dr. C. O. Ilori, of the ECA/FAO Joint Agriculture Division, *Economics of Livestock Transport in the West African Sub-region* (Addis Ababa, August 1970). The importance of this traffic should increase considerably over the next decade, with the extension of intro-continental rail networks and especially road networks which will, among other things, provide land-locked countries with easier access to the sea.

³⁸ A veterinary certificate of origin and health for the animals generally mentions the following: number, species, sex, age of the animals; countries of origin and destination; name and address of the owner and the consignee; mode and means of carriage; date of the health examination. It certifies that the animals have been at the place of origin for a certain period; that they were kept under special observation for a certain number of days during this period and were found to be healthy, free of ectoparasites and fit for transport; that the animals and the districts of origin, transit and loading are free from contagious diseases; that the means of transport have been regularly cleaned and disinfected.

³⁹ A quarantine period must often be observed before shipment, either because the animal has just arrived from another country and is therefore placed under quarantine on arrival until reshipment, or because the country of destination, fearing the introduction of epidemic germs into its territory, re-

³³ Thanks are due to the relevant departments of FAO for their advice and their kind offer to furnish any information available to them.

³⁴ Report referred to in foot-note 17, para. 11, foot-note 13.

³⁵ *Ibid.*, Appendix A, p. 3.

³⁶ Thanks are also due to the Government of Australia, ECAFE, and ECA for information provided.

are generally quarantined for varying periods. Here again, the role of the veterinary officer is decisive, since quarantine cannot be lifted, and consequently delivery cannot be made, without a health certificate.

23. These repeated health inspections can have a number of consequences in the performance of carriage of animals by sea (compulsory slaughtering, delays caused by quarantine or rest periods prescribed as treatment), the entire cost of which is always borne by the shipper. They might also have a decisive effect in determining (in accordance with the applicable law, since the application of the Rules is excluded by definition) the actual times of taking charge of the goods and delivery. The result of these inspections, in practice, is that at the point of shipment, the carrier will actually take the animals into his charge under ship's tackle and on presentation of the health certificate of export. At the destination, on the other hand, the required intervention of the health authorities will separate the time of unloading under ship's tackle and delivery to the consignee.

24. *De lege ferenda*, the effect of the health authorities' action must be taken into account when determining tackle-to-tackle responsibilities, on the basis of the carrier's obligation as custodian of the goods. In other words, the consequences of an extension in time of the carrier's responsibility for animals subject to health controls will have to be studied, since there will be no real "*receptum*" by him or by his agents if the animals are not yet in his custody, or have been withdrawn from his custody prior to loading and after discharge. However, of the rules drafted by the Working Group, the text drawn up at the third session seems to be compatible with these factual situations.⁴⁰ At the point of shipment, the carrier would be responsible for the animals from the time he has taken them over from the health authorities, or on presentation of a certificate from such authorities, and consequently before the animals have passed the ship's rails,⁴¹ or, in other words, from the time when actual *receptum* begins. On the other hand, at the destination the said carrier would be deemed to have delivered the goods by handing them over to an authority or another third party to whom the goods must be handed over under the laws and regulations applicable at the port of unloading, i.e., even after the goods have passed over the ship's rails:⁴² here paragraph (ii) (c) of the proposed text would apply specifically to the health authorities at the port of unloading to whom, under local laws and regulations, the animals must be handed over. In this context, the dele-

quires quarantine before shipment to its ports and, in some cases, action by its official representatives at the place of shipment. For companies participating in the West African Joint Service, "in addition to a veterinary certificate showing that the animal are fit for shipment, a quarantine clearance certificate is also required before the animals are accepted". Likewise, for the Far Eastern Freight Conference, "it is normal in most countries to which a shipment of animals is going to be made to insist on receipt, in advance of the shipment, of a Certificate of Health in respect of the animals, signed by the Government Veterinary Officer in the country of origin and for a Clearance from the country of destination to be made to the country of origin before shipment is allowed".

⁴⁰ Report of the Working Group, third session (A/CN.9/63), para. 14; UNCITRAL Yearbook, Vol. III: 1972, part two, IV.

⁴¹ *Ibid.*, proposed revision of art. 1 (e) preamble of para. (ii).

⁴² *Ibid.*, proposed revision of art. 1 (e); para. (ii) (c).

tion of article 7 of the Hague Rules, decided upon by the Working Group at its third session,⁴³ would be acceptable even in respect of live animals, since a broadening of the scope of responsibility at both ends of the voyage would cover only the periods from the completion of health formalities to loading, at the shipment point, and from unloading to the beginning of the health formalities at the destination. The animals would thus be treated on the same footing as all other goods subject to one form of mandatory action or another by a third party vis-à-vis the contract of carriage. On this very important point, therefore, the carriage of animals would be compatible with the proposed new rules.

III. THE PROBLEM OF THE INTERNATIONAL CARRIAGE OF LIVE ANIMALS BY VARIOUS MODES OF TRANSPORT

A. International carriage by sea

25. Since this subject is dealt with in detail in the following chapter, it will be sufficient to state at this point that the provision of the Hague Rules which refers, by way of exclusion, to this type of carriage is the definition of "goods" (article 1 (c)):

"Article 1. In this Convention the following words are employed with the meanings set out below:

"...

"(c) 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried."

26. This provision places live animals outside the sphere of application of the Rules. The carrier of live animals will therefore be unable to invoke the protection of the Rules (exclusion of particular cases, limitation of liability, prescription, etc.). But he will be able to include in the contract any non-liability clause which is normally allowed when the Rules do not apply. The rules of liability governing his contract will depend on the law deemed applicable under the rules on conflict of laws. Carriers derive considerable advantages from the narrow scope of this definition. That is why the report by the UNCTAD secretariat suggested that it should include live animals, in order to avoid conflict of laws and to give fair treatment to the owners of this type of goods, which plays an important role in the export trade of many developing countries.⁴⁴

B. International carriage by air

27. Article 23 of the Warsaw Convention, which is based directly on article 3, paragraph 8 of the Hague Rules, made the Convention peremptory law by prohibiting air carriers from including any exemption clause whatsoever in the contract of carriage.⁴⁵

"Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve

⁴³ *Ibid.*, para. 15 (c) and para. 17.

⁴⁴ TD/B/C.4/ISL.6/Rev.1, paras. 187-188 and foot-note 146.

⁴⁵ O. Riese, "Die internationale Luftprivatrechtskonferenz in Haag". *Zeitschrift f. Luftrecht*, 1955, p. 28.

the nullity of the whole contract, which shall remain subject to the provisions of this Convention."

28. After the war, the Legal Committee of ICAO proposed to reduce the severity of this provision and to allow the air carrier to exempt himself from the risks arising from the inherent quality or defect, whether latent or not, of the goods (Rio draft, article XIII). After lengthy discussions, the Hague Protocol added to the above-mentioned article 23 a second paragraph, the English and French versions of which differ:

"2. L'alinéa 1^{er} du présent article ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées."⁴⁶

"2. Paragraph 1 of this article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried."

29. In this connexion, it should be noted, first of all, that goods which would be covered by the clauses referred to in the new text are not excluded from the scope of the Convention (as live animals are in the Hague Rules). In other words, the general prohibition is removed only in this specific case. In all other cases, the Convention will continue to govern the classes of the contract of carriage (those relating to, for example, fora and prescription or other provisions, such as article 25 on wilful misconduct, or its equivalent, on the part of the carrier).⁴⁷

30. Secondly, it seems clear that the carriage of live animals was not contemplated either originally or during the *travaux préparatoires* on this new provision.⁴⁸ This provision cannot be ignored here because of the English version (see para. 28) and because of the standard practice of inserting in air way bills clauses such as "Carrier is not responsible for death of animal due to natural causes",⁴⁹ which some are seeking to legitimize as an admissible exemption clause, relying on the basis of the above-mentioned paragraph 2, on the quality (the word "spéciale" was deleted from the French text at the Hague) or inherent vice (the words "whether latent or not" were also deleted) of the animal. But it has been observed that such clauses tend to affect, sometimes strongly, the general principle of liability set forth in article 20 of this Convention, and that such a clause might even seem superfluous, since, in the context of article 20, it would apply only if, the death of the animal being attributable to natural causes, the carrier "proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures". However, owing to their formal resemblance to "livestock clauses" in shipping, such clauses may because of being transposed

from one mode of transport to another in people's minds, give rise to confusion, and possibly to the endless litigation which the French delegation at the Hague foresaw.⁵⁰

31. A third point should be noted in connexion with the misunderstandings to which the difference between the English and French texts might give rise. On the one hand, the word-for-word reproduction in the English text of the wording of article 4, paragraph 2 (*m*), of the Hague Rules should logically, with respect to "inherent defect, quality or vice", lead English-speaking jurists⁵¹ to rely on the body of relevant common law experience, especially in the field of shipping law—that body of experience mentioned in a foot-note citing Carver, on this very subject of live animals, in the Secretary-General's report⁵² which is justly critical of the application to live animals of the exception for "inherent vice" provided for in the above-mentioned paragraph 2 (*m*).⁵³

32. After the rejection of the proposal to enumerate the goods covered by this exemption (which included "wild animals" in addition to "highly perishable goods"),⁵⁴ the final drafting of the French text was preceded by laboured debates on the causal relationship between the quality or vice of the goods and the production of the damage, and on the consequences of a fault of the air carrier or his agents and servants as a factor contributing to its production. For obvious reasons, continental writers have not adopted as clear-cut a position as their English counterparts on the words "quality" and "inherent vice". Their definitions are rather imprecise and intricate, and in some instances make it possible to classify a specific attribute as either a quality or an inherent vice of the goods, according to the circumstances.⁵⁵

33. On the subject of proof, the air carrier must prove: that an agreement on the exemption in question has been concluded; that the exemption is applicable to the damage which occurred in the case in point; that the cause of the damage must be attributed

⁵⁰ Cit. by Riese, *op. and loc. cit.*

⁵¹ Thus McNair, in *The Law of the Air*, London, 1964: "This phrase has a well-recognized meaning in cases of carriage by sea (see *Scrutton on Charter-parties*, 17th ed., p. 201, and ... *Carver's Carriage by Sea*, 11th ed., para. 15, p. 15) and by land (*Hambury's Laws*, 3rd ed., vol. 4, p. 145) and in insurance policies (see ... *Arnould on Marine Insurance*, 15th ed., para. 762, p. 717), and it is necessary to consider it further here. Briefly, it may be said that the loss or damage must have resulted from some quality and defect inherent in the article concerned, which in the light of the events which have occurred rendered it unable to withstand the normal incidents of the carriage contemplated by the parties to the contract in question".

⁵² Report of the Secretary-General on the responsibility of ocean carriers for cargo bills of lading, A/CN.9/63/Add.1, para. 67 and foot-note 69; UNCITRAL Yearbook, Vol. III: 1972, part two IV, Annex; for Carver, see foot-note 11 *supra*.

⁵³ A/CN.9/63/Add.1, para. 73; UNCITRAL Yearbook, Vol. III: 1972, part two, IV, annex.

⁵⁴ Belgian proposal at the Hague, afternoon meeting, 14 September 1955.

⁵⁵ On the lack of precision of the text see the opinions concerning the example, cited by Garnault (The Hague, afternoon meeting, 12 September 1955), of lobsters which lose their shells and die at high altitude: is such damage due to the "quality" of the goods or to the act or omission of the carrier or his crew which caused them to be flown at high altitude without taking due precautions?

⁴⁶ The Spanish text, following the French text, reads "... pérdida ordaño resultante de la naturaleza o vicio propio de las mercancías transportadas".

⁴⁷ Riese, *op. cit.*, p. 29.

⁴⁸ Australia has rightly pointed out that "as amended by the Hague Protocol and supplemented by the Guadalajara Convention of 1961, this Convention does not purport to treat live animals as different in any way from other goods". (Study on Deck Cargo, Live Animals and Trans-shipment, in A/CN.9/WG.III/WP.4/Add.1 (vol. II), p. 46.)

⁴⁹ Another example: Live animals in the Wood case: "Carrier is not responsible for death of animal due to natural causes".

to the quality or inherent vice of the goods.⁵⁶ In fact, since the burden of proof is on the carrier, he would be wise to invoke both causes at once. The claimant, on the other hand, may prove, in rebuttal, that the damage was not caused by those risks or was only partially caused by them.

34. The IATA Conditions of Carriage⁵⁷ relating to goods⁵⁸ include live animals, together with explosives and perishable goods, among the goods which are accepted for carriage only if certain provisions of the air carrier's conditions of carriage are fulfilled (article 5, paragraph 5). While duly specifying at the outset that they operate subject to the binding provisions of the Convention or the law, these conditions state, with respect to the limitations on the air carrier's liability, that he is liable neither for losses, damage nor costs arising from either the death of an animal during carriage from natural causes or the death or injury of an animal owing to its behaviour or that of other animals (for example, bites, kicks, trampling, strangulation), nor for claims caused by, or having as a contributing cause, the condition, nature or natural disposition of the animals (article 14, paragraph 8).

35. In this context, IATA is to be commended for its efforts (see paragraph 7) to find a constructive solution to the problems raised by live animals by establishing its Live Animals Board and bringing into use the IATA *Live Animals Manual*. The manual will help to prevent damage, bring to light mistakes and omissions by the parties involved, and facilitate proof. It contains practical information on the receiving and handling of animals, customs, health and quarantine operations, and the basic and specific behaviour patterns of animals. With a commendable regard for balance, it sets out, on the one hand, the obligations of and care to be provided by the shipper (loading, stowing, provisioning, etc.), and the special instructions to be given to the carrier when the shipper does not have an attendant accompanying the animals. On the other hand, the manual indicates the measures to be taken by the carrier with regard to animals in general and the 231 species with which it deals, in particular. The fact that the carrier has strictly followed the instructions given in the manual will probably be regarded in many cases as a determining factor if he is required, under the terms of article 20 of the Convention,⁵⁹ to

prove that he took all the necessary measures to avoid damage.

36. According to our information, the question of the carriage of animals by air does not seem to have been specifically raised in the work at present under way at ICAO on the revision of the part of the Air Convention relating to goods.

C. International carriage by rail

37. The unification of the law on the carriage of goods by rail in Europe began with the Berne Convention of 1890—the source of both the International Convention Concerning the Carriage of Goods by Rail (CIM)⁶⁰ and the agreement on international carriage of goods (SMGS).⁶¹ Until the advent of the motor car, railways had from the start been regarded as monopolies controlling their operations and their tracks, against which the public had to be protected—hence the railways' general obligation to perform carriage and the strict liability rules imposed on them. This obligation was counterbalanced by permitting, in addition to the customary exemption clauses a number of special causes of exemption for goods which, in other modes of transport, many carriers might refuse or might accept only on certain conditions. Those goods include live animals. "The risk of carriage in these cases is thus left with the person entitled to the goods, on the view that he is generally the originator of the special dangers involved in them. In all these cases, the Convention removes the presumption of liability from the rail carrier and it is up to the claimant to prove that the damage was not attributable, in whole or part, to one of the risks which are presumed to have caused it."⁶²

38. The CIM (in both 1970 and 1961) contains two groups of causes of exemption of railways from the general principle of liability set forth in article 27, paragraph 1, (CIM 1970), normal causes (paragraph 2) and special (also called "privileged") causes (paragraph 3); the latter include the carriage of live animals:

"3. Subject to article 28 (2) of this Convention, the railway shall be relieved of liability when the loss or damage arises out of the special risks inherent in one or more of the following circumstances:

⁵⁶ W. Goldmann, *Internationales Lufttransportrecht*, Zurich, 1965, p. 138.

⁵⁷ The IATA Conditions of Carriage actually have the status of recommendations, whereas the IATA Conditions of Contract (which contain no provisions on the carriage of animals) are binding on the members of IATA.

⁵⁸ The carriage of animals as luggage of their master, the passenger, will not be considered here. Their acceptance is subject to the prior agreement of the carrier, even in the case of small animals (IATA, Conditions of carriage of passengers and luggage, art. 9, paras. 4 and 13).

⁵⁹ The Warsaw Convention, art. 20.—"The [air] carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures". This article should be compared (as was done in the Secretary-General's report in connexion with the Hague Rules: A/CN.9/63/Add.1, para. 236; UNCITRAL Yearbook, Vol. III: 1972, part two, IV, annex) with the new—perhaps more lenient—provision drawn up by the Working Group at its fourth session (A/CN.9/74, para. 28; UNCITRAL Yearbook, Vol. IV: 1973, part two, III, 1).

⁶⁰ The CIM, signed in Rome in 1933, was revised in 1952, 1961 and 1970; the 1970 CIM has not yet come into force. The work of revision is undertaken periodically in Berne by the OCTI.

⁶¹ *Soglashenie o Mezhdunarodnom Gruzovom Soobshchenii* (SMGS), which came into force in 1951; the 1955 version has been in force since 1956. Unlike CIM, this Agreement was concluded (in German, Chinese and Russian) not by the Governments of the socialist countries, but directly by the railways administrations of those countries. For mixed CIM/SMGS traffic, the provisions of the former continue to govern traffic. See the German text with a French translation in annex 1 of *Bulletin des transports internationaux par chemins de fer*, 1960. The work relating to this Convention is handled in Warsaw by the Organization for Railway Collaboration (OSZHD).

⁶² Study by the Secretary-General on the economic implications of the Convention on... combined transport (ST/ECA/160), para. 42.

“... ”

“(g) The carriage of livestock;⁶³

“(h) The carriage of consignments which, under this Convention, or under the conditions applicable or by special agreement made with the sender and referred to in the consignment note, must be accompanied by an attendant, in so far as the risks are those which it is the purpose of the attendant to avert”.

With regard to the burden of proof, the CIM provides that (article 28, paragraph 2):

“2. When the railway establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 27 (3) of this Convention, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.”

39. The literature stresses the fact that the specific danger of transporting animals by rail arises from their natural disposition.⁶⁴ But some writers have considered that this argument is superfluous and that other causes of exemption (such as those inherent in the nature of the goods, or the fault of the shipper) are quite sufficient.⁶⁵ The general view is, nevertheless, that this exemption is justified because it is the shipper's responsibility to take the necessary measures to avoid damage by supervising his goods or having them supervised. That being so, the justification seems to be based on the shipper's obligation to have his goods accompanied by an attendant. It is, in fact, on this basis and on this condition that animals are accepted for carriage under article 4, paragraph 1 (d) of CIM (1961). Under this provision, consignments of live animals must be accompanied by an attendant provided by the shipper, unless the animals in question are small, and are packed for transport in properly-closed containers, or unless the tariffs or inter-network agreements provide for exceptions; the shipper must specify in the consignment note the number of attendants or the fact that there is no attendant. Nevertheless, the CIM of 1970, in the same subparagraph (d), while reaffirming the shipper's obligation to provide an attendant to accompany the animals, added a new exception: the case in which the railways waive the attendance requirement at the request of the shipper. This new provision could have serious consequences, since “in such cases, except where otherwise provided, the railway is relieved of liability for any loss or damage resulting from a risk which it was the purpose of the attendant to avert”—a clear reference to the above-mentioned special cause of exemption in article 27, paragraph 3 (h). OCTI does not seem to be considering for the next CIM any amendment of the rules just outlined.

40. If the railway establishes that the damage took place during carriage of the animals, it will be exempted from liability if the fact of carriage alone accounted for the damage. But it is unthinkable, notes Rodière,⁶⁶ that the railway carrier should never be liable solely because the damage was sustained by a live animal. If he were to be relieved of liability by the mere fact that the nature of the damage (a broken leg, for example) may arise from the circumstance that the article carried was a live animal, no animals would ever again be entrusted to such a carrier; “and the outcome would be both uneconomic and legally absurd, because the carrier undertook to carry live animals and not the corpses of animals.”⁶⁷ The carrier will therefore be unable to confine himself to claiming that live animals were involved. He must establish that, *in the circumstances of the case*, the loss or damage may have been caused by the live nature of the animals.

41. The CIM therefore sets forth a precise sequence of proofs and rebuttals.⁶⁸ The carrier must prove: (1) that *live animals* are involved; (2) what *the factual circumstances* of the occurrence were; (3) that those circumstances justify the affirmation that the damage *may have been* caused by the fact that live animals were involved. Moreover, in this special case, the railway may also be able to rely on article 4, paragraph 1 (d), 1, and thus to claim that the special clause contained in article 27, paragraph 3 (h), is applicable, since the animals must in principle be accompanied by an attendant. When the carrier has thus met these requirements regarding proof, the claimant, in turn, will have the right to establish that the damage was not caused, totally or partially, by this particular risk. It should be noted at this point that there is still some controversy as to whether the provisions of articles 27 and 28 of CIM, taken together, amount to exemption from carrier's liability (with relief from liability and burden of proof on the claimant) or only to a reversal of the burden of proof.⁶⁹

42. This mechanism will not, therefore, apply when the damage can be traced to an occurrence in which the causal relationship (which is both logical and equitable) between the special risk and the said damage does not exist. A typical case of this would be a derailment or collision in which—through no fault of the claimant—an animal is killed and the railway is at fault. In such a case the claimant must prove the absence of a causal relationship. In this connexion, it is interesting to note that many years ago in an entirely different geographical and legal context, the court decided in *Palmer v. Grand Junction R. Co.*, 4 Mee. and W. 749, that it would be unreasonable to exempt the carrier of live animals from liability for all accidents attributable to the special nature of the goods without regard to the question of fault: such a rule would relieve the carrier of all the necessary precautions imposed on anyone who becomes a “bailee for hire” of animals and put the owner

⁶³ In 1933 CIM this subparagraph (g) referred to the special danger which transport constitutes for live animals.

⁶⁴ De Nanassy-Wick, *Das Internationale Eisenbahnfrachtrecht*, Vienna, 1965, p. 197, refers to “natural disposition” (“natürliche Beschaffenheit”).

⁶⁵ O. Loening, *Internationales Übereinkommen über den Eisenbahnfrachtverkehr vom 23.10.1924*, 1927, p. 681; F. Seligsohn, *Das Internationale Übereinkommen über den Eisenbahnfrachtverkehr (IUG)*, 1930, p. 421, foot-note 56.

⁶⁶ R. Rodière, *La CMR*, *Bull. transp.*, 1963, para. 15.

⁶⁷ *Ibid.*, 1970, para. 78 et seq.

⁶⁸ F. Durand, *Les transports internationaux*, 1956, No. 150-151.

⁶⁹ R. Rodière, op. cit., 1963, para. 15; J. Hostie, “Note sur le par. 3 de l'art. 27 CIM”, *Bull. transp. intern. par chemin de fer*, 1957, p. 58 et seq.

of the animals entirely at the mercy of the said carrier. In this particular case, which is the subject of a commentary in the 1887 *American and English Encyclopedia of Law* (see "Carriers of Live Stock", loc. cit., p. 4), the damage, caused by a derailment in which horses had been killed, was not linked to the special characteristics of the goods.

43. The SMGS—probably because of its closer historical links with the old railway Conventions—lays greater emphasis on the obligation to provide an attendant and draws the logical conclusions from the key role of the attendant. Article 5, paragraph 2, provides:

"2. Perishable goods . . ., live fish and other live animals shall be carried only when accompanied from the sending station to the station of destination by attendants provided by the sender or by the consignee. Exceptions to this provision are small animals and birds, dispatched singly without trans-shipment in properly-closed cages, crates, baskets, etc."

In addition, article 10 specifies that live animals shall be carried only in waggon-loads accompanied by an attendant. Finally, with regard to the liability of the railway, article 22, paragraph 2, stipulates:

"2. The railway is not liable in case of total or partial loss of goods, goods missing or damage to goods, when the loss, deficiency or damage results:

" . . .

"(f) from the fact that the attendant provided by the sender or by the consignee has not taken the measures necessary for the safety of the goods;"

and paragraph 7 of the same article 22 states:

"7. When, in the circumstances of the case, the loss or damage can be attributed to one of the causes specified in paragraph 2, . . . (f) . . ., it shall be presumed that it was so caused, unless the sender or the consignee has proved that it did not result therefrom."

44. With regard to national practice, it will be recalled that in certain countries (for example, the United Kingdom, Australia, Kenya: see paragraph 15, footnote 30), the responsible railway is entitled to set limits on compensation which vary according to the species of animal. A statement of value, together with insurance, is possible up to a stipulated maximum value. In its study of the question submitted to the Working Group, Australia suggested that consideration be given to this solution.⁷⁰

45. Like IATA, UIC has devoted attention to helping the parties involved in the carriage of live animals by rail to find a solution of their practical problems, which often fall outside the scope of the Convention. The UIC register, now in preparation (para. 6), sets out in detail the rules to be observed and the measures to be taken to ensure the best conditions of carriage for the animals, distinguishing between the obligations of the railway itself, the shipper and the attendant, and those which are common to them all. A comparison between the UIC draft register and the IATA Manual shows that the texts are complementary to a

large extent and that they could even serve as a basis for a useful intermodal agreement in this field.

D. *International carriage by road*

46. The importance and volume of the national and international carriage of live animals by road are made even more strikingly apparent on occasions when thousands of pitiable cargoes are held up at frontiers by a customs strike. In every continent roads provide a direct internal infrastructure for the carriage of animals. They are an irreplaceable link in the intermodal chain, from the place where the animals are raised to the place where they are taken over by another mode of transport (often the main mode), and from the place of unloading to that of final use. With regard to the developing countries, especially the land-locked developing countries,⁷¹ even a rudimentary road infrastructure plays a vital role in their animal exports (even at the regional or subregional level) and imports (largely for breeding purposes).

47. One of the most recent conventions in transport law, CMR (Convention on the Contract for the International Carriage of Goods by Road), which was signed at Geneva on 19 May 1956, is based on a UNIDROIT draft; it covers road transport in Europe and to and from Europe, interregional and even overseas road transport (by trans-shipment). Its provisions, which are modelled largely on CIM, particularly with regard to the carriage of live animals, represent a first step towards intermodal harmonization of carrier's responsibility.

48. Like CIM, CMR provides for two sets of grounds for exemption from the general principle of the road carrier's liability (article 17, paragraph 1): general grounds (paragraph 2) and particular or "privileged" grounds (paragraph 4), which include the carriage of live animals:

"4. . . ., the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:

" . . .

"(f) The carriage of livestock."

49. The parallel with CIM is not exact on this point, since CMR does not require the road carrier to perform carriage and contains no provision similar to article 27, paragraph 3 (g) of CIM (carriage accompanied by an attendant). This is explained by the fact that there is no obligation in CMR to have live animals accompanied. The problem of attendance and the possible consequences of its absence are covered by general law. Thus the carriers might prove that the consignment should have been accompanied by an attendant and claim, even if no exemption applied, that that fact relieved him of liability because it constituted determining fault on the part of his client.⁷²

50. What has been stated with regard to burden of proof in paragraph 41 is also valid in the context of CMR, article 18, paragraph 2, of which reproduces the wording of article 28, paragraph 2, subparagraph 1 of CIM:

⁷¹ See, for example, the study by C. O. Ilori, op. cit., and in particular the maps on "Major Trade Flows in Livestock and Meat Products in W. Africa" and "Main Stock Routes in W. Africa".

⁷² R. Rodière, loc. cit., para. 17, p. 483.

⁷⁰ Replies to the questionnaire on bills of lading, A/CN.9/WG.III/WP.4/Add.1 (vol. II), para. 31.

"2. When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall however be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks."

51. With regard to the carriage of animals, CMR is again not exactly similar to CIM. The authors of the UNIDROIT draft found the 1933 CIM (see footnote 63) to be too advantageous for the carrier in this respect. In their opinion, the road carrier should not be able to rely, for relief from liability, on the fact of the carriage of animals unless he proved that he had taken all steps normally incumbent upon him and that he had complied with any special instructions issued to him. This is the way in which article 18, paragraph 3 (g), of the draft CMR prepared by UNIDROIT supplemented the provisions borrowed from the rail Convention. When the UNIDROIT draft was revised at Geneva, the ECE Working Group combined questions of burden of proof in a single provision (article 18 of the present CMR) (this explains why only the principle of exemption remains in article 17, paragraph 3 (g) of CMR) and transferred the part of the former text relating to the burden of proof to form paragraph 5 of article 18, which was accepted without discussion, the effect being considerably to limit the scope of the exemption⁷³ and to favour the claimant:

"5. The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him."

The road carrier will thus be in a less favourable position than the railway because he must provide such proof in addition to the three types of proof described in paragraph 41 above, whereas the railway benefits from the additional exemption provided by the presence (or absence) of an attendant.⁷⁴ Note will be taken of the reference in the new paragraph 5 to "any special instructions" issued by the shipper concerning the specific measures and precautions to be taken,⁷⁵ necessitated by the fact that CMR does not require the presence of an attendant.

52. Decision No. 56 on international road transport, adopted under the auspices of the Board of the Cartagena Agreement by the Andean Group on 20 August 1972, refers to animals in so far as it excludes them from the special type of cargo called the

⁷³ *Ibid.*, para. 20, p. 483.

⁷⁴ This "privileged" exemption and its corollary in paragraph 5 are viewed sceptically by Rodière (*CMR, Bull. transp.*, 1970, para. 87), who feels that in practice privileged causes of exemption so advantageous are resisted, and that legal arguments tend to concentrate on proof of inherent vice and the definite causal relationship between such vice and the damage.

⁷⁵ This provision creates a logical connexion between the carriage of live animals agreed to by a carrier who is not obliged to perform carriage, and the carriage of dangerous goods knowingly accepted by the carrier. It is similar in purpose to the information which, in combined transport, the consignor of dangerous goods must give to the CTO under article 7, paragraph 1, of the draft TCM Convention.

encomienda.⁷⁶ They are not referred to in connexion with *carga* itself.⁷⁷

However, in referring to carrier's responsibility, article 48 (b) of annex I states that the carrier shall be relieved of his liability in principle if loss, damage or delay is due to: (a) fault or negligence of the person authorized to dispose of the cargo or to incorrect instructions given by that person; (b) inherent vice of the cargo; (c) *force majeure* or accident; (d) reservations of the carrier.⁷⁸

53. Attention is drawn, among national regulations, to the position of British road carriers,⁷⁹ who must conclude a special contract in order to be covered by exemptions and limitations on railways. A standard contract is the "Conditions of Carriage of Livestock (other than Wild Animals)" of the Road Haulage Association, under which the carrier is liable only if the claimant proves that the damage was caused by wilful negligence of the carrier or his servants. This contract also lays down *per capita* limitations on compensation for the various types of animals covered by the standard contract. While Spanish road transport law associates damage to live animals with the concept of the nature or inherent vice of the goods, which relieves the carrier of liability,⁸⁰ French law has stringent provisions governing the road carrier in article 103 of the Commercial Code, as amended by the Act of 17 March 1905 (Rabier Act).

54. The International Road Transport Union (IRU) seems to have been impressed by the example given by IATA and UIC in the matter of instructions designed to facilitate the carriage of animals, and it plans to study this matter. The concept of "special instructions" in article 18, paragraph 5, of CMR might serve as a good point of departure for this work. It should be noted that the proposals made by IRU in 1967 for the revision of CMR did not refer to the régime for the carriage of live animals.

E. Carriage by inland waterway

55. With regard to carriage by inland waterway, the most recent subject of transport law unification, the

⁷⁶ *Encomienda*: cargo of up to 20 kg or 100 dm³ carried by passenger vehicles in a suitable compartment, with the exception of live animals, explosives and substances which are physically hazardous to persons (chapter 1, article 1, Definitions).

⁷⁷ *Carga*: any goods which may be commercially carried, with the exception of *encomiendas* and *equipaje*. (Chapter 1, article 1, Definitions: *equipaje* is defined as personal effects which the traveller normally carries with him).

⁷⁸ These reservations may relate to the quantity of packages, their marks and numbers, their apparent condition and packaging, the gross weight or volume of the cargo, as the case may be. UNIDROIT reserves the right to complete this paragraph, if necessary, when it has received the text of the *Convenio sobre Transporte Internacional Terrestre* between the Argentine Republic, the Republic of the United States of Brazil and the Eastern Republic of Uruguay (to which Chile and Paraguay subsequently acceded).

⁷⁹ O. Kahn-Freund, *The Law of Carriage by Inland Transport*, London, fourth edition, pp. 367-369.

⁸⁰ F. M. Sanchez Gamborrino, "La naturaleza y vicios propios de las cosas causa de exoneración de responsabilidad del porteador", *Rev. derecho mercantil*, 1953, p. 36.

draft Convention on the Contract for the Carriage of Goods by Inland Waterways (CMN), prepared by UNIDROIT in 1950-1953, followed the ocean carriage example, which still predominated in the early post-war period and, like the Hague Rules, excluded live animals from its definition of "goods" (article 1 (d)).

56. When CMN was revised by the Economic Commission for Europe (ECE) in 1954-1959, that feature was abandoned in favour of provisions of road carriage conventions which offered better safeguards for goods. The revised draft of CMN (1959-1960) embodies this basic change, which was also influenced by CMR, just concluded at that time. Article 16, paragraph 1, of CMN thus uses the wording of article 17, paragraph 3, of CMR, with a subparagraph (f) containing the exemption of the carrier of live animals. With regard to burden of proof, article 16, paragraph 2, of CMN corresponds to article 18, paragraph 2, of CMR. The draft CMN does not, however, reproduce the provision in article 18, paragraph 5, of CMR which requires more rigorous proof from the road carrier in this particular connexion.

57. This draft, which could not be opened for signature in 1960, is now being revised, under the auspices of ECE, by a committee of governmental experts convened by UNIDROIT. So far, no amendments have been proposed to the provisions of the draft relating to live animals.

58. With regard to Danube traffic, an Agreement on the general conditions for goods was signed at Bratislava on 26 September 1955 between the Danube river transport enterprises of Bulgaria, Hungary, Romania, Czechoslovakia and the USSR; it lays down conditions for the carriage on this river of those countries' imports and exports. German and Austrian enterprises have since acceded to the Agreement. Like SMGS (paragraphs 37 and 43), this is not an inter-State convention. It is based on CMN drafts and existing standard bills of lading, particularly those used on the Rhine. It contains no definition of "goods" and makes no reference at all to live animals. It must therefore be assumed that live animals are goods like any others. It should, however, be noted that article 31 provides that:

"Attendants designated by the shipper may accompany the goods during carriage if so agreed by the carrier and the shipper".

In this case, the carriage of livestock does not seem to constitute a special ground for carrier's exemption. At most, under article 50 (d), he will not be liable for:

"(d) damage to goods susceptible by their very nature to total or partial loss, or to damage, particularly by rust, internal decay, frost, desiccation, evaporation, putrefaction, etc., provided that such damage has occurred despite the diligent care exercised by the carrier during the performance of carriage".

59. With regard to commercial practice, note should be taken of the draft Conditions of carriage by inland waterways (*Beförderungsbedingungen der Binnenschifffahrt*) of 31 January 1964, prepared for the Rhine by the International Union for Inland Navigation (UINF). Paragraph 16 (particular cases of exemption from liability) of this text provides that:

"1. The carrier shall not be liable:

"...

"(e) in respect of live animals, for damage caused by the risks inherent in the carriage of such animals.

"2. If damage occurs which may, in the particular circumstances, have been due to one of the risks referred to in paragraph 1, it shall be presumed, unless there is proof to the contrary, to have resulted from the said risk".

60. This text corresponds to paragraph 59 (2), No. 5, of the German *Binnenschiffahrtsgesetz* of 15 June 1895-20 May 1898, of which paragraph 65 (2) provides that the full freight must be paid even for animals which have died *en route*.

F. International combined transport

61. None of the draft Conventions on the contract for the international combined transport of goods, including the draft TCM Convention prepared by the UNIDROIT Round Tables, refer to the carriage of live animals. Based on the "network" system, they would apply, in the event of damage to an animal which occurred on a specific route segment, the régime applicable to the carriage of animals in the mode of transport concerned. With regard to the basic (or residual) system, applicable if the place where the damage occurred is unknown, UNIDROIT's own drafts placed all goods on the same footing and provided exemption for the principal carrier only if he proved that the damage occurred in circumstances which excluded any fault on his part or that of his servants or agents, the proof being determined on the basis of the duties incumbent upon a diligent principal carrier. The TCM drafts, however, contain a long list of exemptions from the basic liability of the CTO, including inherent vice of the goods (article 9, paragraph 2 (e); article 9 A *bis* (a) *in fine*, document E/CONF.59/17). During discussions of these texts, some members wished to include in this concept the special risk inherent in the carriage of live animals (see also chapter VI).

62. In practice, container transport operators already carry live animals (for air transport, the IATA Manual describes a number of model containers designed for various species of animal). Containers for livestock are placed near the tail. Dogs and cats are also carried in kennel containers. In late 1972, Overseas Containers Limited (OCL) began to carry horses, accompanied by a groom engaged by the consignor (who signed a statement of exemption for the groom). The live animals thus carried were covered by OCL's ordinary combined Transport Bill of Lading, on which the following words were stamped:

"Livestock: in addition to and notwithstanding the provision of the tariff, the Carrier shall not be liable for any loss whatsoever and howsoever caused. In the event of the Master, in his sole discretion, considering that any livestock is likely to be injurious to the health of any other livestock or of any person on board, or to cause the vessel to be delayed, such livestock may be destroyed and thrown overboard

without liability attaching to the Carrier.⁸¹ The Merchant shall indemnify the Carrier against the cost of veterinary services on the voyage and of providing forage for any period during which the carriage is delayed for any reason whatsoever and of complying with the regulation of Authority of any country whatsoever with regard to such livestock. The Consignee shall pay 15% of the freight charged for the parent animal, or whichever is the higher figure for any livestock born during the voyage and landed alive".

Some consignments of animals, usually horses, are also carried on the Europe/Australia route in specially designed stall-type containers.

IV. INTERNATIONAL OCEAN CARRIAGE OF LIVE ANIMALS

The Hague Rules and the Harter Act

63. By excluding live animals from the definition of "goods", article 1 (c) of the Hague Rules (as applied to ocean bills of lading) excluded *ipso facto* the carriage of such animals from the scope of the Rules (see para. 25). It merely reproduced the corresponding provision in the 1921 Hague Rules. The *travaux préparatoires* of both Conventions give very little information about this exclusion.⁸² It is usually associated, without further explanation, with the United States Harter Act (13 February 1893), section 7 of which states that sections 1 [loading, custody, proper unloading] and 4 [compulsory issue of a bill of lading] shall not apply to the transportation of live animals.

64. Prior to the Harter Act, it was uncertain, in both the United States and the United Kingdom, whether the carrier of live animals could be deemed to be a common carrier and, in particular, whether live animals could be placed on the same footing as goods which common carriers understood to be ordinary goods. In either case, even when live animals were considered as special goods because of their unpredictable and irrational tendencies and propensities (see para. 13), the carrier could not neglect them with impunity. The courts maintained an equitable balance, subject to the rules on burden of proof, between damage which could be attributed to a kind of vice resulting from the nature of these special goods and damage which clearly had to be attributed to the wrongful acts of the carrier and his servants, as the main cause of the damage (unseaworthiness of the ship, ship not properly manned and equipped, derailment of the train owing to the unsatisfactory condition of the track, etc.). Similarly, although exemption clauses for such carriage were permitted, the courts had the right to keep them under review, particularly in order to ensure that they were fair and reasonable.⁸³ This equitable approach was

⁸¹ The resemblance to the régime of dangerous goods in the Hague Rules (article 4, paragraph 6) will be noted.

⁸² In 1921 the discussion related mainly to the extension of the exclusion to perishable goods (International Law Association, *Report on the Thirtieth Conference, 1921*, vol. II, *Proceedings of the Maritime Law Committee on the Hague Rules, 1921*, pp. xliii, 78-80).

⁸³ See English and American case law of that time concerning the concept of reasonableness, considered not in abstracto, "Carriers of Livestock", in *American and English Encyclopedia of Law*, vol. III, Northport, L. I., 1887, pp. 10-15.

not, moreover, confined to American and English courts. Argentine judges of the time held that a clause of non-liability for the carriage of live animals included in the bill of lading did not have the effect of implying the absolute non-accountability of the carrier, but merely of imposing on the claimant the burden of proving that the damage was caused by the wrongful act or neglect of the master.⁸⁴

65. Nearly a century later and until the work of UNCTAD and UNCITRAL, the tendency was to take the exclusion of live animals for granted. On this subject, it is interesting to read Montier's⁸⁵ account of the events preceding the Harter Act's ruling on the carriage of live animals: "When the Harter Act was introduced in the United States Congress, the United States had a considerable trade in live animals, a large proportion of which were exported by sea . . . the Act would have affected shipowners quite seriously. It would also have affected the export of livestock because of the increase in freight rates which would inevitably have followed the much greater responsibility falling on shipowners who carried live animals rather than inanimate goods. Accordingly, to use the amusing words of "Fairplay" (No. 11, August 1924, page 376), since Congress did not want to harm domestic trade, it made an eleventh-hour change removing live animals from the scope of certain articles of the Act, thus indicating the sponsors' belief that the sauce which was good for the English shipping goose was unhealthy for the gander—the American exporters".

Legislation

66. The Protocol of signature of the 1924 Brussels Convention (paragraph 2) permits States to "give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention". This option, which has been a source of unfortunate differences of opinion, has nullified efforts at unification in many ways. It is the reason why national laws have not applied the principle of exclusion contained in article 1 (c) of the Hague Rules uniformly.

67. These national laws may be divided into three main groups: (a) laws which exclude the application of the Hague Rules to the international carriage of live animals; (b) laws which incorporate the Hague Rules as they stand, but make provision, with regard to such carriage, for exemption for the carrier; and (c) laws which incorporate the Hague Rules as they stand, but do not except such carriage from the general rule declaring exemption clauses void.

68. (a) Many States have reproduced the text of the Hague Rules in their legislation without alteration or with very little alteration. Since the carriage of animals is excluded from the Rules, the rights and obligations of the ocean carrier and his option of exemption in respect of animals will be governed by

⁸⁴ Supreme Court of Buenos Aires, 17 March 1898, *Rev. Int. Dr. Mar.*, XIV, p. 203.

⁸⁵ G. F. Montier, *Le Harter Act*, Paris, 1932, No. 37, p. 43.

the general maritime law of each of these States.⁸⁶ While the carrier is not bound by the Rules, neither may he claim the advantages they provide. In such a case, the exclusion creates great uncertainty as to the applicable liability régime.⁸⁷ The determination of the applicable régime will be made according to the conflict rules of the court concerned. Ocean carriers of live animals, emboldened by this inordinate privilege, have drawn up standard bills of lading for such carriage which protect them against any surprises.

69. This first group includes the United Kingdom and all States which have followed the example of the United Kingdom Carriage of Goods by Sea Act of 1924, the United States of America, which adopted the 1936 Carriage of Goods by Sea Act in the wake of the Harter Act, Belgium, the Holy See, Denmark, Egypt, Spain, Finland, Lebanon, Liberia, Norway, Philippines, Portugal, Sweden, Syria, France and Italy (for carriage considered to be "international"). However, there is nothing to prevent the parties from applying the Rules to the contract for the carriage of live animals.⁸⁸

70. (b) The States which have incorporated the 1924 Brussels Convention as it stands in their national legislation obviously had to have regulations to cover the carriage of live animals. The Convention, whose only purpose is the "unification of certain rules", in fact implies the existence of an applicable national law to fill such gaps. In a number of these States, the carrier is permitted, in this particular case, to exempt himself from liability. This will not, however, give him the almost complete freedom given by régime (a) discussed in paragraph 68 above. All other legislation relating to ocean carriage and not touching on the substance of the clause will be applicable to him. Even with regard to liability, according to the general principles of many countries' law, the clause will not be applicable in the event of the wrongful act or fault of the carrier.⁸⁹ The right to exemption will be limited only by public policy (*ordre public et bonnes mœurs*) and any other provisions of general contract law governing a debtor's exemption from liability or the limitation of such liability (see the Turkish Commercial Code, article 1117, paragraph 2).⁹⁰ One of the consequences of this régime will be that the carrier who has not provided for this

⁸⁶ D. J. Markianos, *Die Übernahme der Haager Regeln in die nationalen Gesetze über die Verfrachterhaftung*, Hamburg, page 82. The same author (p. 56, *et seq.*) analyses the respective advantages of incorporation in the context of national laws and of the unconditional (or nearly unconditional) acceptance of the texts of conventions in national law, thus allowing for the existence, in conjunction with this *lex specialis*, of an underlying general law applicable whenever the special law is not.

⁸⁷ Reply of France to the first UNCITRAL questionnaire on bills of lading (A/CN.9/WG.III/WP.4/Add.1 (Vol. I), page 52).

⁸⁸ W. Tetley, *Marine Cargo Claims*, Toronto, 1965, p. 197.

⁸⁹ Paris, Appeals Court, 12 February 1964, *Droit Maritime Français*, 1965, p. 161: "In accordance with the general principles of law, he (the ocean carrier) may not validly rely on clauses limiting or excluding liability which he stipulates for his own benefit unless the wrongful acts he has committed are not of a negligent nature or do not constitute gross neglect amounting to fraud". This case involved a consignment, which was covered by French law, of 178 horses, 62 of which died during carriage because of very rough weather which had not deterred the carrier from weighing anchor.

⁹⁰ Markianos, *op. cit.*, page 82.

exemption will be held liable as in the case of ordinary goods (exceptions, limitations, etc.).

71. This group includes the Federal Republic of Germany, Greece,⁹¹ Japan, Madagascar, the Netherlands, Poland, Switzerland, Tunisia, Turkey, Yugoslavia, France⁹² and Italy ("non-international" carriage) and the Uniform Scandinavian Maritime Code (inter-Scandinavian maritime carriage).⁹³

72. (c) Other States have incorporated the Hague Rules in their legislation, but have extended their application to live animals and do not allow the carrier to disclaim liability for them. Thus, with regard to the carriage of live animals, the Soviet Merchant Shipping Code contains no exception to the article providing for the invalidity of clauses contrary to the mandatory provisions of this Code (article 116, paragraph 3). This rigidity is, however, mitigated by the legal prohibition (see also SMGS, cited in paragraph 43) on the carriage by sea of animals not accompanied by an attendant employed by the shipper or the consignee and by the provision that the carrier is not liable for goods accompanied by a servant of the shipper or consignee unless the latter proves fault on the part of the carrier (article 162 of the Code). Mexico is also to be included in this group.⁹⁴

73. In conclusion, there is no uniformity in the practical application of the Hague Rules to the carriage of live animals, and the operation of rules of private international law by the court may produce unexpected results when a conflict of laws, which might easily arise in this connexion, has to be settled.

74. This uncertainty is reflected in the replies of Governments to questions 3 (a) and (b) in the first UNCITRAL questionnaire on bills of lading (A/CN.9/WG.III/WP.4/Add.1 (Vol. I, II, III)), which tend, moreover, in the age of containerization, to give more attention to deck cargoes than to live animals. The replies also indicate that the disadvantages were less serious for many States not in group (a) (see above, paragraphs 68 and 69) because, in those States the carriage of live animals was not completely devoid of protection under law, but simply, where necessary, subject to lawful exemption clauses. The foot-note in the report of the Secretary-General summarizing the content of the replies,⁹⁵ the clearest of which is that of Brazil, must be broadly interpreted. The Brazilian reply stated that live animals should be considered as much cargo as other goods under the liability of the carrier.⁹⁶

⁹¹ Greece reproduced in its 1958 Code of private maritime law the substance of the 1924 Brussels Convention, to which it had not acceded, through the German codification of 1937.

⁹² This had already been the case in the Act of 2 April 1936. Under article 30 of the Act of 18 June 1966, by way of derogation of the provision declaring contrary clauses void, "all causes relating to liability or to compensation shall be permitted in the carriage of live animals...".

⁹³ See the reply of Norway to the first UNCITRAL questionnaire, *op. cit.*, vol. I, page 140.

⁹⁴ See the reply of Mexico to the first UNCITRAL questionnaire, *op. cit.*, vol. III, page 10; see also the reply of the Republic of Korea, *op. cit.*, vol. I, page 120.

⁹⁵ Report of the Secretary-General on the responsibility of ocean carriers (A/CN.9/63/Add.1, foot-note 71; UNCITRAL Yearbook, Vol. III: 1972, part two, IV, annex).

⁹⁶ See the reply of Brazil to the first UNCITRAL questionnaire, *op. cit.*, vol. III, page 71.

Documents

75. Another, perhaps subconscious reason for the tendency to exclude the carriage of live animals from the scope of the Convention—incorrectly named for the documents which it covers, bills of lading, rather than for the contract of carriage which it regulates—may be that it is nearly always conducted without an admission ticket, a negotiable bill of lading. As a general rule, a carriage document serves to prove receipt of the goods and of the contract relating to them. The function of representing the goods is an additional characteristic peculiar to bills of lading. But in the case of the carriage of animals, which requires special import licences and certificates of health, the consignee is generally known and the underlying sale a firm transaction long before shipment. Thus, the first two functions mentioned are all that is required and the documents are no more than a receipt (particularly in the case of single small animals), a consignment note or a non-negotiable instrument of the consignment note type. In the majority of cases, the carriers do not issue bills of lading; “instead they issue a consignment note, or some other form of receipt, the terms of which purport to exempt them from any liability arising from any cause whatsoever”.⁹⁷ When they use an ordinary bill of lading form, they over-stamp it with the exemption clause (livestock clause) and often with the words “on deck cargo at shipper’s risk” (since animals often have to travel on deck—for example, in hot climates) and with a “non-negotiable” stamp. The name and address of the consignee may be given without a “to order” clause; or the form may have printed on it “not negotiable unless consigned to order” and the parties will act accordingly. Some documents used exclusively for the carriage of animals are not even described as “bills of lading” but as “contract for the conveyance of livestock—non-negotiable” and stipulate expressly that: “Any receipt for goods issued by or on behalf of the Company shall be a non-negotiable document. The Owners shall not be entitled to the issue of Bills of Lading” (see document in annex III).

Practice

76. Whatever the documents which cover the carriage of animals, they are in effect adhesion contracts which invariably give the carrier the most sweeping exception clauses, thus going back a century to the days of negligence clauses, when “the master was in a position to carry what he wanted, when he wanted, where he wanted, how he wanted and in the conditions which suited him”.⁹⁸

77. In order to provide a clearer understanding of the legal conditions governing such carriage, annex IV reproduces a selection of the usual exception clauses and phrases which, in the minds of those who devised them, provide a barrier which has been justly criticized as being impregnable against any imputation of respon-

sibility to the ocean carrier of animals.⁹⁹ The documents customarily used may be divided into three major groups:

78. (a) The standard bill of lading forms over-stamped with special additional clauses concerning the carriage of animals. An ocean carrier, particularly if he does not specialize in such carriage, can thus use his ordinary bills of lading when he carries animals. He adds the exception clause of his choice, by either stamping or typing it on the first page of the bill of lading generally in the space headed “number and kind of package—description of goods”; for a selection of such clauses see annex IV, section I.

79. (b) Standard bills of lading having several printed clauses which are applicable when the bills are used to cover the carriage of live animals. The clauses on the back of standard bills of lading frequently contain, in print so small as to be illegible, one or more printed clauses concerning deck cargo and live animals. For a selection of such clauses, ranging from the simple to the complicated, see annex IV, section II.

80. (c) Documents expressly designed for the carriage of animals and drafted accordingly.¹⁰⁰ It would be impossible within the framework of the present study, to give a detailed analysis (one going beyond the problem of responsibility for such carriage) of these documents; they are sometimes described as bills of lading (livestock bill of lading) and sometimes omit this expression in order to make it clear that they are non-negotiable documents and that the owners of the animals are not entitled to the issue of bills of lading.

81. The substance of such documents is a fairly systematic arrangement of a number of the clauses reproduced in annex IV. In general, the phrasing is that formerly used in bills of lading before the Hague Rules. They are specially adapted to cover the carriage of live animals and contain an impressive number of negligence clauses. Thus, in addition to the traditional catalogue of exceptions (act of God, etc.), worded as comprehensively as possible, there is total exemption from liability on the grounds of the unseaworthiness or unsuitability for carriage of animals of any vessel or device employed for that purpose: the right of the captain at his discretion to deviate, load the animals on deck, trans-ship them or unload them at any time; the obligation to pay freight on the number of animals loaded, i.e. even for animals which die on the voyage or are lost when the vessel sinks owing to its unseaworthiness or to lack of skill on the part of the crew; the last-mentioned constitutes a special exception for this type of cargo. Other clauses relate to the feeding and watering of the animals, the freight to be paid on the surplus feeding stuffs unloaded at the destination, the status of the attendant or of the carrier himself if he agrees to superintend the cargo (see paragraph 83

⁹⁷ Report of the Secretary-General, op. cit., para. 67, footnote 67.

⁹⁸ G. van Bladel, *Connaissances et Règles de la Haye*, Brussels, 1929, No. 1. This is practically the same as what one of the clauses (No. 6) reproduced in annex IV expressly states.

⁹⁹ Report of the Secretary-General, op. cit., paras. 42 and 43. In addition to such clauses and references, there is often another clause authorizing the carriage of deck cargo at the shipper’s risk.

¹⁰⁰ It is not unusual for breeders to charter a complete vessel to carry their animals. The conditions applicable to such operations naturally vary from one charter party to another. Such arrangements are outside the scope of this study. Furthermore, when a document other than the charter party is issued, it does not usually fulfil the requisite conditions for the application of the Hague Rules.

et seq). In cases where the text of such documents does not regulate these matters, they are accompanied by extracts from price tariffs which show, according to the species and number of animals, the freight per head payable, the supplies and feeding stuffs to be provided by the shipper and carrier respectively and, if applicable, the cost of the fare of the attendant(s) or the gratuity payable to the employees of the carrier who are authorized to look after the animals.

82. In order to give a better understanding of current practice, it seems simpler and more comprehensive to annex one of the last-mentioned documents (annex III), the Non-negotiable Contract for Conveyance of Livestock of the Belfast Steamship Company, Ltd.; the general conditions laid down in it are an excellent illustration of the inequality now prevailing between the parties to a contract for the carriage of live animals.¹⁰¹

V. THE ATTENDANT

83. In principle, if some person (attendant, groom, drover, handler/carer, etc.) accompanies the animals,¹⁰² the legal owner (shipper or consignee) is liable to the carrier for the cost of the fare of such accompanying person and the cost of his board on the voyage. The attendant or attendants (in sufficient number) are required to look after the animals on behalf of the lawful owner and assume on his behalf all responsibility for them. Sometimes animals are carried unaccompanied either because the carrier himself assumes the functions of attendant or because, for any of a variety of reasons, the parties waive attendance—for example, a single harmless animal (pet), a short trip, assured attention by authorized agents during the voyage, indifference in the case of animals exported for slaughter.¹⁰³

84. The legal status of the attendant, a kind of personification of the owner's care for his property during carriage, has been studied in detail in railway law. For a railway, the shipper's obligation, under article 4 of CIM, to have certain goods or articles, which are accepted for carriage subject to conditions,¹⁰⁴ accompanied by qualified persons, counterbalances the obligations to perform carriage imposed by article 5 of CIM. The invariable principle is that the attendant is

¹⁰¹ Similar documents, kindly provided by the Australian Government include: the Bill of Lading for Carriage of Livestock of the C. Clausen Dampskibsrederi A/S, Copenhagen, used for the carriage of sheep from Australia to the Middle East; the Australia Outward Livestock Bill of Lading of Saf-ocean (Pty.) Ltd., applicable to the carriage of cattle between Australia and South Africa; the Australian Outward Livestock Bill of Lading of Royal Inter-ocean Lines of the Netherlands, which carries animals from Australia to East Africa, India and Sri Lanka; the bill of lading used by Aries Shipping (Singapore) Pty. Ltd. and the Livestock Bill of Lading of the Abdul-Moshin and Youssef Ahmed Al-Sager and Co. shipping company of Kuwait for the transport of sheep between Western Australia and the Persian Gulf.

¹⁰² This, naturally, does not apply to domestic pets traveling with their owners who are passengers; they are generally treated as accompanied baggage.

¹⁰³ The sufferings of horses exported for slaughter from Ireland to Continental Europe gave rise to the Paris Convention and, generally speaking, to the RSPCA campaign (see foot-note 17, *supra*).

¹⁰⁴ Railway rolling stock running on its own wheels; funeral consignments (deleted from the 1970 CIM), live animals; articles the carriage of which will give rise to special difficulty (CIM Art 4).

in all cases the representative of the shipper and his agent, and not the agent of the railway; it is the shipper who is responsible for the acts and omissions of the attendant. In the case of an unaccompanied consignment, there is, in theory, no objection to the railway assuming the functions of attendant. But in practice it refrains from so doing in order not to take on such a responsibility under regulations which it finds stringent and because it does not have the necessary qualified employees. The 1970 CIM convention introduces some relaxation of the requirement in earlier versions to provide an attendant (article 4, paragraph 1 (d), third line) (see paragraph 38 above) but it maintains the requirement to add the word "unaccompanied" to the consignment note when consignments need not be and are not accompanied. The SMGS, under which such a requirement is still enforced, not only provides a "special" exemption for the railway in the event of damage being due to the fact that the attendant has not taken the necessary measures to safeguard the goods (article 22, paragraph 2 (f) and paragraph 7), but, in article 10, makes the owner providing the attendant responsible for any damage which the railway may suffer through the fault of the said attendant.

85. The primary task of the attendant, according to Nanassy-Wick,¹⁰⁵ is to give the animals the necessary care and supervision during carriage (food, water, milking, prevention of injury, participation in veterinary inspections, etc.) and to superintend the orderly unloading and subsequent transport of the animals from the railway station. He should, in particular, take timely action in the event of danger—for example, to prevent an animal strangling itself with its halter, to ensure ventilation, check that the truck is properly closed, prevent fire, etc. He has, however, no obligation to ensure that railway officials carry out their duties correctly.¹⁰⁶ It is the duty of the attendant to remain near his animals, and the railway can invoke the special exemption clause on the ground of the requirement of attendance laid down in the Convention if, at the time the injury occurs the attendant is in another wagon or with another consignment he is also accompanying.¹⁰⁷

86. One of the interesting features of the draft register of the UIC (see paragraphs 6 and 45) is that it specifies, not only the obligations of the shipper and the railway, but also those of the attendant, which are additional to those prescribed in the Convention. The IATA Live Animals Manual states (section II, General Acceptance and Handling Standards, paragraph 12—"Attendants") that attendants will be permitted, at the discretion of the air carrier, to accompany animals on all freight aircraft or in the freight compartment of mixed cargo/passenger aircraft. Furthermore, the specific instructions in the manual with regard to each individual species of animals are a guide for both the attendant and the carrier which accepts the consignment (preparations prior to dispatch, feeding guide, general care and loading).

87. In its "General Provisions", the Paris Convention contains provisions on attendance which are applicable to all modes of transport. Article 10 states

¹⁰⁵ De Nanassy-Wick *op. cit.*, p. 17, para. 21.

¹⁰⁶ *Ibid.*, p. 199, para. 55.

¹⁰⁷ *Ibid.*, p. 198, para. 54.

that as a general rule livestock shall be accompanied "in order to ensure the necessary care of the animals during transport"¹⁰⁸ ... except ... where livestock is consigned in containers which are secured; where the transporter undertakes to assume the functions of the attendant; where the sender has appointed an agent to care for the animals at appropriate staging points". With regard to transport by water, the Convention further stipulates (article 29) that "a sufficient number of attendants shall be provided taking into account the number of animals transported and the duration of the voyage".

88. At sea, "animals (especially wild animals) may be accompanied by an attendant or keeper over whom the carrier has no authority".¹⁰⁹ The fact remains, however, that the captain, the agent of the carrier, is always master of his vessel and any improper act by the animals' attendant (or owner, who very often accompanies them) which results in damage, would, as in every other case, relieve the carrier of liability to some degree.

89. Experience of shipping practice shows that in this mode of transport, which unlike the railways, is not bound to perform carriage, the relationship between the attendant, the animals and the vessel is generally satisfactory. In fact such fears as are expressed on this score often seem to be based on a desire to perpetuate a very favourable régime, rather than reflecting real contractual friction which would justify a special régime. In practice, the tariffs (in the absence of special bills of lading) lay down in a few short clauses the provisions for attendance or performance of this service by the carrier himself and for the transport of the attendant.

90. A form commonly used in the first two cases reads as follows:

"Arrangements to be made by shipper for attendance on animals, etc. If butcher or any member of the crew attends to animals (with Company's or Master's consent) a gratuity to be paid to him as shown above. Gratuity will be collected with the freight." (Clause from the Conditions for the Conveyance of Livestock in the south-bound and north-bound tariffs of the West African Joint Service.)

91. From the legal standpoint, in the first case the attendant is the agent of the owner of the cargo he accompanies. As such, he is subordinated to his principal, so that the position is the same as if the latter was himself accompanying the animals. The advice and care provided by either are the reason for their presence on board and will be valuable to the captain, who is more skilled in nautical matters than in zoology. If they make a mistake, the issue is not one of disputed authority: error of the shipper or his agents *relieves the carrier* of liability in all modes of transport without any need to adduce grounds for special exemption. In the text recommended by the Working Group, the carrier could easily prove, if such a loss occurred, that "he, his servants and agents took all measures that could reason-

ably be required to avoid the occurrence and its consequences".

92. At first sight, the situation may seem to be more complex from the legal standpoint when, by virtue of an agreement with the shipper, the carrier undertakes the functions of attendant and entrusts them to his own employees. By so doing he combines in his own person, directly or indirectly, his functions under the contract of carriage and the functions arising out of the principal/agent relationship—which is regulated by the relevant domestic legislation—by virtue of which he represents the party with whom he concluded the first contract. The exemptions which may be applicable within the framework of the contract of carriage do not, however, extend *ipso facto* to the principal/agent relationship, in which a breach of contract or negligence—which amounts to the same thing—on the part of the agent would in any case give the principal an independent right to compensation.

93. But, in practice, the prudent carrier does not agree to take charge of animals without receiving clear written instructions from the shipper/principal concerning them which would doubtless list the measures that might reasonably be required to avoid occurrences which might cause loss or damage (to use the phraseology quoted in paragraph 91).¹¹⁰ In this context there is a tendency to treat animals in the same way as another type of goods with which they have several similarities, namely, goods of a dangerous nature shipped with the knowledge and consent of the carrier (Hague rules, article 4, paragraph 6, last sentence); the two types of goods are already treated on the same footing in a number of bills of lading (see, for example, annex IV, No. 18). In the same way as animals entrusted to the carrier, dangerous goods travel unaccompanied, but the carrier, before loading them, will normally require the shipper to give him precise instructions regarding their nature and the precautions to be taken. By working out the valuable code of dangerous goods,¹¹¹ IMCO has encouraged this practice, which is also embodied in other conventions.¹¹² These considerations should help to dispel the fears sometimes expressed about the idea of the carrier making himself directly responsible for the care of live animals.

94. Lastly, the transport of the attendant himself is a subsidiary but important aspect of the problem. Once again, railway law has an answer. The Additional Convention (Berne, 20 February 1966) to the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV) of 25 February 1961, expressly includes in its definition of the "passengers" protected by it, in the event of liability on the part of the railway for death or injury, attendants of consignments dispatched in conformity with CIM (article 1, para. 1 *b*). With regard to transport by air, the Warsaw Convention is applicable to the carriage of the

¹¹⁰ The need for a handbook, similar to the IATA Manual, for ocean carriage is obvious.

¹¹¹ IMCO, International Maritime Dangerous Goods Code, vols. I, II and III (Sales No. IMCO 1972.9(E)) and Supplement 1972 (Sales No. IMCO 1973.2(E)).

¹¹² See CMR, article 22; see also draft TCM Convention, article 7.

¹⁰⁸ Article 11 *et seq.* cover the obligations to look after the animals, feed and water them, and, if necessary, to milk them at regular intervals, to arrange for veterinary attention in case of need and to keep the vehicles and containers thoroughly cleaned.

¹⁰⁹ Report of the Secretary-General, *op. cit.*, para. 68.

attendant, even if he is to be regarded as non-fare-paying (article 1, paragraph 1, second sentence).¹¹³

95. The Convention of 29 April 1961 on the carriage of passengers by sea should also apply to the contract of carriage of the attendant (article 1 (b)), who should not be excluded from the definition of "passenger" (article 1 (c)).¹¹⁴ The question of deciding whether he is a fare-paying or non-fare-paying passenger was raised in the nineteenth century. But even if free passes issued to drovers specify that the carrier disclaims responsibility for their personal safety, the carrier is required to treat them as passengers; the contract of carriage for live animals and the free pass must be considered in the context of a single contractual relationship and the attendant cannot therefore be regarded as a non-fare-paying passenger.¹¹⁵

96. In practice, the carrier often makes the shipper sign a guarantee statement (Livestock Attendants Indemnity). In it the shipper attests the requisite professional competence of the attendant or attendants, and undertakes not only to pay the fare but also to hold the carrier and his agents

"... indemnified in respect of all claims arising out of loss of life, personal injury or illness of the said livestock attendants, or damage to their effects, whether arising from negligence of yourselves [the carrier] or your Servants or Agents or from defects in the vessel or her appurtenances or otherwise. This indemnity includes the cost of deporting attendants who are refused permission to land at destination as well as repatriation of sick or injured attendants and hospital, medical, funeral and legal expenses."

VI. MULTIMODAL TRANSPORT OF LIVE ANIMALS

97. Only rarely is the carriage of live animals confined to one form of transport. Even if the longer part of the journey is often by sea or air, it is nearly always necessary—unless periods of quarantine are included in the total journey—to precede or follow it by transport by some other mode in order to bring the animals from the place where they have been bred or to take them to the places where they are to be used.

98. But the intermodal transport of live animals is very different from the traditional types of combined transport to which those concerned with international unification have recently given their attention. Live animals, like human beings, are the only cargo which almost immediately shows outward signs when it has been damaged, which makes it possible to notice and verify the damage. This unique characteristic makes it possible to surmount the major obstacle encountered in the combined transport of other goods: namely, to determine the place where the damage occurred, i.e. the mode of transport involved and the law to be applied. For this reason one wonders whether the combined transport of live animals might not constitute a useful testing-ground for current activity in the wider field of

¹¹³ The IATA Live Animals Manual states: "Arrangements for the carriage of attendants shall be made in advance of travel. The attendants' fare will be levied in accordance with IATA resolution 514, as quoted in the carrier's tariff." (section II, paragraph 12).

¹¹⁴ IMCO is engaged in revising this Convention (see paragraph 124).

¹¹⁵ See *American and English Encyclopedia of Law* (vol. III, para. 4 (e)): *Drovers' Passes*, p. 16, and cases cited.

multimodal transport in general. This consideration suggests that present efforts should be aimed, as regards these particular goods, at a solution which would not necessarily impede at least *de facto* harmonization with existing régimes applicable to them in other modes of transport (see chapter III).

VII. CONCLUSIONS AND RECOMMENDATIONS

A "prejudgement" proposal

99. The first conclusion to be drawn from the foregoing account—and it amounts to a foregone conclusion or prejudgement—is that it would be desirable to put an end to a situation in which transport by sea alone, unlike other modes of transport, treats live animals as outlaws. In brief, this situation is prejudicial to the interests of the shippers, since their goods are thus abandoned to the whim of a contracting partner firmly entrenched behind the leonine clauses of an adhesion contract. It is economically harmful to countries, particularly developing countries, for which the export and import of live animals constitute a significant component of their trade balance, since it adversely affects the cost of goods which are practically unprotected *en route*. It harms the reputation of the shipping industry, besmirched by a small number of carriers and above all by a group of parasitical and expensive middlemen. It is also harmful from the humanitarian standpoint, particularly in the light of the Paris Convention, which imposes specific obligations on the contracting States.

100. The replies by Governments to the first UNCITRAL questionnaire seemed to indicate that a majority favours the inclusion of live animals within the scope of the Hague Rules and holds that, as the timely suggestion by Brazil puts it, they "should be considered as much cargo as other goods under the liability of the carrier" (see paragraph 74 and foot-note 96). Some Governments failed to reply on this point, probably because, at least in some cases, they were more interested in the question about deck cargo, which is mentioned in the same section of the Rules. With regard to the Governments which did not favour inclusion,¹¹⁶ it must be pointed out that, in the case of those which have incorporated the Hague Rules directly into their domestic law, it is not a question of total arbitrary exclusion, which would be quite inconceivable (see paragraph 70) but of whether or not to preserve the ocean carrier's right, under that domestic law, to exempt himself by contract from liability with regard to this type of cargo.

The discussions at the third session of the Working Group

101. During the discussion held at the third session of the Working Group,¹¹⁷ there seemed to be considerable support for the inclusion of the carriage of live animals in the Hague Rules, with or without the retention of the carrier's option to exempt himself from liability. Essentially, the delegations opposed to that principle based their position on the fear of friction between carriers and the owners of the goods with

¹¹⁶ Report of the Secretary-General, *op. cit.*, para. 71, and foot-notes 71 and 72.

¹¹⁷ Report of the Working Group, third session, *op. cit.*, para. 31.

regard to ascertaining the cause of loss or damage and were disposed to suggest the drawing up of separate rules for this type of carriage.¹¹⁸

102. At that session, however, the Working Group reached no conclusion on the general question of the responsibility of the ocean freight carrier. It did subsequently compile at its fourth session, a set of texts which differed somewhat from the provisions which sequentially compile at its fourth session, a set of texts are designed to replace paragraphs 1 and 2 of article 3, and paragraphs 1 and 2 of article 4 of the Hague Rules. In order to make the position clear, the first paragraph (hereinafter called "the basic paragraph") of those texts is reproduced below:

"1. The carrier shall be liable for all loss or damage to goods carried if the occurrence which caused the loss or damage took place while the goods were in his charge as defined in article [], unless the carrier proves that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences."

This puts the problem of live animals in a different light, particularly if its solution depends on ascertaining the cause of damage, the subject of the apprehensions mentioned above. The issue of ascertainment, if it exists at all, must arise with all types of goods under a general rule of responsibility based on fault with a transfer of the burden of proof, as set out in the basic paragraph.

103. The material in this study should dispel any doubts about the first conclusion, namely, the desirability of including the carriage of live animals within the scope of revised Hague Rules. The "prejudgement" proposal is, therefore, to delete the words "live animals and" from article 1 (c) of the Rules; or, better still, to delete from the text adopted by the Working Group at its third session¹¹⁹ the words in brackets (except "live animals").

104. This initial advance on the Hague Rules would give parties all the benefits to be derived from the fact that this type of carriage would then be covered by a unification convention, a step required in any case, to deal with all the questions not involving the responsibility of the carrier which have hitherto also been governed solely by the conditions agreed by the parties, i.e., by the will of the carrier as expressed in the adhesion contract (see paragraphs 76 to 82).

105. Two further proposals were made at the third session by delegations which supported the extension of the Rules to live animals. Poland proposed the following text:¹²⁰

"Live animals, whether carried on deck or below deck, shall be considered as 'goods' within the meaning of this article, if it is proved that damage or loss resulted exclusively from the unseaworthiness of the ship or from careless action by the carrier".

Now, however, this proposal does not appear to be compatible with the basic paragraph which is designed to replace—*inter alia*—articles 3 and 4, to which

Poland's proposal implicitly referred. The French delegation proposed¹²¹ the addition to article 1 (c) of the Rules (in which the reference to the exclusion of live animals would obviously be deleted) of the following text:

"However, with respect to the carriage of live animals, all clauses relating to liability and compensation arising out of the risks inherent in such carriage shall be permitted" (v. para. 108).

106. Also at the third session, other delegations which were in favour of that addition felt that the provisions of article 4, paragraph 2, of the Rules were sufficient to protect carriers against any special risks inherent in the carriage of animals.¹²² From the formal standpoint, their position is no longer relevant in view of the basic paragraph, which would replace the aforesaid paragraph 2 also.¹²³ From the standpoint of substance, their view remains valid in the context of the basic paragraph, which was accepted for the very reason that the Working Group considered that its provisions would provide sufficient protection to the carrier once the latter proved that, having regard to the special risk associated with the goods in question, he and his agents had taken all measures which could reasonably be required of them to avoid the occurrence giving rise to the damage and its consequences.

Alternative proposals

107. The second conclusion, once the possibility of maintaining the *status quo* is rejected, is to submit to the Working Group three alternative proposals, with a recommendation in favour of the third. The basis of the first proposal would be an explicit statement of the will of the parties to a contract for the carriage of live animals by sea with regard to the responsibility of the carrier, by means of a clause expressly exempting the latter. The second would be grounded in the question of proof, its point of departure being a legal presumption of non-liability based on the risk inherent in carriage of this type. The third would take account of the fact that the Working Group's extensive discussions have resulted in a shift in the balance between the carrier and the shipper in the basic paragraph referred to above, whose scope is extremely general and whose provisions, as they stand, appear to be equally applicable to the carriage of live animals and to any other kind of goods.

Proposal I

108. (a) The first proposal is to remove the exclusion of live animals ("prejudgement proposal": see paragraph 103) and to add to article 3, paragraph 8 of the Rules (or the corresponding provision of the revised Rules) the following new paragraph:

"However, with respect to the carriage of live animals, all agreements, covenants or clauses relating

¹²¹ A/CN.9/WG.III(III)/CRP.4.

¹²² Report of the Working Group, third session, op. cit., para. 32.

¹²³ The acceptance of the basic paragraph by the Working Group would also render unnecessary the possible inclusion of "special risks" attaching to the transport of animals under article 4, paragraph 2 (m) ("inherent vice") of the Rules, which was contemplated in some quarters and mentioned, not without reservations, in the report of the Secretary-General, op. cit., para. 73.

¹¹⁸ *Ibid.*, para. 33. This suggestion is pursued further in paragraph 121, which suggests the possibility of IMCO's cooperation on this specific point.

¹¹⁹ Report of the Working Group, third session, para. 25 (report of the Drafting Party, para. 1) and para. 26; UNCITRAL Yearbook, Vol. III: 1972, part two, IV.

¹²⁰ A/CN.9/WG.III(III)/CRP.3.

to liability and compensation arising out of the risks inherent in such carriage shall be permitted in the contract of carriage."

109. In essence, it would include the transport of live animals in the revised Rules, but would authorize parties, in consideration of the risks involved in such carriage, to agree on clauses dealing with the carrier's liability and any damages payable. The original French proposal (see paragraph 105) derived from article 30 (deck cargoes and live animals) of the French Act of 18 June 1955.¹²⁴ The reasons why an exclusion such as that incorporated in the International Convention in the case of live animals could not be entertained in the immediate context of a national act have already been pointed out (see paragraph 70). As to the positioning of the proposed text, it appeared logical to take as a model the French Act, in which the said article 30 follows the provision corresponding to article 3, paragraph 8, of the Rules (nullity of clauses conflicting with the peremptory norms of the Convention). The wording is based in part on that of article 3, paragraph 8, of the Rules.

110. This proposal thus assures the parties of the general benefits of a convention having binding force (notably with regard to definitions, scope, fora, arbitration, restrictions on the master's freedom to enter reservations on the bill of lading, etc.). Nevertheless, it still leaves the carrier free to add to the bill of lading provisions regarding his responsibility and compensation for damage (exemptions, limitations on the amount of damages). Like the French proposal, it imposes a desirable limitation on the general scope of the aforementioned article 30 of the French Act and corresponding provisions of other acts: the liability or compensation must derive from the risks inherent in such carriage.

111. This proposal also has the advantage of being convenient. Thus, practically no changes would be involved in the case of a number of States (see paragraph 71) which already have such a system. In other States (see paragraph 69), where shipping law is in practice modelled on the Rules, some changes will be necessary but these will be less onerous in view of the possibility of exceptions, which is left open. Nevertheless, this latter observation means that, while proposal I represents an undeniable improvement on the existing situation, the argument of convenience loses its force, particularly from the standpoint of other States which are directly concerned in the carriage of animals and had anticipated a more radical change on this point, in line with the general reform undertaken by UNCITRAL.

112. The proposal also calls for other observations:

(1) The expression "live animals" is ambiguous (see paragraph 11 *et seq.*, paragraph 18).

(2) The expression "the risks inherent in such carriage" is also ambiguous in that the risks in question are not otherwise identified. Those who want to interpret it as covering the risks deriving from the perishable nature of the cargo, inherent vice or defect of any other kind should remember the compromise whereby the

¹²⁴ Under the terms of this article 30, as an exception to the general nullity provision of article 29 of the same Act, "all clauses relating to liability or compensation shall be permitted in the case of the transport of live animals".

Working Group decided at its fourth session¹²⁵ to delete the "catalogue of exceptions" from article 4, paragraph 2, of the Hague Rules. The introduction of the wording of proposal I should not be regarded as a revocation of that compromise through the revival of the exception, embodied in that paragraph, based on inherent defect, quality or vice of the goods.

(3) It says nothing as to the burden of proof system for the attribution of damage to the special risks of such carriage operations or for rejecting such attribution.

(4) The resort to clauses to be agreed upon by the parties leaves the question of the proliferation of such clauses (see Annex IV) unchanged—a source of litigation and of uncertainties as to conflict of laws in that the proposal contains no substantive limitation on the scope of such clauses (wilful fault, neglect by the carrier or his agents, unseaworthiness),¹²⁶ a matter which is regulated by the municipal law deemed applicable by the court before which proceedings are instituted.

(5) Difficulties could also arise for States parties to the Paris Convention in that proposal I refers expressly to live animals and would therefore eventually form part of a multilateral agreement containing clauses dealing with the international carriage of live animals concluded with States not parties to the said Convention (see the recommendation mentioned in paragraph 5), in other words, the future revised Hague Rules.

Proposal II

113. A second proposal would involve an attempt to bring the régime applicable to the carriage of live animals by sea into line with that of the Conventions governing the same carriage operations by road and rail and of the draft Convention on [the contract for the] carriage [of goods] by inland waterways. The Secretary-General's report envisaged a solution on these lines.¹²⁷ Proposal II would involve the inclusion of live animals in the Rules (see "prejudgement" proposal, paragraph 103), and adding a paragraph 2 *bis* to the text regarding carriers' responsibility formulated by the Working Group at its fourth session:¹²⁸

"With respect to live animals, the carrier shall be relieved of his responsibility where the loss or damage results from the special risks inherent in the carriage of animals. When the carrier proves that, in the circumstances of the case, the loss or damage could be attributed to such risks, it shall be presumed that the loss or damage was so caused, unless there is conflicting proof that such risks were not the whole or partial cause of it. Furthermore, the carrier shall prove that all steps incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him."

114. The model used was the CMR rather than the CIM. The CMR imposes no obligation on the carrier

¹²⁵ Report of the Working Group, fourth session, op. cit., paras. 23-25, 30, 35.

¹²⁶ On this issue see the Polish proposal in para. 105.

¹²⁷ Report of the Secretary-General, op. cit., para. 74. For the corresponding provisions in the Conventions see paras. 38 (CM), 43 (SMGS), 48-51 (C.M.R.), 56 (CMN).

¹²⁸ Report of the Working Group, fourth session, op. cit., para. 28 (report of the Drafting Party, para. 3) and para. 36.

to carry goods or on the shipper to provide an attendant for the animals, thereby resembling shipping practice. Subject to drafting changes, the two first sentences reproduce articles 17, subparagraph 4 (f), and 18, paragraph 4, of the CMR (see paragraphs 48-50). The third sentence provides for the additional protection established in article 18, paragraph 5 of CMR (see paragraph 51) and confirms the principle of "special instructions" which may be given either by the shipper or by the attendant (e.g. as in the case of dangerous goods (see note 75) or in a handbook similar to those of IATA or UIC (see paragraph 121)).

115. A first advantage of proposal II over the present régime and proposal I—based as it is on the subjective element of the stipulation of contractual clauses between parties one of whom is economically stronger—is that it is based on an objective fact, the carriage of live animals, recognized as a special risk which may be presumed to be the cause of the damage. This is a purely presumptive point of reference because the owner of the goods, for his part, may prove that there is no nexus between the animal and the damage and that the latter is due entirely to the fault of the carrier, or that such fault contributed partially to the damage. Furthermore, the analogy with the solution which has been tried successfully in the conventions governing two modes of transport, and is shortly to be extended to a third, may facilitate the acceptance of this proposal by States already parties to these Conventions. Moreover, proposal II would involve a degree of harmonization with other modes of transport the usefulness of which in this context is enhanced by the fact that most animal transport operations are multimodal (see paragraph 97). Finally, with regard to proof, it offers precise, simple rules which have been tested in rail (see annex I) and road practice.

116. Proposal II might, however, give rise to reservations:

1. With regard to the ambiguity of the expression "live animals", see paragraph 112, (1).

2. With regard to the ambiguity of the expression "special risk", see paragraph 112, (2). Nevertheless, the link between the damage and this risk is not the same as that in proposal I, because the express recognition, as in CIM and CMR, that there is a special risk inherent in such transport operations, is a determining factor.

3. It might be contended that this "special" exemption clause (to follow the formula used in the rail Convention) perpetuates a régime favourable to the carrier in the rules governing proof and would open a second loop-hole, the other being fire, in the compromise which brought about the deletion of "the catalogue of exceptions".

4. On the possibilities of conflict with the Paris Convention, see paragraph 112, (5).

Proposal III

117. The third proposal, which also presupposes the inclusion of live animals within the scope of the revised Rules "prejudgement" proposal (see paragraph 103), would be part of the new provisions on responsibility drafted by the Working Group at its

fourth session.¹²⁹ Previously, when articles 3 and 4 of the Rules were under consideration, there was a much broader range of possible solutions. However, the new balance achieved, in the form of the basic paragraph, by establishing, firstly, an affirmative general rule of responsibility based on fault, followed by a second—and equally general—unified burden of proof rule has simplified matters greatly. The new mechanism is adaptable—as it was designed to be—to goods of all kinds, and there is no apparent reason why live animals should be excluded from its application. Once they are included, the fundamental principle of "*receptum*" proclaimed in the first rule can be extended to them automatically; the same is true of the second rule, which really achieves such "remarkable simplification and clarification of complex and ambiguous provisions of the Brussels Convention... that it was not desirable to retain the exemplification of exonerations in the 'catalogue of exceptions'":¹³⁰ *a fortiori*, it is not desirable to perpetuate the present unconscionable situation with regard to the carriage of live animals. The effect is that the carrier can no longer take refuge behind an exception: he must furnish the proof henceforth required of him, a task clearly varying in difficulty according to the damage involved. Predetermined impunity is replaced by a régime common to all goods. In the event of fault on the part of the shipper (for instance, defective packing, faulty instructions or inadequate health documentation) or of the attendant (for instance, incompetence or disregard of instructions) or of damage attributable to the nature of the goods (for instance, death of an animal from illness despite the provision of all necessary care, injury caused by kicks from horses although they were unshod) which all reasonable measures prove powerless to prevent, proof of non-liability can quite easily be furnished by the carrier who, under the new régime as in the past, cannot be expected to guarantee such goods and the consequences deriving from the fact that they are live. The basic paragraph satisfies the requirements in respect of live animals laid down by Hutchinson: "... the carrier is relieved from responsibility if he can show that he has provided all suitable means of transportation, and exercised that degree of care which the nature of the property requires".¹³¹

118. Proposal III thus amounts to taking only the action contemplated in the "prejudgement" proposal, i.e. to delete either the words "live animals and" in article 1 (c) of the Rules or the words in square brackets in the definition of "goods" adopted by the Working Group at its third session.¹³² The effect of the proposal would be that the basic texts on carrier's responsibility would regulate the responsibility of the carrier of live animals by the same yardstick applied to all other goods. As the quotation from Hutchinson shows, this solution is fully in accordance with general principles. There is nothing unprecedented about it, since the situation with which it deals is exactly the

¹²⁹ See foot-note 128.

¹³⁰ Report of the Working Group, fourth session, op. cit., para. 30.

¹³¹ Hutchinson, op. cit., section 336, page 343 and cases cited.

¹³² Report of the Working Group, third session, op. cit., para. 25 (report of the Drafting Party, para. 1).

same as that covered by the Warsaw Convention, which lays down, almost word for word, the same rules of liability¹³³ and which in none of its provisions envisages any exception to those principles for a particular type of goods—for instance, live animals.¹³⁴

119. There are many advantages to this proposal. Firstly, it has the obvious virtue of being simple and clear-cut since it prescribes no special regulations. Furthermore, by its very nature it escapes the criticisms levelled against the other solutions, which resort to ambiguous expressions (such as “live animals” or “special risks” involved in the carriage of animals), conflict with other Conventions (such as the Paris Convention), or could open the way to conflict of laws or worse still, to a whole series of clauses perpetuating privileged positions. In short, this solution, unlike all the others, is in line with the efforts of UNCTAD and UNCITRAL to establish an equitable balance between the carrier and the shipper.

120. Proposal III would be somewhat simplistic if it merely involved applying the general régime pertaining to all other goods to the carriage of this type of goods, the special aspects of which may again emerge as part of the “measures that could reasonably be required to avoid the occurrence and its consequences” and the proof relating thereto. This proposal should be complemented by a recommendation, which appears to be of fundamental importance.

121. There is an instinctive tendency to associate these “measures” with experience in air transport, which has been built up directly on the practical basis of the care to be provided by all concerned to ensure that animals have the best possible chance of reaching their destination safe and sound; in this connexion, the IATA Manual (see paragraphs 7, 35) and the [draft] UIC register (see paragraphs 6, 45) provide useful models. In order to define the aforementioned measures and to facilitate the provision of proof, all those participating in the carriage of live animals by sea should be supplied with some kind of handbook, easy to consult and widely disseminated, containing instructions for the proper handling of such shipments which are as detailed as possible, scientifically sound and based on experience. In view of the IATA and UIC precedents, IMCO appears to be the best qualified and most competent organization to perform this task—as is demonstrated, in a closely related field, by the value of the International Maritime Dangerous Goods Code,¹³⁵ the preparation of which was entrusted to IMCO in 1960 by the International Conference on the Safety of Life at Sea. IMCO should be recommended to carry out that task, taking into account the above-mentioned precedents and acting in co-operation with all interested organizations.

¹³³ Warsaw Convention, art. 18, para. 1: “The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, . . . any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.” Paragraph 2: “The carriage by air . . . comprises the period during which the . . . goods are in charge of the carrier. . . .” Article 20: “The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.”

¹³⁴ On the applicability or non-applicability to live animals of article 23 (2) of this Convention, see para. 30.

¹³⁵ See foot-note 111.

122. The reference to dangerous goods leads on to the closely related subject of the “hazardous” nature of live animals as goods. It may happen that shipments of animals endanger the vessel and the cargo, just as dangerous goods do; certain bills of lading (see annex IV, No. 18) provide a solution similar to that contained in the second sentence of article 4, paragraph 6, of the Rules with regard to dangerous goods shipped with the knowledge and consent of the carrier. The principles embodied in the basic paragraph would doubtless be adequate to cover such a hazard. However, consideration might be given to meeting the concerns of carriers by adding, after paragraph 6 of the Rules, a new paragraph 7 based on article 7, paragraph 1, of the TCM Convention, on the second sentence of article 4, paragraph 6, of the Rules, and on the basic paragraph:

“Before live animals are taken in charge by the carrier, the shipper shall inform the carrier of the exact nature of the danger which they may present and indicate, if need be, the precautions to be taken.¹³⁶ If such animals become a danger to the ship and the cargo, they may, at any time before discharge, be landed at any place or rendered harmless or killed, without liability on the part of the carrier except to general average, if any, provided that he proves that he unsuccessfully took all measures that could reasonably be required in the circumstances of the case.”

The latter phrase should make this text consistent with the provisions of the Paris Convention.

123. In the context of these proposals, mention should be made of the proposal of Australia, in its study in response to the first UNCITRAL questionnaire, that the solution to the question of the unit limitation of liability for loss or damage in the carriage of live animals might be based on the mechanism contained in the General Conditions of the Australian Railways.¹³⁷ In some countries (see paragraph 44), the railways may limit the compensation payable to a fixed amount per head on a scale covering various groups of animals (so much per horse; so much per head of cattle, donkey, mule or camel; so much per head of sheep, swine, dog or other small quadruped; and so forth). This mechanism might be regarded as more satisfactory than those in the Rules, the 1968 Brussels Protocol or the various proposals made at the fifth session of the Working Group concerning unit limitation of liability,¹³⁸ since it would reflect a specific existing practice, provide a con-

¹³⁶ In this connexion, the handbook recommended in para. 121 would clearly be useful.

¹³⁷ Document A/CN.9/WG.III/WP.4/Add.1 (Vol. II), para. 31; an extract from the General Conditions for Livestock, which were not reproduced in that document, has been kindly transmitted by the Australian Government. Article 1 of part 6 (Livestock), title I (Condition), after affirming para. (a)) that the Commissioner's liability for any horses, cattle or other animals shall not exceed the amounts specified under title I, save on declaration of value and payment of a supplementary freight charge, stipulates in paragraph (c) that such liability should be limited to \$A 60 per horse, \$A 30 per camel, mule, head of cattle or donkey, and \$A 4 per head of sheep, swine, dog or other small animal.

¹³⁸ Report of the Working Group, fifth session (A/CN.9/76; UNCITRAL Yearbook, Vol. IV: 1973, part two, IV, 5), paras. 26-28.

venient basis for insurance and obviate the making of declarations of value at practically every stage of shipment, the very principle of which was discussed at that session.

124. There is one last point, which relates to a figure who is intimately involved with the satisfactory conduct of many shipments of live animals: the attendant. In view of the controversy regarding the legal status of the attendant and his legal standing on board ship (see paragraph 95), and bearing in mind the leonine practice of requiring letters of guarantee to be given to the carrier to cover him (see paragraph 96), it might be fair, having determined the carrier's liability towards the animals, to define more precisely his responsibility towards the individual accompanying those animals. The crux of the matter is the Convention regulating the contract of carriage of passengers by sea, which is currently being revised by IMCO. The concepts of "contract of carriage" and "passenger" (Brussels Convention of 29 April 1961, article 1 (b) and 1 (c)) need to be adapted in order to cover contracts for the carriage of attendants accompanying shipments of live animals, as is done in article 1, paragraph 1 (b) of the Berne Convention of

26 February 1966, additional to the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV) of 25 February 1961.

ANNEX I

Summary of court decisions transmitted by the Central Office for International Railway Transport (OCTI)

[Not reproduced in the present volume.]

ANNEX II

Extracts from the IATA Live Animals Manual

[Not reproduced in the present volume.]

ANNEX III

Conditions of Contract for Conveyance of Live Stock of the Belfast Steamship Company, Limited

[Not reproduced in the present volume.]

ANNEX IV

Standard clauses relating to the carriage of live animals

[Not reproduced in the present volume.]

4. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document reference</i>
<i>Working Group on International Legislation on Shipping, sixth session</i>	
Comments and suggestions by Governments and international organizations on the topics to be considered at the sixth session of the Working Group	A/CN.9/WG.III/WP.12/Add.1
Deck cargo: working paper by the Secretariat	A/CN.9/WG.III/WP.14
Provisional agenda and annotations	A/CN.9/WG.III/L.1
Excerpts from the report of the Sub-Committee on International Shipping Legislation (bills of lading) at the fifteenth session of the Asian-African Legal Consultative Committee	A/CN.9/WG.111/(VI)/CRP.1
Proposal by the United States: liability for delay	A/CN.9/WG.III/(VI)/CRP.2
Proposal by Japan: liability for delay	A/CN.9/WG.III/(VI)/CRP.3
Proposal by France: liability of ocean carriers for delay	A/CN.9/WG.III/(VI)/CRP.4
Revised proposal by the United Kingdom: documentary scope of the convention	A/CN.9/WG.III/(VI)/CRP.5
Excerpts proposed by the International Chamber of Commerce (ICC): uniform rules for a combined transport document; liability for delay	A/CN.9/WG.III/(VI)/CRP.6
Proposal by Argentina: liability for delay	A/CN.9/WG.III/(VI)/CRP.7
Proposal by Ghana: liability for delay	A/CN.9/WG.III/(VI)/CRP.8
Proposal by Brazil: definition of delay	A/CN.9/WG.III/(VI)/CRP.9
Proposal by the United States: limitation of carrier liability	A/CN.9/WG.III/(VI)/CRP.10
Proposal by the United States: scope of the convention (documentary and geographical)	A/CN.9/WG.III/(VI)/CRP.11