

of the goods and the character of the danger but also of the precautions to be taken. However, paragraph 2 of article 13 omitted any reference to "precautions to be taken". In the view of these representatives the second sentence of paragraph 2 should therefore be modified along the following lines: "Where dangerous goods are shipped without the carrier having knowledge of their nature or dangerous character or

of the precautions to be taken, the shipper shall be liable . . .".

5. The Working Group was agreed that the text of the draft convention on the carriage of goods by sea, as set forth in the annex, should be presented for detailed consideration to the ninth session of the Commission in 1976, following its circulation to Governments and interested international organizations.

4. Draft convention on the carriage of goods by sea (A/CN.9/105, annex)*

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

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

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

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

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

5. "Contract of carriage" means a contract whereby the carrier agrees with the shipper to carry by sea against payment of freight, specified goods from one port to another where the goods are to be delivered.

6. "Bill of lading" means a document which evidences a contract for the carriage of goods by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

Article 2. Scope of application

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

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

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

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

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

* 18 March 1975.

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

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

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

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

Article 3. Interpretation of the Convention

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

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

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

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

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

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

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

3. In the provisions of paragraphs 1 and 2 of this article, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the

servants, the agents or other persons acting pursuant to the instructions, respectively, of the carrier or the consignee.

Article 5. General rules

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

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

3. The person entitled to make a claim for the loss of goods may treat the goods as lost when they have not been delivered as required by article 4 within 60 days following the expiry of the time for delivery according to paragraph 2 of this article.

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

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

6. The carrier shall not be liable for loss, damage or delay in delivery resulting from measures to save life and from reasonable measures to save property at sea.

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

Article 6. Limits of liability

Alternative A:

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

Alternative B:

1. (a) The liability of the carrier for loss of or damage to goods according to the provisions of article 5 shall be limited to an amount equivalent to (...) francs per kilo of gross weight of the goods lost or damaged.

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed [double] the freight.

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

Alternative C:

1. The liability of the carrier according to the provisions of article 5 shall be limited to an amount equivalent to (...) francs per package or other shipping unit or (...) francs per kilo of gross weight of the goods lost, damaged or delayed, whichever is the higher.

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

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

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

Alternative D:

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

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed:

variation X: [double] the freight;

variation Y: an amount equivalent to $(x-y)^a$ francs per package or other shipping unit or $(x-y)$ francs per kilo of gross weight of the goods delayed, whichever is the higher.

(c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for

^a It is assumed that the $(x-y)$ will represent lower limitations on liability than those established under subparagraph 1 (a).

total loss of the goods with respect to which such liability was incurred.

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

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

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

Alternative E:

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

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 shall not exceed [double] the freight.

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

2. Where a container, pallet or similar article of transport is used to consolidate goods, limitation based on the package or other shipping unit shall not be applicable.

The following paragraphs apply to all alternatives:

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

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

Article 7. Actions in tort

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

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

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

Article 8. Loss of right to limit liability

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the damage resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Nor shall any of the servants or agents of the carrier be entitled to the benefit of such limitation of liability with respect to damage resulting from an act or omission of such servants or agents, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 9. Deck cargo

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

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

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article, the carrier shall be liable for loss of or damage to the goods, as well as for delay in delivery, which results solely from the carriage on deck, in accordance with the provisions of articles 6 and 8. The same shall apply when the carrier, in accordance with paragraph 2 of this article, is not entitled to invoke an agreement for carriage on deck against a third party who has acquired a bill of lading in good faith.

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

Article 10. Liability of contracting carrier and actual carrier

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

actual carrier, be responsible for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

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

3. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the actual carrier only if agreed by him expressly and in writing.

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

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

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

Article 11. Through carriage

1. Where a contract of carriage provides that the contracting carrier shall perform only part of the carriage covered by the contract, and that the rest of the carriage shall be performed by a person other than the contracting carrier, the responsibility of the contracting carrier and of the actual carrier shall be determined in accordance with the provisions of article 10.

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

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper shall not be liable for loss or damage sustained by the carrier, the actual carrier or by the ship unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents.

Article 13. Special rules on dangerous goods

1. When the shipper hands dangerous goods to the carrier, he shall inform the carrier of the nature of the goods and indicate, if necessary, the character of the danger and the precautions to be taken. The shipper shall, whenever possible, mark or label in a suitable manner such goods as dangerous.

2. Dangerous goods may at any time be unloaded, destroyed or rendered innocuous by the carrier, as the circumstances may require, without payment of compensation by him where they have been taken in charge by him without knowledge of their nature and character. Where dangerous goods are shipped without the

carrier having knowledge of their nature or character, the shipper shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

3. Nevertheless, if such dangerous goods, shipped with knowledge of their nature and character, become a danger to the ship or cargo, they may in like manner be unloaded, destroyed or rendered innocuous by the carrier, as the circumstances may require, without payment of compensation by him except with respect to general average, if any.

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

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

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

Article 15. Contents of bill of lading

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

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

(b) The apparent condition of the goods;

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

(d) The name of the shipper;

(e) The consignee if named by the shipper;

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

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

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

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

(j) The signature of the carrier or a person acting on his behalf; the signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if the law of the country where the bill of lading is issued so permits;

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

(l) The statement referred to in paragraph 3 of article 23.

2. After the goods are loaded on board, if the shipper so demands, the carrier shall issue to the ship-

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

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

Article 16. Bills of lading: reservations and evidentiary effect

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

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

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

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

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

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

Article 17. Guarantees by the shipper

1. The shipper shall be deemed to have guaranteed to the carrier the accuracy of particulars relating to the

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

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

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

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

Article 18. Documents other than bills of lading

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

PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, be given in writing by the consignee to the carrier not later than at the time the goods are handed over to the consignee, such handing over shall be *prima facie* evidence of the delivery of the goods by the carrier in good condition and as described in the document of transport, if any.

2. Where the loss or damage is not apparent, the notice in writing must be given within 10 days after the completion of delivery, excluding that day.

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

^b In regard to drafting changes that may be necessary, see section B of the report, foot-note 17.

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

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

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

Article 20. Limitation of actions

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

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

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

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

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

4. The provisions of paragraphs 1, 2 and 3 of this article shall apply correspondingly to any liability of the actual carrier or of any servants or agents of the carrier or the actual carrier.

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

Article 21. Jurisdiction

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

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

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

(c) The port of loading; or

(d) The port of discharge; or

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

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

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

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

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

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

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

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

Article 22. Arbitration

1. Subject to the rules of this article, parties may provide by agreement that any dispute that may arise under a contract of carriage shall be referred to arbitration.

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

(a) A place in a State within whose territory is situated

(i) The port of loading or the port of discharge, or

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

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

(b) Any other place designated in the arbitration clause or agreement.

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

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

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

PART VI. DEROGATIONS FROM THE CONVENTION

Article 23. Contractual stipulations

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

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

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

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null

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

Article 24. General average

Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding general average. However, the rules of this Convention relating to the liability of the carrier for loss of or damage to the goods shall govern the liability of the carrier to indemnify the consignee in respect of any contribution to general average.

Article 25. Other conventions

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

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

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

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

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

Working Group on International Legislation on Shipping, seventh session

Replies to third questionnaire on bills of lading submitted by Governments and international organizations for consideration	A/CN.9/WG.III/L.2 and Add.1 and 2
Provisional agenda and annotations	A/CN.9/WG.III/L.3
Memorandum submitted by Norway concerning the structure of a possible new convention on the carriage of goods by sea	A/CN.9/WG.III/WP.15
Revised compilation of draft provisions on carrier responsibility	A/CN.9/WG.III/WP.16
Observations by the Central Office for International Railway Transport, Berne	A/CN.9/WG.III(VII)/CRP.1
Proposal by the delegation of France: definition of bills of lading	A/CN.9/WG.III(VII)/CRP.2