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on a draft Latin American convention
on civil liability of carriers in
international land transport

Santiago, Chile, 4 to 8 September 1978

DRAFT LATIN AMERICAN CONVENTION ON CIVIL LIABILITY
OF CARRIERS IN INTERNATIONAL LAND TRANSPORT

Note by the secretariat of CEPAL

Introduction

Pursuant to a mandate received from the member States during its seventeenth session, to assist in the process of creating an adequate institutional infrastructure for international land transport within the region, the CEPAL secretariat has convened an Intergovernmental Preparatory Meeting on a draft Latin American Convention on civil liability of carriers in international land transport (CRT).

The draft submitted to the government representatives for their consideration in this meeting was approved by the Group of Experts invited by CEPAL to examine a first draft of the convention,^{1/} following which it was sent in due course to all member governments of the Commission. Similarly, the study by the CEPAL secretariat entitled Limit of civil liability for carriers in Latin American international land transport: Criteria for selection (ST/CEPAL/Conf.67/L.2) was also sent to them.

The CEPAL secretariat considered it of interest to prepare this document, in order to present some commentaries on the more relevant aspects of the CRT, and also so that the government representatives could consider a series of possible modifications based in part on the comments recently received from international and national organizations.

1. International transport in Latin America and the European institutional experience

As foreign trade among the European nations began many years before significant volumes of goods were transported to other continents, international transport among those nations has been the subject of extensive international co-operation. For example, the idea of freedom of river navigation for international trade was formulated as early as 1792, and by the middle of the nineteenth century binding agreements had been made by interested European nations; the Bern Convention of 1890 established control over movements of international freight by rail and was later to achieve similar control over passenger travel.

^{1/} CEPAL, Report of the Group of Experts on the meeting to draw up a draft Latin American convention on the civil liability of carriers in international land transport (E/CEPAL/1047).

The foreign trade of the Latin American nations, however, began with the exportation of agricultural products and raw materials to the more industrialized regions of the world. As many of the roads, railways and port facilities were constructed only for exportation, these countries lacked the necessary interconnecting routes which would allow reciprocal trade. Although in the last 25 years their foreign trade has shown sustained growth, the greater part of it is, as yet, transported between the interested countries by sea. Obviously, this lack of land-transported foreign trade among the Latin American nations meant less need for international co-operation such as has existed in Europe for many years. Latin America has only just begun to formulate the bases for international land transport agreements and related business practices that have been developing in Europe for more than a century.

As a result of these instances of co-operation in European international trade, the Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956, has a scope of application with relatively wide territorial limits:

"when the place of taking over the goods and the place designated for delivery ... are situated in two different countries, of which at least one is a contracting country..."

This wide scope as recognized in the Commentary on CMR, ECE/TRANS/14 in paragraphs 38 and 39, as a disadvantage:

- "(1) It calls for a threefold legal examination (qualification, national rules of private international law, applicable substantive law);
- (2) It results, on occasion, in the application of a foreign law which is not familiar to the court, or to the parties and their representatives;
- (3) Consistency in the outcome of individual cases, which is one of the objects of private international law, is by no means guaranteed since there may be considerable differences between the national rules of private international law."

However, it was also recognized in paragraph 40 of the same document that if "... a large number of European States would become Parties to CMR in the comparatively near future ... the disadvantages will be reduced to a minimum".

The rapidity with which the individual European nations become signatory parties to CMR seems to be related to the historical patterns of trade between such countries.

/As the

As the Latin American nations have neither as much regional external trade transported by land as the European nations, nor have they been engaged in it for as long a period, the draft Latin American Convention on the Civil Liability of Carriers in International Land Transport (CRT) seeks to avoid a scope of application with the above disadvantages that may lead to conflicts between legal systems or infringe upon the sovereign rights of non-Signatory States.

In view of Latin America's interest in increasing intra-regional trade, the CRT in its present form must be understood as the simplest and most basic first stage in a process that seeks to establish the institutional infrastructure required.

2. Scope of application

The binding scope of application of the CRT is indicated in the first paragraph of article 2 which provides that:

"The present Convention shall apply to the international transport of goods by land, as defined in article 1, between Signatory States."

In order to appreciate the extent of this scope of application it is necessary to take into account the definition of international land transport referred to which is that:

"International land transport" is the activity whereby goods are carried by land, handled or stored, for reward, when such operations form part of the movement of goods from the territory of one State to that of another.

The scope of application thus defined indicates that the CRT will apply to the activity of carriage by land, handling or storage of goods, for reward, when such operations form a part of the movement of goods "between Signatory States". The wording "between Signatory States" was selected by the Group of Experts to restrict the binding application of the CRT to transport operations in which a carrier would receive goods in one Signatory State and the same carrier or his agents would effect delivery of such goods in another Signatory State; however, the wording of the present version of the draft convention does not seem clearly to indicate that these are the transport operations referred to. For

/example, where

example, where goods are delivered to a carrier in non-Signatory State "A", for carriage to Signatory State "C" via Signatory State "B", the CRT might be considered applicable because there is transport "between Signatory States" - "B" and "C". The present draft, however, could also be interpreted as being inapplicable because the transport is not "between Signatory States" but merely via Signatory State "B" to Signatory State "C". So as to avoid such problems of interpretation, therefore, it is proposed that the delegates may wish to consider clarifying the scope of application by adopting a new article 2 as follows:

ARTICLE 2 - Scope of application

1. The present Convention shall apply to the international transport of goods by land, as defined in article 1, paragraph 1, if a carrier or his servants or agents receives the goods in the territory of a Signatory State for delivery in the territory of another Signatory State.
2. It shall also apply to operations forming part of the international transport of goods by land, as defined in article 1, which are performed within the territory of a Signatory State, provided that the shipper has declared in writing that such operations form part of a process of international transport, whatever the place of residence or nationality of the parties.
3. The shipper and carrier may agree that the Convention shall apply to any operation of the international transport of goods by land defined in article 1.
4. The present Convention shall be applicable to the international land transport of goods, defined in article 1, when this is effected by institutions, agencies or enterprises of a Signatory State.
5. The present Convention shall not be applicable to transport operations effected by sea or air, nor to operations governed by international postal conventions.

The definition of "international land transport" makes use of the conjunction "or" between the transport operations enumerated indicating that the actual land transport, handling and storage are included, if

/either separately

either separately or in conjunction they form part of the movement of goods between Signatory States. The CRT in no way seeks to govern the carriage of goods between Signatory States other than by land transport. By declaration of the shipper or agreement between the parties, however, it may include handling and storage operations that complement international transport by means other than by land. Thus, the CRT applies not only to land transport between Signatory States but also to handling or storage or both if they form part of the movement of goods by air or sea.

In the following sections are examined the effects of the definition of the scope of application of the CRT on various legal aspects or problems:

- (a) forms of regulating transport operations;
- (b) unification of liability régimes;
- (c) jurisdiction;
- (d) national legislation.

(a) Forms of regulating transport operations

International transport conventions are generally drawn up to regulate the performance of specific transport operations. This may be accomplished directly by regulating the persons performing such operations, or indirectly by regulating the execution and performance of the contract of carriage. Each of these methods has its advantages in a given set of circumstances. For example, if regulation is sought over shippers, carriers and their respective agents only, a convention regulating the execution and performance of the contract of carriage seems appropriate. However, if regulation is sought over a broader group of persons performing various transport operations such as handling, storage or transport proper, a convention regulating all the persons who might perform such operations seems indicated.

The CMR is an example of the regulation of specific transport operations by regulating the contract of carriage. According to the definition in article 1, the CMR applies specifically to every contract for the carriage of goods by road. Further, the Commentary on the CMR, ECE/TRANS/14, provides in paragraph 48 that:

/"CMR is

"CMR is applicable not to a transport operation but to a given contract of carriage (although articles 31 and 32 are an exception to this principle)" (*italics added*).

Thus, as the CMR specifically regulates the contract of carriage, any person performing such a contract - shippers, carriers or their agents - must do so in accordance with the provisions of this Convention.

The CMR regulates the activities of shippers, carriers and their respective agents by means of the contract of carriage; the CRT regulates the activities not only of shippers, carriers and their respective agents but also of persons handling and storing goods.

The inclusion of the agents of both carriers and shippers within the scope of the draft convention is necessary for the same reason as such agents are included in all major transport convention: they may arrange the terms of carriage between shippers and carriers, and may be active agents engaging in the very activity these conventions seek to regulate. Indeed, unless the jurisdiction includes these agents, the aims of the CRT may be weakened.

(b) Unification of liability régimes

Where several régimes of liability exist and damage occurs to goods at a point in the transport chain where two or more functions - for example, unloading and storing - are performed practically simultaneously by different legal persons or entities, each of these persons will allege: first, that his legal régime applies; secondly, that this legal régime does not make him responsible for such damage; thirdly, that he is not subject to any legal régime other than his own; and fourthly, that the other party or parties must, therefore, assume responsibility.

The scope of application of international transport conventions is normally restricted to persons performing specific transport functions and they grant jurisdiction - the authority to hear and decide a specific type of dispute - to a limited number of courts. The owner of the damaged cargo and his insurance company might go from court to court and from legal régime to legal régime without recovery as each court, in keeping with its own legal régime, could maintain that the person subject to its jurisdiction is not responsible for the said damage.

In an effort to avoid such areas of concurrent responsibilities, international transport conventions normally carefully define the

/circumstances which

circumstances which establish and terminate carrier responsibility for damage to goods. For example, The Hague Rules 2/ use a definite event - from the time the goods are connected to the ship's tackle until they are released from it - to establish and terminate responsibility. The CRT, however, in establishing the civil liability of carriers in international land transport, does not attempt to define with such accuracy an event which will establish and terminate the responsibility of the various persons handling, storing or transporting goods. Instead, it seeks to bring under the same régime all the persons in Latin American international land transport who handle, store and transport goods in order to facilitate all legal action to obtain compensation from the party or parties responsible.

The recently adopted Hamburg Rules, 3/ in article 11, make use of a similar procedure with reference to actual carriers. In a through-carriage arrangement, whereby a contract of carriage by sea provides explicitly that a specified part of the carriage covered by this contract is to be performed by a named person other than the carrier, both carriers and actual carriers are subject to the same legal régime. Under this article, the owner of damaged cargo or his insurer, failing settlement of a claim, can bring a legal action against both the carrier and the actual carrier. In such action the carrier has the burden of proving that the damage occurred while the goods were in the charge of the actual carrier.

(c) Jurisdiction

So that the injured party may of his own free will bring an action before a competent court, and considering that the place designated for this purpose in the contract of carriage was agreed upon by assent, it would seem advisable to omit in article 10, paragraph 1 the phrase "in the

2/ Done in Brussels on 25 August 1924; applicable since 2 June 1931 (see United Nations, Register of Texts of Conventions and other instruments concerning international trade law, New York, 1973 (Sales number: E.73.V.3)).

3/ Done in Hamburg in March 1978 (see United Nations, General Assembly, Final Act of the United Nations Conference on the carriage of goods by sea, 1978 (A/CONF.89/13)).

absence of any agreement in this respect, in any court of his choice".

This paragraph would then read:

"In legal proceedings relating to the international transport of goods under this Convention the plaintiff may bring an action in any court agreed upon by the parties or in any court which is competent according to the law of the State where the court is situated and within the jurisdiction of which is situated one of the following:"

(d) National legislation

The scope of application was drafted to be applicable in three situations; first, in binding form when the goods are, for example, moved between two Signatory States; secondly, in declaratory form when the shipper unilaterally declares that such carriage is subject to the CRT; and thirdly, in voluntary form, with both the shipper and carrier have agreed that their relationship is to be governed by the CRT. As the parties may choose to employ the declaratory or voluntary forms within the scope of application even to wholly national carriage, conflicts may arise between national laws and the CRT. In the case of claims, doubts may arise as to whether CRT rules or national laws on the domestic carriage of the same goods are applicable.

In order to ensure that the national land transport laws of each country are not in conflict with the CRT, the delegates might wish to consider the following addition as paragraph 7 of article 14:

"The provisions of this Convention shall apply to all international transport of goods by land falling within the scope of application, defined in article 2, preference over any law, rule or regulation, in force in the Signatory State governing the contract of carriage."

3. Mandatory principle of the Convention

Where a convention applies to specific transport operations through the regulation of the contract of carriage, a clause is normally required to be included in such contracts indicating that the contracting parties agree to regulate their relations in accordance with the provisions of such convention. For example, in article 6, paragraph 1 (k), the CMR

/provides that

provides that the consignment note shall contain a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of said Convention.

As a means of nullifying agreements between contracting parties that violate the provisions of the Convention, the delegates may wish to consider the addition of the following as paragraph 5 of article 4:

"5. Any written or verbal stipulation 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 will not affect the validity of the other written or verbal provisions of the agreement, of which it forms a part."

4. Period of liability of the carrier

Article 3 of the CRT establishes that "the carrier shall be responsible for the goods from the moment in which he takes over the goods until the moment of delivery". Also defined within the same article is the phrase "takes over the goods". Nevertheless, no mention is made of a document recording this act.

In order to remedy this, UNIDROIT and other specialized organizations have suggested that it would be advisable to include in the CRT some reference to the transport document and the most important data to be included for the purposes of the CRT. The recognition of the evidentiary nature of this document would give shippers proof that the goods were received by the carrier. This document would also reinforce the mandatory principle of this Convention, if it included a paramount clause subjecting such carriage to the provisions of the CRT.

In order to make use of these suggestions, it is proposed to include in article 1 a new paragraph 8 with the following definition:

"8. Consignment note, bill of lading or waybill is the document issued by the carrier, which evidences the taking over of the goods by the carrier for delivery as agreed."

The present paragraph 8 would then become paragraph 9.

The following additions to article 3, as paragraphs 3, 4 and 5, are also proposed:

/"3. After

"3. After taking over the goods of carrier shall issue, at the request of the shipper, a waybill or bill of lading including, inter alia, the following:

- (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. Nevertheless, if the carrier has grounds for supposing that the particulars do not accurately represent the goods actually taken over or if he has had no reasonable means of checking such particulars, he shall insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking;
- (b) the apparent condition of the goods;
- (c) a clause stating 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. The bill of lading is prima facie evidence, in the absence of proof to the contrary, of the taking over by the carrier of the goods as described in the bill of lading.

5. The shipper guarantees to the carrier the accuracy of the particulars indicated in paragraph 3(a) of this article as furnished by him for insertion in the bill of lading. The shipper shall indemnify the carrier against the loss resulting from inaccuracies in such particulars. The right of the carrier to such indemnity in no way limits his liability to any person other than the shipper."

5. Delayed goods considered as lost

All international transport conventions which contain provisions for delay in delivery permit shippers and their consignees to consider the goods transported as lost if they have not been delivered or made available for delivery within a stated period of time after such delivery was to have been effected. Although the time period for this provision in article 4, paragraph 3, of the draft Convention is yet to be determined, the following time periods are employed in other international transport conventions:

CONVENTIONS	TIME PERIODS
Hamburg Rules (Art. 5)	60 consecutive days
CMR (Art. 20)	30 days
CIM (Art. 30) <u>4/</u>	30 days
Warsaw (Art. 13) <u>5/</u>	7 days

As is apparent, the Hamburg Rules provide the most generous time period before goods in ocean carriage may be considered as lost. The period of 60 consecutive days in these Rules is a recognition of the longer periods involved in ocean carriage.

6. Special drawing rights

The monetary unit used in international transport conventions to calculate an injured shipper's compensation should have relative monetary stability and be readily convertible into a wide range of national currencies. In order to use a monetary unit in keeping with these requirements international transport conventions have successively employed the following monetary units: first, a major international trading nation's currency; secondly, the gold franc; and thirdly, the Special Drawing Right (SDR) 6/ of the International Monetary Fund. For example, in ocean transport The Hague Rules (1924) employed the pound sterling, the Protocol (1968) to

4/ International Convention concerning the Carriage of Goods by Rail (Convention internationale concernant le transport des marchandises par chemins de fer: CIM), done at Berne on 7 February 1970, applicable since 1 January 1975.

5/ Done in Warsaw on 12 October 1929, amended in The Hague in 1955 (see ICAO, Annual Council Report - 1977, document 9233); applicable since 1 August 1963.

6/ The special drawing right (SDR) is a unit of value established by the International Monetary Fund (IMF) which may be used as a relatively stable unit of account for international operations. Its value in United States dollars is determined daily by adding the values in dollars, at the market exchange rate, of certain proportions of the currencies of the 16 countries with the most important role in international trade. At 31 May 1978 its value was 1.21985 dollars. The value of the SDR in any currency other than the United States dollar is obtained by means of the exchange rate of that currency to the United States dollar and the value of the SDR in dollars.

amend The Hague Rules made use of the gold franc and the Hamburg Rules (1978), which are to replace the earlier Hague Rules and Protocol, employ SDRs.

At one time, the gold franc was the unit of account employed in most European transport conventions. When these provisions were initially adopted, the conversion of the gold franc to the national currencies of the contracting countries did not involve any particular difficulty. Most European countries had at that time an official exchange rate for gold expressed in their respective national currencies, or a system of reference to a third currency based on gold which had the same effects. As many countries no longer acknowledge an official parity between gold and their national currency - when it does exist, it is often obsolete or artificial - conversion of gold francs into the national currency of any contracting party may involve major difficulties in determining the applicable rate of exchange.

As neither national currencies nor gold francs have proved suitable monetary units in other international transport conventions, the delegates may wish to consider the following amendments and additions (Article 26 of the Hamburg Rules and draft Protocol to the CMR) 7/ to article 6 of the CRT, which will incorporate SDRs as the unit of account in this Convention.

(i) Paragraph 1:

"... equivalent to ... units of account per kilogramme of gross weight of the goods lost or damaged."

(ii) At the end of article 6

"5. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 1 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms

7/ ECE, Draft protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) (TRANS/R.58/Rev.1), May 1978.

of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

6. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 5 of this article may, at the time of ratification of or accession to this Convention or at any time thereafter, declare that the limit of liability provided for in paragraph 1 of this article to be applied in their territories shall be ... monetary units. The monetary unit referred to in this paragraph corresponds to 65.5 miligrammes of gold of millesimal fineness nine hundred. The conversion of the amount specified in this paragraph into the national currency shall be made according to the law of the State concerned.

7. The calculation mentioned in the last sentence of paragraph 5 of this article and the conversion mentioned in paragraph 6 of this article shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amount in paragraph 1 of this article as is expressed there in units of account. The States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant to paragraph 5 of this article or the result of the conversion in paragraph 6 of this article as the case may be, when depositing the instrument referred to in article 14 of the Convention and whenever there is a change in either."

7. Contractual liability

Article 8 of the CRT establishes the principle, employed in other major transport conventions, that the defences and limits of liability apply in any action against the carrier - whether such actions be founded in contract, tort or otherwise. For example, the Convention on the Contract for the International Carriage of Goods by Road (CMR) provides in article 28 that

"In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due." (Italics added.)

In some legal systems extra-contractual liability is incorporated in contractual liability while in others both forms of recovery may be regarded as coexistent. In the latter case, a plaintiff may base his claim on the form which he believes to be most advantageous. When injured shippers invoke this non-contractual form of recovery, they should not be allowed to overstep the provisions concerning limitation of liability in the draft Convention which were prepared for the purpose of protecting both carriers and shippers. In order that the CRT may apply not only to actions instituted by injured shippers who base their right of recovery on this Convention but also to actions brought pursuant to other applicable legislation which provides for an extra-contractual form of recovery, it seems advisable to change the text of paragraph 1 of article 8 as follows:

"The exemptions from the limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to the goods, as well as of delay in delivery whether the action is founded on contractual or extra-contractual liability or otherwise."

In the same manner it appears that the title for this article might more appropriately be: "Application to extra-contractual claims".

8. Notice of loss, damage or delay in delivery

The notification periods that follow are employed in other transport conventions and may serve as a basis for the delegates in establishing the periods mentioned in article 9. (It should be noted that the word "notificación" has a distinct legal meaning in Latin American commercial codes. Thus, the use of the term "notificación de la pérdida, avería o demora en la entrega" in the Spanish original might raise doubts as to whether there is a requirement to comply with any legal formalities assigned to this process in national laws. In an effort to avoid such problems it seemed advisable to suggest to the delegates that the above phrase be replaced by the expressions "avisar" and "dar aviso por escrito". The English translation will, however, retain the phrase "Notice of loss, damage or delay in delivery".)

In order to give fuller protection to the rights granted to shippers and carriers by international transport conventions, such conventions provide that injured consignees must inform their carriers of any loss, damage or delay in delivery of cargo within a stated period of time. The main difference between the provisions of each of these conventions is the length of the periods within which a consignee must notify a carrier of apparent or non-apparent loss, damage, or delay in delivery. As can be seen from the following notice periods the International Convention for the Unification of Certain Rules Relating to Bills of Lading (1924) and the Convention on the Carriage of Goods by Sea (1978), better known as The Hague Rules and Hamburg Rules, provide respectively the most limited and generous time periods within which notice must be given for apparent and non-apparent loss or damage, and delay in delivery.

CONVENTION	APPARENT DAMAGE	NON-APPARENT DAMAGE DAMAGE	DELAY IN DELIVERY
Hague Rules (art. 3)	Time of delivery	3 days after delivery	-
CMR (art. 30)	Time of delivery	7 working days after delivery	21 days after delivery
Warsaw (art. 26)	Time of delivery	14 days after delivery	21 days after delivery
CIM (art. 45 and 46)	Time of delivery	7 days after delivery	60 days after delivery
Hamburg Rules (art. 19)	Day after delivery	15 consecutive days after delivery	60 consecutive days after delivery /In order

In order to give consignees a reasonable period of time within which to report apparent loss or damage to goods that will not place an undue burden on the flow of international trade, the Hamburg Rules propose a limited increase in the time period established by The Hague Rules to encompass "... the working day after the day when the goods were handed over to the consignee ...".

With regard to article 9, paragraph 2, the Hamburg Rules, which were adopted after the meeting of the Group of Experts, establish a procedure to avoid the repetition of the formalities while protecting the shipper. As this procedure appears preferable to that indicated in the present article 9, paragraph 2, it is recommended that this paragraph be replaced by the following:

"If the state of the goods, at the time they were handed over to the consignee, has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection."

Annex

DRAFT LATIN AMERICAN CONVENTION ON CIVIL LIABILITY OF
CARRIERS IN INTERNATIONAL LAND TRANSPORT

Actual version

ARTICLE 1 - Definitions

For the purposes of this Convention:

1. "International land transport" is the activity whereby goods are carried by land, handled or stored, for reward, when such operations form part of the movement of goods from the territory of one State to that of another.

2. "Goods" are any kind of merchandise that can be transported. The term "goods" includes live animals. When the goods are consolidated in containers, pallets or other similar articles of transport, or when they are packed, the term "goods" includes such articles of transport or packaging if supplied by the shipper.

3. "Storage" means the safekeeping of the goods in a warehouse, depository or open area.

4. "Handling" means the performance of any operation involving the loading, transshipment or unloading of goods, including any operations effected in order to form or split up consolidated lots of goods.

5. "Carrier" is any person who undertakes the international transport of goods defined in paragraph 1 of this article, in accordance with the relevant legal provisions.

Proposed text

ARTICLE 1 - Definitions

1. Id.

2. Id.

3. Id.

4. Id.

5. "Carrier" is any person who undertakes the international transport of goods defined in paragraph 1 of this article.

/6. "Shipper

Actual version

ARTICLE 1 - Definitions

(cont.)

6. "Shipper or sender" is the person who, on his own or another's behalf, entrusts the carrier with the international transport of goods.

7. "Consignee" is the person entitled to receive the goods.

8. Any reference to a person or entity shall also apply to the servants or agents of the said person or entity.

Proposed text

ARTICLE 1 - Definitions

(cont.)

6. "Shipper or sender" is the person who, on his own or another's behalf, entrusts the carrier with the international transport of goods by land.

7. Id.

8. "Consignment note, bill of lading or waybill" is the document issued by the carrier which evidences the taking over of the goods by the carrier for delivery as agreed.

9. Any reference to a person or entity shall also apply to the servants or agents of the said person or entity.

/ARTICLE 2

Actual version

ARTICLE 2 - Scope of application

1. The present Convention shall apply to the international transport of goods by land, as defined in article 1, between signatory States.

2. It shall also apply to operations forming part of the international transport of goods by land * which are performed within the territory of a signatory State, provided that the shipper has declared in writing that such operations form part of a process of international transport, whatever the place of residence or nationality of the parties.

The parties may agree that the Convention shall apply to the international land transport of goods, even when such transport is within the territory of a non-signatory State.

3. The present Convention shall be applicable to the international land transport of goods when this is effected by institutions, agencies or enterprises of a signatory State.

4. The present Convention shall not be applicable to transport effected under international postal conventions.

Proposed text

ARTICLE 2 - Scope of application

1. The present Convention shall apply to the international transport of goods by land, as defined in article 1, paragraph 1, if a carrier or his servants or agents receives the goods in the territory of a signatory State for delivery in the territory of another signatory State.

2. It shall also apply to operations forming part of the international transport of goods by land, as defined in article 1, which are performed within the territory of a signatory State, provided that the shipper has declared in writing that such operations form part of a process of international transport, whatever the place of residence or nationality of the parties.

3. The shipper and the carrier may agree that the Convention shall apply to any operation of the international transport of goods by land defined in article 1.

4. The present convention shall be applicable to the international land transport of goods defined in article 1 when this is effected by institutions, agencies or enterprises of a signatory State.

5. The present convention shall not be applicable to transport operations effected by sea or air, nor to operations governed by international postal conventions.

* See definition in article 1, paragraph 1.

Actual version

ARTICLE 3 - Period of liability of
the carrier

1. The carrier shall be responsible for the goods from the moment in which he takes over the goods until the moment of delivery.

2. For the purposes of paragraph 1 of this article the goods are deemed to have been taken over by the carrier when they are received from the shipper or from any third person, including any authority in whose custody or control they may be; the carrier is deemed to have made delivery of the goods:
(a) when they have been received by the consignee at the place mutually agreed upon between the parties;
(b) in the event that the consignee does not receive the goods directly from the carrier, when the carrier places them at the disposal of the consignee in accordance with the contract, the law or the usage of the particular trade applicable at the place of delivery; or (c) when the carrier delivers the goods to an authority or other third party to whom they must be delivered under the laws or regulations applicable at the place of delivery.

Proposed text

ARTICLE 3 - Period of liability
of the carrier

1. Id.

2. Id.

3. After taking over the goods the carrier shall issue, at the request of the shipper, a bill of lading including, inter alia, the following:

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

/Nevertheless, if

Actual version:

ARTICLE 3 - Period of liability
of the carrier

(cont.)

Proposed version

ARTICLE 3 - Period of liability
of the carrier

(cont.)

Nevertheless, if the carrier has grounds for supposing that the particulars do not accurately represent the goods actually taken over or if he has had no reasonable means of checking such particulars, he shall insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking;

(b) the apparent condition of the goods;

(c) a clause stating 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. The consignment note, bill of lading or waybill prima facie evidence, in the absence of proof to the contrary, of the taking over by the carrier of the goods as described in said document.

5. The shipper guarantees to the carrier the accuracy of the particulars indicated in paragraph 3 (a) of this article as furnished by him for insertion in the bill of lading. The shipper shall indemnify the carrier against the loss resulting from inaccuracies in such particulars. The right of the carrier to such indemnity in no way limits his liability to any person other than the shipper.

/ARTICLE 4

Actual version

ARTICLE 4 - Basis of liability of
the carrier

1. The carrier shall be liable for the total or partial loss of the goods and for the damage thereto, as well as for any delay in delivery, if the event which caused the loss, damage, or delay took place while the goods were in his charge as defined in article 3.

2. Delay in delivery shall be deemed to have occurred when the goods have not been delivered within the agreed time limit or, in the absence of a stipulated delivery time, within the time which it would normally be reasonable to require of a carrier, having regard to the circumstances of the case.

3. The persons entitled to make a claim for the loss of the goods may treat the goods as lost when they have not been delivered as required by paragraph 2 of article 3 within days following the expiry of the time for delivery defined in paragraph 2 of the present article.

4. The carrier shall be liable for the acts and omissions of his agents and servants and of any third parties whose services he uses in performing the transport operation, when said agents, servants or third parties are acting within the scope of their employment.

Proposed version

ARTICLE 4 - Basis of liability
of the carrier

1. Id.

2. Id.

3. Id.

4. Id.

5. Any written or verbal stipulation 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 does not affect the validity of the other written or verbal provisions of the agreement of which it forms a part.

/ARTICLE 5

Actual version

ARTICLE 5 - Exoneration from liability

1. The carrier shall not be liable for the loss, damage or delay in the delivery of the goods when said loss, damage or delay arises from the special risks inherent in one or more of the following circumstances:

- (a) Wrongful act or neglect of the claimant;
- (b) Inherent vice of the goods;
- (c) Act of war or civil commotion;
- (d) Strikes, lock-outs, or partial or total stoppage or withholding of labour beyond the control of the carrier;
- (e) Act of God or force majeure;
- (f) Defective or insufficient packing which was not apparent;
- (g) Unloading, destroying or rendering harmless at any time or place, as circumstances may require, goods whose dangerous nature had not been declared by the shipper when the carrier took over the goods;
- (h) The carriage of live animals, provided the carrier proves that he has complied with all the special instructions given him by the shipper;
- (i) Normal shortages as a result of handling or the actual nature of the goods previously agreed upon by the parties or established by the relevant laws.

Proposed version

ARTICLE 5 - Exoneration from liability

1. Id.

Actual version

Proposed version

ARTICLE 5 - Exoneration from liability

ARTICLE 5 - Exoneration from liability

2. In the case of loss, damage or delay in the delivery of the goods, it shall be incumbent upon the carrier to prove that said loss, damage or delay was due to one of the special risks specified in paragraph 1 of this article.

2. Id.

3. When an act of omission of the carrier combines with another cause to produce loss, damage or delay in delivery, the carrier shall not be responsible for any loss, damage or delay in delivery that cannot be attributed to his act or omission. In such cases it shall be incumbent upon the carrier to prove the amount of loss, damage or delay in delivery not attributable to him.

3. Id.

Actual version

ARTICLE 6 - Limits of liability

1. When, under the provisions of this Convention, a carrier is required to pay compensation for total or partial loss of goods, such compensation shall be limited to an amount equivalent to (... units of account) per kilogram of gross weight of the goods lost or damaged.

2. The liability of the carrier for delay in delivery according to the provisions of article 4 shall not exceed the freight payable for the goods delayed.

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

4. The aggregate liability of the carrier under paragraphs 1 and 2 of this article shall not, except as provided in paragraph 3 of this article, exceed the limit established in paragraph 1 of this article for total loss of the goods with respect to which such liability was incurred.

Proposed version

ARTICLE 6 - Limits of liability

1. When, under the provisions of this Convention, a carrier is required to pay compensation for total or partial loss of goods, such compensation shall be limited to an amount equivalent to ... units of account per kilogram of gross weight of the goods lost or damaged.

2. Id.

3. Id.

4. Id.

5. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 1 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a contracting State which is a member of the International Monetary Fund,

/shall be

Actual version

ARTICLE 6 - Limits of liability

(cont.)

Proposed version

ARTICLE 6 - Limits of liability

(cont.)

shall be in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

6. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 5 of this article may, at the time of ratification of or accession to this Convention or at any time thereafter, declare that the limit of liability provided for in paragraph 1 of this article to be applied in their territories shall be ... monetary units. The monetary unit referred to in this paragraph corresponds to 65.5 milligrammes of gold of millesimal fineness nine hundred. The conversion of the amount specified in this paragraph into the national currency shall be made according to the law of the State concerned.

/7. The

Actual version

ARTICLE 6 - Limits of liability

(cont.)

Proposed text

ARTICLE 6 - Limits of liability

(cont.)

7. The calculation mentioned in the last sentence of paragraph 5 of this article and the conversion mentioned in paragraph 6 of this article shall be made in such a manner as to express in the national currency of the contracting State as far as possible the same real value for the amount in paragraph 1 of this article as is expressed there in units of account. The States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant to paragraph 5 of this article or the result of the conversion in paragraph 6 of this article as the case may be, when depositing the instrument referred to in article 14 of the Convention and whenever there is a change in either.

/ARTICLE 7

Actual version

ARTICLE 7 - Loss of the right to
limit liability

1. The carrier may not avail himself of the provisions in articles 5 and 6 which exonerate him from or limit his liability, if it is proved that the loss, damage or delay in delivery resulted from a fraudulent act or omission, or from wilful negligence equivalent to fraud and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 8, no servant or agent of the carrier may avail himself of the provisions in articles 5 and 6 which exonerate him from or limit his liability, if it is proved that the loss, damage or delay in delivery resulted from a fraudulent act or omission, or from wilful negligence equivalent to fraud, and with knowledge that it would probably have such results.

Proposed text

ARTICLE 7 - Loss of the right to
limit liability

1. Id.

2. Id.

Actual version

ARTICLE 8 - Application to claims not related to the carriage agreement

1. In cases where loss, damage or delay arising out of carriage under this Convention gives rise to a claim not related to said carriage, the carrier may avail himself of the provisions of this Convention which exonerate him from liability or which fix or limit the compensation due.

2. If such a claim is brought against a servant or agent of the carrier, such servant or agent shall be entitled to avail himself of the provisions for exoneration from and limitation of liability which the carrier is entitled to invoke under this Convention, provided he can prove that he was acting within the scope of their employment.

3. Without prejudice to the provisions of paragraph 3 of article 6, the total amounts recoverable from the carrier or from any of the persons referred to in paragraph 2 of the present article shall not exceed the limits of liability provided for in this Convention.

Proposed text

ARTICLE 8 - Applications to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods, as well as of delay in delivery whether the action is founded in contractual or non-contractual liability.

2. Id.

3. Id.

/ARTICLE 9

Actual version

ARTICLE 9 - Notice of loss, damage or delay in delivery

1. It shall be presumed that the goods were received in good condition 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 working days after delivery of the goods to the consignee in the case of loss or damage which is apparent, or within working days of delivery to the consignee, in the case of loss or damage which is not apparent.

2. If the state of the goods has, at the time of delivery to the consignee, been the subject of a joint survey or inspection by the parties, evidence contradicting the result of said survey or inspection shall only be admissible in the case of loss or damage which is not apparent and provided that the consignee notifies the carrier in writing within working days from the date of said survey or inspection.

3. In the case of any actual or presumed total or partial loss or damage, the carrier and the consignee shall give all reasonable facilities to each other for verifying the fact or surveying and inspecting the goods.

4. No compensation shall be payable for delay in delivery unless notice of the delay has been given in writing to the carrier within working days after the date on which the goods were handed over to the consignee.

5. If the goods have been delivered by a servant or agent of the carrier, any notice given under this article to such servant or agent shall have the same effect as if it had been given to the carrier.

Proposed text

ARTICLE 9 - Notice in writing of loss, damage or delay in delivery

1. Id.

2. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

3. Id.

4. Id.

5. If the goods have been delivered by a servant or agent of the carrier, any notice in writing given under this article to such servant or agent shall have the same effect as if it had been given to the carrier.

Actual version

ARTICLE 10 - Jurisdiction

1. In legal proceedings relating to the international transport of goods under this Convention the plaintiff may bring an action in any court agreed upon by the parties or, in the absence of any agreement in this respect, in any court of his choice which is competent according to the law of the State where the court is situated and within the jurisdiction of which is situated one of the following:

- (a) The principal place of business of the defendant;
- (b) The ordinary residence of the defendant;
- (c) The branch or agency of the defendant through which the international carriage was contracted;
- (d) The place where the goods were taken over by the carrier; or
- (e) The place designated for delivery of the goods.

2. Judgements after trial rendered under the authority of a competent tribunal of a State shall be enforceable by the parties within or outside the territory in which said tribunal is located, as best suits their interests. When such enforcement is requested outside the said territory, the formalities required for this purpose by the laws of the State in which the enforcement of the judgement is requested shall be complied with. The fulfilment of such formalities shall not provide grounds for such judgements to be reviewed or modified.

3. The provisions of paragraph 2 of this article shall apply to judgements after trial, judgements by default and settlements approved or confirmed by an order of the competent court.

Proposed text

ARTICLE 10 - Jurisdiction

1. In legal proceedings relating to the international land transport of goods under this Convention the plaintiff may bring an action in any court agreed upon by the parties or in any court competent according to the law of the State where the court is situated and within the jurisdiction of which is situated one of the following:

- (a) The principal place of business of the defendant;
- (b) The ordinary residence of the defendant;
- (c) The branch or agency of the defendant through which the international carriage was contracted.
- (d) The place where the goods were taken over by the carrier; or
- (e) The place designated for delivery of the goods.

2. Id.

3. Id.

Actual version

ARTICLE 11 - Limitations of actions

1. Any actions related to the international land transport of goods under this Convention must be brought within one year from the time at which the obligation in question becomes demandable. The time-limit shall be two years in cases of fraud or wilful negligence equivalent to fraud, according to the laws of the State in which the Tribunal is located.

2. The period concerned shall not include the day on which the said period begins.

Proposed text

ARTICLE 11 - Limitations of actions

1. Id.

2. Id.

Actual version

ARTICLE 12 - Revision or amendment

1. After this Convention has been in force for three years, any of the parties may request, through the Secretary-General of the United Nations, that a conference be convened to review it. The Secretary-General shall notify the parties of this request, and if within a period of four months after the date of such notification not less than one-fourth of the parties agree, he shall convene a review conference.

2. The Secretary-General shall inform the parties that the conference convened in accordance with paragraph 1 of this article is to be held and shall invite them to submit, within a period of three months, any proposals which they feel should be considered. The Secretary-General shall inform the parties of the provisional agenda of the conference, together with the text of the proposals submitted, at least three months before the opening date of the conference.

3. The Secretary-General shall invite the contracting parties and the signatory States of this Convention to the conference convened in accordance with this article.

Proposed text

ARTICLE 12 - Revision or amendment

1. Id.

2. Id.

3. Id.

Actual version

ARTICLE 13 - Depositary

1. The depositary of the present Convention shall be the Secretary-General of the United Nations.*
2. The functions of the depositary shall be those customary in the international sphere and shall comprise in particular:
 - (a) keeping custody of the original text of the Convention and of any full powers delivered to the depositary;
 - (b) extending certified copies of the original text and preparing any further texts of the Convention in such additional languages as may be required under its terms, and transmitting them to the parties and States indicated in paragraph 1 of article 14;
 - (c) receiving any signatures to the Convention and receiving and keeping custody of any instruments, notifications and communications relating to it;
 - (d) examining whether any signature, instrument, notification or communication relating to the Convention is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
 - (e) informing the parties to the Convention and the States entitled to become parties of acts, notifications and communications relating to the Convention;
 - (f) informing States entitled to become parties to the Convention when the number of signatures or of instruments of ratification or accession required for the entry into force of the Convention has been received or deposited;

* The drafting approved by the Expert Group did not identify the Secretary-General of the United Nations as the depositary, but specific reference to him has been added in order to make this article compatible with articles 12 and 14.

Proposed text

ARTICLE 13 - Depositary

1. Id.
2. Id.

Actual version

Proposed text

ARTICLE 13 - Depositary

ARTICLE 13 - Depositary

(cont.)

(cont.)

(g) registering the Convention with the Secretariat of the United Nations.

3. In the event of any difference arising between a State and the depositary concerning the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States.

3. Id.

/ARTICLE 14

Actual version

Proposed text

ARTICLE 14 - Final provisions

ARTICLE 14 - Final provisions

1. This Convention shall be open for signature by all States
.....
until 19...., at
Reservations entered when signing this Convention shall be accepted only if they are approved by of the other contracting parties.

1. Id.

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

2. Id.

3. This Convention shall be open to the accession of any of the States mentioned in paragraph 1 of this article. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

3. Id.

4. This Convention shall enter into force on the day following the date on which States have acceded to it or deposited their instruments of ratification. For each State ratifying or acceding to the Convention after States have deposited their instruments of ratification or accession, the Convention shall enter into force on the day after the deposit by such State of its instrument of ratification or accession.

4. Id.

5. Any of the contracting parties may denounce this Convention by notifying the Secretary-General of the United Nations of its intention to do so. The denunciation shall take effect months after the date on which the Secretary-General of the United Nations has received notice of such party's intention to denounce it.

5. Id.

Actual version

ARTICLE 14 - Final provisions

(cont.)

6. None of the provisions of this Convention shall prevent the implementation of any international convention signed under the auspices of the United Nations or of any of its specialized agencies which refers to a single contract for the transport of goods concluded by the person or organization providing this service and using two or more modes of transport.

Proposed text

ARTICLE 14 - Final provisions

(cont.)

6. Id.

7. The provisions of this Convention shall apply to all international land transport of goods falling within the scope of application defined in article 2, with precedence over any law, rule or regulation in force in the signatory States governing a contract of carriage.

