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C E P A L
Economic Commission for Latin America

A LATIN AMERICAN CONVENTION ESTABLISHING UNIFORM CONDITIONS
OF LIABILITY FOR ENTERPRISES OFFERING INTERNATIONAL
TRANSPORTATION AND RELATED SERVICES

Preliminary draft prepared by the
Secretariat of CEPAL

Introduction

At its seventeenth session, held in Guatemala City, Guatemala, from 25 April to 5 May 1977, the United Nations Economic Commission for Latin America (CEPAL) approved a plan of action for the adoption of a Latin American convention that will establish uniform conditions of liability for enterprises which provide international transport and related services; this convention will be introduced in the following four stages: 1/

a) The first stage will be one of consultation, in which the secretariat will submit to the consideration of the appropriate Latin American forums the antecedents for the preparation of the said convention, together with the preliminary draft convention contained in the present document. This draft is to serve as a basis to help the countries and interested parties to adopt points of view and prepare observations for the round of negotiations that will commence in the following stage.

b) In the second stage, in accordance with CEPAL resolutions 356 (XVI) and 381 (XVII), the CEPAL Secretariat will convene a specialized meeting of governmental experts for the purpose of drafting - with due attention to the antecedents and the draft prepared in the first stage - an international convention establishing uniform conditions of liability for enterprises providing international transport and other related services.

c) Once this task has been satisfactorily completed, the Commission will authorize the convening of a conference to examine the draft convention prepared in the second stage.

d) In the fourth stage, the plan of action would be completed with the convention being given definitive form and approval by the conference.

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ARTICLE 1 - Definitions

In this convention:

1. "International transportation" is that situation whereby a person obligates himself to store, handle or transport goods, when said operations form a part of the movement of goods from one State to another.
2. The term "goods" includes live animals. When the goods are consolidated in containers, pallets or similar articles of transport or where they are packed, the term "goods" includes such articles of transport or packaging if supplied by the shipper.
3. "Handling" means the performance, for reward, of any function related to the goods other than transportation and storage.
4. "Storage" means the safekeeping of the goods for reward in a warehouse or other depository.
5. "Carrier" means any person that undertakes to transport goods for reward.
6. "Subcontractor of the carrier" means any person to whom the carrier may have entrusted the performance of some operation related to the transportation of the goods for which he is responsible.
7. "Consignee" means the person entitled to receive the goods.
8. Any reference to a person or entity shall mean, moreover, the servants or agents of said person or entity.

ARTICLE 2 - Scope of application

1. The present convention shall apply to the handling, storage and transportation by land of goods for reward within a signatory State, provided that (a) the shipper has declared in writing his intention that said operations constitute international transportation, irrespective of the place of residence and the nationality of the parties; or (b) the parties have agreed that said operations shall be subject to this convention.
2. The present convention shall likewise be applicable in those cases in which the transportation included within its scope may be accomplished by States or by governmental institutions or organizations.
3. The present convention shall not be applicable to transportation effected in accordance with international postal conventions.

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 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, in conformity with the laws or regulations applicable at the place of delivery, the goods must be so delivered.

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 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 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 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 expiration 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 other third parties whose services he utilizes for the performance of the transportation, when said agents, servants or other third parties are acting within the scope of their employment.

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) The wrongful act or neglect of the claimant;
- (b) Inherent vice of the goods;
- (c) Act of war;
- (d) Strikes, lock-outs, or partial or total stoppage or withholding of labor outside the control of the carrier;
- (e) Act of God or force majeure;
- (f) Defective packing, unless the defect was known by or apparent to the carrier at the time he took over the goods;
- (g) Unloading, destroying or rendering harmless, as the circumstances may require, at any time or place, goods of a dangerous nature which the carrier did not know were dangerous at the time of taking over such goods;
- (h) The carriage of live animals, provided the carrier proves that he has complied with all special instructions given him by the shipper.

2. In the case of loss, damage or delay in 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.

3. When an act or 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.

/ARTICLE 6

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.

/ARTICLE 7

ARTICLE 7 - Loss of the right to limit liability

1. The carrier shall not be entitled to 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 wrongful or reckless act or omission committed with knowledge that such loss, damage or delay would probably result, by any one or a combination of the following persons or entities:

- (a) The carrier;
- (b) A subcontractor of the carrier;
- (c) A servant or agent of the carrier or subcontractor of the carrier while acting within the scope of his employment.

2. Notwithstanding the provisions of paragraph 2 of Article 8, no servant or agent within the purview of paragraph 1 of the present Article shall be entitled to avail himself of the provisions of 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 an act or omission of such a person or entity done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

/ARTICLE 8

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

1. In cases where loss, damage or delay in delivery arising out of carriage under this convention gives rise to a claim not related to the carriage agreement, 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, a subcontractor of the carrier, a servant or agent of the subcontractor of the carrier, or any combination of such persons, they shall be entitled to avail themselves of the provisions for exoneration from and limitation of liability which the carrier is entitled to invoke under this convention, provided they can prove that they were 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 the present Article shall not exceed the limits of liability provided for in this convention.

/ARTICLE 9

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

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 _____ 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, such delivery shall be prima facie evidence that the goods were received in good condition.
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 loss or damage the carrier and the consignee shall give all reasonable facilities to each other for surveying and inspecting the goods.
4. No compensation shall be payable for delay in delivery unless notice has been given in writing to the carrier within _____ working days after the day when the goods were handed over to the consignee.
5. If the goods have been delivered by a subcontractor of the carrier, any notice given under this Article to the subcontractor of the carrier shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall also have the same effect as if given to the subcontractor of the carrier.

/ARTICLE 10

ARTICLE 10 - Jurisdiction

1. In legal proceedings relating to the international transportation of goods under this convention the plaintiff, at his option, may bring an action 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:

- (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 carriage was negotiated;
- (d) The place where the goods were taken over by the carrier; or
- (e) The place designated for delivery of the goods.

2. Notwithstanding the provisions of paragraph 1 of this Article, the court thus recognized as having jurisdiction may, at the petition of the defendant, permit removal of the action to another of the jurisdictions referred to in paragraph 1 of this Article for resolution of the claim.

3. Where an action is pending in respect of a claim before a court or tribunal competent under the provisions of paragraph 1 of this Article, or where a judgement has been entered by such a court or tribunal in respect of such a claim, no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the State in which the new proceedings are brought.

4. When the judgements of a court or tribunal of a State, in any such action as is referred to in paragraph 1 of this Article, have become enforceable in that State, they shall also become enforceable in each of the other States, provided the formalities required in the State concerned have been complied with. The fulfillment of such formalities shall not provide grounds for such judgements to be reviewed or modified.

5. The provisions of paragraph 4 of this Article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements.

ARTICLE 11 - Limitation of actions

1. Any action relating to carriage of goods under this convention shall be time-barred after _____ years.
2. The period of limitation shall be counted from the day on which the carrier has delivered the goods or part of the goods or, in cases where no goods have been delivered, from the last day on which the goods should have been delivered.
3. The day on which the period of limitation commences shall not be included in the period.
4. The person against whom a claim may be made may at any time extend the period of limitation by a declaration in writing to the claimant. Such a declaration may be renewed.

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