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Economic Commission for Latin America

REPORT OF THE INTERGOVERNMENTAL PREPARATORY MEETING ON  
A DRAFT LATIN AMERICAN CONVENTION ON CIVIL LIABILITY  
OF CARRIERS IN INTERNATIONAL LAND TRANSPORT  
(Santiago, Chile, 4 to 8 September 1978)



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## I. ORGANIZATION OF THE MEETING

### 1. Place and date

1. The Intergovernmental Preparatory Meeting on a draft Latin American convention on civil liability of carriers in international land transport was held from 4-8 September 1978 at the headquarters of CEPAL, in Santiago, Chile. This meeting was held in pursuance of the programme of work adopted at the Seventeenth Session of the Commission, following the relevant consultations with the governments of the region.

### 2. Attendance

2. Representatives of 13 States members of the Commission took part in this meeting: Argentina, Bolivia, Brazil, Colombia, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua and Uruguay.<sup>1/</sup>

3. Representatives of the United Nations Conference on Trade and Development (UNCTAD), the Organization of American States (OAS), the Latin American Railways Association (ALAF), the Latin American Shipowners Association (ALAMAR) and the Latin American Road Transport Association (ALATAC), were present as observers.

### 3. Election of Officers

4. The following officers were elected:

Chairman: Julio A. Fernández Soto (Chile)

First Vice-Chairman: Luis Henrique Pereira da Fonseca (Brazil)

Second Vice-Chairman: Wilfredo González Medina (Honduras)

Rapporteur: Roberto Betancourt Ruales (Ecuador)

### 4. Agenda

5. The agenda of the meeting was as follows:

1. Election of officers.

2. Adoption of the agenda.

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<sup>1/</sup> For the complete list of participants see annex 1.

3. General comments on the draft Latin American Convention on civil liability of carriers in international land transport.
4. Review of the draft convention.
5. Other business.
6. Adoption of the report of the meeting.

5. Opening speeches

6. The Executive Secretary of CEPAL and the Chairman of the meeting spoke at the opening meeting.
7. After welcoming the representatives of the governments, the Executive Secretary of CEPAL said that it had been made quite clear at the Seventeenth Session that the organization should give full support to the governments in order to allow effective action in establishing uniform standards for the civil liability of international land transport enterprises throughout Latin America. The present economic and social situation of the region required consolidated institutional channels which would permit unity of action, and in particular, facilitate the necessary regional co-operation. He said that the work done to date in connexion with the subject of the present conference had taken its inspiration from the results and experience of other regions, but constantly bearing in mind the capacities and reality of Latin America.
8. The Executive Secretary stressed that it was a privilege for CEPAL to organize this type of meeting, which meant a transition from the field of ideas to that of specific action, and also allowed contact to be made with the interests of the governments. Lastly, he said that he was extremely gratified that CEPAL should serve as a forum in the creation of the institutional network which Latin America required in order to continue to progress in the field of international trade and transport.
9. The Chairman then summarized the background to the meeting and stressed that in the different forums in which the topic of international land transport had been analysed, the consensus had been that priority should

/be given

be given to studying common standards for the civil liability of carriers in this type of transport. He said that the Group of Experts 2/ which he had had the honour to preside, had examined the draft prepared by CEPAL in 1977 and had considered it advisable to include only indispensable material so as to ensure its prompt and adequate application, although the study and adoption of norms on other related matters might be considered at a later date.

10. He said that the draft Convention which would be analysed at this meeting aimed at establishing a system of liability in Latin America which would keep to the fore the objectives of promoting the development of intra-Latin American international trade, reducing to a minimum the total cost which the user paid for the services, guaranteeing an adequate distribution of freight among the different means of land transport, creating the conditions to give the regional road transport industry an appropriate structure, ensuring that those taking part in international transport would be stimulated to adopt the necessary precautions with regard to the goods, promoting a higher level of participation by the Latin American insurance enterprises in the regional insurance market, and ensuring that the rules of international land transport were clear and easy to apply.

11. He went on to say that the specific contributions of the proposed Convention to achieving the above objectives was an accurate definition of the norms on care in handling goods and establishing the amount per kilogramme of gross weight of the liability of carriers for non-observance of these norms.

12. He said that at present international land transport in Latin America had access to a fairly complete network of physical infrastructure, but that the development of this infrastructure had not been accompanied by the creation of an adequate institutional framework which allowed it to be used effectively.

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2/ Group of Experts to draw up a draft Latin American convention on the civil liability of carriers in international land transport (Santiago, Chile, 29 November-2 December 1977), henceforth referred to as the Group of Experts.

#### 6. Closing session

13. At the last working session, held on 8 September in the afternoon, the meeting adopted the present report. At the closing ceremony, the Deputy Executive Secretary of the Economic Commission for Latin America, Manuel Balboa, thanked the delegates for their valuable collaboration in preparing the draft Convention; Jorge Camejo, Chairman of the Delegation of Uruguay, requested a member of his delegation, Alejandro José Nácere, to speak on behalf of the delegations taking part; and, lastly, Julio A. Fernández Soto, Chairman of the Meeting, thanked the government representatives for the spirit of constructive collaboration which had emerged in the course of discussions and the secretariat for the efficient support provided for the meeting.

#### 7. Documentation

14. During the discussions, the participants had access to the documentation appearing in annex 2 of this report.

/II. SUMMARY



## II. SUMMARY OF DEBATES

### 1. General comments on the draft Convention

The CEPAL secretariat said that Latin America already possessed a physical infrastructure which served the imports and exports of each country. As far as trade with countries of other regions was concerned, this infrastructure was based on international agreements which laid down clear established rules on trade and transport, and constituted an institutional infrastructure; these included the Warsaw Convention on air transport, and The Hague Rules on ocean transport. No instrument of this kind existed for land transport in Latin America, however. The representatives of the governments at this meeting had an interest in adopting a draft Convention, which in addition to meeting the technical requisites of the case, met the need of filling the gap which existed in these matters and at the same time was acceptable both to the governments and to the different national sectors which would be affected by its provisions. What was required was a convention which would be duly ratified and put into practice by the governments.

16. The secretariat said that the draft Latin American Convention on civil liability of carriers in international land transport (CRT) included word for word various provisions contained in other conventions. This reflected the desire to include the experience and work of other persons on the problems which Latin America was facing in international transport. However, the draft Convention under study differed in several aspects of fundamental importance from other similar conventions. This was because it had the advantage of starting from zero; this made it possible to consider extracontinental experiences in the light of Latin America's real need. Naturally the draft CRT laid down common standards of liability for all carriers taking part in international land transport whether by rail or by road. Secondly, although the CRT applied to different means of transport, it was limited to very specific matters. It did not claim to regulate transport contracts, because it was considered that legislation in this field should take place in stages.

17. Two criteria used to decide what matters should be included in the Convention and what should not be so included: firstly, include only those matters whose treatment would be applicable in the same terms to any mode of land in Latin America; and second, exclude all matters which were not indispensable for the application of the rules on civil liability. An endeavour was made to arrive at a draft Convention which would contain a minimum number of subjects, so as to facilitate its adoption, ratification and application. The Latin American countries could therefore make immediate use of the advantages of access to common norms on the civil liability of carriers, without having to wait for legislation at the multinational level for other aspects of the carriage.

18. The CEPAL secretariat went on to point out that the CRT was different from other conventions because it took account of three situations in which it could be applied. In the first, assistance is obligatory, the draft Convention cautiously encompasses only land transport among signatory countries. In the second, the parties agreed to incorporate the provisions of the Convention in their own transport agreement; and in the third, the shipper wished the goods to be transported pursuant to the Convention and so notified the carrier.

19. Both the unilateral application and that produced as a result of agreements by the parties might affect land transport and other operations accessory to the international movement of goods by sea or air. The idea of not restricting the possibility of applying the Convention originated in the desire to standardize the norms on civil liability applying to international land transport as far as possible.

20. Lastly, the CEPAL secretariat thanked the agencies for the valuable suggestions which they had put forward, which would make it possible to improve the text of the CRT.

21. The observer of UNCTAD said that his organization had wished to be present at this meeting since co-operation with CEPAL in transport matters was considered to be of great importance. He said that resolutions of the General Assembly and the Economic and Social Council had given UNCTAD prime responsibility for multimodal transport and the use of containers. He congratulated the countries members of the Commission on having undertaken

/such an

such an important task in the field of international transport law. He also said that in view of the importance of this topic in connexion with multimodal transport, his organization was pleased to observe that the draft Convention adopted by the Group of Experts in 1977 promoted uniformity in the different means of transport in that it took into account the form and spirit of other international transport conventions.

22. A delegation observed that since the Seventeenth Session of the Commission, this was the first occasion in which the governments had had an opportunity to express their points of view on the suitability of the Convention, and that it was therefore of interest to hear the different opinions on the subject. The delegation added that it was concerned by the small number of countries which had come to the meeting, and wondered if this was due to a lack of political will on the part of the governments to adopt the CRT. A Convention like that being studied was only of importance if it represented the political will of an appreciable number of countries. In the second half of the twentieth century, the desirability of standardizing the norms governing different aspects of human activities had been proved; however, these norms were only valid when a large number of countries took part in drawing them up. The ideal of uniformity could only be achieved if there was political will. With regard to the topic of the Convention being studied, there were various options: one was to adopt the norms governing the subject in developed countries; another was to endeavour to find a formula which was less ambitious, but in consonance with the interests of Latin America. Lastly, there was the option of not adopting any text on this occasion and waiting for a more propitious moment, once there had been an opportunity for further consultations. According to how the discussions of this meeting progressed, it should be decided which of the last two options was most acceptable, since the first option was considered to be excluded a priori for obvious reasons.

23. The representative of another delegation said that although it was true that the number of representatives at the meeting was not as large as might have been desired, the governments present were in a position to analyse the text. The process now beginning would moreover have other stages, which would complement the work done at this meeting, and provide an opportunity for other governments to be included in the discussions in the future.

24. A delegation said that there were good arguments in favour of reaching multilateral transport agreements at the present time. It was very desirable to standardize the provisions relating to civil liability in transport, as had been done in other regions, and as was the case in sea and air transport. The delegation agreed that political will was necessary for adopting the Convention. For the success of the meeting it would be a good idea to analyse the text proposed and record the points of view of the different countries. If there were discrepancies, or if no agreement were reached on a specific text, it could be left in brackets for study in greater depth and a later decision. In any case, the discussion taking place on this occasion should also be considered as progress.

/2. Analysis

## 2. Analysis of the text of the Convention

### Consideration of article 1

25. The text of the article, as adopted by the Group of Experts, is as follows:

#### 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 said 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.
  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.
26. It was suggested that the words "of goods" should be added in the first paragraph to the expression "international land transport". The suggestion was accepted, and the wording of the entire paragraph was slightly altered so that the change would not cause any redundancy.

27. A delegation recorded a reservation with regard to the third sentence of paragraph 2, since it was contrary to its country's legislation, according to which containers formed part of the carrier's equipment. It was agreed to leave this phrase in brackets so as to allow it to be reformulated at the next meeting.

28. It was suggested that the phrase "when performed by the carrier or his agent under his responsibility" should be added at the end of paragraph 3. In view of one delegation's reservations, the suggested amendment was added in brackets.

29. It was proposed that the same phrase as had been added to paragraph 3 should be inserted at the end of paragraph 4. This was agreed, with the reservation and in the form already described.

30. The suggestions made for amendments to paragraph 5 referred only to the Spanish text.

31. A delegation requested that in paragraph 6 the word "person" should be expanded and clarified so as also to include enterprises. It was explained that the term "person" had been used generically, and therefore included natural and legal persons. Consequently, there was no need for further clarification. It was also agreed to introduce the word "land" between "international" and "transport".

32. With regard to paragraph 7, the same observation was made on the use of the term "person".

33. A delegation requested that, in keeping with the clarification of the word "person" in paragraphs 6 and 7, the expression "or entity" should be suppressed in paragraph 8. It was also agreed to suppress the expression "or entity" at the end of the sentence.

34. In discussing the text of article 3 - Period of liability of the carrier, a delegation suggested that it would be a good idea to add a ninth paragraph to article 1 - Definitions, with a definition of the consignment note. Another delegation requested that this paragraph should be placed in brackets.

/Consideration of

Consideration of article 2

35. The text of the article, as adopted by the Group of Experts, is 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, 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.

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\* See definition in article 1, paragraph 1.

36. One delegation asked if the text of the article included the case of transport whose origin and destination was in one country but which was required to pass through the territory of another country. The representative of another delegation which had taken part in the meeting of the Group of Experts said that no work had in fact been done on this basis and that to do so now would substantially alter the scope of the Convention. Several delegations went on to say that, generally speaking, they considered the wording of the articles lacking in clarity and cohesion. It was explained that the intention had been to consider cases in which the application of the Convention was obligatory; those in which it was obligatory only if the shipper so desired, and lastly, those in which the Convention was only applicable if there was an agreement to this effect between shipper and carrier.

37. The use of the term "shipper" was subject of wide-ranging discussion since several delegations considered that it was not sufficiently clear whether it referred only to the original contractor or if it included a main carrier vis-à-vis the subcontractor of a portion of the carriage. Generally speaking, the object of concern was what happened in the case of a fractional carriage of goods to the liability of different carriers taking part. One delegation expressed doubts as to the desirability of allowing the shipper to determine whether or not an international transport operation was involved.

38. With regard to the second paragraph of paragraph 2, several delegations observed that it should not be included since, according to the general principles of law, the non-signatory States could agree of their own free will to apply the Convention, while in the signatory States, the contracting parties could not decide of their own free will whether to apply it or not.

39. Since there was no agreement on the changes which should be made in the text for a due clarification of the concepts, it was proposed to set up a small working group to endeavour to agree on wording which would be acceptable to the countries which had expressed doubts and discrepancies for submission to the consideration of the meeting for further analysis. When the working group reported on the result of their discussions, it observed that the possibility of voluntarily applying the Convention had not been included since there had been a consensus to exclude it during the earlier discussions of the meeting. A delegation proposed to replace the term "effected" by "governed" in paragraph 4 of the proposed text. At the request of a delegation, the wording of paragraph 4 was amended in order to include an express reference to sea, river or lake transport.

40. Another delegation proposed the suppression of the word "necessary" after "circumstantial" in paragraph 4; it also suggested to change the phrase "land transport" to read "international land transport of goods".



41. A delegation proposed to delete in paragraph 1 the expression "or his servants", since this was clearly understood by the definition given in article 1, paragraph 8. Another delegation proposed to delete throughout the article following the expression "international land transport of goods", the reference "as defined in article 1, paragraph 1". Other delegations insisted that this reference should be maintained in paragraph 1 but accepted its deletion in paragraphs 2 and 3.

42. The text proposed by the working group was adopted with the amendments indicated above.

/Consideration of

Consideration of article 3

43. The text of the article, as adopted by the Group of Experts, is as follows:

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.

44. The delegation of Uruguay proposed the addition of paragraphs 3, 4 and 5, which appear in the text proposed by the secretariat, in document ST/CEPAL/Conf.67/L.3.

45. Several delegations said that they did not have instructions from their respective governments to adopt the text of the new paragraphs 3, 4 and 5, and proposed that they should be placed in brackets for consideration at the next Intergovernmental Preparatory Meeting, as indicated in agenda item 5. They pointed out that it was necessary to study the differences between the text and the different national legislations.

46. A delegation also suggested that the secretariat should examine the bilateral conventions on consignment notes in order to study the possibility of conflicts.

47. A delegation suggested that paragraph 3 should begin with the following sentence: "After taking over the goods, the carrier shall issue a consignment note, bill of lading or waybill...". In answer to an inquiry, the delegation clarified that the amendment implied the obligation of issuing a consignment note.

48. A delegation also proposed that a definition should be included of the consignment note in article 1 - Definitions; it would be placed in brackets, and would be expressed in the following terms: /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./

49. One delegation considered it indispensable that the value of the goods should be given in the consignment note, bill of lading or waybill.

/Consideration of

Consideration of article 4

50. The text of the article, as adopted by the Group of Experts is as follows:

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 normally be reasonable to require of a 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 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.

51. The CEPAL secretariat made a statement on the system of liability adopted in the draft Convention. This was based on the principle of fault or negligence, complementing it so as to make it a system of strict liability or presumed fault, as is the case in other international conventions.

52. It was stressed that the draft Convention made cases of liability mandatory, clearly determined on whom the weight of the evidence rested, and extended the places of jurisdiction in instances of damage. The counterpart was the restriction on the liability of the carrier. All this facilitated carriage for all the persons interested.

53. It was pointed out that the change from a strict liability system to one of objective liability would tend to cause problems in international trade and would not contribute to improving the insurance system; for this reason the formula proposed by the draft Convention was preferred.

54. A delegation observed that, owing to conditions of land transport in Latin America, it could not support the first two paragraphs unless delay in delivery as a basis of the liability of the carrier were suppressed, and said that it wished to study the problem in more detail. It therefore proposed to place in brackets aspects of the delay in delivery appearing in article 4, paragraphs 1, 2 and 3. The sentences which would remain in brackets were: in paragraph 1, /as well as for any delay in delivery/ ... /or delay/ ("or" was added before the word "damage"); the entire text of the second paragraph; in paragraph 3, /defined in paragraph 2 of the present article/.

55. With regard to the period mentioned in paragraph 3, one delegation suggested 60 days. Another delegation said that in view of the nature of the goods, this period could be stipulated by the parties. The phrase, /60 consecutive days or the period stipulated by the parties according to the nature of the goods/, was left in brackets.

56. With regard to paragraph 4, several delegations commented on its meaning and wording. It was finally agreed to delete the last phrase, "when said agents, servants or third parties are acting within the scope of their employment", on the grounds that it was redundant and could cause problems of interpretation.

57. The amendments proposed referred only to the Spanish text.

58. A delegation put forward the possibility that a shipper might wish to recover the goods which had been considered lost or had been found at a later date, and said this case could be considered in a future examination, although this would not mean that it would be included in the provisions of the Convention.

59. Following an inquiry by a delegation, it was explained that because not all the Latin American countries had liability systems based on legislation originating in Roman law, the expression culpa levis had not been used in establishing the liability system and only general reference to negligence had been made.

/Consideration of

Consideration of article 5

60. The text of the article, as adopted by the Group of Experts, is as follows:

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 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.

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.

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.

61. One delegation observed that in his country legislation on railways was applied by analogy to road transport, and since the Convention referred to both types of transport, proposed that certain cases of exoneration from liability considered in this legislation but which did not appear in the present text of the Convention should be included. The observer of one of the agencies

/present at

present at the meeting expressed the opinion that the proposed text would be acceptable if it explicitly included truck transport since otherwise there would be a duality of criteria between two means of transport.

62. Since no agreement was reached on the subject and at the request of another delegation which observed that rail transport was of great importance in his country, it was agreed to add one of the cases proposed in brackets as paragraph 1 (j), for further analysis. With regard to the other two cases, the delegate of the Government making the proposal agreed to withdraw it provided that this was recorded in the report. These two cases referred respectively to loss and damage of goods, attributable to loading and unloading operations effected by the claimant, and loss and damage of goods when transported in closed or open wagons rented by the claimant under his custody and vigilance, if the loss or damage were the consequence of a risk which this vigilance was intended to obviate.

63. At the proposal of another delegation it was agreed to insert paragraph 1 (k) concerning identification marks.

64. Since no agreement could be reached on the deletion of paragraph 1 (f), it was agreed to leave it in brackets, and resolve it at a later meeting.

65. There was considerable discussion on the nature and extension of the list in this paragraph. Some delegations were in favour of extending it, while others considered that the larger the number of cases of exoneration, the smaller the liability of the carrier.

66. Paragraph 2 did not give rise to further discussion and was adopted on condition that the expressions "or delay in delivery" remained in brackets, as was the case in other parts of the article in which it appeared, as a delegation had requested on examining the text of article 4.

67. One delegation considered that paragraph 3 should be deleted since in practice it gave rise to complications. Its basic principle was that the carrier was responsible and it was not advisable to introduce elements of a possible relation between the carrier and a third person. Since several delegations expressed their unease with regard to this paragraph, the secretariat was requested to make known its reasons for including it. The secretariat distributed a document giving the reasons and at the same time proposed an alternative text. Two delegations proposed slight amendments to

/the new

the new text suggested so as to clarify its content. The delegation which had initially opposed its inclusion repeated that, in its opinion, the introduction of the concept of concurrent negligence would make the settlement of liability more difficult. This position was supported by another delegation, which said that the case of concurrent negligence was foreseen in all legislation and that private law took into account the proportional aspect of the compensation. Following a wider ranging discussion on the advisability of including this paragraph it was finally agreed to insert the new text presented by the secretariat with the amendments proposed; all of this would be placed in brackets, in order to finish the discussion at another meeting.

/Consideration of



Consideration of article 6

68. The text of this article, as adopted by the Group of Experts, is as follows:

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.

69. In discussing this article, several delegations indicated that they wished to seek a formula which would harmonize all the interests involved.

70. A delegation pointed out that it would not be in a position to support the text of article 6 as it stood in the draft Convention, since it considered that the liability of the carrier should be based on the value of the goods and not its weight. It also said that it did not consider the restriction of the liability of the carrier to the weight of the freight to be suited to trade and transport in the region.

71. Several delegations agreed that the liability of the carrier should be limited in terms of the declared value of the goods. One delegation put forward the possibility that this value might not have been declared, in which case a special provision restricting compensation would be required. Another delegation said that this was not the case in regional practice, since a declaration of the value of goods exported or imported was always required. Several delegations said that the restriction of liability in air transport had different bases from those which should be considered in the case of land transport.

72. A working group was set up to draft a new article 6. In the course of the discussion on the resulting text, no agreement was reached, and the study of the topic was referred to later meetings. Four options were proposed, as follows.

OPTION A

Delete the article.

OPTION B

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 not exceed an amount equivalent to the declared value of the goods in the consignment note.
2. If for any reason the value of the goods transported is not indicated in the consignment note, the compensation shall be limited to an amount equivalent to 8 dollars per kilogram of gross weight of the goods lost or damaged.
3. 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, unless the parties shall have agreed expressly to a higher amount.
4. The aggregate liability of the carrier under paragraphs 2 and 3 of this article shall not exceed the limit established in paragraph 2 of this article for total loss of the goods with respect to which such liability was incurred.

OPTION C

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 not exceed an amount equivalent to the declared value of the goods in the consignment note.

OPTION D

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 not exceed an amount equivalent to the declared value of the goods in the consignment note with a maximum of ... 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. The aggregate liability of the carrier under paragraphs 1 and 2 of this article shall not exceed the limit established in paragraph 1 of this article for total loss of the goods with respect to which such liability was incurred.
73. The delegation which presented option B said that the figure of 8 dollars per kilogramme was considered to be indicative, and that when this figure was finally fixed it would be more advisable to use a more stable unit of account, i.e., Special Drawing Rights (SDR).

/Consideration of

Consideration of article 7

74. The text of the article, as adopted by the Group of Experts, is as follows:

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.

75. In discussing this article, it was observed that the phrases relating to delay in delivery would be placed in brackets, in keeping with the observation made by a delegation with regard to article 4, when it was suggested that any reference to such delay should be deleted.

76. It was pointed out that the phrase "a fraudulent act or omission, or from wilful negligence equivalent to fraud, and with knowledge that it would probably have such results..." had been used, although there might be an apparent redundancy, since not all the respective national legislation defined in terms in question in the same manner, with a view to avoiding any possible ambiguity.

77. It was also specified that in keeping with the wording of the article, the claimant must prove the negligence of the carrier.

/Consideration of

Consideration of article 8

78. The text of the article, as adopted by the Group of Experts, is as follows:

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 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.

79. It was observed that the last phrase of paragraph 3 should be placed in brackets since it referred to article 6, on the text of which comments had been made.

80. It was pointed out that the article had been so drafted that the carrier could appeal to it in the face of any action against him, and that for greater clarity the secretariat had proposed the text contained in the document ST/CEPAL/Conf.67/L.3. One delegation adopted this text, and presented it as a motion.

81. A delegation requested that the first paragraph of the article should be placed in brackets. Another delegation suggested changing the word "claims" to "action in the title of the article, and amending the last phrase of the first paragraph of the proposed text in document ST/CEPAL/Conf.67/L.3, which would read "although the action is founded in extra-contractual liability or any other cause".

82. It was clarified that it would be desirable to maintain the expression "other cause" since it covered cases considered in legislation based on common law.

/Consideration of

Consideration of article 9

83. The text of the article, as adopted by the Group of Experts, is as follows:

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.

84. A delegation suggested an amendment to the Spanish text, with regard to the word "notice", but it was decided to conserve the term used in the original draft and record in the report that notice may be juridical or extra-juridical, provided that in the latter case it can be attested.

85. With regard to the periods referred to in paragraph 1, a delegation considered that it was not necessary to establish two different periods since this could give rise to confusions and complications. After analysing

/the point,

the point, it was agreed to conserve two options for the period, when the loss or damage were apparent. However, since another delegation still had doubts on the advisability of establishing two periods, it requested that the entire paragraph should be placed in brackets.

86. In analysing paragraph 2 of this article, a delegation proposed the adoption of the alternative text submitted by the secretariat in document ST/CEPAL/Conf.67/L.3. The suggestion was welcomed, and the proposal of another delegation to add after "joint survey or inspection by the parties" the phrase "of which a written record has been made".

/Consideration of

Consideration of article 10

87. The text of the article, as adopted by the Group of Experts, is as follows:

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.

88. A delegation requested that the expression "in the absence of any agreement in this respect" should be left in brackets, lest it should finally always be the carrier who would choose the tribunal. It was necessary to seek a more equitable formula for the interests of the parties, and thus ensure that the shipper should not sign a contract whereby the tribunal was previously determined in case of conflict. A delegation observed that the Convention would have no object if the parties continued to have absolute freedom to resort to whatever tribunal they wished. It was desirable to clarify the wording, adding after "in the absence of any agreement in this respect" the phrase "or when such agreement is legally inapplicable". Both proposals were included in the text, in brackets, for further study.

/Consideration of



Consideration of article 11

89. The text of the article, as adopted by the Group of Experts, is as follows:

ARTICLE 11 - Limitation 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.

90. With regard to the period of limitation considered in the article, a delegation pointed out that it would not be adequate if criminal fraud were required to be established. In order to resolve this concern, the delegations agreed to accept the following wording of paragraph 1 of the article, suggested by the observer from ALATAC:

"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. In cases of fraud or wilful negligence equivalent to fraud and established before a criminal tribunal, according to the laws of the State of the tribunal in which the action related to the transport is brought, the period of one year should run from the time when the judgement of the criminal tribunal becomes enforceable."

/Consideration of

Consideration of articles 12, 13 and 14

91. The text of these articles, as adopted by the Group of Experts, is as follows:

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.

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 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;
  - (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.

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\* 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.

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.

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

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.

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.

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.

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.

92. A delegation said that it would be advisable to review articles 12, 13  
and 14 at the next meeting, in order to ensure that they were in consonance  
with the standards governing these matters in international conventions.

93. A delegation proposed to place in brackets the sentence "Reservations  
entered when signing this Convention shall be accepted only if they are  
approved by ... of the other contracting parties". The aim of this comment  
was to draw the attention of the governments to the importance of this matter,  
and obtain their comments in this respect.

94. A delegation pointed out the possible redundancy of paragraph 6 and the possibility of deleting it. In this respect, it was clarified that the idea of this point was to prevent the Convention from coming into conflict with the Convention on International Multimodal Transport, at present being studied, and it was suggested that the paragraph should be kept to draw attention to the topic, which should be considered in another occasion.

3. Place and date of the next meeting

95. A delegation proposed that during the Eighteenth Session of the Commission the desirability of continuing the preparatory work of the CRT should be examined. This delegation said that prior to this examination it could not ensure its participation in the continuation of the preparatory work.

96. Another delegation found that the observations which led to the above proposal were relevant, although it was not the moment to examine the desirability of continuing with the preparatory work of the CRT, since in order to complete this work, at least one other intergovernmental preparatory meeting must be held.

97. The other delegations which took part in the discussion mentioned the importance of the rules on international land transport for the region and considered that it would be advisable for the CEPAL secretariat, in consultation with the countries, to settle the venue and date of the next intergovernmental preparatory meeting, so that it could be held after the Eighteenth Session of the Commission. They also requested that the secretariat, during the meetings of the Eighteenth Session, should inform the countries on the progress achieved in preparing the draft Convention.

### III. TEXT OF THE DRAFT CONVENTION APPROVED BY THE MEETING

98. At its closing session, the Meeting approved the following draft Convention:

#### DRAFT LATIN AMERICAN CONVENTION ON CIVIL LIABILITY OF CARRIERS IN INTERNATIONAL LAND TRANSPORT OF GOODS (CRT) 3/

##### ARTICLE 1 - Definitions

For the purposes of this Convention:

1. "International land transport of goods" is the activity whereby goods are carried by land, handled or stored, for reward, when such operations form part of the movement of said 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.7
3. "Storage" means the safekeeping of the goods in a warehouse, depository or open area /, when performed by the carrier or his agents or under his responsibility.71
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 /, when performed by the carrier or his agents or under his responsibility.71

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3/ In order to be able to distinguish the changes proposed in the draft of the Group of Experts, it was agreed to indicate them as follows:  
Proposals to revise the wording of the text, in brackets without a number: /7.  
Proposals to add words or phrases to the text, in brackets followed by the number 1: /71.  
Proposals to delete words or phrases, in brackets followed by the number 2: /72.  
Proposals to replace words or phrases, in brackets followed by the number 3: /73.

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.

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

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

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

9. "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.<sup>71</sup>

#### ARTICLE 2 - Scope of application

1. The present Convention shall apply to the international land transport of goods, as defined in article 1, paragraph 1, provided that a carrier 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 the international land transport of goods performed within the territory of a Signatory State, provided that such transport forms part of a process of international transport between Signatory States and that it is so stated in the consignment note, bill of lading or waybill.

3. The present Convention shall also apply 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 operations governed by sea or air transport regulations. This exception does not include circumstantial sea, river or lake crossing to complete the international land transport of goods. This Convention shall also not be applicable to operations effected under 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 when they have been received by the consignee at the place mutually agreed upon between the parties, or 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 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.

/3. After taking over the goods the carrier shall issue a consignment note, bill of lading or waybill 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 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 said document 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.71

/4. The consignment note, bill of lading or waybill constitutes 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.71

//5. The



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 said document. 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.71

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,72 if the event which caused the loss or damage , or delay<sup>72</sup> 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.72

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 60 consecutive days or the period stipulated by the parties according to the nature of the goods<sup>71</sup> following the expiry of the time for delivery defined in paragraph 2 of the present article<sup>72</sup>.

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.

ARTICLE 5 - Exoneration from liability

1. The carrier shall not be liable for the loss or damage or delay in the delivery<sup>72</sup> of the goods when said loss or damage or delay<sup>72</sup> 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,

- (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;<sup>72</sup>
- (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.
- /(j) Carriage in open cars as a result of agreement between the parties or express provision of the railway regulations;<sup>71</sup>
- (k) Insufficient or imperfect marks.

2. In the case of loss, damage /or delay in the delivery<sup>72</sup> of the goods, it shall be incumbent upon the carrier to prove that said loss, or damage /or delay<sup>72</sup> was due to one of the special risks specified in paragraph 1 of this article.

/3. When a cause of exoneration from liability of the carrier as defined in paragraph 1 of this article combines with an act or omission of the carrier to produce loss, or damage /or delay in delivery<sup>72</sup> the carrier shall only be responsible for any loss or damage /or delay in delivery<sup>72</sup> that can be attributed to his act or omission. In such cases it shall be incumbent upon the carrier to prove the amount of loss or damage /or delay in delivery<sup>72</sup> and the act or omission as a result of which said loss, on damage /or delay in delivery<sup>72</sup> is not attributable to him<sup>72</sup>, 3.

ARTICLE 6 - Limits of liability

OPTION A

Delete the article.

OPTION B

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 not exceed an amount equivalent to the declared value of the goods in the consignment note.
2. If for any reason the value of the goods transported is not indicated in the consignment note, the compensation shall be limited to an amount equivalent to 8 dollars per kilogramme of gross weight of the goods lost or damaged.
3. 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, unless the parties shall have agreed expressly to a higher amount.
4. The aggregate liability of the carrier under paragraphs 2 and 3 of this article shall not exceed the limit established in paragraph 2 of this article for total loss of the goods with respect to which such liability was incurred.

OPTION C

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 not exceed an amount equivalent to the declared value of the goods in the consignment note.

OPTION D

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 not exceed an amount equivalent to the declared value of the goods in the consignment note with a maximum of ... per kilogramme 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. The aggregate liability of the carrier under paragraphs 1 and 2 of this article shall not 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 - 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 or damage /or delay in delivery/<sup>2</sup> resulted from a fraudulent act or omission, or from wilful negligence equivalent to fraud and with knowledge that such loss or damage /or delay/<sup>2</sup> 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, or damage /or delay in delivery/<sup>2</sup> resulted from a fraudulent act or omission, or from wilful negligence equivalent to fraud, and with knowledge that it would probably have such results.

ARTICLE 8 - Application to non-contractual claims

/1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods, /as well as of delay in delivery/<sup>2</sup> whether the action is founded in contractual or non-contractual liability.<sup>3</sup>

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 his employment.

3. /Without prejudice to the provisions of paragraph 3 of article 6,<sup>2</sup> 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.

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 /1 /3 /1 working days after delivery of the goods to the consignee in the case of loss or damage which is apparent, or within 15 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 at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties of which a written record has been made, notice in writing need not be given of loss or damage ascertained during such 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 60 consecutive days after the date on which the goods were handed over to the consignee./2

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 has been given to the carrier.

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 Tribunal agreed upon by the parties or, /in the absence of any agreement in this respect,/2 /or when such agreement is legally inapplicable/1 in any Tribunal of his choice which is competent according to the law of the State where the tribunal is situated and within the jurisdiction of which is situated one of the following:

- (a) The principal place of business of the defendant; or
- (b) The ordinary residence of the defendant; or
- (c) The branch or agency of the defendant through which the international carriage was contracted; or

/((d) The

(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 a competent Tribunal.

#### ARTICLE 11 - Limitation 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. In cases of fraud or wilful negligence equivalent to fraud and established before a criminal tribunal, according to the laws of the State of the tribunal in which the action related to the transport is brought, the period of one year shall run from the time when the judgement of the criminal tribunal becomes enforceable.

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

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.

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

- (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;
  - (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.

#### 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.<sup>7</sup>
2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
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.
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.



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.

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.



Annex 1

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Annex 2

LIST OF DOCUMENTS

ST/CEPAL/Conf.67/L.1	Provisional agenda
ST/CEPAL/Conf.67/L.2	Limit of civil liability of carriers in international land transport in Latin America: Criteria for its establishment.
ST/CEPAL/Conf.67/L.3	Draft Latin American Convention on civil liability of carriers in international land transport: Note by the secretariat of CEPAL
E/CEPAL/1047	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, (Santiago, Chile, 29 November to 2 December 1977).





