signee will only have the rights that the shipper would have enjoyed under the circumstances. Thus the consignee will still be bound by any limitations imposed by the convention on the rights of the shipper, such as the time limitation for giving the required notice of the loss or damage to the carrier (Revised Compilation, art. 5-A) or the statute of limitation (prescription) period for bringing actions against the carrier (Revised Compilation, art. 5-B). Furthermore, the provision that the consignee "shall have the rights of the shipper" would not impose on the consignee the obligations of the shipper to the carrier, since these obligations (such as the shipper's liability for shipping dangerous goods under art. 4 (6) of the 1924 Convention) seem peculiarly to be the shipper's own.

14. The draft proposal concerning the legal position of consignees makes special reference to article 3 (4), because under that article consignees (and other third parties in good faith to whom a bill of lading has been transferred) are intended to enjoy greater rights against the carrier than those which the shipper would have enjoyed.

3. Report of the Working Group on International Legislation on Shipping on the work of its eighth session (New York, 10-21 February 1975) (A/CN.9/105)*

CONTENTS

* 18 March 1975.

General introduction

1. The Working Group on International Legislation on Shipping was established by the United Nations Commission on International Trade Law (UNCITRAL) at its second session (1969), and was enlarged by the Commission at its fourth session (1971).[1] The Working Group consists of the following 21 members of the Commission: Argentina, Australia, Belgium, Brazil, Chile, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Japan, Nigeria, Norway, Poland, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Zaire.

2. In defining the task of the Working Group, the Commission, at its fourth session, resolved that:

> "The rules and practices concerning bills of lading, including those rules contained in the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Brussels Convention, 1924) and in the Protocol to amend that Convention (the Brussels Protocol 1968) shall be examined with a view to revising and amplifying the rules as appropriate, and that a new international convention may, if appropriate, be prepared for adoption under the auspices of the United Nations."[2]

3. In addition, the Commission specified a number of topics that among others should be considered. The Working Group at earlier sessions has taken action with respect to the following topics: (*a*) the period of carrier responsibility; (*b*) responsibility for deck cargo and live animals; (*c*) choice of forum clauses in bills of lading;[3] (*d*) the basic rules governing the responsibility of the carrier; (*e*) arbitration clauses in bills of lading;[4] (*f*) unit limitation of liability; (*g*) trans-shipment; (*h*) deviation; (*i*) the period of limitation;[5] (*j*) liability of the carrier for delay; (*k*) scope of application of the Convention; (*l*) elimination of invalid clauses; (*m*) deck cargo and live animals; (*n*) definitions under article 1 of the Brussels Convention;[6] (*o*) contents and legal effect of documents evidencing the contract of carriage; (*p*) validity and effect of letters of guarantee; and (*q*) definition of contract of carriage and of consignee.[7]

4. At its seventh session the Working Group decided that its future work in respect of carrier responsibility should be carried out with a view to drawing up a new convention. Accordingly, it requested the Secretariat to structure the draft provisions approved by the Working Group in the form of a convention and to submit the draft of such a convention to its eighth session for a second reading.[8] The Working Group also decided to take up the following topics at its eighth session: (i) general rule of liability of the shipper; (ii) dangerous goods; (iii) notice of loss; (iv) general average; and (v) relationship of the convention with other maritime conventions.[9]

5. The Working Group held its eighth session at New York from 10-21 February 1975.

6. All members of the Working Group were represented at the session with the exception of the United Republic of Tanzania and Zaire.

7. The session was attended by the following member of the Commission as observer: Philippines; by the following State not member of the Commission as observer: Canada; and by observers from the following international, intergovernmental and non-governmental organizations: United Nations Conference on Trade and Development (UNCTAD), International Maritime Committee (IMC), International Chamber of Commerce (ICC), International Shipowners Association (INSA), International Union of Marine Insurance (IUMI), International Chamber of Shipping (ICS),

[1] Report of the United Nations Commission on International Trade Law on the work of its fourth session (1971), *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17* (A/8417), para. 19 (UNCITRAL Yearbook, vol. II: 1971, part one, II, A).

[2] *Ibid.* The Commission decided at its seventh session that the Working Group should "continue its work under the terms of reference set forth by the Commission at its fourth session and complete the work expeditiously". Report of the United Nations Commission on International Trade Law on the work of its seventh session (13-17 May 1974), *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 17* (A/9617), para. 53 (UNCITRAL Yearbook, vol. V: 1974, part one, II, A).

[3] Working Group report on third session (A/CN.9/63; UNCITRAL Yearbook, vol. III: 1972, part two, IV). The first report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading (A/CN.9/63/Add.1; UNCITRAL Yearbook, vol. III: 1972, part two, IV) was used by the Working Group as its working document.

[4] Working Group report on fourth (special) session, (A/CN.9/74; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 1). The Working Group used as its working documents the first report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading (A/CN.9/63/Add.1), and two other working papers prepared by the Secretariat: "Approaches to basic policy decisions concerning allocation of risks between the cargo owner and carrier" (A/CN.9/74, annex I; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 2) and "arbitration clauses" (A/CN.9/74, annex II; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 3).

[5] Working Group report on fifth session (A/CN.9/76; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 5). The Working Group used as its working document the second report of the Secretary-General on responsibility of ocean carriers for cargo: bill of lading (A/CN.9/76/Add.1; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 4).

[6] Working Group report on sixth session (A/CN.9/88; UNCITRAL Yearbook, vol. V: 1974, part two, III, 1). The Working Group used as its working documents the third report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading (A/CN.9/88/Add.1; UNCITRAL Yearbook, vol. V: 1974, part two, III, 2), part five of the second report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading (A/CN.9/76/Add.1; UNCITRAL Yearbook, vol. IV: 1973, part two, IV, 4), a study prepared by the International Institute for the Unification of Private Law (UNIDROIT) entitled "Study on carriage of live animals" (A/CN.9/WG.III/WP.11, UNCITRAL Yearbook, vol. V: 1974, part two, III, 3) and a working paper by the Secretariat on the topic of deck cargo (A/CN.9/WG.III/WP.14).

[7] Working Group report on seventh session, (A/CN.9/96, reproduced in this volume, part two, IV, 1). The Working Group used as its working documents the fourth report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading (A/CN.9/96/Add.1, reproduced in this volume, part two, IV, 2).

[8] Working Group report on seventh session (A/CN.9/96; reproduced in this volume, part two, IV, 1), para. 107.

[9] *Ibid.*, para. 108.

and the Central Office for International Railway Transport, Berne (OCTI).

8. The Working Group unanimously elected the following officers:

Chairman ..... Mr. Mohsen Chafik (Egypt)

Vice-Chairmen ... Mr. Stanislaw Suchorzewski (Poland)

Mr. Nehemias Gueiros (Brazil)

Rapporteur ..... Mr. P. V. Swarlu (India)

Mr. Suchorzewski was elected to serve as Acting Chairman in the absence of the Chairman, during the first five meetings of the Working Group.

9. The following documents were placed before the Working Group:

1. Provisional agenda and annotations (A/CN.9/WG.III/L.4/Rev.1);
2. Liability of the shipper: draft article proposed by Japan (A/CN.9/WG.III(VIII)/CRP.1);
3. Liability for damage caused by a nuclear incident: draft article proposed by Norway (A/CN.9/WG.III(VIII)/CRP.7);
4. Matters not resolved at the seventh session: comment by the United Kingdom of Great Britain and Northern Ireland (A/CN.9/WG.III(VIII)/CRP.3);
5. Note concerning certain texts proposed by the Working Group at its seventh session, submitted by the Central Office for International Railway Transport, Berne (A/CN.9/WG.III(VIII)/CRP.2);
6. Observations by the Central Office for International Railway Transport, Berne (A/CN.9/WG.III(VII)/CRP.1);
7. Preliminary version of a draft convention on the liability of carriers of goods by sea: note by the Secretariat (A/CN.9/WG.III/WP.19);
8. Observations by International Maritime Committee (IMC) (A/CN.9/WG.III(VIII)/CRP.4).

10. The Working Group adopted the following agenda:

(i) Opening of the session
(ii) Election of officers
(iii) Adoption of the agenda
(iv) Consideration of the topics not yet dealt with by the Working Group
(v) Second reading of the preliminary version of the draft convention
(vi) Future work
(vii) Adoption of the report.

A. Consideration of the topics not yet dealt with by the Working Group

1. Basic rule on the exoneration of the shipper from liability

(a) *Provisions of the Brussels Convention of 1924*

1. Article 4 (3) of the 1924 Brussels Convention deals with the topic of the exoneration of the shipper from liability, and reads as follows:

> "The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants."

(b) *Discussion by the Working Group*

2. There was general agreement within the Working Group that the revised Convention should contain a provision dealing with the subject-matter of article 4 (3) of the 1924 Convention.

3. Some representatives expressed the view that such a provision should commence with a detailed listing of the shipper's responsibilities and obligations, and should then state that the shipper would be liable for any loss or damage sustained by the carrier resulting from the failure of the shipper to meet such responsibilities and obligations. It was argued that such a provision would be a proper counterpart of article 5 in the preliminary version of the draft convention, which delineates the responsibilities of the carrier. Most representatives, however, objected to the inclusion of a list of the shipper's obligations. It was pointed out that the present rule in article 4 (3) of the Convention had not given rise to difficulties in practice. Some representatives also pointed out that the enumeration of the carrier's obligations in article 3 (1) and 3 (2) of the Convention had not been included in the new draft Convention.

4. Several representatives supported the retention of the substance of article 4 (3) of the 1924 Brussels Convention, but favoured its recasting in a positive formulation. Most representatives, however, expressed their preference for the negative formulation of this rule, as found in article 4 (3) of the 1924 Convention. These representatives emphasized that the substance of article 4 (3) of the 1924 Convention should be read in the light of the mandatory character of the Convention. The rule, therefore, served a useful purpose, since it prevented carriers from inserting in bills of lading clauses that would impose on the shipper a standard of liability stricter than one limited to fault or neglect by the shipper.

5. There was general agreement that the word "act" in article 4 (3) of the 1924 Convention was ambiguous and seemed to serve no useful purpose and that, therefore, it should be deleted in the revised text. It was further agreed that the revised article should cover "loss or damage sustained by the carrier, the actual carrier or the ship" and that it should bear some heading other than "General rule on the liability of the shipper".

6. The Working Group considered, but did not adopt, the proposal of one representative that the revised rule based on article 4 (3) of the 1924 Convention should exonerate the shipper from liability in cases where the loss or damage sustained by the carrier or the ship did not arise directly from the fault or neglect of the shipper.

Proposed new article

7. The Working Group considered the question whether the revised Convention should contain an article dealing with the respective rights and obligations of the shipper, carrier and consignee as to taking delivery of the goods, and the legal consequences of the carrier's inability to effect delivery of the goods in the prescribed manner.

8. Under one formulation of such an article, the consignee would be obliged to take delivery of the

goods within a reasonable period after the notice of their arrival; if the consignee failed to take delivery, upon notice from the carrier the shipper would have to designate some other person to take delivery; failing such action by the consignee or shipper, the carrier could sell or dispose of the goods for the account of the person entitled to the goods, in order to recover his expenses, or to avoid disproportionate storage costs or deterioration of the goods; the consignee or shipper, as the case may be, would remain liable for any loss or expense by the carrier that could not be recovered from the sales proceeds. The representative introducing this proposal explained that it was not intended to cover a shipper who is an "FOB" seller.

9. Another formulation stated that, if the goods were not claimed or if there was a dispute as to the person entitled to take delivery, or the payment of freight, the captain could, on the basis of a court order, sell the goods or hold them at the expense of the consignee; the shipper would remain liable for freight or the costs incurred by the carrier to the extent they could not be recovered from the sales proceeds. The representative introducing this proposal explained that it was designed to safeguard the interests of shippers and consignees and to prevent arbitrary action by carriers.

10. A third formulation provided that if the consignee did not take delivery of the goods within a reasonable time or if several persons claimed the goods, the carrier could entrust the goods to a third party for the account of the consignee; the carrier was then entitled to sell the goods if they were perishable, or if there would be disproportionate storage charges. The representative introducing this proposal stated that such a provision would be less harsh on shippers and consignees than the first formulation (referred to in para. 8, above), while having the advantage of avoiding judicial intervention.

11. Many representatives opposed the addition of a new article to the draft Convention based on one of the above formulations on the ground that the provisions of article 4 (2) (*b*) in the preliminary version of the draft convention, together with the national law applicable at the port of discharge, were sufficient to protect the interests of carriers in cases where they were unable to effect delivery of the goods. Several representatives also stated that each of the proposed formulations presented special problems, such as the defining of the expression "reasonable period" for taking delivery, and of forcing the shipper to arrange for the taking over of the goods at the port of discharge.

12. It was agreed that the revised Convention should not contain a separate provision dealing with cases where the carrier was unable to effect delivery.

13. The task of drafting a suitable text of a basic rule on the exoneration of the shipper from liability was referred to the Drafting Party for consideration, taking into account the above discussion by the Working Group.[10]

[10] The Working Group established a drafting party to consider this topic and any other matters that may be referred to it during the course of the eighth session of the Working Group. The Drafting Party was composed of the representatives of the following countries: Argentina, Belgium, Chile, France, Ghana, India, Japan, Nigeria, Norway, Poland, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and the Union of Soviet Socialist Republics. The Drafting Party elected as its Chairman Mr. E. Chr. Selvig (Norway).

REPORT OF THE DRAFTING PARTY

[*Article 12. Basic rule on the exoneration of the shipper from liability*]

The Drafting Party considered this topic, and recommended the following text for the consideration of the Working Group:

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

CONSIDERATION OF THE REPORT OF THE DRAFTING PARTY

14. The Working Group adopted the text recommended by the Drafting Party, and accepted certain suggestions which were made with a view to bringing into harmony the various language versions.

2. DANGEROUS GOODS

(a) *Provisions of the Brussels Convention of 1924*

1. Article 4 (6) of the Brussels Convention deals with the carriage of dangerous goods and reads as follows:

"Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any."

(b) *Discussion by the Working Group*

2. The view was expressed that article 4 (6) had worked well in practice, and that therefore its substance should be retained subject to clarifying amendments in regard to language.

3. However, the view was also expressed that amendments of substance to that article might be required. One suggestion was that a limitation should be placed on the seemingly unrestricted discretion presently given under article 4 (6) to land the goods, destroy them, or render them innocuous. It was proposed

that the action to be taken by the carrier should be commensurate with the danger involved. It was argued, on the other hand, that a balancing of this kind may be impracticable at a time when the threat of danger arises, and that to protect his reputation the carrier would in any event act in a reasonable manner.

4. It was proposed that, while the rights given to the carrier under the present article of the Brussels Convention to deal with the goods should be retained in substance, a new text should be drafted containing additional provisions imposing an obligation on the shipper to inform the carrier of the dangerous character of the goods, and of indicating by suitable marking that the goods were dangerous. Further, the proposed new text would expressly preserve the rights of the carrier to freight notwithstanding the exercise of his rights to dispose of the dangerous goods.

5. In regard to the additional obligations sought to be imposed on the shipper by the proposal mentioned in paragraph 4 above, the view was expressed that provisions to this effect would constitute an improvement on the present article 4 (6) of the Brussels Convention. However, some representatives felt it would be sufficient only to impose an obligation to give information as to the dangerous character of the goods, since there might for practical reasons be difficulty in marking certain types of goods. Most representatives opposed any reference to freight in the article on dangerous goods.

6. Another proposal adapted the language and technique used in the provision on the carriage of live animals (article 5 (5) of the preliminary version of the draft convention) to the carriage of dangerous goods, while preserving the rights of the carrier under the present article 4 (6) of the Brussels Convention. However, most representatives were of the view that the carriage of dangerous goods posed unique problems that would not be resolved by a provision analogous to the one on the carriage of live animals.

7. It was also suggested that the definition of dangerous goods contained in article 4 (6) of the Brussels Convention was not a model of clarity. It was therefore suggested that the question whether goods were dangerous should be decided by reference either to the law of the flag of the vessel, or to the law of the port of loading, or to international agreements. Most representatives, however, felt that while the scheme of article 4 (6) may not be wholly satisfactory, it had caused no serious difficulties in practice. It was also pointed out that goods had been held to be dangerous if their carriage or discharge was prohibited by the rules in force in the port of discharge and would result in the detention of the vessel, and that provision might be made for such cases.

8. It was decided that article 4 (6) of the Brussels Convention, together with the proposals made in the Working Group, should be remitted to the Drafting Party for consideration in the light of the above discussion with a view to the drafting of an appropriate text.

REPORT OF THE DRAFTING PARTY

The Drafting Party considered the topic of dangerous goods. The text of a draft provision on this topic, as amended by the Working Group,[11] is as follows:

[*Article 13. Dangerous goods*]

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

2. Dangerous goods may at any time be unloaded, destroyed or rendered innocuous by the carrier, as the circumstances may require, without payment of compensation by him where they have been taken in charge by him without knowledge of their nature and character. Where dangerous goods are shipped without such knowledge, the shipper shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

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

CONSIDERATION OF THE REPORT OF THE DRAFTING PARTY

9. The Working Group considered the above-quoted report of the Drafting Party. The Working Group adopted the report of the Drafting Party, subject to the amendments to the text noted above.[12]

The following comments were made with respect to the draft provisions recommended by the Drafting Party.

(*a*) In relation to the first paragraph, the view was expressed that the duty imposed on the shipper always to inform the carrier of the nature of the danger may be too stringent. In many cases, such as successive shipments of identical dangerous goods, the carrier would know, or should ascertain through the exercise of reasonable diligence, the nature of the danger. Most representatives felt that it would be sufficient to impose on the shipper an obligation to inform the carrier in every case of the nature of the goods, and that the

[11] The amendments made by the Working Group are the following:

(*a*) In the first sentence of paragraph 1, the words "the goods and indicate, if necessary, the character of the danger and the precautions to be taken", commencing after the words "nature of", were substituted for the words "the danger, and indicate if necessary, the precautions to be taken".

(*b*) In the second sentence of paragraph 2, the opening words "Where dangerous goods are shipped without such knowledge, the shipper . . ." were substituted for the words "The shipper of such goods . . .".

[12] See foot-note 11.

obligation to give information on the character of the danger and the precautions to be taken ought to apply only in cases where the carrier could not be expected to have such knowledge.

(*b*) It was also stated in relation to the first paragraph that the proper precautions to be taken during the carriage against the danger would normally be within the knowledge of the carrier. It was suggested that the present formulation appeared to cast a burden on the shipper of indicating precautions, for the discharge of which he may not have the necessary knowledge. On the other hand, it was observed that the words "if necessary" introduced a qualification which mitigated possible hardship in this regard to the shipper.

(*c*) Concerning the liability of the shipper for damages arising from the shipment of dangerous goods which is imposed by the second sentence of the second paragraph, the view was expressed that the text should state clearly that such liability will only arise in relation to dangerous goods taken in charge by the carrier without knowledge of their dangerous nature and character, and the text was amended accordingly.

(*d*) A proposal in regard to the liability of the shipper set forth in the second sentence of the second paragraph, to the effect that the carrier should have no right to claim damages or expenses unless he proved that he had acted reasonably in making a choice between landing, destroying and rendering the goods innocuous, was considered but not adopted by the Working Group.

3. Notice of loss, damage or delay

(a) *Provisions in the Brussels Convention of 1924*

1. Provisions as to notice of loss or damage are contained in article 3 (6) of the Brussels Convention, which reads as follows:

> "6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.
>
> "If the loss or damage is not apparent, the notice must be given within three days of the delivery.
>
> "The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.
>
> "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.
>
> "In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."[13]

(b) *Discussion by the Working Group*

2. The view was expressed by some representatives that the first subparagraph of article 3 (6) of the Brussels Convention had no real legal effect. Failure to give notice as specified therein did not have the effect of barring a claim; it was therefore immaterial in that context whether or not notice was given. For this reason it was suggested that the deletion of this subparagraph might be considered.

3. Other representatives were of the view that the first subparagraph of article 3 (6) could have some practical effect in legal proceedings. A court would be more inclined to accept evidence offered by a claimant who had given the required notice. It was also observed that a requirement that notice be given to the carrier was an incentive to claimants to take prompt decisions on possible claims. Such notice also served to inform the carrier of the evidence he needed to preserve in order to refute claims arising out of the particular carriage to which the notice pertained.

4. There was general agreement that the principle that notice of loss or damage must be given to the carrier should be preserved, and that the failure to give notice should not bar claims against the carrier.

5. With regard to the period of three days specified in the second subparagraph of article 3 (6) for giving notice when the loss or damage to the goods was not apparent, there was general agreement that this period was too short. Such a period did not give a claimant a reasonable opportunity to discover th's type of loss or damage, attribute it to the carriage by sea, and give notice thereof. One suggestion was that a flexible time-limit, such as "within a reasonable period" should be substituted. Representatives opposed to this suggestion pointed out that the practical needs of international commerce demanded the greater degree of certainty provided by a fixed time-limit for giving the required notice.

6. It was also noted that article 3 (6) did not deal with certain problems which might arise in calculating the period. Under many legal systems, holidays or non-working days were excluded from the calculation. There was support for the suggestion that any such period should be specified in terms of "working days".

7. One representative pointed out that where there was non-delivery of a part of the goods, it would not be immediately clear whether such goods were in fact lost, or merely delayed. It might therefore be impossible to give notice of "loss". It was suggested that language should be added to deal expressly with this case.

8. It was also pointed out that, under article 5 (1) of the preliminary version of the draft Convention, liability had been imposed on the carrier for delay. It

[13] Subparagraph 4 of art. 3 (6) deals with the limitation of actions. This subject was considered at the fifth session of the Working Group, and the provisions adopted are reproduced as art. 20 in the preliminary version of the draft Convention (A/CN.9/WG.III/WP.19). The subject is now dealt with in article 20 of the draft convention on the carriage of goods by sea.

was therefore suggested that an additional provision as to notice would be needed to deal with the case of delay. It was suggested that such a provision might take the form of requiring notice within a specified period after the delayed delivery was effected. Provisions to this effect were to be found in other transport conventions, e.g. the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, 1929, and the Convention on the Contract for the International Carriage of Goods by Road, 1956 (CMR). However, the view was also expressed that no special notice provision was needed for delay, and that even if such a provision were introduced, failure to give notice should not be a bar to a subsequent action.

9. Attention was also drawn to certain defects in article 3 (6) of the Brussels Convention. Article 3 (6) only referred to the "carrier", while the preliminary version of the draft Convention as a general rule imposed liability on the contracting carrier also in relation to carriage the performance of which he had entrusted to an actual carrier. It was noted that in certain circumstances notice may for practical reasons have to be given to the "actual carrier" rather than to the carrier who entered into the contract of carriage; such a notice ought to take effect also in relation to the contracting carrier as if it had been given to him directly. It was also noted that the text of article 3 (6) used different terminology in its various subparagraphs to describe the transfer of the goods from the carrier to the person entitled to take delivery of the goods, and that a uniform terminology might be desirable.

REPORTS OF THE DRAFTING PARTY

10. The task of preparing a draft text, taking into consideration the discussion by the Working Group, was then referred to the Drafting Party.

(i) *Report of the drafting party on notice of loss or damage*

The Drafting Party considered the topic of notice of loss or damage. The text of a draft provision on this topic proposed by the Drafting Party, as amended by the Working Group,[14] is as follows:

[*Article 19. Notice of loss or damage*]

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

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

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

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

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

(ii) *Report of the Drafting Party on notice of delay*

(*a*) The question of the possible inclusion in the Convention of a provision under which notice must be given by a consignee if he claims compensation from the carrier for delay in delivery was briefly considered by the Working Group and was then referred to the Drafting Party. The Drafting Party was of the view that the question of principle as to whether such a provision was desirable should be decided by the Working Group, but it nevertheless believed that the Working Group might find it useful to have a draft text before it when reconsidering this matter. Accordingly, the draft provision below was presented only with the aim of facilitating the discussion in the Working Group:

[*Notice by consignee that he will claim compensation for delay in delivery*]

"No compensation shall be payable for delay in delivery unless a notice has been sent in writing to the carrier within twenty-one days from the time that the goods were handed over to the consignee."

Notes on the report of the Drafting Party

(*b*) If the Working Group should decide to include in the revised Convention a provision dealing with notice regarding claims by the consignee for compensation for delay in delivery, it would also have to decide on the placing of such a provision. The Drafting Party was of the view that such a provision could form paragraph 5 of the draft article on notice of loss or damage (article 19), with the paragraph on the effect of notice that was given to the actual carrier then becoming paragraph 6 of that same article.

CONSIDERATION OF THE REPORTS OF THE DRAFTING PARTY

(i) *Notice of loss or damage*

11. (*a*) Divergent views were expressed with regard to the use of the term "document of transport" in paragraph 1, as that term had not been defined in the draft convention. This question was referred back by the Working Group to the Drafting Party for consideration.

(*b*) In relation to the period of 10 days specified in paragraph 2, the issue was raised as to whether holidays and non-working days were to be excluded

[14] The amendments made by the Working Group are as follows:
(*a*) In paragraph 2, the words "the notice in writing must be given within ten days after the completion of delivery, excluding that day" were substituted after the word "apparent", for the words "the notice must be given within 10 consecutive days of the delivery".
(*b*) In paragraph 5, the words "under this article", which were absent in the draft text recommended by the Drafting Party, were inserted between the words "given" and "to".

or included in the calculation of this period. The view was expressed that the intention behind the use of the term "consecutive days" in the draft text was that holidays and non-working days should be included in the calculation of the period, and that the extension of the period of three days given in paragraph 2 of article 3 (6) of the Brussels Convention to 10 days was made to alleviate possible hardship to the consignee arising from this method of calculation. On the other hand, it was observed that the use of the word "consecutive" to achieve this result was unnecessary.

(*c*) The Drafting Party was also requested to consider the question of bringing into harmony the various language versions of the text of article 19.

(ii) *Notice of delay*

12. On the request of one representative the Working Group agreed to postpone consideration of the report until the second reading of the draft Convention in relation to article 19.

4. Relationship of the draft convention with other conventions

1. The Working Group considered the relationship of the draft convention on carriage of goods by sea with (a) conventions regulating liability for damage caused by a nuclear incident, and (b) other maritime conventions.

(a) *The relationship with Conventions regulating liability for damage caused by a nuclear incident*

(i) *Provisions in the 1968 Brussels Protocol*

2. Article 4 of the 1968 Brussels Protocol to the Brussels Convention of 1924 reads as follows:

> "This Convention shall not affect the provisions of any international convention or national law governing liability for nuclear damage."

(ii) *Discussion by the Working Group*

3. Under a proposed new article, whenever that article was applicable, liability for damage caused by a nuclear incident would not be regulated by the draft convention on the carriage of goods by sea. It was argued in support of the new article that it would enable States parties to the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 1964, or the 1963 Vienna Convention on Civil Liability for Nuclear Damage, to become parties also to the convention on the carriage of goods by sea. It was further pointed out that it would be desirable to harmonize the rule relating to nuclear damage with the Brussels Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material, 1971, and the corresponding rule in article 20 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

4. There was general support for the proposed new article, although the view was also expressed that article 4 of the Brussels Protocol of 1968 was equally acceptable. It was also suggested that the proposed new article should also provide for the case of States which at present did not have a specific national law governing liability for such damage, but based such liability on the general principles of civil liability. The proposed new article, together with the suggestion for its amendment, was referred to the Drafting Party.

(b) *The relationship with other maritime conventions*

(i) *Provisions in other conventions*

5. Article 8 of the Brussels Convention of 1924 reads as follows:

> "The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels."

(ii) *Discussion by the Working Group*

6. It was stated that, while the substance of article 8 in the 1924 Brussels Convention was acceptable, its wording was ambiguous in that the phrase "for the time being in force" suggested that only statutes in force at the conclusion of that Convention were within the ambit of the provision. It was also stated that reference should be made to limitation of liability under international conventions.

7. The view was also expressed that the provisions of article 19 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, might form an appropriate basis for a suitable text. This article reads as follows:

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

However, it was suggested that while the text of article 19 of the 1974 Athens Convention could be used as a model, it would be necessary in this context to refer also to the limitation of liability of owners of seagoing vessels provided for in national law.

8. The question of the relationship of the draft convention with other conventions was then remitted to the Drafting Party for the formulation of a draft text in the light of the above discussion.

Report of the Drafting Party

(*a*) The Drafting Party considered provisions dealing with the relationship of the revised Convention with other conventions, and then recommended the following draft text on this topic:

[*Relationship of the revised Convention with other conventions*]

[part VII]

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

2. No liability shall arise under the provisions of this Convention for damage caused by a nuclear

incident if the operator of a nuclear installation is liable for such damage:

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

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

Notes on the proposed draft provisions

(*b*) One representative expressed the view that paragraph 1 of the draft text set forth above should not contain any reference to "national law" and reserved his position on this point.

CONSIDERATION OF THE REPORT OF THE DRAFTING PARTY

9. The Working Group considered the above-quoted report of the Drafting Party. This report, including the proposed draft provisions, was approved by the Working Group. However, the Working Group referred back to the Drafting Party the question of harmonizing the various language versions of this article.

5. General average

(a) *Provisions in existing conventions*

1. Article 5, paragraph 2, of the 1924 Brussels Convention states:

"Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average."

(b) *Discussion in the Working Group*

2. The discussion in the Working Group was based on the above provision, and the texts of proposals submitted by two representatives.

3. After repeating the above provision contained in the Brussels Convention, the first proposal stated that no person having an interest in the goods shall be required to contribute in general average unless the carrier proves that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence giving rise to the general average.

4. After similarly repeating the above provision contained in the Brussels Convention, the second proposal stated that claims in respect of general average shall be governed by applicable provisions of the draft convention, and that any provision inconsistent with the convention was to be null and void to the extent that it derogated therefrom.

5. It was stated that the first proposal was intended to grapple with the situation which arose as regards general average from the impact of the terms of article 5 (1) of the preliminary draft convention dealing with the basic rule as to carrier liability on the rules of general average. Under rule D of the York-Antwerp Rules, the right to contribute in general average was not affected though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure. However, this did not prejudice any remedies which may be open against that party for that fault. If in terms of this rule a contribution in general average was made by the cargo owner to the carrier, and he sought to recover such contribution on the basis that the general average loss was due to the carrier's fault, his action may fail since it might not be an action for loss, damage or expense resulting from loss of or damage to the goods within the meaning of article 5 (1). To avoid this result, the first proposal negated the carrier's right to contribution unless he disproved fault on his part. In commenting on this proposal, however, the view was expressed that this placed too heavy a burden on the carrier, and limited too sharply his right to contribution. Another suggestion was that a better way of reaching the desired result was not to negate the right to contribute, but to grant a right of reimbursement in respect of contribution unless the carrier proved absence of fault. It was accordingly agreed that the right of cargo owners to counter-claim in respect of general average contribution should be governed by the provisions of the convention as if such counter-claim were a claim arising from loss of or damage to the goods. However, one representative pointed out that if all the provisions of the convention were applied to such counter-claims there was a possibility that the cargo owners' position would be prejudiced in some jurisdictions because of the application of the time bar in article 20. In view of this difficulty this representative said that if a provision was adopted in this form a reservation on this point might have to be made.

6. In support of the second proposal it was stated that the rights of the parties to a contract of carriage in regard to general average were now generally embodied in the clauses of bills of lading. It was therefore important to ensure that such clauses did not contravene the provisions of the convention. In regard to this proposal the comment was made that it was superfluous, in that article 23 already invalidated all clauses derogating from the draft convention.

7. Some representatives also stated that clarification was desirable as to what was meant by the reference to "lawful" provisions regarding general average in the text of article 5, paragraph 2 of the Brussels Convention. It was observed that provisions which were not lawful would in any event be ineffective, and that these words may therefore be superfluous.

8. It was resolved that the present text of article 5, paragraph 2 of the Brussels Convention, together with the suggested drafting changes to it, should be considered by the Drafting Party with a view to drafting a suitable text.

REPORT OF THE DRAFTING PARTY

The Drafting Party considered this topic, and recommended the following provision for consideration by the Working Group.

[*Article 24. General average*]

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding general average.

2. However, the rules of this Convention relating to the liability of the carrier for loss of or damage to the goods shall govern the liability of the carrier to indemnify the consignee in respect of any contribution to general average.

CONSIDERATION OF THE REPORT OF THE DRAFTING PARTY

9. The Working Group considered the above-quoted report of the Drafting Party. This report, including the proposed draft provisions, was adopted by the Working Group.

The following comments and reservations were made with respect to the draft provisions:

(*a*) One delegation reserved the right, when enacting domestic legislation giving effect to the draft convention, to add a provision preserving the rights given under paragraph 2 in regard to general average from the impact of a possible expiry of the limitation period under article 20 of the draft convention.

(*b*) Two delegations reserved their positions in regard to paragraph 2.

(*c*) The Drafting Party was requested to consider the question of bringing the various language versions of the text of article 24 into harmony.

B. Second reading by the Working Group of the preliminary version of a draft convention on the liability of carriers of goods by sea

Discussion by the Working Group

1. The Working Group examined in second reading the draft provisions approved by it at the third to seventh sessions.[15]

Title of the convention

2. The Working Group, after deliberation, decided to modify the title of the draft convention as follows: "Draft Convention on the Carriage of Goods by Sea".

Headings

3. The Working Group decided to refer to the Drafting Party the examination of the headings set forth in the preliminary version of the draft convention.

PRELIMINARY VERSION OF A DRAFT CONVENTION ON THE LIABILITY OF CARRIERS OF GOODS BY SEA

PART I. SCOPE OF APPLICATION

Article 1. [*Contracts covered*]

1. The provisions of this Convention shall be applicable to all contracts for the carriage of goods by sea.

[2. Where a bill of lading or similar document of title is not issued, the parties may expressly agree that the Convention shall not apply, provided that a document evidencing the contract is issued and a statement of the stipulation is endorsed on such document and signed by the shipper.]

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

[4. For the purpose of this article, contracts for the carriage of a certain quantity of goods over a certain period of time shall be deemed to be charter-parties.]

Paragraph 1

4. The Working Group adopted this provision as set out above.

Paragraph 2

5. The Working Group considered the question of retaining or deleting paragraph 2. It was stated in support of the provision that it would be to the advantage of shippers that in certain circumstances there should be the option of agreeing that the convention would not be applicable. Most representatives, however, favoured deletion of this paragraph, since the provision might enable carriers to circumvent the protection provided by this convention to shippers and consignees. The Working Group therefore decided to delete paragraph 2 of this article.

Paragraph 3

6. The Working Group adopted this paragraph as set out above. In this context the representative of the Federal Republic of Germany, in his capacity as chairman of the UNCTAD Working Group on International Shipping Legislation, informed the Group that the UNCTAD Working Group at its session held earlier this year had not yet taken a final decision on legislative or other actions eventually to be taken with regard to charter-parties. This decision was deferred to 1978. He set out in brief the main reasons for this decision.

Paragraph 4

7. Most representatives were of the view that the language of this paragraph, in excluding from the ambit of the convention "contracts for the carriage of a certain quantity of goods over a certain period of time", was too wide as it would have the effect of excluding from the protection of the convention a large number of contracts of carriage. In response to these comments one representative proposed the following new text for paragraph 4:

"The provisions of this Convention shall not be applicable to *contracts for successive shipments of goods as bulk cargo in full shiploads.* However, where a bill of lading is issued pursuant to such a contract, the provisions of the Convention shall ap-

[15] See document A/CN.9/WG.III/WP.19. In the account that follows of the consideration of the draft convention by the Working Group at the second reading, the articles are set forth as they appeared in A/CN.9/WG.III/WP.19, and not as finally adopted at this session.

ply to such a bill of lading when it governs the relation between the carrier and the holder of the bill of lading."

The representative who introduced the above proposal explained that such long-term contracts for successive shipload shipments of large quantities of bulk commodities were common in many trades, and that parties to such long-term contracts were usually in an equal bargaining position. The contract usually fixed the freight rates on a long-term basis and provided *inter alia* for the type of charter-party to be used for each shipment under the contract, and thus it possessed the character of a "frame-contract" for future shipments. That these contracts should be excluded from the convention could, therefore, be seen also as a consequence of the agreed exclusion of charter-parties from the convention. Another representative suggested the addition of the words "if the parties so agree" at the end of the first sentence of the draft proposal set out above, in order to make non-applicability of the convention to such contracts dependent upon a specific agreement of the parties. Several representatives expressed support for the draft proposal as modified. The representative who had proposed the new text for paragraph 4 then withdrew his proposal, explaining that with such an amendment the rule proposed would be inconsistent with the provision on charter-parties already adopted by the Working Group. The Working Group then decided to delete paragraph 4 of this article.

Paragraph 4 bis

8. The Working Group agreed to add a new paragraph, based on article 7 of the Convention on the Limitation Period in the International Sale of Goods, which reads as follows:

"*Article 7*

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

The Drafting Party was requested to consider where in the draft convention the provision could most suitably be placed.

Article 2. [Geographic scope]

1. The provisions of this Convention shall, subject to article [1], be applicable to every contract for carriage of goods by sea between ports in two different States, if:

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

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

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

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

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

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

[3. Each Contracting State shall apply the provisions of this Convention to the contracts of carriage mentioned above.]

4. This article shall not prevent a Contracting State from applying the rules of this Convention to domestic carriage.

Paragraph 1

1. The Working Group retained the provisions in this paragraph. The Group did not adopt a proposal by one representative to delete the words "as provided for in the contract of carriage" in subparagraphs (*a*) and (*b*); this proposal was motivated by the wish to have the principles of the Convention apply in the case where the goods covered by a bill of lading which was not issued in a Contracting State, are in fact (un)-loaded in a port of a Contracting State when the contract of carriage foresaw a part of un(loading) not located in a Contracting State. This proposal was not adopted since this would prevent the parties from knowing in advance with certainty whether the Convention would apply or not.

Paragraph 2

2. The Working Group adopted the provision as set out above.

Paragraph 3

3. The Working Group considered the question whether this paragraph should be deleted. Many representatives considered this paragraph to be superfluous since the principle contained therein was part of international law. Under another view, the provision was useful in that it would prevent possible differences with respect to the implementation of the convention in national legislation, as had been the case with the implementation of the 1924 Brussels Convention. The Working Group, after deliberation, decided to delete paragraph 3.

Paragraph 4

4. It was suggested that this paragraph should be deleted in view of the fact that a State in any event had the right to apply the rules of the convenion to domestic carriage and that an express provision to this effect would intrude upon the principle of sovereignty of States. One representative, however, stated that a provision along the lines of paragraph 4 was desirable under the constitutional system of his country. The Working Group therefore decided that the provision

should be retained in the convention and referred paragraph 4 to the Drafting Party for a suitable formulation.

Article 3. [Definitions]

[In this Convention:]

1. "Carrier" or "contracting carrier" means any person who in his own name enters into a contract for carriage of goods by sea with the shipper.

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

3. "Goods" includes goods, wares, merchandise and articles of every kind whatsoever including live animals.

4. "Contract of carriage" means a contract whereby the carrier agrees with the shipper to carry by sea against payment of freight, specified goods from one port to another where delivery is to take place.

[5. "Ship" means any vessel used for the carriage of goods by sea.]

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

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

1. The Working Group was of the view that the convention should open with an article on definitions and therefore decided that this article should become article 1. One representative was opposed to this view on the ground that a convention should first define the scope of its application. This representative expressed himself in favour of the order of articles set forth in the preliminary version of the draft convention (A/CN.9/WG.III/WP.19).

Paragraphs 1 and 2

2. The Working Group decided to request the Drafting Party to consider the reformulation of paragraphs 1 and 2 in the light of the definitions of "carrier" and "performing carrier" given in the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974. These definitions are as follows:

"(*a*) 'Carrier' means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

"(*b*) 'Performing carrier' means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage."

One representative suggested that identical terminology between the Athens Convention of 1974 and the new convention was unnecessary in view of the dissimilarities between problems of passenger carriage and cargo carriage. In addition, it seemed to that representative that in view of the unacceptability of the Athens Convention to some States it would be unfortunate to incorporate provisions of that Convention in the Working Group's draft.

Paragraph 3

3. One representative proposed the following new formulation for the definition of "goods": " 'Goods' means any kind of goods, including live animals; where the goods are packed or consolidated in a container, pallet or similar article of transport, 'goods' includes such packaging or article of transport supplied by the shipper."

4. It was explained that the intention was thereby to include all types of packaging within the definition of "goods". It was argued in opposition to this proposal that it would encourage claims for damage to packaging even in cases where the goods themselves were not damaged. It was also suggested that the carrier should only be liable for damage to valuable packaging, such as containers. The substance of the proposal quoted above was adopted by the Working Group and the Drafting Party was asked to formulate a new definition of the term "goods" using it as the basis.

Paragraph 4

5. The Working Group referred to the Drafting Party the suggestion by a representative to delete the words "where delivery is to take place".

Paragraph 5

6. The Working Group decided to delete the definition of "ship", as it was of the view that such a definition was not needed.

Paragraph 6

7. In order to make it clear that the term "bill of lading" encompassed, in addition to documents made out "to the order of a named person, or to bearer", also documents made out "to order", the Working Group decided on the proposal of one representative to insert in the second sentence of the definition of the term "bill of lading" suitable language to achieve this result.

8. One representative suggested deletion of the reference to loading of the goods in the first sentence of the definition of the term "bill of lading", since "loading" was merely one form of "taking over the goods". The Working Group, however, did not adopt this suggestion, since "shipped" bills of lading stating expressly that the goods had been loaded on board a named vessel were generally required by banks making payments against surrender of documents.

9. One representative suggested that the term "contract for the carriage of goods by sea" be replaced by the words "contract of carriage" on the ground that paragraph 4 of article 3 set forth a definition of the latter term. The Working Group decided to refer this suggestion to the Drafting Party.

Paragraph 7

10. One representative proposed that the definition of "consignee" be replaced by the following:

> " 'Rightful owner' means the person entitled to take delivery of the goods. He is empowered to exercise the rights of the shipper."

In the original French text of the proposal the term *l'ayant-droit* was used to indicate the object defined.

11. This representative was of the view that in French the term *destinataire* only covered a named consignee and that, therefore, a different term such as *l'ayant-droit* was necessary. However, there was general agreement that the term "consignee" was the proper one to be used in the English text, and that the closest equivalent to that term in French was *destinataire*. For this reason, the term *destinataire* was retained in the French text of the article. In regard to the second sentence in the above proposal, most representatives were of the view that it should not be adopted since the legal positions of shippers and consignees were not necessarily the same.

12. The Working Group adopted the text of paragraph 7 as set out above.

13. One representative suggested that the sequence of the definitions set forth in article 3 should be rearranged to the effect that the definition of "consignee" should follow the definition of "actual carrier". The Working Group requested the Drafting Party to consider the desirability of rearranging the article as proposed.

PART II. LIABILITY OF THE CARRIER

SECTION 1. GENERAL PROVISIONS

Article 4. [Period of liability of the carrier]

Paragraph 1

1. The Working Group approved this provision as set out above.

Paragraph 2

2. The suggestion was made that the word "usage" in subparagraph (b) should be replaced by the words "common usage of the particular trade in question" or words to similar effect.

3. The Working Group referred this suggestion to the Drafting Party and, subject to a suitable formulation on the lines suggested, adopted the provisions of paragraph 2.

Paragraph 3

4. The Working Group approved this provision as set out above.

Article 5. [Basic rules on the liability of the carrier]

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

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

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

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

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

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

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

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

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

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

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

3. In the provisions of paragraphs 1 and 2, reference to the carrier or to the consignee shall mean, in addition to the carrier or the consignee, the servants, the agents or other persons acting pursuant to the instructions, respectively, of the carrier or the consignee.

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

Paragraph 1

1. The Working Group considered but did not adopt a proposal by a representative that paragraph 1 should read, for the reasons stated in document A/CN.9/WG.III(VII)/CRP.1 presented by OCTI, as follows:

"1. The carrier shall be liable for loss of or damage to the goods if the loss or damage took place while the goods were in his charge; he shall also be liable for loss, damage or expense resulting from delay in delivery.

"The carrier shall be exonerated from this liability if he proves that he or his servants or agents took all measures that could reasonably be required to avoid loss of or damage to the goods or loss, damage or expense resulting from delay in delivery."

2. The Working Group considered but did not approve the proposal of another representative to add at the end of paragraph 1 the words "measures to make the ship seaworthy shall be deemed to be measures that are reasonably required to be taken by the carrier, his servants or agents".

3. Four representatives proposed a new paragraph 1 *bis* which read as follows:

"Notwithstanding the provisions of paragraph 1 of this article, the carrier shall not be responsible for loss, damage, expense or delay resulting from any neglect or default in the navigation of the ship or from fire unless it is proved that the occurrence giving rise to such loss, damage, expense or delay has been caused by the fault of the carrier."

In support of this proposal it was stated that:

(*a*) Sea voyages continued to involve high risks;

(*b*) The shipowner did not have continuous effective control over the captain, the crew, pilots, or conditions at the ports of loading and discharge;

(*c*) The elimination of the exception relating to "errors in navigation" would result in considerably higher liability insurance premiums for carriers without a corresponding decrease in cargo insurance rates. The increased liability insurance premiums would be reflected in higher freight rates;

(*d*) Neither shippers nor carriers favoured the elimination of the exception for "errors in navigation";

(*e*) The real economic effect of the elimination of this exception was at the present time unknown and incalculable; and

(*f*) The elimination of the exception relating to navigational error would have serious adverse effects on practices regarding general average. The Working Group should therefore not take any action prejudicial to that subject, which was due to be discussed in 1979 by the UNCTAD Working Group on International Shipping Legislation.

Representatives opposing the addition of this proposed paragraph 1 *bis* advanced the following reasons:

(*a*) Due to advances in technology the risks involved in sea voyages had been greatly reduced;

(*b*) Owing to advances in communications, the shipowner today was able to be in continuous contact with the vessel and its officers;

(*c*) There was insufficient data to conclude that the total insurance costs involved would rise as a consequence of the elimination of the exception;

(*d*) Shippers favoured elimination of the exception;

(*e*) Retention of the exception for "errors in navigation" would constitute a serious deviation from the basic general legal principles of liability for fault and vicarious liability and would run counter to the principles established in other transportation conventions;

(*f*) The present text of article 5, paragraph 1 represented a carefully worked out compromise that should be retained.

4. The Working Group, after deliberation, decided not to adopt the proposed paragraph 1 *bis*.

5. Another proposal for a new paragraph 1 *bis* read as follows:

"The carrier shall, however, not be liable to pay compensation for loss, damage or expense, other than loss of or damage to the goods resulting from delay in delivery, when such loss, damage or expense could not have been reasonably foreseen by the carrier at the time of entering into the contract of carriage as a probable consequence of the delay."

6. The view was expressed that the above provision, limiting the carrier's liability to pay compensation for damages that were foreseeable, was unnecessary, and that this issue could be left to be resolved by national law.

7. The Working Group decided not to adopt this proposal.

Paragraph 2

8. On the proposal of one representative, the Working Group decided to add the words "at the port of discharge provided for in the contract of carriage" after the words "have not been delivered" in paragraph 2 of article 5.

Paragraph 3

9. The Working Group decided to approve this provision as set out above.

Paragraph 4

10. The following text was proposed by two representatives as a new paragraph 4 to replace the existing provision.

"In case of fire the carrier shall be liable unless he proves that he had adequate means to avert the

fire and that he, his servants and agents, took all reasonable measures to avoid it and limit its consequences except where the claimant proves the fault or negligence of the carrier or his agents or servants caused or contributed to the fire."

11. In support of this proposal, the view was expressed that the present formulation of paragraph 4 placed a burden of proof on the claimant which was excessively hard for him to discharge, and that the proposed new formulation was more equitable. Many representatives, however, expressed the view that the present formulation was justifiable, since most fires on ships were caused by spontaneous combustion originating in the cargo. It was observed that the proposal would in substance lead to the same result as would the application of the rule contained in paragraph 1 of article 5. It was also noted that the present formulation of paragraph 4 of article 5 was part of the carefully worked out compromise which was embodied in paragraph 1 of article 5.

12. The Working Group decided not to adopt the proposed text.

Paragraph 5

13. The Working Group considered but did not adopt the proposal of one representative that paragraph 5 be deleted.

Paragraph 6

14. The Working Group considered but did not adopt the proposal of one representative that the immunity of the carrier from liability for loss or damage resulting from measures to save life at sea should be limited to measures which are reasonable.

Paragraph 7

15. The Working Group decided to adopt this provision as set out above.

SECTION 2. LIMITS ON THE LIABILITY OF CARRIERS

Article 6. [Computation of the limits]

[*Alternative A*: single method for the limitation of the carrier's liability:

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

[*Alternative B*: dual method for the limitation of the carrier's liability:

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

(*b*) In case of delay in delivery, if the claimant proves loss, damage or expense other than as referred to in subparagraph (*a*) above, the liability of the carrier shall not exceed:

Variation x: [double] the freight.

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

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

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

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

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

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

4. The amount referred to in paragraph 1 of this article shall be converted into the national currency of the State of the court or arbitration tribunal seized of the case on the basis of the official value of that currency by reference to the unit defined in paragraph 3 of this article on the date of the judgement or arbitration award. If there is no such official value, the competent authority of the State concerned shall determine what shall be considered as the official value for the purposes of this Convention.

Paragraphs 1 and 2

1. One representative proposed that the following text should replace paragraphs 1 and 2 of article 6:

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

In support of the proposal, this representative pointed out that the limitation per package or unit contained in the 1924 Brussels Convention had given rise to ambiguities and uncertainties. Courts in different countries had reached varying conclusions as to its interpretation. Although some clarifications had been made through the adoption of the so-called container clause in the 1968 Brussels Protocol and the substitution of a concept of "shipping unit" for "unit" in the new draft convention, considerable difficulties would still exist as to the correct interpretation of what would be considered as a "package" or "shipping unit". This representative also pointed out that the international

conventions relating to transport by air, road and rail only used a concept of limitation based on weight.

2. A majority of the representatives were of the view that the above proposal would lead to considerable simplification of the existing text. However, some of these representatives stated that they could accept the above proposal provided that a separate limitation rule in terms of freight charges was established for delay in delivery. The view was also expressed that the present formulation may lead to an unduly low quantum of compensation when the cargo affected was of low weight but high value.

3. The Working Group then decided to include in the draft convention the following alternatives regarding the limitation on the liability of carriers:

(*a*) A general rule in terms of gross weight;

(*b*) A general rule in terms of gross weight, coupled with a special rule as to delay in delivery;

(*c*) A general rule in terms of gross weight or package or other shipping unit;

(*d*) A general rule in terms of gross weight or package or other shipping unit, with a special rule as to delay in delivery;

(*e*) The alternative mentioned under point (*d*), coupled with another special rule as to containers.

4. The Working Group agreed not to adopt a rule based on any of the above alternatives on the ground that it was desirable to maintain the several alternatives. Several representatives expressed the view that Governments would not be in a position to choose among these alternatives until the amounts to be fixed as the ceiling of liability per kilo of gross weight or package or shipping unit were agreed upon. The Working Group requested the Drafting Party to draft alternative texts in the light of the discussions.

Paragraphs 3 and 4

5. The Working Group adopted paragraphs 3 and 4 of article 6 as set forth above.

Article 7. [Applicability of the limits of liability: torts; servants and agents]

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

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

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

The Working Group adopted the text of article 7 as set out above.

Article 8. [Effect of wilful misconduct]

The carrier shall not be entitled to a benefit of the limitation of liability provided for in paragraph 1 of article [6] if it is proved that the damage was caused by wilful misconduct of the carrier, or of any of his servants or agents acting within the scope of their employment. Nor shall any of the servants or agents of the carrier be entitled to the benefit of such limitation of liability with respect to damage caused by wilful misconduct on his part.

1. On the proposal of one representative the Working Group agreed to replace the term "wilful misconduct" by the corresponding formulation in article 13 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.[16]

2. The Working Group considered the proposal made by one representative to delete from the first sentence of article 8 the words "or of any of his servants or agents acting within the scope of their employment". It was argued in support of this proposal that the limitation on the liability of carriers should only be removed in those cases where there was serious personal wrongdoing on the part of the carrier himself. As against this it was argued that carriers normally acted through servants or agents, and that therefore the amendment suggested would reduce greatly the special protection to shippers and consignees provided by this article.

3. The Working Group was almost equally divided on the suggested amendment. Several representatives were of the view that these words should be retained. However, the prevailing view was that the words "or of any of his servants or agents acting within the scope of their employment" in the first sentence of article 8 should be deleted.

4. One representative reserved his position on article 8 in view of the interrelationship of this article with article 6.

SECTION 3. DECK CARGO

Article 9. [Deck cargo]

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

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the

[16] Article 13 of that Convention reads as follows:

Article 13

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in articles 7 and 8 and paragraph 1 of article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1, the carrier shall be liable for loss of or damage to the goods, as well as for delay in delivery, which results solely from the carriage on deck, in accordance with the provisions of articles [6 and 7]. The same shall apply when the carrier, in accordance with paragraph 2 of this article, is not entitled to invoke an agreement for carriage on deck against a third party who has acquired a bill of lading in good faith.

4. Carriage of goods on deck contrary to express agreement for the carriage under deck shall be deemed to be wilful misconduct and subject to the provision of article [8].

Paragraph 1

1. The Working Group considered but did not adopt the proposal made by one representative to add either the words "obtaining in the port of loading" or the words "obtaining in the port of unloading" at the end of this paragraph.

2. The Working Group decided to retain the text of this paragraph as set out above, while deleting on the proposal of one representative, supported by several others, the brackets around the words "with the common usage of the particular trade".

Paragraph 2

3. One observer proposed that the option given to carriers by this paragraph to carry goods on deck should only apply to "carriage on deck in containers on specially equipped container vessels". The Working Group took note of this proposal.

Paragraph 3

4. The Working Group adopted the text of this paragraph as set out above, but changed the reference at the end of the first sentence from "articles 6 and 7" to "articles 6 and 8".

Paragraph 4

5. The Working Group decided to retain the substance of this paragraph, but to replace the term "wilful misconduct" by a term based on the formulation used in article 13 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (see also para. 1 under art. 8 above).

6. One representative reserved his position on the provision limiting the liability of the carrier in the event of an unauthorized deck carriage.

SECTION 4. LIABILITY OF CONTRACTING CARRIER AND ACTUAL CARRIER

Article 10. [Carriage by an actual carrier]

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

2. The actual carrier also shall be responsible, according to the provisions of this Convention, for the carriage performed by him.

3. The aggregate of the amounts recoverable from the contracting carrier and the actual carrier shall not exceed the limits provided for in this Convention.

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

The Working Group considered the proposal by two representatives to replace article 10 as set out above by a new formulation that would take into account the approach regarding this problem taken by article 4 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. During the discussion of this proposal, it was suggested that the two representatives should attempt to formulate a compromise between the approach adopted in aricle 10 set forth above, and that taken in article 4 of the Athens Convention. The two representatives thereafter submitted a proposal in the form of a draft text. One representative suggested that paragraph 3 of the new proposal was unacceptable because its vagueness could permit major derogations from the convention. The Working Group, after deliberation, adopted this proposal, and remitted the text to the Drafting Party.

Article 11. [Through bill of lading]

[1. Where the contract of carriage provides that a designated part of the carriage covered by the contract shall be performed by a person other than the contracting carrier (through bill of lading), the responsibility of the contracting carrier and of the actual carrier shall be determined in accordance with the provisions of article [10].

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

Paragraph 1

1. One representative stated that the words "designated part" in this paragraph gave rise to a lack of clarity as to the scope of the paragraph, and therefore proposed that the following words be substituted for the first phrase therein:

"Where the contract of carriage provides that the contracting carrier shall perform only part of the carriage covered by the contract, and that the rest of the contract shall be performed by a person other than the carrier (through bill of lading), . . .".

2. The Working Group considered and adopted this proposal.

Paragraph 2

3. One representative proposed that paragraph 2 be deleted. In support of this proposal, he stated that the provision derogated from the principle that a contracting carrier should be liable for loss, damage or delay occurring during the entire course of the carriage. Other representatives, however, were of the view that the deletion of this paragraph might lead carriers to desist from issuing through bills of lading, and might give rise to the practice of each successive carrier issuing a bill of lading covering only the part of the carriage performed by him. However, the availability for presentation of a single bill of lading was necessary for certain commercial transactions utilizing such documents. The Working Group considered the question, and decided to retain the paragraph, as set out above.

4. The Working Group decided to substitute the words "delay in delivery" for the word "delay" in this paragraph, and to remove the brackets presently around the word "delay".

Paragraphs 1 and 2 considered together

5. One representative proposed that both paragraphs 1 and 2 be deleted, and a text substituted to the effect that where the contract of carriage is performed by more than one carrier, the first carrier shall be responsible to the owner of the goods for performance of the contract of carriage. Any intermediate carrier was to be responsible for performance of the part of the contract of carriage undertaken by him.

6. The arguments for and against this proposal were substantially similar to those noted above in relation to the proposal in regard to the deletion of paragraph 2. The proposal was not adopted by the Working Group.

7. One representative suggested that both paragraphs 1 and 2 should be retained, and that the brackets around them be deleted. It was stated in support of this proposal that this would result in the continuance of the present advantages arising from the issue of through bills of lading. The Working Group adopted this proposal.

8. A suggestion that language should be introduced making it clear that the article only applied when the entire carriage was to be by sea was not adopted. The view was expressed that this was sufficiently clear from the definition of "contract of carriage".

PART III. LIABILITY OF THE SHIPPER

Article 12. [General rule]

The consideration of this article by the Working Group, and the decisions taken thereon, are contained in section A of this report, under the heading "Basic rule on the exoneration of the shipper from liability".

Article 13. [Dangerous goods]

The consideration of this article by the Working Group, and the decisions taken thereon, are contained in section A of this report, under the heading "Dangerous goods".

PART IV. TRANSPORT DOCUMENTS

SECTION 1. BILLS OF LADING

Article 14. [Duty to issue bill of lading]

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

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

Paragraphs 1 and 2

1. The Working Group adopted the texts of paragraphs 1 and 2 as set out above.

New paragraph 3

2. One representative proposed the addition of the following paragraph as a new paragraph 3:

"3. Where a bill of lading is issued by the charterer of a ship under a charter-party, such charterer only shall be the contracting carrier for the purpose of this article, and any stipulation in the bill of lading which is designed to deny that he is the carrier shall be null and void and of no effect."

It was stated in support of this proposal that there was some uncertainty as to who was the contracting carrier when a bill of lading was issued by a charterer, particularly when such bill of lading was signed by the master of the ship without any indication as to the person on whose behalf he was signing. As against this, it was observed that the existing paragraph 2 of this article resolved this difficulty by providing that in such circumstances the bill of lading was deemed to have been signed on behalf of the contracting carrier. It was also observed that there may be several charters operating simultaneously in respect of the same ship, and that in those circumstances the proposed paragraph could lead to difficulty. The Working Group decided not to adopt this proposal.

Article 15. [Contents of bill of lading]

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

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

(*b*) The apparent condition of the goods including their packaging;

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

(*d*) The name of the shipper;

(*e*) The consignee if named by the shipper;

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

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

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

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

(*j*) The signature of the carrier or a person acting on his behalf; the signature may be printed or stamped if the law of the country where the bill of lading is issued so permits; and

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

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

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

1. The Working Group considered the question whether the required contents of bills of lading as set forth in paragraph 1 of this article should or should not be mandatory. Under one view, making the required information mandatory would serve to protect third parties acquiring bills of lading; if a document did not contain the required information it would not be a bill of lading but would still be a document evidencing the contract of carriage. Representatives who were opposed to this view considered that the sanction of making a document, lacking one or more of the items listed, a document which was not a bill of lading would have the effect of denying to holders of such documents the protection of the convention; it was stated that regardless of any omissions a document should be considered a bill of lading if it met the requirements set out in the definition of the term "bill of lading".

2. The Working Group took no decision on this issue.

Paragraphs 1 and 1 (a)

3. The Working Group adopted the text of these provisions as set out above.

Paragraph 1 (b)

4. The Working Group adopted the proposal made by one representative to delete from this subparagraph the words "including their packaging", since packaging was specifically included in the definition of the term "goods".

Paragraphs 1 (c)-*1* (i)

5. The Working Group adopted the text of these provisions as set out above.

Paragraph 1 (j)

6. Some representatives proposed that this subparagraph be deleted since it did not cover a number of the ways in which signatures can be affixed to documents. Furthermore, in the case of information extracted by means of electronic data processing, there may be no signature at all. For these reasons, the Working Group, while retaining subparagraph (*j*), decided to expand the list of permissible methods for affixing signatures on bills of lading contained in that subparagraph as follows:

"The signature may be in handwriting, printed in facsimile, perforated, stamped, or by any other mechanical or electronic means, if the law of the country where the bill of lading is issued so permits;".

Paragraph 1 (k)

7. The Working Group considered but did not adopt the proposal made by one representative to delete this subparagraph.

Paragraph 1 (l)

8. The Working Group decided to add a new paragraph 1 (l), reading as follows:

"The statement referred to in paragraph 3 of article 23."

New paragraph 1 bis

9. One representative proposed the addition of a new paragraph 1 *bis* to article 15 reading as follows:

"Any other means which would preserve a record of the particulars set forth in paragraph 1 may, with the consent of the shipper, serve as a bill of lading."

10. This representative drew attention to electronic data processing used in connexion with transport documents. The draft convention should not operate as a bar to such modern developments since these reduced or eliminated traditional documentation. This representative therefore proposed additional language providing that any other means which would preserve a record of the particulars set forth in article 15, paragraph 1, could serve as a bill of lading, with the consent of the shipper. No representative expressed the opinion that the new convention was not amenable to electronic or automatic data processing, but some believed that an amendment was not needed to accomplish the desired result. It was also observed that, in relation to bills of lading, a document would in any event be required since, according to the agreed definition of "bill of lading" the goods could be delivered to the consignee only against surrender of the document. The Working Group did not adopt this proposal.

Paragraphs 2 and 3

11. The Working Group adopted the text of these provisions as set out above.

Article 16. [Bills of lading; reservations and evidentiary effect]

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

2. When the carrier fails to note on the bill of lading the apparent condition of the goods, including their packaging, he is deemed to have noted on the bill of lading that the goods, including their packaging, were in apparent good condition.

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

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

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

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

Paragraph 1

1. The Working Group considered but did not adopt the proposal by an observer to modify this paragraph so as to make it optional for the carrier to note his reservations on a bill of lading.

2. The Working Group decided to adopt the suggestion to add the words "knows or" preceding the words "has reasonable grounds", to make it clear that the paragraph was also applicable in cases where the carrier actually knew that the description of the goods in the bill of lading was inaccurate.

3. The Working Group did not adopt the proposal of one representative to replace the words "make special note of these grounds or inaccuracies, or of the absence of reasonable means of checking" by the words "make special note of this on the bill of lading". The proposal was motivated by practical considerations. The speed with which goods are handled does not permit the noting with the desired precision of the observation made.

4. The Drafting Party was requested to examine the language of this paragraph in the light of various drafting suggestions that were made by representatives.

Paragraph 2

5. The Working Group adopted the text of paragraph 2 as set out above, subject to the deletion of the words "including their packaging" which resulted from the decision taken in this regard by the Working Group concerning article 15 (1) (*b*).

Paragraph 3

6. One representative proposed the deletion of the words "including any consignee" which appear in paragraph 3 (*b*). In support of this proposal it was argued that these words were unnecessary since a consignee, except a shipper who was also the consignee, was always a third party as far as the contract of carriage was concerned. As against this, it was noted that the words "including any consignee" were necessary since in some national legal systems the consignee was considered to be a party to the contract of carriage. The Working Group, for that reason, decided to retain the words "including any consignee" in the text of subparagraph (*b*). The Working Group referred to the Drafting Party the suggestion by one representative that the expression "shall be presumed" in article 16 (4) and the expression "shall be *prima facie* evidence" in articles 16 (3) (*a*), 18 and 19 should be harmonized.

Paragraph 4

7. The Working Group considered but did not adopt the proposal of one representative to delete this paragraph.

Article 17. [Guarantees]

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

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

3. Such letter of guarantee or agreement shall be void and of no effect as against the shipper if the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of

this article, intends to defraud a third party, including any consignee, who acts in reliance on the description of the goods in the bill of lading. If in such a case, the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier shall have no right of indemnity from the shipper pursuant to paragraph 1 of this article.

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

Paragraph 1

1. It was proposed that this paragraph should be deleted from this article, and inserted as paragraph 5 of article 16, since it had a closer relation to the provisions of the latter article. Divergent views were expressed on this issue, and the Working Group decided to retain the paragraph within the present article.

Paragraph 2

2. A proposal was made to the effect that this paragraph should be deleted. It was argued in support of this proposal that the paragraph was unnecessary, in that in any event a letter of guarantee or agreement between the carrier and shipper would have no effect in relation to a third party. However, several representatives were of the view that the paragraph served a useful purpose in clearly deciding this issue, and thereby protecting third parties. The Working Group decided to retain this paragraph.

Paragraph 3

3. A proposal was made to the effect that this paragraph should be deleted, since such a provision in the convention was not a proper vehicle for preventing fraud of the type envisaged therein. As against this, it was pointed out that fraud of this type caused serious prejudice to third parties, and that such a provision was needed to counteract these fraudulent practices.

4. A proposal to the effect that the first sentence of this paragraph should be amended to read "Such letter of guarantee or agreement shall be valid as against the shipper unless the carrier or the person acting in his behalf, . . ." was adopted by the Working Group. The Drafting Party was requested to amend the text accordingly, and to make any consequential amendments that might be necessary in the text of the article.[17]

[17] The texts of paragraphs 3 and 4 of article 17, as finally adopted by the Working Group, and incorporating the amendment noted above to the first sentence of paragraph 3, reads as follows:

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

Paragraph 4

5. The Working Group adopted this provision as set forth above.

Paragraphs 2, 3 and 4 considered together

6. One representative, supported by a number of observers, proposed deletion of the three paragraphs as a whole because they represented an unacceptable endorsement of fraudulent practices. However, as indicated above, the Working Group considered the paragraphs separately and decided to retain them.

SECTION 2. DOCUMENTS OTHER THAN BILLS OF LADING

Article 18. [Evidentiary effect of documents other than bills of lading]

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

The Working Group adopted the provisions of this article as set forth above.

PART V. CLAIMS AND ACTIONS

Article 19. [Notice of loss or damage][18]

The Working Group decided to add to the provisions of this article earlier adopted by it at the present session the following special notice requirement applicable to claims for damages from delay in delivery:

"No compensation shall be payable for delay in delivery unless a notice has been sent in writing to the carrier within twenty-one days from the time that the goods were handed over to the consignee."

Article 20. [Limitation period]

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

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

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

It may be considered that consequential drafting changes are necessary in regard to the phrases "If in such a case, . . ." occurring in the second sentence of paragraph 3, and "In the case referred to in paragraph 3 of this article . . ." in paragraph 4, in order to make it clear that the case referred to in these phrases is the case of the omission of a reservation with intent to defraud mentioned in the first sentence of paragraph 3 as set forth above.

[18] For the initial consideration of this article, see the heading "Notice of loss, damage or delay" in section A of the general introduction to this report.

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

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

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

4. An action for indemnity against a third person may be brought even after the expiration of the period of limitation provided for in the preceding paragraphs if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall not be less than [90 days] commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

Paragraph 1

1. The Working Group was evenly divided on the question whether the limitation period should be one year or two years. The Group, therefore, decided that the paragraph should set forth both periods as alternatives, in order to enable either the Commission or the diplomatic conference to decide this point.

Paragraph 2

2. The Working Group adopted this provision as set forth above.

Paragraph 3

3. The Working Group adopted this provision as set forth above.

New paragraph 3 bis

4. The Working Group adopted this proposal made by one representative to add the following new paragraph 3 *bis* to article 20, in order to make it clear that the rules on the limitation period also applied to the actual carrier, his servants and agents:

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

Paragraph 4

5. The Working Group adopted this provision as set forth above.

Article 21. [*Choice of forum*]

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

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

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

(c) The port of loading; or

(*d*) The port of discharge; or

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

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

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

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

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

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

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

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

Paragraphs 1 and 1 (a)

1. The Working Group adopted the text of these provisions as set out above.

Paragraph 1 (b)

2. The Working Group considered the proposal of one representative to delete from this subparagraph the words "branch or agency". It was stated in support of this proposal that it would eliminate the possibility of the carrier being sued at an inconvenient, insubstantial "branch or agency" situated inland; the fear was ex-

pressed that a single commercial agent may be construed as an "agency" for purposes of jurisdiction. Several representatives, however, were opposed to the above proposal on the grounds that the terms "branch" and "agency" would not cause difficulties of interpretation and that it was important for the consignee to be able to sue the carrier at any place where the carrier was engaged in business to a substantial extent. Accordingly, the Working Group decided to retain the words "branch or agency" in the text of this subparagraph.

Paragraphs 1 (c)*-1* (e)

3. The Working Group adopted the text of these provisions as set out above.

Paragraph 2 (a)

4. Some representatives noted that the second sentence of this subparagraph might possibly conflict with article 7 of the 1952 Brussels Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships and reserved their rights to present to the Commission draft proposals intended to resolve this difficulty for States parties to that Convention.

Paragraphs 2 to 5

5. The Working Group adopted the text of these paragraphs as set out above.

6. Some representatives were of the view that article 21 restricted the autonomy of the parties to a contract of carriage to submit a dispute to the judicial forum of their choice, and were therefore opposed to the article as adopted by the Working Group.

Article 22. [Arbitration]

1. Subject to the rules of this article, any clause or agreement referring disputes that may arise under a contract of carriage to arbitration shall be allowed.

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

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

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

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

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

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

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

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

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

1. One representative proposed deletion of the article on the ground that more detailed provisions would be required in order to resolve the problems that could arise during arbitral proceedings. In support of the present provision it was stated that the article was a necessary counterpart to article 21 dealing with the choice of judicial fora in that it prevented carriers from inserting in the contracts of transport clauses providing for exclusive arbitration fora. Such clauses could be harmful to claimants in that they circumvented the protection provided by article 21.

2. The Working Group, after deliberation, decided to retain article 22. Most representatives observed that, like article 21, it was necessary in order to safeguard the availability of a convenient forum for the plaintiff. Some representatives expressed the view that the Convention should not restrict the autonomy of the parties in choosing an arbitral forum, and were therefore opposed to the retention of the article.

Paragraph 1

3. The Working Group adopted the proposal of one representative to replace paragraph 1 by the following new text:

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

Paragraph 2

4. Following the decision taken by the Working Group concerning the proposal by one representative to delete in article 21 (1) (*b*) the words "branch or agency", this representative withdrew an analogous proposal relating to paragraph 2 (*a*) (iii). The Working Group then adopted the paragraph as set out above.

Paragraph 3

5. The Working Group adopted the paragraph as set out above.

Paragraph 4

6. One representative was of the view that the provisions of this paragraph might conflict with provisions in international conventions dealing with international commercial arbitration. However, the Working Group decided to retain this paragraph as set out above.

Paragraph 5

7. The Working Group adopted this paragraph as set out above.

PART VI. CONTRACT STIPULATIONS DEROGATING FROM THE CONVENTION

Article 23. [General rule]

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

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

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

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

Paragraphs 1 and 2

1. The Working Group adopted these paragraphs as set out above.

Paragraph 3

2. One representative proposed that this paragraph should be deleted, as the requirement contained therein that the document evidencing the contract of carriage shall contain the statement described in the paragraph would obstruct the simplification of the contents of such documents. On the other hand, it was argued that such a provision was necessary to alert the shipper to the rights conferred on him by the Convention.

3. The Working Group decided to retain this paragraph.

Paragraph 4

4. The Working Group adopted this paragraph as set out above.

Article 24. [General average]

The consideration of this article by the Working Group, and the decisions taken thereon, are contained in section A of the general introduction to this report, under the heading "General average".

PART VII. RELATIONSHIP OF THE CONVENTION WITH OTHER MARITIME CONVENTIONS

The consideration of this Part of the draft Convention, and decisions taken thereon, are contained in section A of the general introduction, under the heading "Relationship of the draft Convention with other conventions".

PART VIII. IMPLEMENTATION

PART IX. DECLARATIONS AND RESERVATIONS

PART X. FINAL CLAUSES

The Working Group did not consider draft provisions concerning implementation, declarations and reservations, or final clauses for the draft Convention. It requested the Secretariat to prepare draft articles dealing with these topics for consideration by the Commission at its ninth session.

C. Final decisions by the Working Group

1. After the completion of the second reading of the draft convention on the carriage of goods by sea, the Working Group referred the texts considered by it to the Drafting Party for review, with specific reference to amendments and suggestions for improvement to those texts adopted in the course of its discussions.

2. The Drafting Party, after deliberation, presented to the Working Group its report containing these texts as reviewed by it, and, where necessary, amended.

3. The Working Group considered the report of the Drafting Party, and adopted the texts contained therein, with certain amendments, as the text of the draft convention on the carriage of goods by sea.

4. The Working Group took note of the following observations by the Drafting Party:

To article 4. The Drafting Party noted that the Commission might wish to consider the harmonization of paragraph 1 of this article with paragraph 1 of article 5 and with the definition of the term "contract of carriage" in article 1.

To article 6. Some representatives expressed the view that in alternative D, variation *Y* should retain the formula "(*x-y*)" in stating the equivalent to francs per kilo and francs per package. These representatives stated that an explanatory foot-note should then be added along the lines of foot-note 23 of A/CN.9/WG.III/WP.19 which states: "It is assumed that (*x-y*) will represent lower limitations on liability than those established under subparagraph 1 (*a*)."

To article 13. Some representatives pointed out that paragraph 1 of article 13 imposed upon the shipper who hands dangerous goods to the carrier the obligation not only to inform the carrier of the nature

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

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

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

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

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

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

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

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

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

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

Article 2. Scope of application

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

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

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

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

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

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

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

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

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

Article 3. Interpretation of the Convention

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

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

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

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

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

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

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

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

* 18 March 1975.