

5. Report of the Secretary-General: draft Convention on the Carriage of Goods by Sea; draft provisions concerning implementation, reservations and other final clauses (A/CN.9/115)*

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INTRODUCTION

1. At the eighth session (10-21 February 1975) of the Working Group on International Legislation on Shipping at which the text of the draft convention on the carriage of goods by sea was adopted, the Working Group requested the Secretariat to prepare draft final clauses for consideration by the Commission at its ninth session. The present report has been prepared in response to that request.

2. It will be noted that the article on "entry into force" makes such entry depend on States with a specified tonnage of merchant shipping becoming contracting States, the amount of tonnage of a contracting State being determined by reference to certain statistical tables contained in Lloyd's Register of Shipping. The Secretariat has communicated with Lloyd's Register of Shipping in regard to the method of compiling these tables, their format, and the date of publication of the Register, and has received the following information:

(a) The statistical tables are principally based on data recorded in the ship's registers, and supplemented by any published data on small ships. The data are held on a computer file and updated daily. Data are collected from all known reliable sources, including government authorities, shipowners and shipbuilders. The data are examined and evaluated to ensure their accuracy.

(b) Lloyd's Register of Shipping cannot be certain that the categories of merchant vessels currently set forth in table 2 will remain the same in future issues of the tables, since technological development in shipbuilding may necessitate changes. However, no radical changes in these categories is at present foreseen.

(c) The Register is published annually in October or November of each year. The figures contained in an issue are applicable as at 1 July in the year of publication.

DRAFT ARTICLES

Article []. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

* 1 March 1976.

[Article []. Implementation]¹

[1. If a Contracting State has two or more territorial units in which [, according to its constitution,] different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, [acceptance, approval] or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.²

2. Declarations made at the time of signature are subject to confirmation upon ratification [acceptance or approval].

3. Declaration made under paragraph 1 of this article, and the confirmation of declarations made under paragraph 2 of this article, shall be in writing and shall be notified to the depositary.

4. Declarations shall state expressly the territorial units to which the Convention applies.

5. Declarations made under paragraph 1 of this article shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned, except for declarations of which the depositary only receives notification after such entry into force. The latter declarations shall take effect on the date the notification thereof is received by the depositary. If the notification of the latter declarations states that they are to take effect on a date specified therein, and such date is later than the date the notification is received by the depositary, the declarations shall take effect on such later date.

¹ This article is modelled on article 31 of the Convention on the Limitation Period in the International Sale of Goods, New York, 1974. However, the Secretariat is not at present aware of any state which has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in the draft convention on the carriage of goods by sea.

² This paragraph is modelled on para. 1 of article 31 of the Convention on the Limitation Period in the International Sale of Goods, New York, 1974, and the words "according to its constitution" enclosed in square brackets appear in the latter paragraph. However, the Commission may wish to consider whether these words are necessary for the purpose of this Convention.

6. If a Contracting State described in paragraph 1 of this article makes no declaration at the time of signature, ratification [acceptance, approval] or accession, the Convention shall have effect within all territorial units of that State.]

Article []. Date of application

Each Contracting State shall apply the provisions of this Convention to contracts [of carriage] concluded on or after the date of the entry into force of this Convention in respect of that State.

Article []. Signature, ratification, [acceptance, approval,] accession

1. This Convention shall be open for signature by all States until* at the Headquarters of the United Nations, New York.

2. This Convention shall be subject to ratification, [acceptance or approval] by the signatory States.

3. After*, this Convention shall be open for accession by all States which are not signatory States.

4. Instruments of ratification [, acceptance, approval] and accession shall be deposited with the Secretary-General of the United Nations.

Article []. Reservations

1. Any State may, at the time of signature, ratification, [acceptance, approval] or accession, make one or more of the following reservations:

(a)

(b)

2. No reservations may be made to this Convention other than those set forth in paragraph 1 of this article.

3. Reservations made at the time of signature are subject to confirmation upon ratification [acceptance or approval].

4. Reservations made under paragraph 1 of this article, and the confirmation of reservations made under paragraph 3 of this article, shall be in writing and shall be notified to the depositary.

5. Reservations shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned.

6. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the depositary. Such withdrawal shall take effect on the date the notification is received by the depositary. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the depositary, the withdrawal shall take effect on such later date.

Article []. Entry into force

Alternative A

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than States,

* Same date to be inserted.

the combined merchant fleets of which constitute not less than per cent of the gross tonnage of the world's merchant shipping, have become Contracting States to it in accordance with article [].³

Alternative B

1. This Convention shall enter into force on the first day of the month following the expiration of one year after the date on which not less than States, including States each with not less than gross tons of merchant shipping, have become Contracting States to it in accordance with article [].⁴

2. For the purposes of the present article, the tonnage shall be deemed to be that [contained in Lloyd's Register of Shipping, Statistical Tables 197-, table 1, in respect of the merchant fleets of the world] [contained, in respect of a Contracting State, in the issue of Lloyd's Register of Shipping, Statistical Tables, table 1, in respect of the merchant fleets of the world, published most recently prior to the date on which that State became a Contracting State].⁵

³ This provision is modelled on the approach taken in article 49 of the Convention on a Code of Conduct for Liner Conferences, Geneva, 1974, and article 17 of the International Convention on the Tonnage Measurements of Ships, London, 1969.

⁴ This provision is modelled on the approach taken in article 13 of the Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, Brussels, 23 February 1968; article 11 of the International Convention relating to the Limitation of the Liability of Carriers of Seagoing Ships, Brussels, 1957; and article XV of the International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969.

⁵ (1) This provision is modelled on the approach taken in article 49 of the Convention on a Code of Conduct for Liner Conferences, Geneva, 1974. Article 49 (1) reads as follows:

"(1) The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with article 48. For the purpose of the present article the tonnage shall be deemed to be that contained in Lloyd's Register of Shipping, *Statistical Tables 1973*, table 2 'World fleets—analysis by principal types', in respect of general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States reserve fleet and the American and Canadian Great Lakes fleets."

It may be noted that the statistics as to tonnage extracted from the Lloyd's Register of Shipping, 1973, *Statistical Tables*, table 2, "World fleets—analysis by principal types", together with an explanatory note, are set forth in the report of the Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, vol. II (TD/CODE/13/Add.1, part 2). A reference to these statistics as set forth in TD/CODE/13/Add.1, part 2 is given in a foot-note to article 49 of the Convention on a Code of Conduct for Liner Conferences.

(2) Certain conventions in respect of which the Secretary-General of the Intergovernmental Maritime Committee is the depositary (e.g. article 17, International Convention on the Tonnage Measurement of Ships, 1969) and certain ILO maritime conventions (e.g. article 15, Convention No. 133 of 1970: Convention concerning Crew Accommodation on Board Ship) contain provisions making entry into force depend on Contracting States having a specified tonnage of shipping, but do not state how such tonnage is to be determined. In response to inquiries made by the Secretariat, the secretariats of IMCO and ILO have stated that the tonnage is determined for the purposes of these provisions as to entry into force by reference to the statistical data contained in Lloyd's Register of Shipping.

(3) In response to an inquiry by the Secretariat from Lloyd's Register of Shipping as to the possible use of its statistical table to determine tonnage, Lloyd's Register of Shipping suggested that consideration might be given to determining the tonnage of shipping of a contracting State not

3. For each State which becomes a Contracting Party to this Convention during the course of, or after the expiration of, the one year specified in paragraph 1, this Convention shall enter into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

Alternative A

4. A State which is a party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention), upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention, so that the 1924 Convention shall cease to have effect for that State simultaneously with the entry into force of this Convention with respect to that State. Prior to the date on which the last instrument of ratification [acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention is deposited with the Secretary-General of the United Nations, for the purposes of this paragraph, a State may request the Government of Belgium to consider the notification by that State of its denunciation of the 1924 Convention to be received on the first day of the month following that date.

5. Upon the deposit of the last instrument of ratification [acceptance, approval] or accession required by paragraph 1 of this article for the entry into force of this Convention, the depositary of this Convention shall inform the Government of Belgium as the depositary of the 1924 Convention of the date of such deposit

by reference to table 1 ("Merchant fleets of the world") but by reference to table 2 ("World fleets—analysis by principal types"). Reference to table 2 may be appropriate if it were considered that only the tonnage of certain types of merchant vessels was to be relevant for calculating the tonnage of shipping of a State for the purposes of the provisions relating to entry into force. The Commission may wish to consider this suggestion.

and of the names of Contracting States to the Convention on that date.

Alternative B

4. A State which is a party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) upon becoming a Contracting State to this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

5. Upon the entry into force of this Convention under paragraph 1 of this article, the depositary of this Convention shall notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

6. The provisions of paragraph 4 of this article shall apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

Article []. Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation shall take effect [one year] after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification has reached the depositary.

Done at, in a single original, of which the Chinese, English, French, Russian and Spanish texts are equally authentic.