

Article 11. Notice of loss, damage or delay

Time frame may be somewhat short for large consignments.

Article 16. Unit of account

This conversion may confer a definite disadvantage to developing countries or other nations, the currencies of which are "weak", comparatively speaking.

[A/CN.9/319/Add.4]

INTERNATIONAL ASSOCIATION OF PORTS
AND HARBORS (IAPH)

The following communication has been received by the Secretary of the United Nations Commission on International Trade Law from the Secretary General of the International Association of Ports and Harbors:

[Original: English]

1: I, as in the capacity of the Secretary General of the International Association of Ports and Harbors, respectfully submit the "Resolution Concerning a Proposed Convention to Limit Liability of Terminal Operators", which was adopted at the Plenary Session of the 16th Biennial Conference of this Association convened in Miami on April 28, 1989.

2: The text of the Resolution (numbered as Resolution No. 2 of the 16th Biennial Conference of IAPH) reads:

RESOLUTION CONCERNING A PROPOSED CONVENTION TO LIMIT LIABILITY OF TERMINAL OPERATORS

WHEREAS the Committee on Legal Protection of Port Interests has studied a Proposed Convention on Liability of Operators of Transport Terminals which will be placed before the United Nations Commission on International Trade Law at its 1989 meeting; and

WHEREAS, the Board of Directors has approved the Committee's Report on that Proposed Convention;

NOW, THEREFORE, BE IT RESOLVED by the INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS, at its Second Plenary Meeting held during the Sixteenth Conference on the 28th day of April, 1989, that IAPH hereby expresses its support of the principle of clarifying and limiting the liability of operators of transport terminals for loss of or damage to goods subject to the

reservation that it wishes UNCITRAL to consider carefully the proposed concept of the operator being made responsible for intentional damage or delay to goods by the servants or agents of the operator and subject to the further reservation that the monetary limits should be set at reasonable and insurable levels.

[A/CN.9/319/Add.5]

IRELAND

[Original: English]

While the continuing increase in international trade is likely to generate increased needs for transport terminals and related operations especially in mainland Europe with the completion of the Single Market of the European Communities, Ireland sees no pressing need for an international instrument to regulate such terminals. Such an international instrument could, however, have benefits if widely implemented.

Ireland notes that earlier attempts by the Comité Maritime International to devise such an instrument were unsuccessful, due to lack of support internationally, and questions whether such support would be forthcoming now to warrant undertaking the detailed work required to finalize the text of a convention. (This obviously has a bearing on when the Convention, if adopted, should come into force internationally.)

Ireland also questions the proposed inclusion in article 17(1)(b) of the draft Convention of the "UN Convention on the Carriage of Goods by Sea, 1978 (Hamburg)" which has not yet been adopted by a sufficient number of States for it to come into effect internationally. Indeed, the major maritime States have not given any indication of an intention to adopt that Convention.

With regard to the scope of the proposed Convention, Ireland considers the present draft to be defective in that it does not address the vital issue of how perishable goods (notably foodstuffs) should be dealt with, and does not make any provision in relation to customs, or duties applicable to goods.

As Irish port authorities provide facilities for goods to remain in open or covered accommodation, without acceptance of responsibility and free of charge, it is Ireland's contention that a port authority does not "in the course of business, undertake to take in charge goods involved in international trade" and that, therefore, the terms of the draft Convention would not apply to Irish port authorities. Ireland seeks confirmation that this interpretation is also that of other delegations.

**B. Limits of liability and units of account in international transport conventions:
report of the Secretary-General (A/CN.9/320) [Original: English]**

INTRODUCTION

1. During the consideration by the Commission of the draft Convention on the Liability of Operators of Transport Terminals in International Trade at the twenty-first session (1988), it was noted that the General Assembly

might decide to convene a diplomatic conference to conclude the Convention. A suggestion was made that the diplomatic conference might present a good opportunity to consider a possible revision of the limits of liability and the provisions pertaining to the units of account in the United Nations Convention on the Carriage of Goods by

Sea, 1978 (Hamburg) and the United Nations Convention on International Multimodal Transport of Goods. After discussing that suggestion, and noting that the possibility of revising the conventions might cause States that were considering becoming parties to them to postpone their decision, the Commission agreed that there was no need to decide on the suggestion and that it might be taken up at a later stage. Nevertheless, it was felt that detailed information on the limits of liability and the units of account used in various transport conventions could be useful to the Commission; thus, the Secretariat was requested to prepare an analytical compilation of such provisions for the twenty-second session.¹

2. The present report contains the analytical compilation requested by the Commission. In view of the context in which the Commission's request was made, the compilation includes only international conventions and protocols thereto relating to the transport of goods or, where a convention or protocol covers the transport of goods as well as of passengers or luggage, only to those provisions relating to the transport of goods. The conventions and protocols are presented in chronological order according to the mode of transport.

3. Most of the conventions included in the compilation have been amended by protocols adopting the Special Drawing Right (SDR) of the International Monetary Fund (IMF) as the basic unit of account for expressing the limits of liability for loss of or damage to goods. Prior to those amendments, the conventions expressed the limits of liability in gold francs, using either the Poincaré franc, which consists of 65.5 milligrams of gold of millesimal fineness 900, or the Germinal franc, which consists of 10/31 of a gram of gold of millesimal fineness 900. The relative value of these units is approximately 5 Poincaré francs = 1 Germinal franc.

4. Following the compilation is a summary comparison of the limits of liability for loss of or damage to goods expressed in SDR under the conventions and protocols that have adopted the SDR. Those conventions and protocols reflect the most recent expressions by the international community of the level of the limits under the various conventions. The comparison shows the quantitative relationship among the levels of the limits of liability under each convention and protocol. In addition, since the conventions and protocols contain various provisions to promote uniformity in the conversion of the limits into national currencies, the comparison gives an accurate indication of the relative values of the limits in national currencies.

5. The limits of liability expressed in gold francs have not been included in the summary comparison for the following reasons. Firstly, the comparison of the limits expressed in SDR also shows the quantitative relationship among the limits expressed in gold francs. This is because the number of SDR in each of the conventions and protocols has been established by converting the limits as expressed in gold francs at the rate of approximately

15 Poincaré francs equals 1 SDR, or 3 Germinal francs equals 1 SDR, as the case may be. Secondly, a comparison of the limits expressed in gold francs would not give an accurate indication of the relative values of the limits in national currencies. This is because, with the absence of an official price of gold, States have converted the limits expressed in gold francs into national currencies in disparate ways. For example, the conversion has been effected variously on the basis of the free market price of gold; on the basis of the last official price of gold in the country concerned; or by converting the amounts of gold francs into SDR on the basis of the last gold value of the SDR and then converting the resulting amounts of SDR into the national currency at the daily rate of the SDR *vis-à-vis* that currency. In addition, some countries that adhere to a convention or protocol in which the limits are expressed in gold francs have, in their legislation implementing the convention or protocol, expressed the limits in specified amounts of the national currency.

6. The Commission may wish to be informed of a recent development related to the subject of this report. A protocol to amend the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, has been prepared by the Legal Committee of the International Maritime Organization. The protocol would replace the Poincaré franc as the unit of account for expressing the limits of liability in the Convention with the SDR. The Legal Committee has agreed that the decision on the amounts of the limits to be included in the Protocol is to be taken by the diplomatic conference at which the protocol will be adopted. The protocol would also introduce an expedited procedure for revising the limits of liability, patterned after the procedure set forth in the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969. (Report of the Legal Committee on the work of its sixtieth session (10-14 October 1988), IMO document LEG 60/12, paragraphs 77 to 106. The text of the draft protocol resulting from the deliberations of the Legal Committee at its sixtieth session is set forth in annex I of that Report.) The Committee has recommended that the draft protocol be submitted to a diplomatic conference to be held early in 1990 (*ibid.*, paragraph 136).

I. CARRIAGE BY SEA²

A. International Convention for the Unification of Certain Rules Relating to Bills of Lading (Brussels, 1924) ("Hague Rules")

For loss of or damage to goods:

Pursuant to article 4(5), the limit is 100 pounds sterling per package or unit or the equivalent of that sum in

²It may be noted that, in addition to the limits set forth in the conventions and protocols included in this section, a shipowner may be able to invoke an overall limit of liability in respect of claims brought against it, e.g., under the Convention on Limitation of Liability for Maritime Claims, 1976. (The possibility of revising that Convention has been placed on the work programme of the Legal Committee of the International Maritime Organization (IMO) for the 1990-1991 biennium (Report of the Legal Committee on the work of its sixtieth session, IMO document LEG 60/12, paragraphs 146 and 157(b)).

¹Report of the United Nations Commission on International Trade Law on the work of its twenty-first session, *Official Records of the General Assembly, Supplement No. 17 (A/43/17)*, paras. 30 and 31.

other currencies, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading. Another limit can be fixed by agreement between the carrier, master or agent of the carrier and the shipper, provided that the limit is not less than the one provided for in the Convention. Article 9 provides that the monetary units in pounds sterling are taken to be the gold value.

B. Protocol to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading (1968) ("Visby Protocol")

For loss of or damage to goods:

Article 4(5) provides that, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading, the limits are 10,000 Poincaré francs per package or unit or 30 Poincaré francs per kilogram of gross weight, whichever is the higher. Other limits can be fixed by agreement between the carrier, master or agent of the carrier and the shipper, provided that the limits are not less than those provided for in the Convention.

C. United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) ("Hamburg Rules") (not yet in force)

For loss of or damage to goods:

Article 6(1)(a) sets forth limits of 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

Pursuant to article 26, the unit of account is the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF). Non-member States of the IMF whose laws do not permit the use of the SDR may apply the following limits instead of the limits expressed in SDR: 12,500 Poincaré francs per package or other shipping unit or 37.5 Poincaré francs per kilogram of gross weight.

To promote uniformity in the conversion of the limits into national currencies, the Convention includes, in article 26, the following provisions. The amounts expressed in SDR are to be converted according to the value of the currency at the date of judgement or the date agreed upon by the parties. The value in terms of SDR of the currency of a member State of the IMF is to be calculated in accordance with the method of valuation applied by the IMF in effect at the date in question. The value of a currency of a non-member State of the IMF is to be calculated in a manner determined by that State. For non-member States of the IMF whose law does not permit the use of the SDR and for which the limits expressed in Poincaré francs will apply, the conversion of those limits into the national currency is to be made according to the law of the State concerned. The foregoing calculations and conversions by non-member States of the IMF are to be made in

such a manner as to express in the national currency as far as possible the same real value as the limits expressed in SDR.

For delay in delivery:

Pursuant to article 6(1), the limit is 2 1/2 times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage. The aggregate liability of the carrier for loss, damage and delay shall not exceed the limit for total loss of the goods with respect to which liability was incurred.

Other provisions:

By agreement between the carrier and the shipper, limits of liability exceeding those provided for in the Convention may be fixed (article 6(4)).

D. Protocol amending the International Convention for the Unification of Certain Rules Relating to Bills of Lading, 25 August 1924, as amended by the Protocol of 23 February 1968 (1979)

For loss of or damage to goods:

Article 4(5) provides that, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading, the limits are 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight, whichever is higher. Other limits can be fixed by agreement between the carrier, master or agent of the carrier and the shipper, provided that the limits are not less than those provided for in the Convention.

The unit of account is the SDR. Non-member States of the IMF whose laws do not permit the use of the SDR may apply the following limits instead of the limits expressed in SDR: 10,000 Poincaré francs per package or unit or 30 Poincaré francs per kilogram of gross weight. Provisions similar to those in the Hamburg Rules are included to promote uniformity in the conversion of the limits into national currencies.

II. CARRIAGE BY AIR

A. Convention for the Unification of Certain Rules relating to International Carriage by Air (1929) ("Warsaw Convention")

As set forth in article 22, the limit is 250 Poincaré francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if required. In that case, the limit is the declared sum, unless the carrier proves that the sum is greater than the actual value to the consignor at delivery.

For objects of which the passenger takes charge himself, the limit is 5,000 Poincaré francs per passenger.

**B. Protocol done at the Hague on
28 September 1955 to amend the
Warsaw Convention
("Hague Protocol")**

Essentially the same as under the Warsaw Convention (above) (article 22).

**C. Protocol done at Guatemala City on
8 March 1971 to amend the Warsaw Convention
as amended by the Hague Protocol
("Guatemala Protocol") (not yet in force)**

Essentially the same as under the Warsaw Convention, except that:

1. the separate limit for objects of which the passenger takes charge himself is eliminated;
2. it is expressly provided that the costs of the action incurred by the claimant, including lawyers' fees, are not to be taken into account in applying the limits. (Article 22(3)(c)).

**D. Additional Protocols done at Montreal on
25 September 1975:**

**Protocol No. 1 amending the Warsaw Convention
Protocol No. 2 amending the Warsaw Convention
as amended by the Hague Protocol**

**Protocol No. 3 amending the Warsaw Convention
as amended by the Hague and Guatemala
Protocols**

**Protocol No. 4 amending the Warsaw Convention
as amended by the Hague Protocol**

(none of the Protocols is yet in force)

For the limit of 250 Poincaré francs per kilogram in the Warsaw Convention and the Hague and Guatemala Protocols, all four Montreal Protocols substitute the limit of 17 SDR per kilogram. For the limit of 5,000 Poincaré francs per passenger in the Warsaw Convention and Hague Protocol, Montreal Protocols No. 1 and 2 substitute the limit of 332 SDR per passenger.

Non-member States of the IMF whose law does not permit the use of the SDR may apply the following limits instead of the limits expressed in SDR: 250 Poincaré francs per kilogram; for objects of which the passenger takes charge himself, 5,000 Poincaré francs per passenger (the per-passenger limit is set forth only in Montreal Protocols 1 and 2).

Provisions similar to those in the Hamburg Rules are included to promote uniformity in the conversion of the limits into national currencies, except that the Protocols omit the requirement that non-member States of the IMF convert the limits into other national currencies in such a manner as to express as far as possible the same real values as the limits expressed in SDR.

III. CARRIAGE BY ROAD

**A. Convention on the Contract for the International
Carriage of Goods by Road (CMR) (1957)**

For total or partial loss of goods:

Pursuant to article 23, the limit is 25 Germinal francs per kilogram of gross weight short. Carriage charges, customs duties and other charges incurred in respect of the carriage of goods are to be refunded in addition.

For damage to the goods:

Article 25(2) provides that, if the whole consignment has been damaged, the limit is the amount that would be payable in the case of total loss; if only part of the consignment has been damaged, the limit is the amount that would be payable in the case of loss of the part affected.

For delay:

The limit is the carriage charges (article 23(5)).

Other provisions:

In the case of total or partial loss of the goods, amounts exceeding the limit specified in the Convention may be claimed where the sender has, against the payment of an agreed surcharge, stipulated in the consignment note a declaration of value of the goods (articles 23(6), 24). In the case of loss, damage or delay, amounts exceeding the limits specified in the Convention may be claimed where the sender has, against the payment of an agreed surcharge, declared a special interest in delivery and entered the amount thereof in the consignment note (articles 23(6), 26).

**B. Protocol to the Convention on the Contract
for the International Carriage of Goods by Road
(CMR) (1978)**

Article 23 replaces the limit of 25 Germinal francs per kilogram for total or partial loss of the goods with 8.33 units of account per kilogram. The unit of account is the SDR. Non-member States of the IMF whose law does not permit the use of the SDR may apply the limit of 25 Germinal francs per kilogram. Provisions similar to those in the Hamburg Rules are included to promote uniformity in the conversion of the limits into national currencies.

IV. CARRIAGE BY RAIL

**A. Agreement concerning the International
Carriage of Goods by Rail (SMGS) (1966)**

For total or partial loss of goods:

The limit, as set forth in article 24, is the price of the goods or their declared value. For total or partial loss

of household furniture with no declared value, the limit is 2.70 roubles per kilogram.

For damage to goods:

For damage to the entire consignment, the limit is the amount that would be payable in the case of total loss; for damage to a part of the consignment the limit is the amount that would be payable in the case of the loss of the goods damaged (article 25).

For delay:

Article 26 fixes the amount of compensation according to a gradation of percentages of the transport charge, ranging from 6 per cent for a delay up to 1/10 of the required delivery time to 30 per cent for a delay exceeding 4/10 of the required delivery time. Total compensation for loss, damage and delay may not exceed the amount payable in the case of total loss of the goods.

B. Appendix B to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980

For total or partial loss of goods:

Under article 40, the limit is 17 units of account per kilogram of gross mass short. Carriage charges, customs duties and other amounts incurred in connection with the carriage are to be refunded in addition.

Article 7 provides that the unit of account is the SDR. For non-member States of the IMF whose law does not permit the use of the SDR, the unit of account is equal to 3 Germinal francs. Provisions similar to those in the Hamburg Rules are included to promote uniformity in the conversion of the limits into national currencies, except that the provision concerning the time as of which the conversion is to be made is not included.

For damage to goods:

According to article 42, if the whole consignment has lost value, compensation may not exceed the amount that would be payable in case of total loss; if only part of the consignment has lost value, compensation may not exceed the amount that would be payable if that part had been lost. In addition, carriage charges, customs duties and other amounts incurred in connection with the carriage are to be refunded proportionally.

For delay:

The limit, set forth in article 43, is 3 times the carriage charges. In the case of total loss of the goods, compensation for delay is not payable in addition to compensation for the total loss. In the case of partial loss of the goods, compensation is limited to three times the carriage charges in respect of the part of the consignment not lost. In the case of damage to the goods not resulting from the delay, compensation for the delay is payable in addition to compensation for the damage. Total compensation for loss, damage and delay may not exceed the amount payable for total loss. Other forms

of compensation for delay may be specified in international tariffs or in special agreements when the transit period has been established on the basis of transport plans.

Other provisions:

According to article 45, when the railway agrees to special conditions of carriage involving a reduced carriage charge, it may limit the amount of compensation payable for loss, damage or delay, provided that such limit is indicated in the tariff.

Under article 46, in case of a declaration of interest in delivery, further compensation exceeding the limits provided for in the Convention may be claimed up to the amount declared.

V. MULTIMODAL TRANSPORT

*United Nations Convention on International Multimodal Transport of Goods (1980)
(not yet in force)*

For loss of or damage to goods:

Pursuant to article 18, the limits are 920 units of account per package or other shipping unit or 2.75 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher. However, if the international multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the limit of liability of the multimodal transport operator is limited to 8.33 units of account per kilogram of gross weight of the goods lost or damaged.

Article 31 provides that the unit of account is the SDR. Non-member States of the IMF whose laws do not permit the use of the SDR may apply the following limits instead of the limits expressed in SDR:

13,750 Poincaré francs instead of 920 units of account

41.25 Poincaré francs instead of 2.75 units of account

124 Poincaré francs instead of 8.33 units of account.

Article 31 contains provisions similar to those in the Hamburg Rules to promote uniformity in the conversion of the limits into national currencies.

For delay in delivery:

Article 18 provides that the limit is 2 1/2 times the freight payable for the goods delayed, but not exceeding the total freight payable under the multimodal transport contract. The aggregate liability of the multimodal transport operator for loss, damage and delay shall not exceed the limit for total loss of the goods.

Other provisions:

By agreement between the multimodal transport operator and the consignor, limits for loss, damage or delay exceeding those provided for in the Convention may be fixed in the multimodal transport document (article 18 (6)).

VI. SUMMARY COMPARISON OF LIMITS OF LIABILITY FOR LOSS OF OR DAMAGE TO GOODS EXPRESSED IN SDR

<i>Convention or Protocol</i>	<i>Per package or unit</i>	<i>Per kilogram</i>
<i>Carriage by sea</i>		
Hamburg Rules (1978)	835	2.5
Protocol amending Hague Rules/ Visby Protocol (1979)	666.67	2.0
<i>Carriage by air</i>		
Montreal Protocols (1975)	not applicable	17
<i>Carriage by road</i>		
Protocol amending CMR Convention (1978)	not applicable	8.33
<i>Carriage by rail</i>		
COTIF (1980)	not applicable	17
<i>Multimodal transport</i>		
Multimodal Convention (1980)		
if transport includes carriage by sea or by inland waterways	920	2.75
if transport does not include carriage by sea or by inland waterways	not applicable	8.33

C. Liability of operators of transport terminals: draft final clauses for the draft Convention on the Liability of Operators of Transport Terminals in International Trade: report of the Secretary-General (A/CN.9/321) [Original: English]

The present document contains a draft of the final clauses to be included in the draft Convention on the Liability of Operators of Transport Terminals in International Trade. The document was prepared pursuant to a request made at the twenty-first session of the Commission.¹

FINAL CLAUSES

Article A

Depositary

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

Article B

Signature, ratification, acceptance, approval, accession

(1) This Convention is open for signature [at the signing ceremony of the United Nations General Assembly on . . . and will remain open for signature by all States at the Headquarters of the United Nations, New York, until . . .]

[at the concluding meeting of the United Nations Conference on . . . and will remain open for signature by all States at the Headquarters of the United Nations, New York, until . . .].

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article C

Application to territorial units

(1) If a Contracting State has two or more territorial units in which 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 is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

¹Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17), para. 29.