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Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]

Delivery: Information presented by the delegation of the Netherlands

Note by the Secretariat

In preparation for the sixteenth session of Working Group III (Transport Law), the Government of the Netherlands submitted the paper attached hereto as an annex in order to facilitate consideration by the Working Group of the chapter on delivery in the draft convention on the carriage of goods [wholly or partly] [by sea].

The Dutch delegation has advised that it has circulated informally to other delegations the text of the questionnaire as it appears in the annex to this note, with the intention of compiling the views expressed by responding delegations for facilitation of the discussion of the chapter on delivery in the Working Group.

The questionnaire in the annex attached hereto is reproduced in the form in which it was received by the Secretariat.

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Annex

Questionnaire on 'Delivery'

General remarks

1. This informal questionnaire deals with the chapter on delivery in the draft convention on the carriage of goods [wholly or partly] [by sea]. However, because delivery marks the end of the carrier's responsibility, the provisions on the period of responsibility are also included in this questionnaire. In addition, the related matter of 'free in and out (stowed)' ("FIO(S)") is dealt with. Finally, at the end of this questionnaire, the matter of the liability of the carrier and the shipper for any breach of their obligations under the delivery provisions is raised.

2. In this informal questionnaire, the texts of the provisions are taken from A/CN.9/WG.III/WP.56, which includes the newly consolidated texts that will be the basis of the forthcoming discussions during the sixteenth session of the Working Group in Vienna. The numbering used in this questionnaire is that of A/CN.9/WG.III/WP.56, which has been prepared and submitted for translation and publication. To avoid confusion, the 'old' A/CN.9/WG.III/WP.32 numbering is added between brackets.

3. **Paragraphs 11(1), (2) and (4)** (previously 7 (1), (2) and (3))**. Period of responsibility of the carrier**

> **1. Subject to article 12, the responsibility of the carrier for the goods under this Convention covers the period from the time when the carrier or a performing party has received the goods for carriage until the time when the goods are delivered to the consignee.**
>
> **2. The time and location of receipt of the goods is the time and location agreed in the contract of carriage, or, failing such agreement, the time and location that is in accordance with the customs, practices, or usages in the trade. In the absence of such agreement or of such customs, practices, or usages, the time and location of receipt of the goods is when and where the carrier or a performing party actually takes custody of the goods.**
>
> **4. The time and location of delivery of the goods is the time and location agreed in the contract of carriage, or, failing such agreement, the time and location that is in accordance with the customs, practices, or usages in the trade. In the absence of such agreement or of such customs, practices, or usages, the time and location of delivery is that of the discharge or unloading of the goods from the final means of transport in which they are carried under the contract of carriage**.

4. Providing for a definition of delivery is not that easy. Some jurisdictions require some act of actual receipt by the consignee; others regard the placing of the goods at the free disposal of the consignee as delivery. Such placing at the consignee's disposal may be done actually or through documents, such as a delivery order. In this respect, a lot of variations are possible. Therefore, the draft avoids a definition

of delivery. It just defines the beginning and the end of the period of responsibility of the carrier.

5. Such definition of the beginning and end is in principle a contractual affair: what is decisive is what the parties have agreed are the receipt of the goods and their delivery. As an example: if the contract of carriage includes a provision "*the consignee shall accept the goods alongside the vessel as fast as she can deliver*", the responsibility of the carrier (under the contract of carriage) ends when he has placed the goods on the quay. If no express or implied agreement has been made about the time and place of receipt or delivery, but certain customs, practices or usages of the trade at the place of destination exist, then such customs, practices or usages apply. If no agreement, customs, practices or usages are applicable, a general fall-back provision applies. In such case the actual taking custody of the goods or the actual discharge or unloading of the goods from the final vessel or vehicle in which they are carried is the relevant time and place of receipt or delivery. One of the consequences of this approach is that the classic "tackle-to-tackle" clause has to refer to the scope of the contract rather than to an exclusion of the carrier's liability.

6. *Questions:*
   (a) Is this concept acceptable?
   (b) Do you have any suggestions for drafting improvements?

7. **Paragraphs 11 (3) (**newly drafted) **and (5)** (previously 7 (4))

3. If the consignor is required to hand over the goods at the place of receipt to an authority or other third party to which, pursuant to applicable law or regulation, the goods must be handed over and from which the carrier may collect them, the time and location of the carrier's collection of the goods from the authority or other third party is the time and location of receipt of the goods by the carrier under paragraph 2.

5. If the carrier is required to hand over the goods at the place of delivery to an authority or other third party to which, pursuant to applicable law or regulation, the goods must be handed over and from which the consignee may collect them, such handing over is a delivery of the goods by the carrier under paragraph 4.

8. In a limited number of countries, export goods must be handed over to certain authorities before the carrier may take receipt of them, or import goods must be handed over to certain authorities before the consignee may take delivery of them. These paragraphs deal with these situations.

9. *Questions:*
   (a) Are these concepts acceptable?
   (b) Do you have any suggestions for drafting improvements?

10. **Paragraph 11 (6)** (newly drafted) **and paragraphs 14(1) and (2**) (previously 11(1) and (2))

Article 11

6. For the purpose of determining the carrier's period of responsibility and subject to paragraph 14(2) (previously 11(2))**, the contract of carriage may not provide that:**

(a) the time of receipt of the goods is subsequent to the commencement of their initial loading under the contract of carriage, or

(b) the time of delivery of the goods is prior to the completion of their final discharge under the contract of carriage.

Article 14

1. The carrier must during the period of its responsibility as defined in article 11 (previously 7)**, and subject to article 27** (previously 8)**, properly and carefully receive, load, handle, stow, carry, keep, care for, discharge and deliver the goods.**

[2. The parties may agree that the loading, stowing and discharging of the goods is to be performed by the shipper or any person referred to in article 35 (previously 32)**, the controlling party or the consignee. Such an agreement must be referred to in the contract particulars.]**

11. Because of the views expressed in the Working Group that the commercial flexibility of article 11 (previously 7) could be misused by the carrier in order to reduce its period of responsibility, the Secretariat has included in A/CN.9/WG.III/WP.56 a new paragraph 11(6). In addition, it has amended the bracketed paragraph 14(2) substantially. It is now expressly provided that the period of responsibility must include loading and discharging of the goods and that any delegation by the carrier of any of its duties during this period is restricted to loading, stowing and discharging only.

12. Taken together, the new paragraph 11(6) and the amended paragraph 14(2) may solve the problem of the FIO(S) clauses as well. The use of these clauses is a widespread practice in some sectors of maritime carriage[1]. However, unlike inland transport conventions such as the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000 ("CMNI"), the Convention on the Contract for the International Carriage of Goods by Road, 1956 as amended by the 1978 Protocol ("CMR") and the Uniform Rules concerning the Contract for

[1] This practice almost exclusively exists in the non-liner sector. There, shippers/consignees often prefer doing the loading and/or discharging operations themselves because, for instance, they own the terminal involved or have a special expertise in respect of the goods. In such cases the freight rate excludes the cost element for loading and/or discharging. Pursuant to article 10 (previously 2(4)), the application of this Convention may be extended to non-liner carriage as well, which is the reason for which the draft pays attention to this matter.

International Carriage of Goods by Rail, Appendix to the Convention concerning International Carriage by Rail, as amended by the Protocol of Modification of 1999 ("COTIF"), the existing maritime transport conventions include loading and discharging as the (automatic) duties of the carrier. As a result, the existing law is here on strained terms with an established practice.

13. Solutions for this problem differ in various jurisdictions. Some adhere to the theory that a FIO(S) clause determines the scope of the voyage. Then, delivery of the goods is deemed to take place on board the vessel. Other jurisdictions rely on the 'act or omission of the shipper' exception in order to relieve the carrier from the consequences of improper stowage of the cargo. The view also exists that a FIO(S) clause is to be regarded as relating to the costs of loading, stowing, etc. only without having an impact on the carrier's liability. This legal uncertainty is aggravated when the FIO(S) clause itself is not clear, with the result that sometimes different judges in the same jurisdiction arrive at different conclusions.

14. The draft attempts to create some uniformity by providing in the new paragraph 11(6) together with paragraph 14(1) (previously 11(1)) that loading, stowing and discharging is a carrier's duty within the period of his responsibility. Subsequently, paragraph 14(2) (previously 11(2)) states that FIO(S) clauses are legally permitted and must be regarded as an exception to this duty of the carrier. The consequence of these provisions is that loading, stowing and discharging are placed within the boundaries of the contract of carriage and, therefore, under the draft Convention. A FIO(S) clause as such may no longer determine the time of receipt or delivery of the goods. It follows that loading, stowage and discharging is without prejudice to all other obligations of the carrier, such as its due diligence obligation. The further consequences of a FIO(S) clause will depend on its construction. If it is the intention of the parties that the clause makes the cargo side responsible for loading, stowage or discharging, a carrier may be relieved from liability for the consequences of improper stowage, but only within the scope of the liability system outlined in article 17 (previously 14). In this article, the 'act or omission of the shipper' exception is retained, but this exception operates now within the context of another division of the burden of proof between the carrier and the claimant than it did under the Hague-Visby Rules.

15. *Questions:*

(a) Is, after the revisions made by the secretariat, the concept of the manner how the draft Convention deals with the existence of FIO(S) clauses acceptable?

(b) Do you have any suggestions for drafting improvements?

16. **Article 46. Obligation to accept delivery**

When the goods have arrived at their destination, the consignee [that exercises any of its rights under the contract of carriage] must accept delivery of the goods at the time and location referred to in article 11(4) (previously 7(3))**. [If the consignee, in breach of this obligation, leaves the goods in the custody of the carrier or the performing party, the carrier or performing party acts in respect of the goods as an agent of the consignee, but without any liability for loss or damage to these goods, unless the loss**

or damage results from a personal act or omission of the carrier [or of the performing party] done with the intent to cause such loss or damage, or recklessly, with the knowledge that such loss or damage probably would result.]

17. Pursuant to article 13 (previously 10) the carrier is obliged to deliver the goods to the consignee. And article 1 (k) (previously 1(i)) defines the consignee as the person entitled to take delivery of the goods. This leaves the problem to what extent a consignee should be allowed *not* to take delivery. As to this question, the draft including the bracketed language provides that only the consignee that is not actively involved in the carriage, may not take delivery. As soon as he becomes active, he must take delivery. This applies even if a consignee takes samples of the goods and subsequently decides to reject them under the contract of sale. In line with article 86 of the United Nations Convention on Contracts for the International Sale of Goods, such consignee when taking delivery from the carrier does so on behalf of the seller. The inactive consignee, such as a bank holding a bill of lading as security, is under no obligation to take delivery itself, but may have to take action under article 48 or 49.

18. In the discussion within the Working Group the question has arisen whether the duty of the consignee should be unconditional. On the other hand, an unconditional duty might make it too easy to get rid of goods that have lost all commercial value. Also, the level of the consignee's activity that would trigger its duty to accept delivery has been a point of discussion. In this respect, attention is drawn to paragraph 62(3) (previously 60(3)) that qualifies the level of activity in order the holder of a negotiable transport document to assume liabilities[2].

19. *Questions:*

(a) Is the concept laid down in the first sentence of article 49, including its bracketed part, acceptable, or should the duty of the consignee to accept delivery be unconditional?

(b) If the concept is acceptable, should the exercising of any of its rights by the consignee further be qualified, for instance along the lines of paragraph 62(3) (previously 60(3))?

20. The second sentence of this article relating to liability is dealt with in the paragraphs 46 to 48 of this questionnaire.

21. **Article 47. Obligation to acknowledge receipt**

On request of the carrier or the performing party that delivers the goods, the consignee must acknowledge receipt of the goods from the carrier or

[2] This provision reads: "… any holder that is not the shipper does not exercise any rights under the contract of carriage solely by reason of the fact that it:

(a) under article 7 (previously 4) agrees with the carrier to replace a negotiable transport document by a negotiable electronic transport record or to replace an electronic transport record by a negotiable transport document, or

(b) under article 61 (previously 59) transfers its rights."

the performing party in the manner that is customary at the place of destination.

This provision was generally acceptable to the Working Group and, therefore, does not lead to specific questions under this questionnaire.

22. **Article 48. Delivery when no negotiable transport document or negotiable electronic record is issued**

When no negotiable transport document or no negotiable electronic transport record has been issued, the following paragraphs apply:

(a) If the name and address of the consignee is not referred to in the contract particulars the controlling party must advise the carrier thereof, prior to or upon the arrival of the goods at the place of destination;

(b)

Variant A of paragraph (b)

The carrier must deliver the goods at the time and location mentioned in article 11(4) (previously 7 (3)) **to the consignee upon the consignee's production of proper identification.**

Variant B of paragraph (b)

The carrier must deliver the goods at the time and location mentioned in article 11(4) (previously 7 (3)) **to the consignee. As a prerequisite for delivery, the consignee must produce proper identification.**

Variant C of paragraph (b)

The carrier must deliver the goods at the time and location mentioned in article 11(4) (previously 7 (3)) **to the consignee. The carrier may refuse delivery if the consignee does not produce proper identification.**

(c) If the consignee does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier must so advise the controlling party or, if it, after reasonable effort, is unable to identify the controlling party, the shipper. In such event, the controlling party or shipper must give instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to identify and find the controlling party or the shipper, then the person referred to in article 34 (previously 31) **is deemed to be the shipper for purposes of this paragraph. The carrier that delivers the goods upon instruction of the controlling party or the shipper under this paragraph is discharged from its obligations to deliver the goods under the contract of carriage.**

23. This article applies when no negotiable document has been issued, or, for instance in e-commerce situations, when no document at all is used. It sets out the principle that it is the obligation of the controlling party (which in these situations

often will be the shipper) to secure that the carrier is able to deliver the goods. This concept was already endorsed by the Working Group. The only matter left was whether a carrier that is under the obligation to deliver pursuant article 13 (previously 10), could refuse delivery if the consignee claiming delivery could not produce adequate identification. The draft was considered unclear at this point and the secretariat made two variations that may solve this matter.

24. *Question: Do you prefer Variant A (the original text), Variant B or Variant C?*

25. **Article 49. Delivery when negotiable transport document or negotiable electronic transport record is issued**

When a negotiable transport document or a negotiable electronic transport record has been issued, the following paragraphs apply:

(a)(i) Without prejudice to article 46 the holder of a negotiable transport document is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier must deliver the goods at the time and location referred to in article 11(4) (previously 7 (3)) **to such holder upon surrender of the negotiable transport document. In the event that more than one original of the negotiable transport document has been issued, the surrender of one original will suffice and the other originals will cease to have any effect or validity.**

(ii) Without prejudice to article 46 the holder of a negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier must deliver the goods at the time and location referred to in article 11(4) (previously 7 (3)) **to such holder if it demonstrates in accordance with the procedures referred to in article 6 that it is the holder of the electronic transport record. Upon such delivery, the electronic transport record will cease to have any effect or validity.**

26. The problem here is with the negotiable bill of lading. This document provides security to its holder by granting it the exclusive right to take delivery of the goods at the place of destination. And it provides security to the carrier that, if it delivers the goods to the bill of lading holder, the carrier is discharged from its obligation to deliver. However, these key functions of the document can only be fulfilled if it is available at the place of destination. If the document is not available, both parties may feel insecure. To provide for a solution, the draft starts to state in this paragraph that the bill of lading holder is entitled, but not obliged, to take delivery against presentation of the bill of lading. And, in such case, the carrier is obliged to deliver. This approach follows the normal practice today**.**

27. **Article 49**

(b) If the holder does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier must so advise the controlling party or, if, after reasonable effort, it is unable to identify or find the controlling party, the shipper. In such event the controlling party

or shipper must give the carrier instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to identify and find the controlling party or the shipper, then the person referred to in article 34 (previously 31) **shall be deemed to be the shipper for purposes of this paragraph**.

28. When the bill of lading is not available at the place of destination of the goods, or the bill of lading holder does not want to take delivery, the same principle as under the previous article applies: it is the primary duty of the controlling party to take care that the carrier will be able to perform his obligation under the contract of carriage to deliver the goods. The controlling party is the party interested in the goods and it may be required that the controlling party protects its interests. It may be that the controlling party does not establish contact with the carrier and/or cannot be traced by the carrier. In such event, the shipper, being the original contractual counterpart of the carrier, has to assume the responsibility of advising the carrier about delivery. The shipper must try to find the right person to whom delivery should be made, or, if it fails in its efforts, the shipper may take the responsibility for a proper delivery itself by, for instance, requesting the carrier to store the goods on its behalf. If the shipper does not fulfill this obligation, it may be held liable. As to the standard of liability see paragraphs 49 to 53 of this questionnaire.

29. **Article 49**

(c) [Notwithstanding paragraph (d),] the carrier that delivers the goods upon instruction of the controlling party or the shipper in accordance with paragraph (b) is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 6, that it is the holder.

30. When the carrier delivers upon instruction of, in principle, the controlling party, the carrier is discharged from its obligation under the contract of carriage to deliver to the consignee. However, if the bill of lading holder cannot be traced (in which event the shipper has to instruct the carrier about the delivery), it may be expected that the bill of lading will not be presented. Then, the question arises what rights are connected to such bill of lading after delivery of the goods by the carrier. This matter is dealt with in the next paragraph (d).

31. **Article 49**

Variant A of paragraph (d)

(d) [Except as provided in paragraph (c)] if the delivery of the goods by the carrier at the place of destination occurs without the surrender of the negotiable transport document to the carrier or without the demonstration referred to in paragraph (a)(ii), a person that becomes a holder after the carrier has delivered the goods to the consignee or to a person entitled to them pursuant to any contractual or other arrangement other than the

contract of carriage acquires rights [against the carrier] under the contract of carriage only if: (i) the passing of the negotiable transport document or negotiable electronic transport record was effected in pursuance of contractual or other arrangements made before such delivery of the goods; or (ii) unless such person at the time it became a holder did not have and could not reasonably have had knowledge of such delivery. [This paragraph does not apply when the goods are delivered by the carrier pursuant to paragraph (c).]

32. This paragraph deals with two situations. The one is the event that there is a bill of lading holder who acquired the bill of lading after delivery was made by the carrier, but pursuant to a contractual arrangement other than the contract of carriage and made before delivery. A typical example of such person is an intermediate buyer in a string of buyers and sellers where the bill of lading goes too slowly through the string to be available in time at the place of destination. If such intermediate buyer becomes a bill of lading holder after the carrier has delivered the goods to the final buyer, he has no right to delivery any more, but may have acquired a right to sue the carrier if there is a liability of the carrier for loss or damage to the goods.

33. The other situation is that of an 'innocent' party, someone who did not have or could reasonably not have knowledge of the delivery, has acquired the bill of lading in good faith. That party is protected and may rely on the contents of the bill of lading, including the right of delivery of the goods. A typical example is not easy to give because, when all parties involved in a commercial transaction act diligently (and honestly), arguably, this situation should not occur. But, obviously, it should not be excluded either, which is the reason for its inclusion in the draft.

34. In the Working Group, some concern was raised that this paragraph is insufficiently clear. It was also suggested that the relationship between this paragraph and the previous one should be clarified. Therefore, the Secretariat made the following alternative to address these points. Subparagraph (d) in this alternative is complementary to subparagraph (c) and subparagraph (e) prevails over subparagraph (c) and (d).

35. **Article 49**

Variant B of paragraph (d), which comprises (d) and (e)

(d) If the goods are delivered pursuant to paragraph (c), a person that becomes a holder after the carrier has delivered the goods to the consignee or to a person entitled to them pursuant to any contractual or other arrangement other than the contract of carriage acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods, when only the transfer of the negotiable transport document or negotiable electronic transport record was effected in pursuance of contractual or other arrangements made before such delivery of the goods.

(e) Notwithstanding paragraphs (c) and (d), the holder that did not have or could reasonably not have knowledge of such delivery at the time it

became a holder acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record.

36. Article 49 as a whole received the general support of the Working Group. The general view was that the problem of delivery without presentation of a bill of lading deserves a solution. Trade practices have weakened the bill of lading system and an attempt for repair should be made, in the interest of the carriers as well as the cargo side. However, a note of caution was raised that the balance of the different rights and obligations requires a careful examination in order to strike the right one and to reach workable solutions.

37. *Questions:*

(a) Do you prefer Variant B over the original draft of subparagraph (d)?

(b) Does article 49 strike a right balance of the different rights and obligations?

(c) Do you regard the concept of article 49 as workable?

(d) Do you have suggestions for improvements?

38. **Article 50** (previously paragraph 49(e)). **Failure to give adequate instructions**

If the controlling party or the shipper does not give the carrier adequate instructions under articles 48 and 49 or if the controlling party or the shipper cannot be found, the carrier is entitled, without prejudice to any other remedies that the carrier may have against such controlling party or shipper, to exercise its rights under articles 51, 52 and 53 (previously 50, 51 and 52).

39. This provision was generally acceptable to the Working Group and, therefore, does not lead to specific questions under this questionnaire.

40. **Article 51** (previously 50). **When goods are undeliverable**

1. The carrier is entitled to exercise the rights and remedies referred to in paragraph 2 at the risk and expense of the person entitled to the goods, if the goods have arrived at the place of destination and:

(a) The consignee did not actually accept delivery of the goods under this chapter at the time and location referred to in article 11(4) (previously 7(3)) **[and no express or implied contract has been concluded between the carrier or the performing party and the consignee with respect the custody of the goods]; or**

(b) The carrier is not allowed under applicable law or regulations to deliver the goods to the consignee,

2. The rights and remedies referred to in paragraph 1 are:

(a) To store the goods at any suitable place;

(b) To unpack the goods if they are packed in containers, or to act otherwise in respect of the goods as, in the opinion of the carrier, circumstances reasonably may require; or

(c) To cause the goods to be sold in accordance with the practices, or the requirements under the law or regulations, of the place where the goods are located at the time.

3. If the goods are sold under paragraph 2(c), the carrier must hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred in respect of the goods and any other amounts that are due to the carrier.

41. General support was expressed by Working Group for the concept of this provision. The issue left, therefore, is the bracketed part that some delegates found somewhat confusing.

42. *Questions:*
(a) Would you like to retain the bracketed part of subparagraph (a)?
(b) If so, do you have any suggestions to improve the language?

43. **Article 52** (previously 51). **Notice of arrival at destination**

The carrier is allowed to exercise the rights referred to in article 51 only after it has given reasonable advance notice that the goods have arrived at the place of destination to the person stated in the contract particulars as the person to be notified of the arrival of the goods at the place of destination, if any, or to the consignee, or otherwise to the controlling party or the shipper.

44. This article provides that the carrier should make an effort to avoid a situation that on the part of the consignee no adequate reaction is forthcoming.

45. *Questions:*
(a) Is this concept acceptable?
(b) Do you have any suggestions for drafting improvements?

46. **Article 53** (previously 52). **Carrier's liability for undeliverable goods**

When exercising its rights referred to in article 51(2) (previously 50(2)), **the carrier or a performing party is liable for loss of or damage to the goods, only if the loss or damage results from [an act or omission of the carrier or of the performing party done with the intent to cause such loss or damage, or recklessly, with the knowledge that such loss or damage probably would result].**

47. In this article and in the second sentence of article 46, the liability of the carrier for loss or damage to the goods is dealt with in cases when the goods are undeliverable. The main question is what the standard of liability of the carrier must be under these circumstances. These circumstances may qualify (under national law)

as ‘creditors default’ (the consignee being the creditor of the carrier), ‘agent (or bailee) by necessity’ (the carrier being such agent or bailee) and the like. Under these special circumstances the standard of liability of a person having a certain duty of care for the goods, is usually of a lower level than it under normal circumstances would have been.

48. *Questions:*

(a) Should the provisions on the carrier’s liability in articles 46 and 53 (previously 52) be consolidated in one single provision?

(b) In case of such consolidation, what would be an acceptable standard of liability of the carrier for loss of or damage to the goods under the circumstances referred to in the articles 46 and 51 (previously 50)?

(c) If you prefer no such consolidation, please indicate your preferred standard for each situation.

49. **Liability of the carrier and shipper for a breach of obligation under the Convention not already dealt with**

50. Chapter 10 does not pretend to provide solutions for all possible problems connected with delivery. Its focus is on the main problem, namely that the goods arrive at their place of destination without someone there to receive them or the consignee being unwilling to take delivery of the goods. The chapter subsequently sets out the legal position of the carrier and the consignee in such cases. What could be added are one or more provisions setting out the standard of liability of the carrier and shipper if one of these is in breach of any of its obligations in respect of delivery. Such breach may lead to a claim under the draft Convention.

51. The duty of the carrier to deliver the goods to the consignee is dealt with in article 13 (previously 10). What if the carrier does not deliver the goods to the person entitled to them? Chapter 6 (previously 5) only applies to loss, damage or delay to the goods and not, for instance, to misdelivery. Should the draft Convention include a provision that sets out the standard of liability of the carrier for breaches under the draft Convention other than causing loss, damage or delay to the goods? Such provision (not necessarily to be included in Chapter 10) could be a fault-based liability with a reversal of the burden of proof, similar to the provision relating to the shipper’s liability in paragraph 31(1) (previously 29(1)). Assuming that, for instance, the time bar and the limitation of liability will apply to *any* claim against the carrier under the draft Convention, there may be some logic in determining the standard of liability of the carrier beyond the matter of loss, damage or delay to the goods as well.

52. A similar question may arise with regard to the shipper’s liability. Under Chapter 8 (previously 7) the shipper’s liability is limited to breaches under article 28 (previously 25) and paragraph 30(a) (previously 27(a)). Should this standard of shipper’s liability be extended to, for instance, a breach by the shipper of his obligation to accept delivery under article 46? Or, drawing this line further, to any breach of obligation under the draft Convention to the extent that the shipper’s liability is not dealt with otherwise (such as the strict liability under paragraph 31(2) (previously 29(2))?

53. *Questions:*

(a) Should the draft Convention include a general provision relating to the carrier's liability for a breach of <u>any</u> of its obligations under the draft Convention that should apply to the extent that its liability is not already dealt with (such as in Chapter 6 (previously 5) and article 53 (previously 52)) or should this matter be left to national law?

(b) Should the draft Convention extend the provision on shipper's liability in paragraph 31(1) (previously 29(1)) to a breach of <u>any</u> of the shipper's obligations under the draft Convention that should apply to the extent that the shipper's liability is not dealt with otherwise, or should this matter be left to national law?