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**Transport Law: Preparation of a draft convention on the  
carriage of goods [wholly or partly] [by sea]****Shipper's obligations: drafting proposal by the Swedish delegation****Note by the Secretariat**

In preparation for the seventeenth session of Working Group III (Transport Law), the Government of Sweden submitted to the Secretariat the paper attached hereto as an annex with respect to shipper's obligations in the draft convention on the carriage of goods [wholly or partly] [by sea]. The Swedish delegation advised that the paper was intended to facilitate consideration of the topic in the Working Group by proposing revised text for chapter 8 of the draft convention regarding shipper's obligations. The Swedish delegation further advised that the revised text and commentary in the attached annex was prepared in light of the consideration of the topic of shipper's obligations by the Working Group during its sixteenth session, and on the basis of further informal consultations with other delegations. The Working Group may wish to consider the text in the attached annex in its further consideration of chapter 8 of the draft convention on shipper's obligations.



## Annex

### **Shipper's obligations: chapter 8 of the draft convention on the carriage of goods [wholly or partly] [by sea]**

#### **I. Introduction**

1. During the summer of 2005, the delegation of Sweden distributed an informal questionnaire on shipper's obligations to interested delegations. The purpose of the questionnaire was to facilitate the discussion in the Working Group on the subject and to investigate whether there was room for compromise regarding certain questions in the text of the UNCITRAL draft convention on the carriage of goods [wholly or partly] [by sea] (the draft convention). Replies to the informal questionnaire were submitted by 19 delegations in total. One reply was submitted as a joint document from three different delegations. On the basis of these replies the delegation of Sweden produced a compromise proposal. The proposal was reproduced as document A/CN.9/WG.III/WP.55. Shipper's obligations were then discussed during the sixteenth session of WG III (Transport law) in Vienna, from 28 November to 9 December 2005. The discussions were based on the draft text in A/CN.9/WG.III/WP.56 and on the text proposed in A/CN.9/WG.III/WP.55. The deliberations and decisions are reproduced in the report of the sixteenth session (A/CN.9/591, paras. 104-187). On the basis of that discussion in the Working Group and on further informal consultations, the delegation of Sweden has now found it suitable to submit a new paper containing a refined proposal on shipper's obligations.

#### **II. Title of the chapter**

2. It was agreed during the sixteenth session of the Working Group that the title of the chapter should make reference to the shipper's obligations to the carrier (see paras. 108 and 120 of A/CN.9/591). The reason for this is to clarify that chapter 8 of the draft convention does not deal with the liability of the shipper with respect to third parties, for example, to seamen who get injured by the goods. General tort law will instead govern this liability. Another issue is that the carrier might in an action against the shipper claim compensation for what it has had to pay to the injured seamen as an employer (see further the discussion of draft article 28 below).

3. A title which the Working Group might want to consider is:

*Shipper's obligations to the carrier*

#### **III. Draft article 28. Delivery ready for carriage**

4. Draft article 28 contains a general obligation to deliver the goods ready for carriage. During the sixteenth session, it was agreed that the expression "unless otherwise agreed" should be moved to the beginning of the first sentence (see paras. 110 and 120 of A/CN.9/591). It is not clear from the report whether this also meant that the words "in the contract of carriage" should be deleted. It could be

argued that these words are superfluous since the present text does not require a written agreement for the parties in order to derogate from the obligation in the provision.

5. Concerns were also raised during the session that the word “injury” might imply that the draft provision also regulates the relationship between the shipper and third parties, such as the seamen on board the ship (see para. 119 of A/CN.9/591). The purpose of draft article 28 is not to grant third parties any right of direct action against the shipper, and as a consequence of this, the word “injury” ought to be deleted. But, as indicated above, draft article 28 should not only cover situations where the ship or other equipment belonging to the carrier is physically damaged. For example the provision should also cover situations where the carrier in a recourse action is claiming compensation for what he has had to pay to his employees or other persons, who have been injured because of bad stowage of the goods by the shipper. Therefore it seems appropriate also to include the word “loss” in the first sentence. It should also be noted that the word “loss” is already included in draft article 31 on liability of the shipper.

6. Regarding the second sentence of draft article 28 as it appeared in A/CN.9/WG.III/WP.56, the Working Group decided to retain the sentence, but to simplify the text, possibly along the lines in the proposal in footnotes 116 and 435 of A/CN.9/WG.III/WP.56. However, the problem with using the words “goods ... delivered in ... a container” is that according to the definition in draft article 1 (w) the term “goods” includes both the merchandise and the container when supplied by the shipper. In order not to create a contradiction in the text, it is proposed that the second sentence should only cover the situation where the container or trailer is supplied by the carrier and consequently is not a part of the goods. A solution to this problem could be to substitute the expression “packed by the shipper” in the text of footnotes 116 and 435 with the expression “supplied by the carrier”. It would follow implicitly from the text that the goods must be stowed by the shipper in or on the trailer.

7. In addition, it was also suggested during the sixteenth session that in certain language versions of the text, the words “unless otherwise agreed” in the first sentence would modify the obligations in both the first and the second sentence. In order to avoid this, the first and the second sentence could be placed in different paragraphs.

8. It was also noted that there might be a need for harmonizing the expression “container or trailer” with the language elsewhere in the convention. In draft article 64 (3) the expression “container, pallet, or similar article of transport used to consolidate goods” is used. However, it is important here to note that the two provisions fulfil different purposes. While the purpose of draft article 64 (3) is to clarify how the limitation shall be calculated when the goods are consolidated in a container or on a pallet, the purpose of draft article 28, second paragraph, is to emphasize that the obligation in paragraph 1 also includes that wares, merchandise and articles inside a container or trailer, to which the carrier has no immediate access and therefore no possibility to check, must be stowed, lashed and secured properly. Other types of articles used to consolidate goods, such as open pallets, should therefore not be included in the second paragraph.

9. The Working Group might wish to consider the following text:

*Article 28. Delivery for carriage*

1. *Unless otherwise agreed [in the contract of carriage], the shipper must deliver the goods ready for carriage and in such condition that they will withstand the intended carriage, including their loading, handling, stowage, lashing and securing, and discharge, and that they will not cause loss or damage.*

2. *In the event the goods are delivered in or on a container or trailer [packed by the shipper] [supplied by the carrier], the obligation in paragraph 1 extends to the stowage, lashing and securing of the goods in or on the container or trailer.*

**IV. Draft article 29. Carrier's obligation to provide information and instructions; and Draft article 18. Carrier's liability for failure to provide information and instructions**

10. During its sixteenth session, the Working Group agreed to retain draft article 29, but to draft it in more general terms focussing on the cooperation between shipper and the carrier in preventing loss and damage to as well as from the goods (see para. 127 of A/CN.9/591). The obligation of the carrier in draft article 29 is to be seen as a secondary one in relation to the shipper's obligation under draft article 28. According to draft article 29 the carrier is under the obligation to assist the shipper in order to make it possible for the latter to fulfil its obligation to prepare the goods for the transport. One of the problems with the text as it now stands is that it imposes an obligation on the carrier, while the chapter as a whole deals only with the shipper's obligations. This was noted already in the discussion of the chapter at the thirteenth session of the Working Group from 3 to 14 May 2004 (see A/CN.9/552, para. 126) A solution to this problem could be to replace the obligation of the carrier with a general right for the shipper to request and obtain information from the carrier. It would then become clear from the text that the carrier has an implicit obligation to cooperate with the shipper in this respect and that this obligation is secondary to the obligation of the shipper under draft article 28.

11. Regarding the obligation of the shipper to provide information, instructions and documents, it was noted during the sixteenth session of the Working Group that the text in draft article 30, especially paragraph (b), is very broad and that a shipper failing to provide a single document could be exposed to unforeseeable and enormous losses (see para. 133 of A/CN.9/591). However, one way of balancing a broad text like the existing one in draft article 30 is to extend the right for the shipper to request and obtain information and instructions reasonably necessary for fulfilling the obligations under draft article 28 to draft article 30 as well, at the same time as the liability of the shipper is changed into a general fault-based one. This would mean that in a situation where the shipper is not sure whether the carrier will need a special kind of document, it will have the opportunity to request and obtain that information from the carrier. If the answer from the carrier is negative, then the shipper will not be liable for any loss or damage due to the fact that the document was not provided. If this approach is chosen, it is proposed that the Working Group may wish to reverse the order of the existing draft articles 29 and 30 in an effort to

reduce the shipper's obligations regarding information, instructions and documents by obligating the carrier to provide instructions on the request of the shipper.

12. The information that the shipper has the right to request and obtain should be limited to what is reasonably available to the carrier. This means that the shipper cannot ask for information, which requires an extensive investigation by the carrier. An alternative could be to include the words "within the carrier's knowledge". Such a wording would, however, indicate that the carrier has no obligation at all to provide information that he has no knowledge of, even if it would be easy for him to investigate the matter. Also, the instructions that the shipper would have the right to request and obtain ought to be limited to what is reasonably necessary.

13. Another alternative would be to include a more general provision stating that the shipper and the carrier have a mutual obligation to cooperate regarding information and instructions required for the safe handling and transportation of the goods. The advantage of such a provision would be that it emphasizes the duty of the parties to cooperate. However, at the same time there is a risk that such a general provision would be regarded by the courts as a mere declaration having no legal effect.

14. The Working Group might wish to consider the following text as Variants B and C of the existing text of draft article 29 in A/CN.9/WG.III/WP.56, which would be considered Variant A of the draft article:

*Article 29 [30]. Information and instructions from the carrier*

*[Variant A*

*The carrier must provide to the shipper, on its request [and in a timely manner] such information as is within the carrier's knowledge and instructions that are reasonably necessary or of importance to the shipper in order to comply with its obligations under article 28. [The information and instructions must be accurate and complete.]*

*[Variant B*

*The shipper has the right to request and obtain from the carrier in a timely manner such reasonably available information and instructions as are reasonably necessary in order to comply with its obligations under articles 28 and 30 [29].]*

*[Variant C*

*The carrier and the shipper shall respond in good faith to reasonable requests from the other for information and instructions required for the safe handling and transportation of the goods, which information and instructions are in such party's possession and not otherwise reasonably available to the requesting party.]*

15. As a consequence of the discussion above, draft article 18 on the carrier's liability for failure to provide information and instructions ought to be deleted. There seems to be little or no need for a special sanction here because of the fact that the obligation of the carrier in this respect is secondary to the obligations of the shipper under draft article 28. This means for example that if the shipper is not able to provide information and instructions due to the fact that the carrier did not

cooperate, the former will not be liable for damages caused by the goods to the ship or other equipment belonging to the carrier.

16. Another reason for the deletion of draft article 18 is that, as it now stands, it interferes with the general provision on the carrier's liability in draft article 17. For example, if the goods are damaged during the transport, the carrier might defend himself pursuant to draft article 17 by proving that the goods were actually stowed by the shipper and that the stowage caused the damage to the cargo (see draft article 17 (2) and (3) (i)). The burden of proof would then shift to the shipper, who would have to prove that the bad stowage was due to the fact that it followed the instructions from the carrier (see draft article 17 (2) (a)). In other words, this situation is already governed by draft article 17 and the existence of an additional rule in draft article 18 that might be applicable could cause confusion.

## **V. Draft article 30. Shipper's obligation to provide information, instructions and documents**

17. In the report of the sixteenth session, it was noted that paragraph (b) should be placed within square brackets, that the phrase in the chapeau "in a timely manner, such accurate and complete" should be considered in the same fashion as the similar text in draft article 29 and that drafting improvements should bear in mind A/CN.9/WG.III/WP.55 as well as other international instruments (see paras. 129 and 135 of A/CN.9/591). It was further decided by the Working Group that the future discussion of the basis of the shipper's liability in draft article 31 should be taken into consideration in future drafts of draft article 30, and that the reference to draft article 38 (1) (b) and (c) should be extended to (a) (see para. 135 of A/CN.9/591).

18. In paragraph 20 of A/CN.9/WG.III/WP.55, it was proposed that the phrase in paragraph (a) "except to the extent that the shipper may reasonably assume that such information is already known to the carrier" and the phrase in paragraph (c) "unless the shipper may reasonably assume that such information is already known to the carrier" should be deleted. As observed in the report of the sixteenth session of the Working Group, the consequence of the fact that paragraphs (a) and (c) would ultimately be subject to a fault-based liability scheme pursuant to draft article 31 (except for the liability for the accuracy of information), could be that there would be no need for the phrase "reasonably assume" and that it therefore could be deleted (see para. 130 of A/CN.9/591).

19. As noted above, the general problem with draft article 30, especially paragraph (b), is that the text is very broad and that it might expose the shipper to onerous liability. At the same time, it seems difficult to narrow the scope of the provision. It does not seem possible in practice to try to draft the obligations of the shipper in draft article 30 in specific terms since the information, instructions and documents needed may vary substantially between different types of carriage of goods. One way of doing this in paragraph (b) might be to limit the information, instructions and documents the shipper has to provide to reasonably available information, instructions and documents made known to the shipper by the carrier, unless it is prescribed by rules and regulations of government authorities that the shipper shall provide the information (see Variant B). However, such a regulation

could contradict the fact that in many situations, the shipper is the one who has the best knowledge of what documents are needed in order to satisfy the customs authorities. As indicated above regarding draft article 29, a practical solution to this problem could be to try to limit the liability of the shipper by making it generally a fault-based liability with an ordinary burden of proof and possibly also by excluding most of the liability for delay or to limit the compensation to a certain amount, instead of trying to narrow the scope of paragraph (b).

20. On the basis of this discussion the Working Group might wish to consider the following text:

*Article 30 [29]. [Shipper's obligation to provide information, instructions and documents] [Obligation of shipper and carrier to provide information, instructions and documents]*

*The shipper must provide to the carrier in a timely manner such information, instructions, and documents that are reasonably necessary for:*

*(a) The handling and carriage of the goods, including precautions to be taken by the carrier or a performing party;*

*[Variant A of paragraph (b)*

*(b) Compliance with rules and regulations and other requirements of authorities in connection with the intended carriage, including filings, applications, and licences relating to the goods;] and*

*[Variant B of paragraph (b)*

*(b) The carrier's compliance with rules and regulations of government authorities that are applicable to the shipment if the shipper is required by applicable law to provide such information, instructions and documents or such information, instructions and documents are timely made known to the shipper by the carrier. Except as required by applicable law, the shipper is not obligated under this paragraph to provide information, instructions and documents that are otherwise reasonably available to the carrier;] and*

*(c) The compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 38 (1) (a), (b) and (c); the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic record is to be issued, if any.*

## **VI. Draft article 31. Basis of shipper's liability**

21. A majority of the delegations during the sixteenth session of the Working Group favoured the view that the liability should be based on fault with an ordinary burden of proof, like in article 12 of the Hamburg Rules and article 4 (3) of the Hague-Visby Rules (see para. 138 of A/CN.9/591). That approach means that the carrier will have to prove that the loss or damage was due to the fault of the shipper. As indicated above, this would compensate for the fact that the shipper has an

unlimited liability. It would also reflect the fact that the carrier is usually in a much better position to establish what has occurred during the voyage. Such a regulation would also correspond better with the rule in draft article 17 (2) and (3) (i), that the carrier, if goods are damaged, will have to prove, for example, the fact that the shipper actually stowed the goods and that this caused the damage.

22. Another way of reducing the exposure of the shipper to great risks is to remove the shipper's liability for delay. It was proposed during the sixteenth session that liability for "delay" should be deleted from the draft text (see paras. 143-146 of A/CN.9/591). However, other delegations spoke in favour of keeping the liability for delay. A deletion would call into question the rationale for creating a strict liability for submitting incorrect information, since inaccurate information was said to be the most common cause for delay. It is suggested that the effect of deleting the word "delay" is not that the shipper will not be liable for delay at all. The shipper will still be liable for delay that occurs as a consequence of physical damage according to the convention. If, for example, the goods damage the ship, the carrier will be entitled also to compensation for delay due to the damage. The effect of deleting the word "delay" is instead that the liability for delays that are not connected with physical damage would be left to national law. Such a solution would not correspond with the existing regulation in article 3 (5) of the Hague Rules and article 17 (1) of the Hamburg Rules regarding the liability for inaccurate information. A compromise solution to this problem might be to delete the word "delay" and leave the question of liability for delay (where the delay is not a consequence of a physical damage) to national law, except for in draft article 30 (c). In the proposed text, the word "delay" is put within square brackets.

23. The Working Group decided during its sixteenth session that there should be strict liability for inaccurate information under draft article 30 (c). This means that the shipper will be deemed to have guaranteed the accuracy of the information in the documents that it provides to the carrier, while the liability for not providing a document will still be based on fault. Such a liability will correspond with article 3 (5) of the Hague Rules and article 17 (1) of the Hamburg Rules. It must be noted here that in order to fully correspond with the Hague-Visby and Hamburg Rules, the liability in paragraph 2, as indicated above, should include delay.

24. As a consequence of the fact that the Working Group decided that chapter 8 of the draft convention should only deal with the relationship between the shipper and the carrier and not with third parties, paragraph 3 of draft article 31 in A/CN.9/WG.III/WP.56 should be deleted.

25. The Working Group might wish to consider the following text:

*Article 31. Basis of shipper's liability*

1. *The shipper is liable to the carrier for loss, [or] damage [or delay] caused by the goods and for breach of its obligations under articles 28 and [29] 30, provided such loss, [or] damage [or delay] was due to the fault of the shipper or of any person referred to in article 35.*

2. *Notwithstanding paragraph 1 the shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information and documents that must be provided according to article [29] 30 (c). The shipper*

*must indemnify the carrier against all loss, [or] damages [or delay] arising out of or resulting from the information and documents not being accurate.*

## **VII. Draft article 32. Material misstatement by the shipper**

26. It was agreed during the sixteenth session that draft article 32 should be deleted from the draft convention (see para. 156 of A/CN.9/591).

## **VIII. Draft article 33. Special rules on dangerous goods**

27. The Working Group decided during its sixteenth session to insert the words “or become” in paragraph 1 of draft article 33 in order to make the rule more complete (see paras. 159 and 161 of A/CN.9/591).

28. Regarding paragraph 2, it was noted that the shipper might have difficulties to fulfil his obligation to mark or label the goods in accordance with existing rules, regulations and requirements of authorities because of the fact that it does not have knowledge about how the exact voyage is to take place or what transport modes are to be used. To a certain extent this problem is already solved by the fact that the obligation applies to the “intended carriage”. If, for example, the carrier suddenly decides to transport the goods through another country or by another type of transport mode than originally planned, the shipper cannot be made liable for that the goods are not labelled according to the regulations applicable to that new transport mode in that country. However, the existing text does not solve the problem when the voyage is never agreed upon, but leaves it to the carrier to decide. As a practical solution to this problem it is proposed that a new paragraph 4 could be inserted giving the shipper the right to request and obtain reasonably available information and instructions from the carrier in order to comply with its obligations. This proposed text has been inserted in square brackets below, and is intended, as is the proposed text of draft article 29, to underline the fact that the carrier and the shipper must cooperate so that the carrier must, on request, inform the shipper about the voyage. An alternative approach could also be to make reference to draft article 33 (3) in Variant B of draft article 29.

29. Furthermore, in paragraphs 2 and 3 of draft article 33, the text has been adjusted in order to reflect the decision of the Working Group during its sixteenth session (see paras. 166 and 170 of A/CN.9/591). The references to performing parties have been deleted regarding liability (the shipper may still inform the performing party instead of the carrier), and the words “directly or indirectly” in paragraphs 2 and 3 have been deleted. The word “delay” could also be deleted as a way of limiting the exposure of the shipper to a great liability. As noted in paragraph 168 of A/CN.9/591, as an alternative to the words “such shipment”, the words “such failure to inform” could be used in the text. This would underline the fact that there must exist causation between the failure to inform and the loss, damage or delay. However, note also the view expressed in the Working Group during its sixteenth session that the phrase “such shipment” was intended to preserve the approach taken in article 13 (2) (a) of the Hamburg Rules, in order to reflect the serious nature of the shipper’s obligation (see para. 168 of A/CN.9/591).

30. As a consequence of the fact that the obligation to inform the carrier about the dangerous character of the goods is the most important one in this provision, it is proposed that this rule should form paragraph 2 instead of paragraph 3. The Working Group may also wish to discuss whether the definition of “dangerous goods” ought to be moved to draft article 1 of the draft convention. Neither of these proposed solutions was explicitly discussed during the sixteenth session.

31. The Working Group might wish to consider the following text:

*Article 33. Special rules on dangerous goods*

1. “Dangerous goods” means goods which by their nature or character are[, or become], or reasonably appear likely to become, a danger to persons or property or the environment.

2. The shipper must inform the carrier of the dangerous nature or character of the goods in a timely manner before the consignor delivers them to the carrier or a performing party. If the shipper fails to do so and the carrier or the performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for all loss, [or] damages [or delay] arising out of or resulting from such [shipment][failure to inform].

3. The shipper must mark or label the dangerous goods in accordance with any rules, regulations or other requirements of authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for all loss, [or] damages [or delay] arising out of or resulting from such failure.

[4. The shipper has the right to request and obtain from the carrier such reasonably available information and instructions as are reasonably necessary in order to comply with its obligations under paragraph 3.]

## **XI. Draft article 34. Assumption of shipper’s rights and obligations**

32. The Working Group here decided to insert the text proposed in paragraph 39 of A/CN.9/WG.III/WP.55, but to substitute the phrase “receives the transport document or the electronic transport record” with the phrase “accepts that its name appears on the transport document or the electronic transport record as the shipper” (see para. 175 of A/CN.9/591).

33. As a consequence of this the text should read:

*Article 34. Assumption of shipper’s rights and obligations*

1. If a person identified as “shipper” in the contract particulars, although not the shipper as defined in paragraph 1 (h), accepts that its name appears on the transport document or electronic transport record as the shipper, then such person is (a) subject to the responsibilities and liabilities imposed on the shipper under this chapter and under article 59, and (b) entitled to the shipper’s rights and immunities provided by this chapter and by chapter 14.

2. Paragraph 1 of this article does not affect the responsibilities, liabilities, rights or immunities of the shipper.

## X. Draft article 35. Vicarious liability of the shipper

34. The Working Group here decided to insert the text proposed in paragraph 41 of A/CN.9/WG.III/WP.55 in the draft convention (see para. 180 of A/CN.9/591).

35. It was also noted during the discussion at the sixteenth session of the Working Group that there might be a need for adjusting paragraph 2 of the text in A/CN.9/WG.III/WP.55 to accommodate any changes made to draft article 14 (2) regarding “free in and out (stowed)” (FIO(S)) clauses. Later, during the discussions on delivery of goods it was clarified that the combined effect of draft articles 11 (6) and 14 (2) is that the shipper is liable for any loss due to its failure to effectively fulfil its obligations according to the FIO(S) clause, while the carrier will retain responsibility for other matters during loading and discharge (see para. 204 of A/CN.9/591). As a consequence of this there seems to be little need for paragraph 2 of draft article 35. Only in a situation where the parties treat the FIO(S) clause as a mere payment clause—i.e. the loading or discharge of the goods is paid for by the shipper, but still performed by the carrier—does the paragraph seem to have some sort of meaning. But, in a situation like this it would follow from general principles of contract law that the carrier cannot make the shipper liable for loss or damage. Paragraph 2 could therefore be deleted.

36. Provided paragraph 2 of the text as set out in paragraph 41 of A/CN.9/WG.III/WP.55 is retained, the question arises whether the text should be adjusted. It was suggested during the discussion that the word “on the carrier’s side” is superfluous since the term “performing party” is defined in the draft convention as persons acting on behalf of the carrier (see para. 179 of A/CN.9/591). However, the words here seem to fulfil the purpose of differentiating between performing parties on shipper’s side and performing parties on the carrier’s side. The paragraph is only applicable to the carrier’s performing parties. The text has been clarified slightly to “acting on behalf of the carrier” rather than “on the carrier’s side”.

37. It was also suggested during the sixteenth session that the word “vicarious” in the title ought to be changed in order to ensure linguistic uniformity between the different language versions of the draft convention. An alternative to the existing title might be “Liability for acts and omissions of other persons”.

38. On the basis of the discussion above, the Working Group might wish to consider the following text:

*Article 35. Liability for acts and omissions of other persons*

*1. The shipper is liable for the acts and omissions of any person, including subcontractors, employees and agents, to which it has delegated the performance of its responsibilities under this chapter as if such acts or omissions were its own. Liability is imposed on the shipper under this article only when the act or omission of the person concerned is within the scope of that person’s contract, employment or agency.*

*[2. Notwithstanding paragraph 1, the shipper is not liable for acts and omissions of the carrier, or a performing party acting on behalf of the carrier, to which it has delegated the performance of its responsibilities under this chapter.]*

## **XI. Draft article 36. Cessation of shipper's liability**

39. The Working Group decided to retain draft article 36, but to reconsider it in the light of the decision taken with respect to draft article 94 (2). However, the word "or" at the end of paragraph (a) should be moved to the end of paragraph (b).

40. In that case, the provision should read:

### *Article 36. Cessation of shipper's liability*

*If the contract of carriage provides that the liability of the shipper or any other person identified in the contract particulars as the shipper will cease, wholly or partly, upon a certain event or after a certain time, such cessation is not valid:*

*(a) With respect to any liability under this chapter of the shipper or a person referred to in article 34;*

*(b) With respect to any amounts payable to the carrier under the contract of carriage, except to the extent that the carrier has adequate security for the payment of such amounts; or*

*(c) To the extent that it conflicts with article 63.*

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