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Transport Law

Draft convention on the carriage of goods [wholly or partly] [by sea]

Note by the Secretariat

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Introduction

1. At its thirty-fourth session, in 2001, the Commission established Working Group III (Transport Law) and entrusted it with the task of preparing, in close cooperation with interested international organizations, a legislative instrument on issues relating to the international carriage of goods such as the scope of application, the period of responsibility of the carrier, obligations of the carrier, liability of the carrier, obligations of the shipper and transport documents.ⁱ The Working Group commenced its deliberations on a draft instrument on the carriage of goods [wholly or partly] [by sea] at its ninth session in 2002. The most recent compilation of historical references regarding the legislative history of the draft instrument can be found in document A/CN.9/WG.III/WP.100.

2. This document consists of a consolidation of revised provisions for the draft convention on the carriage of goods [wholly or partly] [by sea] prepared by the Secretariat for consideration by the Working Group prior to submitting the text for consideration by the Commission at its forty-first session in 2008. Changes to the consolidated text most recently considered by the Working Group (contained in documents A/CN.9/WG.III/WP.81 and A/CN.9/WG.III/WP.81/Corr.1) have been indicated in footnotes to the text indicating those changes and, where applicable, by reference to the working paper in which the revised text appeared, or to the paragraph of the report in which such text appeared.

ⁱ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3), para. 345.*

Draft convention on the carriage of goods [wholly or partly] [by sea]

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this Convention:

1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

3. “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

4. “Non-liner transportation” means any transportation that is not liner transportation.

5. “Carrier” means a person that enters into a contract of carriage with a shipper.

6. (a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.¹

(b) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee instead of by the carrier.²

¹ The final sentence, “It includes agents or subcontractors of a performing party to the extent that they likewise perform or undertake to perform any of the carrier’s obligations under a contract of carriage” has been deleted as redundant, since the parties listed are already included in the definition of “performing party” by virtue of the first sentence.

² Revised text of the provision agreed to by the Working Group (see A/CN.9/621, paras. 141, 142 and 153). The Working Group had also agreed to include the following text, “(i) an employee of the carrier or a performing party; or (ii)”, however, in considering drafting changes, that particular construction was thought to create difficulties. In particular, excluding “employees” from the definition of “performing party” could cast doubt on the responsibility of the maritime performing party for acts of its employees. Instead, the Working Group may wish to consider the suggested redrafted text of draft article 4 and the insertion of the new provision at draft article 20 (4), which are intended to implement the Working Group’s policy decision that employees of performing parties may not be held personally liable under the draft convention.

7. “Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship.³ An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.⁴

8. “Shipper” means a person that enters into a contract of carriage with a carrier.

9. “Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.

10. “Consignor” means a person that delivers the goods to the carrier or to a performing party for carriage.

11. “Holder” means:

(a) A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

(b) The person to which a negotiable electronic transport record has been issued or transferred and that has exclusive control of that negotiable electronic transport record in accordance with the procedures in article 9, paragraph 1.

12. “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

13. “Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 11.

14. “Controlling party” means the person that pursuant to article 54 is entitled to exercise the right of control.

15. “Transport document” means a document issued under a contract of carriage by the carrier or a performing party that satisfies one or both of the following conditions:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; or

(b) Evidences or contains a contract of carriage.

³ The phrase “, but, in the event of a trans-shipment, does not include a performing party that performs any of the carrier’s obligations inland during the period between the departure of the goods from a port and their arrival at another port of loading” has been deleted as a drafting improvement, since it was thought that the final sentence of the definition included the cases of trans-shipment covered by the deleted phrase.

⁴ Revised text of the provision agreed to by the Working Group (see A/CN.9/621, paras. 141, 144, 145 and 153). It is thought that the existing text includes inland waterways. Further, the definition of “non-maritime performing party” has been deleted as agreed by the Working Group (see A/CN.9/621, para. 139).

16. “Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.

17. “Non-negotiable transport document” means a transport document that is not a negotiable transport document.

18. “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

19. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier or a performing party, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier or a performing party, so as to become part of the electronic transport record, that satisfies one or both of the following conditions:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; or

(b) Evidences or contains a contract of carriage.

20. “Negotiable electronic transport record” means an electronic transport record:

(a) That indicates, by statements such as “to order”, or “negotiable”, or other appropriate statements recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and

(b) The use of which meets the requirements of article 9, paragraph 1.

21. “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.

22. The “issuance” and the “transfer” of a negotiable electronic transport record means the issuance and the transfer of exclusive control over the record.

23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

24. “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

25. “Ship” means any vessel used to carry goods by sea.

26. “Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

27. “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

28. “Domicile” means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, whichever is applicable,⁵ (ii) central administration, or (iii) principal place of business, and (b) the habitual residence of a natural person.

29. “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.

Article 2. Interpretation of this Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Article 3. Form requirements⁶

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 20, paragraph 3; 24, paragraphs 1 to 3; 38, subparagraphs 1 (b), (c) and (d); 42, subparagraph 4 (b); 46; 51, paragraph 3; 54, paragraph 1;⁷ 62, paragraph 1; 66; 69; and 83, paragraphs 1 and 5 shall be in writing. Electronic communications may be used for these purposes, provided the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

Article 4. Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:

- (a) The carrier or a maritime performing party;
- (b) The master, crew or any other person that performs services on board the ship; or

⁵ “Whichever is applicable” has been inserted instead of the less specific “as appropriate”.

⁶ The Working Group may wish to consider whether it is advisable to include with the final text an explanatory note to the effect that any notices contemplated in this convention that are not included in art. 3 may be made by any means including orally or by exchange of data messages that do not meet the definition of “electronic communication”. It is implicit in the definition of “electronic communication” that it must be capable of replicating the function of written documents (see *supra*, note to definition of “electronic communication”).

⁷ Given the decision of the Working Group to delete draft article 61 (see A/CN.9/642, paras. 116 and 118), the following reference has been deleted from draft article 3: “61, subparagraph (d);”.

(c) Employees of the carrier or a maritime performing party.⁸

2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.⁹

CHAPTER 2. SCOPE OF APPLICATION

Article 5. General scope of application

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:

- (a) The place of receipt;
- (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.

2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

Article 6. Specific exclusions

1. This Convention does not apply to the following contracts¹⁰ in liner transportation:

- (a) Charterparties; and
- (b) Other contracts¹¹ for the use of a ship or of any space thereon.¹²

⁸ Drafting clarification of text in A/CN.9/WG.III/WP.81 (considered by the Working Group A/CN.9/621, para. 149). The Working Group may wish to note that this text is slightly different from that considered in A/CN.9/621, paras. 141 and 149, in order to achieve the policy goals of the Working Group using a more precise drafting technique, as also noted in the above footnote to para. (b) of the definition of “performing party”. The subparagraphs of this revised text of paragraph 1, and the inclusion of the phrase “whether founded in contract, in tort, or otherwise”, are intended as improved drafting to include the content of the suggested new paras. 2 and 3 that had been agreed by the Working Group (A/CN.9/621, paras. 141, 149 and 153).

⁹ Draft paragraph 2 is new text intended to respond to the decision of the Working Group (A/CN.9/621, para. 17) to extend the protection of draft article 4 to shippers, to the extent that shipper liability was covered in the draft convention.

¹⁰ The phrase “of carriage” has been deleted, since charterparties and similar contracts are contracts of carriage in some jurisdictions, but not in others, and it is suggested that a reference to “the following contracts” without further specification would allow for a consistent approach in all jurisdictions, regardless of the treatment allotted charterparties.

¹¹ Drafting clarification of text in A/CN.9/WG.III/WP.81 (considered by the Working Group A/CN.9/621, para. 21), not intended to change meaning of paragraph. With a view to improved drafting, the word “contracts” has been substituted for the phrase “contractual arrangements”.

¹² With a view to improving the drafting, the phrase “whether or not they are charterparties” has

2. This Convention does not apply to contracts of carriage in non-liner transportation except when:

(a) There is no charterparty or other contract between the parties¹³ for the use of a ship or of any space thereon; and

(b) The evidence of the contract of carriage is a transport document or an electronic transport record that also evidences the carrier's or a performing party's receipt of the goods.

Article 7. Application to certain parties

Notwithstanding article 6, this Convention applies as between the carrier and the consignor, consignee, controlling party or holder that is not an original party to the charterparty or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

CHAPTER 3. ELECTRONIC TRANSPORT RECORDS

Article 8. Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

(b) The issuance, exclusive¹⁴ control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

Article 9. Procedures for use of negotiable electronic transport records or the electronic equivalent of a non-negotiable transport document that requires surrender¹⁵

1. The use of a negotiable electronic transport record or the electronic equivalent of a non-negotiable transport document that requires surrender shall be subject to procedures that provide for:

(a) The method for the issuance and the transfer of that record to an intended holder;

(b) An assurance that the negotiable electronic transport record retains its integrity;

been deleted as redundant.

¹³ Drafting clarification of text in A/CN.9/WG.III/WP.81 (considered by the Working Group A/CN.9/621, para. 21), not intended to change meaning of paragraph. Again, the word "contract" has been substituted for the phrase "contractual arrangement".

¹⁴ The word "exclusive" has been added as a drafting improvement intended to achieve greater precision.

¹⁵ Reference has been added to "or the electronic equivalent of a non-negotiable transport document that requires surrender" in both the title and the text of this article to address an omission from the earlier text.

(c) The manner in which the holder or the consignee¹⁶ is able to demonstrate that it is the holder or the consignee; and

(d) The manner of providing confirmation that delivery to the holder or the consignee¹⁷ has been effected, or that, pursuant to articles 10, paragraph 2, 49, subparagraph (a),¹⁸ or 50, subparagraphs (a)(ii) and (c), the¹⁹ electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.²⁰

Article 10. Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(c) The negotiable transport document ceases thereafter to have any effect or validity.

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) The electronic transport record ceases thereafter to have any effect or validity.

¹⁶ Reference to “the consignee” has been added to this subparagraph so as to accurately include in this provision coverage of an electronic equivalent of a non-negotiable transport document that requires surrender.

¹⁷ Ibid.

¹⁸ Reference to “article 49, subparagraph (a)” has been added to this subparagraph so as to accurately include in this provision coverage of an electronic equivalent of a non-negotiable transport document that requires surrender.

¹⁹ The word “negotiable” has been deleted to correct the text, since reference to draft article 49 (a) has been added.

²⁰ As set out in footnote 34 in A/CN.9/WG.III/WP.47, and as agreed in paras. 198-199 of A/CN.9/576, the term “readily ascertainable” was used to indicate without excessive detail that the necessary procedures must be available to those parties who have a legitimate interest in knowing them prior to entering a legal commitment based upon the validity of the negotiable electronic transport record. It was further noted that the system envisaged would function in a manner not dissimilar to the current availability of terms and conditions of bills of lading. The Working Group may wish to consider whether related detail should be specified in a note or a commentary accompanying the draft convention.

CHAPTER 4. OBLIGATIONS OF THE CARRIER

Article 11. Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Article 12. Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.²¹

2. (a) If the law or regulations of the place of receipt require the consignor to hand over the goods to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.²²

(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.²³

3. For the purposes of determining the carrier's period of responsibility and subject to article 14, paragraph 2, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it²⁴ provides that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or

²¹ In order to clarify the relationship between paras. 1 and 2 as they appeared in draft article 11 in A/CN.9/WG.III/WP.81 as agreed by the Working Group (A/CN.9/621, paras. 32 and 33), and to clarify this provision's focus on the period of responsibility of the carrier, former para. 2 as it appeared in A/CN.9/WG.III/WP.81 has been deleted and its content with respect to ascertaining the time and location of delivery has been inserted into draft article 45 (1). Further, the opening phrase "Subject to article 12" has been deleted as a suggested correction to the text, since that provision, which is now draft article 13, is no longer the same in substance as it was when the reference was added.

²² Given the deletion of the former paragraph 2 from draft article 11 as it appeared in A/CN.9/WG.III/WP.81, consequential changes have been made to the latter part of this provision in order to render it consistent with the revised text. Thus, former subparagraphs (a) and (b) have been deleted, and their content retained to the extent that they offered supplementary rules to determine the period of responsibility in the context described. In addition, the remaining text of this draft paragraph has been split into two subparagraphs, (a) and (b), in order to provide an accurate rendering in all language versions of the text, but there was no change intended to the content of the text.

²³ The remaining text of this draft paragraph has been split into two subparagraphs, (a) and (b), in order to provide an accurate rendering in all language versions of the text, but there was no change intended to the content of the text.

²⁴ Given the deletion of the former paragraph 2 from draft article 11 as it appeared in A/CN.9/WG.III/WP.81, consequential changes have been made to the latter part of this provision in order to render it consistent with the revised text. Further, the phrase "the parties may agree on the time and location of receipt and delivery of the goods, but" has been retained in draft paragraph 3 in order to include that element of flexibility in former paragraph 11 (2).

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

Article 13. Transport beyond the scope of the contract of carriage

On the request of the shipper, the carrier may agree to issue a single transport document or electronic transport record that includes specified transport that is not covered by the contract of carriage and in respect of which it is therefore not the carrier. In such event, the period of responsibility of the carrier for the goods is the period of the contract of carriage. If the carrier arranges the transport that is not covered by the contract of carriage as provided in such transport document or electronic transport record, the carrier does so on behalf of the shipper.²⁵

Article 14. Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 27, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the parties may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper²⁶ or the consignee. Such an agreement shall be referred to in the contract particulars.

Article 15. Specific obligations applicable to the voyage by sea

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

- (a) Make and keep the ship seaworthy;
- (b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
- (c) Make and keep the holds and all other parts of the ship in which the goods are carried, including any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

Article 16. Goods that may become a danger

Notwithstanding articles 11 and 14,²⁷ the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or

²⁵ Clarification of the text in A/CN.9/WG.III/WP.81 (agreed by the Working Group A/CN.9/621, paras. 44, 47 and 49, with slight modification for improved drafting).

²⁶ Further to the Working Group's request to make the necessary drafting adjustments to draft articles 14 (2), 28 (2), 18 (3)(h) and 35 in order to render consistent the treatment of the shipper's responsibility for the acts of the consignee and the controlling party (see A/CN.9/621, para. 260), the documentary shipper has been added to this provision, while the controlling party and any person referred to in draft article 35 have been deleted as unnecessary in this context.

²⁷ The reference to article 15, formerly article 16, has been deleted as irrelevant to this provision. The reference had originally been inserted in the text since the obligation of due diligence had been made an ongoing obligation.

reasonably²⁸ appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

Article 17. Sacrifice of the goods during the voyage by sea²⁹

Notwithstanding articles 11, 14, and 15, the carrier or a performing party may sacrifice goods at sea³⁰ when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

CHAPTER 5. LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

Article 18. Basis of liability

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 19.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

- (a) Act of God;
- (b) Perils, dangers, and accidents of the sea or other navigable waters;
- (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
- (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 19;
- (e) Strikes, lockouts, stoppages, or restraints of labour;
- (f) Fire on the ship;
- (g) Latent defects³¹ not discoverable by due diligence;

²⁸ The word "reasonably" was added to the text as set out in A/CN.9/WG.III/WP.81 as agreed by the Working Group (see A/CN.9/621, paras. 55 and 57).

²⁹ Draft article 16 (2) of the text as it appeared in A/CN.9/WG.III/WP.81 has been retained in a separate provision and the brackets surrounding it have been deleted as agreed by the Working Group (see A/CN.9/621, paras. 61 and 62).

³⁰ It is suggested that the phrase "at sea" be added following the phrase "sacrifice goods" in order to clarify that sacrifice of the goods is restricted to the sea leg of the transport.

³¹ The phrase "in the [ship][means of transport]" as it appeared in A/CN.9/WG.III/WP.81 was deleted as agreed by the Working Group (see A/CN.9/621, paras. 70 and 71).

(h) Act or omission of the shipper, the documentary shipper, the controlling party, the consignee, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 34 or 35;³²

(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 14, paragraph 2, unless the carrier or a performing party³³ performs such activity on behalf of the shipper, the documentary shipper or the consignee;

(j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of³⁴ the carrier;

(l) Saving or attempting to save life at sea;

(m) Reasonable measures to save or attempt to save property at sea;

(n) Reasonable measures to avoid or attempt to avoid damage to the environment;

(o) Acts of the carrier in pursuance of the powers conferred by articles 16 and 17.

4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:

(a) If the claimant proves³⁵ that the fault of the carrier or of a person referred to in article 19 caused or contributed to the event or circumstance on which the carrier relies; or

(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 19.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

³² Further to the Working Group's request to make the necessary drafting adjustments to draft articles 14 (2), 28 (2), 18 (3)(h) and 35 in order to render consistent the treatment of the shipper's responsibility for the acts of the consignee and the controlling party (see A/CN.9/621, para. 260), the documentary shipper has been added to this provision, and reference to "the consignee" has been deleted as unnecessary, despite the Working Group having agreed to retain the phrase "the consignee" as it appeared in A/CN.9/WG.III/WP.81 (see A/CN.9/621, paras. 69 and 71). In addition, reference to draft article 34 has been added in order to include those persons for whom the documentary shipper is liable.

³³ The phrase "or a performing party" as it appeared in A/CN.9/WG.III/WP.81 was retained and the brackets around it deleted as agreed by the Working Group (see A/CN.9/621, paras. 69 and 71).

³⁴ The phrase "or on behalf of" as it appeared in A/CN.9/WG.III/WP.81 was retained and the brackets around it deleted as agreed by the Working Group (see A/CN.9/621, paras. 69 and 71).

³⁵ The phrase "if the claimant proves" has been moved from the chapeau to the beginning of subparagraphs (a) and (b) in order to ensure correct reading of the burden of proof with respect to the latter portion of subparagraph (b).

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried (including any containers supplied by the carrier in or upon which the goods are carried) were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or (ii) that it complied with its obligation to exercise due diligence pursuant to article 15.³⁶

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 19. Liability of the carrier for other persons

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

- (a) Any performing party;
- (b) The master or crew of the ship;
- (c) Employees or agents of the carrier or a performing party; or

(d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.³⁷

Article 20. Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:

(a) The maritime performing party received³⁸ the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and³⁹

³⁶ In order to clarify that subparagraph 5 (a) required the claimant to prove the probable cause of the loss, damage or delay, while subparagraph 5 (b) provided the carrier with the possibility of counterproof (see A/CN.9/621, para. 73), there has been a slight drafting adjustment to this provision, without intending to change the meaning of the text.

³⁷ Revised text of the provision agreed to by the Working Group (see A/CN.9/621, paras. 141, 150 and 153). Draft paragraph 2 of the text as it appeared in A/CN.9/WG.III/WP.81 was deleted as agreed by the Working Group (see A/CN.9/621, paras. 77 and 78).

³⁸ The word "initially" has been deleted from before the word "received" and the word "finally" has been deleted from before the word "delivered" because, while the terms were intended to clarify which maritime performing parties were included in a trans-shipment (see A/CN.9/594, para. 142), the words "initially" and "finally" were, in fact, confusing, and could be misread to mean only the initial receipt of the goods under the contract of carriage and their final delivery. A similar deletion of the terms is recommended in draft article 71 (b).

³⁹ The brackets that appeared around the text following the phrase "a maritime performing party"

(b) The occurrence that caused the loss, damage or delay took place: (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) when it had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.⁴⁰

2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of⁴¹ its liability are higher than the limits specified⁴² under this Convention,⁴³ a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.

4. Nothing in this Convention imposes liability on an employee of the carrier or of a maritime performing party.⁴⁴

Article 21. Joint and several liability

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several⁴⁵ but only up to the limits provided for under this Convention.⁴⁶

as it appeared in A/CN.9/WG.III/WP.81 were deleted and the text retained as agreed by the Working Group (see A/CN.9/621, paras. 83 and 84).

⁴⁰ Revised text of the provision agreed to by the Working Group (see A/CN.9/621, paras. 141, 150 and 153), as slightly revised and reordered by the Secretariat for improved drafting. Draft paragraph 2 of the text as it appeared in A/CN.9/WG.III/WP.81 was deleted as agreed by the Working Group (see A/CN.9/621, paras. 77 and 78). Former subparagraph 1 (b) is now paragraph 3.

⁴¹ The phrase "the limits of" have been added for greater drafting clarity.

⁴² The word "specified" has been substituted for the word "imposed" for greater drafting clarity.

⁴³ Reference to "under this Convention" has been substituted for the phrase "pursuant to articles 63, 62 and 25, paragraph 5" as they appeared in A/CN.9/WG.III/WP.81 in order to simplify the text and to eliminate the possibility that inaccurate or incomplete references are listed.

⁴⁴ Although the Working Group had initially agreed to make drafting adjustments to draft article 19 (4) as it appeared in A/CN.9/WG.III/WP.81 (see A/CN.9/621, paras. 92 to 95 and 97), the revised text of draft article 19 as it appeared in paragraph 141 of A/CN.9/621 intended to delete the paragraph in its entirety as a consequence to adjustments made elsewhere in the text. As such, paragraph 4 of draft article 19 as it appeared in A/CN.9/WG.III/WP.81 has been deleted and replaced with text intended to replace the now-deleted portion of the definition of "performing party" formerly found in draft article 1 (6)(b)(i), in order to provide protection to individual employees.

⁴⁵ The phrase "[, such that each such party is liable for compensating the entire amount of such loss, damage or delay, without prejudice to any right of recourse it may have against other liable parties,]" as it appeared in A/CN.9/WG.III/WP.81 was deleted as agreed by the Working Group (see A/CN.9/621, paras. 98 and 100).

⁴⁶ As was the case in draft article 20 (2) above, reference to "under this Convention" has been substituted for the phrase "pursuant to articles 25, 62 and 63" as they appeared in A/CN.9/WG.III/WP.81 in order to simplify the text and to eliminate the possibility that

2. Without prejudice to article 64, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.⁴⁷

Article 22. Delay

Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time⁴⁸ agreed.⁴⁹

Article 23. Calculation of compensation

1. Subject to article 62, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 45, paragraph 1.

2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

Article 24. Notice of loss, damage, or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery⁵⁰ after the delivery of the goods.

2. Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in article 18.⁵¹

3. The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which

inaccurate or incomplete references are listed.

⁴⁷ Draft paragraph 3 of the text as it appeared in A/CN.9/WG.III/WP.81 was deleted as agreed by the Working Group (see A/CN.9/621, paras. 104 to 105).

⁴⁸ The word “expressly” as it appeared in A/CN.9/WG.III/WP.81 has been deleted as agreed by the Working Group (see A/CN.9/621, para. 184).

⁴⁹ The phrase “upon or, in the absence of such agreement, within the time it would be reasonable to expect of a diligent carrier, having regard to the terms of the contract, the customs, practices and usages of the trade, and the circumstances of the journey” as it appeared in A/CN.9/WG.III/WP.81 has been deleted from the latter portion of the draft provision as agreed by the Working Group (see A/CN.9/621, paras. 180 (b) and 183 to 184).

⁵⁰ The option of “seven working days at the place of delivery” in the provision as it appeared in A/CN.9/WG.III/WP.81 was retained and the brackets around it deleted, and the other bracketed text was deleted as agreed by the Working Group (see A/CN.9/621, paras. 113 to 114).

⁵¹ Draft paragraph 2 of the text was added to clarify the effect of draft paragraph 1, as agreed by the Working Group (see A/CN.9/621, paras. 111, 112 and 114).

they have been delivered and the carrier or the maritime performing party against which liability is being asserted.⁵²

4. No compensation is payable pursuant to articles 22 and 63 unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

5. When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

CHAPTER 6. ADDITIONAL PROVISIONS RELATING TO PARTICULAR STAGES OF CARRIAGE

Article 25. Deviation during sea carriage

When pursuant to national law, a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in article 64.

Article 26. Deck cargo on ships

1. Goods may be carried on the deck of a ship only if:

- (a) Such carriage is required by law;
- (b) They are carried in or on containers on decks that are specially fitted to carry such containers; or
- (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages, and practices of the trade in question.

2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this article.

3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defenses provided for in article 18.

4. The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a

⁵² Draft paragraph 3 of the text was formerly the final sentence of draft paragraph 1 as it appeared in A/CN.9/WG.III/WP.81. The draft paragraphs that follow have been renumbered accordingly.

negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

5. If the carrier and shipper expressly⁵³ agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability⁵⁴ for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage,⁵⁵ or delay resulted from their carriage on deck.

*Article 27. Carriage preceding or subsequent to sea carriage*⁵⁶

1. When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

(a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;⁵⁷

(b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

(c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

[2. Paragraph 1 of this article does not affect the application of article 62, paragraph 2.]⁵⁸

3. Except when otherwise provided in paragraph 1 of this article [and] article[s] 85⁵⁹ [and 62, paragraph 2], the liability of the carrier and the maritime

⁵³ The brackets that appeared around the word "expressly" as it appeared in A/CN.9/WG.III/WP.81 were deleted and the word retained as agreed by the Working Group (see A/CN.9/621, paras. 125 and 126).

⁵⁴ This phrase has been adjusted to "not entitled to the benefit of the limitation of liability" to be consistent with draft article 64, as agreed by the Working Group (see A/CN.9/621, paras. 124 and 126).

⁵⁵ The option of "to the extent that such damage" in the provision as it appeared in A/CN.9/WG.III/WP.81 was retained and the brackets around it deleted, and the other bracketed options were deleted as agreed by the Working Group (see A/CN.9/621, paras. 125 to 126).

⁵⁶ The Working Group at its nineteenth session had requested the inclusion in the text of a draft article 26 bis to provide for a declaration provision allowing a Contracting State to include in what is now draft article 27 (1) its mandatory national law (see A/CN.9/621, paras. 189 to 192). However, at its twentieth session, the Working Group decided, as part of its provisional decision pending further consideration of the compromise proposal on the level of the limitation of the carrier's liability, to reverse that decision (see A/CN.9/642, paras. 163 and 166).

⁵⁷ The phrase "[or national law]" has been deleted from the chapeau of draft paragraph 1 and subparagraph 1 (a) and (c) as they appeared in A/CN.9/WG.III/WP.81 and Variant B has been retained and Variant A deleted as agreed by the Working Group (see A/CN.9/621, paras. 190 to 192).

⁵⁸ If para. 62 (2) is deleted, this paragraph should also be deleted.

⁵⁹ If draft paragraph 3 is retained, for greater accuracy, reference has been added to draft article 85,

performing party for loss of or damage to the goods, or for delay in delivery, shall be solely governed by the provisions of this Convention.⁶⁰

CHAPTER 7. OBLIGATIONS OF THE SHIPPER TO THE CARRIER

Article 28. Delivery for carriage

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

2. When the parties⁶¹ have made an agreement referred to in article 14, paragraph 2, the shipper shall properly and carefully load, handle or stow the goods.⁶²

3. When a container or trailer is packed by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or trailer and in such a way that they will not cause harm to persons or property.

*Article 29. Cooperation of the shipper and the carrier in providing information and instructions*⁶³

Without prejudice to the shipper's obligations in article 31, the carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

and the square bracket around "paragraph 1 of this article" has been moved so that it brackets only the reference to "articles 62, paragraph 2".

⁶⁰ The brackets around the draft paragraph as it appeared in A/CN.9/WG.III/WP.81 have been removed and the paragraph retained as agreed by the Working Group (see A/CN.9/621, paras. 201 and 203). However, the Working Group may wish to consider whether this paragraph is necessary at all in light of its decision to choose the 'hypothetical contract' approach of Variant B of subparagraph 1 (a) rather than the conflict of laws approach of Variant A (see A/CN.9/621, para. 191). As noted in footnote 93 of A/CN.9/WG.III/WP.81, draft paragraph 3 had been added to the text for greater clarity regarding the applicability of inland transport conventions when the only approach in subparagraph 1 (a) of the text was the conflict of laws approach set out in Variant A. In light of the decision of the Working Group to choose the Variant B approach, the Working Group may wish to consider the deletion of draft paragraph 3.

⁶¹ "Parties" has been substituted for "carrier and the shipper" as a drafting improvement and to render the text consistent with draft article 14.

⁶² The brackets around the draft paragraph as it appeared in A/CN.9/WG.III/WP.81 have been removed and the paragraph retained as agreed by the Working Group (see A/CN.9/621, paras. 209 and 212). Further, the obligation regarding "discharge" of the goods has been deleted from this paragraph and moved to draft article 45 (2), in order to clarify that discharging or unloading the goods would be an obligation of the consignee at delivery and not of the shipper.

⁶³ The title of the draft article has been adjusted in order to differentiate it from the obligation of the shipper to provide information in draft article 30 as agreed by the Working Group (see A/CN.9/621, paras. 215 and 216).

Article 30. Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

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

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 31. Basis of shipper's liability to the carrier

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.⁶⁴

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 32, paragraph 2 and 33, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 35.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage⁶⁵ that is attributable to its fault or to the fault of any person referred to in article 35.

Article 32. Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for 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, paragraph 1;⁶⁶ 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 transport record is to be issued, if any.

⁶⁴ Revised text of draft article 31 (1) of the provision as it appeared in A/CN.9/WG.III/WP.81, which has been adjusted to comprise paragraphs 1 and 2, and the former paragraph 2 has been amended to become paragraph 3, as agreed by the Working Group (see A/CN.9/621, paras. 241 to 243). Reference in draft paragraph 1 to "pursuant to articles 27, [and] 29, subparagraphs 1 (a) and (b) [and 31, paragraph 1]" as they appeared in A/CN.9/WG.III/WP.81 has been replaced with the phrase "under this Convention" in order to meet a drafting suggestion made by the Working Group (see A/CN.9/621, para. 242 (a)).

⁶⁵ The reference in this provision to delay has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 180 (b), 183 and 184).

⁶⁶ Correction to the text to ensure that draft article 38 (1) is included in its entirety (see A/CN.9/621, paras. 245 to 246).

2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss⁶⁷ or damage⁶⁸ resulting from the inaccuracy of such information.

Article 33. Special rules on dangerous goods

When goods by their nature or character are,⁶⁹ or reasonably appear likely to become, a danger to persons, property or the environment:

(a) The shipper shall 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 performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss⁷⁰ or damage⁷¹ resulting from such failure to inform;⁷² and

(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public 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 loss⁷³ or damage⁷⁴ resulting from such failure.

Article 34. Assumption of shipper's rights and obligations by the documentary shipper

1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 58, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

⁶⁷ As in draft article 33 (a) and (b) below, the word "all" has been deleted from before the word "loss" as a drafting improvement, since it does not assist in the understanding of the provision, and could be mistakenly construed to include damages for delay on the part of the shipper, which are not intended to be covered in the draft convention.

⁶⁸ The reference in this provision to delay has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 180 (b), 183 and 184).

⁶⁹ The phrase "[or become]" has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 250, 251 and 253).

⁷⁰ As in draft article 32 (2) above and subparagraph (b) below, the word "all" has been deleted from before the word "loss" as a drafting improvement, since it does not assist in the understanding of the provision, and could be mistakenly construed to include damages for delay on the part of the shipper, which are not intended to be covered in the draft convention.

⁷¹ The reference in this provision to delay has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 180 (b), 183 and 184). In addition, the phrase "and expenses" has been deleted as redundant to improve drafting, and to avoid the possibility that the "damage" in this provision could be construed more broadly than elsewhere in the draft convention.

⁷² The phrase "[the carriage of such goods]" has been deleted and the phrase "such failure to inform" has been retained as agreed by the Working Group (see A/CN.9/621, paras. 252 and 253).

⁷³ As in draft articles 32 (2) and 33 (a) above, the word "all" has been deleted from before the word "loss" as a drafting improvement, since it does not assist in the understanding of the provision, and could be mistakenly construed to include damages for delay on the part of the shipper, which are not intended to be covered in the draft convention.

⁷⁴ The reference in this provision to delay has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 180 (b), 183 and 184).

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

Article 35. Liability of the shipper for other persons

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of the consignor or any other person,⁷⁵ including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations,⁷⁶ but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.⁷⁷

Article 36. Cessation of shipper's liability

A term in the contract of carriage according to which the liability of the shipper or the documentary shipper⁷⁸ will cease, wholly or partly, upon a certain event or after a certain time is void:⁷⁹

(a) With respect to any liability pursuant to this chapter of the shipper or a documentary shipper;⁸⁰ or

(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.⁸¹

CHAPTER 8. TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

Article 37. Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, practice or usage in the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party:

⁷⁵ Further to the Working Group's request to make the necessary drafting adjustments to draft articles 14 (2), 28 (2), 18 (3)(h) and 35 in order to render consistent the treatment of the shipper's responsibility for the acts of the consignee and the controlling party (see A/CN.9/621, para. 260), specific reference to the consignor has been added to this provision.

⁷⁶ The phrase "as if such acts or omissions were its own" has been deleted as redundant and in order to render the provision consistent with draft article 20 (3).

⁷⁷ The closing phrase of this provision "pursuant to this chapter" has been deleted as being inaccurate. Further, paragraph 2 of this provision as it appeared in A/CN.9/WG.III/WP.81 has been deleted as agreed by the Working Group (see A/CN.9/621, paras. 259 to 260).

⁷⁸ Correction to the text as it appeared in A/CN.9/WG.III/WP.81, given the defined term "documentary shipper" in draft article 1 (9).

⁷⁹ The phrase "not valid" has been adjusted to "void" in keeping with the suggestion made in the Working Group (see A/CN.9/621, paras. 262 to 263).

⁸⁰ Correction to the text as it appeared in A/CN.9/WG.III/WP.81, given the defined term "documentary shipper" in draft article 1 (9).

⁸¹ Given the decision of the Working Group to delete draft article 61 (see A/CN.9/642, paras. 116 and 118), the following paragraph has been deleted from draft article 35: "[c) To the extent that it conflicts with article 61, subparagraph (d)(iii).]".

(a) The consignor is entitled to obtain a non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record that evidences only the carrier's or performing party's receipt of the goods; and

(b) The shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option, an appropriate negotiable or non-negotiable transport document or, subject to article 8, subparagraph (a), a negotiable or non-negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage, or practice in the trade not to use one.

Article 38. Contract particulars

1. The contract particulars in the transport document or electronic transport record referred to in article 37 shall include the following information, as furnished by the shipper:

- (a) A description of the goods as appropriate for the transport;⁸²
- (b) The leading marks necessary for identification of the goods;
- (c) The number of packages or pieces, or the quantity of goods; and
- (d) The weight of the goods, if furnished by the shipper.

2. The contract particulars in the transport document or the electronic transport record referred to in article 37 shall also include:

- (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
- (b) The name and address of⁸³ the carrier;
- (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
- (d) If the transport document is negotiable,⁸⁴ the number of originals of the negotiable transport document, when more than one original is issued.

3. For the purposes of this article, the phrase "apparent order and condition of the goods" in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:

- (a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
- (b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or the electronic transport record.

⁸² The phrase "as appropriate for the transport" has been added as agreed by the Working Group (see A/CN.9/621, paras. 271 to 273 and 277).

⁸³ The phrase "a person identified as" has been deleted to be consistent with the approach taken in UCP 600, as agreed by the Working Group (see A/CN.9/621, paras. 276 and 277).

⁸⁴ The opening phrase "If the transport document is negotiable" has been added to achieve greater accuracy.

Article 39. Identity of the carrier

1. If a⁸⁵ carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.

2. If no person is identified in the contract particulars as the carrier as required pursuant to article 38, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.⁸⁶

Article 40. Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.

2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

Article 41. Deficiencies in the contract particulars

1. The absence of one or more of the contract particulars referred to in article 38, paragraphs 1 or 2, or the inaccuracy of one or more of those particulars, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or

(b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them from the consignor, the contract particulars are deemed to have stated that the goods were in

⁸⁵ Clarification suggested in the Working Group (see A/CN.9/621, para. 278).

⁸⁶ Text of the provision adjusted based on footnote 122 of A/CN.9/WG.III/WP.81 as agreed by the Working Group (see A/CN.9/621, paras. 287 and 288).

apparent good order and condition at the time the consignor delivered them to the carrier or a performing party.

Article 42. Qualifying the information relating to⁸⁷ the goods in the contract particulars

1. The carrier shall qualify the information referred to in article 38, paragraph 1 to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:⁸⁸

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is⁸⁹ false or misleading; or

(b) The carrier has reasonable grounds to⁹⁰ believe that a material statement in the transport document or electronic transport record is false or misleading.

2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 38, paragraph 1 in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.⁹¹

3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container, the carrier may qualify the information referred to in article 38, paragraph 1, if:

(a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier has reasonable grounds to believe⁹² the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

4. When the goods are delivered for carriage to the carrier or a performing party in a closed container, the carrier may qualify the information referred to in:⁹³

⁸⁷ The phrase “information relating to” has been substituted for the phrase “description of” as suggested in the Working Group (see A/CN.9/621, paras. 299 and 300).

⁸⁸ In order to improve the clarity of the drafting of this provision, it is suggested that draft paragraph 1 deal only with the mandatory qualification of information by the carrier, and that the non-mandatory portion of the provision as it appeared in A/CN.9/WG.III/WP.81 be dealt with separately in draft paragraph 2. In adjusting the drafting in this manner, there was no intention to change the meaning of the draft article.

⁸⁹ The word “materially” has been deleted as suggested in the Working Group (see A/CN.9/621, paras. 299 and 300).

⁹⁰ The phrase “has reasonable grounds to believe” has been inserted as suggested in the Working Group (see A/CN.9/621, paras. 299 and 300).

⁹¹ Draft paragraph 2 was formerly included in the chapeau of paragraph 1 of the provision as it appeared in A/CN.9/WG.III/WP.81. In order to improve the clarity of the drafting of paragraph 1, this non-mandatory portion of the provision as it appeared in A/CN.9/WG.III/WP.81 has been removed into a separate paragraph 2. In adjusting the drafting in this manner, there was no intention to change the meaning of the draft article.

⁹² The phrase “has reasonable grounds to believe” has been inserted as suggested in the Working Group (see A/CN.9/621, paras. 299 and 300).

⁹³ In order to improve the drafting and to make paragraph 4 consistent with paragraphs 1, 2 and 3,

- (a) Article 38, subparagraphs 1 (a), (b), or (c), if:
 - (i) Neither the carrier nor a performing party has in fact inspected the goods inside the container; or
 - (ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and
- (b) Article 38, subparagraph 1 (d), if:
 - (i) Neither the carrier nor a performing party weighed the container, and the shipper and the carrier had not agreed prior to the shipment that the container would be weighed and the weight would be included in the contract particulars; or
 - (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container.

*Article 43. Evidentiary effect of the contract particulars*⁹⁴

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 42:

- (a) A transport document or an electronic transport record that evidences receipt of the goods is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;
- (b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:
 - (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith, or
 - (ii) A non-negotiable transport document or a non-negotiable electronic transport record that [provides]⁹⁵ [indicates] that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith.
- (c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any⁹⁶ of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:

the phrase "qualify the information referred to in" has been substituted for the phrase "include a qualifying clause in the contract particulars with respect to: (a) The information referred to in ... (b) The information referred to in ..." as it appeared in A/CN.9/WG.III/WP.81.

⁹⁴ The text of draft article 43 is taken from the corrected text set out in paragraph 1 of A/CN.9/WG.III/WP.94, on which the Working Group agreed to base its consideration of the provision (see A/CN.9/642, paras. 9 and 14).

⁹⁵ The word "indicates" has been placed in square brackets, and the alternative "provides" has been added to the text in order to render it consistent with the choices the Working Group has decided to retain in draft article 48.

⁹⁶ As agreed by the Working Group, the phrase "acting in good faith in respect of" has been adjusted to "that in good faith has acted in reliance on any of" (see A/CN.9/642, paras. 12 and 14).

- (i) The contract particulars referred to in article 38, paragraph 1, when such contract particulars are furnished by the carrier;
- (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and
- (iii) The contract particulars referred to in article 38, paragraph 2.⁹⁷

Article 44. "Freight prepaid"

If the contract particulars contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

CHAPTER 9. DELIVERY OF THE GOODS

*Article 45. Obligation to accept delivery*⁹⁸

1. When the goods have arrived at their destination, the consignee that exercises its rights under⁹⁹ the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, practices and usages of the trade and the circumstances of the carriage, delivery could reasonably be expected.¹⁰⁰

⁹⁷ As noted in paragraph 1 of A/CN.9/WG.III/WP.94, the Secretariat has corrected the text of paragraph (c) as it appeared in A/CN.9/WG.III/WP.81. In particular, the reference to draft article 38, subparagraph 2 (a) in the first sentence has been deleted as incorrect, since subparagraph 2 of draft article 38 refers exclusively to information in the contract particulars which would be furnished by the carrier. Instead, subparagraph (c)(i) has been substituted, such that reference is now made to the contract particulars in draft article 38, paragraph 1, that are provided by the carrier. Subparagraph (c)(ii) repeats text that appeared in the previous version of the provision, and subparagraph (c)(iii) refers to the contract particulars in draft article 38, paragraph 2, all of which will be furnished by the carrier. The corrections to the text of subparagraph (c) are not intended to alter its meaning.

⁹⁸ The text of draft article 45 is taken from the adjusted text set out in paragraph 3 of A/CN.9/WG.III/WP.94, on which the Working Group agreed to base its consideration of the provision (see A/CN.9/642, paras. 15 and 23).

⁹⁹ The first alternative text set out in A/CN.9/WG.III/WP.81 was retained, but the phrase "any of" was deleted, as agreed by the Working Group (see A/CN.9/642, paras. 19 to 23).

¹⁰⁰ In considering how best to clarify the relationship between paragraphs 1 and 2 of former draft article 11 as it appeared in A/CN.9/WG.III/WP.81 (see A/CN.9/621, paras. 30 to 33), the Secretariat suggested that the optimum drafting approach was to delete paragraph 2 of former draft article 11, and to move the relevant text to the end of paragraph 1 of draft article 45, deleting the cross-reference to paragraph 2 of former draft article 11 in draft article 45 as it appeared in A/CN.9/WG.III/WP.81. As indicated in paragraph 3 of A/CN.9/WG.III/WP.94, that additional text would have been added to the end of paragraph one as follows: "In the absence of such agreement or of such customs, practices, or usages, the time and location of delivery are that of the unloading of the goods from the final means of transport in which they are carried under the contract of carriage." However, the Working Group decided instead to delete the phrase at the end of the first sentence, "that are in accordance with the customs, practices or usages of the trade", and insert the phrase "at which, having regard to the terms of the contract, the customs, practices and usages of the trade and the circumstances of the carriage, delivery could reasonably be expected", pending further consideration (see A/CN.9/642, paras. 16 to 18 and 23).

2. When the parties have made an agreement referred to in article 14, paragraph 2, that requires the consignee to unload the goods, the consignee shall do so properly and carefully.¹⁰¹

Article 46. Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Article 47. Delivery when no negotiable transport document or negotiable electronic transport record is issued

When no negotiable transport document or no negotiable electronic transport record has been issued:

(a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 45, paragraph 1. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier.

(b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address.

(c) If the name or the address of the consignee is not known to the carrier or if the consignee, after having received a notice of arrival, does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier shall so advise the controlling party, and the controlling party shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier shall so advise the shipper, and the shipper shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party or the shipper, the carrier shall so advise the documentary shipper, and the documentary shipper shall give instructions in respect of the delivery of the goods.¹⁰²

(d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper¹⁰³ pursuant to subparagraph (c) of this

¹⁰¹ As noted in paragraphs 2 and 3 of A/CN.9/WG.III/WP.94, in its consideration of how best to clarify the drafting of the text of paragraph 2 of draft article 28 (see A/CN.9/621, paras. 209 to 212), the Secretariat concluded that it would be best to move the obligation of unloading to a separate location in the text, as an agreement to unload the goods pursuant to paragraph 2 of draft article 14 was unlikely to be performed by the shipper, and should thus not appear in the chapter on shipper's obligations. This obligation was thus deleted from paragraph 2 of draft article 28, clarified as the obligation of the consignee, and moved to become a new paragraph 2 of draft article 45 with respect to the obligation of the consignee to accept delivery.

¹⁰² In order to clarify the drafting of the provision, the necessary steps in the procedure were set out in greater detail, and the final two sentences of the text as it appeared in A/CN.9/WG.III/WP.81 ("In such event, the controlling party or shipper shall give instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to locate the controlling party or the shipper, the documentary shipper is deemed to be the shipper for purposes of this paragraph.") were deleted.

¹⁰³ Reference to the "documentary shipper" has been added to correct the text.

article is discharged from its obligations to deliver the goods under the contract of carriage.

*Article 48. Delivery when a non-negotiable transport document that requires surrender is issued*¹⁰⁴

When a non-negotiable transport document has been issued that [provides] [indicates]¹⁰⁵ that it shall be surrendered in order to obtain delivery of the goods:

(a) The carrier shall deliver the goods at the time and location referred to in article 45, paragraph 1, to the consignee upon the consignee properly identifying itself¹⁰⁶ on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity.

(b) If the consignee, after having received a notice of arrival,¹⁰⁷ does not claim delivery of the goods from the carrier after their arrival at the place of destination or the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, the carrier shall so advise the shipper, and the shipper shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier shall so advise the documentary shipper, and the documentary shipper shall give instructions in respect of the delivery of the goods.¹⁰⁸

(c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper¹⁰⁹ pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

¹⁰⁴ The square brackets around draft article 48 have been deleted and the text retained, as agreed by the Working Group (see A/CN.9/642, paras. 34 to 35).

¹⁰⁵ The alternatives “[provides]” and “[indicates]” have been retained and the alternative “[specifies]” has been deleted, as agreed by the Working Group (see A/CN.9/642, paras. 31 to 33 and 35).

¹⁰⁶ The Secretariat has adjusted the text throughout the draft convention to replace the phrase “upon proper identification” with the phrase “upon the consignee properly identifying itself” to avoid inconsistencies in the different language versions of the text.

¹⁰⁷ The phrase “after having received a notice of arrival” has been inserted, as agreed by the Working Group (see A/CN.9/642, paras. 34 to 35).

¹⁰⁸ In order to clarify the drafting of the provision, and to be consistent with draft articles 47 (c) and 49 (b), the necessary steps in the procedure were set out in greater detail, and the final phrase of the text as it appeared in A/CN.9/WG.III/WP.81 (“the documentary shipper is deemed to be the shipper for the purpose of this paragraph”) was deleted.

¹⁰⁹ Reference to the “documentary shipper” has been added to correct the text.

[Article 49. Delivery when the electronic equivalent of a non-negotiable transport document that requires surrender is issued]¹¹⁰

When the electronic equivalent of a non-negotiable transport document has been issued that [provides] [indicates]¹¹¹ that it shall be surrendered in order to obtain delivery of the goods:

[(a) The carrier shall deliver the goods at the time and location referred to in article 45, paragraph 1 to the person named in the electronic record as the consignee and that has exclusive control of the electronic record. Upon such delivery the electronic record ceases to have any effect or validity. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier, and shall refuse delivery if the person claiming to be the consignee is unable to demonstrate in accordance with the procedures referred to in article 9, paragraph 1,¹¹² that it has exclusive control of the electronic record.]¹¹³

(b) If the consignee, after having received a notice of arrival,¹¹⁴ does not claim delivery of the goods from the carrier after their arrival at the place of destination or the carrier refuses delivery in accordance with subparagraph (a) of this article, the carrier shall so advise the shipper, and the shipper shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier shall so advise the documentary shipper, and the documentary shipper shall give instructions in respect of the delivery of the goods.¹¹⁵

(c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper¹¹⁶ pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the person to which the goods are delivered is able to demonstrate in accordance with the procedures referred to in article 9, paragraph 1,¹¹⁷ that it has exclusive control of the electronic record.]

¹¹⁰ Reference to “non-negotiable electronic transport record that requires surrender” has been corrected to “the electronic equivalent of a non-negotiable transport document that requires surrender” both here and throughout the text (see A/CN.9/642, para. 37).

¹¹¹ The alternatives “[provides]” and “[indicates]” have been retained and the alternative “[specifies]” has been deleted for the purposes of consistency in light of the agreement of the Working Group regarding draft article 48 (see A/CN.9/642, paras. 31 to 33 and 35).

¹¹² “Paragraph 1” has been added to make the reference more precise.

¹¹³ As agreed by the Working Group, subparagraph (a) has been placed in square brackets pending further consideration (see A/CN.9/642, paras. 38 and 41).

¹¹⁴ The phrase “after having received a notice of arrival” has been inserted for the purposes of consistency in light of the agreement by the Working Group to include it in draft article 48 (b) (see A/CN.9/642, paras. 34 to 35 and 40 to 41).

¹¹⁵ In order to clarify the drafting of the provision, and to be consistent with draft articles 47 (c) and 48 (b), the necessary steps in the procedure were set out in greater detail, and the final phrase of the text as it appeared in A/CN.9/WG.III/WP.81 (“the documentary shipper is deemed to be the shipper for the purpose of this paragraph”) was deleted.

¹¹⁶ Reference to the “documentary shipper” has been added to correct the text.

¹¹⁷ “Paragraph 1” has been added to make the reference more precise.

*Article 50. Delivery when a negotiable transport document or negotiable electronic transport record is issued*¹¹⁸

When a negotiable transport document or a negotiable electronic transport record has been issued:

(a) Without prejudice to article 45, the holder of the negotiable transport document or 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 shall deliver the goods at the time and location referred to in article 45, paragraph 1,¹¹⁹ to the holder:¹²⁰

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 11 (a)(i), upon the holder properly identifying itself;¹²¹ or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record.

(b). The carrier shall refuse delivery if the conditions of subparagraph (a)(i) or (a)(ii) are not met.

(c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document,¹²² the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

(d)¹²³ If the holder, after having received a notice of arrival,¹²⁴ does not claim delivery of the goods at the time or within the time referred to in article 45,

¹¹⁸ Corrections and slight adjustments have been made to the text of subparagraphs 1 (a), (d) and (h) as they appeared in A/CN.9/WG.III/WP.81, as described in paragraphs 4 to 7 of A/CN.9/WG.III/WP.94, on which the Working Group agreed to base its consideration of the provision (see A/CN.9/642, paras. 42).

¹¹⁹ Correction of the reference to paragraph 2 of draft article 11 instead to draft article 45, paragraph 1, to reflect the revised text.

¹²⁰ The phrase "as appropriate" has been deleted as unnecessary.

¹²¹ The Secretariat has adjusted the text throughout the draft convention to replace the phrase "upon proper identification" with the phrase "upon the holder properly identifying itself" to avoid inconsistencies in the different language versions of the text.

¹²² The phrase "and the number of originals is stated in that document" has been inserted into the text as agreed by the Working Group (see A/CN.9/642, paras. 45 to 51), having slightly adjusted the drafting prior to insertion. In addition, the Working Group agreed (see A/CN.9/642, paras. 45 to 51) to reverse the decision taken at its nineteenth session (see A/CN.9/621, paras. 296 and 297) to include a paragraph in draft article 41 (deficiencies in the contract particulars) regarding the consequences of a failure to state the number of original bills of lading, which is required in the contract particulars pursuant to draft article 38 (2)(d).

¹²³ A proposal was made at the twentieth session of the Working Group to limit the operation of subparagraphs 50 (d), (e), (g) and (h) to those situations where a negotiable transport document or electronic transport record had been issued that stated on the document or the record itself that the goods to which it related could be delivered without presentation of the negotiable transport document or electronic transport record. A mechanism proposed for the implementation of that suggestion was that a phrase could be inserted as a chapeau prior to

paragraph 1,¹²⁵ from the carrier after their arrival at the place of destination, the carrier shall so advise the controlling party, and the controlling party shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier shall so advise the shipper, and the shipper shall give instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party or the shipper, the carrier shall so advise the documentary shipper, and the documentary shipper shall give instructions in respect of the delivery of the goods.¹²⁶

(e) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper¹²⁷ in accordance with subparagraph (d) of this article 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 9, paragraph 1,¹²⁸ that it is the holder.

(f) The person giving instructions under subparagraph (d) of this article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph (h) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request.¹²⁹

(g) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph (e) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods.

subparagraphs 50 (d), (e), (g) and (h) along the following lines: “If a negotiable transport document or electronic transport record that states on its face that the goods may be delivered without presentation of the document or electronic record, the following rules apply:” (see A/CN.9/642, paras. 63 to 64 and 67).

¹²⁴ The phrase “after having received a notice of arrival” has been inserted for the purposes of consistency in light of the agreement by the Working Group to include it in draft articles 48 (b) and 49 (b) (see A/CN.9/642, paras. 34 to 35 and 40 to 41).

¹²⁵ The phrase “before expiration of the time referred to in article 45, paragraph 1” has been added to clarify the text, for example, in the cases where the time of delivery is a time period rather than a particular date. Draft article 45, para. 1 has been adjusted to include a similar clarification.

¹²⁶ As in the case of draft article 47 (c), in order to clarify the drafting of the provision, the necessary steps in the procedure were set out in greater detail, and the final two sentences of the text as it appeared in A/CN.9/WG.III/WP.81 (“In such event, the controlling party or shipper shall give instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to locate the controlling party or the shipper, the documentary shipper is deemed to be the shipper for purposes of this paragraph.”) were deleted.

¹²⁷ Reference to the “documentary shipper” has been added to correct the text.

¹²⁸ “Paragraph 1” has been added to make the reference more precise.

¹²⁹ As agreed by the Working Group, a new subparagraph (f) has been added to draft article 50 setting out the right of the carrier to take recourse action against the controlling party or the shipper for losses the carrier incurred resulting from carrying out instructions given by the controlling party or the shipper, coupled with an obligation on the consignee to establish reasonable security with the carrier (see A/CN.9/642, paras. 58 to 62 and 67).

(h) Notwithstanding subparagraphs (e) and (g) of this article, a holder that becomes a holder after such delivery, and who¹³⁰ did not have and¹³¹ could not reasonably have had 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. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.¹³²

*Article 51. Goods remaining undelivered*¹³³

1. For the purposes of this article, goods shall be deemed to have remained undelivered only¹³⁴ if, after their arrival at the place of destination:

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 45, paragraph 1;

(b) The controlling party, the shipper or the documentary shipper¹³⁵ cannot be found or does not give the carrier adequate instructions pursuant to articles 47, 48, 49 and 50;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 46,¹³⁶ 47, 48, 49 and 50;

(d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(e) The goods are otherwise undeliverable by the carrier.

2. Without prejudice¹³⁷ to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(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, including by moving the goods or causing them to be destroyed; and

¹³⁰ Suggested clarification of the text through the addition of the phrase “becomes a holder after such delivery and who”.

¹³¹ Correction of the text, replacing “or” with “and”.

¹³² The second sentence in this subparagraph has been inserted as agreed by the Working Group (see A/CN.9/642, paras. 58 to 62 and 67).

¹³³ As agreed by the Working Group the order of paragraphs 1 and 2 has been reversed from the order in which they appeared in A/CN.9/WG.III/WP.81 (see A/CN.9/642, paras. 73 and 75).

¹³⁴ The word “undeliverable” has been corrected to “undelivered” (see A/CN.9/642, paras. 74 and 75), and the word “only” has been added for greater clarity.

¹³⁵ Reference to the “documentary shipper” has been added to correct the text.

¹³⁶ The text was corrected by adding a reference to draft article 46, pursuant to which the carrier is entitled to refuse delivery.

¹³⁷ The phrase “Unless otherwise agreed and” has been deleted from the opening phrase of this paragraph as agreed by the Working Group (see A/CN.9/642, paras. 72 and 75).

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

3. The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article¹³⁸ to the person stated in the contract particulars as the person if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

4. If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they¹³⁹ remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

Article 52. Retention of goods

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

CHAPTER 10. RIGHTS OF THE CONTROLLING PARTY

Article 53. Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:

(a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

(c) The right to replace the consignee by any other person including the controlling party.

¹³⁸ As agreed by the Working Group, the notice requirement in this provision has been clarified by substituting the phrase “reasonable notice of the intended action under paragraph 1 of this article” for the phrase “reasonable advance notice of arrival of the goods at the place of destination” (see A/CN.9/642, paras. 78 and 81).

¹³⁹ It is suggested that, in order to clarify that the carrier remains liable for loss of or damage to the goods that occurred prior to them remaining undelivered, the phrase “loss of or damage to goods that occurs during the time that they remain undelivered” should be substituted for the phrase “loss of or damage to goods that remain undelivered.”

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.¹⁴⁰

Article 54. Identity of the controlling party and transfer of the right of control

1. When no negotiable transport document or no negotiable electronic transport record is issued:

(a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(c) The controlling party shall properly identify itself¹⁴¹ when it exercises the right of control.

2. When a non-negotiable transport document or a non-negotiable electronic transport record has been issued that [provides] [indicates]¹⁴² that it shall be surrendered in order to obtain delivery of the goods:

(a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document or the electronic transport record by transferring the document to that person without endorsement, or by transferring the electronic transport record to it in accordance with the procedures referred to in article 9, paragraph 1.¹⁴³ If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and

(b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself,¹⁴⁴ or, in the case of an electronic transport record, shall demonstrate in accordance with the procedures referred to in article 9, paragraph 1,¹⁴⁵ that it has exclusive control of the electronic transport record. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

3. When a negotiable transport document is issued:

¹⁴⁰ Following the Working Group's instruction to consider whether draft article 54 (5) could be deleted (see A/CN.9/642, paras. 93 to 94 and 96), the Secretariat suggests that draft article 54 (5) could be deleted provided that the phrase "and ceases when that period expires" is added here to make it clear when the right of control ceases.

¹⁴¹ The Secretariat has adjusted the text throughout the draft convention to replace the phrase "produce proper identification" with the phrase "properly identify itself" to avoid inconsistencies in the different language versions of the text.

¹⁴² The alternatives "[provides]" and "[indicates]" have been retained and the alternative "[specifies]" has been deleted for the purposes of consistency in light of the agreement of the Working Group regarding draft article 48 (see A/CN.9/642, paras. 31 to 33 and 35).

¹⁴³ "Paragraph 1" has been added to make the reference more precise.

¹⁴⁴ The Secretariat has adjusted the text throughout the draft convention to replace the phrase "produce proper identification" with the phrase "properly identify itself" to avoid inconsistencies in the different language versions of the text.

¹⁴⁵ "Paragraph 1" has been added to make the reference more precise.

(a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 60. If more than one original of that document was issued, all originals shall be transferred to that person¹⁴⁶ in order to effect a transfer of the right of control; and

(c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 11 (a)(i), the holder shall properly identify itself.¹⁴⁷ If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.¹⁴⁸

4. When a negotiable electronic transport record is issued:

(a) The holder is the controlling party;

(b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1;¹⁴⁹

(c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1,¹⁵⁰ that it is the holder.¹⁵¹

Article 55. Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 53 if:

(a) The person giving such instructions is entitled to exercise the right of control;

(b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

¹⁴⁶ The phrase "to that person" has been added for greater clarity.

¹⁴⁷ The Secretariat has adjusted the text throughout the draft convention to replace the phrase "produce proper identification" with the phrase "properly identify itself" to avoid inconsistencies in the different language versions of the text.

¹⁴⁸ The Secretariat reviewed the text of subparagraphs 3 (b) and (c) in light of subparagraph (c) of draft article 50, as requested by the Working Group (see A/CN.9/642, paras. 92 and 96), but decided against aligning the provisions. It was thought that aligning those provisions would allow the carrier to claim discharge, and that the preferable approach would be to leave the issue to national law.

¹⁴⁹ "Paragraph 1" has been added to make the reference more precise.

¹⁵⁰ "Paragraph 1" has been added to make the reference more precise.

¹⁵¹ Following the Working Group's instruction to consider whether draft article 53 (5) as it appeared in A/CN.9/WG.III/WP.81 could be deleted (see A/CN.9/642, paras. 93 to 94 and 96), the Secretariat suggests that draft article 53 (5) could be deleted, as has been done, provided that the phrase "and ceases when that period expires" is added to draft article 53 (2) to make it clear when the right of control ceases. Further, draft article 53 (6) as it appeared in A/CN.9/WG.III/WP.81 has been deleted as agreed by the Working Group (see A/CN.9/642, paras. 95 and 122 to 124).

(c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

2. In any event, the controlling party shall reimburse the carrier any reasonable¹⁵² additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently¹⁵³ executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to¹⁵⁴ other goods being carried.

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods or for delay in delivery¹⁵⁵ resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 18 to 24, and the amount of the compensation payable by the carrier shall be subject to articles 62 to 64.

Article 56. Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 53, subparagraph 1 (b), are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods.

Article 57. Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 53, subparagraphs 1 (b) and (c).

2. Variations to the contract of carriage, including those referred to in article 53, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender,¹⁵⁶ or incorporated in a negotiable electronic transport record, or, upon the request¹⁵⁷ of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record.¹⁵⁸ If so stated or incorporated, such variations shall be signed in accordance with article 40.

¹⁵² The word "reasonable" has been added as agreed by the Working Group (see A/CN.9/642, paras. 99 to 101 and 103).

¹⁵³ The word "diligently" has been added as agreed by the Working Group (see A/CN.9/642, paras. 97 and 103).

¹⁵⁴ The phrase "[or for delay in delivery of]" has been deleted as agreed by the Working Group (see A/CN.9/642, paras. 98 to 101 and 103).

¹⁵⁵ The phrase "[or for delay in delivery of]" has been retained and the square brackets around it have been deleted as agreed by the Working Group (see A/CN.9/642, paras. 102 to 103).

¹⁵⁶ The phrase "or in a non-negotiable transport document that requires surrender" has been added as agreed by the Working Group (see A/CN.9/642, paras. 106 to 107).

¹⁵⁷ The phrase "upon the request" has been added and the phrase "at the option" deleted, as agreed by the Working Group (see A/CN.9/642, paras. 105 and 107).

¹⁵⁸ If the electronic equivalent of a non-negotiable transport document that requires surrender in draft article 49 is retained, reference to it should be included here should the Working Group

3. Variations to the contract of carriage made pursuant to this article shall not affect the parties' rights and obligations as they exist prior to the date on which the variations to the contract of carriage are signed in accordance with article 40.¹⁵⁹

*Article 58. Providing additional information, instructions
or documents to carrier*

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier, that the carrier may reasonably need to perform its obligations under the contract of carriage.¹⁶⁰

2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions, or documents to the carrier, the shipper shall do so. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall do so.¹⁶¹

Article 59. Variation by agreement

The parties to the contract of carriage may vary the effect of articles 53, subparagraphs 1 (b) and (c), 53, paragraph 2¹⁶² and 55. The parties may also restrict or exclude the transferability of the right of control referred to in article 54, subparagraph 1 (b).

decide that they will constitute conclusive evidence.

¹⁵⁹ This subparagraph has been slightly adjusted to avoid inconsistencies in the different language versions of the text. However, the Working Group may wish to delete this subparagraph altogether so as to avoid its difficult construction, and since it may be superfluous, as most legal systems would enforce this rule regardless of whether it is in the draft convention.

¹⁶⁰ As requested by the Working Group, the text of draft article 58 has been aligned with the shipper's obligation to provide information, instructions and documents pursuant to draft article 30, bearing in mind the different contexts of the two provisions (see A/CN.9/642, paras. 109 to 113). As part of the alignment, the draft article has been split into two paragraphs.

¹⁶¹ The phrase "documentary shipper" has been deleted from the final phrase of the provision as it appeared in A/CN.9/WG.III/WP.81 and instead moved to a new final sentence in order to improve clarity regarding the order in which the carrier should proceed when seeking information.

¹⁶² Given the deletion of draft article 53 (5) as it appeared in A/CN.9/WG.III/WP.81, and the inclusion of a phrase denoting the expiration of the right of control in draft article 53 (2), the reference in this provision has been changed from "article 53, paragraph 5" to "article 53, paragraph 2". While reference to draft article 53 (2) makes the reference in draft article 59 slightly broader than when it referred to draft article 53 (5), that adjustment is not thought to be problematic.

CHAPTER 11. TRANSFER OF RIGHTS¹⁶³*Article 60. When a negotiable transport document or negotiable electronic transport record is issued*

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:¹⁶⁴

(a) Duly endorsed either to such other person or in blank, if an order document; or

(b) Without endorsement, if: (i) A bearer document or a blank endorsed document; or (ii) A document made out to the order of a named person and the transfer is between the first holder and the named person.

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.¹⁶⁵

Article 61. Liability of holder

1. Without prejudice to article 58, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

[2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.]¹⁶⁶

3. For the purpose of paragraph[s] 1 [and 2] of this article and article 45,¹⁶⁷ a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

¹⁶³ The Working Group agreed to retain in the text draft articles 60 and 61, and to delete former draft article 61 from chapter 12 as it appeared in A/CN.9/WG.III/WP.81 (see A/CN.9/642, paras. 115 to 118).

¹⁶⁴ For ease of translation and for drafting purposes, the order of the two clauses in each of subparagraphs has been reversed from the order set out in A/CN.9/WG.III/WP.81. Further, subparagraphs (b) and (c) have been combined into one subparagraph for the purposes of improved drafting clarity.

¹⁶⁵ "Paragraph 1" has been added to make the reference more precise.

¹⁶⁶ As agreed by the Working Group, paragraph 2 has been placed in square brackets to indicate the divided views on it, and the first bracketed alternative in the text as it appeared in A/CN.9/WG.III/WP.81 has been retained and the brackets around it deleted, while the second alternative text has been deleted (see A/CN.9/642, paras. 125 to 129).

¹⁶⁷ The square brackets around the phrase "and article 45" have been deleted and the text retained, as agreed by the Working Group (see A/CN.9/642, paras. 130 to 131). Further, the text of the draft convention was examined to consider whether the opening phrase "for the purposes of paragraphs 1 and 2 of this article and article 45" could be deleted, but it is suggested that the references are important to delimit the exercise of the right referred to in draft article 45.

- (b) It transfers its rights pursuant to article 60.¹⁶⁸

CHAPTER 12. LIMITS OF LIABILITY

Article 62. Limits of liability

1. Subject to articles 63 and 64, paragraph 1, the carrier's liability for breaches of its obligations under this Convention¹⁶⁹ is limited to [835]¹⁷⁰ units of account per package or other shipping unit, or [2.5]¹⁷¹ units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

¹⁶⁸ Draft article 61 as it appeared in A/CN.9/WG.III/WP.81 has been deleted, as agreed by the Working Group (see A/CN.9/642, paras. 118 and 132).

¹⁶⁹ The Working Group requested the Secretariat to review the drafting history of paragraph 1 (see A/CN.9/642, paras. 165 and 166). In addition to the following note, the Working Group may wish to refer to a discussion of this issue in A/CN.9/WG.III/WP.72 (see paras. 14 to 15). In the original text of the draft convention, A/CN.9/WG.III/WP.21, the phrase "in connection with the goods" had been adopted in the text from article 4 (5) of the Hague and Hague-Visby Rules. As a result of a request by the Working Group at its thirteenth session to examine the use of the phrase "in connection with the goods" throughout the draft convention (see A/CN.9/552, paras. 41 to 43), in A/CN.9/WG.III/WP.56, the phrase "for loss of or damage to [or in connection with] the goods" was deleted throughout the text of the draft convention and the phrase "for breaches of its obligations under this Convention" was added in its stead, with appropriate footnotes. The rationale for that change was that the phrase deleted had caused considerable uncertainty and a lack of uniformity in interpretation following its use in the Hague and Hague-Visby Rules, particularly concerning whether or not it had been intended to include cases of misdelivery and misinformation regarding the goods. Under the Hague and Hague-Visby Rules, it was generally thought that misdelivery was intended to be covered, but there was uncertainty regarding whether misinformation was intended to be covered. It was thought that the revised text was more explicit in terms of including in the limitation on liability all breaches of the carrier's obligations under the draft convention, including both misdelivery and misinformation regarding the goods. Therefore, the clear inclusion of misdelivery of the goods in the limitation on liability is not a novelty, but the clear inclusion of misinformation regarding the goods represents a change from the original text as it appeared in A/CN.9/WG.III/WP.21 and A/CN.9/WG.III/WP.32. Further, as a result of the change to the text in A/CN.9/WG.III/WP.56, a consequential change to make the text more accurate was made in A/CN.9/WG.III/WP.81 to the phrase "the goods lost or damaged", so that it read "the goods that are the subject of the claim or dispute".

¹⁷⁰ At its twentieth session, the Working Group decided, as part of its provisional decision on the level of the limitation of the carrier's liability, to fill the first set of square brackets relating to the per package limitation with the number "835", as contained in the Hamburg Rules, pending further consideration of the compromise proposal on the level of the limitation (see A/CN.9/642, paras. 163 and 166).

¹⁷¹ At its twentieth session, the Working Group decided, as part of its provisional decision on the level of the limitation of the carrier's liability, to fill the second set of square brackets relating to the per kilogram limitation with the number "2.5", as contained in the Hamburg Rules, pending further consideration of the compromise proposal on the level of the limitation (see A/CN.9/642, paras. 163 and 166).

[Variant A of paragraph 2]¹⁷²

[2. Notwithstanding paragraph 1 of this article, if (a) the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused] during the sea carriage or during the carriage preceding or subsequent to the sea carriage and (b) provisions of an international convention [or national law] would be applicable pursuant to article 27 if the loss, damage, [or delay] occurred during the carriage preceding or subsequent to the sea carriage, the carrier's liability for such loss, damage, [or delay] is limited pursuant to the limitation provisions of any international convention [or national law] that would have applied if the place where the damage occurred had been established, or pursuant to the limitation provisions of this Convention, whichever would result in the higher limitation amount.]

Variant B of paragraph 2

[2. Notwithstanding paragraph 1 of this article, if the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused] during the sea carriage or during the carriage preceding or subsequent to the sea carriage, the highest limit of liability in the international [and national] mandatory provisions applicable to the different parts of the transport applies.]]¹⁷³

3. When goods are carried in or on a container, pallet, or similar article of transport used to consolidate goods, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport are deemed one shipping unit.

4. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 63. Limits of liability for loss caused by delay

Subject to article 64, paragraph 2, compensation for loss of or damage to the goods caused by delay shall be calculated in accordance with article 23 and¹⁷⁴

¹⁷² If draft article 62 (2) is retained, its text should be adjusted based on the final text of draft article 27. Variant A is intended as a clarification of the text of Variant B, and is not intended to change the suggested approach.

¹⁷³ At its twentieth session, the Working Group decided, as part of its provisional decision on the level of the limitation of the carrier's liability, to place draft article 62 (2) in square brackets pending further consideration of its deletion as part of the compromise proposal on the level of the limitation (see A/CN.9/642, paras. 163 and 166).

¹⁷⁴ The phrase "[, unless otherwise agreed,]" as it appeared in A/CN.9/WG.III/WP.81 was deleted as

liability for economic loss caused by delay is limited to an amount equivalent to [two and one-half¹⁷⁵ times] the freight payable on the goods delayed. The total amount payable pursuant to this article and article 62, paragraph 1 may not exceed the limit that would be established pursuant to article 62, paragraph 1 in respect of the total loss of the goods concerned.

Article 64. Loss of the benefit of limitation of liability

1. Neither the carrier nor any of the persons referred to in article 19 is entitled to the benefit of the limitation of liability as provided in article 62,¹⁷⁶ or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in article 19 is entitled to the benefit of the limitation of liability as provided in article 63 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

CHAPTER 13. TIME FOR SUIT

*Article 65. Period of time for suit*¹⁷⁷

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted¹⁷⁸ after the expiration of a period of two years.

2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods, or, in cases in which no goods have been delivered, or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

agreed by the Working Group as part of the compromise regarding liability for delay in delivery of the goods (see A/CN.9/621, paras. 180 (b) and 183 to 184).

¹⁷⁵ At its twentieth session, the Working Group decided, as part of its provisional decision on the level of the limitation of the carrier's liability, to replace the word "one" with the words "two and one-half" in square brackets in draft article 63 pending further consideration of the compromise proposal on the level of the limitation (see A/CN.9/642, paras. 163 and 166).

¹⁷⁶ As discussed at paras. 55 and 62 of A/CN.9/552, the suggestion to add a reference to art. 23 might need to be further discussed in the context of chapter 16.

¹⁷⁷ The title of the article has been changed to "Period of time for suit" from "Limitation of actions" so as to avoid concerns regarding the use of the phrase "limitation period", as discussed in the Working Group (see A/CN.9/642, paras. 169 to 171).

¹⁷⁸ The word "instituted" has been substituted for the word "commenced" as being more accurate and more easily capable of appropriate translation.

*Article 66. Extension of time for suit*¹⁷⁹

The period¹⁸⁰ provided in article 65 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

Article 67. Action for indemnity

An action for indemnity by a person held liable¹⁸¹ may be instituted after the expiration of the period provided¹⁸² in article 65 if the indemnity action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

Article 68. Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 39, paragraph 2, may be instituted after the expiration of the period provided¹⁸³ in article 65 if the action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 39, paragraph 2.¹⁸⁴

CHAPTER 14. JURISDICTION

Article 69. Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 70 or 75, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

¹⁷⁹ The title of the article has been changed to “Extension of time for suit” from “Extension of limitation period” so as to avoid concerns regarding the use of the phrase “limitation period”, as discussed in the Working Group (see A/CN.9/642, paras. 169 to 171).

¹⁸⁰ The word “limitation” has been deleted before the word “period” so agreed by the Working Group (see A/CN.9/642, paras. 169 to 171).

¹⁸¹ The phrase “under this Convention” has been deleted from its former placement here since it was thought to have been improperly placed, and, in any event, unnecessary (see A/CN.9/642, para. 176).

¹⁸² The word “provided” has been substituted for the phrase “referred to” for improved consistency.

¹⁸³ The word “provided” has been substituted for the phrase “referred to” for improved consistency.

¹⁸⁴ The Secretariat was requested by the Working Group to review the interplay between draft articles 68 and 39 (2) with a view to determining whether the reference to the bareboat charterer could be deleted. It is suggested that the reference is necessary, since the registered owner or the bareboat charterer could rebut the presumption at two different times (see A/CN.9/642, paras. 178 and 179).

(a) In a competent court within the jurisdiction of which is situated one of the following places:

- (i) The domicile of the carrier;
- (ii) The place of receipt agreed in the contract of carriage;
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

Article 70. Choice of court agreements

1. The jurisdiction of a court chosen in accordance with article 69, paragraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated; or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and

(b) Clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State.

2. A person that is not a party to the volume contract is only bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article if:

(a) The court is in one of the places designated in article 69, paragraph (a);

(b) That agreement is contained in the contract particulars of a transport document or electronic transport record that evidences the contract of carriage for the goods in respect of which the claim arises;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) The law of the court seized¹⁸⁵ recognizes that that person may be bound by the exclusive choice of court agreement.¹⁸⁶

Article 71. Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the maritime performing party; or

¹⁸⁵ As agreed by the Working Group, the first variant of the series of alternatives appearing in A/CN.9/WG.III/WP.81 has been retained and the square brackets around it deleted, and the other alternatives have been deleted (see A/CN.9/642, paras. 185 to 190 and 192).

¹⁸⁶ Paragraphs 3 and 4 of this draft article as it appeared in A/CN.9/WG.III/WP.81 have been deleted, as agreed by the Working Group (see A/CN.9/642, paras. 191 to 192 and 205).

(b) The port where the goods are received¹⁸⁷ by the maritime performing party or the port where the goods are delivered by the maritime performing party, or the port in which the maritime performing party performs its activities with respect to the goods.

Article 72. No additional bases of jurisdiction

Subject to articles 74 and 75, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to articles 69 or 71.¹⁸⁸

Article 73. Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

- (a) The requirements of this chapter are fulfilled; or
- (b) An international convention that applies in that State so provides.

Article 74. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding¹⁸⁹ pursuant to articles 70 or 75,¹⁹⁰ if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 69 and article 71. If there is no such court, such action may be instituted in a court designated pursuant to article 71, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is binding¹⁹¹ pursuant to articles 70 or 75,¹⁹² a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that

¹⁸⁷ The word “initially” has been deleted from before the word “received” and the word “finally” has been deleted from before the word “delivered” because, while the terms were intended to clarify which maritime performing parties were covered in the case of trans-shipment (see A/CN.9/594, para. 142), the words “initially” and “finally” were, in fact, confusing, and could be misread to mean only the initial receipt of the goods under the contract of carriage and their initial delivery. A similar deletion of the terms has been recommended in draft article 20 (1).

¹⁸⁸ Since the full, rather than the partial, “opt-in” approach to draft article 77 was agreed upon by the Working Group, the phrase in square brackets “[or pursuant to rules applicable due to the operation of article 77, paragraph 2]” was unnecessary and could be deleted (see A/CN.9/642, paras. 194 and 205).

¹⁸⁹ The word “binding” has been substituted for the word “valid”, since it was regarded as more appropriate.

¹⁹⁰ Since the full, rather than the partial, “opt-in” approach to draft article 77 was agreed upon by the Working Group, the phrase in square brackets “[or pursuant to rules applicable due to the operation of article 77, paragraph 2]” was unnecessary and could be deleted (see A/CN.9/642, paras. 196 and 205).

¹⁹¹ The word “binding” has been substituted for the word “valid”, since it was regarded as more appropriate.

¹⁹² Since the full, rather than the partial, “opt-in” approach to draft article 77 was agreed upon by the Working Group, the phrase in square brackets “[or pursuant to rules applicable due to the operation of article 77, paragraph 2]” was unnecessary and could be deleted (see A/CN.9/642, paras. 196 and 205).

would deprive a person of its right to select the forum pursuant to article 69 or 71 shall at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 69 or 71, whichever is applicable, where the action may be recommenced.

Article 75. Agreement after dispute has arisen and jurisdiction when the defendant has entered an appearance

1. After the dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.
2. A competent¹⁹³ court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 76. Recognition and enforcement

1. A decision made by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of that Contracting State when both States have made a declaration in accordance with article 77.
2. A court may refuse recognition and enforcement:
 - (a) Based on the grounds for the refusal of recognition and enforcement available pursuant to its law; or
 - (b) If the action in which the decision was rendered would have been subject to withdrawal pursuant to article 74, paragraph 2, had the court that rendered the decision applied the rules on exclusive choice of court agreements of the State in which recognition and enforcement is sought.¹⁹⁴
3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgments as between member states of the regional economic integration organization, whether adopted before or after this Convention.

Article 77. Application of chapter 14

The provisions of this chapter shall bind only Contracting States that declare¹⁹⁵ in accordance with article 94, that they will be bound by them.

¹⁹³ The phrase “in a Contracting State” has been deleted since it already appears in the definition of “competent court” (see A/CN.9/642, paras. 197 to 198).

¹⁹⁴ Since the full, rather than the partial, “opt-in” approach to draft article 77 was agreed upon by the Working Group, the phrase in square brackets “[or pursuant to rules applicable due to the operation of article 77, paragraph 2]” was unnecessary and could be deleted (see A/CN.9/642, paras. 200 to 201 and 205).

¹⁹⁵ As agreed by the Working Group, Variant B of the text as it appeared in A/CN.9/WG.III/WP.81 has been retained, and Variants A and C deleted, thus preserving the full “opt-in” approach (see A/CN.9/642, paras. 202 to 203 and 205). Further, the Working Group decided that such a declaration could be made at any time, and, as a drafting improvement, reference to the time of the declaration has been moved to draft article 94 (see A/CN.9/642, paras. 203, 205 and 260 to 261).

CHAPTER 15. ARBITRATION

Article 78. Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.

2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:

- (a) Any place designated for that purpose in the arbitration agreement; or
- (b) Any other place situated in a State where any of the following places is located:
 - (i) The domicile of the carrier;
 - (ii) The place of receipt agreed in the contract of carriage;
 - (iii) The place of delivery agreed in the contract of carriage; or
 - (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.¹⁹⁶

3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if it is contained in a volume contract that clearly states the names and addresses of the parties and either

- (a) Is individually negotiated; or
- (b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

- (a) The place of arbitration designated in the agreement is situated in one of the places referred to in article 69, subparagraph (a);
- (b) The agreement is contained in the contract particulars of a transport document or electronic transport record that evidences the contract of carriage for the goods in respect of which the claim arises;¹⁹⁷
- (c) The person to be bound is given timely and adequate notice of the place of arbitration; and
- (d) Applicable law permits that person to be bound by the arbitration agreement.

¹⁹⁶ The reference in this provision to the “places specified in article 69, subparagraph (a)” has been deleted, and the subparagraphs under draft article 69, subparagraph (a) have instead been reproduced here to ensure completeness, since it is possible that a Contracting State could opt in to chapter 15 without opting into chapter 14, in which draft article 69 is set out.

¹⁹⁷ The square brackets around draft article 78 (4)(b) have been deleted, and the subparagraph retained, as agreed by the Working Group (see A/CN.9/642, paras. 208 and 211).

5. The provisions of paragraphs 1, 2, 3, and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent therewith is void.

Article 79. Arbitration agreement in non-liner transportation

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the provisions of this Convention apply by reason of:

(a) The application of article 7;¹⁹⁸ or

(b) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.

2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this Chapter unless:

(a) The terms of such arbitration agreement are the same as the terms of the arbitration agreement in the charterparty or other contract of carriage excluded from the application of this Convention by reason of the application of article 7;¹⁹⁹ or

(b) Such an arbitration agreement: (i) incorporates by reference the terms of the arbitration agreement contained in the charterparty or other contract of carriage excluded from the application of this Convention by reason of the application of article 7; (ii) specifically refers to the arbitration clause; and (iii) identifies the parties to and the date of the charterparty.²⁰⁰

Article 80. Agreements for arbitration after the dispute has arisen

Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen, the parties to the dispute may agree to resolve it by arbitration in any place.

Article 81. Application of chapter 15

The provisions of this chapter shall be binding only on Contracting States that declare²⁰¹ in accordance with article 94, that they will be bound by them.

¹⁹⁸ As requested by the Working Group, consideration was given to adding to this provision a reference to draft article 6 (2), but after consideration, it was thought that that was not necessary, since draft article 6 (2) was covered under draft article 78, and did not need to be included in draft article 79 (see A/CN.9/642, paras. 212 and 214).

¹⁹⁹ Concerns were expressed in the Working Group that subparagraph (a) raised questions regarding how a claimant would know that the terms of the arbitration clause were the same as those in the charterparty once arbitration had begun (see A/CN.9/642, paras. 213 and 214).

²⁰⁰ Concerns were expressed in the Working Group in respect of subparagraph (b) regarding the specificity of the prerequisites in order to bind a third party to the arbitration agreement, since those prerequisites might not meet with practical concerns and current practice (see A/CN.9/642, paras. 213 and 214). The Working Group may wish to consider that subparagraph (b) is useful as providing clarity and uniformity, even though it may not meet with current practices in some jurisdictions.

²⁰¹ As agreed by the Working Group, Variant B of the text as it appeared in A/CN.9/WG.III/WP.81 has been retained, and Variant A deleted, thus adopting the full "opt-in" approach (see A/CN.9/642, paras. 216 and 218). Further, the Working Group decided that such a declaration could be made at any time, and, as a drafting improvement, reference to the time of the

CHAPTER 16. VALIDITY OF CONTRACTUAL TERMS²⁰²*Article 82. General provisions*

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

- (a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;
- (b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or
- (c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 19.

2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

- (a) Directly or indirectly excludes, limits, or increases the obligations under this Convention of the shipper, consignor, consignee, controlling party, holder, or documentary shipper; or
- (b) Directly or indirectly excludes, limits, or increases the liability of the shipper, consignor, consignee, controlling party, holder, or documentary shipper for breach of any of its obligations under this Convention.²⁰³

Article 83. Special rules for volume contracts

1. Notwithstanding article 82, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations, and liabilities than those set forth in this Convention provided that the volume contract contains a prominent statement that it derogates from this Convention, and:

- (a) Is individually negotiated; or
- (b) Prominently specifies the sections of the volume contract containing the derogations.

2. A derogation pursuant to paragraph 1 of this article shall be set forth in the volume contract and may not be incorporated by reference from another document.

3. A carrier's public schedule of prices and services, transport document, electronic transport record, or similar document is not a volume contract for the purposes²⁰⁴ of this article, but a volume contract may incorporate the provisions of²⁰⁵ such documents by reference as terms of the contract.

declaration has been moved to draft article 94 (see A/CN.9/642, paras. 216, 218 and 260 to 261).

²⁰² In order to improve the drafting, this chapter has been moved from its former placement as the penultimate chapter to a position immediately following the chapter on arbitration.

²⁰³ Brackets around the phrase "or increases" in paragraphs 2 (a) and (b) have been deleted from the text as it appeared in A/CN.9/WG.III/WP.81 (agreed by the Working Group A/CN.9/621, paras. 159 and 160).

²⁰⁴ As a drafting clarification, the phrase "for the purposes" has been substituted for the phrase

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 15, subparagraphs (a) and (b), 30 and 33 or to liability arising from the breach thereof, nor does paragraph 1 of this article apply to any liability arising from an act or omission referred to in article 64.

5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 1 of this article, apply between the carrier and any person other than the shipper provided that:

(a) Such person received information that prominently states that the volume contract derogates from this Convention and expressly consents²⁰⁶ to be bound by such derogations; and

(b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document, or electronic transport record.

6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Article 84. Special rules for live animals and certain other goods

Notwithstanding article 82 and without prejudice to article 83, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(a) The goods are live animals, but any such exclusion or limitation will not be effective if²⁰⁷ the claimant proves that the loss of or damage to the goods, or delay in delivery resulted from an act or omission of the carrier or of a person referred to in article 19, or of a maritime performing party done recklessly and with knowledge that such loss or damage, or that the loss due to delay, would probably result; or

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

"pursuant to paragraph 1".

²⁰⁵ As a drafting clarification, the phrase "the provisions of" has been inserted into the text.

²⁰⁶ As a drafting clarification, the phrase "expressly consents" has been substituted for the phrase "gives its express consent".

²⁰⁷ As a drafting improvement, it is suggested that the phrase "but any such exclusion or limitation will not be effective if" should replace the phrase "except when".

CHAPTER 17. MATTERS NOT GOVERNED BY THIS CONVENTION²⁰⁸*Article 85. International conventions governing the carriage of goods by other modes of transport*²⁰⁹

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force that regulate the liability of the carrier for loss of or damage to the goods:

(a) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;

(b) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a vehicle carried on board a ship;

(c) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or

(d) Any convention regarding the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without transshipment both by inland waterways and sea.²¹⁰

Article 86. Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.²¹¹

*Article 87. General average*²¹²

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

*Article 88. Passengers and luggage*²¹³

This Convention does not apply to a contract of carriage for passengers and their luggage.²¹⁴

²⁰⁸ As a drafting improvement, it is suggested that chapters 17 and 18 as they appeared in A/CN.9/WG.III/WP.81 be combined into one chapter entitled “Matters not governed by this convention”. As an additional drafting improvement, the order of the provisions has been adjusted from their previous order as set out in A/CN.9/WG.III/WP.81.

²⁰⁹ The reference to “air” in the title has been changed to “other modes of transport” to reflect the new content of the provision.

²¹⁰ As requested by the Working Group, draft article 85 replaces the previous text as it appeared in A/CN.9/WG.III/WP.81, as proposed text to deal with the very narrow issue of specific conflicts that may arise with unimodal transport conventions (see A/CN.9/642, paras. 228 to 236).

²¹¹ As requested by the Working Group, draft article 86 replaces the previous text as it appeared in A/CN.9/WG.III/WP.81, as proposed text to reflect the subject matter of the conventions in question (see A/CN.9/642, paras. 237 to 238).

²¹² Since there is no longer a separate chapter on general average, the title of this provision can be adjusted to “general average”.

²¹³ The title of this provision has been adjusted to better reflect its contents.

²¹⁴ As requested by the Working Group, draft article 88 replaces the previous text as it appeared in

*Article 89. Damage caused by nuclear incident*²¹⁵

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the additional Protocol of 28 January 1964, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

CHAPTER 18. FINAL CLAUSES

Article 90. Depositary

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

Article 91. Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States [at [...] from [...] to [...] and thereafter] at the Headquarters of the United Nations in New York from [...] to [...].

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

3. This Convention is open for accession by all States that 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.

A/CN.9/WG.III/WP.81, as proposed text to appropriately deal with the issue of passengers and their luggage (see A/CN.9/642, paras. 239 to 243).

²¹⁵ The title of this provision has been adjusted to better reflect its contents. It was thought that it was not necessary to adjust the text of this provision, since, unlike draft article 88, if a nuclear operator is liable to the limit of its liability under the other conventions and there is additional damage over that amount, the carrier should not be liable for it under the draft convention.

*Article 92. Denunciation of other conventions*²¹⁶

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924; to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924; or to the Protocol to amend the International Convention for the Unification of certain Rules relating to Bills of Lading as Modified by the Amending Protocol of 23 February 1968, signed at Brussels on 21 December 1979 shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.²¹⁷

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978, shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.²¹⁸

3. For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article that are notified to the depositary after this Convention has entered into force²¹⁹ are not effective until such denunciations as may be required on the part of those States in respect of these instruments have become effective. The depositary of this Convention shall consult with the Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary coordination in this respect.

Article 93. Reservations

No reservation is permitted to this Convention.²²⁰

²¹⁶ As a drafting improvement, this provision has again been moved from its location in former chapter 18 of A/CN.9/WG.III/WP.81 to its previous position in the final chapter on “final clauses”.

²¹⁷ As agreed in the Working Group, the phrase “with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State” has been added to the end of paragraph 1 so as to render it consistent with the approach taken in article 31 (1) of the Hamburg Rules (see A/CN.9/642, paras. 224 to 227).

²¹⁸ As agreed in the Working Group, the phrase “with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State” has been added to the end of paragraph 1 so as to render it consistent with the approach taken in article 31 (1) of the Hamburg Rules (see A/CN.9/642, paras. 224 to 227).

²¹⁹ The phrase “that are notified to the depositary after this Convention has entered into force” has been added to paragraph 3 in order to clarify the interaction between this provision and paragraphs 1 and 2, and the word “themselves” has been deleted from after the phrase “these instruments have” as redundant.

²²⁰ The text has been revised to reflect that the Working Group has chosen the “opt-in” approach to the chapters on jurisdiction and arbitration, and it has agreed that no reservations are permitted to the draft convention (see A/CN.9/642, paras. 204, 205, 216 and 218).

Article 94. Procedure and effect of declarations

1. The declarations permitted by articles 77 and 81 may be made at any time. The declarations permitted by article 95, paragraph 1, and article 96, paragraph 2, shall be made at the time of signature, ratification, acceptance, approval or accession. No other declaration is permitted under this Convention.²²¹

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

3. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

4. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

5. Any State that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 95. Effect in domestic 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 amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration pursuant to this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration pursuant to paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 96. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this

²²¹ It is proposed that the time limit for making the various declarations permitted under the draft convention be included in a new first paragraph to draft article 94, and that the other paragraphs be renumbered accordingly. It will be recalled that the Working Group agreed that the declarations regarding the chapters on jurisdiction and arbitration should be able to be made at any time (see A/CN.9/642, paras. 252 and 254).

Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization when the context so requires.

Article 97. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of [one year] [six months] after the date of deposit of the [twentieth] [fifth]²²² instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the [twentieth] [fifth]²²³ instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of [one year] [six months] after the deposit of the appropriate instrument on behalf of that State.

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

Article 98. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

²²² As agreed by the Working Group, the word “fifth” should replace the word “third” in draft article 97 (see A/CN.9/642, para. 271).

²²³ As agreed by the Working Group, the word “fifth” should replace the word “third” in draft article 97 (see A/CN.9/642, para. 271).

[Article 99. Amendment of limitation amounts²²⁴

1. The special procedure in this article applies solely for the purposes of amending the limitation amount set out in article 62, paragraph 1 of this Convention.

2. Upon the request of at least [one fourth]²²⁵ of the Contracting States to this Convention,²²⁶ the depositary shall circulate any proposal to amend the limitation amount specified in article 62, paragraph 1, of this Convention to all the Contracting States²²⁷ and shall convene a meeting of a committee composed of a representative from each Contracting State to consider the proposed amendment.

3. The meeting of the committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

4. Amendments shall be adopted by the committee by a two-thirds majority of its members present and voting.²²⁸

5. When acting on a proposal to amend the limits, the committee will take into account the experience of claims made under this Convention and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.²²⁹

6. (a) No amendment of the limit pursuant to this article may be considered less than [five]²³⁰ years from the date on which this Convention was opened for signature or less than [five] years from the date of entry into force of a previous amendment pursuant to this article.

²²⁴ Text as set out in para. 7 of A/CN.9/WG.III/WP.39, including footnotes. The proposal is based upon the amendment procedure set out at art. 23 of the 2002 Protocol to the Athens Convention (“Athens Convention”) and at art. 24 of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (“OTT Convention”). Similar approaches have been taken in a number of International Maritime Organization (“IMO”) conventions, such as the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969; the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (not yet in force) (“2003 Protocol to the IOPC Fund 1992”); the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976; and the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

²²⁵ Para. 23 (2) of the Athens Convention refers to “one half” rather than “one quarter” of the Contracting States.

²²⁶ Para. 23 (2) of the Athens Convention includes the phrase “but in no case less than six” of the Contracting States.

²²⁷ Para. 23 (2) of the Athens Convention also includes reference to Members of the IMO.

²²⁸ Para. 23 (5) of the Athens Convention is as follows: “Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as revised by this Protocol present and voting in the Legal Committee ... on condition that at least one half of the Contracting States to the Convention as revised by this Protocol shall be present at the time of voting.”

²²⁹ This provision has been taken from para. 23 (6) of the Athens Convention. See, also, para. 24 (4) of the OTT Convention.

²³⁰ Paras. 11 and 12 of A/CN.9/WG.III/WP.34 suggest that the time period in this draft paragraph should be seven years rather than five years.

(b) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention increased by [six] per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.²³¹

(c) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention multiplied by [three].²³²

7. Any amendment adopted in accordance with paragraph 4 of this article shall be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of [eighteen]²³³ months after the date of notification, unless within that period not less than [one fourth]²³⁴ of the States that were Contracting States at the time of the adoption of the amendment have communicated to the depositary that they do not accept the amendment, in which case the amendment is rejected and has no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 of this article enters into force [eighteen]²³⁵ months after its acceptance.

9. All Contracting States are bound by the amendment unless they denounce this Convention in accordance with article 100 at least six months before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.

10. When an amendment has been adopted but the [eighteen]-month period for its acceptance has not yet expired, a State that becomes a Contracting State during that period is bound by the amendment if it enters into force. A State that becomes a Contracting State after that period is bound by an amendment that has been accepted in accordance with paragraph 7 of this article. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.]²³⁶

²³¹ No similar provision is found in the OTT Convention. An alternative approach as suggested in paras. 11 and 12 of A/CN.9/WG.III/WP.34 could be: "No limit may be increased or decreased so as to exceed an amount which corresponds to the limit laid down in this Convention increased or decreased by twenty-one per cent in any single adjustment."

²³² No similar provision is found in the OTT Convention. An alternative approach as suggested in paras. 11 and 12 of A/CN.9/WG.III/WP.34 could be: "No limit may be increased or decreased so as to exceed an amount which in total exceeds the limit laid down in this Convention by more than one hundred per cent, cumulatively."

²³³ Paras. 11 and 12 of A/CN.9/WG.III/WP.34 suggest that the time period in draft paras. 7, 8 and 10 should be twelve months rather than eighteen months.

²³⁴ The OTT Convention specifies at para. 24 (7) "not less than one third of the States that were States Parties".

²³⁵ Recent IMO conventions have reduced this period to twelve months when urgency is important. See, for example, the 2003 Protocol to the IOPC Fund 1992, at para. 24 (8).

²³⁶ At its twentieth session, the Working Group decided, as part of its provisional decision on the level of the limitation of the carrier's liability, to place draft article 99 in square brackets pending further consideration of its deletion as part of the compromise proposal on the level of the limitation (see A/CN.9/642, paras. 163 and 166).

Article 100. Denunciation of this Convention

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

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. If a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at [...], this [...] day of [...], [...], in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.
