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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 The most recent compilation of historical references regarding the legislative history of the draft instrument can be found in document A/CN.9/WG.III/WP.80.

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 for the third reading of the draft convention. Changes to the consolidated text most recently considered by the Working Group (contained in document A/CN.9/WG.III/WP.56) 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.¹

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.²

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.³

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

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

6. “Performing party” means a person other than the carrier that performs⁵ or undertakes to perform any of the carrier’s obligations⁶ under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, discharge 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. It includes employees, agents and subcontractors of a performing party to the extent that they likewise perform or undertake to perform any of the carrier’s obligations

¹ Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

² Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

³ Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

⁴ The Working Group may wish to consider whether the definition of “non-liner transportation” is necessary in light of the definition of “liner transportation”.

⁵ As a drafting improvement, the word “physically” has been deleted from its previous placement in the text in A/CN.9/WG.III/WP.56 prior to the word “perform(s)” in two places in this sentence, since the translation of this phrase in some languages was unclear, and since the list of functions set out in the provision makes it clear that the performing party must take some concrete action in the performance of the contract of carriage in order to be included in the definition.

⁶ In order to standardize the text, the word “obligations” has been substituted for the word “responsibilities”, where appropriate.

under a contract of carriage,⁷ but does not include any person that is retained by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee, or is an employee, agent or subcontractor of a person (other than the carrier) who is retained by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee.

7. “Maritime performing party” means a performing party to the extent⁸ 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 ship⁹, 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.

8. “Non-maritime performing party” means a performing party to the extent that it is not a maritime performing party.¹⁰

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

10. “Documentary shipper” means a person other than the shipper that accepts to be named as “shipper” in the transport document or electronic transport record.¹¹

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

12. “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

⁷ The opening phrase of this sentence has been added to clarify further the definition.

⁸ The addition of the phrase “to the extent” is suggested to further clarify the definition to take into account the possibility that the same person may perform both a maritime part and an inland part of the transport.

⁹ The phrases “[or, in case of trans-shipment, at the first port of loading]” and “[or final port of discharge as the case may be]” have been deleted in order to clarify the text and to make it consistent with the definition of “performing party” in the paragraph above. Refinements with respect to the liability of the maritime performing party have been made to draft art. 19. As set out in an earlier note, it was suggested at para. 31 of A/CN.9/544 that a rail carrier, even if it performed services within a port, should be deemed to be a non-maritime performing party. The Working Group may wish to consider this suggestion.

¹⁰ Revised text to maintain consistency with technique used elsewhere in the draft convention, for example, in the definition of “non-liner transportation”. The Working Group may wish to consider whether this definition is necessary, since the term “non-maritime performing party” is used only in draft art. 20(3).

¹¹ This definition was moved from its former position in the first sentence of former draft article 34 as it appeared in A/CN.9/WG.III/WP.56.

(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 9.¹²

13. “Consignee” means a person entitled to delivery¹³ of the goods under a contract of carriage or a transport document or electronic transport record.

14. “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

15. “Controlling party” means the person that pursuant to article 53 is entitled to exercise the right of control.

16. “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.

17. “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”.

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

19. “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.¹⁵

¹² The phrase “in accordance with the procedures in article 9” has been added to allow for the deletion of the second sentence of former draft article 1(u) as it appeared in A/CN.9/WG.III/WP.56, which defined “exclusive control” in a circular fashion by referring to the procedure of draft article 9. If the Working Group decides to delete draft article 59, the definition may require further drafting adjustment.

¹³ The word “take” that had been placed before “delivery” has been deleted as redundant and potentially misleading.

¹⁴ Definition of “right of control” drawn from the chapeau of draft article 52, formerly draft art. 54 as it appeared in A/CN.9/WG.III/WP.56.

¹⁵ Suggested clarification to ensure that the draft convention does not draw an unnecessary distinction between the means of transmission and the form in which the data are stored. The definition of “electronic communication” draws on the definition of “data message” in art. 2 of the United Nations Model Law on Electronic Commerce, 1996 (“MLEC”), without the illustrative list of techniques. In the MLEC and the United Nations Convention on the Use of Electronic Communications in International Contracts (“Electronic Contracting Convention”), Annex I to *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17*, (A/60/17), not all data messages are capable of having the same value as written paper documents, which is only possible in respect of data messages that are “accessible so as to be

20. “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.

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

(a) That indicates, by statements such as “to order”, or “negotiable”, or other appropriate¹⁶ 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.

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

23. The “issuance” and the “transfer” of a negotiable electronic transport record means the issuance and the transfer of exclusive control over the record.¹⁷

24. “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.

25. “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.¹⁸

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

usable for subsequent reference”. In the draft instrument, the notion of “electronic communication”, also incorporates the criteria for the functional equivalence between data messages and written documents on art. 6 of MLEC and art. 9, para. 2 of Electronic Contracting Convention. Thus, an “electronic communication” under the instrument must always be capable of replicating the function of written documents.

¹⁶ The Working Group may wish to consider whether the word “appropriate” is necessary in light of the use of the phrase “recognized as having the same effect” and whether similar language in draft para. 1(17) should be aligned accordingly.

¹⁷ Text as set out in para. 207 of A/CN.9/576, and as approved for further discussion in para. 210 of A/CN.9/576, but for the second sentence, which has been deleted as a drafting improvement in favour of the addition of the phrase “in accordance with the procedures in article 9” at the end of draft article 1(12)(ii).

¹⁸ The phrase “or a performing party” has been deleted since it should be clear that the performing party is included by way of the use of the phrase “supplied by or on behalf of the carrier”.

27. “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.

28. “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.¹⁹

29. “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, as appropriate, (ii) central administration, or (iii) principal place of business, and (b) the habitual residence of a natural person.²⁰

30. “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 a matter.²¹

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 requirements²²

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 3; 23, paragraphs 1 to 3; 37, subparagraphs 1(b), (c) and (d); 41, subparagraph 3(b); 45; 50, paragraph 3; 53, paragraph 1; 61, subparagraph (d); 62, paragraph 1; 66; 69; and 89, paragraphs 1 and 5 shall be in writing. Electronic communications may be used for these

¹⁹ Deletion of this definition is proposed given the deletion of the chapter on freight and the inclusion of “freight” in the definition of “contract of carriage” in para. 1(a).

²⁰ Suggested adjustments to text as set out in para. 115 of A/CN.9/576. It is suggested that reference should be made to associations, since these legal entities often own ships, but may not be included in “other legal persons”. “Place of incorporation or registered office” have been added for certainty, since “statutory seat” is not universally recognized. All of these changes conform with the text of art. 60 of Council Regulation (EC) No. 44/2001, 22 Dec. 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters [Official Journal L 12 of 16.01.2001] (“Brussels I”), from which the original text was drawn. Further, the Working Group may wish to note that the definitions of “time of receipt” and “place of receipt” and “time of delivery” and “place of delivery” that formerly appeared in square brackets as draft articles 1(aa) and (bb) in A/CN.9/WG.III/WP.56 have been deleted as redundant, since these terms are already specified in the text as necessary at draft articles 5, 11 and 69.

²¹ As agreed by the Working Group in para. 73 of A/CN.9/591. The phrasing is the same as that used in article 5(3)(b) of the Convention on Choice of Court Agreements, 2005.

²² The Working Group may wish to note that this list is not closed, pending further examination. Further, the Working Group may wish to consider whether it is advisable to include with the final text an explanatory note 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”).

purposes, provided the use of such means is with the consent²³ 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

The defences and limits of liability provided for in this Convention and the obligations imposed by this Convention apply in any action against the carrier or a maritime performing party for 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,²⁴ whether the action is founded in contract, in tort, or otherwise.²⁵

CHAPTER 2. SCOPE OF APPLICATION

*Article 5. General scope of application*²⁶

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 carriage²⁷ 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:²⁸

- (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 contracts of carriage in liner transportation:

- (a) Charterparties; and

²³ The phrase “express or implied” that had formerly been inserted before the word “consent” in the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted as redundant.

²⁴ The addition of “the breach of any other obligation” is thought to have made the reference to “[or in connection with]” the goods unnecessary.

²⁵ Draft article 4(2) as it existed in A/CN.9/WG.III/WP.56 has been deleted as redundant given the text of draft article 19(4).

²⁶ Revised draft based on A/CN.9/WG.III/WP.61, para. 19, as agreed by the Working Group (A/CN.9/594, paras. 123 and 128).

²⁷ Revised draft based on A/CN.9/WG.III/WP.61, para. 19, as agreed by the Working Group (A/CN.9/594, paras. 123 and 128). The phrases “of a sea carriage” and “of the same sea carriage” have been reinserted into the text in order to emphasize the sea carriage aspect and for enhanced clarity.

²⁸ The phrase “according to the contract of carriage, any one of the following places is located in a Contracting State” has been added to the end of the chapeau in order to allow for deletion of that phrase from the sub-paragraphs that follow. Further, the sub-paragraphs as they appeared in A/CN.9/WG.III/WP.56 have been divided into separate paragraphs so as to make clear that each component listed must be agreed in the contract of carriage.

(b) Contracts for the use of a ship or of any space thereon, whether or not they are charterparties.²⁹

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

(a) There is no charterparty or contract for the use of a ship or of any space thereon between the parties, whether such contract is a charterparty or not; 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.³⁰

*Article 7. Application to certain parties*³¹

Notwithstanding article 6, this Convention applies as between the carrier and the consignor, consignee, controlling party or holder³² 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 6.³³

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 pursuant to this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent³⁴ of the carrier and the shipper; and

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

²⁹ New draft based on A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 129-133).

³⁰ Redrafting of text in A/CN.9/WG.III/WP.61, para. 23 (agreed by the Working Group A/CN.9/594, paras. 129-133), not intended to change meaning of paragraph.

³¹ Text based on A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 134-140).

³² The phrase "or the person referred to in article 34 (now article 33)", as considered by the Working Group in paras. 138 and 140 of A/CN.9/594, has been deleted from the text in A/CN.9/WG.III/WP.61, para. 23 as a clarification, since the application of draft article 7 to the documentary shipper in draft article 33 would be to that person in its capacity as controlling party or holder, but not in its capacity as the documentary shipper.

³³ Text from A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 134-140), with slight adjustments intended to improve the drafting but to leave unchanged the substance of the draft article.

³⁴ The phrase "express or implied" that had formerly been inserted before the word "consent" in A/CN.9/WG.III/WP.56 has been deleted as redundant.

Article 9. Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record 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;

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

(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 49, subparagraphs (a)(ii) and (c), the negotiable 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.³⁵

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.

³⁵ 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. PERIOD OF RESPONSIBILITY

Article 11. Period of responsibility of the carrier

1. Subject to article 12, 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.³⁶

2. The time and location of receipt of the goods for carriage and of delivery of the goods are the time and location agreed in the contract of carriage, or, failing such agreement, the time and location that are in accordance with the customs, practices, or usages of the trade. In the absence of such agreement or of such customs, practices, or usages:

(a) The time and location of receipt of the goods for carriage are when and where the carrier or a performing party actually takes custody of the goods; and

(b) The time and location of delivery are that of the discharge or unloading of the goods from the final means of transport in which they are carried under the contract of carriage.³⁷

3. If the consignor is required to hand over the goods at the place of receipt, or if the carrier is required to hand over the goods at the place of delivery, to an authority or other third party to which, pursuant to the law or regulations of the place of receipt or delivery, the goods must be handed over and from which the carrier, or the consignee, as the case may be, may collect them:³⁸

(a) The time and location of the carrier's collection of the goods from the authority or other third party are the time and location of the receipt of the goods by the carrier pursuant to subparagraph 2(a) of this article; and

(b) The time and location of such handing over at the place of delivery are the time and location of delivery of the goods by the carrier pursuant to subparagraph 2(b) of this article.

4. For the purposes of determining the carrier's period of responsibility and subject to article 14, paragraph 2, the contract of carriage may not provide that:

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

³⁶ The phrase "to the consignee" has been deleted from this paragraph and from subpara. 3(b) as unnecessary, since 'delivery' as it is referred to in these provisions concerns not the obligation of the carrier, but rather the actual delivery that defines the end of the period of responsibility of the carrier.

³⁷ Para. 2 combines and replaces former paragraphs 2 and 4 of this draft article as previously set out in A/CN.9/WG.III/WP.56. The change is intended as a drafting improvement and not as a change in substance.

³⁸ This paragraph is proposed by the Secretariat to address the situation when the consignor is required to hand over the goods to an authority, such as a customs authority, prior to them being handed over to the carrier. Further, para. 3 combines and replaces former paragraphs 3 and 5 of this draft article as previously set out in A/CN.9/WG.III/WP.56. The change is intended as a drafting improvement and not as a change in substance.

(b) The time of delivery of the goods is prior to the completion of their final discharge under the contract of carriage.³⁹

*Article 12. Transport not covered by the contract of carriage*⁴⁰

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. In such event, [the responsibility of the carrier covers the period of the contract of carriage and, unless otherwise agreed, the carrier, on behalf of the shipper, shall arrange the additional transport as provided in such transport document or electronic transport record.] [the carrier shall exercise due diligence in selecting the other carrier, conclude a contract with such other carrier on usual and normal terms, and do everything that is reasonably required to enable such other carrier to perform duly under its contract.]⁴¹

CHAPTER 5. OBLIGATIONS OF THE CARRIER

Article 13. Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage,⁴² carry the goods to the place of destination and deliver them to the consignee.

Article 14. Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 11, and subject to article 26, properly and carefully receive,⁴³ load, handle, stow, carry, keep, care for, discharge and deliver the goods.

2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 5 and to chapters 6 to 8,⁴⁴ the parties may agree that the loading, handling, stowing or discharging of the goods is to be performed by the shipper, any person referred to in article 34, paragraph 1, the controlling party or the consignee. Such an agreement shall be referred to in the contract particulars.

³⁹ Para. 4 is suggested in order to ensure that fictions may not be included in the contract of carriage in order to reduce the carrier's period of responsibility.

⁴⁰ The Working Group may wish to consider whether art. 12 is properly placed within chapter 4 on period of responsibility.

⁴¹ Since the first sentence of Variant B of this draft article as it appeared in A/CN.9/WG.III/WP.56 was intended only as a clarification of para. 1 of Variant A, the two variants have been combined into one, where the text in square brackets in the second sentence presents two alternative approaches: the first changes the obligation of the carrier in its arrangement of additional transport from one of due diligence to whatever is agreed in the contract of carriage or elsewhere, and the second alternative maintains an obligation of due diligence on the part of the carrier.

⁴² Suggested deletion of "[properly and carefully]" as unnecessary and repetitious, since "subject to this Convention" already includes proper and careful carriage. Further, draft art. 13 is intended as a general obligation that is enhanced in subsequent articles.

⁴³ "Receive" and "deliver" have been added to ensure they are recognized as carrier's obligations.

⁴⁴ The opening phrase "Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 5 and to chapters 6 to 8" has been added to achieve greater clarity.

*Article 15. Goods that may become a danger*⁴⁵

Notwithstanding articles 13, 14, and 16, paragraph 1, 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 appear likely to become during the carrier's period of responsibility an actual danger to persons, to property or to the environment.⁴⁶

Article 16. Specific obligations applicable to the voyage by sea

1. 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,⁴⁷ equip and supply the ship and keep the ship so crewed,⁴⁸ 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.

[2. Notwithstanding articles 13, 14, and 16, paragraph 1, the carrier or a performing party may sacrifice goods 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.]⁴⁹

CHAPTER 6. LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

*Article 17. Basis of liability*⁵⁰

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 circumstance⁵¹ that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

⁴⁵ The revised text of this draft article combines what appeared as Variant A and Variant B in A/CN.9/WG.III/WP.56.

⁴⁶ The concept of "an illegal or unacceptable danger" to the environment that appeared in the text in A/CN.9/WG.III/WP.56 has been changed to a "danger to the environment" in an effort to make the standard more objective.

⁴⁷ As set out in footnote 56 of A/CN.9/WG.III/WP.36, the gender-neutral word "crew" had been inserted in place of the word "man".

⁴⁸ Ibid.

⁴⁹ As noted at para. 157 of A/CN.9/544, the Working Group decided to maintain draft para. 16(2) in square brackets in its current location, with a view to considering at a later stage whether it should be moved to chapter 17 on general average.

⁵⁰ Redraft of text set out in paras. 31 and 75 of A/CN.9/572, as broadly accepted in paras. 33 and 80 of A/CN.9/572, and as published in A/CN.9/WG.III/WP.56. The redraft of this draft article, which is drawn entirely from the previous text as accepted, is only intended to improve the drafting by simplifying the structure of the draft article, and is not intended to change the content of the provision in any way.

⁵¹ The word "occurrence" has been replaced with "event or circumstance" to standardize the text used elsewhere in the draft article and for greater clarity. Reference to "event or circumstance"

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 18, paragraph 1.

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 18, paragraph 1;⁵²
- (e) Strikes, lockouts, stoppages, or restraints of labour;
- (f) Fire on the ship;
- (g) Latent defects in the [ship] [means of transport]⁵³ not discoverable by due diligence;
- (h) Act or omission of the shipper[, the consignor]⁵⁴ or any person referred to in article 34,⁵⁵ paragraph 1, the controlling party, or the consignee;
- (i) Loading, handling, stowing, or discharging⁵⁶ of the goods performed pursuant to an agreement in accordance with article 14, paragraph 2, unless the carrier [or a performing party] performs such activity on behalf of the shipper.
- (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 of] 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;

has been standardized throughout the draft article.

⁵² Further examination is needed whether the reference to art. 18, paragraph 1, is necessary.

⁵³ The Working Group may wish to consider which of the terms in square brackets is intended to be addressed in this paragraph.

⁵⁴ The Working Group may wish to decide whether draft article 34 is intended to include the “consignor” or not, and should expressly include it in draft article 34, if that is the intention. If draft article 34 includes “consignor”, this reference is not needed.

⁵⁵ Further examination is needed whether the reference to art. 34 is necessary.

⁵⁶ “Discharging” is suggested in order to be consistent with the language in draft art. 14.

(o) Acts of the carrier⁵⁷ in pursuance of the powers conferred by articles 15 and 16, paragraph 2.⁵⁸

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

(a) That the fault of the carrier or of a person referred to in article 18, paragraph 1, caused or contributed to the event or circumstance on which the carrier relies; or

(b) 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 18, paragraph 1.

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

(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 can prove neither that the loss, damage, or delay was not caused by any of the events or circumstances referred to in subparagraph 5(a) of this article nor that it complied with its obligation to exercise due diligence pursuant to article 16, paragraph 1.

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 18. Liability of the carrier for other persons⁵⁹

1. The carrier is liable for the breach of its obligations pursuant to this Convention caused by the acts or omissions of:

(a) Any performing party; and

⁵⁷ The phrase “or a performing party” that appeared after the word “carrier” in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant, since the performing party has no powers under draft articles 15 and 16.

⁵⁸ The square brackets around this draft paragraph have been removed and the phrase “when the goods have become a danger to persons, property, or the environment or have been sacrificed” have been deleted as unnecessary in light of the Working Group’s consideration of draft arts. 15 and 32 (see A/CN.9/510, paras. 128-130, A/CN.9/591, paras. 157-170, and A/CN.9/594, paras. 195-198).

⁵⁹ Note that former draft art. 18 as it appeared immediately prior to this provision in A/CN.9/WG.III/WP.56 was deleted following the Working Group’s deliberations on draft article 28 (A/CN.9/594, para. 186). The opening phrase of para. 1 as set out in A/CN.9/WG.III/WP.56, “Subject to article 20, paragraph 4”, has been deleted as a drafting improvement to avoid an unnecessary cross-reference.

(b) Any other person,⁶⁰ 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.⁶¹

[2. The carrier is liable pursuant to paragraph 1 of this article only when the performing party's or other person's act or omission is within the scope of its contract, employment, or agency.]⁶²

Article 19. Liability of maritime performing parties

1. A maritime performing party [that initially received the goods for carriage in a Contracting State, or finally delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State]⁶³:

(a) Is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's rights and immunities provided by this Convention if the occurrence that caused the loss, damage or delay took place 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 from a ship, when it has custody of the goods or at any other time to the extent that it is participating in the performance of any of the activities contemplated by the contract of carriage, and

(b) Is liable for the breach of its obligations pursuant to this Convention caused by the acts and omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage.⁶⁴

⁶⁰ The phrase "including a performing party's employees, agents and subcontractors" that appeared after the word "carrier" in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant, since that phrase is now included in the definition of "performing party" in draft article 1(6).

⁶¹ The phrase "as if such act or omissions were its own" that appeared in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant.

⁶² The Working Group may wish to consider deleting this paragraph as it may cause evidentiary problems in some jurisdictions where, for example, employees who have started fires with cigarettes or who have stolen cargo have been found to be acting outside of their scope of employment or contract. Deletion of the paragraph would leave the issue of what is within the scope of employment to national law. Similar treatment should be given to para. 2 of draft art. 34.

⁶³ The phrase "that initially received the goods for carriage in a Contracting State, or finally delivered them in a Contracting State" has been inserted as preferred drafting to the insertion of para. 5 as set out in A/CN.9/WG.III/WP.61, para. 44, as agreed by the Working Group (A/CN.9/594, paras. 140-145). The text of para. 5, as it appeared in A/CN.9/WG.III/WP.61, read as follows: "5. This article does not apply unless the place where the goods are initially received by the maritime performing party or the place where the goods are finally delivered by the maritime performing party is situated in a Contracting State." In addition, the phrase "or performed all of its activities with respect to the goods in a single port in a Contracting State" has been inserted as a drafting improvement to further refine the provision.

⁶⁴ As a drafting improvement and to be consistent with draft article 19, former draft article 20(1)(a) and (b) as they appeared in A/CN.9/WG.III/WP.56 have been combined into one paragraph, and former draft article 20(3) as it appeared in A/CN.9/WG.III/WP.56 has been moved to become subparagraph (b) of draft article 19(1).

2. [A maritime performing party is liable pursuant to paragraph 1 of this article only when the act or omission of the person concerned is within the scope of its contract, employment, or agency.]⁶⁵

3. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that its liability is higher than the limits imposed pursuant to articles 63, 62⁶⁶ and 25, paragraph 5, a maritime performing party is not bound by this agreement unless the maritime performing party expressly agrees to accept such obligations or such limits.

4. If an action⁶⁷ is [brought against a maritime performing party]⁶⁸ [brought against an employee or agent of the carrier or a maritime performing party]⁶⁹ [brought against any person referred to in article 18, paragraph 1, or subparagraph 1(a) of this article, other than the carrier,]⁷⁰ that person is entitled to the defences and limits of liability available to the carrier under this Convention if [it proves that]⁷¹ it acted within the scope of its contract, employment, or agency.

Article 20. Joint and several liability and set-off

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 several [, 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,]⁷² but only up to the limits provided for in articles 25, 62 and 63.

⁶⁵ As a drafting improvement and to be consistent with draft article 18, the last sentence of former draft article 20(1)(b) as it appeared in A/CN.9/WG.III/WP.56 has been moved to draft article 19(2). Square brackets have been inserted around this phrase to mirror the treatment of similar phrases elsewhere in the text. See also footnote 62 above to draft art. 18(2), and footnote 110 below to draft article 34(2).

⁶⁶ As set out in footnote 69 of A/CN.9/WG.III/WP.36, the Working Group took note of the suggestion to limit the reference to draft art. 62, since it was stated that, while the reference to paras. (1), (3) and (4) of draft art. 62 was acceptable, para. (2) of draft art. 62 should not be referred to since the performing party was not liable in case of non-localized damage. The Working Group decided that this suggestion might need to be further discussed after a decision had been made regarding the inclusion of para. (2) of draft art. 62 in the draft convention.

⁶⁷ The phrase “under this Convention” has been deleted from the text as it appeared in A/CN.9/WG.III/WP.56 in order to broaden the application of this provision, which is then limited by the use of the phrase “under this Convention” at the end of the subparagraph.

⁶⁸ This approach was formerly reflected in Variant A of former draft article 20(4) as it appeared in A/CN.9/WG.III/WP.56.

⁶⁹ This approach reflects that taken in former draft article 4(2) as it appeared in A/CN.9/WG.III/WP.56.

⁷⁰ This approach reflects that taken in Variant B of former draft article 20(4) as it appeared in A/CN.9/WG.III/WP.56. Further, the phrase “including employees or agents of the contracting carrier or of a maritime performing party” as it appeared in this provision in A/CN.9/WG.III/WP.56 has been deleted to correspond with the inclusion of that concept in the definition of “maritime performing party” in draft article 1.

⁷¹ The Working Group may wish to consider whether the bracketed text should be deleted in order to reduce the burden of proof on the person entitled to claim the benefit of the defence of limit of liability of the carrier.

⁷² As decided at paras. 12 and 17 of A/CN.9/552, the phrase in square brackets was added for clarification of the meaning of “joint and several liability”. However, the Working Group may wish to consider the use of the term “joint and several liability” in numerous international

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

[3. If a claimant obtains compensation from a non-maritime performing party for the loss of, damage to, or delay in delivery of the goods, the amount received by the claimant shall be set off against any subsequent claim for that loss, damage or delay that the claimant makes against the carrier or a maritime performing party.]⁷³

Article 21. 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 time expressly agreed 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,⁷⁴ and the circumstances of the journey.

Article 22. 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 11.

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 19.

Article 23. 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

instruments, including: para. 10(4) of the Hamburg Rules; para. 27(4) of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail, as amended by the Protocol of Modification of 1999 ("CIM-COTIF 1999"); para. 4(5) of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000 ("CMNI"); para. 30(3) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by protocols in 1955 and 1975 ("Warsaw Convention"); and para. 36(3) of the Convention for the Unification of Certain Rules for the International Carriage by Air, Montreal 1999 ("Montreal Convention").

⁷³ As decided at paras. 14 and 17 of A/CN.9/552, a revised draft has been prepared, pending further discussion regarding the preparation of a uniform rule on set-off, or of leaving the issue to domestic law. The Working Group may wish to consider whether this paragraph is necessary or whether it can be deleted. Further, should the Working Group decide to delete the definition of "non-maritime performing party", the phrase "a performing party other than a maritime performing party" could be substituted for the phrase "a non-maritime performing party".

⁷⁴ In order to be consistent with other provisions of the draft convention, such as draft article 11, the phrase "customs, practices and usages of the trade" has been inserted instead of the phrase "characteristics of the transport" found in this provision in A/CN.9/WG.III/WP.56.

notice of loss of or damage to⁷⁵ the goods, indicating the general nature of such loss or damage, was given⁷⁶ 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 [three working days][seven days][seven working days at the place of delivery][seven consecutive days] after the delivery of the goods. Such a notice is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to whom they have been delivered⁷⁷ and the carrier or the maritime performing party against which liability is being asserted.⁷⁸

2. No compensation is payable pursuant to articles 21 and 63 unless notice of loss due to delay was given to the carrier within 21 consecutive days following delivery of the goods.

3. 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.

4. 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 7. ADDITIONAL PROVISIONS RELATING TO PARTICULAR STAGES OF CARRIAGE

Article 24. 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 64.⁷⁹

*Article 25. Deck cargo on ships*⁸⁰

1. Goods may be carried on the deck of a ship only if:
 - (a) Such carriage is required by law; or

⁷⁵ "In connection with" deleted as unnecessary in this paragraph.

⁷⁶ The phrase "[by or on behalf of the consignee]" has been deleted to improve drafting since it is irrelevant from whom the notice comes as long as notice is given.

⁷⁷ The term "consignee" has been replaced with "person to whom they have been delivered" in order to clarify that what is meant in this provision is joint inspection by the person who receives the goods who may not actually be the consignee in a legal sense.

⁷⁸ Variant A of para. 1 as set out in A/CN.9/WG.III/WP.56 has been chosen for insertion over Variant B as representing better drafting with greater clarity and entailing no substantive difference in meaning.

⁷⁹ Variants A and B as they appeared in A/CN.9/WG.III/WP.56 have been deleted as confusing due to their overlap with draft articles 17(3)(l) and (m), which could be seen to created confusing different standards. The text that has been substituted is based on that previously found in footnotes 105 and 424 of A/CN.9/WG.III/WP.56, which was thought to contain preferable drafting.

⁸⁰ Drafting improvements have been made to clarify the text of this draft article as set out in A/CN.9/WG.III/WP.56, but to keep its meaning intact.

(b) They are carried in or on containers⁸¹ on decks that are specially fitted to carry such containers; or

(c) The carriage on deck is in accordance with the contract of carriage, or⁸² 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.⁸³

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 17.

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 negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.⁸⁴

[5. If the carrier and shipper [expressly] agreed that the goods would be carried under deck, the carrier is not entitled to limit its liability for any loss of, damage to or delay in the delivery of the goods [[that solely][to the extent that such damage] resulted from their carriage on deck]⁸⁵.]⁸⁶

Article 26. Carriage preceding or subsequent to sea carriage⁸⁷

1. When loss of or damage to goods, or an event or circumstances 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

⁸¹ The phrase "[fitted to carry cargo on deck]" has been deleted as redundant.

⁸² The square brackets that were formerly around the phrase "the contract of carriage, or" have been deleted, since they were added pending consideration by the Working Group of freedom of contract issues, pursuant to paragraph 106 of A/CN.9/552, and this consideration has already occurred.

⁸³ As discussed at paras. 108 and 109 of A/CN.9/552, para. 2 may need to be discussed in greater detail in conjunction with draft para. 17(6), however, changes to para. 17(6) may have rendered this discussion unnecessary.

⁸⁴ As discussed at paras. 110 and 111 of A/CN.9/552, discussion of this paragraph, which formerly appeared as draft article 26(3) in A/CN.9/WG.III/WP.56, and whether it should cover third-party reliance on non-negotiable transport documents and electronic transport records would continue after discussion of third-party rights and freedom of contract.

⁸⁵ As decided at paras. 113-114 and 117 of A/CN.9/552, square brackets were placed around "that exclusively resulted from their carriage on deck". A further alternative has been added.

⁸⁶ As decided at paras. 116 and 117 of A/CN.9/552, square brackets were placed around para. 5, for discussion at a future session, with further study of its relationship with draft art. 64.

⁸⁷ The redrafted text of draft paragraph 1 of this article from the text as set out in A/CN.9/WG.III/WP.56 is intended as improved drafting only, and is not intended to change the content of the provision in any way.

international instrument⁸⁸ [or national law] that, at the time of such loss, damage or event or circumstance causing delay:

(a) [Variant A of subparagraph (a)]: Pursuant to the provisions of such international instrument [or national law] apply to all or any of the carrier's activities under the contract of carriage during that period;⁸⁹

[Variant B of subparagraph (a)]: Pursuant to the provisions of such international instrument [or national law] 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;⁹⁰

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

(c) Cannot be departed from by contract⁹¹ either at all or to the detriment of the shipper under that instrument [or national law].

[2. Paragraph 1 of this article does not affect the application of article 62, paragraph 2.⁹²]

[3. Except where otherwise provided in [paragraph 1 of this article and 62, paragraph 2], the liability of the carrier and the maritime performing party for loss of or damage to the goods, or for delay, shall be solely governed by the provisions of this Convention.⁹³]

⁸⁸ The word "convention" has been changed to "instrument" here and in subparas. 1(a) and (c) in order to include the mandatory regulations of regional organizations.

⁸⁹ Variant A is the text of former article 27(1)(b)(i) as it appeared in A/CN.9/WG.III/WP.56, with slight drafting improvements. Further, as set out in para. 55 of A/CN.9/WG.III/WP.21, the bracketed text "[irrespective whether the issuance of any particular document is needed in order to make such international convention applicable]" reflected the situation under the 1980 Convention concerning International Carriage by Rail ("COTIF"). Since the 1999 Protocol for the Modification of COTIF entered into force in July 2006, the bracketed text has been deleted in both Variants.

⁹⁰ Variant B is based upon the drafting suggestion set out in para. 224 of A/CN.9/616 and agreed at para. 228.

⁹¹ The word "private" has been deleted from before the word "contract" as redundant.

⁹² If para. 62(2) is deleted, this paragraph should also be deleted.

⁹³ Paragraph 3 as it appeared in A/CN.9/WG.III/WP.56 has been replaced with the text set out in paragraph 36 of A/CN.9/WG.III/WP.78, as considered by the Working Group in paragraphs 233 and 235 of A/CN.9/616. Although the text of this paragraph has changed, it is intended to fulfil the same purpose as the previous text, which was, as set out in para. 54 of A/CN.9/WG.III/WP.21, as a conflict of law provision that was intended to safeguard the applicability of inland transport conventions.

CHAPTER 8. OBLIGATIONS OF THE SHIPPER TO THE CARRIER

*Article 27. Delivery for carriage*⁹⁴

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 discharging, and that they will not cause harm to persons or property.

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

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 28. Obligation of the shipper and the carrier to provide information and instructions

Without prejudice to the shipper's obligations in article 30, 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.⁹⁵

*Article 29. Shipper's obligation to provide information, instructions and documents*⁹⁶

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 reasonably⁹⁷ 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 public⁹⁸ authorities in connection with the intended carriage, provided that the

⁹⁴ Revised text intended to simplify the text of this article (see paras. 113 and 120 of A/CN.9/591), taking into account the text in footnotes 116 and 435 of A/CN.9/WG.III/WP.56, and to clarify that draft para. 1 refers to the condition of the goods themselves and to their packaging, while draft paras. 2 and 3 refer to the proper stowage of the goods. Draft para. 2 takes into consideration the situation where there has been an agreement on a FIO(S) clause pursuant to draft article 14(2).

⁹⁵ Revised draft based on A/CN.9/WP.67, para. 14, Variant C, as agreed by the Working Group (A/CN.9/594, para. 186). The Working Group may wish to consider whether this draft article should be included in light of the content of draft article 29.

⁹⁶ Revised draft based on A/CN.9/WG.III/WP.69, para. 6, with elements from Variant A of A/CN.9/WG.III/WP.67, para. 20, as agreed by the Working Group (A/CN.9/594, paras. 187-194).

⁹⁷ The Working Group may wish to consider whether this second "reasonably" may be deleted, since the word "necessary" may be considered sufficient.

⁹⁸ The phrase "public authorities" has been reintroduced in paragraphs 1 and 2 of this draft article

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 30. Basis of shipper's liability to the carrier

1. [Variant A of the first sentence⁹⁹: The shipper is liable for loss¹⁰⁰ or damage sustained by the carrier[, including loss or damage caused by delay,] if the carrier proves that such loss or damage was caused by the goods¹⁰¹ or by a breach of the shipper's obligations pursuant to articles 27 and 29, subparagraphs 1(a) and (b).] [Variant B of the first sentence¹⁰²: The shipper is liable to the carrier for loss, [or] damage [or delay] caused by the breach of its obligations pursuant to articles 27 and 29, provided such loss, [or] damage [or delay] was due to the fault of the shipper or of any person referred to in article 34.] Except as provided in articles 31 and 32, the shipper is relieved of all or part of its liability if it proves that the cause or one of the causes of the loss[, or] damage [or delay] is not attributable to its fault or to the fault of any person referred to in article 34.

2. 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] damage [or delay] that is attributable to its fault or to the fault of any person referred to in article 34.¹⁰³

*Article 31. Information for compilation of contract particulars*¹⁰⁴

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 37, subparagraphs 1(a), (b) and (c); the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

for drafting and translation purposes, and to be consistent with its use in draft article 17(3)(d).

⁹⁹ Revised draft based on the Working Group's deliberations at the 16th session (A/CN.9/591, paras. 136-153). Both Variants A and B of former paragraph 2 as it appeared in A/CN.9/WG.III/WP.56, as well as former paragraph 3, have been deleted from this draft article accordingly, and the substance of Variants A and B of paragraph 2 regarding strict liability for the provision of accurate information has been moved to a new provision in draft art. 31. The text of Variant A of para. 1 mirrors draft article 17(1).

¹⁰⁰ This loss could include loss resulting from delay.

¹⁰¹ The Working Group may wish to consider whether the phrase "caused by the goods" is appropriate in this context.

¹⁰² Variant B is taken from the text set out in para. 25 of A/CN.9/WG.III/WP.67, with the addition of the second sentence from Variant A, to facilitate the operation of draft para 2.

¹⁰³ Para. 2 is a new provision patterned on draft article 17(6) and is intended to ensure similar treatment of shippers and carriers in this regard.

¹⁰⁴ Removed into a separate provision from former draft article 30, subpara. (c), as set out in A/CN.9/WG.III/WP.56, as agreed by the Working Group (see A/CN.9/591, paras. 148 and 153).

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 all loss, [or] damage [or delay] resulting from the inaccuracy of such information or documents.

*Article 32. Special rules on dangerous goods*¹⁰⁵

When goods by their nature or character are, [or become,] or reasonably appear likely to become, a danger to persons or property or to 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 all loss, [or] damage, [or delay] and expenses resulting from [the carriage of such goods][such failure to inform] 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 all loss, [or] damage, [or delay] resulting from such failure.

*Article 33. Assumption of shipper's rights and obligations by the documentary shipper*¹⁰⁶

1. A documentary shipper¹⁰⁷ is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 57, and is entitled to the shipper's rights and immunities provided by this chapter and by chapter 14.

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

*Article 34. Liability of the shipper for other persons*¹⁰⁸

1. The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations as if such acts or omissions were its own[, 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 it has entrusted the performance of its obligations pursuant to this chapter].¹⁰⁹

¹⁰⁵ Revised draft based on text found in A/CN.9/WG.III/WP.67, para. 31, without paragraph 4, as agreed by the Working Group (A/CN.9/594, paras. 195-198).

¹⁰⁶ Revisions in this draft article as agreed in paras. 171 to 175 of A/CN.9/591.

¹⁰⁷ The first sentence of this draft paragraph as it appeared in A/CN.9/WG.III/WP.56 has been moved to draft article 1(10) as the definition of "documentary shipper."

¹⁰⁸ Revised draft based on A/CN.9/WG.III/WP.55, para. 41, as agreed by the Working Group (A/CN.9/591, paras. 178-180). As noted with respect to draft article 17(3)(h), the Working Group may wish to decide whether draft article 34 includes the "consignor" or not, and should expressly include it in draft article 34, if that is the intention.

¹⁰⁹ The bracketed text has been moved to para. 1 from its original location in para. 2 of the draft article as it appeared in A/CN.9/WG.III/WP.56, in order to mirror the text in draft article 18. The bracketed text was intended to deal with the FIO(S) issue in draft article 14(2), but the reference

[2. The shipper is liable pursuant to paragraph 1 of this article only when the act or omission of the person concerned is within the scope of that person's contract, employment or agency.]¹¹⁰

*Article 35. Cessation of shipper's liability*¹¹¹

A term in the contract of carriage according to which the liability of the shipper or any other person identified in the contract particulars as the shipper will cease, wholly or partly, upon a certain event or after a certain time is not valid:

(a) With respect to any liability pursuant to this chapter of the shipper or a person referred to in article 35; 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.

[(c) To the extent that it conflicts with article 61, subparagraph (d)(iii).¹¹²]

CHAPTER 9. TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

*Article 36. Issuance of the transport document or the electronic transport record*¹¹³

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

(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,¹¹⁴ the documentary shipper, is entitled to obtain from the carrier, at the shipper's option, an appropriate negotiable

in draft article 17(3)(i) to actual performance of obligations by the shipper, any person referred to in art. 35 (now draft art. 34), or other parties has now been deleted in favour of the phrase "performed pursuant to an agreement in accordance with article 14, paragraph 2, unless the carrier [or a performing party] performs such activity on behalf of the shipper".

¹¹⁰ The Working Group may wish to consider whether this paragraph could be deleted as it may cause evidentiary problems in some jurisdictions where, for example, employees who have started fires with cigarettes or who have stolen cargo have been found to be acting outside of their scope of employment or contract. Deletion of the paragraph would leave the issue of what is within the scope of employment to national law. Similar treatment should be given to para. 2 of draft art. 18.

¹¹¹ Former para. 43(2) of A/CN.9/WG.III/WP.32, moved to this placement from the now-deleted chapter 9 on freight.

¹¹² Paragraph (c) could be deleted if the chapter on transfer of rights is deferred for future work.

¹¹³ Draft article amended as agreed by the Working Group (A/CN.9/594, paras. 223 and 224). Additional drafting suggestions made to clarify the application of custom, usage or practice in the trade.

¹¹⁴ The phrase "instructs the carrier" was thought to be too inflexible and too narrow, and has thus been replaced with the word "consents".

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.¹¹⁵

*Article 37. Contract particulars*¹¹⁶

1. The contract particulars in the transport document or electronic transport record referred to in article 36 shall include the following information, as furnished by the shipper:

- (a) A description of the goods;
- (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 36 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 of a person identified as¹¹⁷ 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) 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.

¹¹⁵ As set out in footnote 127 of A/CN.9/WG.III/WP.32, with respect to para. (a), it was acknowledged that, since not all transport documents as defined under draft art. 1(16) served the function of evidencing receipt of the goods by the carrier, it was important to make it clear that, under para. (a), the transport document should serve the receipt function.

¹¹⁶ Para. 1 of this draft article as set out in A/CN.9/WG.III/WP.56 has been redrafted as agreed by the Working Group (A/CN.9/594, paras. 225-233), and has been split into paras. 1 and 2 for greater clarity in that para. 1 concerns information furnished by the shipper.

¹¹⁷ As agreed by the Working Group at paragraphs 18 and 28 of A/CN.9/616.

*Article 38. Identity of the carrier*¹¹⁸

1. If the 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.¹¹⁹

[2. Variant A

If the contract particulars fail to identify the carrier but indicate that the goods have been loaded on board a named ship, the registered owner of the ship is presumed to be the carrier. The registered owner can defeat this presumption if it proves that the ship was under a bareboat charter at the time of the carriage that transfers contractual responsibility for the carriage of the goods to an identified bareboat charterer. [If the registered owner defeats the presumption that it is the carrier pursuant to this article, the bareboat charterer at the time of the carriage is presumed to be the carrier in the same manner as that in which the registered owner was presumed to be the carrier.]]¹²⁰

Variant B

If no person is identified in the contract particulars as the carrier as required pursuant to article 37, 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 defeat any presumption of being the carrier in the same manner.¹²¹

3. Nothing in paragraph 2 of this article prevents the claimant from proving that any person other than the registered owner is the carrier.¹²²

¹¹⁸ This new draft article has been inserted to draw together the provisions regarding the identity of the carrier into a single identifiable draft provision. The first paragraph of this new draft article consists of para. 4 of A/CN.9/WG.III/WP.79, while Variant A of the second paragraph consists of former draft article 40(3) as it appeared in A/CN.9/WG.III/WP.56, and Variant B of the second paragraph consists of paragraph 5 of A/CN.9/WG.III/WP.79.

¹¹⁹ This text is a modification of the text of para. 4 of A/CN.9/WG.III/WP.79, which the Working Group agreed to include in the draft convention in para. 28 of A/CN.9/616. The modification was made to ensure that the principle agreed upon by the Working Group could be applied with similar result in the case of both transport documents and electronic transport records.

¹²⁰ Variant A is the text of former draft article 40(3) as it appeared in A/CN.9/WG.III/WP.56.

¹²¹ Variant B is based on the text suggested in paragraph 5 of A/CN.9/WG.III/WP.79.

¹²² The Working Group may wish to consider the inclusion of a provision such as this to ensure that cargo interests remain free to advance their claims against the carrier they believed to be responsible for the loss or damage, as supported by the Working Group in paragraphs 23 and 28 of A/CN.9/616.

Article 39. Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.¹²³
2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf.¹²⁴ 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 40. Deficiencies in the contract particulars

1. The absence of one or more of the contract particulars referred to in article 37, 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 deemed¹²⁵ 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,¹²⁶ 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,¹²⁷ 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 stated¹²⁸ that the goods were in apparent good order and condition at the time the consignor delivered them to the carrier or a performing party.¹²⁹

¹²³ Although the Working Group agreed at paras. 12 and 13 of A/CN.9/616 to substitute the phrase "by or on behalf of the carrier" for the phrase "by the carrier or a person having authority from the carrier", the Working Group may wish to consider whether the drafting suggested more effectively achieves its goal of leaving issues such as agency and proper authority to the applicable law. The drafting formulation suggested is the same as that taken in article 15(1)(j) of the Hamburg Rules.

¹²⁴ Ibid.

¹²⁵ Text changed from "considered" to "deemed" to render it more conclusive as agreed by the Working Group in paras. 16 and 28 of A/CN.9/616.

¹²⁶ This drafting suggestion to reverse the order of the two phrases as they existed in the previous text is intended to improve the clarity of the subparagraph.

¹²⁷ Ibid.

¹²⁸ While draft para. 3 was approved in substance (see para. 26 of A/CN.9/616), a drafting clarification has been made to the text to ensure conformity with the changes made to draft article 42 and to take into account the approach taken in article 16(2) of the Hamburg Rules.

¹²⁹ The Working Group may wish to consider whether reference should be made in this article to the number of original bills of lading now required in the contract particulars pursuant to draft article 37(2)(d).

*Article 41. Qualifying the description of the goods in the contract particulars*¹³⁰

1. The carrier may qualify the information referred to in article 37, subparagraphs 1(a), (b), (c) or (d) in the circumstances and in the manner set out in this article in order to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper, and shall do so if:

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

(b) The carrier reasonably believes that a material statement in the transport document or electronic transport record is false or misleading.¹³¹

2. 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 37, subparagraphs 1(a), (b), (c) or (d) if:

(a) The carrier had no physically practicable or commercially¹³² 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 reasonably considers the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

3. When the goods are delivered for carriage to the carrier or a performing party in a closed container, the carrier may include a qualifying clause in the contract particulars with respect to:

(a) The information referred to in article 37, 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;

(b) The information referred to in article 37, 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

¹³⁰ The draft article has been reformulated to simplify and better align its structure and to take into account the issues raised in A/CN.9/WG.III/WP.62, paras. 36-39, and the deliberations at the Working Group's eighteenth session (A/CN.9/616, paras. 29-39).

¹³¹ As agreed by the Working Group (paras. 35-37, 39, 41 and 43-44, A/CN.9/616).

¹³² The phrase "the carrier can show that" has been deleted here and in draft paras. 4(a) and (b) pursuant to the decision of the Working Group (para. 38, A/CN.9/616). Further, the phrase "physically practicable or commercially" has been included here to allow for the deletion of former draft article 42(a), as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (paras. 43-44, A/CN.9/616).

- (ii) There was no physically practicable or commercially¹³³ reasonable means of checking the weight of the container.

*Article 42. Evidentiary effect of the contract particulars*¹³⁴

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 41:¹³⁵

(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;¹³⁶

(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 indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith.¹³⁷

(c) Proof to the contrary by the carrier shall not be admissible against a consignee acting in good faith in respect of contract particulars referred to in article 37, subparagraph 2 (a) included in a non-negotiable transport document or a non-negotiable electronic transport record, when such contract particulars are furnished by the carrier. For the purpose of this paragraph, the information referred to in article 37, subparagraph 2 (a), as well as the number, type and identifying numbers of the containers, but not the identifying numbers of the container seals, is deemed to be information furnished by the carrier.¹³⁸

*Article 43. "Freight prepaid"*¹³⁹

If the contract particulars¹⁴⁰ contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the

¹³³ The phrase "physically practicable or commercially" has been included here to allow for the deletion of former draft article 42(a), as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (paras. 43-44, A/CN.9/616).

¹³⁴ The drafting adjustments to the text are made to the provision as it appeared in para. 58 of A/CN.9/616.

¹³⁵ The contents of the chapeau of draft article 42 was located in former draft article 44, as it appeared in A/CN.9/WG.III/WP.56, which has been deleted.

¹³⁶ The Working Group may wish to note that this paragraph represents an expansion of the coverage of this principle from that set out in article IV(5)(f) of the Hague-Visby Rules.

¹³⁷ This subparagraph has been reformulated to avoid the difficult notion of conclusive evidence by using the construction of article 16(3)(b) of the Hamburg Rules, which has, however, been expanded to include non-negotiable transport documents and electronic transport records.

¹³⁸ The clarifications made to draft para. (c) as compared with the version of the text that appeared in para. 58 of A/CN.9/616 are those agreed to by the Working Group in para. 59 of A/CN.9/616.

¹³⁹ Former draft para. 44(1) from A/CN.9/WG.III/WP.32 retained as agreed (see paras. 162 to 164 of A/CN.9/552) in draft art. 43.

¹⁴⁰ The phrase "in a negotiable transport document or a negotiable electronic transport record" has been deleted in order to render the provision neutral as between negotiable and non-negotiable documents, as agreed by the Working Group (paras. 81-82, A/CN.9/616).

consignee the fact that the freight has not been paid.¹⁴¹ This article does not apply if the holder or the consignee is also the shipper.

CHAPTER 10. DELIVERY OF THE GOODS

Article 44. Obligation to accept delivery

When the goods have arrived at their destination, the consignee that [exercises any of its rights under][has actively involved itself in] the contract of carriage¹⁴² shall accept delivery of the goods at the time and location referred to in article 11, paragraph 2.

Article 45. Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt¹⁴³ 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 46. Delivery when no negotiable transport document or negotiable electronic transport record is issued¹⁴⁴

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 11, paragraph 2. 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 or, if, after reasonable effort, it is unable to locate the controlling party, the shipper. 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.

¹⁴¹ As agreed by the Working Group (para. 80, A/CN.9/616), the text suggested in para. 59 of A/CN.9/WG.III/WP.62 has been included in the provision.

¹⁴² As set out in footnote 160 of A/CN.9/WG.III/WP.32, a preference was expressed for the obligation to accept delivery not to be made dependent upon the exercise of any rights by the consignee, but rather that it be unconditional.

¹⁴³ It was thought that deletion of the phrase “shall confirm delivery” and replacement with the phrase “must acknowledge receipt” was preferable since the consignee could confirm its own act, but not the fulfilment of the carrier’s obligation.

¹⁴⁴ Revised text as agreed by the Working Group (A/CN.9/591, paras. 226 and 230), but with the order of paras. (a) and (b) reversed from their former position in the draft article in A/CN.9/WG.III/WP.56.

(d) The carrier that delivers the goods upon instruction of the controlling party or the shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.¹⁴⁵

[Article 47. Delivery when a non-negotiable transport document that requires surrender is issued¹⁴⁶

When a non-negotiable transport document has been issued that [provides] [indicates] [specifies] 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 11, paragraph 2 to the consignee upon proper identification of it 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 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. In such event, the shipper shall give instructions in respect of delivery of the goods. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper is deemed to be the shipper for the purpose of this paragraph.

(c) The carrier that delivers the goods upon instruction of the shipper 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.^{147]}

[Article 48. Delivery when a non-negotiable electronic transport record that requires surrender is issued¹⁴⁸

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

¹⁴⁵ Paragraph (d) of this draft article consists of the final sentence of former paragraph (c) of this draft article, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁴⁶ Draft article based on proposed new article 48 bis as set out in A/CN.9/WG.III/WP.68, para. 15, with slight drafting adjustments, which the Working Group agreed to include in the draft convention (A/CN.9/594, paras. 208-215).

¹⁴⁷ Paragraph (c) of this draft article consists of the final sentence of former paragraph (b) of this draft article as it appeared in A/CN.9/WG.III/WP.68, para. 15, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁴⁸ Draft article based on proposed new article 48 ter as set out in A/CN.9/WG.III/WP.68, para. 16, with slight drafting adjustments, which the Working Group agreed to include in the draft convention (A/CN.9/594, paras. 208-215).

(a) The carrier shall deliver the goods at the time and location referred to in article 11, paragraph 2 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 that it has exclusive control of the electronic record.

(b) If the consignee 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. In such event, the shipper shall give instructions in respect of delivery of the goods. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper is deemed to be the shipper for the purpose of this paragraph.

(c) The carrier that delivers the goods upon instruction of the shipper 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 that it has exclusive control of the electronic record.^{149]}

Article 49. Delivery when a negotiable transport document or negotiable electronic transport record is issued¹⁵⁰

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

(a) Without prejudice to article 44, 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 11, paragraph 2, to the holder, as appropriate:

- (i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 12(a)(i), upon proper identification; or
- (ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, subparagraph 1(c), 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.

¹⁴⁹ Paragraph (c) of this draft article consists of the final sentence of former paragraph (b) of this draft article as it appeared in A/CN.9/WG.III/WP.68, para. 16, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁵⁰ Revised text as agreed by the Working Group (A/CN.9/591, paras. 231-239, and A/CN.9/595, paras. 80-89). As a drafting improvement to avoid repetition, former subparas. (a)(i) and (ii) as set out in A/CN.9/WG.III/WP.56 have been combined to form paras. (a) and (b) in this article.

(c) If more than one original of the negotiable transport document has been issued, 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, subparagraph 1(d).

(d) If the holder 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 or, if, after reasonable effort, it is unable to locate the controlling party, the shipper. In such event the controlling party or shipper shall give the carrier 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 shall be deemed to be the shipper for purposes of this paragraph.

(e) The carrier that delivers the goods upon instruction of the controlling party or the shipper 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, that it is the holder.

(f) 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.

(g) Notwithstanding subparagraphs (e) and (f) of this article, the holder that did not have or 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.

Article 50. Goods remaining undelivered

1. Unless otherwise agreed and without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee,¹⁵¹ 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:¹⁵²

(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

¹⁵¹ Former draft article 50 as set out in A/CN.9/WG.III/WP.56 has been deleted, and its substance incorporated into draft article 50 in this text, in light of the Working Group's deliberations at the 17th session (A/CN.9/594, paras. 90-93). See also subpara. 2(b) of this article.

¹⁵² Paragraph 1 is a slightly amended version of former draft art. 51(2) as set out in A/CN.9/WG.III/WP.56, with amendments and corresponding changes to the chapeau as per deliberations of the Working Group (A/CN.9/594, paras. 97 to 99).

(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.

2. For the purposes of this article, goods shall be deemed to have remained undeliverable if, after their arrival at the place of destination:¹⁵³

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 11, paragraph 2;

(b) The controlling party or the shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 46, 47, 48 and 49;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 46, 47, 48 and 49;¹⁵⁴

(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.

3. The carrier may exercise these rights only after it has given reasonable advance notice of arrival of the goods at the place of destination 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.¹⁵⁵

4. If the goods are sold pursuant to subparagraph 1(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.¹⁵⁶

5. The carrier shall not be liable for loss of or damage to goods that 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.¹⁵⁷

¹⁵³ Paragraph 2 is a slightly amended version of former draft art. 51(1)(a) as set out in A/CN.9/WG.III/WP.56, with amendments and corresponding changes to the chapeau as per deliberations of the Working Group (A/CN.9/594, paras. 96 and 99).

¹⁵⁴ The Working Group may wish to consider the addition of subpara. 2(c) in order to include the situation when the goods remain undelivered because the carrier is entitled or required to refuse delivery.

¹⁵⁵ Paragraph 3 reflects the incorporation into draft article 50 of former article 52 as set out in A/CN.9/WG.III/WP.56, which the Working Group wished to see placed earlier in the text (A/CN.9/594, paras. 102-106).

¹⁵⁶ This paragraph was formerly draft art. 51(3) of the text as set out in A/CN.9/WG.III/WP.56, with slight modifications to reflect the views of the Working Group (A/CN.9/594, paras. 100-101).

¹⁵⁷ This draft paragraph consists of a combination of the second sentence of former draft art. 46 and of the spirit of former draft art. 53, both as set out in A/CN.9/WG.III/WP.56, and revised so as to reflect the Working Group's deliberations (A/CN.9/594, paras. 107-113). The Secretariat suggests that placement of the revised provision would be best in this draft article.

*Article 51. Retention of goods*¹⁵⁸

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 11. RIGHTS OF THE CONTROLLING PARTY¹⁵⁹

*Article 52. Exercise and extent of right of control*¹⁶⁰

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.

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 11, paragraph 1.

Article 53. 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:¹⁶¹

(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;

(c) The controlling party shall produce proper identification 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] [specifies] 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

¹⁵⁸ This new draft paragraph is based on the text contained in para. 14 of A/CN.9/WG.III/WP.63 and reflects the Working Group's deliberations (A/CN.9/594, paras. 114-117).

¹⁵⁹ Title of the chapter revised to better reflect its content.

¹⁶⁰ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 10-16), with drafting alterations to reflect that the definition of "controlling party" has been placed in draft article 1(15).

¹⁶¹ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 23-36 and 68-71). Former draft article 56(1)(d) as set out in A/CN.9/WG.III/WP.56 has been moved to become a separate para. 5 of this article.

by transferring the document to this person without endorsement, or by transferring the electronic transport record to it in accordance with the procedures referred to in article 9. 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;

(b) In order to exercise its right of control, the controlling party shall produce the document and proper identification, or, in the case of an electronic transport record, shall demonstrate in accordance with the procedures referred to in article 9 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:

(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 59. If more than one original of that document was issued, all originals shall be transferred in order to effect a transfer of the right of control;

(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 12(a)(i), the holder shall produce proper identification. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.¹⁶²

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;

(c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, that it is the holder.¹⁶³

5. The right of control ceases when the goods have arrived at destination and have been delivered in accordance with this Convention.¹⁶⁴

[6. Notwithstanding article 61, a person, not being the shipper or the documentary shipper, that transferred the right of control without having exercised that right, is upon such transfer discharged from the liabilities imposed on the controlling party by the contract of carriage or by this Convention.]¹⁶⁵

¹⁶² Revised draft as agreed by the Working Group (A/CN.9/594, paras. 37-40).

¹⁶³ Revised draft as agreed by the Working Group (A/CN.9/594, para. 41).

¹⁶⁴ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 23-36 and 68-71). This paragraph was formerly draft para. 56(1)(d) as set out in A/CN.9/WG.III/WP.56, and has been moved to this placement to improve clarity.

¹⁶⁵ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 42-45). The Working Group agreed that this paragraph should be placed in square brackets pending its possible modification or deletion, following further consideration of the issues raised and of the text in draft para. 60(1).

Article 54. 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 52 if:¹⁶⁶

(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

(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 additional expense that the carrier may incur and shall indemnify the carrier against any loss or damage that the carrier may suffer as a result of executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to [or for delay in delivery of] other goods being carried.¹⁶⁷

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 delivery] 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 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 62 to 64.¹⁶⁸

Article 55. Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 52, subparagraph 1(b), are deemed to be delivered at the place of destination, and the provisions of chapter 10 relating to such delivery apply to such goods.

Article 56. Variations to the contract of carriage¹⁶⁹

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 52, subparagraphs 1(b) and (c).

2. Variations to the contract of carriage, including those referred to in article 52, subparagraphs 1(b) and (c), shall be stated in a negotiable transport document or incorporated in a negotiable electronic transport record, or, at the option of the controlling party, shall be stated in a non-negotiable transport

¹⁶⁶ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 46-49).

¹⁶⁷ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 50-51).

¹⁶⁸ New provision replacing former article 57(4), as it appeared in A/CN.9/WG.III/WP.56, as requested by the Working Group (A/CN.9/594, paras. 55-58).

¹⁶⁹ Draft article moved here from its previous placement as former draft article 55 earlier in the chapter as set out in A/CN.9/WG.III/WP.56. Revised draft of provision as agreed by the Working Group (A/CN.9/594, paras. 17-22).

document or incorporated in a non-negotiable electronic transport record.¹⁷⁰ If so stated or incorporated, such variations shall be signed in accordance with article 39.

3. Variations to the contract of carriage made pursuant to this article shall not affect the rights and obligations of the parties prior to the date on which they are signed in accordance with article 39.

Article 57. Providing additional information, instructions or documents to carrier

If the carrier or a performing party during the period that it has custody of the goods reasonably requires information, instructions, or documents in addition to those referred to in article 29, subparagraph 1(a), the controlling party, on request of the carrier or such performing party, shall provide such information, instructions or documents to the extent that it is able to do so. 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 or the documentary shipper shall do so.¹⁷¹

Article 58. Variation by agreement

The parties to the contract of carriage may vary the effect of articles 52, subparagraphs 1(b) and (c), 53, paragraph 5 and 54. The parties may also restrict or exclude the transferability of the right of control referred to in article 53, subparagraph 1(b).¹⁷²

[CHAPTER 12. TRANSFER OF RIGHTS]¹⁷³

Article 59. 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:

- (a) If an order document, duly endorsed either to such other person or in blank; or,
- (b) If a bearer document or a blank endorsed document, without endorsement; or,

¹⁷⁰ The non-negotiable transport document and electronic transport record that require surrender in draft articles 47 and 48 should be included here should the Working Group decide that they will constitute conclusive evidence.

¹⁷¹ The Working Group at para 63 of A/CN.9/594 suggested that a difference could be drawn based on whether the controlling party has been active or passive. However, the Secretariat suggests that this may be unnecessary, since the controlling party should always be aware if it is a controlling party, and text as it stands indicates other parties who may be contacted for additional information if the controlling party is not identified or found.

¹⁷² The Secretariat suggests the deletion of the following closing phrase as redundant: "If a negotiable transport document or a negotiable electronic transport record is issued, any agreement referred to in this article shall be stated or incorporated in the contract particulars."

¹⁷³ The original text of this chapter is taken from A/CN.9/WG.III/WP.32, with some drafting improvements suggested to that text. The Working Group has not yet taken a final decision regarding the disposition of this chapter, following its decision in paras. 77-78 of A/CN.9/594 to defer for future discussion the consideration of chapter 12 on transfer of rights.

(c) If a document made out to the order of a named person and the transfer is between the first holder and the named person, without endorsement.¹⁷⁴

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 9.¹⁷⁵

Article 60. Liability of holder

1. Without prejudice to article 57, 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] [the liabilities imposed on the controlling party pursuant to chapter 11 and the liabilities imposed on the shipper for the payment of freight, dead freight, demurrage and compensation for detention to the extent that such liabilities are incorporated in the negotiable transport document or the negotiable electronic transport record].¹⁷⁶

3. For the purpose of paragraphs 1 and 2 of this article [and article 44]¹⁷⁷, 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

(b) It transfers its rights pursuant to article 59.

¹⁷⁴ As set out in footnote 201 of A/CN.9/WG.III/WP.32, there was strong support in the Working Group to maintain the text of draft para. 59(1) as drafted in order to promote harmonization and to accommodate negotiable electronic transport records. The concern raised in para. 132 of A/CN.9/526 regarding nominative negotiable documents under certain national laws was noted.

¹⁷⁵ As set out in footnote 202 of A/CN.9/WG.III/WP.32, para. 2 was discussed during the fifteenth session of the Working Group in conjunction with the other provisions in the draft convention regarding electronic transport records.

¹⁷⁶ As set out in footnote 204 of A/CN.9/WG.III/WP.32, the Working Group requested the Secretariat to prepare a revised draft of para. 2 with due consideration being given to the views expressed. However, the views expressed in the preceding paras. 137 to 139 of A/CN.9/526 were not consistent. Those that favoured a revision of the text requested that the subparagraph stipulate which liabilities the holder that exercised any right under the contract of carriage would assume pursuant to that contract, and an attempt has been made to revise the text. It should be noted that there is a relevant type of liability that ought perhaps to be considered: the liability in respect of loss, damage or injury caused by the goods (but excluding in any event that for breach of the shipper's obligations under draft art. 27).

¹⁷⁷ Inclusion of the text in square brackets will depend upon the decision of the Working Group regarding the inclusion of the bracketed text in draft art. 44.

Article 61.¹⁷⁸ When no negotiable transport document or negotiable electronic transport record is issued

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

(a) The transfer of rights pursuant to a contract is subject to the law applicable to the contract for the transfer of such rights;

(b) The transfer of rights other than by contract is subject to the law applicable to such other mode of transfer;

(c) The transferability of rights is subject to the law applicable to the contract of carriage; and

(d) Regardless of the law applicable pursuant to subparagraphs (a) and (b) of this article,

(i) A transfer that is otherwise permissible pursuant to the applicable law may be made by electronic means,

(ii) A transfer shall be notified to the carrier by the transferor or, if applicable law permits, by the transferee, and

(iii) The transferor and the transferee are jointly and severally liable for liabilities that are connected to or flow from the right that is transferred.]

CHAPTER 13: 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 Convention¹⁷⁹ is limited to [...] units of account per package or other shipping unit, or [...] 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 value¹⁸⁰ 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.

Variant A of paragraph 2¹⁸¹

[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

¹⁷⁸ Draft art. 61, formerly draft art. 61 bis, has replaced draft arts. 61 and 62 from A/CN.9/WG.III/WP.32, as agreed by the Working Group in para. 213 of A/CN.9/576, following its consideration of the electronic commerce aspects of art. 63, as set out in para. 12 of A/CN.9/WG.III/WP.47, and its consideration of replacing former draft arts. 61 and 62 with draft art. 61 in paras. 212 and 213 of A/CN.9/576.

¹⁷⁹ The addition of breaches of the carrier's obligations is thought to have made the reference to "[or in connection with]" the goods unnecessary.

¹⁸⁰ Further to the decision of the Working Group (paras. 172 and 174, A/CN.9/616), reference to the "nature" of the goods has been deleted.

¹⁸¹ If draft article 62(2) is retained, its text should be adjusted based on the final text of draft article 26. Variant A is intended as a clarification of the text of Variant B, and is not intended to change the suggested approach.

delivery was caused]¹⁸² 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 26 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]¹⁸³ 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]¹⁸⁴ 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]¹⁸⁵ mandatory provisions applicable to the different parts of the transport applies.]

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*¹⁸⁶

Subject to article 64, paragraph 2, compensation for physical loss of or damage to the goods caused by delay shall be calculated in accordance with article 22 and [, unless otherwise agreed,] liability for economic loss caused by delay is limited to an amount equivalent to [one times] the freight payable on the goods delayed. The total amount payable pursuant to this article and article 62,

¹⁸² See, *infra*, note 184.

¹⁸³ Text placed in square brackets to mirror the text in art. 26(1), pending a decision by the Working Group.

¹⁸⁴ Draft para. 2 was maintained in square brackets, and reference to delay in delivery was introduced in square brackets, for future discussion.

¹⁸⁵ See *supra*, note 183.

¹⁸⁶ Variant B has been deleted and Variant A has been retained from the text as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (para. 181, A/CN.9/616).

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 18, paragraph 1, is entitled to the benefit of the limitation of liability as provided in article 62¹⁸⁷, or as provided in the contract of carriage,¹⁸⁸ 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 18, paragraph 1, 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 14. TIME FOR SUIT

Article 65. Limitation of actions

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention¹⁸⁹ may be commenced after the expiration of a period of two years.¹⁹⁰

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,¹⁹¹ on the last¹⁹² day on which the goods should have been delivered. The day on which the period commences is not included in the period.¹⁹³

¹⁸⁷ As discussed at paras. 55 and 62 of A/CN.9/552, the suggestion to add a reference to art. 22 might need to be further discussed in the context of chapter 19.

¹⁸⁸ As agreed by the Working Group (para. 198 and 200, A/CN.9/616), the square brackets around the words "[or as provided in the contract of carriage,]" were deleted and the text retained.

¹⁸⁹ The insertion of the phrase "in respect of claims or disputes arising from a breach of an obligation under this Convention" is intended to provide for the same scope of coverage in this provision as in draft article 62.

¹⁹⁰ In keeping with the decision made by the Working Group (see paras. 127-133, A/CN.9/616), Variant B of the text as it appeared in A/CN.9/WG.III/WP.56 was used as the basis for a revised draft by the Secretariat. The text suggested in this regard is intended to contain the essential elements agreed to by the Working Group, but to rephrase the provision in such a fashion so as to avoid consideration of whether rights or actions have been extinguished or time-barred.

¹⁹¹ As agreed by the Working Group, reference to draft article 11 has been deleted (paras. 136 and 143, A/CN.9/616) and accommodation has been made for cases of partial delivery, as provided for in article 20(2) of the Hamburg Rules (para. 138, A/CN.9/616).

¹⁹² The square brackets have been removed from around the word "last" as agreed by the Working Group (paras. 133 and 139).

¹⁹³ As set out in footnote 216 of A/CN.9/WG.III/WP.32, the Working Group requested the Secretariat to retain the text of former draft art. 70, as it appeared in A/CN.9/WG.III/WP.56, with consideration being given to possible alternatives to reflect the views expressed. That text has now been moved into this paragraph, and former draft article 70, as it appeared in

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.¹⁹⁴

Article 66. Extension of limitation period

The limitation period provided in article 65 shall not be subject to suspension or interruption,¹⁹⁵ 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 liable under this Convention may be instituted after the expiration of the period referred to 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) 90 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 itself¹⁹⁶, whichever is earlier.¹⁹⁷

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 38, paragraph 2,¹⁹⁸ may be instituted after the expiration of the period referred to 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) 90 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 38, paragraph 2.¹⁹⁹

A/CN.9/WG.III/WP.56, has been deleted. In addition, the last sentence of this paragraph has been added from article 20(3) of the Hamburg Rules.

¹⁹⁴ In keeping with the Working Group's decision to allow for set-off of claims as a defence even when the limitation period had expired (paras. 130-131, 133, and 154 A/CN.9/616), the Secretariat has prepared draft paragraph 3, based on article 25(2) of the Convention on the Limitation Period in the International Sale of Goods. Former article 73 of the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted as a consequence of the inclusion of this text.

¹⁹⁵ Reference to suspension or interruption of the limitation period has been included further to the agreement in the Working Group (paras. 132-133, A/CN.9/616).

¹⁹⁶ Further to the decision made by the Working Group (para. 152, A/CN.9/616), Variant B of the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted and the text of Variant A retained.

¹⁹⁷ The phrase "whichever is earlier" has been added for clarification in those situations where service of process has already taken place, and discussions regarding settlement occur later.

¹⁹⁸ Drafting clarifications and corrections made to text in light of the revisions made as a consequence of former draft article 40(3), as it appeared in A/CN.9/WG.III/WP.56, now found in draft article 38(2).

¹⁹⁹ Consequential drafting changes have been made to this provision as a result of the revised text of former draft article 40(3), as it appeared in A/CN.9/WG.III/WP.56, now found in draft article 38(2).

CHAPTER 15. JURISDICTION²⁰⁰*Article 69. Actions against the carrier*

Unless the contract of carriage contains an exclusive choice of court agreement that complies with²⁰¹ article 70 or 75, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

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

- (i) The domicile of the carrier;²⁰²
- (ii) The place of receipt agreed in the contract of carriage;²⁰³
- (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.²⁰⁴

Article 70. Choice of court agreements²⁰⁵

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;²⁰⁶ and

(b) Clearly²⁰⁷ designates the courts of one Contracting State or one or more specific courts of one Contracting State.

²⁰⁰ The suggested drafting changes are made to the version of this chapter as it appeared in the annex to A/CN.9/WG.III/WP.75, as considered by the Working Group in paras. 245-266 of A/CN.9/616.

²⁰¹ "Complies with" is suggested as preferable to "is valid", which appeared previously in the text.

²⁰² Reference corrected to "carrier" rather than to "defendant" in order to be consistent with draft article 71 regarding actions against maritime performing parties.

²⁰³ Subparagraphs (ii) and (iii) were placed in separate subparas. from the previous text as it appeared in A/CN.9/WG.III/WP.75 for the purposes of clarity.

²⁰⁴ The text in subparagraph (b) replaces that of both former subparagraph (d) and former draft article 76(1), as they appeared in the text in A/CN.9/WG.III/WP.75, and which have been deleted in this version of the draft convention.

²⁰⁵ The first paragraph of this provision as it appeared in the annex to A/CN.9/WG.III/WP.75 has been deleted and, as a drafting improvement, replaced with a reference to draft article 69(b) in paragraph 1.

²⁰⁶ The phrase "sections of" has replaced the phrase "location within" as accurately reflecting the text of draft article 89(1)(b).

²⁰⁷ The phrase "clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State" has been retained and the square brackets deleted in accordance with the decision taken by the Working Group (para. 256, A/CN.9/616). Further, former draft

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 for²⁰⁸ 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 seized²⁰⁹][The law of the [agreed] place of delivery of the goods][The law of the place of receipt of the goods [by the carrier]][The applicable law pursuant to the rules of private international law of the law of the forum]²¹⁰ recognizes that that person may be bound by the exclusive choice of court agreement.

[3. This article does not prevent a Contracting State from giving effect to a choice of court agreement that does not meet the requirements of paragraphs 1 or 2 of this article. Such Contracting State shall give notice to that effect [to _____].²¹¹

4. (a) Nothing in paragraph 3 of this article or in a choice of court agreement effective pursuant to paragraph 3 of this article prevents a court specified in article 69[, paragraph (a)] and situated in a different Contracting State from exercising its jurisdiction over the dispute and deciding the dispute under this Convention.

(b) Except as provided in this chapter, no choice of court agreement is exclusive with respect to an action [against a carrier] under this Convention.²¹²]²¹³

paragraph (c), as it appeared in A/CN.9/WG.III/WP.75 has been deleted as agreed by the Working Group (para. 257, A/CN.9/616).

²⁰⁸ As agreed in the Working Group, the square brackets around draft paragraph (b) have been deleted, and the phrase “that evidences the contract of carriage for” has replaced the phrase “issued in relation to” (para. 258, A/CN.9/616).

²⁰⁹ The Working Group may wish to consider whether further clarification may be necessary to ascertain whether the “court seized” will necessarily be the competent court, or whether it may be another court.

²¹⁰ Various alternatives for this provision have been added as agreed by the Working Group (para. 259, A/CN.9/616).

²¹¹ The Working Group may wish to consider the interplay between this approach and the final clauses.

²¹² Separate paragraph provided for this provision in order to avoid making it subject to paragraph. 4 of this article, as suggested by the Working Group in paragraph 80 of A/CN.9/591.

²¹³ Square brackets have been inserted around draft paragraphs 4 and 5 to indicate the Working Group’s agreement that if the decision were made to include a reservation or “opt in” clause regarding the entire chapter on jurisdiction, these paragraphs could be deleted (para. 260, A/CN.9/616).

*Article 71. Actions against the maritime performing party*²¹⁴

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
- (b) The port where the goods are initially received by the maritime performing party or the port where the goods are finally delivered by the maritime performing party, or the port in which the maritime performing party performs its activities with respect to the goods.²¹⁵

*Article 72. No additional bases of jurisdiction*²¹⁶

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 [or pursuant to rules applicable due to the operation of article 77, paragraph 2]²¹⁷.

*Article 73. Arrest and provisional or protective measures*²¹⁸

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.²¹⁹

Article 74. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is valid pursuant to articles 70 [or] 75 [or pursuant to rules applicable due to the operation

²¹⁴ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. A slight variation has been made to the chapeau for drafting purposes only in order to ensure that the chapeau mirrors that of article 69, and text has been suggested in paragraph (b) to accommodate maritime performing parties that operate in a single port. Further, the Working Group may wish to clarify the relationship between articles 70 and 71.

²¹⁵ The square brackets have been deleted from the text as it appeared in the annex to A/CN.9/WG.III/WP.75, in addition to the deletion of the words “single” and “all of”, as agreed by the Working Group (para. 261, A/CN.9/616).

²¹⁶ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84, with a clarification concerning proceedings against the carrier or a maritime performing party.

²¹⁷ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77(2).

²¹⁸ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84.

²¹⁹ The square brackets in the text have been removed as agreed in the Working Group (para. 262, A/CN.9/616) and the text inside retained, and the phrase “according to its rules of application” has been deleted as redundant.

of article 77, paragraph 2]²²⁰, 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 valid pursuant to articles 70 [or] 75 [or pursuant to rules applicable due to the operation of article 77, paragraph 2]²²¹, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 69 or 71²²² 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 recommenced²²³

Article 75. Agreement after dispute has arisen and jurisdiction when the defendant has entered an appearance²²⁴

1. After the dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent²²⁵ court in a Contracting State before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 76. Recognition and enforcement²²⁶

1. A decision made by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with

²²⁰ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77 (2).

²²¹ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77 (2).

²²² The text “seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum under articles 69 or 71” has been inserted and the alternative texts that appeared in A/CN.9/WG.III/WP.75 have been deleted in keeping with the decision of the Working Group (para. 263, A/CN.9/616).

²²³ It is suggested that the closing phrase of the previous text as it appeared in A/CN.9/WG.III/WP.75 “and may recommence it in one of the courts designated under articles 69 or 71, whichever is applicable, as chosen by the defendant” be replaced with the phrase “once the defendant has chosen a court designated pursuant to article 69 or 71, whichever is applicable, where the action may be recommenced” in order to make clear that the defendant is required to choose a court in which the case should be heard, and cannot simply avoid the action by failing to choose a court.

²²⁴ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. The opening phrase “Notwithstanding the preceding articles of this chapter” has been deleted as redundant, as references to article 75 have been added to articles 69, 70 and 74, and opening phrase of the second paragraph has been clarified from “a competent court” to “a court in a Contracting State”.

²²⁵ The word “competent” has been inserted as agreed in the Working Group (para. 264, A/CN.9/616).

²²⁶ The suggested drafting changes are made to the version of this draft article as it appeared in the annex to A/CN.9/WG.III/WP.75, in order to accommodate the possible adoption by the Working Group of a whole or partial reservation or “opt in” approaches with respect to chapter 15, in keeping with paras. 265-266 of A/CN.9/616.

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;

(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; or

(c) If a court of that Contracting State had exclusive jurisdiction in a dispute resulting in the decision in respect of which recognition and enforcement is sought pursuant to the rules applied as a result of a declaration made pursuant to article 77, paragraph 2.

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 15²²⁷

[Variant A]

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession, in accordance with article 94, that it will not be bound by the provisions of this chapter.]

[Variant B]

The provisions of this chapter shall bind only Contracting States that declare [at the time of signature, ratification, acceptance, approval or accession,] [at any time thereafter] in accordance with article 94, that they will be bound by them.]

[Variant C] would consist of Variant B plus the following text as a second para.:

A Contracting State that makes a declaration pursuant to paragraph 1 of this article may at the same time declare that it will not be bound by article 70 and its courts shall instead apply the rules which would be otherwise applicable in that Contracting State.]

²²⁷ Variant A is intended to represent the reservation approach to the chapter on jurisdiction, while Variant B is intended to represent the “opt-in” approach, and Variant C, which would consist of both Variants B and C, is intended to represent a “partial opt-in” approach (see A/CN.9/616, paras. 246-252).

CHAPTER 16. ARBITRATION²²⁸*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 at²²⁹:

(a) Any place designated for that purpose in the arbitration agreement; or

(b) Any other place situated in a State where any of the places specified in article 69, subparagraph (a), (b) or (c), is located.

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 of²³⁰ the volume contract containing the arbitration²³¹ 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) or (c);

[(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;]

(c) The person to be bound is given timely and adequate notice of the place of arbitration; and

(d) Applicable law²³² permits that person to be bound by the arbitration agreement.

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.

²²⁸ The suggested changes to the text of this chapter are to the version of the provision as it appeared in para. 270 of A/CN.9/616.

²²⁹ The phrase "one of the following locations" has been deleted as redundant.

²³⁰ The phrase "sections of" has replaced the phrase "location within" as accurately reflecting the text of draft article 89(1)(b).

²³¹ The phrase "containing the arbitration" has replaced "of that" for greater precision.

²³² It is suggested that the phrase "[for the arbitration agreement]" be deleted as it has caused confusion regarding the applicable law in the past.

*Article 79. Arbitration agreement in non-liner transportation*²³³

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; 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; 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.

Article 80. Agreements for arbitration after the dispute has arisen

Notwithstanding the provisions of this chapter and chapter 15, 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 16*²³⁴

[Variant A

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession, in accordance with article 94, that it will not be bound by the provisions of this chapter.]

[Variant B

The provisions of this chapter shall be binding only on Contracting States that declare [at the time of signature, ratification, acceptance, approval or accession,] [at any time thereafter] in accordance with article 94, that they will be bound by them.]

²³³ In response to the views of the Working Group as set out in paras. 276-277 of A/CN.9/616 and in order to clarify this provision in general, this draft article has been substantially adjusted from the version set out in para. 270 of A/CN.9/616.

²³⁴ For the purposes of consistency, the drafting approach taken in both Variants A and B is similar to that taken in draft article 77, with respect to the chapter on jurisdiction. Variant A is intended to represent the reservation approach to the chapter on arbitration, while Variant B is intended to represent the "opt-in" approach. A "partial opt-in" approach was considered with respect to the chapter on arbitration, as suggested in discussion in the Working Group (see A/CN.9/616, paras. 278-279), but was not considered necessary or practicable with respect to arbitration.

CHAPTER 17. GENERAL AVERAGE

Article 82. Provisions on general average

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

CHAPTER 18. OTHER CONVENTIONS

*Article 83. Denunciation of other conventions*²³⁵

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; or, alternatively, 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 and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect.

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.

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 are not effective until such denunciations as may be required on the part of those States in respect of these instruments have themselves 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 co-ordination in this respect.²³⁶

Article 84. International conventions governing the carriage of goods by air

Nothing in this Convention prevents a Contracting State from applying the provisions of any other international convention regarding the carriage of goods by air to the contract of carriage when such international convention according to its provisions applies to any part of the contract of carriage.²³⁷

²³⁵ Draft article 83 consists of former article 102 as it appeared in A/CN.9/WG.III/WP.56, which has been moved to this location from its previous location in the chapter on Final Clauses. It is thought that chapter 18 on Other Conventions reads more logically with the addition of former article 102, now draft article 83, on denunciations to this location.

²³⁶ Text based on paras. 99(3) and (6) of the United Nations Convention on Contracts for the International Sale of Goods. See also art. 31 of the Hamburg Rules.

²³⁷ Suggested approach along the lines of former draft article 89 as it appeared in A/CN.9/WG.III/WP.56 to ensure that there is no conflict of conventions with the Montreal Convention, as considered by the Working Group in paras. 225 and 234-235 of A/CN.9/616.

Article 85. Global limitation of liability

This Convention does not modify the rights or obligations of the carrier, or the performing party provided for in international conventions or national law applicable to the limitation of liability of owners of seagoing ships or the limitation of liability for maritime claims.²³⁸

Article 86. Other provisions on carriage of passengers and luggage

No liability arises under this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is liable under any convention or national law applicable to the carriage of passengers and their luggage.

Article 87. Other provisions on damage caused by nuclear incident

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) By virtue of 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 19. VALIDITY OF CONTRACTUAL TERMS²³⁹*Article 88. General provisions*²⁴⁰

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

²³⁸ The phrase “for maritime claims” has been added in order to reflect the terminology of the Convention on Limitation of Liability for Maritime Claims, 1976 and its 1996 Protocol.

²³⁹ The Working Group may wish to consider whether this chapter would be better placed before chapter 17 on general average, or merged into chapter 2 on scope of application.

²⁴⁰ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 46, as requested by the Working Group (A/CN.9/594, paras. 147 and 153). The word “provision” has been substituted for “stipulation”.

(c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18, paragraph 1.

[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.]

*Article 89. Special rules for volume contracts*²⁴¹

1. Notwithstanding article 88, as between the carrier and the shipper,²⁴² 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 pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 16, subparagraphs (1)(a) and (b), 29 and 32 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 64.²⁴³

²⁴¹ Revised draft based on alternative version in A/CN.9/WG.III/WP.61, para. 49, with amendments to paras. 4 and 5 requested by the Working Group (A/CN.9/594, paras. 163-167). Drafting adjustments have been made to the text of para. 5 with the intention of improving clarity but not changing the substance, and former subpara. 5(c) as it appeared in para. 49 of A/CN.9/WG.III/WP.61 has been moved into a separate para. 6.

²⁴² The phrase "as between the carrier and the shipper" has been added to this paragraph to accommodate the simplified version of para. 5 now inserted into the draft convention by ensuring the inclusion of the text in former subpara. 5(a) of the draft article as set out in para. 49 of A/CN.9/WG.III/WP.61, which stated "Paragraph 1 of this article applies between the carrier and the shipper".

²⁴³ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 49, with amendments regarding the reference to draft art. 64 as requested by the Working Group (A/CN.9/594, paras. 158-162).

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 gives its express consent 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.²⁴⁴

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

*Article 90. Special rules for live animals and certain other goods*²⁴⁵

Notwithstanding article 88 and without prejudice to²⁴⁶ article 89, 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 except when 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 18, paragraph 1, or of a maritime performing party done recklessly and with knowledge that such loss or damage,²⁴⁷ 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.

CHAPTER 20. FINAL CLAUSES

Article 91. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.²⁴⁸

²⁴⁴ Drafting adjustments have been made to the text of para. 5 as set out in para. 49 of A/CN.9/WG.III/WP.61 with the intention of improving clarity but not changing the substance. Former subpara. 5(c) as it appeared in para. 49 of A/CN.9/WG.III/WP.61 has been moved into a separate para. 6.

²⁴⁵ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 62, as requested by the Working Group (A/CN.9/594, paras. 163-167).

²⁴⁶ In the opening phrase of para (a), the phrase "without prejudice to" has been added to the text as set out in para. 62 of A/CN.9/WG.III/WP.61 to better reflect the nature of articles 88 and 89.

²⁴⁷ In order to avoid repetition, the phrase "would probably occur or recklessly and with knowledge" has been deleted from the text as set out in para. 62 of A/CN.9/WG.III/WP.61.

²⁴⁸ Text taken from art. 15 of the Electronic Contracting Convention and art. 27 of the Hamburg Rules.

Article 92. 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.²⁴⁹

Article 93. Reservations

No reservations are permitted except those expressly authorized in this Convention.²⁵⁰

Article 94. Procedure and effect of declarations²⁵¹

1. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.
3. 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.
4. 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.

²⁴⁹ Text taken from art. 16 of the Electronic Contracting Convention.

²⁵⁰ Revised text to accommodate the possible inclusion of reservations regarding chapters 15 and 16.

²⁵¹ Suggested text to accommodate the possible inclusion of reservations regarding chapters 15 and 16.

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.²⁵²

*Article 96. Participation by regional economic integration organizations*²⁵³

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

²⁵² Text is taken from art. 18 of the Electronic Contracting Convention. See also art. 52 of the Convention on International Interests in Mobile Equipment, Cape Town, 16 November 2001.

²⁵³ Text from sixteenth session of Working Group, para. 73 of A/CN.9/591, where it was not discussed, as noted in para. 83 of A/CN.9/591.

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.²⁵⁴

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.²⁵⁵

Article 99. Amendment of limitation amounts²⁵⁶

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 fourth²⁵⁷] of the Contracting States to this Convention,²⁵⁸ the depositary shall circulate any proposal to amend the limitation amount specified in article 62, paragraph 1, of this Convention to all the

²⁵⁴ Text is taken from art. 30 of the Hamburg Rules. Note that the second suggested time period in square brackets is drawn from art. 23 of the Electronic Contracting Convention. The time selected for entry into force, which is a function of both the number of ratifications required and of the length of time required after the deposit of the appropriate instrument, is generally the time considered appropriate for business practice to adjust to the new regime.

²⁵⁵ Text is taken from art. 32 of the Hamburg Rules. Amendment procedures are not common in UNCITRAL texts, but the Hamburg Rules have a general provision in art. 32 and a special provision in art. 33 for revision of the limitation amounts and the unit of account. In the Electronic Contracting Convention, the Commission decided not to have a provision on amendments because the States parties to that Convention may initiate an amendment procedure under general treaty law (typically, with a diplomatic conference and an amending protocol, such as in the case of the Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol of 11 April 1980, New York, 14 June 1974), if applicable, after discussion in the Commission. Note that the amendment provisions at draft arts. 103 and at draft art. 104 may be adopted independently.

²⁵⁶ 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.

²⁵⁷ Para. 23(2) of the Athens Convention refers to “one half” rather than “one quarter” of the Contracting States.

²⁵⁸ Para. 23(2) of the Athens Convention includes the phrase “but in no case less than six” of the Contracting States.

Contracting States²⁵⁹ 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.²⁶⁰

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.²⁶¹

6. (a) No amendment of the limit pursuant to this article may be considered less than [five²⁶²] 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.

(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.²⁶³

(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].²⁶⁴

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 [eighteen²⁶⁵] months after the date of notification, unless within that period not less than [one fourth²⁶⁶] of the States that were Contracting States at the time of the adoption of the amendment

²⁵⁹ Para. 23(2) of the Athens Convention also includes reference to Members of the IMO.

²⁶⁰ 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."

²⁶¹ This provision has been taken from para. 23(6) of the Athens Convention. See, also, para. 24(4) of the OTT Convention.

²⁶² 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.

²⁶³ 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."

²⁶⁴ 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."

²⁶⁵ 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.

²⁶⁶ The OTT Convention specifies at para. 24(7) "not less than one third of the States that were States Parties".

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]²⁶⁷ 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.

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.²⁶⁸

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.

²⁶⁷ 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).

²⁶⁸ Text is taken from art. 34 of the Hamburg Rules. The second sentence of para. 2 is not strictly necessary but is present in the Hamburg Rules and in some other UNCITRAL treaties, including the Electronic Contracting Convention. It is not present, for instance, in art. 27 of the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (the most recent text deposited with the Secretary-General), which provides some slightly modified alternative language:

“1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.”