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LIABILITY OF OPERATORS OF TRANSPORT TERMINALS

Report of the Secretary-General

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INTRODUCTION

1. The Commission, at its sixteenth session, had before it a report of the Secretary-General on some recent developments in the field of international transport of goods (A/CN.9/236). 1/ That report, inter alia, described the work of the International Institute for the Unification of Private Law (UNIDROIT) on the liability of international terminal operators, and discussed a preliminary draft Convention on this subject which had been prepared by a UNIDROIT study group.

2. After considering the report, the Commission decided to include the topic of liability of international terminal operators in its programme of work, to request UNIDROIT to transmit the preliminary draft Convention to the Commission for its consideration, and to assign work on the preparation of uniform rules on this topic to a Working Group. The Commission deferred to its seventeenth session the decision on the composition of the Working Group. The Secretariat was requested to submit to the Commission at its seventeenth session a study of important issues arising from the preliminary draft Convention, and to consider in this study the possibility of broadening the scope of the uniform rules to cover the storage and safekeeping of goods not involved in transport. 2/

3. UNIDROIT has transmitted to the Commission the preliminary draft Convention as adopted by the UNIDROIT Governing Council in May, 1983. 3/ The text of the preliminary draft Convention is contained in Annex II to this study. The present study, prepared in response to the request of the Commission, discusses some of the major issues which arise from the preliminary draft Convention and which may merit consideration in the formulation of uniform rules on the liability of operators of transport terminals (OTTs).

4. Whether or not the application of the uniform rules is limited to operations which are directly related to international transport, it may be desirable in dealing with certain issues (e.g. the standard of liability, limit of liability, and limitation period) to keep in mind approaches which are adopted in international transport conventions. For ease of reference, a table summarizing the approaches adopted in various major international transport conventions is provided in Annex I to this study.

1/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session (1983), Official Records of the General Assembly, Thirty-eighth session, Supplement No. 17 (A/38/17), para. 109.

2/ Ibid., para. 115.

3/ The preliminary draft Convention as adopted by the Governing Council of UNIDROIT at its 62nd session in May, 1983, is titled "preliminary draft Convention on Operators of Transport Terminals" (UNIDROIT 1983, Study XLIV - Doc. 24). The term "operators of transport terminals" (OTTs), rather than "international terminal operators", will be used in the balance of this study.

I. SCOPE OF APPLICATION OF UNIFORM RULES

A. Relationship of uniform rules to international transport

5. A principal reason for undertaking to unify the legal rules relating to the liability of OTTs is to fill gaps in the liability regimes left by international transport conventions. ^{4/} These conventions achieve a high degree of uniformity with respect to legal rules governing the liability of carriers for loss of and damage to goods during carriage operations. However, the liability of non-carrying intermediaries for loss of and damage to goods before and after carriage (which is when such loss and damage most frequently occur), as well as during carriage, remains governed by disparate legal regimes under national legal systems. ^{5/} It has been considered desirable for this liability, too, to be governed by a uniform international legal regime, in order to give due protection to persons with interests in cargo, and to facilitate recourse by carriers, multimodal transport operators, freight forwarders and similar entities against intermediaries when the former are held liable for loss of or damage to goods in the custody of the intermediaries.

6. With these objectives in mind, the drafters of the UNIDROIT preliminary draft Convention restricted its application to operations of OTTs which are related to international carriage (article 2(b)). However, it has been questioned whether such a restriction is desirable, or whether all operations of OTTs, even if they are not related to international transport, or to transport at all, should be governed by a uniform international legal regime. Within the UNIDROIT study group which prepared the preliminary draft Convention it was suggested, in favour of having the convention govern even operations of OTTs which were not related to international transport, that restricting the scope of the rules to operations related to international transport would make it difficult in some cases to determine when an OTT's operations would be governed by the Convention. For example, goods might be deposited in a terminal by a customer who had not yet determined whether they would be exported and transported internationally, or sold domestically. Even if the customer did know, it might not be known by the OTT. In such circumstances the OTT would not know whether he should take out insurance to cover his liability under the Convention. ^{6/}

^{4/} See A/CN.9/236, paras. 28-32; also, Explanatory report on the preliminary draft Convention on Operators of Transport Terminals (UNIDROIT 1983, Study XLIV - Doc. 24) (hereinafter referred to as "Explanatory report") paras. 1, 9-10.

^{5/} See A/CN.9/236, paras. 22-27. See also Ramberg, "Liability of Sea Terminals - Some Preliminary Thoughts", International Maritime Committee, Documentation, 1975, II; and the Preliminary report on the warehousing contract prepared by D. Hill for UNIDROIT in 1976 (UNIDROIT 1976, Study XLIV - Doc. 2).

^{6/} Explanatory report, para. 33.

7. It might be considered, however, that cases in which a customer depositing goods in a terminal does not know whether they will be carried in international transport are probably not very numerous, and will occur only with respect to goods deposited before transport, rather than during or after transport. In any event, if the application of the uniform rules is to be restricted to operations of OTTs related to international transport, it might be possible to cover those situations in which the OTT does not know whether the goods will be carried in international transport, by obligating the customer to declare to the OTT that the goods are to be carried in international transport, failing which the operations of the OTT would not be governed by the uniform rules. It might also be possible to subject the operations to the uniform rules only if the OTT knew or ought to have known that the goods had been deposited with him in connection with international transport.

8. In connection with the question of whether the uniform rules should apply only to operations of OTTs which are related to international transport, it may also be noted that the safekeeping of goods which is not related to transport, or which is only remotely or tenuously related to transport, usually does not have foreign elements, and for these situations the existence of disparate rules under other national legal systems should create few problems. These transactions might continue to be governed by local law, and there may be no need for international harmonization of the legal rules applicable to them. Moreover, an attempt to unify legal rules which would also be applicable to operations of OTTs unrelated to transport or related only to transport of a purely local nature may encounter significant opposition from OTTs engaged in such operations, as well as from some States, and may unnecessarily jeopardize the international acceptance of uniform rules covering operations related to international transport.

9. If the application of the uniform rules is to be restricted to operations related to international transport, it might be considered advisable for the rules to establish the degree and nature of the relationship required in order for the rules to apply. One possible approach might be to have the rules apply only to operations of an OTT which are performed between the time when the goods are taken over by a carrier from the shipper in one State and the time when the goods are delivered to a recipient in another State. Since this would include periods during which a carrier would be responsible for the goods, this approach would protect the carrier's right of recourse against the OTT. However, under this approach the uniform rules would not apply to some situations in which uniformity in the legal rules governing the operations of OTTs might be thought to be desirable, such as the safekeeping of goods for a shipper before carriage in international transport has begun, and the safekeeping of goods at the end of international transport by an OTT to whom the goods are delivered by a carrier and who acts as agent for the recipient.

10. The preliminary draft Convention is made applicable to operations of OTTs which are "related to carriage in which the place of departure and the place of destination are situated in two different States" (article 2(b)). The degree and nature of the relationship are not further defined, and such a formulation could give rise to questions in particular cases as to whether the Convention is applicable.

B. Types of operators and operations to be governed by uniform rules

11. It may be considered what types of operations performed by an intermediary should be governed by the uniform rules. The preliminary draft Convention applies to operators of transport terminals, i.e. persons acting in a capacity other than that of a carrier who undertake against remuneration the safekeeping of goods before, during or after carriage (article 1(1)). An OTT would be responsible for the safekeeping of goods from the time he has taken them in charge until their handing over to the person entitled to take delivery of them (article 3(1)). During this basic period of responsibility, it appears that the OTT would be responsible for loss of or damage to the goods whether they occurred while the goods were in safekeeping, or during any other operation performed by the OTT with respect to the goods ancillary to safekeeping. In addition, if the OTT has undertaken discharging, loading or stowage of the goods even before or after the basic period of responsibility, he would be responsible for loss or damage occurring during these operations as well (article 3(2)).

12. On the other hand, it appears that the preliminary draft Convention does not apply to an intermediary (such as a stevedore) who handles the goods before, during or after carriage, but for whom safekeeping does not constitute part of his undertaking.

13. This approach was adopted as a compromise between creating a single, unified legal regime to cover all handling operations taking place at any time before, during and after carriage, whether or not these operations were related to a primary obligation of safekeeping, and restricting such a regime to safekeeping alone. It was based on the desire to fill to the greatest extent possible the gaps left by international transport conventions, and to avoid enabling an OTT to escape the application of the Convention by claiming that the loss or damage occurred during handling operations, rather than safekeeping. It was therefore decided not to restrict the application of the preliminary draft Convention to safekeeping operations alone. On the other hand, it was considered unrealistic at the present time to create a unified regime covering all handling operations, whether or not they were related to safekeeping, and that a single regime may not be suitable for all operations. ^{7/}

14. A related issue may be whether the safekeeping of goods and ancillary operations performed by a freight forwarder (i.e. an intermediary who arranges for transportation of goods for a shipper or consignee and who may perform other services in connection with the transportation) should be covered by the uniform legal rules. In this regard, a distinction may be drawn between a forwarder who acts as a principal in the transport of goods, i.e., one who, in his own name, assumes responsibility for the

^{7/} Ibid., paras. 36 and 37.

transport from the point of receipt of the goods to the final destination, 8/ and one who merely arranges for transport for the shipper, by entering into a contract with the carrier either on behalf of the shipper 9/ or on his own behalf.

15. The activities of a forwarder acting as a principal will in many cases be governed by a combined transport document such as the Combined Transport Bill of Lading issued by the International Federation of Freight Forwarders Associations (FIATA), 10/ which has achieved a degree of international uniformity with respect to the liability of forwarders issuing the document. Moreover, the activities of a forwarder acting as a principal will likely be governed by the United Nations Convention on International Multimodal Transport of Goods (1980) (the "Multimodal Convention") when it comes into force. 11/ It may therefore be unnecessary for the uniform rules to govern these activities. In this regard, it may be noted that the preliminary draft Convention specifically precludes its application to one acting as a carrier (article 1(1)), 12/ and that the liability of carriers is governed by other conventions. 13/ By analogous reasoning the uniform rules might also exclude freight forwarders acting as principals, and perhaps other similar operators, such as multimodal transport operators. However, if a freight forwarder acting as a principal engages and deposits goods with an OTT during the period

8/ See Report of the Secretary-General: survey of the work of international organizations in the field of transport law (A/CN.9/172), paras. 59-62.

9/ Ibid., paras. 54 and 55.

10/ This document has been approved by the Joint Committee on Intermodal Transport of the International Chamber of Commerce (ICC), as conforming with the ICC Uniform Rules for a Combined Transport Document.

11/ TD/MT/CONF.16. An exception may be when, after carriage has ended, the forwarder holds the goods in his own facility at the disposal of the consignee, and notifies the consignee of the arrival of the goods, but after a reasonable time the consignee fails to collect them. Under article 14(2)(b)(ii) of the Multimodal Convention the responsibility of the forwarder may terminate; if so, storage would be subject to rules of national law.

12/ See also Explanatory report, para. 24. It should be noted that under some legal systems after a carrier unloads goods and retains them in its own storage areas and a reasonable time for collection of the goods by one entitled to receive them has elapsed, the carrier ceases to be liable for the goods as a carrier, and is liable only as a bailee. It may be questioned whether, as a consequence of the words "other than that of a carrier" in article 1(1) of the preliminary draft Convention, a carrier whose situation under the position just described is changed to that of a bailee would be subject to the rules of the Convention. If not, it may be considered whether a carrier in such a position should be made subject to the regime applicable to OTTs.

13/ Pursuant to article 14, the preliminary draft Convention would be subordinate to other international conventions relating to the international transport of goods.

when the forwarder is responsible for the goods, the operations of the OTT should be governed by the uniform rules in order to preserve the forwarder's right of recourse against the OTT.

16. Where, on the other hand, the forwarder merely arranges for transport for the shipper, he may temporarily store the goods in his own premises. Such operations would not be governed by other international transport conventions. Moreover, although the safekeeping of the goods is not the primary undertaking by forwarders in such cases, safekeeping and related operations (e.g. pick-up and delivery of the goods) are sometimes the major material or physical acts performed by the forwarder (his other tasks being ministerial in nature, such as arranging for carriage and insurance, preparing and receiving shipping documents, and customs clearance), and one during which the goods could suffer actual loss or damage. It may therefore be reasonable to include within the scope of the uniform regime the safekeeping and related operations of freight forwarders who act in this capacity.

II. ISSUANCE OF DOCUMENT

17. The issues of whether the OTT should be obligated to issue a document in respect of goods taken in charge by him, and if so, the nature and contents of the document, might be considered. Current practice in this regard varies. In some locations documents are not issued by an OTT. In those areas in which documents are issued, the contents and nature of the document, and the time of its issuance, vary considerably. 14/

18. It has been suggested that requiring a document in connection with international terminal operations in addition to the documents covering the carriage of the goods could be an unnecessary hindrance to the rapid movement of goods. 15/ On the other hand, it has also been argued that there is no value in establishing a liability regime for OTTs if no document is to be available to prove that the goods have actually been taken in charge. 16/ In addition, a document serving as a receipt for goods taken in charge by an OTT may be useful in connection with claims for loss of or damage to the goods. A document could also be useful in connection with obtaining finance against the goods. This is particularly true in international trade, where it is not uncommon for a seller to ship goods to a foreign warehouse, and for either the seller or a buyer to obtain financing against the goods.

19. The drafters of the preliminary draft Convention chose to require the OTT to issue a document only upon request of the customer (article 4(1)), on the ground that the need for the document would vary according to the circumstances. 17/

14/ Explanatory report, para. 41.

15/ Ibid., para. 40.

16/ Ibid., para. 41.

17/ Ibid., para. 42.

20. With regard to the question whether the document should be negotiable, the UNIDROIT study group which prepared the preliminary draft Convention was unsure of the commercial need for a negotiable document. The text provides that the document may be negotiable if the parties so agree and the applicable law so permits (article 4(4)). 18/

21. Arguments against requiring the OTT to issue a negotiable document include the following. There are many cases in which it is not necessary for the document to be negotiable. The existence of a negotiable transport document may in some cases obviate the need for a negotiable OTT document. The problem of fraud in connection with negotiable transport documents is becoming increasingly serious, and the widespread issuance of negotiable OTT documents could add to this problem. Difficulties could arise if two documents of title for the same goods were to be in effect at the same time. There is a growing body of opinion that the speed of modern international transport makes negotiable transport documents, and the costs, time and risks associated with them, unnecessary, and makes non-negotiable documents preferable. 19/ In some cases a negotiable document can impede the flow of goods out of a terminal. An example is when goods deposited together are to be released at different times or to different persons. With a non-negotiable document, goods could be released against orders executed by the party to whom the document has been issued.

22. On the other hand, in order to accommodate those situations in which the customer needs or wants a negotiable document, it may be appropriate to require the OTT to issue a negotiable document when the customer requests one (compare article 4(4) of the preliminary draft Convention).

23. If the uniform rules were to provide for a negotiable document, it might be desirable for provisions to be included dealing with various issues arising from the negotiability of the document, such as the position of a good-faith transferee of the document who relies on an erroneous description of the goods in the document, and an adjustment of rights of a good-faith transferee with the rights of a person entitled to the goods under a transport document.

24. If the OTT is obligated to issue a document, it might also be considered desirable for the uniform rules to specify a time-limit within which he must do so. If the OTT were to be obligated to issue a document in all cases, the time-limit might begin to run from the time he has taken over the goods. The preliminary draft Convention does not specify a time-limit within which the document must be issued.

18/ This provision was included by UNIDROIT merely for the purpose of stimulating discussion on the issue of negotiability, as the UNIDROIT study group which prepared the preliminary draft Convention felt that it did not have sufficient information to take a final decision on the issue (ibid., para. 46).

19/ See Report of the Secretary-General: co-ordination of work: international transport documents (A/CN.9/225), paras. 68-76. For mechanisms designed to overcome problems associated with the use of non-negotiable sea-way bills instead of negotiable bills of lading, and in connection therewith the simplification of documents and the role of automatic data processing and other techniques, see ibid., paras. 74-76.

25. It might also be considered whether it would be desirable for the uniform rules to provide sanctions for a failure of the OTT to issue a document within the time allowed, or whether the consequences of such a failure should be left to existing rules of national law. Possible sanctions might include the payment of compensation to the customer for losses incurred by him due to the OTT's failure, or a presumption that the goods were received by the OTT in good condition or as claimed by the customer. The preliminary draft Convention does not provide for sanctions in the event of a failure of the OTT to issue a document.

26. As to the contents of the document, the preliminary draft Convention requires the document to be dated, to acknowledge receipt of the goods, and to state the date on which the goods were taken in charge by the OTT (article 4(1)). The document need not itself indicate the quantity or condition of the goods; however, it must indicate "any inaccuracy or inadequacy of any particular concerning the description of the goods taken in charge as far as this can be ascertained by reasonable means of checking" (article 4(2)). The document is given prima facie evidentiary effect (article 4(3)). It may be considered whether the document should also indicate the quantity, condition and other relevant particulars concerning the goods, insofar as these can be reasonably ascertained by the OTT. Where a container is used, an OTT will often be unable to examine goods inside the container which has been deposited with him. In such cases, his obligation might be therefore limited to indicating the condition of the container.

III. STANDARD OF LIABILITY

27. Various approaches may be adopted with respect to the standard of liability to which an OTT should be subject. If the operations of an OTT are related to transport, one approach could be to impose on the OTT the same standard of liability as the standard which governs the transport to which the operations are related. Although this approach would facilitate the carrier's right of recourse against the OTT, it could lead to differences in the standards of liability applicable to OTTs whose operations are related to different modes of transport. Moreover, such an approach would be difficult to apply when carriage is effected by two or more different modes of transport.

28. Another approach could be to establish a single standard of liability to apply to all operations of OTTs covered by the uniform rules, regardless of whether they are related to a particular mode of transport. This approach would have the advantage of uniformity. This is the approach adopted by the preliminary draft Convention. The standard adopted is presumed fault (article 6), following the regime under the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) ("Hamburg Rules"), 20/ and the Multimodal Convention (see Annex I).

20/ A/CONF.89/13 (Official Records of the United Nations Conference on the Carriage of Goods by Sea, United Nations publication, Sales No. E.80.VIII.1).

29. The following considerations may be relevant to the question of whether this or some other standard may be appropriate. First, the evidence and the means of determining the circumstances relating to loss of or damage to the goods are likely to be within the control of the OTT. It may therefore be appropriate for him to bear the burden of proving that the loss or damage was not due to his fault, rather than requiring the claimant to prove that the loss or damage resulted from the fault of the OTT. Second, the presumed fault standard is the lowest standard employed in most of the major existing international transport conventions (including those not yet in force) (see Annex I). If the uniform rules were to adopt a lower standard than this, recourse by carriers against OTTs would not be fully assured. ^{21/} Third, since in some modes of transport other than carriage by sea it is customary for carriers to store goods in their own facilities, rather than to employ OTTs, the uniform rules will more frequently apply to OTT operations connected with carriage by sea, or with multimodal transport, than to operations connected with other modes of transport. It may therefore be appropriate to employ in the uniform rules governing the operations of OTTs the same standard as that applicable to carriage by sea and multimodal transport. Also for this reason, a standard more strict than presumed fault might be excessive for the purpose of assuring recourse against OTTs by carriers who would principally be affected by the uniform rules.

IV. LIABILITY FOR DELAY

30. It may be considered whether the uniform rules should deal with the liability of an OTT for delay in handing over the goods. The preliminary draft Convention does not deal with the liability of the OTT for delay, on the ground that the question of delay is relevant essentially to the movement of goods, rather than to stationary goods such as those deposited in a terminal. ^{22/} On the other hand, the operations to be covered by the uniform rules will in any event include those connected with the transport of goods; the question of delay may therefore be relevant from the points of view both of the person entitled to receive the goods and the carrier. The intended recipient of goods in transport will be affected by a delay in an OTT's handing them over (either to a carrier for transport or to the intended recipient) just as he would be by a delay in the transport itself. Under international transport conventions a carrier is responsible for delay in

^{21/} This may be illustrated by the following: a carrier is liable to a shipper upon the basis of presumed fault (such as under the Hamburg Rules or the Multimodal Convention). Goods are damaged while in the custody of an OTT but within the period of the carrier's responsibility for the goods. The standard of liability applicable to the OTT is ordinary negligence, which must be proved by the claimant. In such a case the carrier may be held liable to the shipper or consignee under his stricter standard of liability but his recourse action against the OTT may fail due to an inability to prove that the OTT was negligent.

^{22/} Explanatory report, para. 55.

delivery, and he may be liable even if the delay was that of an OTT. The question of the delay of an OTT may therefore be relevant to the carrier from the point of view of his recourse against the OTT if the carrier is held liable for delay.

31. The preliminary draft Convention does, however, provide that if an OTT does not hand over goods within 60 days following a request by the person entitled to receive them, the goods may be treated as lost (article 6(2)). 23/ This would apparently give a claimant a choice as to whether to claim for loss of the goods, which would be governed by the Convention and its limitation of liability, or to claim for delay under national law.

32. If the uniform rules do not deal with the issue of delay, it will be governed by other rules of national law, under which the liability of an OTT for consequential damages may be extensive, or perhaps by general conditions, which might severely restrict an OTT's liability for delay and thus prejudice recovery by a person entitled to receive the goods and recourse by a carrier. Consideration might therefore be given as to whether the uniform rules should impose liability on an OTT for delay in handing over the goods, and whether they should establish a financial limit to this liability. 24/

V. LIMIT OF LIABILITY

33. One feature of the preliminary draft Convention that was thought by some members of the UNIDROIT study group to constitute an inducement to OTTs to agree to the higher standard of liability under the Convention is a limit of liability that would be difficult to break. 25/ The limit in the preliminary draft Convention is 2.75 units of account per kilogramme (article 7). 26/

23/ Comparable to the Hamburg Rules, article 5(3).

24/ See Hamburg Rules, article 6(1)(b); Multimodal Convention, article 18(4).

25/ Explanatory report, para. 13.

26/ The preliminary draft Convention incorporates the unit of account provision (defining the unit of account as the Special Drawing Right of the International Monetary Fund) (article 13), and the expedited procedure for revising the limits of liability (article Y), which were recommended by the Commission at its fifteenth session (Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, Official Records of the General Assembly, Thirty-seventh session, Supplement No. 17 (A/37/17), para. 63). The unit of account provision and two alternative provisions recommended by the Commission for revising limits of liability (i.e. the expedited revision procedure, and revision in accordance with changes in a price index) have also been recommended by the General Assembly for use in international conventions containing limit of liability provisions (Resolution 37/107 of 16 December 1983).

34. Assuming that the uniform rules are to contain financial limits to liability for loss of or damage to the goods, it may be considered whether the limit used in the preliminary draft Convention is appropriate, or whether some other limit should be used. It may be noted, for example, that this limit is lower than limits established in some international transport conventions (see Annex I). The preliminary draft Convention adopts the limit contained in the Multimodal Convention 27/ because this limit was considered to be the most recent expression of the will of the international community. 28/ A further justification for the adoption of this limit might be that the safekeeping of goods in transport by an entity which is not a carrier or an analogous entity (e.g. multimodal transport operator or freight forwarder acting as a principal) may most often occur before, during or after carriage by sea or multimodal transport. It may therefore be appropriate to key the limits of liability of an OTT to the limits to which carriers in these modes of transport would be subject. Adopting the 2.75 units of account limit would enable full recourse against OTTs by carriers subject to the Multimodal Convention, as well as those subject to the Hamburg Rules and the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") (both under the original Convention and as amended), which impose lower limits of liability.

35. Like a carrier under the Hamburg Rules and a multimodal transport operator under the Multimodal Convention, 29/ under the preliminary draft Convention the OTT could agree to higher limits (article 7(3)). An ability of the OTT to agree to increase his limits to those to which the carrier is subject would protect the ability of the carrier to obtain full compensation from the OTT in a recourse action. It has been suggested, however, that this possibility could make the uniform rules less attractive to OTTs, since they could be subjected to pressure from shipping companies to agree to higher limits. 30/

36. The question may be considered whether, and if so under what circumstances, the limit of liability may be broken. The preliminary draft Convention subjects the OTT to damages in full if the loss or damage "resulted from an act or omission of the OTT done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result" (article 9 (1)).

37. The liability limits under the Hamburg Rules and the Multimodal Convention are breakable only in the event of the wilful misconduct or recklessness of the carrier. 31/ In favour of such an approach it has been suggested that as

27/ Multimodal Convention, article 18(1).

28/ Explanatory report, para. 59.

29/ Hamburg Rules, article 6(4); Multimodal Convention, article 18(6).

30/ Explanatory report, para. 60.

31/ Hamburg Rules, article 8 (see also Official Records of the United Nations Conference on the Carriage of Goods by Sea, United Nations publication, Sales No. E.80.VIII.1, Part II, Summary Records of the First Committee, 34th Meeting, para. 24); Multimodal Convention, article 21.

a general rule insurance carriers prefer limits that are difficult to break, since this enables them to assess their risks accurately and calculate reasonable premiums. This implies that relatively unbreakable limits may result in premiums that are somewhat lower than they would be with easily breakable limits. It has also been suggested that relatively unbreakable limits would be an inducement to OTTs to accept a standard of liability which is more stringent than that to which they are accustomed. 32/

38. In connection with the limit of liability it might further be questioned whether, in addition to the per-kilogramme limit, a total limit of liability per event should be incorporated in the uniform rules. Such a limit may be appropriate for covering cases of excessive damage (e.g. caused by fire or explosion) against which it would be difficult or expensive to insure. If such an approach is adopted it might be desirable for the uniform rules to provide a means of apportioning the available recovery among the various claimants, in the event the total of the damages to which they would be entitled under the per-kilogramme limit exceed the maximum.

39. It might also be considered whether, as an alternative to the per-kilogramme limit, the uniform rules should include a per-package limit, as do the Hamburg Rules and the Multimodal Convention. 33/ An argument against including the per-package limit has been that the goods may arrive in a terminal in the form of a package, and then be broken up to be transported further to separate destinations. 34/

VI. LIMITATION PERIOD

40. The limitation period for bringing an action under the preliminary draft Convention is two years from the day on which the goods are handed over by the OTT, or from the time when they may be treated as lost (see paragraph 31, above) (article 11). In determining whether this period is appropriate, it may be relevant to consider that it is equal to the periods within which actions must be brought against carriers under the Hamburg Rules and the Multimodal Convention, and is longer than the limitation periods applicable to carriers under other international transport conventions (see Annex I). It should be noted, however, that the two-year period applicable to an action against an OTT may in some cases bar a recourse action by a carrier or a multimodal transport operator against an OTT. For example, when goods are handed over by an OTT to a carrier or a multimodal transport operator during transport, the limitation period applicable to an action by a cargo interest against the carrier or multimodal transport operator would commence at the end of the transport; the limitation period applicable to a recourse action by the carrier or multimodal transport operator against the OTT would commence earlier, i.e. when the goods are handed over to the carrier or multimodal transport operator by the OTT. With both types of action subject to the same limitation period, the recourse action against the OTT would be barred before

32/ Explanatory report, para. 62.

33/ Hamburg Rules, article 6(1); Multimodal Convention, article 18(1).

34/ Explanatory report, para. 58.

the action against the carrier or multimodal transport operator. It may be considered whether the limitation period in the uniform rules should contain a provision which effectively preserves the ability of a carrier or a multimodal transport operator to bring such a recourse action.

41. The preliminary draft Convention does not deal with the question of interruption or suspension of the limitation period or other related issues. ^{35/} For example, in some legal systems, rules of national law may be applied if the uniform rules are silent as to these issues. In other legal systems the silence of the uniform rules could be interpreted to mean that the limitation period may not be interrupted or suspended, notwithstanding the existence of national legal rules. From the point of view of uniformity in the application of the limitation period, it may be desirable for the uniform rules either to provide detailed rules for the operation of the limitation period, or to provide that these related issues are to be resolved in accordance with national legal rules.

VII. SECURITY INTERESTS IN GOODS

42. The preliminary draft Convention grants the OTT a security interest in goods taken in charge by him for his costs and claims relating to the goods, including the right to retain the goods and the right to sell them to satisfy his claims (article 5).

43. If these rights are exercised by an OTT, they may conflict with and interfere with the rights of the person entitled to receive the goods. It might be considered whether this is an appropriate result. For example, in cases where an OTT engaged by a carrier retains the goods until the carrier pays the OTT's charges, the carrier may be liable for damages to the person entitled to receive the goods. This may constitute sufficient protection to that person. However, when an OTT sells the goods to satisfy his claim against the carrier for unpaid charges, the carrier's liability to pay damages may not constitute adequate protection to the person entitled to receive the goods. On the other hand, if such rights of retention and sale are exercised by an OTT who is engaged by, or acts as agent for, the person entitled to receive the goods, it may not be inappropriate for him to suffer the consequences of the retention or sale, since the claims of the OTT leading to such actions (e.g. non-payment of storage fees) will usually be the responsibility of that person himself. Moreover, it may be noted that such cases will in any event usually occur outside the period of the carrier's responsibility.

44. In connection with conflicts such as these it may be noted that article 14 of the preliminary draft Convention provides, "This Convention does not modify any rights or duties which may arise under any international Convention

^{35/} For identification of these issues, see, e.g., Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (A/CONF.63/15) (Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, United Nations Publication, Sales No. E.74.V.8).

relating to the international carriage of goods." Another approach might be to leave such matters to national law.

VIII. ISSUES NOT DEALT WITH IN THE PRELIMINARY DRAFT CONVENTION

45. In addition to the question of whether the uniform rules should deal with the liability of an OTT for delay in handing over the goods, a number of other issues relevant to the operations and liability of OTTs are not dealt with in the preliminary draft Convention. These include, for example, the obligations of a customer, such as his obligation to pay the charges of the OTT, and to inform the OTT as to the nature of hazardous goods or instruct him relative to their safekeeping. Nor does it deal with the right of the OTT to dispose of dangerous goods. The preliminary draft Convention also does not deal with the liability of an OTT for his failure to accept goods for safekeeping under a contract with a customer. The intention of the drafters of the preliminary draft Convention was to produce an outline draft establishing a minimum set of rules governing essentially the liability of OTTs. They anticipated that omitted details, such as those just referred to, could be included in the text at a later stage or, alternatively, could be regulated by standard conditions which could be prepared by an interested commercial organization. ^{36/} In this regard, it may be noted that the International Maritime Committee has been preparing a set of standard conditions to be used by OTTs. The UNCITRAL Secretariat has been in contact with the International Maritime Committee and has informed it of the decisions taken by UNCITRAL at its sixteenth session with respect to the topic of the liability of OTTs.

IX. FORM AND NATURE OF UNIFORM RULES

46. The current great disparity in legal rules governing the liability of OTTs arises from rules of national law, as well as from general conditions employed by OTTs which may not be consistent with the interests of parties under modern commercial conditions. Uniformity in this area might be achieved by providing for uniformity in national law through a convention or model law, and by requiring general conditions to be consistent with these uniform rules. Even if the uniform rules were non-mandatory (see paragraph 47, below), the existence of a formal legal framework could constitute an increased incentive to OTTs to follow them. It could also legitimize provisions of general conditions which are consistent with the uniform rules. This would benefit both customers of OTTs and OTTs themselves, since general conditions alone, even if they were substantially unified, might otherwise be contrary to mandatory rules of national law, and since advantages to OTTs under such unified general conditions (e.g. limits of liability) might otherwise run the risk of being struck down by courts in some legal systems.

47. Another issue is whether the uniform rules contained in a convention or model law should be made applicable to all OTTs within the State which is a

^{36/} Explanatory report, para. 20.

party to the convention or which enacts the model law. Within the UNIDROIT study group that prepared the preliminary draft Convention, the view was expressed that if the uniform rules were mandatorily applicable to all OTTs within a State it might be difficult for States to overcome the pressure of professional interests not to adhere to the text. A suggestion was therefore made that States which wished to do so might be permitted to apply the uniform rules only to OTTs who undertook to be bound by them. Those favouring this view considered that under such an approach OTTs could be induced to "opt-in" to the uniform regime by certain incentives, such as a moderate liability regime, a limit to liability which would be difficult to break, a lien over goods deposited with the OTT, and the reduced likelihood that general conditions which conform to the rules would be struck down by a court. However, it was decided not to complicate the preliminary draft Convention at its present stage by including an "opting-in" provision, but rather to present the uniform rules without prejudice as to the ultimate form which the text would assume. ^{37/} It is submitted that the Commission might also wish to defer its decision on the ultimate form the uniform rules should take until after the Working Group which will be entrusted with the work of preparing draft texts finalizes its work, at which time the Commission may be in a better position to decide on the matter in the light of developments surrounding the project.

X. FUTURE WORK

48. With respect to the procedure to be followed in the elaboration of uniform rules, one approach may be for the Working Group to which the work is assigned first to review the UNIDROIT preliminary draft Convention with the need in mind to take decisions on the approaches to be adopted with respect to issues discussed in this study, and then to proceed to the preparation of a draft set of uniform rules on the basis of a draft which the Secretariat might be requested to prepare after such decisions have been taken.

49. With respect to the Working Group to which the work should be assigned, it may be noted that the Working Group on International Contract Practices has recently completed its work on a model law on international commercial arbitration, and would be available to commence work on the liability of OTTs in the third quarter of 1984. The Working Group may be expected to be able to proceed with its work expeditiously, and perhaps complete a set of draft uniform rules during the course of 1985.

^{37/} Ibid., para. 13.

A N N E X I

SELECTED PROVISIONS OF MAJOR INTERNATIONAL TRANSPORT CONVENTIONS

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English
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<u>Convention</u>	<u>Standard of liability</u>	<u>Limit of liability for loss of or damage to goods (per kilo)*</u>	<u>Limitation period</u>
<u>Carriage by sea</u>			
International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) ("Hague Rules")	Based on duties and immunities in articles 3 and 4; broadly, a duty of reasonable care	(No per-kilogramme limit: 100 pounds sterling per package or unit (article 4(5))	1 year (article 3(6))
Hague Rules as amended by Protocol done at Brussels on 23 February 1968 ("Hague Rules")	Essentially as Hague Rules, above	30 francs (Poincaré) (article 4(5)(a))	1 year (article 3(6))

* The Poincaré franc referred to in this column consists of 65 1/5 milligrammes of gold of millesimal fineness 900; The Germinal franc consists of 10/31 of a gramme of gold of millesimal fineness 900. The relative values of these units is therefore approximately 1 Germinal franc = 5 Poincaré francs. Most of the Conventions listed in this chart, either in the Conventions themselves or in Protocols, contain equivalences between these units and the SDR; in general, 1 SDR = 15 Poincaré francs or 3 Germinal francs. For cases in which these provisions do not apply (e.g. to a State which is a party to a Convention but not to the Protocol which contains the provision) there is no international agreement on the method of converting the Poincaré or Germinal franc into national currencies. This has led to disparities in the conversion of liability limits expressed in these units.

<u>Convention</u>	<u>Standard of liability</u>	<u>Limit of liability for loss of or damage to goods (per kilo)</u>	<u>Limitation period</u>
Protocol amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 25 August 1924 as amended by the Protocol of 23 February 1968 (1979)(not yet in force)	(not applicable)	2 units of account (SDR)(non-IMF members which cannot apply SDR provision may fix limit at 30 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article II)	(not applicable)
United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) ("Hamburg Rules") (not yet in force)	Carrier liable unless he proves that he, his servants or agents took "all measures that could reasonably be required to avoid the occurrence and its consequences" (article 5(1))	2.5 units of account (SDR) (article 6(1)) (non-IMF members which cannot apply SDR provision may fix limit at 37.5 monetary units (1 monetary unit equal to 1 Poincaré franc) article 26))	2 years (article 20)
<u>Carriage by air</u>			
Convention for the Unification of Certain Rules relating to International Carriage by Air (1929) ("Warsaw Convention")	Carrier liable (article 18(1)): (a) unless he proves he and his agents have taken "all necessary measures to avoid the damage or that it was impossible for him or them to take such measures" (article 20(1)), or (b) unless he proves that the damage was occasioned by negligent pilotage, negligence in handling of aircraft or in navigation, and that in all other respects he and his agents have taken all necessary measures to avoid the damage (article 20(2))	250 francs (Poincaré (article 22(2))	2 years (article 29)

Convention

Warsaw Convention as amended by Protocol done at The Hague on 28 September 1955

Standard of liability

Warsaw Convention standard "(a)", above, only (article 20)

Limit of liability for loss of or damage to goods (per kilo)

250 francs (Poincaré) (article 22(2))

Limitation period

2 years (article 29)

Montreal Protocol No.4 to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955 (1975)
 (not yet in force)

Carrier liable unless he proves that destruction, loss or damage resulted solely from inherent defect, etc., defective packing by one other than carrier, his servants or agents, act of war or armed conflict, or act of public authority in connection with entry exit or transit of cargo (article IV)

17 SDRs (non-TMF members which cannot apply SDR provision may fix limit at 250 monetary units (1 monetary unit equal to 1 Poincaré franc)) (article VII)

(not applicable)

Carriage by road

Convention on the Contract for the International Carriage of Goods by Road (CMR) (1956)

Carrier liable (article 17(1)) unless he proves loss or damage caused by wrongful act or neglect of claimant, by instructions of claimant not resulting from wrongful act or neglect of carrier, by inherent vice, or through "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" (article 17(2)); or unless he proves that loss or damages arose from an enumerated special risk (article 17(4)) (generally loss or damage is rebuttably presumed to have arisen from a special risk if carrier establishes it could have so arisen (article 18))

25 francs (Germinal) (article 23(3))

1 year; 3 years if wilful misconduct (article 32)

<u>Convention</u>	<u>Standard of liability</u>	<u>Limit of liability for loss of or damage to goods (per kilo)</u>	<u>Limitation period</u>
Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) (1978)	(Not applicable)	8.33 units of account (SDR) (non-IMF members which cannot apply SDR provision may fix limit at 25 monetary units (1 monetary unit equal to 1 Germinal franc)) (article 2)	(not applicable)
<u>Carriage by rail</u>			
Agreement concerning the International Carriage of Goods by Rail (SMGS) (1966)	Carrier liable unless he proves that loss or damage resulted from circumstances he could not avoid or consequences of which he could not prevent or unless they resulted from other enumerated circumstances (article 22)	Price of goods or declared value (articles 24, 25)	9 months (article 30)
International Convention concerning the Carriage of Goods by Rail (CIM) (1970)	Essentially same as CMR Convention, above (articles 27, 28)	50 francs (Germinal) (articles 31(1), 33)	1 year; 2 years if wilful misconduct, fraud, others (article 47)
Complementary provision concerning method of conversion of gold franc under the CIM Convention (1977)	(not applicable)	3 francs = 1 SDR	(not applicable)
Appendice B à la Convention relative aux transports internationaux ferroviaires (COTIF) du 19 Mai 1980 (not yet in force)	Same as CIM Convention, above (articles 36, 37)	17 units of account (SDR) (articles 40(2), 42) (for non-IMF members which cannot apply SDR provision the unit of account equals 3 Germinal francs (article 7))	Same as CIM Convention (article 58)

Convention

Standard of liability

Limit of liability
for loss of or damage
to goods (per kilo)

Limitation
period

Multimodal transport

United Nations Convention
on International Multi-
modal Transport of Goods
(1980) ("Multimodal
Convention")
(not yet in force)

Essentially same as Hamburg Rules,
above (article 16)

2.75 units of
account (SDR)
(article 18(1))
(non-IMF members which
cannot apply SDR provision
may fix limit at 41.25
monetary units (1 monetary
unit equal to 1 Poincaré
francs) (article 31))

2 years
(article 25)

ANNEX II

TEXT OF PRELIMINARY DRAFT CONVENTION ON OPERATIONS
OF TRANSPORT TERMINALS

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the rights and duties of operators of transport terminals and in particular to their liability;

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

Article 1

DEFINITIONS

For the purposes of the application of this Convention:

1. "Operator of a transport terminal (OTT)" means any person acting in a capacity other than that of a carrier, who undertakes against remuneration the safekeeping of goods before, during or after carriage, either by agreement or by taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them.

2. "Goods" includes any container, pallet or similar article of transport or packaging, if not supplied by the OTT.

Article 2

SCOPE OF APPLICATION

This Convention applies whenever the operations for which the OTT is responsible are:

- (a) performed in the territory of a Contracting State, and
- (b) related to carriage in which the place of departure and the place of destination are situated in two different States.

Article 3

PERIOD OF RESPONSIBILITY

1. The OTT shall be responsible for the safekeeping of goods from the time he has taken them in charge until their handing over to the person entitled to take delivery of them.
2. If the OTT has undertaken to perform or to procure performance of discharging, loading or stowage of the goods, even before their taking in charge or after their being handed over, the period of responsibility shall be extended so as to cover such additional operations also.

Article 4

ISSUANCE OF DOCUMENT

1. The OTT shall, at the request of the other party to the contract issue a dated document acknowledging receipt of the goods and stating the date on which they were taken in charge.
2. Such a document shall indicate any inaccuracy or inadequacy of any particular concerning the description of the goods taken in charge as far as this can be ascertained by reasonable means of checking.
3. Such a document is prima facie evidence of the contract for the safekeeping of goods and the taking in charge of the goods as therein described.
4. The document issued by the OTT may, if the parties so agree, and the applicable national law so permits, contain an undertaking by the OTT to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person or to order, or to bearer, constitutes such an undertaking.
5. Nothing in this Convention shall prevent the issuing of documents by any mechanical or electronic means, if not inconsistent with the law of the place where the document is issued.

Article 5

SECURITY RIGHTS IN THE GOODS

1. The OTT shall have a right of retention over the goods he has taken in charge for costs and claims relating to such goods, fees and warehousing rent included. However, nothing in this Convention shall affect the validity under national law of any contractual arrangements extending the OTT's security in the goods.

2. The OTT shall not be entitled to retain the goods he has taken in charge if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operations for which the OTT is responsible under this Convention are performed.

3. The OTT may, after giving timely and adequate notice, sell or cause to be sold all or part of the goods retained by him so as to obtain the amount necessary to satisfy his claim.

Article 6

BASIS OF LIABILITY

1. The OTT is liable for loss resulting from loss of or damage to the goods for which he is responsible under this Convention, unless he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence which caused the loss or damage, and its consequences.

2. If the OTT does not hand over the goods at the request of the person entitled to take delivery of them within a period of 60 consecutive days following such request, the person entitled to make a claim for the loss of the goods may treat them as lost.

3. Where fault or neglect on the part of the OTT, his servants or agents combines with another cause to produce loss or damage the OTT is liable only to the extent that the loss or damage is attributable to such fault or neglect, provided that the OTT proves the amount of the loss or damage not attributable thereto.

Article 7

LIMIT OF LIABILITY

1. The liability of the OTT for loss resulting from loss of or damage to goods according to the provisions of Article 6 is limited to an amount equivalent to 2.75 units of account per kilogramme of gross weight of the goods lost or damaged.

2. Unit of account means the unit of account mentioned in Article 13.

3. The OTT may, by agreement, increase the limits of liability provided for in paragraph 1 of this article.

Article 8

NON-CONTRACTUAL LIABILITY

1. The defences and limits of liability provided for in this Convention apply in any action against the OTT in respect of loss of or damage to goods

caused by any act or omission within the scope of the OTT's obligations provided for under this Convention, whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the OTT, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the OTT is entitled to invoke under this Convention.

3. Except as provided in Article 9, the aggregate of the amounts recoverable from the OTT and from any person referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 9

LOSS OF THE RIGHT TO LIMIT LIABILITY

1. The OTT is not entitled to the benefit of the limitation of liability provided for in Article 7 if it is proved that the loss or damage resulted from an act or omission of the OTT done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

2. Notwithstanding the provisions of Article 8, paragraph 2, a servant or agent of the OTT is not entitled to the benefit of the limitation of liability provided for in Article 7 if it is proved that the loss or damage resulted from an act or omission of such servant or agent, done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 10

NOTICE OF LOSS OR DAMAGE

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing to the OTT not later than the working day after the day when the goods were handed over to the person entitled to take delivery of them, such handing over is prima facie evidence of the delivery by the OTT of the goods as described in the document issued by the OTT or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

3. If the state of the goods at the time they were handed over to the person entitled to take delivery of them has been the subject of a joint survey or inspection, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the OTT and the person entitled to take delivery of the goods must give all reasonable facilities to each other for inspecting and tallying the goods.

Article 11

LIMITATION OF ACTIONS

1. Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences on the day on which the OTT has handed over the goods or part thereof or, in cases where no goods have been handed over, on the last day of the period referred to in Article 6, paragraph 2.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. Provided that the provisions of another applicable international convention are not to the contrary, a recourse action for indemnity by a person held liable under this Convention may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted; however, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 12

CONTRACTUAL STIPULATIONS

1. Any stipulation in a contract for the safekeeping of goods concluded by an OTT or in any document evidencing such a contract is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

2. Notwithstanding the provisions of paragraph 1 of this article, the OTT may, by agreement, increase his responsibilities and obligations under this Convention.

Article 13

UNIT OF ACCOUNT AND CONVERSION

1. The unit of account referred to in Article 7 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 7 are to be expressed in the national currency of a State according to the value of such currency at the date of judgment or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is a member of the International Monetary Fund and the Special Drawing Right 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 equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of paragraph 1 is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in Article 7 as is expressed there in units of account. Contracting States must communicate to the Depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

Article 14

OTHER CONVENTIONS

This Convention does not modify any rights or duties which may arise under any international Convention relating to the international carriage of goods.

Article 15

INTERPRETATION OF THE CONVENTION

1. 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.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based, or in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article Y

REVISION OF THE LIMITATION AMOUNTS AND UNIT OF ACCOUNT

1. The Depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in Article 7:

- (a) Upon the request of at least [] Contracting States, or
- (b) When five years have passed since the Convention was opened for signature or since the Committee last met.

2. If the present Convention comes into force more than five years after it was opened for signature, the Depositary shall convene a meeting of the Committee within the first year after it comes into force.

3. Amendments shall be adopted by the Committee by a [] majority of its members present and voting.

4. Any amendment adopted in accordance with paragraph 3 of this article shall be notified by the Depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of [6] months after it has been notified, unless within that period not less than [one-third] of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all Contracting States [12] months after its acceptance.

5. A Contracting State which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment has entered into force. Such denunciation shall take effect when the amendment enters into force.

6. When an amendment has been adopted by the Committee but the [6] month period for its acceptance has not yet expired, a State which becomes a Contracting State to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Contracting State to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 4.