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PART I

Organization of the CMI

Comité Maritime International

CONSTITUTION

(1992)

PART I - GENERAL

Article 1
Object

The Comité Maritime International is a non-governmental international organization, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

To this end it shall promote the establishment of national associations of maritime law and shall cooperate with other international organizations.

Article 2
Domicile

The domicile of the Comité Maritime International is established in Belgium.

Article 3
Membership

a) The Comité Maritime International shall consist of national (or multinational) Associations of Maritime Law, the objects of which conform to that of the Comité Maritime International and the membership of which is open to persons (individuals or bodies corporate) who either are involved in maritime activities or are specialists in maritime law. Member Associations should endeavour to present a balanced view of the interests represented in their Association.

Where in a State there is no national Association of Maritime Law in existence, and an organization in that State applies for membership of the Comité Maritime International, the Assembly may accept such organization as a Member of the Comité Maritime International if it is satisfied that the object of such organization, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organization admitted as a Member pursuant to this Article.

Only one organization in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for

Comité Maritime International

STATUTS

1992

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er
Objet

Le Comité Maritime International est une organisation non-gouvernementale internationale qui a pour objet de contribuer, par tous travaux et moyens appropriés, à l'unification du droit maritime sous tous ses aspects.

Il favorisera à cet effet la création d'Associations nationales de droit maritime. Il collaborera avec d'autres organisations internationales.

Article 2
Siège

Le siège du Comité Maritime International est fixé en Belgique.

Article 3
Membres

a) Le Comité Maritime International se compose d'Associations nationales (ou multinationales) de droit maritime, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de membre est accordée à toutes personnes (personnes physiques ou personnes morales) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre s'efforcera de maintenir l'équilibre entre les divers intérêts représentés dans son sein.

Si dans un pays il n'existe pas d'Association nationale et qu'une organisation de ce pays pose sa candidature pour devenir membre du Comité Maritime International, l'Assemblée peut accepter une pareille organisation comme membre du Comité Maritime International après s'être assurée que l'objectif, ou un des objectifs, poursuivis par cette organisation est l'unification du droit maritime sous tous ses aspects. Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme membre conformément au présent article.

Une seule organisation par pays est éligible en qualité de membre du Comité

membership only if there is no Member Association in any of its constituent States.

b) Individual members of Member Associations may be appointed by the Assembly as Titulary Members of the Comité Maritime International upon (i) the proposal of the Association concerned, endorsed by the Executive Council, or (ii) the proposal of the Executive Council. The appointment shall be of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the Comité Maritime International, and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members shall not be entitled to vote.

Titulary Members presently or formerly belonging to an association which is no longer a member of the Comité Maritime International may continue to be individual Titulary Members at large, pending the formation of a new Member Association in their State.*

c) Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International, may upon the proposal of the Executive Council be admitted as Provisional Members, but shall not be entitled to vote. A primary objective of Provisional Membership is to facilitate the organization and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be appointed by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State.*

d) The Assembly may appoint to Membership Honoris Causa any individual who has rendered exceptional service to the Comité Maritime International, with all of the rights and privileges of a Titulary Member but without payment of contributions.

Members Honoris Causa shall not be attributed to any Member Association or State, but shall be individual Members of the Comité Maritime International as a whole.

e) International organizations which are interested in the object of the Comité Maritime International may be admitted as Consultative Members but shall not be entitled to vote.

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* Paragraphs (b) and (c) have been amended by the CMI Assembly held on 8 May 1999.

Maritime International, à moins que l'Assemblée n'en décide autrement. Une association multinationale n'est éligible en qualité de membre que si aucun des Etats qui la composent ne possède d'Association membre.

b) Des membres individuels d'Associations Membres peuvent être nommés Membres Titulaires du Comité Maritime International par l'Assemblée (i) sur proposition émanant de l'Association intéressée et ayant recueilli l'approbation du Conseil Exécutif, ou (ii) sur proposition du Conseil Exécutif. Cette nomination aura un caractère honorifique et sera décidée en tenant compte des contributions apportés par les candidats à l'œuvre du Comité Maritime International, et/ou des services qu'ils auront rendus dans le domaine du droit ou des affaires maritimes dans la poursuite de l'uniformisation internationale du droit maritime ou des pratiques commerciales qui y sont liées. Les Membres Titulaires n'auront pas le droit de vote.

Les Membres Titulaires appartenant ou ayant appartenu à une Association qui n'est plus membre du Comité Maritime International peuvent rester membres titulaires individuels hors cadre, en attendant la constitution d'une nouvelle Association membre dans leur Etat.*

c) Les nationaux des pays où il n'existe pas d'Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent, sur proposition du Conseil Exécutif, être admis comme Membres Provisoires, mais ils n'auront pas le droit de vote. L'un des objectifs essentiels du statut de Membre Provisoire est de favoriser la mise en place et l'organisation, au plan national ou régional, de nouvelles Associations de Droit Maritime affiliées au Comité Maritime International. Le statut de Membre Provisoire n'est pas normalement destiné à être permanent, et la situation de chaque Membre Provisoire sera examinée tous les trois ans. Cependant, les personnes physiques qui sont Membres Provisoires depuis cinq ans au moins peuvent, sur proposition du Conseil Exécutif, être nommées Membres Titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays. *

d) L'Assemblée peut nommer membre d'honneur, jouissant des droits et privilèges d'un membre titulaire mais dispensé du paiement des cotisations, toute personne physique ayant rendu des services exceptionnels au Comité Maritime International.

Les membres d'honneur ne relèvent d'aucune Association membre ni d'aucun Etat, mais sont à titre personnel membres du Comité Maritime International pour l'ensemble de ses activités.

e) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être admises en qualité de membres consultatifs, mais n'auront pas le droit de vote.

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* Les paragraphes (b) and (c) ont été modifiés par l'Assemblée du CMI qui a eu lieu le 8 mai 1999.

PART II - ASSEMBLY

Article 4
Composition

The Assembly shall consist of all Members of the Comité Maritime International and the members of the Executive Council.

Each Member Association and Consultative Member may be represented in the Assembly by not more than three delegates.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

Article 5
Meetings

The Assembly shall meet annually on a date and at a place decided by the Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks notice shall be given of such meetings.

Article 6
Agenda and Voting

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy.

All decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to this Constitution shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

Article 7
Functions

The functions of the Assembly are:

a) To elect the Officers of the Comité Maritime International;
b) To admit new members and to appoint, suspend or expel members;
c) To fix the rates of member contributions to the Comité Maritime International;
d) To consider and, if thought fit, approve the accounts and the budget;
e) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
f) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;

2ème PARTIE - ASSEMBLEE

Article 4
Composition

L'Assemblée est composée de tous les membres du Comité Maritime International et des membres du Conseil Exécutif.

Toute Association membre et tout membre consultatif peuvent être représentés à l'Assemblée par trois délégués au maximum.

Le Président peut, avec l'approbation du Conseil Exécutif, inviter des observateurs à assister, totalement ou partiellement, aux réunions de l'Assemblée.

Article 5
Réunions

L'Assemblée se réunit chaque année à la date et au lieu fixés par le Conseil Exécutif. L'Assemblée se réunit en outre à tout autre moment, avec un ordre du jour déterminé, à la demande du Président, de dix de ses Associations membres, ou des Vice-Présidents. Le délai de convocation est de six semaines au moins.

Article 6
Ordre du jour et votes

Les questions dont l'Assemblée devra traiter, y compris les élections à des charges vacantes, seront exposées dans l'ordre du jour accompagnant la convocation aux réunions. Des décisions peuvent être prises sur des questions non inscrites à l'ordre du jour, exception faite de modifications aux présents statuts, pourvu qu'aucune Association membre représentée à l'Assemblée ne s'oppose à cette façon de faire.

Chaque Association membre présente à l'Assemblée et jouissant du droit de vote dispose d'une voix. Le droit de vote ne peut pas être délégué ni exercé par procuration.

Toutes les décisions de l'Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote, et prenant part au vote. Toutefois, le vote positif d'une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts.

Article 7
Fonctions

Les fonctions de l'Assemblée consistent à:

a) Elire les membres du Bureau du Comité Maritime International;
b) Admettre de nouveaux membres et nommer, suspendre ou exclure des membres;
c) Fixer les montants des cotisations des membres du Comité Maritime International;
d) Examiner et, le cas échéant, approuver les comptes et le budget;
e) Etudier les rapports du Conseil Exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;
f) Approuver la convocation et fixer l'ordre du jour de Conférences Internationales du Comité Maritime International, et approuver en dernière lecture les résolutions adoptées par elles;

g) To amend this Constitution;
h) To adopt rules of procedure not inconsistent with the provisions of this Constitution.

PART III - OFFICERS

Article 8
Designation

The Officers of the Comité Maritime International shall be:
a) The President,
b) The Vice-Presidents,
c) The Secretary-General,
d) The Treasurer,
e) The Administrator (if an individual), and
f) The Executive Councillors.

Article 9
President

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the Comité Maritime International. He shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International SubCommittees and Working Groups, and represent the Comité Maritime International externally.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the Comité Maritime International.

The President shall be elected for a full term of four years and shall be eligible for re-election for one additional term.

Article 10
Vice-Presidents

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the Comité Maritime International, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a full term of four years, and shall be eligible for reelection for one additional term.

Article 11
Secretary-General

The Secretary-General shall have particular responsibility for organization of the non-administrative preparations for International Conferences, Seminars

g) Modifier les présents statuts;
h) Adopter des règles de procédure sous réserve qu'elles soient conformes aux présents statuts.

3ème PARTIE - MEMBRES DU BUREAU

Article 8
Désignation

Les membres du Bureau du Comité Maritime International sont:
a) le Président,
b) les Vice-Présidents,
c) le Secrétaire Général,
d) le Trésorier,
e) l'Administrateur (s'il est une personne physique) et
f) les Conseillers Exécutifs.

Article 9
Le Président

Le Président du Comité Maritime International préside l'Assemblée, le Conseil Exécutif et les Conférences Internationales convoquées par le Comité Maritime International. Il est membre de droit de tout comité, de toute commission internationale ou de tout groupe de travail désignés par le Conseil Exécutif.

Avec le concours du Secrétaire Général et de l'Administrateur il met à exécution les décisions de l'Assemblée et du Conseil Exécutif, surveille les travaux des commissions internationales et des groupes de travail, et représente, à l'extérieur, le Comité Maritime International.

D'une manière générale, la mission du Président consiste à assurer la continuité et le développement du travail du Comité Maritime International.

Le Président est élu pour un mandat entier de quatre ans et est rééligible une fois.

Article 10
Les Vice-Présidents

Le Comité Maritime International comprend deux Vice-Présidents, dont la mission principale est de conseiller le Président et le Conseil Exécutif, et dont d'autres missions leur sont confiées par le Conseil Exécutif.

Le Vice-Président le plus ancien comme membre du Bureau du Comité Maritime International supplée le Président quand celui-ci est absent ou dans l'impossibilité d'exercer sa fonction.

Chacun des Vice-Présidents est élu pour un mandat entier de quatre ans, renouvelable une fois.

Article 11
Le Secrétaire Général

Le Secrétaire Général a tout spécialement la responsabilité d'organiser les préparatifs, autres qu'administratifs, des Conférences Internationales,

and Colloquia convened by the Comité Maritime International, and to maintain liaison with other international organizations. He shall have such other duties as may be assigned by the Executive Council and the President.

The Secretary-General shall be elected for a term of four years, and shall be eligible for reelection without limitation.

Article 12

Treasurer

The Treasurer shall be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorize disbursement of, funds as directed by the Executive Council.

The Treasurer shall keep the financial accounts, and prepare the balance sheet for the preceding calendar year and the budgets for the current and next succeeding year, and shall present these not later than the 31st of January each year for review by the Executive Council and approval by the Assembly.

The Treasurer shall be elected for a term of four years, and shall be eligible for re-election without limitation.

Article 13

Administrator

The functions of the Administrator are:

a) To give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Seminars and Colloquia, and of all meetings of Committees, International Sub Committees and Working Groups;
b) To circulate the agendas, minutes and reports of such meetings;
c) To make all necessary administrative arrangements for such meetings;
d) To carry into effect the administrative decisions of the Assembly and of the Executive Council, and administrative determinations made by the President;
e) To circulate such reports and/or documents as may be requested by the President, the Secretary General, the Treasurer or the Executive Council;
f) In general to carry out the day by day business of the secretariat of the Comité Maritime International.

The Administrator may be an individual or a body corporate. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the Comité Maritime International.

The Administrator, if an individual, shall be elected for a term of four years, and shall be eligible for re-election without limitation. If a body corporate, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

Article 14

Executive Councillors

There shall be eight Executive Councillors of the Comité Maritime International, who shall have the functions described in Article 18.

The Executive Councillors shall be elected upon individual merit, also giving due regard to balanced representation of the legal systems and geographical areas of the world characterized by the Member Associations.

séminaires et colloques convoqués par le Comité Maritime International, et de poursuivre la liaison avec d'autres organisations internationales. D'autres missions peuvent lui être confiées par le Conseil Exécutif et le Président.

Le Secrétaire Général est élu pour un mandat de quatre ans, renouvelable sans limitation de durée.

Article 12

Le Trésorier

Le Trésorier répond des fonds du Comité Maritime International, il encaisse les fonds et en effectue ou en autorise le déboursement conformément aux instructions du Conseil Exécutif.

Le Trésorier établit les comptes financiers, prépare le bilan de l'année civile écoulée ainsi que les budgets de l'année en cours et de l'année suivante, et soumet ceux-ci, au plus tard le 31 janvier de chaque année, à l'examen du Conseil Exécutif et à l'approbation de l'Assemblée.

Le Trésorier est élu pour un mandat de quatre ans, renouvelable sans limitation de durée.

Article 13

L'Administrateur

Les fonctions de l'Administrateur consistent à:

a) envoyer les convocations pour toutes les réunions de l'Assemblée et du Conseil Exécutif, des conférences internationales, séminaires et colloques, ainsi que pour toutes réunions de comités, de commissions internationales et de groupes de travail,
b) distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
d) mettre à exécution les décisions de nature administrative prises par l'Assemblée et le Conseil Exécutif, et les instructions d'ordre administratif données par le Président,
e) assurer les distributions de rapports et documents demandées par le Président, le Secrétaire Général, le Trésorier ou le Conseil Exécutif,
f) d'une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

L'Administrateur peut être une personne physique ou une personne morale. L'Administrateur personne physique peut également exercer la fonction de Trésorier du Comité Maritime International, s'il est élu à cette fonction.

L'Administrateur personne physique est élu pour un mandat de quatre ans, et est rééligible sans limite. L'Administrateur personne morale est élu par l'Assemblée sur proposition du Conseil Exécutif et reste en fonction jusqu'à l'élection d'un successeur.

Article 14

Les Conseillers Exécutifs

Le Comité Maritime International compte huit Conseillers Exécutifs, dont les fonctions sont décrites à l'article 18.

Les Conseillers Exécutifs sont élus en fonction de leur mérite personnel, en ayant également égard à une représentation équilibrée des systèmes juridiques et des régions du monde auxquels les Association membres appartiennent.

Each Executive Councillor shall be elected for a full term of four years, and shall be eligible for re-election for one additional term.

Article 15
Nominations

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

a) A chairman, who shall have a casting vote where the votes are otherwise equally divided, and who shall be elected by the Executive Council
b) The President and past Presidents,
c) One member elected by the Vice-Presidents, and
d) One member elected by the Executive Councillors.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he is a candidate.

On behalf of the Nominating Committee, the chairman shall first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning candidates for nomination. The Nominating Committee shall then make nominations, taking such views into account.

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations independently of the Nominating Committee, provided such nominations are forwarded to the Administrator before the annual meeting of the Assembly at which nominees are to be elected.

Article 16
Immediate Past President

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council with voice but without vote, and at his discretion shall advise the President and the Executive Council.

PART IV - EXECUTIVE COUNCIL

Article 17
Composition

The Executive Council shall consist of:

a) The President,
b) The Vice-Presidents,
c) The Secretary-General,
d) The Treasurer,
e) The Administrator (if an individual),
f) The Executive Councillors, and
g) The Immediate Past President.

Chaque Conseiller Exécutif est élu pour un mandat entier de quatre ans, renouvelable une fois.

Article 15
Présentations de candidatures

Un Comité de Présentation de candidatures est mis en place avec mission de présenter des personnes physiques en vue de leur élection à toute fonction au sein du Comité Maritime International.

Le Comité de Présentation de candidatures se compose de:

a) un président, qui a voix prépondérante en cas de partage des voix, et qui est élu par le Conseil Exécutif;
b) le Président et les anciens Présidents du C.M.I.;
c) un membre élu par les Vice-Présidents;
d) un membre élu par les Conseillers Exécutifs.

Nonobstant les dispositions de l'alinéa qui précède, aucun candidat ne peut siéger au sein du Comité de Présentation pendant la discussion des présentations intéressant la fonction à laquelle il est candidat.

Agissant au nom du Comité de Présentation, son Président détermine tout d'abord s'il y a des membres du bureau qui, étant rééligibles, sont disponibles pour accomplir un nouveau mandat. Il demande ensuite l'avis des Associations membres au sujet des candidats à présenter. Tenant compte de ces avis, le Comité de Présentation fait alors des propositions.

Le président du Comité de Présentation transmet les propositions décidées par celui-ci à l'Administrateur suffisamment à temps pour être diffusées cent-vingt jours au moins avant l'Assemblée annuelle appelée à élire des candidats proposés.

Des Associations membres peuvent, indépendamment du Comité de Présentation, faire des propositions, pourvu que celles-ci soient transmises à l'Administrateur avant l'Assemblée annuelle appelée à élire des candidats présentés.

Article 16
Le Président sortant

Le Président sortant du Comité Maritime International a la faculté d'assister à toutes les réunions du Conseil Exécutif avec voix consultative mais non délibérative, et peut, s'il le désire, conseiller le Président et le Conseil Exécutif.

4ème PARTIE - CONSEIL EXECUTIF

Article 17
Composition

Le Conseil Exécutif est composé:

a) du Président,
b) des Vice-Présidents,
c) du Secrétaire Général,
d) du Trésorier,
e) de l'Administrateur, s'il est une personne physique,
f) des Conseillers Exécutifs,
g) du Président sortant.

Article 18

Functions

The functions of the Executive Council are:

a) To receive and review reports concerning contact with:
   (i) The Member Associations,
   (ii) The CMI Charitable Trust, and
   (iii) International organizations;
b) To review documents and/or studies intended for:
   (i) The Assembly,
   (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
   (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, and to supervise them;
d) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
e) To oversee the finances of the Comité Maritime International;
f) To make interim appointments, if necessary, to the offices of Treasurer and Administrator;
g.) To review and approve proposals for publications of the Comité Maritime International;
h) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
i) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
j) To carry into effect the decisions of the Assembly;
k) To report to the Assembly on the work done and on the initiatives adopted.

The Executive Council may establish and delegate to its own Committees and Working Groups such portions of its work as it deems suitable. Reports of such Committees and Working Groups shall be submitted to the Executive Council and to no other body.

Article 19

Meetings and Quorum

At any meeting of the Executive Council seven members, including the President or a VicePresident and at least three Executive Councillors, shall constitute a quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are consulted and a majority respond affirmatively in writing.

Article 18
Fonctions

Les fonctions du Conseil Exécutif sont:

a) de recevoir et d'examiner des rapports concernant les relations avec:
   (i) les Associations membres,
   (ii) le "CMI Charitable Trust", et
   (iii) les organisations internationales;
b) d'examiner les documents et études destinés:
   (i) à l'Assemblée,
   (ii) aux Associations membres, concernant le travail du Comité Maritime International, et en les avisant de tout développement utile,
   (iii) aux organisations internationales, pour les informer des vues du Comité Maritime International sur des sujets adéquats;
c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail et de contrôler leur activité;
d) d'encourager et de favoriser le recrutement de nouveaux membres du Comité Maritime International;
e) de contrôler les finances du Comité Maritime International;
f) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Trésorier ou d'Administrateur;
g) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
h) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
i) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
j) d'exécuter les décisions de l'Assemblée;
k) de faire rapport à l'Assemblée sur le travail accompli et sur les initiatives adoptées.

Le Conseil Exécutif peut créer ses propres comités et groupes de travail et leur déléguer telles parties de sa tâche qu'il juge convenables. Ces comités et groupes de travail feront rapport au seul Conseil Executif.

Article 19
Réunions et quorum

Lors de toute réunion du Conseil Exécutif, celui-ci ne délibère valablement que si sept de ses membres, comprenant le Président ou un Vice-Président et trois Conseillers Exécutifs au moins, sont présents. Toute décision est prise à la majorité simple des votes émis. En cas de partage des voix, celle du Président ou, en son absence, celle du plus ancien VicePrésident présent, est prépondérante.

Le Conseil Exécutif peut toutefois, lorsque les circonstances l'exigent, prendre des décisions sans qu'une réunion ait été convoquée, pourvu que tous ses membres aient été consultés et qu'une majorité ait répondu affirmativement par écrit.

PART V - INTERNATIONAL CONFERENCES

Article 20

Composition and Voting

The Comité Maritime International shall meet in International Conference upon dates and at places approved by the Assembly, for the purpose of discussing and taking decisions upon subjects on an agenda likewise approved by the Assembly.

The International Conference shall be composed of all Members of the Comité Maritime International and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by ten delegates and the Titulary Members who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other members or Officers of the Comité Maritime International shall have the right to vote.

The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

PART VI - FINANCE

Article 21

Arrears of Contributions

Member Associations remaining in arrears of payment of contributions for more than one year from the date of the Treasurer's invoice shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay contributions who remain in arrears of payment for more than three years from the date of the Treasurer's invoice shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Contributions received from a Member in default shall be applied to reduce arrears in chronological order, beginning with the earliest year of default.

Article 22

Financial Matters

The Administrator shall receive compensation as determined by the Executive Council.

Members of the Executive Council and Chairmen of Standing Committees, International SubCommittees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the Executive Council.

The Executive Council may also authorize the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

5ème PARTIE - CONFERENCES INTERNATIONALES

Article 20

Composition et Votes

Le Comité Maritime International se réunit en Conférence Internationale à des dates et lieux approuvés par l'Assemblée aux fins de délibérer et de se prononcer sur des sujets figurant à un ordre du jour également approuvé par l'Assemblée.

La Conférence Internationale est composée de tous les membres du Comité Maritime International et d'observateurs dont la présence a été approuvée par le Conseil Exécutif.

Chaque Association membre, ayant le droit de vote, peut se faire représenter par dix délégués et par les membres titulaires, membres de leur Association. Chaque membre consultatif peut se faire représenter par trois délégués. Chaque observateur peut se faire représenter par un délégué seulement.

Chaque Association membre présente et jouissant du droit de vote dispose d'une voix à la Conférence Internationale, à l'exclusion des autres membres et des membres du Bureau du Comité Maritime International.

Le droit de vote ne peut pas être délégué ni exercé par procuration.

Les résolutions des Conférences Internationales sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote.

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

Les Associations membres qui demeurent en retard de paiement de leurs cotisations pendant plus d'un an depuis la date de la facture du Trésorier sont considérés en défaut et ne jouissent pas du droit de vote jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les membres redevables de cotisations qui demeurent en retard de paiement pendant plus de trois ans depuis la date de la facture du Trésorier ne bénéficient plus, sauf décision contraire du Conseil Exécutif, de l'envoi des publications ni des autres droits et avantages appartenant aux membres, jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les cotisations reçues d'un membre en défaut sont imputées par ordre chronologique, en commençant par l'année la plus ancienne du défaut de paiement.

Article 22

Questions financières

L'Administrateur reçoit une indemnisation fixée par le Conseil Exécutif.

Les membres du Conseil Exécutif et les présidents des comités permanents, des commissions internationales et des groupes de travail ont droit au remboursement des frais des voyages accomplis pour le compte du Comité Maritime International, conformément aux instructions du Conseil Exécutif.

Le Conseil Exécutif peut également autoriser le remboursement d'autres frais exposés pour le compte du Comité Maritime International.

PART VII - TRANSITIONAL PROVISIONS

Article 23
Entry into Force

This Constitution shall enter into force on the first day of January, a.d. 1993.

Article 24
Election of Officers

Notwithstanding any of the foregoing provisions of this Constitution, no election of officers shall be held until the terms of office current at the time of entry into force of this Constitution have expired; at which time the following provisions shall govern until, in accordance with Article 25, this Part VII lapses.

a) Following adoption of this Constitution by the Assembly, the Nominating Committee shall be constituted as provided in Article 15.
b) For purposes of determining eligibility for office, all persons holding office at the time of entry into force of this Constitution shall at the expiration of their current terms be deemed to have served in their respective offices for one term.
c) The President, Secretary-General, Treasurer and Administrator shall be elected as provided in Articles 9, 11, 12 and 13.
d) One Vice-President shall be elected as provided in Article 10 above, and one Vice-President shall be elected for a term of two years. When the two year term expires, the election of Vice-Presidents shall become wholly governed by Article 10.
e) Two Executive Councillors shall be elected as provided in Article 14; two Executive Councillors shall be elected for terms of three years, two shall be elected for terms of two years, and two shall be elected for terms of one year. When the one year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the two year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the three year terms expire, the election of Executive Councillors shall become wholly governed by Article 14.

Article 25
Lapse of Part VII

When the election of all Executive Councillors becomes wholly governed by Article 14 of this Constitution, then this Part VII shall lapse and shall be deleted from any future printing of this Constitution.

7ème PARTIE - DISPOSITIONS TRANSITOIRES

Article 23
Entrée en vigueur

Les présents statuts entreront en vigueur le 1er janvier 1993.

Article 24
Elections des membres du Bureau

Nonobstant toute disposition précédente des présents statuts, il n'y aura pas d'élection de membres du Bureau avant l'expiration des mandats dans les fonctions en cours au moment de l'entrée en vigueur des présents statuts; à ce moment, les dispositions suivantes s'appliqueront jusqu'à ce que, conformément à l'article 25, la présente 7ème Partie devienne caduque.

a) Après adoption des présents statuts par l'Assemblée, le Comité de Présentation de candidatures sera constitué conformément à l'Article 15.
b) Pour la détermination des conditions d'éligibilité, toute personne titulaire d'une fonction au moment de l'entrée en vigueur des présents statuts sera, à l'expiration de son mandat en cours, réputée avoir accompli un mandat dans cette fonction.
c) Le Président, le Secrétaire Général, le Trésorier et l'Administrateur seront élus conformément aux Articles 9, 11, 12 et 13.
d) Un Vice-Président sera élu conformément à l'Article 10 ci-dessus, et un VicePrésident sera élu pour un mandat de deux ans. A l'expiration de ce mandat de deux ans, l'élection des Vice-Presidents deviendra entièrement conforme à l'Article 10.
e) Deux Conseillers Exécutifs seront élus conformément à l'Article 14; deux Conseillers Exécutifs seront élus pour un mandat de trois ans, deux seront élus pour un mandat de deux ans, et deux seront élus pour un mandat d'un an. A l'expiration de ces mandats d'un an, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de deux ans, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de trois ans, l'élection des Conseillers Exécutifs deviendra entièrement conforme à l'Article 14.

Article 25
Caducité de la 7ème Partie

Lorsque l'élection de tous les Conseillers Exécutifs sera devenue entièrement conforme à l'article 14, la présente 7ème Partie deviendra caduque et sera supprimée dans toute publication ultérieure des présents Statuts.

RULES OF PROCEDURE*

Rule 1
Right of Presence

In the Assembly, only Members of the CMI as defined in Article 3 of the Constitution, members of the Executive Council as provided in Article 4 and Observers invited pursuant to Article 4 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 8 and Observers invited pursuant to Article 20 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings.

Rule 2
Right of Voice

Only Members of the CMI as defined in Article 3 of the Constitution and members of the Executive Council speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

Rule 3
Points of Order

During the debate of any proposal or motion any Member or Officer of the CMI having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

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* Approved by the CMI Assembly held on 13th April 1996.

Rule 4
Voting

For the purpose of application of Article 6 of the Constitution, the phrase "Member Associations present, entitled to vote, and voting" shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 7 or 21, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI *Yearbook*.

If a vote is equally divided, the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the proposal of the Nominating Committee pursuant to Article 15, then the candidate(s) so proposed may be declared by the President to be elected to that office by acclamation.

Rule 5
Amendments to Proposals

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

Rule 6
Secretary and Minutes

The Secretary-General or, in his absence, an Officer of the CMI appointed by the President, shall act as secretary and shall take note of the proceedings and prepare the minutes of the meeting. Minutes of the Assembly shall be published in the two official languages of the CMI, English and French, either in the CMI *News Letter* or otherwise distributed in writing to the Member Associations.

Rule 7
Amendment of these Rules

Amendment to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations not less than 60 days before the annual meeting of the Assembly at which the proposed amendments will be considered.

Rule 8
Application and Prevailing Authority

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the CMI.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail in accordance with Article 7(h). Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

GUIDELINES FOR PROPOSING THE APPOINTMENT OF TITULARY AND PROVISIONAL MEMBERS*

Titulary Members

No person shall be proposed for appointment as a Titulary Member of the Comité Maritime International without supporting documentation establishing in detail the qualifications of the candidate in accordance with Article 3(b) of the Constitution. The Administrator shall receive such documentation not less than sixty (60) days prior to the meeting of the Assembly at which the proposal is to be considered.

Contributions to the work of the Comité may include active participation as a voting Delegate to two or more International Conferences or Assemblies of the CMI, service on a CMI Working Group or International Sub-Committee, delivery of a paper at a seminar or colloquium conducted by the CMI, or other comparable activity which has made a direct contribution to the CMI's work. Services rendered in furtherance of international uniformity may include those rendered primarily in or to another international organization, or published writing that tends to promote uniformity of maritime law or related commercial practice. Services otherwise rendered to or work within a Member Association must be clearly shown to have made a significant contribution to work undertaken by the Comité or to furtherance of international uniformity of maritime law or related commercial practice.

Provisional Members

Candidates for Provisional Membership must not merely express an interest in the object of the CMI, but must have *demonstrated* such interest by relevant published writings, by activity promoting uniformity of maritime law and/or related commercial practice, or by presenting a plan for the organization and establishment of a new Member Association.

Every three years, not less than sixty (60) days prior to the meeting of the Assembly, each Provisional Member shall submit a concise report to the Secretary-General concerning the activities organized or undertaken by that Provisional Member in pursuance of the object of the CMI.

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* Approved by the CMI Assembly held on 8 May 1999.

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Constituent Members: 19 - Regular Members: 290 - Student Members: 2
Total Membership including Honoraries & Constituent: 326.

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PART II

The Work of the CMI

UNIFORMITY OF THE LAW OF THE CARRIAGE OF GOODS BY SEA

REPORT ON THE WORK OF THE INTERNATIONAL SUB-COMMITTEE

Introduction

The process of unification of the law relating to liability arising out of the carriage of goods by sea, which was begun by the CMI as long ago as 1907, continued satisfactorily until the Visby Protocol of amendment to the Hague Rules was adopted in 1968. At that time there were 73 States parties to the 1924 Convention, including most of the major maritime nations of the world. Some other States had introduced the provisions of the Hague Rules into their domestic legislation without ratifying the Convention. With the entry into force of the Visby Protocol in 1977, the degree of uniformity decreased, as only a limited number of States parties to the Convention became parties to the Protocol. Presently there are 60 States parties to the unamended 1924 Convention, 17 States parties to the Convention as amended by the Visby Protocol and 18 States parties to the Convention as amended by the Visby Protocol and by the SDR Protocol. Moreover, although about 8 States simultaneously ratified the Protocol and denounced the unamended Convention, about 12 other States have ratified the 1968 Visby Protocol without denouncing the original 1924 Convention.

After the Hamburg Rules entered into force, the pace of disunification increased significantly. In fact, whilst the amendments made to the original Hague Rules by the two Protocols did not affect the basic provisions of the Rules, contained in Articles 3 and 4, the Hamburg Rules brought about a system of liability which significantly different from that of the Hague and Hague-Visby Rules.

Of the 25 States at present parties to the Hamburg Rules, 12 were parties to the 1924 Convention and 13 were not. The confusion is increased by the fact that only one of the States parties to the Hague Rules appear to have denounced them whilst the other 11 do not appear to have done so. Moreover several States parties to the Hague Rules, have amended their domestic legislation with which they have given effect to the Rules by amending some of its terms and adding other terms, based on certain provisions of the Hamburg Rules.

Several States, that were not parties to the Hague Rules, have in turn enacted or are moving toward the enactment of domestic legislation incorporating features of both the Hague Rules and the Hamburg Rules as well as unilateral innovations.

In 1988 the Assembly of the CMI decided that the Hague-Visby Rules should be revisited, in order to find out whether and to which extent its provisions were still in line with the requirements of the industry and provided a balanced solution of the conflicting interests of the carriers and their liability insurers on the one hand and of the cargo owners and their insurers on the other hand. The International Sub-Committee established for such purpose produced a draft Study (Paris I, p. 54) which was submitted to the 1990 CMI Paris Conference. Certain amendments were made to the draft by the Conference who then approved the Study (Paris II, p. 104) and the accompanying "Paris Declaration".[1]

Subsequently the CMI Executive Council decided that the possibility of ensuring greater uniformity in this area should be further explored and that the views of National Associations should be solicited.

To that end it directed, at its meeting in Sydney on 2 October 1994, that the Working Group of Executive Council members previously appointed at its meeting in Oxford on 13 May 1994 should prepare a Questionnaire directed to the Member Associations.

Replies from 26 National Associations were received and a synopsis of the replies was published in the 1995 Yearbook (p. 115-177) followed by a synoptical table showing the most significant changes suggested by National Associations to both the Hague-Visby Rules and the Hamburg Rules.

The International Sub-Committee held five sessions during which the most relevant issues connected with matters dealt with by the aforesaid Conventions were identified and debated.[2] The Reports of the first four sessions, prepared by Dr. Frank Wiswall, who acted as Rapporteur, are published in the 1995 Yearbook (at p. 229-243) and in the 1996 Yearbook (at p. 360-420). A synopsis of such Reports is published in the 1997 CMI Yearbook (at p. 291).

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1 The text of the "Paris Declaration" is reproduced below:

Paris Declaration on Uniformity of the law of Carriage of Goods by Sea 29th June 1990

1. During the XXXIVth International Conference of the Comité Maritime International held in Paris from 24th to 29th June 1990, a draft Document entitled "Uniformity of the Law of the Carriage of Goods by Sea in the Nineteen Nineties" was discussed by a Committee of the Conference largely on the basis of the Hague-Visby Rules and in which discussion all the 41 National Associations represented at the Conference participated.

2. Following this discussion, the draft was amended to clarify certain points which were raised and to reflect views expressed by delegates which were not always unanimous. The Document, as amended, is attached. It was presented to a Plenary Session of the Conference on Friday, 29th June and was approved as a basis for further work.

3. In approving the Document as a basis for further work, the hope was expressed that the International Organizations concerned will continue to offer to the CMI the co-operation it has received in the past for the work that lies ahead.

2 A list of the participants to each session is annexed as Table I.

A report was then prepared by the Chairman for consideration by the Antwerp Centenary Conference wherein the views of the International Sub-Committee (or of the majority of the delegates who attended its sessions) on each of the issues were summarized. The most significant amongst the aforesaid issues (liability regime, identity of the carrier, period of application of the uniform rules, jurisdiction and arbitration) were again discussed during the Conference and a Report on the discussion is published in the 1997 CMI Yearbook (at p. 288).

Meanwhile the CMI Executive Council, after consultation with the Secretariat of UNCITRAL, had decided that a wider investigation should be carried out in respect of a number of other important issues of transport law, such as the interfaces between contract of carriage and contract of sale of goods, relationship within the contract of carriage, transport documents, bankability of transport documents, EDI, and ancillary contracts.

The CMI Assembly held on 15 May 1998 then decided that the work on the liability regime should be concluded for the present in the form of a CMI Study summarising the position of the CMI and where appropriate suggesting possible wordings of a draft text, but took notice of the fact that in the context of the broader work of the CMI on issues of transport law it was quite possible that the questions of liability would be affected to a degree that at present it is difficult to assess.

Following the above resolution a fifth Session of the International Sub-Committee was held in London on 9 and 10 November 1998. During such session all the issues considered at the previous sessions were again debated with a view to reaching, whenever possible, a consensus at least in respect of some of them. It was, however, not deemed appropriate for the time being to draft any text, even on the issues on which a consensus was reached, in consideration of the possible future developments resulting from the study of other issues of transport law.

A conclusive report of the work of the Sub-Committee in respect of each of the issues that have been considered follows.[3]

1. Definitions

There is a consensus on the need for a definition of the following terms:

- actual/performing carrier
- carrier
- contract of carriage of goods by sea
- goods
- shipper
- signature
- transport documents
- writing (including electronic communications)

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[3] The degree of consensus reached in respect of each issue is shown in Table II.

The definition of goods should include also deck cargo, but exclude live animals. The definition of the following additional terms may be considered:

- charter party
- electronic communication
- ship.

2. Scope of application

The uniform rules should apply both to outbound and inbound cargo irrespective of the document evidencing the contract of carriage, except for charter parties.

A provision along the lines of Article 2 of the Hamburg Rules is considered appropriate.

3. Period of application

There is a consensus that the period of application of the Hague-Visby Rules (Article 1(e)) is by far too limited and that the provision of the Hamburg Rules (Article 4) is not satisfactory. It is thought that the notion of "port" must be flexible, in that the movement of the goods which is required in order to deliver the goods to the consignee in a "port-to-port" contract of carriage should always, in principle, be governed by the rules applicable to such contract, irrespective of whether the movement takes place entirely in the port area (on the assumption that the port area may be defined) or not.

4. Identity of the carrier

The problem of the identity of the carrier arises when the carrier is not clearly named in the transport document.

In order to make it easier for the owner of the goods to identify the carrier, the following rules are suggested:

1. The carrier must indicate his name and address in the transport document.
2. When the carrier is named, then the person so named should be conclusively taken to be the carrier.
3. Where the carrier is not named, but the transport document contains a representation that the goods have been shipped (or received for shipment) on board a named ship, the registered owner of that ship should be conclusively taken to be the carrier unless the registered owner proves that the ship was at the time of the carriage of the goods under demise charter and the demise charterer accepts responsibility for the carriage of the goods.
4. If the registered owner declares that the ship was under demise charter the time bar should not run from the time when suit is brought against the registered owner but the time when the demise charterer accepts responsibility for the carriage of the goods.

   It should then be considered whether these provisions should apply, *mutatis mutandis*, to the performing carrier.

5. The liability regime of the carrier

(a) The need for a provision on the duties of the carrier.

There is a consensus on the need for a provision such as that contained in Article 3(1) and (2) of the Hague-Visby Rules.

This provision in fact has been and will be in the future of great assistance to courts and to lawyers, as well as to carriers and shippers, because it provides a very useful guideline of what is required of a diligent carrier, and its abolition would not only deprive all those persons of an important guideline, but might also - and this would be very dangerous - be construed as an intentional change of the liability regime that has been known and applied for over half a century.

The duties of the carrier relate to the seaworthiness of the ship and to her fitness to receive and preserve the cargo during the voyage. Articles 3(1) and (2) of the Hague-Visby Rules meet this requirement satisfactorily, except perhaps with respect to the time when the duties must be performed. However, the question whether the obligation of the carrier should be a continuous obligation or not continues to be the object of conflicting views. The practical importance of the issue was questioned for the reason that the continuous obligation in respect of seaworthiness may arise under paragraph 2 of Article 3.

(b) Responsibility for the faults of servants or agents.[4]

(i) Fault in the navigation

The question whether or not the exoneration in respect of fault in the navigation of the ship should be maintained continues to be controversial.

In the Document entitled "Uniformity of the Law of the Carriage of Goods by Sea in the Nineteen-Nineties", approved by the Paris CMI Conference in 1990, it is stated that at that time the "strongly prevailing view" was that the exemption should be retained. During the first four sessions of this Sub-Committee the position did not appear to have changed, nor has it changed during the fifth session, save that the majority in favour of the retention of the exemption was less significant.

(ii) Fault in the management of the ship.

Also in respect of this exemption there continue to be different views and, therefore, the question whether the exemption should be retained remains open.

(iii) Fire.

The provision of Article 4(2)(b) of the Hague-Visby Rules is considered still to be satisfactory.

(c) The allocation of the burden of proof. The catalogue of exceptions.

Save for the lack of agreement on the question whether sub-paragraph (a) of Article 4(1) should be retained, there is a consensus that all the subsequent "excepted perils" should be maintained. It is accepted that in case the carrier proves that the loss or damage have been caused by one of the excepted perils

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[4] Table III shows the views expressed by the National Associations in the occasion firstly of the 1990 Paris Conference and then of the five sessions of the International Subcommittee.

the cargo owner may in turn prove that the fault of the carrier or of his servants or agents contributed to cause the loss or damage.

There is however no consensus on the question whether the provision of paragraph 1 of the Protocol of Signature should be incorporated in the uniform rules, rather than remain a reservation.

6. Liability of the performing carrier

The liability regime of the performing carrier should be the same as that of the contracting carrier, save that the liability of the performing carrier should be limited to the part of the carriage performed by him.

The question was raised whether the independent contractors performing services ashore in respect of the handling of the goods from the time of discharge to the time of delivery to the consignee ought to be considered as performing carriers. No agreement, however, could be reached in this respect.

7. Through carriage

A distinction must be made between the right of the carrier to tranship the cargo en route, in which case he remains responsible for the performance of the whole carriage, and the right of the carrier to restrict his obligation to the part of the carriage performed by him, his only duty thereafter being that of entering into a separate contract of carriage with the owner of the vessel on which the goods will be transhipped for their carriage to the final port of destination.

In this latter case the obligation of the carrier terminates only if the transhipment is expressly mentioned in the transport document together with the place where it will be effected. It has been agreed by the majority of the delegates that it should not be a requirement of the termination of the obligation that the name of the carrier who performs the subsequent leg of the carriage be indicated in the transport document, provided that the original contracting carrier indicates his name to the owner of the goods when the goods are delivered to him at the place of final destination.

8. Deviation

The uniform rules should provide that they apply in any case of breach by the carrier of his obligations, including any breach that in certain legal system may be qualified as fundamental, such as an unreasonable deviation.

9. Deck cargo

The uniform rules should contain an express provision on deck cargo, along the lines of Article 9 of the Hamburg Rules.

10. Delay

The uniform rules should apply in case of delay and a provision along the lines of Article 5(2) of the Hamburg Rules is considered satisfactory. There is no agreement, however, as to whether the rules should also contain a provision

on constructive loss in case of excessive delay, such as that of Article 5(3) of the Hamburg Rules. A majority is of the view that they should, though the time limit ought to be longer, and that after the time limit has expired, it is irrelevant that the goods are found.

11. Limitation of liability

There seems to be general support for the package-kilo limitation.

A provision along the lines of those in the Hague-Visby Rules and of the Hamburg Rules is considered satisfactory, except that it should state that the unit is the shipping unit. A large majority considers that this provision should also state that the limits apply to the aggregate of all claims, including claims in respect of damages for delay.

12. Loss of the right to limit

The wording of Art. 8 of Hamburg Rules is preferable to that of Art. 4(5)(e) of the Hague-Visby Rules because it refers to "such loss". However, in the view of the majority, the fact that the act or omission should be a personal act or omission of the carrier should be specified, as in the LLMC (Art. 4) and in the HNSC (Art. 9 § 2).

13. Transport Documents

The uniform rules should apply to all types of transport documents, except charter parties.

The obligation of the carrier to issue a bill of lading on request of the carrier should still be provided, but it ought to be made clear that the parties are free to agree otherwise.

As regards the signature of the transport documents, it is thought that a provision along the lines of Article 14(3) of the Hamburg Rules, updated in light of developing technology, would be proper.

14. Contractual stipulations

As a general rule, the uniform rules should be compulsory and a provision along the lines of Article 3(8) of the Hague-Visby Rules and Article 23(1) of the Hamburg Rules should be adopted. It is felt by a substantial majority, however, that certain exceptions are still justified and that a provision along the lines of Article 6 of the Hague-Visby Rules would be required. It would be necessary then to clarify what it is meant by "particular goods" and whether the operation of such provision should always be conditional upon whether a bill of lading has been issued.

15. Contents and evidentiary value of the transport documents

1. Both in the Hague-Visby Rules and in the Hamburg Rules there are provisions on the contents of the bill of lading. Such provisions (subject to modification) ought instead to apply to all transport documents.

2. Whilst the Hague-Visby Rules provide (Article 3(3)(b)) that the carrier is bound to indicate in the bill of lading one particular regarding the goods (either the number of packages or pieces, or the quantity, or weight), the Hamburg Rules provide (Article 15(1)(a)) that the carrier shall indicate in the bill of lading both the number of packages or pieces and the weight or quantity of the goods. Furthermore, the Hague-Visby Rules require that the information concerning the goods must be furnished in writing by the shipper, whilst such requirement does not appear in the corresponding provision of the Hamburg Rules. It is the view of a clear majority that the provision of the Hague-Visby Rules is preferable to that of the Hamburg Rules.

3. The carrier is entitled to insert reservations in respect of the particulars concerning the goods supplied by the shipper and inserted in the transport document if he has reasonable grounds to suspect that they do not accurately represent the goods or if he has not reasonable means of checking such particulars. He, however, is not required to mention in the transport document the reasons for which the reservations are inserted. If the cargo owner wishes to challenge the validity of the reservations, the burden of proving that they have been inserted without justification is upon him.

4. In case of goods stuffed in a container by the shipper, there is a presumption to the effect that the carrier has not been able to check the number of packages or pieces. He, however, cannot refuse to insert the particulars supplied by the shipper in the transport document. In such a case the limit of liability is based on the number of packages and pieces declared by the shipper, unless the carrier proves that the number of packages or pieces actually stuffed in the container was different.

16. Duties and liability of the shipper

The uniform rules should contain a provision setting out the general duties of the shipper in respect of the goods delivered to the carrier, as well as his special duties in respect of dangerous goods (see paragraph 17), including the obligation to adequately prepare and package the goods for the carriage by sea. The general provisions outlined above should be followed by specific provisions along the lines of those set out in Articles 3(5) and 4(3) of the Hague-Visby Rules and of Articles 12 and 17(1) of the Hamburg Rules.

17. Dangerous cargo

Both the Hague-Visby Rules and the Hamburg Rules have a provision on dangerous cargo. The views are divided on which of such provisions is preferable. An argument in favour of the former is that its interpretation has been the subject of Court decisions and, in particular, of the recent decision of the House of Lords in *The "Giannis N. K."*.

18. Letters of guarantee

A clear majority is of the view that letters of guarantee ought not to be governed by the uniform rules. A substantial number are in favour of discouraging the use of letters of guarantee.

19. Notice of loss

There is a consensus on a provision along the lines of Article 3(6) of the Hague-Visby Rules, save that the provision should state that, in case of loss or damage which is not apparent, the notice must be given within three working days.

20. Time bar

The question whether the time bar period should be one or two years remains unsettled.

21. Jurisdiction

The uniform rules should contain a provision on jurisdiction along the lines of Article 21 of the Hamburg Rules save that:

(i) the second sentence of paragraph (2)(a) must be deleted, since it is in conflict with Article 7(1) of the 1952 Arrest Convention;

(ii) paragraph (2)(b) must be deleted, for the same reason;

(iii) paragraph 4 must be deleted, because the matters dealt with therein should be left to national law.

22. Arbitration

A clear majority is in favour of a provision along the lines of Article 22(1), (2), (4) and (5) (the reference to paragraph (4) being deleted) of the Hamburg Rules, but against a provision such as that of paragraph (4) of that Article.

A minority is instead of the view that the uniform rules should not contain any provision on arbitration.

FRANCESCO BERLINGIERI
Chairman of the International Sub-Committee

Table I

List of Participants				
I	**II**	**III**	**IV**	**V**
Australia & New Zealand	Australia & New Zealand			Australia & New Zealand
	Belgium		Belgium	
Canada			Canada	Canada
	China	China	China	
Denmark	Denmark	Denmark	Denmark	Denmark
				Dominican Rep.
Finland		Finland	Finland	
France	France	France	France	
Germany		Germany		
Ireland	Ireland	Ireland		
Japan	Japan	Japan	Japan	Japan
Korea	Korea	Korea	Korea	Korea
Netherlands	Netherlands		Netherlands	
Norway	Norway	Norway	Norway	Norway
	Panama			
Poland				
Portugal				
South Africa			South Africa	South Africa
Spain	Spain	Spain	Spain	Spain
		Sweden	Sweden	Sweden
Switzerland	Switzerland	Switzerland	Switzerland	Switzerland
UK	UK	UK	UK	UK
USA	USA	USA	USA	USA
				Venezuela

Table II

Consensus	*Large/Substantial/ Clear/Great majority*	*No consensus*
1. Definitions	7. Through carriage	5. The liability regime of the carrier (b) Responsibility for the faults of servants or agents* (i) Fault in the navigation (ii) Fault in the management of the ship
2. Scope of application	11. Limitation of liability	
3. Period of application	12. Loss of the right to limit (*majority*)	
4. Identity of the carrier	14. Contractual stipulations	
5. The liability regime of the carrier (a) The need for a provision on the duties of the carrier	18. Letters of guarantee	
	22. Arbitration	6. Liability of the performing carrier
5. The liability regime of the carrier (b) Responsibility for the faults of servants or agents (iii) Fire		10. Delay
		17. Dangerous cargo
		20. Time bar
5. The liability regime of the carrier (c) The allocation of the burden of proof. The catalogue of exceptions		
8. Deviation		
9. Deck cargo		
13. Transport Documents		
15. Contents and evidentiary value of the transport documents		
16. Duties and liability of the shipper		
19. Notice of loss		
21. Jurisdiction		* *See Table III*

Table III

	Fault in Navigation		*Management*	
	Retain	**Delete**	**Retain**	**Delete**
Report to Paris Conference (Paris I, 104)	Substantial majority	Some delegates	No consensus	
Paris Conference (Paris II, 152)	Strong prevailing view	— —	Narrowly prevailing view	—
ISC-I (Yearbook 1995, 234)	Australia n. 2 China Denmark Ireland Japan Korea Netherlands Norway Poland Portugal UK **11**	Canada Finland Spain USA Venezuela **5**	China Denmark Korea Netherlands Panama Portugal Switzerland UK **8**	Australia Canada Finland Ireland Japan Norway Poland Spain USA Venezuela **10**
ISC-II (Yearbook 1996, 370)	Australia (?) China Denmark Ireland Japan Korea Netherlands Panama Norway UK **10**	Belgium France Spain USA **4**	China Denmark Japan Korea Netherlands Panama UK **7**	Australia Belgium France Ireland Spain USA **6**
(Yearbook 1996, 394)	**10**	**4**	**8**	**7**
ISC-IV	—	—	—	—
ISC-V	No consensus		No consensus	

ISSUES OF TRANSPORT LAW

I

INTRODUCTORY PAPER

1. Terms of Reference

This International Sub-Committee on Issues of Transport Law was set up by the CMI Executive Council at its meeting on 11th November 1999 with the following terms of reference:

To consider in what areas of transport law, not at present governed by international liability regimes, greater international uniformity may be achieved; to prepare the outline of an instrument designed to bring about uniformity of transport law; and thereafter to draft provisions to be incorporated in the proposed instrument including those relating to liability.

It will be seen that these terms of reference contain essentially three limbs. I refer to these limbs further in Section 4 below.

2. Background

On 16th December 1996, the United Nations General Assembly passed a resolution recommending the Model Law on Electronic Commerce which had been adopted by UNCITRAL. The CMI had assisted UNCITRAL in drafting Articles 16 and 17 of the Model Law, which relate to contracts of carriage of goods and transport documents. During the course of this work it was recognised that in order to be able to translate trade practice into electronic means, it was necessary to analyse the functions of paper documents used in the carriage of goods by sea and to attempt to achieve a wider unification of transport law in this area. The Report on the work of the 29th Session of UNCITRAL held in May and June 1996 set out a proposal that UNCITRAL *"should include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules in the areas where no such rules existed"*. It was noted that *"existing national laws and international conventions left significant gaps regarding issues such as the functioning of the bills of lading and sea waybills, the relation of those transport documents to*

the rights and obligations between the seller and the buyer of goods, and to the legal position of the entities that provided financing to a party to the contract of carriage".

It was decided at the 29th Session that the UNCITRAL Secretariat should gather information, ideas and opinions as to the problems that arose in practice, and possible solutions to those problems, and that such information gathering should be broadly based and should involve the international organisations representing the commercial sectors involved in the carriage of goods by sea, such as the CMI. In fact, UNCITRAL subsequently indicated that it would be happy for CMI to take the lead and, together with all the international organisations, to organise further work on the issues of transport law summarised in the Report of the 29th Session. The CMI Executive Council then set up a Steering Committee to consider the project. The Steering Committee issued a report dated 29th April 1998 (published in the CMI Yearbook 1998 at pp107-117) which outlined the work which should be undertaken by a working group. An International Working Group was then established under my chairmanship consisting of - Prof. Lars Gorton (Sweden), Paul Koronka (UK), Prof. Michael Sturley (Rapporteur) (US), Prof. Gertjan van der Ziel (Netherlands), Prof. Stefano Zunarelli (Italy), Jernej Sekolec (UNCITRAL) and the President and Secretary General. Sean Harrington (Canada) joined the Working Group this year.

The Working Group studied the issues outlined in the Steering Committee's report and drew up a Questionnaire which was sent to all National Associations in May 1999. A number of responses have been received to this Questionnaire and a synopsis of these responses is included as Annex 1 to this paper.* This synopsis will be updated if any further responses come in before 26th January 2000. Many of the responses have been extremely detailed and thorough and cannot easily be summarised without some change of emphasis and, possibly, loss of accuracy. I apologise to any National Association which may feel that the synopsis does not do justice to its response, but the Working Group felt that some broad summary of the responses would be helpful to delegates. I have not however included responses to specific questions which I am not fully confident I have understood. Copies of the individual responses are available on the CMI Website at www.comitemaritime.org, or on request to the CMI office in Antwerp.

Based on the responses which have been received, the Working Group has prepared a list (Annex 2) of the six principal issues which it recommends to the Sub-Committee should be the subject of debate at the first meeting on 27th/28th January 2000. Each member of the Working Group has made a particular study of one of the issues and it is proposed that he should lead the discussion on it.

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* Annex 1 is not being published as the Questionairre and the Responses are being published in full.

3. Issues of Liability

It was noted in the Report of the 29th Session of UNCITRAL that a review of the liability regime was not the main objective of the proposed work. Within the CMI the liability regimes were the subject of the work which was being undertaken by the International Sub-Committee on the Uniformity of the Law of the Carriage of Goods by Sea under the chairmanship of Prof. Francesco Berlingieri. Issues of liability were therefore excluded from the Working Group's brief when it was established in May 1998.

Prof. Berlingieri's Sub-Committee held its fifth meeting in November 1998 and a report on its work was presented to the CMI Assembly in May 1999 (published in CMI Newsletter no. 2-1999). The Secretary General informed the Assembly that issues of liability would be re-introduced into the overall work of the International Sub-Committee on Issues of Transport Law which it was planned would be established later in the year. The terms of the reference set out above accordingly include drafting provisions relating to liability which are to be incorporated in the proposed instrument designed to bring about uniformity of transport law.

The terms of reference, however, make it clear that this limb of the Sub-Committee's task is to follow its consideration of the areas, not at present governed by international liability regimes, in which greater international uniformity may be achieved. It is this first limb which has been the subject of the Working Group's studies to date and to which the Questionnaire to National Associations was directed. Consequently the issues which the Working Group recommends should be debated at the first meeting on 27th/28th January 2000 (Annex 2) do not specifically include issues of liability, although some of these issues, particularly issues 1 and 2, impinge on matters which have been discussed in Prof. Berlingieri's Sub-Committee. In order to assist consideration of the first limb, Prof. Michael Sturley has prepared a paper outlining the scope of application of existing international transport law regimes. This paper is attached as Annex 3.

Moreover, the Working Group believes that it would be premature to prepare an outline of any instrument before the issues, which such an instrument would be designed to resolve by harmonisation, have been thoroughly debated and identified. It is not therefore proposed to proceed to the second limb of the terms of reference at the first meeting. However if time permits I hope that it will be possible to have a preliminary discussion about the form such an instrument might take.

4. Future Programme

The 33rd Session of UNCITRAL will begin in New York on 12th June 2000. The CMI has been invited to submit an agenda note on issues of transport law for that meeting. It is hoped that it may be possible not only to indicate in that document the areas in which harmonisation would be appropriate, but also to outline the nature and form of an instrument designed to bring about such uniformity. As the agenda note must be prepared by early April 2000, it may be necessary to hold the second meeting of the Sub-

Committee in March 2000 and the dates of 9th/10th March have provisionally been proposed for such a meeting.

In this agenda note the CMI will propose to UNCITRAL that the project as outlined in the Report of the 29th Session be extended to include an updated liability regime. If this proposal is accepted, the Sub-Committee will then move to consider the third limb of its terms of reference.

This whole subject will be a major topic for consideration at the next CMI Conference in Singapore in February 2001. As papers for this Conference must go to print in November 2000, it is likely that a meeting to complete the Sub-Committee's work, so far as that may be possible in this relatively short time-scale, should be held in October 2000. If an earlier meeting is necessary, particularly to deal with issues of liability, this could be held in July 2000, possibly in New York in conjunction with the joint UNCITRAL/CMI Colloquium, which is fixed for 6th July 2000.

5. International Organisations

The CMI's brief from UNCITRAL is to obtain broadly based information and to involve the relevant international organisations in its work. The Steering Committee therefore invited a number of international shipping organisations to attend meetings of a "round table". Two such meetings have been held in May 1998 and June 1999 and members of the "round table" were invited by the Secretary General further to contribute to the project by responding to a number of specific points. All the organisations which have been invited to meetings of the "round table" are being invited to send a representative to meetings of the Sub-Committee.

STUART N. BEARE
Chairman of the International Sub-Committee
29th December 1999

ANNEX 2

International Sub-Committee on Issues of Transport Law

Issues for Discussion

Questionnaire

ANNEX 3

Scope of application, duration of coverage, and exceptions to coverage in International Transport Law Regimes

Michael F. Sturley*

Introduction

This paper discusses the application and coverage of several international transport regimes. In the process, the paper examines three different aspects of this broad issue. Most obviously, it examines what the Hamburg Rules describe as the "scope of application," *i.e.*, the situations in which the provisions of a particular legal regime are applicable. Secondly, it examines the duration of coverage (or period of responsibility), *i.e.*, the time during the underlying transaction after coverage begins and before it ends. Finally, it examines exceptions to coverage, *i.e.*, the situations that might otherwise be subject to the legal regime at issue that are nevertheless not governed by the regime because of an explicit exception in the regime.

The Carriage of Goods by Sea Regimes

A. The Hague Rules

In keeping with the narrow choice-of-law principles that were generally recognized at the time, Article 10 of the Hague Rules provides:

> The provisions of this convention shall apply to all bills of lading issued in any of the contracting States.[1]

This provision was added during the Brussels Conference; there had been no corresponding provision in the drafts prepared by the International Law Association in 1921 or the Comité Maritime International in 1922.[2] As a result, there was very little discussion of the issue—and to the extent there was any

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1 Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, art. 10, 51 Stat. 233, T.S. No. 931, 120 L.N.T.S. 155 [hereinafter *Hague Rules*].

2 See *1 The Legislative History of the Carriage of Goods by Sea Act and the Travaux Préparatoires of the Hague Rules 28* (M. STURLEY ed. 1990) [hereinafter *Legislative History*].

discussion, it focused on whether an international regime should be binding in a dispute between two citizens of the same country.[3]

The Hague Rules also adopted a restrictive provision on the duration of coverage. Under the so-called "tackle-to-tackle" rule, the regime applied during "the period from the time when the goods are loaded on to the time they are discharged from the ship."[4] The draftsmen made an explicit choice that events before loading or after discharge should be governed by the relevant national laws.[5]

The scope of the Hague Rules is further limited by a few explicit exceptions to coverage. Under a restrictive definition of "goods," the regime does not apply to live animals or "cargo which by the contract of carriage is stated as being carried on deck and is so carried."[6] Both the carriage of live animals and the carriage of deck cargo were considered so risky that carriers should not be required to assume the onerous requirements of the new regime.[7] Under a restrictive definition of "contract of carriage," the regime applied only to carriage under "a bill of lading or any similar document of title."[8] This excluded, for example, carriage under a charter party[9] (except when a bill of lading issued under a charter party "regulates the relations between a carrier and a holder"[10]). Many courts have also interpreted this provision to exclude common bill of lading substitutes.[11]

B. The Hague-Visby Rules

Dissatisfaction with the narrow scope of Article 10 was the initial impetus for amending the Hague Rules. The Comité Maritime International's International Sub-Committee on Conflicts of Law studied the issue, and gave a full report in 1959 at the Rijeka Conference.[12] The conference adopted a

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3 *See Conférence Internationale de Droit Maritime, Documents et Procès-Verbaux des Séances 153* (1922) [hereinafter *1922 Procès-Verbaux*] (statement of Sir Leslie Scott), translated in *1 Legislative History*, *supra* note 2, at 387 (Caroline Boyle trans.); *Conférence Internationale de Droit Maritime, Réunion de la Sous-Commission, Bruxelles 1923*, at 37-38 [hereinafter *1923 Procès-Verbaux*] (statement of Sir Leslie Scott), translated in *1 Legislative History*, *supra* note 2, at 428 (Caroline Boyle trans.); 1923 *Procès-Verbaux*, *supra*, at 81, translated in *1 Legislative History*, *supra* note 2, at 485.

4 *Hague Rules*, *supra* note 1, art. 1(e). The "tackle-to-tackle" rule is part of the "carriage of goods" definition. Article 7 also clarifies that the convention does not affect the rights of shippers and carriers before loading or after discharge.

5 *See, e.g., Comité Maritime International, London Conference, October 1922*, at 448-449 (Bulletin no. 57), reprinted in *2 Legislative History*, *supra* note 2, at 445-446.

6 *Hague Rules*, *supra* note 1, art. 1(c).

7 *See, e.g., 1922 Procès-Verbaux*, *supra* note 3, at 126 (statement of Edvin Alten), translated in *1 Legislative History*, *supra* note 2, at 353.

8 *Hague Rules*, *supra* note 1, art. 1(b).

9 See also *Hague Rules*, *supra* note 1, art. 5, para. 2 ("The provisions of this convention shall not be applicable to charter parties . . .).

10 *Hague Rules*, *supra* note 1, art. 1(b). See also *Hague Rules*, *supra* note 1, art. 5, para. 2.

11 English law appears to take a very narrow view of the phrase "a bill of lading or any similar document of title." See, e.g., CHARLES DEBATTISTA, *Sale of Goods Carried by Sea 189-199 (1990)*. U.S. law, in contrast, has generally been far more expansive. See, e.g., Pomerene Act § 2, 49 U.S.C. § 80103.

12 Comité Maritime International, *Rijeka Conference 1959*, at 134-140 [hereinafter *Rijeka Conference Report*].

resolution calling for the extension of the Hague Rules to cases in which the port of loading or the port of discharge was located in a contracting state,[13] *i.e.*, to both inbound and outbound cases. (The conference also instructed the International Sub-Committee to consider other potential amendments to the Hague Rules.)

Ultimately, the Visby Protocol amended article 10 to extend the application of the Rules beyond cases in which the bill of lading is issued in a contracting state (as under the Hague Rules) to include international shipments in which "the carriage is from a port in a Contracting State,"[14] or the contract of carriage provides for the application of either the Hague-Visby Rules or the laws of a State giving effect to them.[15] In other words, the Visby Protocol rejected the inbound application of the Hague Rules (which had been agreed at the Rijeka Conference[16]) but extended their application in other (albeit less significant) ways.[17]

The Visby Protocol did not amend any other provisions in the Hague Rules relating to their application and coverage. Thus the Hague-Visby Rules contain the same "tackle-to-tackle" provision, the same exceptions for live animals and deck cargo, and the same bill of lading limitation.

C. The Hamburg Rules

When UNCITRAL prepared the Hamburg Rules,[18] it recognized the problems with the limited scope of the Hague and Hague-Visby Rules,[19] and accordingly provided for broader coverage across the board. Article 2(1) declares that the convention applies "to all contracts of carriage by sea between two different States" if the port of loading or discharge is in a contracting state, the bill of lading is issued in a contracting state, or the contract of carriage provides for the application of either the Hamburg Rules or the laws of a State giving effect to them.[20] Thus the Hamburg Rules start with the Visby provisions[21] and extend them to cover inbound shipments as well.

The Hamburg Rules reject the "tackle-to-tackle" rule, extending the carrier's responsibility to "the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge."[22] "Goods" are explicitly defined to include "live animals,"[23] an

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13 *Rijeka Conference Report*, *supra* note 12, at 420.

14 *Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*, Feb. 23, 1968, art. 5, 1977 Gr. Brit. T.S. No. 83 (Cmnd. 6944) (entered into force June 23, 1977) [hereinafter *Visby Protocol*] (*Hague-Visby Rules*, art. 10(b)).

15 *Visby Protocol*, *supra* note 14, art. 5 (Hague-Visby Rules, art. 10(c))

16 See *supra* note 13 and accompanying text.

17 The principal extension of the Rules' application was to fill the gap that had been held to have existed in *Vita Food Products* v. *Unus Shipping Co.*, [1939] A.C. 277.

18 *United Nations Convention on the Carriage of Goods by Sea*, Mar. 31, 1978, 17 I.L.M. 608 [hereinafter *Hamburg Rules*].

19 See, e.g., UNCITRAL Resolution, para. 2 (April 5, 1971), reprinted in [1971] 2 UNCITRAL Y.B. 12-13.

20 *Hamburg Rules*, *supra* note 18, art. 2(1).

21 See *supra* notes 14-15 and accompanying text.

22 *Hamburg Rules*, *supra* note 18, art. 4(1).

23 *Hamburg Rules*, *supra* note 18, art. 1(5).

entire article is devoted to deck cargo,[24] and the "bill of lading" limitation of the Hague and Hague-Visby Rules is abandoned.[25]

Other Transport Regimes

A. Carriage of Goods by Air: The Warsaw Convention

The Warsaw Convention, which governs the carriage of goods by air, "applies to all international carriage . . . of goods performed by aircraft for reward" (including "gratuitous carriage by aircraft performed by an air transport undertaking").[26] International carriage is defined as:

> any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention.[27]

As the places of both departure and destination must generally be within the territory of treaty parties, the Warsaw Convention seems somewhat more restrictive[28] than the Hague and Hague-Visby Rules (which generally apply whenever the port of departure is within the territory of a treaty party). The Warsaw Convention has been so widely adopted,[29] however, that this difference is probably more theoretical than practical.

The duration of coverage is much broader under the Warsaw Convention

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[24] *Hamburg Rules*, *supra* note 18, art. 9.

[25] The Hamburg Rules do preserve the charter party exception. See *Hamburg Rules*, *supra* note 18, art. 2(3).

[26] *Warsaw Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929*, art. 1(1), 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 [hereinafter *Warsaw Convention*]. English translations of the authentic French text are from the version published in the League of Nations Treaty Series. Each of the major English-speaking countries appears to use a different version!

[27] *Warsaw Convention*, supra note 26, art. 1(2).See generally LAWRENCE B. GOLDHIRSCH, *The Warsaw Convention Annotated: A Legal Handbook* 10-16 (1988).

[28] In some situations, however, the Warsaw Convention's coverage is clearly broader. Article 1(3) provides:

> A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Warsaw Convention, supra note 26, art. 1(3). Thus a domestic shipment under a contract covering only that domestic shipment may still be covered by the Convention if it is part of an international movement.

[29] See, e.g., 1997 *U.S. Dep't of State, Treaties in Force* 329-330 (listing well over a hundred parties to the Warsaw Convention). (The precise count is complicated by such issues as the extent to which successor states are bound by ratifications of such nations as the former Soviet Union.)

than under the Hague and Hague-Visby Rules. In sharp contrast to the "tackle-to-tackle" rule, article 18(2) of the Warsaw Convention provides as follows:

> The carriage by air . . . comprises the period during which the . . . goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.[30]

This provision is broadly similar to the corresponding "period of responsibility" provision in the Hamburg Rules.[31]

Like the Hague and Hague-Visby Rules, the Warsaw Convention includes exceptions that make its coverage somewhat narrower. The most significant of these declares that the Convention does not apply to transportation performed under the terms of any international postal convention.[32]

B. Carriage of Goods by Road: CMR and the Inter-American Convention on Contracts for the International Carriage of Goods by Road

The Convention on the Contract for the International Carriage of Goods by Road ("CMR")[33] governs the carriage of goods by road (primarily within Europe[34]). It applies—more broadly than the Hague and Hague-Visby Rules—when the contractual places of receipt and delivery are in different countries, *either one of which* is a party to the convention.[35] The coverage is thus analogous to the inbound and outbound coverage of the Hamburg Rules.[36] CMR also has a multi-modal element: "Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions or article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage."[37]

Like the Warsaw Convention (and thus unlike the Hague and Hague-Visby Rules), the carrier is responsible under CMR from receipt to delivery.[38]

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30 *Warsaw Convention*, *supra* note 26, art. 18(2). See generally GOLDHIRSCH, *supra* note 27, at 70-72. The following paragraph of the Convention provides:

> The period of carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or trans-shipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Warsaw Convention, supra note 26, art. 18(3). See generally GOLDHIRSCH, *supra* note 27, at 72-75.

31 See *supra* note 22 and accompanying text.

32 *Warsaw Convention*, supra note 26, art. 2(2). See generally GOLDHIRSCH, *supra* note 27, at 17-18.

33 May 19, 1956, 399 U.N.T.S. 189 [hereinafter *CMR*].

34 Morocco (as of 1995) and some of the successor states to the former Soviet Union are the only parties to *CMR* that are not at least partially within Europe.

35 *CMR*, *supra* note 33, art. 1(1). Under the Protocol of Signature, however, the Convention does not apply to traffic between the United Kingdom and the Republic of Ireland.

36 See *supra* notes 20-21 and accompanying text.

37 *CMR*, *supra* note 33, art. 2(1). See generally MALCOLM A. CLARKE, *International Carriage of Goods by Road: CMR 40-46* (3d ed. 1997).

38 *CMR*, *supra* note 33, art. 17(1). See generally CLARKE, *supra* note 37, at 213-218.

39 *CMR*, *supra* note 33, art. 1(4)(a).

CMR includes exceptions that make its coverage somewhat narrower: carriage performed under the terms of any international postal convention,[39] funeral consignments,[40] and furniture removal.[41]

The Inter-American Convention on Contracts for the International Carriage of Goods by Road,[42] sponsored by the Organization of American States, provides:

> This Convention shall apply to the international carriage of goods by road, provided that the place of dispatch of the goods is in a State Party and that of their delivery is in another State Party, even when the vehicle used is itself carried, for a portion of the route, by some other mode of transportation without the goods being unloaded, or when carriage is performed by joint services.[43]

The scope of the convention is limited by the cryptic statement, "The rules of this Convention shall not limit the rules of bilateral or multilateral conventions between the States Parties concerning the international transportation of goods or more favorable practices followed by those States in relation thereto."[44] The convention also does "not apply to carriage performed in accordance with international postal agreements or other international treaties."[45]

C. Carriage of Goods by Rail: COTIF and CIM

The Convention Concerning International Carriage by Rail (COTIF),[46] which applies primarily in Europe and the Middle East, provides that "international through traffic" is subject to the "Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM)," which forms Appendix B to COTIF.[47] CIM, by its terms, applies "to all consignments of goods for carriage under a through consignment note made out for a route over the territories of at least two States and exclusively over the lines or services [specified by the Member States]."[48] There are numerous provisions for opting out of CIM coverage. For example, CIM does not apply unless the Member States themselves have designated the relevant lines on the "list of CIM lines."[49] In some situations, the sender can opt out of CIM coverage:

> Consignments between stations in two adjacent States and between stations in two States in transit through territory of a third State shall, if the

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[40] *CMR*, *supra* note 33, art. 1(4)(b). See generally CLARKE, *supra* note 37, at 35.

[41] *CMR*, *supra* note 33, art. 1(4)(c). See generally CLARKE, *supra* note 37, at 35-36.

[42] July 15, 1989, OAS T.S. No. 72, 29 I.L.M. 81 [hereinafter *Inter-American Convention*]. According to the OAS web site, no nation has yet ratified this convention. The signatories are Bolivia, Colombia, Ecuador, Guatemala, Haiti, Paraguay, Peru, Uruguay, and Venezuela. *See* <http://www.oas.org/EN/PROG/JURIDICO/english/Sigs/b-55.html>.

[43] *Inter-American Convention*, *supra* note 42, art. 2, para. 1.

[44] *Inter-American Convention*, *supra* note 42, art. 2, para. 2.

[45] *Inter-American Convention*, *supra* note 42, art. 2, para. 3.

[46] May 9, 1980, 1987 Gr. Brit. T.S. No. 1 (Cm. 41) [hereinafter *COTIF*].

[47] *COTIF*, *supra* note 46, art. 3(1).

[48] *Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM)*, *COTIF*, *supra* note 46, app. B, art. 1(1) [hereinafter *CIM*].

[49] *COTIF*, *supra* note 46, art. 3(2); see also *id.*, art. 10.

lines over which the consignments are carried are exclusively operated by a railway of one of those three States, are subject to the internal traffic regulations applicable to that railway if the sender, by using the appropriate consignment note, so elects and where there is nothing to the contrary in the laws and regulations of any of the states concerned.[50]

In some situations, the railroad can opt out of CIM coverage.[51]

When CIM does apply, the railway is responsible for the goods "between the time of acceptance for carriage and the time of delivery."[52]

D. Carriage of Goods by Inland Waterways: CMN

The Convention on the Contract for the Carriage of Goods by Inland Waterways ("CMN"),[53] which has not been ratified by any nation, would govern contracts for the international carriage of goods by water when "the contract is not governed by maritime law by reason of passage through the sea."[54] Like the Hamburg Rules,[55] CMN would apply when either the place of loading or the place of discharge is in a contracting country.[56] The carrier's period of responsibility extends from "the time of taking over" the goods to "the time of delivery of the goods."[57]

E. Multimodal Transport

The United Nations Convention on International Multimodal Transport of Goods,[58] which is not currently in force (and is apparently unlikely ever to come into force), would govern all contracts of international multimodal transport if the contractual location for the multimodal transport operator's receipt or delivery of the goods is in a Contracting State.[59] Thus the Multimodal Convention, which was designed to work in harmony with the Hamburg Rules, follows that example on inbound and outbound coverage[60] (but without the choice-of-law option[61]). "International multimodal transport" is defined as:

> the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.[62]

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50 *CIM*, *supra* note 48, art. 2(2).

51 See, e.g., *CIM*, *supra* note 48, art. 2(1)(b); *id.* art. 8(4).

52 *CIM*, *supra* note 48, art. 36(1).

53 Feb. 6, 1959, 1961 Unidroit 399, 1 Int'l Transport Treaties at II-1 [hereinafter *CMN*].

54 *CMN*, *supra* note 53, art. 1(1).

55 See *supra* notes 20-21 and accompanying text.

56 *CMN*, *supra* note 53, art. 1(1).

57 *CMN*, *supra* note 53, art. 11.

58 May 24, 1980, reprinted in 6 *Benedict on Admiralty* doc. 1-4 (7th rev. ed. 1998) [hereinafter *Multimodal Convention*].

59 *Multimodal Convention*. *supra* note 58. art. 2.

60 See *supra* note 20 and accompanying text.

61 *Hamburg Rules*, *supra* note 18, art. 2(1)(e).

62 *Multimodal Convention*, *supra* note 58, art. 1(1).

As with the Hamburg Rules,[63] the multimodal transport operator's responsibility "covers the period from the time he takes the goods in his charge to the time of their delivery."[64] Unlike the Hamburg Rules,[65] there is no limitation on where receipt or delivery may take place.

F. Terminal Operators: The OTT Convention

The International Institute for the Unification of Private Law ("UNIDROIT") spent over twenty years on the work of terminal operators in the combined transport context, starting with a study of warehousing contracts in 1960. In the early 1980s, UNCITRAL picked up the topic and ultimately produced the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade ("OTT Convention").[66] The OTT Convention is designed to deal with gaps in existing international transport law by providing rules during the time period that cargo is not in the custody of a carrier. Although the OTT Convention requires only five ratifications to take effect,[67] it is not yet in force.

The concepts of "outbound" and "inbound" coverage[68] do not apply in the OTT context, for the work of terminal operators is almost inevitably performed in a single jurisdiction. The OTT Convention instead looks to the nationality of the terminal operator, the place where the services are performed, and the governing law of the performance:

> This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:
> (a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or
> (b) When the transport-related services are performed in a State Party, or
> (c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.[69]

Thus if the terminal operator's work is connected to a contracting state in any one of the three ways specified, the OTT Convention applies. This means that if a particular nation adopts the OTT Convention (and the Convention goes into force), then its rules will govern all covered services (a) performed by a company whose place of business is located in that nation, regardless of where the particular services in question are performed or the otherwise applicable law; (b) performed in that nation, regardless of where the company's place of business is located or the otherwise applicable law; *and* (c) when choice-of-law rules point to the application of that nation's laws (*e.g.*, when an enforceable

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63 See *supra* note 22 and accompanying text.

64 *Multimodal Convention*, *supra* note 58, art. 14(1).

65 See *supra* note 22 and accompanying text.

66 U.N. Doc. A/CONF.152/13 at 5-16 (1991) [hereinafter *OTT Convention*], reprinted in JOSEPH C. SWEENEY, *New U.N. Convention on Liability of Terminal Operators in International Trade*, 14 FORDHAM INT'L L.J. 1115, 1124-38 (1991).

67 *OTT Convention*, *supra* note 66, art. 22(1).

68 See, e.g., *supra* note 13 and accompanying text.

69 *OTT Convention*, *supra* note 66, art. 2(1).

choice-of-law clause calls for the application of that nation's laws), regardless of where the particular services in question are performed or where the company's place of business is located.

The more important limits on the scope of application are found in the definitions. In particular, an "operator" is defined as

> a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use. However, a person is not considered an operator whenever he is a carrier under applicable rules of law governing carriage.[70]

"International carriage" is then defined as

> any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator.[71]

"Transport-related services" are not restrictively defined, but are specified as including "such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing."[72]

The scope of application of the OTT Convention may be significantly limited by Article 15, which provides:

> This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to a convention relating to the international carriage of goods.[73]

If this article preserves the application of Himalaya clauses,[74] for example, it could exclude the application of the OTT Convention in a large number of cases where it would otherwise have its greatest impact.

As with the Hamburg Rules[75] and the Multimodal Convention,[76] the terminal operator's responsibility covers the period "from the time he has taken [the goods] in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them."[77] As with the Multimodal Convention,[78] and unlike the Hamburg Rules,[79] there is no limitation on where receipt or delivery may take place.

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70 *OTT Convention*, *supra* note 66, art. 1(a).
71 *OTT Convention*, *supra* note 66, art. 1(c).
72 *OTT Convention*, *supra* note 66, art. 1(d).
73 *OTT Convention*, *supra* note 66, art. 15.
74 See SWEENEY, *supra* note 66, at 1122 & nn.32-34.
75 See *supra* note 22 and accompanying text.
76 See *supra* note 64 and accompanying text.
77 *OTT Convention*, *supra* note 66, art. 3.
78 See *supra* text at note 65.
79 See *supra* note 22 and accompanying text.

Conclusion

This brief survey of international transport law conventions illustrates a wide range of possibilities. It seems noteworthy that the scope of application of the Hague and Hague-Visby Rules is generally much narrower than the other alternatives considered here. This brief survey also helps to identify where there are gaps in existing international conventions that may be addressed by the new CMI International Sub-Committee on Issues in Transport Law.

II

QUESTIONNAIRE

1 - Obligations of the Carrier

1.1 - Receipt of the goods

Under the FCA Incoterms (1990) the seller is obliged to deliver the goods into the custody of the Carrier at the place or point named in the contract of sale and the completion of delivery is precisely defined. Under the CPT and CIP Incoterms the seller is obliged to deliver the goods into the custody of the Carrier, or the first Carrier, as the case may be. Under the CIF and FOB Incoterms the seller is obliged to deliver the goods on board the vessel. The risk in the goods, and the obligation to bear costs, normally passes at the time of such delivery.

Questions:

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on "shipment terms"?

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

1.2 - Inspection of the goods and statements in the bill of lading

The Carrier is obliged to show/state the apparent order and condition of the goods in the bill of lading (if this document is requested by the shipper) (Article III Rule 3(c) of the Hague-Visby Rules; Article 15.1 of the Hamburg Rules). It may be inferred that the Carrier also has a duty to inspect the goods. When the goods are packed, the Carrier is only obliged to inspect the goods insofar as they are visible. He is not obliged to open the packages or unpack the goods. Inspection of the goods is not only an obligation of the Carrier, it is also his right. However actual inspection of the goods has become more and more unusual, because many goods are packed in containers or other units.

Containers are often sealed by the shipper. In these cases it is commercially impossible for the Carrier to inspect the goods. In many other cases inspection may be possible but not reasonably feasible. As regards the order and condition of the goods, the Carrier must state only what is apparent. In the case of a sealed container normally very little is apparent about its contents.

According to Article III Rule 3(c) of the Hague-Visby Rules and Article 16.1 of the Hamburg Rules the Carrier is not obliged to state the marks, number, quantity or weight of the goods if he has reasonable grounds for suspecting that the information given by the shipper is inaccurate, or if he has no reasonable means of checking it. In the liner trade a Carrier usually receives the description of the goods, and probably other data, for insertion in the bill of lading from the database in which particulars of the contract of sale and connected contracts, such as those relating to the financing and the insurance of the goods, are also contained. Often, on the basis of this input, the printing of the bill of lading is carried out automatically, sometimes by the shipper or his agent. The Carrier has therefore no option but to accept this data, some of which, such as the number of the letter of credit, may have nothing to do with the contract of carriage.

Under Article 31 of UCP 500 banks will accept a transport document which bears a clause on its face "such as *"shipper's load and count"* or *"said by shipper to contain"* or words of similar effect".

Questions:

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

1.2.3 - What is the meaning of "apparent"?

1.2.4 - What is the legal effect of clauses such as:

- *"shipper's load and count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc.) unknown"*

Please answer the above questions indicating the position both as between the Carrier and the shipper and the Carrier and subsequent holders of the bill of lading, i.e., a third party acting in good faith to whom the bill of lading has been transferred (Hague-Visby Rules Article III Rule 4), or a third party who in good faith has acted in reliance on the description of the goods therein (Hamburg Rules Article 16.3(b)).

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:

- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued*

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example,

- *if the fob buyer is named in the transport document as the shipper*
- *if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.*

1.3 - Delivery of the goods at destination

The Carrier is obliged to deliver (or redeliver) the goods at the contractual destination. Under a sea waybill he is obliged to deliver to the named or notified consignee. If a negotiable bill of lading has been issued, he is obliged to deliver to the holder, or to his order, against its surrender. Under the "D" (delivered) Incoterms the seller is obliged to place the goods at the disposal of the buyer at the stipulated place of delivery, e.g., on board the vessel (DES) or on the quay (DEQ). Delivery from the seller to the buyer may thus take place before or after unloading from the vessel.

Questions:

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

1.4 - Delivery of the goods without surrender of the bill of lading

It is often the case that the bill of lading is not available when the carrying vessel arrives at the discharge port. It has therefore become common practice for the Carrier to deliver the goods against a letter of indemnity and it is not uncommon in some trades for a charterparty to require the Carrier to do so.

Questions

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

1.5 - Dating and signature of the transport document

The Carrier is obliged to issue a bill of lading on the demand of the shipper (Hague-Visby Rules Article III Rule 3; Hamburg Rules Article 14.1). Otherwise the Carrier may issue a non-negotiable sea waybill. Either document is a "transport document" for the purposes of Incoterms. Articles 23 and 24 of UCP 500 require the transport document to indicate on its face the name of the Carrier and to have been signed or otherwise authenticated by the Carrier or his named agent on his behalf, or by the Master or his named agent, and such signature or authentication must be identified as that of the Carrier or Master as the case may be. Article 14.2 of the Hamburg Rules provides for signature of a bill of lading by a person having authority from the Carrier and Article 14.3 provides for the method of signature, including electronic means.

Questions:

1.5.1 - Under your national law is it a requirement that the transport document be dated

- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment on board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

2 - Rights of the Carrier

2.1 - Freight

The Carrier is entitled to freight for the carriage of the goods. Article 16.4 of the Hamburg Rules provides for the evidentiary effect of statements as to freight and demurrage on the bill of lading, or the absence thereof.

Questions:

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

2.1.2 - When is the freight earned?

2.1.3 - When is the freight payable?

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

2.2 - Deadfreight and other charges

The Carrier may be entitled to deadfreight in respect of cargo not shipped, to demurrage at the loading or discharge port, to contributions in general average, or to other sums payable by "the merchant".

Questions:

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual "provisions"?

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

The legal basis on which any of the above persons acquires rights and liabilities under the contract of carriage is not uniform. The shipper directly enters into a contract with the Carrier and, on this basis, has rights and liabilities from the outset. The shipper is the original, and sometimes the sole, contractual counterpart of the Carrier. The other parties mentioned above may have rights and liabilities under the contract by becoming a party to the contract at a later stage. Nonetheless some rights and obligations do not so pass and remain with the shipper. In many jurisdictions subsequent holders of the bill of lading are regarded as becoming a party through the acceptance of a promise for the benefit of a third party, which is considered to be an implied term of the contract of carriage. A bill of lading holder becomes a party from the moment that, against consideration, he takes up the bill. In other jurisdictions the liability of the subsequent holder is created, wholly or partly, by operation of law.

Questions:

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

3.2 - Receipt of the goods

The problem of a consignee's failure to receive the goods is becoming of increasing importance. Storage space for large cargoes is not readily available and the impact of safety and environmental requirements is often a factor.

Questions:

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity.

4 - Rights to give instructions to the Carrier

4.1 - The person who has the right to instruct the Carrier during transit effectively controls the goods. In the case of non-maritime carriage the right to instruct the Carrier is covered in the various Conventions (see CMR Convention Article 12, COTIF/CIM Convention Articles 30, 31 and 32 and Warsaw Convention Article 12). There are no corresponding provisions in the Hague-Visby or Hamburg Rules. Rule 6 of the CMI Uniform Rules for Sea Waybills provides that the shipper shall be the only party entitled to give the Carrier instructions unless he exercises his option to transfer the right to the consignee. A distinction must be drawn between instructions which relate to the goods themselves (such as instructions to issue delivery orders) and instructions which relate to other matters arising under the contract of carriage.

Questions:

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:

- under a negotiable bill of lading

- under a sea waybill

- if no contractual document is issued

4.1.2 - Is the Carrier obliged to accept such instructions:

- as to matters relating to the goods themselves

- as to other matters arising under the contract of carriage

III

RESPONSES OF THE MARITIME LAW ASSOCIATIONS OF ARGENTINA, AUSTRALIA AND NEW ZELAND, CANADA, CHINA, FRANCE, INDONESIA, ITALY, JAPAN, NETHERLANDS, NORTH KOREA, NORWAY, SPAIN, SWEDEN TURKEY, UNITED KINGDOM, UNITED STATES

ARGENTINA

1 - Obligations of the Carrier

1.1 - Receipt of the goods

Carrier's liability is from the moment of the receipt of the goods until the delivery and the allocation of liability and risks between sellers and buyers depends on the contract of sale. As I said there are no legal links between the contract of carriage and the contract of sale.

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on "shipment terms"?

I assume that "shipment terms" means under the sale contract when the goods are shipped on board and carrier's liability commence in the moment in which the reception of the goods has been made to the carrier.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

I think that the answer is affirmative.

1.1.3 - Does the expression "liner terms" or a FIO (S) (free in and out (stowed) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Both expressions "liner terms" and FIO (S) are a problem of the person in charge of the work and costs with possible consequences about the liability for the carrier and the enterprises who must do the work. But from a legal point of view those clauses did not define the scope of the contract of carriage.

1.2 - Inspection of the goods and statements in the bill of lading

This is something very important for the parties in the contract of sale and for the statements in the Bill of Lading always provided that the captain or owner or agent intervene in the inspection.

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

It all depends on the fact if the carrier has the opportunity to ascertain the particulars given by the shipper and specially if the merchandise has been stowed in containers without his intervention.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

When the carrier can not check the particulars given by the shipper and, for example, in the case that the containers are "house to house". The relevant example would be if the merchandise has been stowed in the container by the shipper without carrier's intervention. In accordance with our law the carrier must include reserves in the Bill of Lading when there are suspiction about the particulars given by the shipper.

1.2.3 - What is the meaning of "apparent"?

The carrier can give a reference about the apparent condition of the goods and must establish the reserves when there are reasonable doubts about the details and remarks given by the shipper.

1.2.4 - What is the legal effect of clauses such as:
- Shipper's load and count
- Said (by shipper) to contain
- Particulars provided by shipper
- Weight (etc) unknown

All of these are general terms and to have some legal consequences in favour of the carrier it must be given evidence that he could not count or weigh the merchandises. See precedent answer.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 55 (ii) (b) should be maintained/introduced as regards marks, the number quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued

- if the contract of carriage is covered by a sea waybill
- if no transport document is issued

The rules must be maintained and the protection for sellers and buyers is the preshipment inspection and it would be important to include reserves unless the carrier obtain good letters of undertaking.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is (is not shown as consignee.)

See answer to previous points. It all depends on the contract and on the evidences when the shipper is the seller.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

Any observation or eventual possibility of claim must be established at the reception by the consignee. When carriage contract ends at the delivery of the buyer the answer is affirmative.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

The answer is negative. See precedent answer.

1.3.3 - Is the co-operation of the consignee/bill holder necessary to complete delivery?

The consignee/bill holder must receive the goods but if he does not give coopcration to complete delivery, the carrier or his agent must deposit the merchandises at their risks and expenses.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods? the carrier can claim expenses.

The carrier can claim expenses and has the right to attach or take preventive measures on the merchandises.

1.4 - Delivery of the goods without surrender of the bill of lading

There are risks for the carrier who can be sued by the holder of the Bill of Lading. The question has been arisen when the Customs or the Terminal are giving the merchandise against an undertaking of the consignees which is not covering the price of the merchandise. From a practical point of view, the terminals before delivering the goods must obtain the authorization of the carrier's agent.

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

The carrier is not a party in the contract of sale and he must deliver the goods to the holder of the Bill of Lading.

1.4.2 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

See answer to previous point and the possible suit against Customs House or Terminal and eventually against the carrier who was advised by the agent in the port of shipment or by the seller of the particulars of the case.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated:
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document;*
- *with the date of shipment on board in the case of an "on board" document · with the date of signature;*
- *with a date agreed by the shipper and the Carrier*

The answer is affirmative (art. 298 Navigation Act) but there are not necessary all the requirements mentioned in said article.

1.5.3 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier(the identity of the Carrier (e.g, "the registered owner of the carrying vessel")?

It is good to clarify the identity of the carrier and the name of the carrier in the bill of lading but the clause of the identity of the carrier has not been admitted in general terms.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

The signature is required and could be produced by electronic means. In some cases the signature is not relevant when the bill of lading has not been used and presented to the Customs without any remark on the subject.

2 - <u>Rights of the Carrier</u>

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of

the goods to the consignee? Are they subject to any relevant contractual provisions?

The carrier must collect the freight in accordance with the contract and to keep the action against the shipper it must be adopted attachment or take preventive measures at the discharge. If this measures has not been successful he can act against the shipper.

2.1.2 - When is the freight earned?

We must consider the Bill of Lading clauses and, in principle, the carrier has the right to collect the freight when the merchandise is at the disposal of the B/L's holder. (Art. 308 N.A.). The clause "ship lost or not lost" is valid.

2.1.3 - When is the freight payable?

See precedent answer. In accordance with the B/L's clauses and normally after the performance of the contract. (Arts. 312/316 Navigation Act).

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage will be due on demand after the goods are delivered at destination.

The answer depends on the facts and see answer to precedent point. The period to collect freight is of one year (art. 293 N.A.)

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

Freight pre-paid or collected means that it has been paid and freight collect is when it could be claimed at destination.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

The "cesser" clause is to put an end to the liability of the shipper for freight and other charges (see answer point 2.1.1).

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

See precedent answer (2.1.1). the carrier must require the attachment of the merchandises.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

It is possible and convenient clauses for the payment and see precedent answers.

2.2.2 - If the items are unpaid, what are the Carrier's right to lien the goods or to withhold delivery?

The carrier cannot retain the cargo on board and must exercise the attachment on cargo for freight and other charges (art. 309 and art. 542, 543, 544 and 545 N.A.)

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

The answer is negative. The debtor is responsible but the carrier cannot lien or privilege on other goods.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

The answer is affirmative (see point 2.2.3) but to keep privileged lien he must proceed on the cargo to keep his rights (see precedent answer).

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The answer is affirmative and the shipper independent of the supplier.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the carrier?

The answer is affirmative but it must be taken into consideration whether there is a contract of carriage independently of the B/L. In general the B/L is the evidence of the contract.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

All depends on the B/L. The right is to receive the merchandises and he is liable for freight and charges.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

It all depends on the condition of the transference of the documents.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

The shipper could have rights in accordance with the sale contract but it would be difficult to have right against the carrier when he has transferred the B/L and there are not reserves or instructions on the subject.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the carrier to enable to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

The answer is affirmative and see precedent answers.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

Consignee must receive the merchandises and he has not the right to reject the cargo. He can act against the carrier and eventually against the seller.

4 - Rights to give instructions to the Carrier

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- *under a negotiable bill of lading*
- *under a sea way bill*
- *if no contractual document is issued*

In principle, the beneficiary of the B/L.

4.1.2 - Is the Carrier obliged to accept such instructions:
- *as to matters relating to the goods themselves ·*
- *as to other matters arising under the contract of carriage*

He must take precautions for example when he is receiving instructions from the shipper.

AUSTRALIA AND NEW ZEALAND*

Introduction

1. Australian and New Zealand law generally follows the English law except where legislation intervenes. Australia and New Zealand have tended (with some notable exceptions) to codify transport law by following, with modifications, English statutes. For example legislation dealing with admiralty and in respect of bills of lading follows the English statutes reasonably closely.
2. Where Australia and New Zealand have departed in a major way from the English position – insofar as relevant to the issues contained in the questionnaire are concerned – is in the area of duration of liability prior to and following ocean carriage.
3. New Zealand has its Carriage of Goods Act 1979 which provides a code determining liability and quantum of liability for land carriage. This Act links in with codification for ocean and air carriage. The former is covered by the Maritime Transport Act 1994 which incorporates into New Zealand law the Hague-Visby Rules covering shipment from New Zealand. For inwards shipments, New Zealand would apply the Hague-Visby Rules in the circumstances prescribed by Article X of the Convention; and subject to that would generally recognise foreign law by applying the law of the contract.

   For air transport New Zealand has by virtue of its Carriage by Air Act 1967 ratified the Warsaw Convention. Recent legislation has increased the value of the Convention's package limitation. New Zealand is in the course of considering amendments to the Carriage by Air Act to incorporate both the Hague protocol of 1955 and the Montreal protocols numbers 3 and 4 of 1975. It is unclear whether the SDR Convention will be adopted for the purposes of limitation. Significantly such Convention is incorporated into the amended Hague rules as annexed to the Maritime Transport Act in respect of carriage by sea.

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* This response has been prepared with the valuable assistance of Dr Paul Myburgh, University of Auckland; Professor Martin Davies, Melbourne University; John McKelvie, New Zealand Claims Manager, International Marine Insurance Agency Limited, Auckland; and Mr Alan Sherlock, Senior Solicitor, Hesketh Henry, Solicitors, Auckland. M E Perkins District Court Judge, Napier, NZ

4. Australia has by virtue of its recent Carriage of Goods by Sea Act and Regulations introduced a variation on Hague-Visby with some overlay of Hamburg Rules and its own variations. This has resulted in the extension of the duration of liability of carriers for outwards shipments. For inward shipments from Hague or Hague-Visby countries, however, Australia continues to apply the Rules with the traditional "tackle to tackle" restricted coverage.
   For air carriage, Australia has ratified the Warsaw Convention as amended by the Hague Protocol. It has enacted legislation to give effect to Montreal Protocols numbers 3 and 4, but that legislation has not yet come into force.
5. The linkage of land carriage to ocean carriage in New Zealand can best be described as tackle to tackle or "hook to hook" as it has been described in one legal authority. In Australia such linkage extends from point of delivery to the carrier to point of delivery from the carrier, but only in relation to outward shipments. Inward shipments are, as noted above, still "tackle to tackle" if from Hague or Hague-Visby countries. Outside the "tackle to tackle" period, there is no uniform compulsorily applicable transport law, so the terms of the transport document (bill of lading, waybill, etc) generally govern.
6. The linkage of land carriage to air carriage in both countries is along traditional lines under the Warsaw Convention with the traditional "aerodrome" durations of coverage applying.
7. With the above introductory remarks in mind Australia and New Zealand would not differ greatly from the United Kingdom and accordingly it seems appropriate to adopt the British Maritime Law Association response and only indicate where the antipodean response might differ.
8. Accordingly, the Australian and New Zealand response is as follows:

Questionnaire

1 -Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

The British response is true of Australian and New Zealand law. The passing of risk from seller to buyer under the sales contract and assumption of responsibility by the carrier are not necessarily synchronised. It is perceived

that this is unlikely to cause practical difficulties in Australia or New Zealand. Where goods have been delivered by the seller to a carrier or its agent for international carriage from Australia or New Zealand "on shipment terms", risk may only pass to the carrier/buyer under the international carriage/sales contract at the point of shipment or later. From the seller's perspective the concern would be that the goods may be damaged or lost in the interim period after the goods enter the transport chain but before risk has passed under the international carriage/sales contracts.

In New Zealand that concern is largely removed in practice by the Carriage of Goods Act 1979 referred to above and as interpreted by the New Zealand Courts particularly in *Fletcher Industries v Ports of Auckland* [1992] 2 NZLR 231. In this example goods were damaged on the wharf prior to loading for international carriage. The Court held that the defendant (as operator of a container terminal) was performing domestic carriage services and was therefore covered by the mandatory domestic carriage liability regime under the Carriage of Goods Act 1979. The case came before the Court in the context of time limitation and the possibility of variation in package limitation from the Hague Rules to the local statute. Relying indirectly on *Pyrene v Scindia* [1954] 2 QB 402, the Court held that the demarcation point between the Carriage of Goods Act 1979 and international carriage under the Hague Rules (that being the convention upon which the New Zealand legislation of the time was based) is the ship's hook. This interpretation of the position was recently approved in an Australian case where the New Zealand legislation came to be applied: *Nederlandse Speciaal Drukkerijen v Bollinger Shipping Agency* [1999] NSWSC 200 (17 March 1999). On the basis of this analysis, therefore, any cargo handling by the carrier, its agents, port companies, stevedores etc after the goods have passed out of the seller's control but before ship's rail, will amount to "incidental services" as defined in the Carriage of Goods Act 1979 and be subject to the time and package limitations which apply under that Act. This is defined in the Act to include "any service (such as that performed by consolidators, packers, stevedores and warehousemen) the performance of which is to be or is undertaken to facilitate the carriage of the goods pursuant to a contract of carriage". Any such services will attract the mandatory statutory domestic carrier liability regime under the New Zealand Carriage of Goods Act 1979.

In Australia, on the other hand, it is still the case that the seller continues to bear the risk in goods under an FOB or CIF contract after the goods have been handed over to the carrier at a container terminal or other cargo handling facility. That is illustrated (in the context of marine insurance) by *New South Wales Leather Co Pty Ltd v Vanguard Insurance Co Ltd* (1991) 25 NSWLR 699, where the New South Wales Court of Appeal held that risk in containerised goods had not passed from seller to buyer when they were stolen from the container at the port of loading. This is not a desirable situation, although it can, of course, be avoided if exporters use FCA or CPT terms for containerised cargoes, rather than FOB or CIF.

In the context of attempts at unification one member of the New Zealand working party has suggested that if, as a matter of mandatory provision,

delivery to the shipowner (and commencement of its period of responsibility) were to be deemed to take place at the moment the cargo arrived at the port of loading, buyers and banks would presumably be as content to receive "received for shipment" bills of lading as they would "clean on-board" bills. This is not to say that the British response is incorrect but merely that if unification is the goal mandatory codification may be equally as valid as a laissez-faire commercial response.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Yes, although some doubts have recently been expressed in Australia. Australia generally follows the British view of FIO(S) clauses, namely that the carrier's obligations in respect of the cargo do not begin until loading (and/or stowing) is complete. In *Nikolay Malakhov Shipping Co Ltd v SEAS Sapfor Ltd* (1998) 44 NSWLR 371, Sheller JA of the New South Wales Court of Appeal expressed a preference for the US view of FIO(S) clauses (under which the carrier becomes responsible under the Hague Rules when loading commences, even if it does not perform loading operations itself).

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Under Australian law, the carrier would only be held to have reasonable grounds for suspicion that the information given by the shipper was inaccurate if there were some obvious discrepancy between the goods as shipped and the information as provided. In the case of containerised goods sealed by or on behalf of the shipper, that could only arise in the event of some deficiency in measured weight.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

Generally speaking, under Australian law, the carrier would be held to have no reasonable means of checking the particulars furnished by the shipper if the condition of the goods was not visible or otherwise apparent – for example, if they were in a shipper-packed and – sealed container.

1.2.3 - What is the meaning of "apparent"?

Again the British response would be true to New Zealand. A statement in the bill of lading that the goods are "accepted in apparent good order and condition" (such statement would be invariably contained in the bill of lading) preclude the carrier from adducing evidence to the contrary against a claimant other than the shipper. This has been the subject of decisions in New Zealand,

namely *Ross v Shaw Savill & Albion Co Ltd* (1907) 26 NZLR 845; *Mason Struthers & Co v Shaw Savill & Albion Co Ltd* (1911) 14 GLR 325, *A E Potts & Co Ltd v Union Steamship Co of NZ Ltd* [1946] NZLR 276. In *Fletcher Industries Ltd v Japan Line (NZ) Ltd* (unreported, High Court Wellington, AD 313, 314/83 18 October 1984, Jeffries J.) the Court held that the carrier will also be estopped from denying a clean bill of lading where the defects were noted on a mate's receipt but the face of the bill was not claused. This decision also contains pointed comments on the use by issuers of bills of lading of letters of indemnity having the effect of defrauding innocent cargo interests.
The statement contained in the bill of lading of course only admits that the goods as shipped appeared to be in good order and condition from an external examination. Any visible damage to the exterior of the package or container following such statement would therefore be presumed to have occurred after shipment: *Court & Son Ltd v "Piako"* [1923] NZLR 911; *Sise v Turnbull Martin & Co* [1927] NZLR 476. The declaration in the bill of lading does not, however, amount to an admission as to the state of the goods inside the packaging or container which would not prior to issue be capable of being ascertained by external examination: *NZ Shipping Co v Lewis's Ltd* [1920] NZLR 243; *Rowe & Sons Ltd v Union Steamship Company of New Zealand Ltd* (1909) 28 NZLR 97.

1.2.4 - What is the legal effect of clauses such as:
- *"Shipper's load and Count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc) unknown"*

Such clauses would seem to place a preliminary onus on the shipper to adduce evidence that the goods were indeed in good order and condition when they were delivered to the carrier: *NZ Shipping Co v Lewis's Ltd* (supra) and *Rowe & Sons Ltd v Union Steamship Company of New Zealand Ltd* (supra); *Marbig Rexel Pty Ltd v ABC Container Line NV (The TNT Express)* [1992] 2 Lloyd's Rep 636 (NSW, Australia). Evidence of subsequent external damage would reverse the onus to the carrier.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

As stated in the British response the period of responsibility of the carrier under the Hague-Visby Rules and delivery under the international sales contract will not necessarily coincide. Indeed, in a case of multi-modal carriage such coincidence is unlikely. However, in New Zealand any cargo handling by the carrier or its agents subsequent to the ship's hook will be

subject to the mandatory carrier liability regime in the Carriage of Goods Act 1979. This assumes that for shipment into New Zealand the regime under the carriage contract is also Hague-Visby Rules. If Hague Rules still apply then the local Carriage of Goods Act may operate from ship rail. In Australia, inward bound shipments are governed by the terms of the carriage contract once the goods have left the ship's hook.

With shipments from Australia into New Zealand there is a prospect that New Zealand Courts will recognise the new statutory regime in Australia and extend ocean carrier's liability into the container terminal. (The conflict then arising between the New Zealand Carriage of Goods Act and the Australian legislation in this situation will need to be resolved. However, it is also possible in such circumstances that the New Zealand courts will apply the "pure" Hague-Visby Rules despite the amended version in force in Australia. See *Australian Maritime Law Decisions 1998* [1999] LMCLQ 406 (Prof. Martin Davies).)

Where the carrier has contracted to provide "door to door" carriage, or where the goods are still in the control of the carrier's agent (as opposed to the consignee's agent), therefore, the carrier will still be responsible as a contracting/actual carrier under the Carriage of Goods Act 1979 even though its period of carriage under the Hague-Visby Rules has come to an end.

Furthermore, unless the "delivery" terms are DES (Delivered Ex Ship) or (possibly) DEQ (Delivered Ex Quay), there can be no possibility of the carrier's responsibility ending at the same moment as delivery to the buyer, unless the carrier undertakes responsibility for multimodal or "door to door" carriage. An FIO clause does define the scope of the carrier's contractual liability, for the reasons set out above in para 1.1.3.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

Not in all cases. If the custom of the port permits it, or if the transport document so defines "carriage" and/or "delivery", delivery to a third party (such as Customs or port authorities) may amount to complete delivery.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

In New Zealand, under sections 22-29 of the Mercantile Law Act 1908 (NZ), if the consignee refuses to cooperate or receive the goods, the carrier has the right to land the goods, process them through Customs and warehouse them, preserving the carrier's lien for unpaid freight if the statutory guidelines are followed. If the failure to cooperate is ongoing, the goods may be sold to pay for Customs duties, storage costs and to cover the carrier's lien for freight. Any surplus must be paid to the owner of the goods. There is similar right under s.24 of the Carriage of Goods Act 1979 to protect the lien of local carriers. (The Carriage of Goods Act 1979 incidentally covers, in addition to land carriage, domestic sea and air carriage.) Perishable goods and dangerous goods may be disposed of as appropriate (ss.25-26, Carriage of Goods Act 1979). Provided a carrier follows the statutory guidelines it is immune from

liability for loss or damage arising from the sale or disposal of goods (s.27 Carriage of Goods Act 1979). In Australia, the carrier's rights depend on the terms of the transport document.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

New Zealand's relative provision to the British provision is s.13B(2) of the Mercantile Law Act 1908 (as amended by the Mercantile Law Amendment Act 1994). The equivalent provision in Australia is Sea-Carriage Documents Acts (in each of the States), s 8. The point under this question is that where the goods are released to a consignee under a letter of indemnity and the consignee subsequently becomes a holder of the bill of lading it thereby acquires full rights of suit under the bill of lading because it falls within the proviso to s.13B(2). Any endorsement on the bill of lading to a third party after delivery, however, would be ineffective.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

New Zealand's relative provision to the British is s.13B(1) of the Mercantile Law Act 1908 (as amended). Australia's is Sea-Carriage Documents Acts (in each of the States), s 8. In cases of non-shipment there may be some question (although perhaps theoretical) under New Zealand law as to whether the consignee's rights of suit are defeated by the problematic rule in relation to title in *Grant v Norway* (1851) 10 CB-665, 138 ER 263 which for some obscure reason was not nullified by the amendment to the Mercantile Law Act in 1994. This is contrary to the position in the United Kingdom where the situation was dealt with by virtue of s.4 of the Carriage of Goods by Sea Act 1992 (UK) which removed it from English law, and the position in Australia, where s 12 of the State Sea-Carriage Documents Acts is to the same effect as the English provision. If it can be argued that the effect of the rule in *Grant v Norway* is to allow the carrier to raise total non-shipment of goods as a defence to contractual liability against the shipper on the failure of consideration argument, then the consignee's statutory rights to "have transferred to and vested in him or her all the rights of suit under the contract of carriage as if [the consignee] had been a party to that contract" may be nullified. It is perceived that the New Zealand Courts would refuse to apply *Grant v Norway* in such a way as to undermine the new regime established by the Mercantile Law Amendment Act 1994.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment o board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

The British position applies. In New Zealand, S.3 of the Mercantile Law Amendment Act 1922 lays down formal requirements regarding the timing of issuing of "received for shipment" bills of lading. Under the section the issue of a "received for shipment" bill of lading shall be sufficient evidence until the contrary is proved that the requirements of this section have been complied with. There is no equivalent provision in Australia.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

Again the British position applies. There does not appear to be any New Zealand case directly on point in respect of demise/identity of carrier clauses but in *Air New Zealand v "Contship America"* [1992] 1 NZLR 425 the clause did not seem to attract any judicial disapprobation. Although no Australian case turns squarely on the point, judicial comments have generally indicated approval of the effectiveness of demise clauses: see *Kaleej International Pty Ltd v Gulf Shipping Lines Ltd* (1986) 6 NSWLR 569.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

The British position applies. In New Zealand, S.15 of the Mercantile Law Act 1908 does seem to contemplate that bills of lading will be signed, and the definition of "received for shipment" bills of lading in s.3 of the Mercantile Law Amendment Act 1992 referred to above includes the statement that they are to be "signed by a person purporting to be authorised to sign the same". There is no equivalent provision in Australia *requiring* signature, although the legislation plainly contemplates that documents will be signed.

2 - <u>Rights of the Carrier</u>

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

The British position applies. On a better view, the bill of lading in the hands of the shipper represents best evidence of the contract of carriage but is not the contract itself: *Cook Islands Shipping Co. Ltd v Colson Builders Ltd* [1975] 1 NZLR 422 which followed *"The Ardennes"* (1950) 84 LIL Rep 340; [1951] 1 KB 55. However, in *Union Steamship Company Limited v Wickes Ltd* (1909) 28 NZLR 584, extrinsic evidence tendered by the consignee of business custom regarding recovery of freight which contradicted the express terms of the bill of lading was ruled to be inadmissible. It is therefore open to the shipper (but not the consignee or other holder of the bill) to adduce extrinsic evidence to show that the freight is owed by a third party. In the hands of an innocent consignee, however, statements regarding payment of freight in the bill of lading may create an estoppel against the ship owner: *Waitomo Wools (NZ) Ltd v Geo. H Scales Ltd* [1976] 1-NZLR 143; *NZ Line Ltd v Kagan Brothers (NZ) Ltd* (unreported, High Court Auckland CP5/91) where it was held that the practice of endorsing a bill of lading "freight prepaid" at the shipper's request when, in fact, no freight had been paid, precluded the ship owner from exercising its lien for unpaid freight against the innocent endorsee for value.

2.1.2 - When is the freight earned?

2.1.3 - When is the freight payable?

Under general Australian law, freight is not earned or payable until delivery by the carrier to the receiver or its agent. However, there is nothing to prevent the parties agreeing by contract that freight may be earned and payable on receipt of the cargo. That is very often done in standard form transport contracts.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

The British position applies. In New Zealand, S.4(5)(a) of the Frustrated Contracts Act 1944 provides that that Act does not apply to contracts for carriage of goods by sea. The equivalent provisions in Australian state law are to similar effect. The result is that under Australian law, the parties are relieved of all obligations that are due after the occurrence of the frustrating event, but remain obliged to perform obligations before the frustrating event.

In New Zealand, as far as breach is concerned, assuming that the carriage is governed by New Zealand law, the parties' rights to cancel the contract of carriage are set out in s.7 of the Contractual Remedies Act 1979. On cancellation under s.8 of the Act, performance of the parties' rights and obligations is "frozen". Once this occurs no party shall be obliged or entitled to perform it further and no party shall by reason only of a cancellation, be divested of any property transferred or money paid pursuant to the contract. In other words if the freight has already been paid to the carrier, there is no obligation to repay. Conversely, if the freight remains unpaid at the moment of cancellation of the carriage contract, it is not required to be paid under the contract. Either party may, on cancellation, apply to the Court for common law

damages (expressly preserved under s.10 of the Contractual Remedies Act 1979) and for discretionary relief under s.9 (which is considerably broader and more flexible than common law damages). The same is true in Australia, but as a matter of common law, not statutory provision.
It should be added here for clarification that New Zealand has in several respects codified the law of contract. Most of the legislation is motivated by principles of consumer protection. Insofar as the Contractual Remedies Act 1979 is concerned the remedies for innocent misrepresentation have been extended against the common law. It is not appropriate to deal fully with the legislation here but simply to highlight that New Zealand law as a result of such legislation may differ from English law, where the common law applies.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

As discussed above the New Zealand Courts have held that statements regarding payment of freight in the bill of lading may create an estoppel against the ship owner: *Waitomo (NZ) Ltd v Geo. H. Scales Ltd* (supra); *NZ Line Ltd v Kagan Brothers New Zealand Ltd* (supra), on the basis that a fraud could otherwise be perpetrated against innocent third parties.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

Under Australian law, a cesser clause has the effect of relieving the shipper of liabilities (other than freight) accruing after shipment. It operates only to the extent that the carrier is able to exercise an effective lien for such amounts on the goods at the discharge port. Such clauses are fairly common in charterparties, but not in bills of lading.

2.1.7 - f the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

In Australia and New Zealand as under English law the carrier has a possessory lien for unpaid freight. In addition, in New Zealand the carrier has statutory rights of lien over cargo where the consignee refuses to pay freight: see ss. 22-99 of the Mercantile Law Act 1908, ss 24-27 of the Carriage of Goods Act 1979. As discussed above these provisions allow the carrier to warehouse the goods and eventually sell them, thereby satisfying its lien for unpaid freight out of the sale proceeds.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

As with the British response. New Zealand's relevant provision is s.13(C) of

the Mercantile Law Act 1908 (as amended by the Mercantile Law Amendment Act 1994). The relevant Australian provisions are Sea-Carriage Documents Acts (in each Australian state), s 11.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

As in 2.1.7 above.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The seldom invoked Shipping Act 1987 s.2 defines "shipper" as meaning "a person who is both the consignor and owner of the goods by whom or in whose name goods are consigned or to be consigned wholly or partly by sea from a place in New Zealand to a place outside New Zealand; and includes any class, group, or association of shippers". Otherwise the British response applies in Australia and New Zealand.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

As in the British response, except that the relevant provisions are s.13(B) (rights) and s.13(C) (liabilities) of the Mercantile Law Act 1908 (NZ) (as amended by the Mercantile Law Amendment Act 1994) and Sea-Carriage Documents Acts (in each Australian state), ss 8 (transfer of rights), 9 (extinguishment of rights of original parties after transfer), 10 (transfer of liabilities), 11 (liability of original parties).

3.2 - Receipt of the goods

3.2.1 -Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

The answer to this question is also "yes". The same provisions as specified in 3.1.4 and 3.1.5 above apply.

Additional Comment

9. Outside the specific questions, the representative of cargo interests on the working party in New Zealand has made a plea which arises because so much of New Zealand's export trade involves temperature-controlled foodstuffs. He suggests that in any draft convention emanating from the responses the carrier be required as a matter of course to provide upon delivery and, if requested prior to the issue of any proceedings, information on the way in which the cargo has been carried whilst in its custody and in particular documentary or other electronically stored information on temperature recordings.
10. We recognise that a valid response from carrier interests might be to seek a provision that documentary or electronic information should be deemed to be admissible evidence of carriage temperatures and the like without having to lay a foundation for its production through a qualified witness or witnesses.

CANADA

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on "shipment terms"?

The period of the Carrier's responsibility and delivery, or passing of risk, under the contract of sale may, but generally do not coincide. The contract of carriage and the contract of sale are separate contracts and the position depends on their respective terms.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

It is not desirable. It could lead to confusion, conflicts and unnecessary burdens on the parties. Such a requirement would reduce flexibility. It could involve shifting the carrier's responsibility to an earlier point in the carriage, which may not be possible.

1.1.3 - Does the expression «liner terms» or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

No. The terms do not define the scope of the carriage contract nor do they relieve the carrier from liability.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Any open or obvious condition which would lead a reasonable person to suspect an inaccuracy. It is purely a question of fact to be decided by the Court.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

It is purely a question of fact in each case.

1.2.3 - What is the meaning of "apparent"?

As determined by reasonable inspection without interfering with the packing.

1.2.4 - What is the legal effect of clauses such as:
- *"Shipper's load and count"*
- *"said by shipper to contain"*
- *"particulars provided by shipper"*
- *"weight (etc.) Unknown"*

Shipper's load and count is applicable to containers and validly confirms that the carrier does not acknowledge receipt of the number of packages or pieces said to be within the container. The other expressions may also avoid the creation of evidence, prima facie or otherwise, so long as there remains an unqualified statement of either the number, quantity or weight (unless excused by the last paragraph of Article III Rule 3.)

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16-3; CMI Uniform Rules for Sea Waybills Rule 5(ii)(b), should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods?

They should be maintained/introduced where a transport document is issued. They should apply where no transport document is issued.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example,
- *if the fob buyer is named in the transport documents as the shipper:*
- *if no transport document is issued?*

Yes if the bill of lading has been endorsed to the FOB buyer and the FOB buyer is a «third party acting in good faith».

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

See response to 1.1.1 above.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

See response to 1.1.3 above

1.3.3 - If the co-operation of the consignee/bill of lading holder necessary to complete delivery?

Not in all instances. Canadian law recognizes the concept of «constructive delivery». The co-operation of the consignee/bill of lading holder is not needed when the cargo is delivered to a third party under custom of the port, such as to a port authority or terminal authority. The delivery will be subject tot he terminal operator's remedies in the case of unclaimed goods.

1.3.4 - What are the Carrier's rights if the consignee (bil of lading holder) does not co-operate or refuses to received the goods?

The carrier may warehouse the cargo and recover the costs from the shipper, and any endorsee of a negotiable bill of lading who accepted the bill of lading.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

A negotiable bill of lading is a document of title. The holder of a negotiable bill of lading is entitled to receive the goods from the carrier. The rights of the holder as against the person entitled to the goods under the contract of sale depends on the contract of sale.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

The holder has a right of suit against the carrier if the carrier delivers the goods without the surrender of the negotiable bill of lading. The carrier may have a cause of action against the actual receiver of the goods for conversion and unlawful enrichment.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery and if so how?

Yes. If the holder endorses and transfers a negotiable bill of lading, the endorser transfers to the endorsee the right to sue the carrier for delivery of the goods without the surrender of the negotiable bill of lading.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

See response to 1.4.1 - 1.4.3 above.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the carrier of the goods specified therein in

the case of a 'received for shipment' document
- *with the date of shipment on board in the case of an «on board» document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier.*

Dating is not mandatory, but an undated or unsigned bill of lading would not normally be good tender under a CIF contract or a letter of credit. The date should be the date on which all the goods covered by the document are on board/received for shipment.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. «The registered owner of the carrying vessel?)

No.

1.5.3 - Is it a requirement that the transport documents be signed and, if so, by whom and how?

No. But in practice bills of lading are so signed.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

The shipper is liable for freight. A consignee who accepts the bill of lading of makes a claim to the carrier for the goods would be liable for freight. An endorsee who accepts a bill of lading may be liable for freight.

2.1.2 - When is the freight earned?

Freight is earned on delivery, but the contract may provide that it is deemed earned on an earlier date.

2.1.3 - When is the freight payable?

Freight is payable on delivery, but the contract may provide that it is deemed payable on an earlier date.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach.

The position is unclear.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

With "freight pre-paid" there is a rebuttable presumption that the shipper had paid the freight and the carrier is not entitled to make a claim against the endorsee for the freight. With "freight collect" the carrier may look to the shipper or the consignee (if the bill of lading has been accepted) for payment.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods.

Subject to the precise wording of the clause a cesser clause will normally relieve the shipper to the extent that the carrier can exercise a lien.

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

In a "freight collect" situation the carrier has a possessory lien and may have a contractual lien for the payment of the freight and may withhold delivery.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law hat are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual "provisions"?

The shipper's liabilities depend on contract. A lawful holder of the bill of lading also becomes liable if he takes or demands delivery of the goods or makes a claim against the carrier under the contract of carriage. A liability to contribute general average attaches, apart from contract, to the owner of the goods at the time of the general average act. Generally, intermediate holders of the bill of lading are not liable in personam.

2.2.2 - If the items are unpaid, what are the carrier's rights to lien the goods or to withhold delivery?

The carrier had a common law possessory lien for general average contributions, freight and other expenses incurred in protecting and preserving the goods. In the absence of contract, the carrier has no lien for deadfreight, demurrage or other charges.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

Only if covered by a clear contractual provision.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

No.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

In Canada the shipper is not defined, but is generally understood to be the contractual counter-part of the Carrier. A supplier of goods to be shipped, i.e. a supplier to the shipper has no contractual relationship with the carrier.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

There is a rebuttable presumption of evidence that the person named as «shipper» in the bill of lading is liable to the carrier as the contractual counterpart.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

Generally speaking, there are no rights and liabilities exclusive to the consignee. The exception possibly may be a cesser clause, or an obligation on the consignee to take delivery of the goods.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights of the consignee?

Rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee by operation of the The Bills of Lading Act R.S.C. 1985, c. B-5. This Federal Canadian Statute is effectively the U.K. Bills of Lading Act of 1855. The rights and liabilities of the bona fide holder of the bill of lading are governed by The Bills of Lading Act of Canada.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

When the shipper endorses the bill of lading to the intermediate party or ultimate holder of the bill of lading the shipper has no rights or claim against the carrier for damage or misdelivery of the goods. The shipper may have continuing obligations to the carrier such as guarantee of accuracy of marks, Article III, Rule 5, or liability for supply of dangerous goods, Article IV, Rule 6 of the Canadian Carriage of Goods by Water Act (Hague-Visby Rules)

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3. and 1.3.4 above?)

The consignee has a positive obligation to receive the goods in a timely way. If the consignee does not take delivery the carrier, or more likely, the terminal operator, can exercise its right of lien claim for unpaid storage charges and ultimately sell the cargo. Once the time of "carriage of goods" under the Hague-Visby Rules has expired, the obligation for removal is on the consignee.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity.

The obligation of the consignee to accept goods is the same whether the goods are damaged or not. The consignee can only refuse to accept the goods if they cannot be ascertained.

4 - Rights to give instructions to the Carrier

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable?
- For a negotiable bill of lading:

For a negotiable bill of lading the Hague-Visby Rules are silent on who may give instructions. The bill of lading holder has the right to receive the goods and to issue instructions to the ship owner with respect to reception. Where a bill of lading is issued under a charterparty the charterer may retain a right of instruction during the voyage by reason of the charterparty. For liner trades the bill of lading is the operative document. Here again the Hague-Visby Rules are silent on the holder's right to give instructions to the ship owner. It should be noted that under the Bills of Lading Act of Canada, rights of stoppage in transit are preserved.

- Sea waybill:

Under a Sea waybill Canada has no legislation dealing with sea waybills. If you consider a sea waybill to be a non-negotiable bill of lading the shipper retains the common law right of stoppage in transitu and also stoppage in transit under the Bills of Lading Act. If the sea waybill is simply a contract for carriage and not a document of title to the goods it is probable that the carrier is bound only to accept instructions from the shipper.

- No contractual document:

If the transaction is by an oral agreement between the parties, the carrier is only obliged to receive orders from the person with whom he contracted. In Canada, if there is no contract of carriage the owner of the goods can instruct the carrier.

4.1.2 - Is the Carrier obliged to accept such instructions?
- As to matters relating to the goods themselves:

In relation to the goods themselves, the carrier is obliged to accept instructions concerning delivery if they are given by the appropriate holder or consignee of a bill of lading. Obviously the party giving the instructions in relation to the goods must pay all freight and outstanding charges.

- As to other matters arising under the contract of carriage:

We are not entirely certain what is required in this question. It is considered the carrier does not have to accept instructions concerning the method of performance of the contract of carriage. Most often, bills of lading contain specific clauses which deal with the carrier's method of performing its contract of carriage.

CHINA

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

The contract of carriage of goods and the contract of sale are separate contracts and it will depend on their respective terms whether the period of the Carrier's responsibility coincides with the period of delivery under the contract of sale. In light of Chinese Maritime Code, the period of the Carrier's responsibility with regard to the goods carried in containers covers the entire period during which the Carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharging. While the period of the Carrier's responsibility with regard to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. But the latter provision doesn't prejudice that the shipper and the carrier reach any agreements on the carrier's responsibilities before the loading and after the discharging.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

Theoretically yes, but no difficulties arise in practice when they do not coincide. This is beneficial to the flexibility in practice.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Generally it only stipulates who will provide and pay for the relevant operations, but it may depend on the precise wording of the clause.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

There is neither specific provision nor authority. The court or the judge would decide each case on its own merits and apply the reasonable standard for an ordinary prudent master.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

There is no authority. The court or the judge would probably decide each case on its particular facts. Generally it is believed that the carrier has no obligation to inspect the contents of a sealed container or packed goods, but the carrier would be expected to check visible conditions and weight of bulk goods by a reasonable survey.

1.2.3 - What is the meaning of "apparent"?

Generally it means that all visible appearances is in good condition and fit to withstand ordinary methods of transport.

1.2.4 - What is the legal effect of clauses such as:
- *"Shipper's load and Count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *" weight (etc) unknown"*

In accordance with Chinese Maritime Code, it is the shipper who should guarantee the accuracy of the description, marks, number of packages or pieces, weight or quantity of the goods at the shipment. And the carrier should check these particulars provided by the shipper. When the carrier has reasonable grounds to suspect that such particulars do not accurately represent the goods actually received or has no reasonable means of checking, he should make a note in the B/L, specifying those inaccuracies and the grounds, such as "said (by shipper) to contain" or "particulars provided by shipper". Under such circumstances, the carrier bears no responsibility for the relevant particulars of the goods even if the B/L has been transferred to a third party.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued*

Yes, because the third party other than the shipper can not directly enter into the contract of carriage with the carrier, he who is in good faith can only rely on the accuracy of the transport documents, such as the bill of lading, in order to know the particulars like marks, weight, number or quantity of the goods. It goes that, when a negotiable bill of lading is issued, it is important to maintain the provision of conclusive evidence to protect the interests of the third party acting in good faith. If a contract of carriage is covered by a sea waybill, it is also essential to maintain the rule of conclusive evidence. Though the sea waybill is not a document of title and it is non-negotiable, the consignee still rely on the descriptions of the goods noted in such document since he has to pay the money when the shipper presents the sea waybill and other requested documents to the bank. If the statements of the sea waybill are inaccurate, the consignee may suffer losses thereby. If no transport document is issued, in case of EDI, it is still important to maintain the rules of conclusive evidence, since the consignee has to pay for the goods if the descriptions and apparent order of the goods contained in electronic data is acceptable.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

Under Chinese Maritime Code, shipper means:

(a) the person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier;
(b) the person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea.

The rules of conclusive evidence are only beneficial to the third party, including a consignee who has acted in good faith in reliance on the descriptions of the goods contained therein. So the rules of conclusive evidence would benefit a FOB buyer unless he is named in the transport document as the shipper.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

As per the answer to question 1.1.1 above.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

As per the answer to question 1.1.3 above.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

Yes. Delivery is a consensual legal act between the carrier and the consignee, or conceptually a bilateral process. And also Chinese Maritime Code provides that the master is entitled to discharge the goods into warehouse or other appropriate places, if the goods were not taken delivery of at the port of discharging or if the consignee has delayed or refused taking delivery of the goods.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

The master may discharge the goods into warehouses or other appropriate places, and any expenses or risks arising therefrom should be borne by the consignee. And the carrier has a lien on cargo for unpaid expenses due from the consignee.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

It constitutes a breach of the contract of carriage of goods to deliver the goods without presenting the original bill of lading. And only the lawful holder is entitled to take delivery, also in this case the lawful holder has the right to claim against the carrier for the loss of the contract value he suffered thereby. The rights of a holder in good faith prevail over the rights of a person who has taken possession of the goods in accordance with the terms of the contract of sale.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

The holder of B/L has the right to ask only the carrier to deliver the goods under the contract of carriage.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

There is no authority for the nature of this suit. In some courts, it is considered as a breach of the contract of carriage of goods. While in other courts, it is considered as having prejudiced the right of the holder in tort. The holder of the B/L has no right against the person to whom such delivery has been made, who acted in good faith. The holder has to sue the carrier under the contract of carriage of goods.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment o board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

A B/L should contain the date and place of issuing the B/L. And such dating is mandatory since an undated or unsigned B/L would not satisfy the letter of credit. The date should be the one on which all the goods covered by the document are on board if an "on board " document is required. Otherwise it may be the one on which the goods are received for shipment.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

Chinese Maritime Code provides that a B/L should contain, i.e, the following particulars: (1) descriptions of the goods; (2) the name and principal place of business of the carrier. But the lack of one or more particulars above mentioned does not affect the function of the B/L, provided that it nevertheless meets the requirements as provided for in Article 73 of Chinese Maritime Code.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

The bill of lading must be signed by the carrier or a person authorized by him.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

In accordance with Chinese Maritime Code. the shipper should pay the freight to the carrier as agreed (Art. 69 (1)). The consignee and the holder of the bill of lading would also become liable for paying the freight in case the shipper and the carrier have agreed that the freight shall be paid by the consignee or the holder, and such an agreement has been noted in the B/L (Art. 69 (2)). Such liabilities are not affected by the delivery of the goods to the consignee.

2.1.2 - When is the freight earned?

Theoretically, freight is earned on delivery in absence of any agreement to the contrary. But the contract may provide that it is earned earlier, such as "freight prepaid", which is usually considered not recoverable after it is paid.

2.1.3 - When is the freight payable?

Freight is payable when it is earned, but the contract may provide that it is payable on an earlier date. The specific time to pay freight is different under different terms and conditions in the contract of the carriage of goods.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

If the contract of carriage is cancelled due to force major prior to the ship's sailing and freight has not been collected, the carrier shall not demand the payment of the freight. Where freight has been paid, it shall be refunded to the shipper. If the contract of carriage is cancelled at the request of the shipper before the ship sails from the port of loading, the shipper shall pay half of the agreed amount of the freight except as otherwise provided in the contract.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

If the B/L is endorsed "freight (pre)paid", the carrier can not claim freight against any subsequent holders of the B/L. But if it is endorsed "freight to collect", the carrier has the right to claim freight against subsequent holders, and has a lien on cargo for the unpaid freight.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

Subject to the precise wording of the "cesser" clause, it will normally relieve the shipper of all liability on shipment of the goods, and to this extent. the carrier can exercise a lien on the goods.

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

The carrier has a lien to a reasonable extent on the goods where no appropriate security is given. If the goods under lien have not been taken delivery of within 60 days from the next day of the ship's arrival at the port of discharging, the carrier may apply to the court for an order to sell the goods by auction. Where the goods are perishable or the expenses for keeping such goods would exceed their value, the carrier may apply for an earlier sale by auction. If the proceeds fall short of such expenses, the carrier is entitled to claim the difference against the shipper, whereas any amount in surplus shall be refunded to the shipper.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

The shipper's liabilities depend on the contract of carriage concluded between the shipper and the carrier. Neither the consignee nor the holder of B/L shall be liable for the demurrage, deadfreight, or all other expenses in regard to loading the goods occurred at the loading port unless the B/L specifically states that the aforesaid demurrage, deadfreight and other expenses shall be borne by the consignee and the holder of the B/L. But the consignee or the holder of B/L is liable for the demurrage and
other expenses in respect of discharging the goods occurred at the port of discharging.

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

The carrier's right to lien the goods or withhold delivery depends on the fact whether the consignee/the holder of B/L is liable for the unpaid items.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

No.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

No.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

In light of Chinese Maritime Code, the shipper is defined as follows: (1) the person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier; (2) the person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea. A supplier who is not a party to the contract of carriage may be the shipper in the second case mentioned above.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

Between the shipper and the carrier, there is such a presumption that the shipper named in the B/L is the counterpart of the carrier unless there is refutable evidence to the contrary.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The consignee has the rights of taking delivery of the goods, asking the cargo inspection agency to inspect the goods and claiming the loss of or damage to the goods. The consignee has the obligation to co-operate with the carrier in taking delivery of the goods, to give the notice of loss or damage in writing to the carrier within prescribed time, if any, and to pay for the costs or expenses due from him.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

The extent of the rights and liabilities passed from the shipper to the holder of the B/L and then to the consignee shall be defined by the clause of the B/L.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

After the shipper has ceased to hold the B/L, he shall not enjoy the rights under the B/L, but he shall still bear the liabilities to a certain extent, including paying freight and other expenses, compensating for, the loss caused to the carrier or the actual carrier, or for the damage caused to the ship by the fault of the shipper, his servant or agent. Compensating for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship caused by the fault of his own, his servant or agent, is exclusively the liability of the shipper.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

Yes.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

No, the consignee's obligation is not affected but loss thereunder should be claimed against the corresponding party liable.

4 - Rights to give instructions to the Carrier

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

Where a negotiable B/L is issued, the shipper or the bank is entitled to give instructions relating to the goods themselves, and the right is transferable where the ownership of the goods is transferred. The shipowner or the charterer (if any) is entitled to give instructions regarding other matters arising under the contract of carriage.

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

Yes, the carrier is obliged to accept instructions relating to the goods themselves if such instructions are in compliance with the provisions of the contract and law.

FINLAND

The Nordic countries (Denmark, Finland, Norway and Sweden) ratified and implemented the Hague-Visby Rules at the beginning of the 1970's. Also the 1979 Protocol supplementing these Rules has been accepted by these countries. After the Hamburg Rules were adopted in 1978, the Nordic countries decided to review their respective Maritime Codes in co-operation as far as the carriage of goods and chartering were concerned. The aim was to achieve uniform legal rules and principles.

New maritime Codes were introduced in the above mentioned countries and they entered into force 1st October, 1994. The solution in the new Codes in respect of the Hague-Visby Rules and the Hamburg Rules is, that the legislation is in principle in conformity with the Hague-Visby Rules, since the Nordic countries are still parties to these Rules. However, to the extent that the Hamburg Rules are not in conflict with the Hague-Visby Rules, the Nordic countries have implemented the Hamburg Rules to applicable parts on a national basis.

As a result of this development, the Nordic Maritime Codes are in substance similar concerning carriage of goods by sea. Therefore, having read the Norwegian responses, we could not find any remarkable differences in relation to Finnish law. In the main the answers to the questions would be corresponding under Finnish law.

FRANCE

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

La responsabilité du transporteur commence à la prise en charge de la marchandise, laquelle n'est pas nécessairement concomitante à son embarquement à bord du navire. Le contrat de transport et le contrat de vente sont deux contrats distincts. Le moment et le lieu de la livraison sont respectivement déterminés par l'un et l'autre contrat, le premier n'ayant aucune incidence sur le second et réciproquement.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

La réponse est négative. Le contrat de vente et le contrat de transport sont indépendants. Les parties sont distinctes. Il convient de préserver la diversité des clauses et conditions du contrat de vente.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

La clause FIO n'a pas d'incidence sur l'étendue de la responsabilité du transporteur. Elle constitue essentiellement une clause répartissant la charge des frais de chargement et de déchargement.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Il n'y a pas de réponse de principe à cette question qui n'est pas réglée par la loi. Il s'agit d'une question de fait.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

Le transporteur n'a pas les moyens raisonnables de vérifier la description de la marchandise fournie par l'expéditeur lorsqu'il se trouve matériellement dans cette impossibilité (ex.: conteneur plombé par l'expéditeur).

1.2.3 - What is the meaning of "apparent"?

Le terme "apparent" comprend les éléments objectifs qui peuvent être appréciés à partir de données externes.

1.2.4 - What is the legal effect of clauses such as:
- "Shipper's load and Count"
- "said (by shipper) to contain"
- "particulars provided by shipper"
- " weight (etc) unknown"

Le transporteur ne peut utilement faire de réserves générales telles que "poids inconnu", "déclaré contenir". En droit français, l'efficacité juridique d'une réserve dépend de sa précision et de sa motivation.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued
- if the contract of carriage is covered by a sea waybill
- if no transport document is issued

Cette question est à réserver pour un examen ultérieur.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

Cette question mérite d'être précisée.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

La livraison ne peut intervenir avant la fin du déchargement. Mais elle peut se situer à n'importe quel moment postérieurement. En conséquence, le

transporteur reste responsable pour toutes les opérations de manutention et celles liées à la garde de la marchandise jusqu'à la livraison. S'agissant du conteneur, la jurisprudence décide que la livraison est accomplie lorsque son déchargement a été entièrement réalisé.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

Cf. réponse à question 1.1.3.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

La livraison est un acte juridique qui implique la remise effective de la marchandise au destinataire et donc son acceptation.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

Suivant l'article 106 du Code de Commerce, en cas de refus par le destinataire des marchandises, le transporteur peut, après autorisation du juge, les mettre en dépôt public. Plus spécialement en transport maritime, l'article 53 du décret du 31 Décembre 1966 dispose:

> "A défaut de réclamation des marchandises ou en cas de contestation relative à la livraison ou au paiement du fret, le Capitaine peut, par autorité de justice:
> a) en faire vendre pour le paiement de son fret, si mieux n'aime le destinataire fournir caution,
> b) faire ordonner le dépôt du surplus.
> S'il y a insuffisance, le transporteur conserve son recours en paiement du fret contre le chargeur.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

Le porteur du connaissement est réputé être le propriétaire des marchandises décrites. En cas de conflit avec un acheteur, le porteur de bonne foi l'emportera.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

Le porteur pourra mettre en cause la responsabilité du transporteur. C'est la raison même de l'existence de la lettre de garantie que de permettre au transporteur de ne pas subir le risque de la livraison à une personne qui n'est pas le porteur légitime du connaissement.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

L'endossement postérieur à une délivrance fautive ne change pas les droits du porteur envers le transporteur.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

La personne qui tient ses droits du contrat de vente n'a pas, en principe, de droit d'action contre le transporteur sur le fondement du contrat de transport. La qualité d'acheteur et de destinataire peuvent se réunir sur une même tête, de sorte que l'acheteur agira en qualité de destinataire.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document
- with the date of shipment o board in the case of an "on board" document
- with the date of signature
- with a date agreed by the shipper and the Carrier

La loi française impose seulement que les originaux du connaissement soient datés. Un connaissement reçu "pour embarquement" doit être daté du jour de la mise à quai de la marchandise, tandis que pour un connaissement embarqué c'est la date de mise à bord effective de la marchandise qu'il faut retenir.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

Le connaissement doit comporter les mentions nécessaires pour permettre d'identifier les parties. Ce qui implique l'adresse et l'identité du transporteur.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

Les originaux doivent être signés par le transporteur ou son représentant. La signature du chargeur n'est plus une condition de validité du titre. Cependant en pratique, la signature du chargeur continue à être déterminante car elle permet de prouver que le chargeur a eu connaissance des clauses du contrat et qu'il les a acceptées. Concernant un sea waybill, le nom du destinataire doit être précisé, ce titre n'étant pas négociable. En pratique, sont mentionnées le nom et l'adresse du chargeur et la date d'émission.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

Le fret est dû par le chargeur. Si le fret est payable à destination, le réceptionnaire est débiteur à condition d'accepter la marchandise mais même dans ce cas le chargeur reste tenu.

2.1.2 - When is the freight earned?

Le fret est normalement dû à la délivrance mais il peut en être décidé autrement contractuellement.

2.1.3 - When is the freight payable?

Le fret est normalement payé au moment où il est dû. Là encore, les parties peuvent aménager la date du paiement.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

Il n'est dû aucun fret lorsque des marchandises ont été perdues par fortune de mer ou par suite de la négligence du transporteur s'agissant de l'une de ses obligations fondamentales. Le fret reste dû en cas de perte résultant d'un vice propre de la marchandises ou d'une faute du chargeur. S'il manque des marchandises, le fret sera réduit à due proportion. Si les marchandises sont perdues, le transporteur a droit au fret si les avaries proviennent d'une clause qui n'engage pas sa responsabilité. En cas de cause de "fret acquis à tout événement" il a toujours le droit au paiement du fret.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

L clause "freight prepaid" vaut présomption simple de paiement et "collect" oblige le transporteur à percevoir le fret avant livraison.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

A préciser.

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

Le paiement du fret est garanti par une sûreté légale (un privilège) dont

l'assiette est la marchandise transportée. Cependant, le transporteur qui n'a pas été payé avant la date de la livraison n'a pas le droit de retenir les marchandises. Il peut néanmoins refuser de les livrer et faire consigner la marchandise chez un tiers.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

Pas de réponse particulière pour le deadfreight.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

Le shipper est le chargeur sans égard à sa qualité de fournisseur.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

Le shipper désigné par le connaissement est présumé être le cocontractant du transporteur. Cette présomption est néanmoins réversible, la personne désignée pouvant n'être qu'un mandataire du chargeur. Il appartient aux tribunaux de rechercher la personne ayant la qualité de chargeur réel.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

Responsabilité du destinataire. Il a l'obligation de prendre réception de la marchandise. Il peut engager la responsabilité du transporteur en cas de manquement à ses obligations (et ce bien qu'il n'existe pas de lien contractuel) (voir 3.1.4).

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

Le chargeur reste tenu envers le transporteur qui pourra engager sa responsabilité, celui-ci étant son cocontractant direct, s'il prouve qu'il a subi un préjudice. Concernant le bénéficiaire du connaissement, il convient de distinguer selon que le connaissement:

- est à personne dénommée, seul le destinataire a le droit d'agir;
- est à ordre, c'est le dernier endossataire qui a qualité pour agir;
- est au porteur, c'est le dernier porteur légitime qui est habilité à agir.

Si le droit d'action est en principe réservé au réceptionnaire mentionné au connaissement, la jurisprudence française admet cependant que le destinataire réel puisse agir en responsabilité contre le transporteur à condition que les énonciations du connaissement fassent apparaître sa qualité et démontrent qu'il est le véritable intéressé de l'opération. Concernant le chargeur, il a été dernièrement retenu (1989) par la Cour Suprême française que bien qu'il ne soit pas le destinataire, il puisse néanmoins en sa qualité de partie au contrat de transport mettre en cause la responsabilité du transporteur, à condition qu'il démontre avoir subi un préjudice personnel.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

Le chargeur reste tenu envers le transporteur au titre du contrat de transport. L'existence d'un connaissement ou d'une sea waybill est sans effet sur cette responsabilité.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

L'absence de coopération du destinataire et son refus de se faire délivrer la marchandise sans justification sérieuse et motivée sont constitutifs d'une faute de nature à engager sa responsabilité.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

Une fois qu'il a accepté les marchandises transportées, celles-ci sont présumées avoir été livrées sans défaut. Le destinataire peut néanmoins renverser cette présomption en formulant lors de la réception des réserves précises et motivées.

4 - Rights to give instructions to the Carrier

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

Réservé.

ITALY

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

According to article 422 of the Italian Navigation Code (C.N.) the period of the Carrier's responsibility commences at the moment the shipper delivers the goods into the custody of the Carrier ("dal momento in cui [il vettore] le riceve [le merci]" – "from the moment when [the Carrier] receives [the goods]".
The aforesaid provision is in line with the general rule contained in article 1693 of the Italian Civil Code (C.C.), which is applicable to land carriage as well as to modes of transport not governed by a specific regulation but, of course, as the latter is not a mandatory provision, the parties of the contract of sale can agree that the passing of risk takes place at a different time..
It is clear, in any case, that as the contract of carriage and the contract of sale are totally separate contracts the position of the parties in each of them depend on their respective terms. If, therefore, by "shipment terms" it is meant the loading of the goods onto the carrying ship, it is clear that the period of responsibility of the carrier can commence before or even after (in case of carriage on f.i.o. terms; but see answer to question 1.1.3 below) thc delivery of the goods by the seller.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

It is desirable, for the sake of simplification and certainty, that the moment of delivery both under the contract of sale and the contract of carriage coincide.
A different situation, for example, creates incertitude in the identification of the person entitled to bring an action (in particular an action in tort) against the carrier/shipowner, if admitted by the applicable law.
The parties of the contract of sale should remain, in any case, free to adopt a different solution.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Some decisions appear to be inclined to recognise to the FIO(S) clause the function to define the scope of the contract of carriage, and therefore to identify the initial and final moment of the period of the responsibility of the Carrier, in cases concerning the carriage in bulk.[1]
Most decisions, however, qualify the said clause, in the absence of other statements in the bill of lading providing evidence of a different intention of the parties, simply as a cost division clause[2] particularly with reference to liner carriage.[3]
In a few decisions concerning this issue, the attitude of Italian Courts with reference to the expression 'liner terms' has been confused.[4].
Interpreters, however, seem inclined to qualify the said expression not only as a cost division clause, but as a clause defining the scope of the contract of carriage and the moment of delivery to the Carrier.[5]

1.2 – Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Although Italy ratified the 1968 and 1979 Protocols to the 1924 Brussels Convention, under Italian domestic law (which still applies to contracts not covered by the Hague-Visby Rules) there is no provision corresponding to the part of Article III Rule 3(c) of the Hague-Visby Rules stating that the Carrier is not obliged to state in the bill of lading an information "which he has reasonable ground for suspecting not accurately to represent the goods actually received".
This can explain perhaps why the attitude of Italian Courts in applying the above mentioned provisions is not clear-cut.
Some Court decisions seem inclined to recognise the existence of a "legal obligation of the carrier to check, as far as possible the goods on loading" ("il dovere giuridico di verificare, per quanto possibile, la merce all'imbarco") .[6]
The Carrier can, therefore, refuse to insert in the bill of lading only the

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1 Court of Appeal of Milan, 7th May 1982. [1984] Il Diritto Marittimo. 609.

2 Italian Supreme Court of Cassazione, 25th October 1982, [1983] Giustizia Civile, I, 115, with a comment by GRIGOLI; Court of Appeal of Catania, 30th May 1989, [1991] Il Diritto Marittimo, 729, with a comment by ORIONE; Court of Appeal of Bologna, 6th May 1993, [1993] Contratti, 685, with a comment by SILINGARDI; Italian Supreme Court of Cassazione, 1st Section, 11th May 1995, n. 5158/1995, [1995] Massimario

3 Tribunal of Genoa 30th March 1987, [1988] Il Diritto Marittimo. 1167 with a comment by CELLE; Tribunal of Genoa, 4th July 1986, [1988] Il Diritto Marittimo, 441, with a comment by CHIRCO.

4 Italian Supreme Court of Cassazione. 1st section. 18th December 1978, n. 6048, in [1981]. Trasporti, 183; Court of Appeal of Milan, 7th May 1982, in [1984] Il Diritto Marittimo. 609

5 BERLINGIERI, *'Fi.o.s. – liner', una clausola senza senso*, in [1984] Il Diritto Marittimo, 610).

6 Court of Appeal of Genoa. 20th June 1987, [1988] Il Diritto Marittimo, 780; Tribunal of Ravenna. 15th March 1995. [1997] Diritto dei Trasporti. 889 with a comment by SIA and GAVOTTI PELLERANO, Ancora sulle riserve al carico, [1993] Il Diritto Marittimo, 1060.

information given by the shipper that was checked and found incorrect. Moreover, the Carrier can include in the bill of lading a reservation concerning the information given by the shipper when a "normal check" ("normale verifica") of the said information is not possible (Article 462.1 C.N.; see below the answer to question 1.2.2) on the ground of Article III Rule 3 last paragraph of the Hague Visby Rules and, if Italian domestic law is applicable, of article 462.1 C.N. (see also answer to question 1.2.2.).

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

The prevailing view of Italian Courts is that the Carrier has the burden of providing the evidence that he had no reasonable means of checking the particulars furnished by the shipper.[7]
It is, however, generally accepted that under certain circumstances the carrier is presumed to have no reasonable means to check the particulars furnished by the shipper. Such a conclusion was adopted in a case concerning a printed clause 'weight and quantity unknown' on a bill of lading concerning a carriage of oil[8], and in some cases concerning, in general, carriage of wheat in bulk.[9]
Also the presence of a large number of packages stowed by the shipper in a container or in a trailer or the risk that the time it takes to check the cargo can delay the loading, can justify the insertion by the Carrier of a reservation clause in the bill of lading.[10]

1.2.3 - What is the meaning of 'apparent'?

Italian Courts tend to identify the 'apparent order and condition of the goods' with their 'external' condition. As the Carrier can normally ascertain the external condition of the goods, no reservation can be admitted with reference to said condition. [11]

1.2.4 - What is the legal effect of clauses such as:
- "shipper's load and count"
- "said (by shipper) to contain"
- "particulars provided by shipper"

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7 Tribunal of Genoa, 11th December 1989, [1991] Il Diritto Marittimo, 1056; Court of Appeal of Venice, 7th July 1994, [1995] Il Diritto Marittimo, 185; Tribunal of Ravenna, 15th March 1995, [1997] Diritto dei Trasporti, 889 with a comment by SIA.

8 Court of Appeal of Genoa, 30th August 1994, [1995] Il Diritto Marittimo, 188, with a comment by LONGANESI CATTANI

9 Tribunal of Naples, 13th October 1993 [1994] Il Diritto Marittimo, 525; Tribunal of Venice, 18th April 1992, [1993] Il Diritto Marittimo, 441; Court of Appeal of Naples, 21st June 1996, [1998] Il Diritto Marittimo, 1050 with a comment by ABBATE).

10 Italian Supreme Court of Cassazione, 1st section, 3rd November 1983, n. 6470, [1984] Il Foro Italiano,I, 1015 and [1985] Diritto e Pratica delle Assicurazioni, 160 with a comment by VIANELLO; see Tribunal of Genoa 19th March 1991, [1993] Il Diritto Marittimo, 1060 with a comment by GAVOTTI PELLERANO

11 Tribunal of Trieste, 15th June 1991, [1993] Il Diritto Marittimo, 761).

- *"weight (etc.) unknown'*

Please answer the above questions indicating the position both as between the Carrier and the shipper and the Carrier and subsequent holders of the bill of lading.

It is generally accepted that the legal effect of the above mentioned clauses is that the consignee/bill of lading holder cannot avail itself of the prima facie evidence (conclusive evidence in case of a subsequent bona fide holder of the bill of lading) that the description contained in the bill of lading corresponds to the nature, quality and quantity of goods (and to the number of packages and marks) which were in fact delivered to the Carrier.[12]

In such a case, the consignee/bill of lading holder must therefore provide otherwise "precise, sure and not equivocal evidence" that the goods delivered to the Carrier were those mentioned in the bill of lading. Such an evidence was considered not to have been provided by a customs document in which it was not clearly stated that the customs officer had checked the information provided by the exporter to the local custom authorities.[13]

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:

- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued.*

The conclusive evidence rules are of fundamental importance for the certainty of the legal position of the purchaser of the goods in international trade and are essential, in particular, in documentary credits.

It would be desirable, therefore, to obtain a wider application of the same principles, in particular in case the contract of carriage is covered by a sea waybill.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:

- *if the fob buyer is named in the transport document as the shipper*
- *if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.*

According to the general principles of the Italian Civil Code concerning the

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12 Italian Supreme Court of Cassazione. 21st November 1981. n. 6218. [1983] Il Foro Italiano, I, 185; Italian Supreme Court of Cassazione, 3rd November 1983, n. 6470. [1984], La Giurisprudenza Italiana, I, 1, 1628; Tribunal of Genoa, 19th March 1991, [1993] Il Diritto Marittimo, 1060 with a comment by GAVOTTI PELLERANO: Italian Supreme Court of Cassazione, 3rd section, 3rd October 1997, n. 9670, [1998] Il Diritto Marittimo, 1100 with a comment by DUCA).

13 Tribunal of Genoa, 2nd October 1989, [1990] Il Diritto Marittimo, 1076; Italian Supreme Court of Cassazione, 3rd section, 3rd October 1997. n. 9670, [1998] Il Diritto Marittimo, 1100 with a comment by DUCA.

position of the person issuing a document of title (article 1993 C.C.) such as a bill of lading (article 464.2 C.N.) proof to the contrary should be admitted in any case of transfer of a negotiable transport document to a bona fide holder, only with reference to the particulars that the carrier had no reasonable means to check.[14]

Pursuant to the above mentioned principles under Italian law a fob buyer would benefit of the conclusive evidence rules contained in Article III Rule 4 of the Hague Visby Rules if he is not named as the shipper in the transport document which has the nature of a document of title (i.e. a bill of lading or a delivery order issued by the carrier or on his behalf).

For contracts of carriage by sea governed by Italian domestic law, article 462.2 C.C. provides that "in the absence of reservations, the nature, quality and quantity of the goods, as well as the number and marks of the packages delivered to the Carrier or loaded on board are presumed, if no proof of the contrary is given ("fino a prova contraria"), to correspond to the indications contained in the bill of lading".

In such carriages, therefore, it could be inferred that the conclusive evidence rules do not apply.

However, it was recently stated that the application of the general principles contained in the Italian Civil Code concerning the position of the person issuing a document of title (Article 1993 C.C.), such as a bill of lading (Article 464.2 C.N.) lead to the opposite conclusion.[15]

The provision contained in Article 462.2 C.N. would apply, therefore, only to the contractual relationship between the Carrier and the shipper, and the fob buyer who is a bona fide holder is therefore granted the same protection offered by Article III Rule 4 of the Hague Visby Rules.

If the fob buyer is in fact a party, as the shipper, to the contract of carriage originating the issuing of the bill of lading, the fob buyer would not benefit of the conclusive evidence rules. However, for the problems concerning the identification as a party of the contract of carriage of the person named in the transport document as the shipper, see the answer to question 3.1.2.

1.3 – Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

In general, according to Article 422.1 C.N. the Carrier is liable for loss of or damage to the goods up to the moment of their delivery to the consignee ("al momento della riconsegna").

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[14] PAVONE LA ROSA, Polizza di carico, in Enciclopedia del diritto Vol. XXXIV Milan 1985, 201 e ss

[15] Italian Supreme Court of Cassazione, 3rd section, 24th, with a comment by SIA, Sul valore probatorio delle risultanze della polizza di carico, [1997] Diritto dei Trasporti, 891 at 898.

Under Italian law, a voyage charter ("trasporto di carico totale o parziale") delivery takes place, if not otherwise agreed and in the absence of a different port regulation or local use, on the quay "at the ship's tackle" ("sotto paranco" – Article 442 C.N.). It is quite common, however, that in such contracts the parties agree for cargo to be delivered to the consignee in the ship's hold at the port of destination.
In contracts for the carriage of goods in a general ship ("trasporto di cose determinate") (normally in liner trade and under a bill of lading), the Carrier can specify when and where the goods are delivered to the consignee (after the discharge from the ship), but the Carrier bears all the costs and risks related to the necessary operations (Article 454.2 C.N.).

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

See answer to question 1.1.3

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

In a voyage charter ("trasporto di carico totale o parziale"), if the consignee is not ready or willing to receive the goods (or there is uncertainty in the identification of the consignee) the Carrier must ask for instructions from the shipper (Article 450.1 C.N.), who must refund the additional costs resulting from the performance of the said instructions (Article 1685.1 C.C.). If a bill of lading or other negotiable document was issued, the shipper must provide to the Carrier the said document (Article 1685.2 C.C.) in order to be entitled to give instructions.
In case the right to obtain delivery was already transferred to the consignee (i.e. if the goods arrived at destination and the consignee asked the Carrier for their delivery – Article 1689.1 C.C.) and he objects about the way delivery should be performed or delays taking in charge the goods, the Carrier can store them in compliance with the formalities described in Article 1514 C.C. or, if the goods are of a perishable nature, he can sell them in compliance with the formalities described in Article 1515 C.C. in the interest of the legitimate consignee (Article 450.2. C.N.).
In contracts for the carriage of goods in a general ship ("trasporto di cose determinate"), if the consignee is not ready or willing to receive the goods (or there is uncertainty in the identification of the consignee) the Carrier can deliver the goods to a company duly authorised to carry out warehousing, provided notice of that is given to the consignee or to the person named in the bill of lading. In this case, the responsibility of the Carrier ceases at the moment when the goods are taken in charge by the warehousing company, who becomes liable towards the consignee as a bailee (Article 454.1 C.N. : "... il vettore ha facoltà di consegnare le merci ad un'impresa di sbarco regolarmente autorizzata, la quale diviene responsabile verso il destinatario quale depositaria delle cose").

If there is uncertainty in the identification of the consignee, the rule contained in Article 450 C.N. (which was already described above) applies.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

See the answer to question 1.3.3. (Article 454.1 C.N.).

1.4 – Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

Under article 463.3 and article 467 C.N. the bearer, the endorsee or the holder of the bill of lading is entitled to request the delivery of the goods, and can dispose of the goods by endorsement of the bill of lading.
The person entitled to request delivery of the goods is therefore only the holder of the bill of lading, despite the fact that the holder may not be the party entitled to the goods under the contract of sale.
Once the delivery has taken place, however, it is questionable whether the holder continues to have the right to sue the Carrier.
The views expressed on the issue by Italian Courts and authors are indeed not uniform.
Italian Courts have often held that the bill of lading holder is the sole party entitled to sue the Carrier, even in case he has only acted as agent for cargo interests, and in spite of the fact that such a quality has been declared at discharge to the Carrier: the right arising from the possession of the bill of lading prevails therefore on the right of the owner of the goods under the contract of sale [16] and the Carrier has no possibility to challenge the claim on the assumption that the bill of lading holder is not the owner of the goods or has acted on his behalf and for his account. In several occasions, however, Italian Courts have been more inclined to consider the implications arising from the contract of sale, and the owner of the goods was held entitled to sue the Carrier once the delivery has taken place, having the "circulation" of the bill of lading terminated. The view generally expressed by the Courts in these cases is that once the delivery has taken place, the bill of lading is no more a document of title and a negotiable instrument, but just evidence of the contract of carriage, so that the owner of the goods is entitled to sue the Carrier in spite of the fact that he is not the bearer or the holder of the bill of lading. The main objection to such a view, expressed in the aforesaid decisions, is that despite the circulation of the bill of lading is terminated with the delivery of the goods,

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[16] Italian Supreme Court of Cassazione, 1st section, 22nd December 1994 n. 11043, [1996] Il Diritto Marittimo, 722; see also Italian Supreme Court of Cassazione 22nd may 1975 n. 2027, [1976] Banca, borsa e titoli di credito, 223; Tribunal of Genoa 15th October 1988, [1990]Il Diritto Marittimo, 122

the holder keeps nonetheless the right to obtain the delivery of goods of the quality and in the quantity indicated in the bill of lading, so that he does not lose the title to sue the Carrier in case of discrepancies between state and conditions indicated in the bill of lading and actual state and conditions of the goods delivered. In a recent case[17] where both bill of lading holder and cargo owners had sued the carrier claiming loss or damage occurred during the carriage, the Court held that both plaintiffs were entitled to file the claim; but the decision is rather superficial and unsatisfactory.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

See answer to question 1.4.1.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

The answer to the question is strictly connected to the issues mentioned above as to the effects of the delivery of the goods on the bill of lading.
The view generally expressed is that after the delivery the bill of lading is no more a document of title to the goods, so that the rights of the owner of the goods should not be affected by a further endorsement of the bill of lading. The only issue still under dispute is, as mentioned above, the identity of the party entitled to sue the Carrier. There is, however, some argument supporting in principle the possibility that title to the cargo can be transferred by endorsement after the delivery of the goods. Article 1996 C.C. includes the bill of lading among the documents of title to the goods therein indicated; under the following article 1997 C. C the attachment of goods "documented" by a bill of lading is deprived of effects in case the document itself is not attached. The provision is clearly based on the assumption that the attachment could be made void by means of the negotiation of the document of title, and is aimed at protecting the rights of a third good faith holder of the document. There is no reference in the provision to the moment of delivery of the goods, and it seems therefore that Italian law admits the possibility that the bill of lading be endorsed effectively by the holder even once the goods have been delivered to cargo owners.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

See answer to question 1.4.1

[17] Tribunal of Naples, 22nd April 1995, in [1996]Il Diritto Marittimo, 486 with a comment by ABBATE

1.5 – Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document
- with the date of shipment on board in the case of an 'on board' document
- with the date of signature
- with a date agreed by the shipper and the Carrier

According to Article 460.1 f) C.N. a received for shipment bill of lading must include the indication of the date of receipt by the Carrier of the goods specified therein as well as of the date of signature. If there is no mention of the date of receipt of the goods, it is presumed that this date coincides with the date of signature (Article 461.2 C.N.).
According to Article 460.2 h) C.N. a 'on board' bill of lading must include the indication of the date of receipt by the Carrier of the goods specified therein, of the date of shipment on board the vessel as well as of the date of signature. If there is no mention of the date of receipt of the goods, it is presumed that this date coincides with the date of shipment on board (Article 461.1 C.N.); if there is no mention of the date of shipment on board, it is presumed that this date coincides with the date of signature (Article 461.2 C.N.).
In case a bill of lading indicates a false date of loading of the goods which, according to the underlying contract of sale or documentary credit, should have been loaded before the date when they were actually put on board the ship, Italian Courts seem inclined to consider the Carrier and the Shipper jointly and severally liable for the damages arising out of the said false indication.[18]
However, such liability is not recognised if the purchaser/consignee was aware of the date mentioned in the bill of lading being false and, nevertheless, indicated in the purchase contract the date mentioned in the bill of lading as the deadline for the delivery of the goods to the Carrier.[19]

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

According to Article 460.1 a) the bill of lading must indicate the name and domicile ("nome e domicilio") of the Carrier.
On the ground of said provision, and considering also the nature of a document of title of the bill of lading, the attitude of the Courts is that, vis-à-vis the holder

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[18] Italian Supreme Court of Cassazione, 25th February 1979, n. 1218, [1979] Il Diritto Marittimo, 565; Court of Appeal of Genoa, 20th June 1987, [1988] Il Diritto Marittimo, 790.
[19] Italian Supreme Court of Cassazione, 2nd section, 14th August 1997, n. 7612, [1999] Il Diritto Marittimo, 347 with a comment by LOPEZ DE GONZALO

of the transport document, the identity of the Carrier must in any case be inferred only from the information which appears on the bill of lading. The Carrier must be identified in the person who issues (or in whose name is issued) the bill of lading.

Therefore, in the absence of clear indications in the bill of lading about the name and domicile of the Carrier, Italian Courts have adopted the following criteria:

- in general, the heading of the bill of lading is not decisive; it however becomes relevant for the identification of the Carrier (i.e. of the person issuing the bill of lading) if the heading is coherent with the signature of the document. Therefore, the charterer mentioned in the heading of the bill of lading was considered to be the Carrier in the presence of a signature by the shipping agent without any specification;[20]
- in the presence of a reference to a charter party, even if duly incorporated in the bill of lading, the Carrier must not be identified according to the provisions of the said charter party if it is not clear from the wording of the document that the master (or the shipping agent) signed the bill of lading in the name of the charterer;[21]
- in case the bill of lading is signed by the master, the Carrier is deemed to be the operator ("armatore") of the carrying vessel, as a consequence of the provision, contained in Articles 274.1 and 295.2 C.N., that the master is the legal representative of the operator;
- in case the bill of lading is signed by the ship's agent at the port of loading on behalf of the master, the Carrier is deemed to be the operator of the carrying vessel;[22]
  the 'identity of the carrier clause' contained in the bill of lading becomes relevant only in the case the identity of the person issuing the document cannot be inferred otherwise from the text of the document[23];
- in case the bill of lading is signed by a shipping agent at the port of loading without specification of the name of the principal and the bill of lading lacks of heading and of any relevant clause, the shipping

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[20] Italian Supreme Court of Cassazione, 13th March 1987, n. 2651 [1988] Il Diritto Marittimo, 1077 with a comment by BERLINGIERI. Italian Supreme Court of Cassazione. 18th August 1994, n. 7428 [1995] Diritto dei Trasporti, 527 with a comment by COLAFIGLI, with reference to the relevance of the heading of the transport document containing the name of the manager of the ship

[21] Italian Supreme Court of Cassazione, 3rd section. 4th March 1997. n. 1914. [1998] Il Diritto Marittimo, 1091; Italian Supreme Court of Cassazione. 25th January 1971. n. 153 [1971] Rivista del Diritto della Navigazione. II. 260 with a comment by TULLIO

[22] Italian Supreme Court of Cassazione. 26th July 1960, n. 2164 [1962] Rivista del Diritto della Navigazione, 1962, II, 87: Court of Appeal of Venice, 19th June 1993, [1994] Il Diritto Marittimo, 179: Court of Appeal of Genoa, 15th October 1994. [1995] Il Diritto Marittimo, 749

[23] Italian Supreme Court of Cassazione. 13th March 1987. n. 2651 [1988] Il Diritto Marittimo, 1077 with a comment by BERLINGIERI; see also Italian Supreme Court of Cassazione 7th July 1981, n. 4436. [1981] La Giustizia Civile. II, 2921 with a comment by GRIGOLI

agent himself is deemed to be the Carrier, in particular if the name of the shipping agent appears in the heading of the document.[24]

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

According to Article 463.3 C.N. the (negotiable) transport document must be signed by Carrier, or by the ship's agent ("raccomandatario") at the place where the document is issued or by the master of the carrying vessel, who act in their capacity of representatives of the Carrier (Article 2, Law 4th June 1977, n. 135).
Article 15 of Law 15th March 1997, n. 59 recognizes the validity of documents issued (and forwarded) by means of computer devices. The regulation implementing the above mentioned provision is contained in the Decree of the President of the Republic (D.P.R.) 19th November 1997, n. 513 and in the Decree of the President of the Council of the Ministers (D.P.C.M.) 8th February 1999.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

In principle, according to the general rules concerning the contract of carriage contained in the Italian Civil Code, the sender ("mittente") is the person liable for the payment of the freight.
However, according to Article 1689 C.C., the consignee does not become entitled to the delivery of the goods unless the freight is paid. If the Carrier delivers the goods to the consignee in the absence of such payment, he cannot request payment from the sender any more (Article 1692 C.C.), if not otherwise agreed by the parties.
In the case of the carriage by sea, article 455 C.N., which is part of the provisions regulating the contracts for carriage in a general ship ("trasporto di cose determinate"), but seems applicable by analogy to the voyage charter party, contains a provision corresponding to Article 1692 C.C., previously mentioned.
For the voyage charter parties, article 437 C.N. provides that if freight is unpaid

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[24] Italian Supreme Court of Cassazione, 15th January 1965, n. 81 [1965] Rivista del Diritto della Navigazione, II, 204

at the port of discharge the Master, in his capacity as representative of the Carrier, can ask the local Court to be authorised to store the quantity of the carried goods corresponding to the amount of the freight (including deadfreight) and of demurrage, or to sell the goods if necessary.
It must be considered, however, that according to Articles 464.2 and 467 C.N. and the general principles on the effect of the transfer of documents of title ("titoli di credito") contained in the Italian Civil Code, if a bill of lading is issued and transferred to a bona fide holder, the latter has the right to obtain the delivery of the goods, provided he performs the obligations mentioned in the document only.[25] In this situation, in several cases it was decided that, in the absence of a precise different contractual provision in the bill of lading (see under 2.1.5), if the freight is not paid by the consignee, the shipper is in any case obliged to its payment, even if the Carrier did not store or sell the goods according to Article 437 C.N. The provision contained in Article 437 C.N., in fact, only allows the Carrier to avail himself of the said possibility, and does not imply an obligation for him to do so, so that a different behaviour of the Carrier does not affect his claim against the shipper for the payment of the freight.[26] Moreover, in the case that the proceeds of the sale of the goods at the port of discharge are not sufficient to cover the amount of the freight, the shipper remains liable for the balance.[27]

2.1.2 - When is the freight earned?

According to Article 436 C.N., in case the goods do not arrive at destination the freight must be paid only if the non arrival is due to the act or omission of the shipper or to the nature of the goods, which was not known by the Carrier or by the Master of the ship. Being Article 436 C.N. a non-mandatory provision, a different agreement can be made (and is often made) by the parties.[28] From the above mentioned provision, as well as from those contained in Articles 437, 438 and 447 C.N., it can be inferred that, in the absence of a different contractual provision, the freight is earned when the goods arrive at port of destination.

2.1.3 - When is the freight payable?

From the provisions contained in the aforementioned Article 436 C.N. it can be inferred that, in the absence of a different contractual provision, the freight is payable upon arrival of the goods at destination.

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25 Tribunal of Bergamo, 31st October 1978, [1979] Il Diritto Marittimo, 385 at 399

26 Tribunal of Milan, 1st April 1985, [1986] Il Diritto Marittimo, 132;Tribunal of Genoa, 8th September 1990, [1991] Il Diritto Marittimo, 784; Tribunal of La Spezia, 16th April 1997, [1998] Il Diritto Marittimo, 452

27 Tribunal of Genoa, 18th July 1989, [1990] Il Diritto Marittimo, 732

28 Arbitral Tribunal, 31st March 1994, [1995] Diritto dei Trasporti, 213 with a comment by MASUTTI

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

In case the carriage, after the sailing from the port of loading, becomes impossible because of force majeure, according to Article 429.2 C.N. the freight must be paid up to the amount corresponding to the part of the voyage actually performed, provided that the persons interested in the cargo have some benefit from such partial performance and that the Master of the ship adopted all possible action for the on-carriage of the goods to their final destination. See also answer to question 2.1.2.

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

If the words "freight (pre)paid" are included in the bill of lading, according to Articles 1992.1 and 1993.1 C.C. and Article 464.2 C.N., the bona fide holder of the document has the right to obtain the delivery of the goods, and the Carrier is not entitled to claim from him the payment of the freight.
The clause 'freight payable at destination' (or 'freight collect') has not the effect of relieving the shipper from his liability for the payment of the freight. The Carrier must simply address the request for such payment to the consignee before addressing it to the shipper.[29]
These clauses are generally construed as a delegation of payment, with the effect of derogating from the rules set out in articles 1692 C.C. and 455 C.N. referred to above under 2.1.1.

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

In the few decisions concerning the 'cesser clause' in the bill of lading stating that the shipper is relieved from the liability for freight (and for demurrage at the port of destination) on shipment of the goods, Italian Courts have held that the said clause is valid and effective also if contained in a charter party which was duly incorporated in the bill of lading.[30]
If a charter party provides that the charterer/shipper is relieved from liability for freight and demurrage at the port of discharge in case the Carrier does enforce the lien on the cargo granted by same charter party, the cesser clause is ineffective, provided both clauses (the cesser clause and the lien clause) are not duly and validly incorporated in the bill of lading.[31]

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29 Tribunal of Livorno, 15th July 1987, [1988] II Diritto Marittimo, 1180; Italian Supreme Court of Cassazione, 1st section, 28th July 1989, [1991] II Diritto Marittimo, 353; Tribunal of Genoa, 8th September 1990, [1991] II Diritto Marittimo, 784; Tribunal of La Spezia, 16th April 1997, [1998] II Diritto Marittimo, 452. A different attitude was adopted by Tribunal of Milan, 1st April 1985, [1986] II Diritto Marittimo, 132

30 Tribunal of Bergamo, 31st October 1978, [1979] II Diritto Marittimo, 395

31 Court of Appeal of Genoa, 28th April 1987, [1987] II Diritto Marittimo, 943

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

According to Article 437 C.N., if the freight is unpaid, at the port of unloading the Master of the ship can ask the local Court to be authorised to store the quantity of the goods corresponding to the amount of the freight (including deadfreight) and of demurrage, or to sell the goods if is necessary. The consignee can avoid such a consequence by depositing with the Court the said amount. Italian Courts frequently emphasised the very limited purpose of the intervention of the judge in such proceedings, which is limited to a control of the existence of the elements requested by the law.[32]

2.2 – Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

The liability to pay deadfreight in carrier's favour is set out in article 434 C.N., which states that in case the shipper delivers for the carriage a quantity of goods smaller than that agreed, he must pay the full freight, deducting the loading cost of the unshipped goods if such cost is included in the freight.
The Master has the possibility to load further cargo, but in case a "full cargo" clause has been agreed, such a possibility is subject to shipper's prior consent. In this case the shipper is entitled to deduct from the freight originally due the freight the carrier receives for the carriage of the additional cargo.
Article 437 C.N., referred to under 2.1.7., just refers to unpaid freight and demurrage, but Italian Courts are generally inclined to apply this provision also in respect of deadfreight.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

Carrier's remedies for the non-payment of the aforesaid items are various, and are to be found in several provisions contained in the Civil and Navigation Codes. It is however somewhat difficult to harmonise these provisions, and the views expressed by Italian Courts are not uniform.
The remedy given by article 437 C.N. is extended to freight, demurrage and deadfreight, but the opinion generally expressed by the Courts is that the Master can ask for the authorisation to discharge and store part of the cargo just in respect of credits already accrued and immediately payable.[33]

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[32] Tribunal of Genoa 6th August 1980, [1981] Il Diritto Marittimo, 682; Tribunal of Ravenna, 5th November 1991. [1993] Diritto dei Trasporti, 141 with a comment by CAMPAILLA; Tribunal of Genoa. 2nd February 1995. [1997] Il Diritto Marittimo, 803

[33] Tribunal of Genoa 2nd April 1980 [1980] Il Diritto Marittimo, 669; Tribunal of Genoa 3rd April 1980 [1980] Il Diritto Marittimo, 672

In one case the remedy has been granted in spite of the fact that demurrage was payable 60 days after the discharge, on the ground that the carrier had proved that charterers were unable to fulfil their obligations.[34]

As to the nature and the effects of this remedy, it is generally considered as a conservative measure aiming at securing the payment of the claims:[35] this implies that the carrier cannot just satisfy his claim through the sale of the goods discharged and stored, but must preliminarily obtain a judgement, and is subsequently entitled to enforce the judgement on the goods.

This view is held inter alia in consideration of the fact that article 437 C.N. allows the sale of the goods just "in case of necessity", and that this provision is generally construed in the sense that sale is admitted just in case the goods are perishable.

A previous decision[36] seems however to hold the possibility for the carrier to satisfy himself immediately through the auction of the goods discharged.

The carrier has furthermore the right to exercise his lien on the goods under article 561 C.N., which enables the carrier to exercise such a lien for the claims for general average contribution (article 561 C.N. 3) and those arising out of the contract of carriage, including discharge costs (article 561 C.N. 4).

The exercise of the lien can take place either through the attachment or the seizure of the goods. It has been held[37] that the action under article 437 C.N. is also available for the exercise of the lien under article 561 C.N.

The provision is generally construed in the sense that the lien is available also for claims not yet accrued and payable: the remedy under article 561 C.N. is therefore generally adopted in order to secure the payment of claims arising out of the contract of carriage when the deadline for the payment has not expired yet. Under articles 2761 C.C., 2756 C.C. and 2796 C.C., the carrier has the right to exercise a lien on the goods carried for claims arising out of the contract of carriage. He can furthermore withhold the goods until payment, and satisfy his claims through a special and very quick procedure of sale.

It is questionable whether these provisions, which are part of the general rules of the civil code on the contract of carriage, apply to the carriage of goods by sea. The view expressed by the Courts is that the sea carrier cannot claim a right exceeding the scope of article 561 C.N. (which does not foresee the possibility of satisfying the claim through the sale of the goods attached) and cannot therefore avail himself of the remedy afforded in our civil code.[38]

The possibility for the carrier to withhold the delivery has then been maintained to exist pursuant to article 1460 C.C., which provides that in synallagmatic contracts each party can refuse the fulfilment of its obligations in case the other party is in breach, or does not give sufficient guarantees of due fulfilment.[39] If

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34 Tribunal of Genoa 8,25,31st July and 6th August, [1980] Il Diritto Marittimo, 682

35 See Tribunal of Ravenna 22nd November 1993, [1993] in Il Diritto Marittimo, 1128 with a comment of ORIONE; Tribunal of Genoa 2nd March 1988 [1990] Il Diritto Marittimo, 715

36 Tribunal of Ravenna 2nd October 1991 [1993] Diritto dei Trasporti, 139

37 Tribunal of Genoa 17th March 1966, [1966] in Il Diritto Marittimo, 310

38 Tribunal of Genoa 17th March 1966 [1966] Il Diritto Marittimo, 314

39 Supreme Court of Cassazione, 26th March 1981 n. 1775, for a case of carriage of goods by road

a bill of lading is issued and same contains no reference to the charter party provisions as to the payment of freight and demurrage, the general approach is that the carrier has no possibility to exercise a lien against the bill of lading holder.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from 'the merchant' in respect of other goods?

The general principle established for liens on cargo under article 561 C.N. is that the carrier can exercise the lien upon goods loaded on board for claims accrued in relation to the carriage of the aforesaid goods.
In this case the carrier can exercise the lien irrespectively of the property on the goods, even in case the goods do not belong to the merchant.[40]

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

The remedy under article 437 C.N. is conceived as a remedy to be adopted before the discharge takes place, through an order of the competent Court entitling the Master to unload and store the part of cargo suitable to secure the payment of the credits outstanding.
Article 564 C.N. provides that the lien becomes void in case the carrier fails to exercise it within 15 days from the discharge and the property on the goods passes on a third party.

3. – Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 – Legal basis of such rights and liabilities

3.1.1 - How is 'the shipper' defined under your national law? Is there a distinction between 'the shipper' and a supplier of the goods to be shipped who is not a party to the contract of carriage?

Neither the Navigation Code nor the Civil Code contains an express definition of 'shipper' ("caricatore") or 'sender' ("mittente"). The shipper, however, can be undoubtedly identified in the person who enters in his own name into a contract for the carriage of goods, as it can be inferred from the provision of Article 432 C.N. ("The shipper can withdraw from the contract before the departure of the ship..."; "Prima della partenza della nave, il vettore può recedere dal contratto ...").
For the purpose of identifying the shipper, it is therefore irrelevant that the goods to be shipped are supplied to the Carrier by a person who is not the party

[40] The same principle has been held for the action under article 437 C.N.: Tribunal of Genoa 31st July 1980 [1980] Il Diritto Marittimo, 687, with a comment of BERLINGIERI

to the contract of carriage, such a person acquiring the quality of an agent of the shipper.[41]
Moreover, it was clarified that the freight forwarder who contracts in his own name (even if in the interest and on behalf of his principal) for the carriage of the goods, is personally liable, as shipper, for the payment of freight, deadfreight and demurrage.[42]

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

Italian Courts are inclined not to consider the indications contained in the bill of lading relevant for the purpose of the identification of the shipper, if the document is not signed by the person named in it as the shipper, pursuant to Article 463 C.N. In the absence of such signature, the shipper can be identified in the person who submits (or in whose name is submitted) to the Carrier the loading declaration ("dichiarazione d'imbarco", Article 457 C.N.).[43]

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

According to the general provision contained in Article 1689.1 C.C., the rights and liabilities arising out of the contract of carriage of goods are transferred from the sender (shipper) to the consignee not being the holder of a bill of lading if, the goods having arrived at destination or the time of their arrival having expired, he asks the Carrier for their delivery. However, the consignee does not become entitled to the delivery of the goods unless he pays the freight and other claims of the Carrier arising out of the contract of carriage (Article 1689.2 C.C.).
Liabilities of the shipper that do not arise out of the contract of carriage are not transferred to the consignee, and therefore the Carrier cannot enforce such claims against the consignee (Article 1413 C.C.).
Reference is also made to the answer under 3.1.4., in respect of the position of the consignee who is a bona fide holder of the bill of lading.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

Pursuant to Articles 464.2 and 467 C.N. and to the general principles on the effect of the transfer of documents of title ("titoli di credito") contained in the Italian Civil Code (Articles 1992 and 1993 C.C.), if a bill of lading is issued and transferred to a bona fide holder, the latter has the right to obtain the

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41 Court of Appeal of Genoa, 28th April 1987, [1987] Il Diritto Marittimo, 943
42 Tribunal of Milan, 1st April 1985, [1986] Il Diritto Marittimo, 132
43 Italian Supreme Court of Cassazione, 28th December 1991, [1991] Massimario

delivery of the goods, provided he performs the obligations mentioned in the document only.
Once he has transferred the bill of lading, the intermediate holder of the document looses the right incorporated in the document and is not liable any more for the obligations mentioned therein.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

The shipper looses his right to give instructions to the Carrier if he has ceased to be the holder of the bill of lading (Article 1685.2 C.C.) or if the rights arising out of the contract of carriage have been transferred to the consignee according to Article 1689 C.C. (see the answer under 3.1.3).
Reference is made to the answer under 2.2.1 in respect of the liability of the shipper for the payment of demurrage.

3.2 – Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4. above)?

The behaviour the consignee must adopt in order to enable the Carrier to fulfil his obligations as to delivery should be properly qualified as a condition for the exercise of the rights arising out of the contract of carriage rather than as an obligation, with the exception of the liability for demurrage at the port of unloading (see Article 449.2 C.N.).
Reference is also made to the answers under 1.3.3.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

If the consignee looses his interest in the cargo, for whatever reason, the Carrier can store or sell the goods according to Articles 450 and 454 C.N.

4 – Rights to give instructions to the Carrier

4.1 - Who is the person entitled to give instructions to the carrier, and is the right to give such instructions transferable:
- *under a negotiable bill of lading*
- *undear a sea waybill*
- *if no contractual document is issued*

The shipper has the right to suspend the carriage and request the redelivery of the goods, and can furthermore modify, during the course of the carriage, the instructions for the delivery of the goods, but must reimburse to the carrier any cost incurred and indemnify any damage arising from the change of

destination or instructions. The shipper looses however his right to give instructions to the Carrier if he has ceased to be the holder of the bill of lading (Article 1685.2 C.C.).
As regards the carriage of goods by sea, under Article 432 C.N. the shipper can, before the vessel sails, withdraw from the contract of carriage, by paying half of the agreed freight as well as the loading and unloading costs, if these are not included in the freight, and the demurrage accrued. The shipper has the possibility, however, to be exonerated from the payment of freight and costs in case he can prove that the Carrier has suffered no damages at all or that the damages arising out of the withdrawal are lower.
Under Article 433 C.N. the shipper can furthermore exercise the right to withdraw the goods during the carriage, by paying the freight in full and reimbursing the Carrier the costs incurred for the discharge.
With regard to the transfer of the right to instruct the Carrier, the general rule contained in Article 1689.1 C.C. provides that the rights and liabilities arising out of the contract of carriage are transferred from the shipper to the consignee not being the holder of a bill of lading if, the goods having arrived at destination or the time of their expected arrival having expired, this latter asks the Carrier for the delivery. However, the consignee does not become entitled to the delivery of the goods unless he pays the freight and other claims of the Carrier arising out of the contract of carriage (Article 1689.2 C.C.).
If a bill of lading is issued and transferred to a bona fide holder, the latter is entitled to obtain the delivery of the goods, provided he performs the obligations mentioned in the document only. Once he has transferred the bill of lading, the intermediate holder of the document losses the right incorporated in the document and is not any more liable for the obligations mentioned therein.
If a sea waybill is issued, as long as same is not a document of title to the goods but just evidence in respect of the description of the cargo and of the contract of carriage, the general rule under article 1689 C.C. should apply (there is no decision available yet on the issue), as well as for the case no contractual document is issued.

4.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage.

The Carrier is not obliged to accept the instructions issued by the shipper under article 432 C.N. in case the shippers fails to exercise his right with due diligence and promptness and fails to pay the sums due.[44]
Article 433 provides furthermore that in case the shipper exercises his right to withdraw the goods during the carriage the Master can refuse to allow the discharge if this implies excessive delay or change of route or the vessel must call at a port not agreed in the contract.

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[44] Court of Appeal of Naples, 1968, [1968] Diritto e Giurisprudenza, 812

JAPAN

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

No. The commencement of carrier's responsibility does not necessarily coincide with the delivery by the seller under a contract of sale on "shipment terms".

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

No.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Yes.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

There is no pertinent case available on this point.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

There is no case pertinent available on this point.

1.2.3 - What is the meaning of "apparent"?

As for the packed goods, "order and condition of the goods" is "apparent" when it is conceivable from outside by the carrier with a reasonable care.

(Supreme Court Decision April 19, 1973, Minshu vol. 27, No. 3, p. 527) In addition to the anomalous visible appearance, other clue such as unreasonable weight, doubtful noise or smell should be taken into account.

1.2.4 - What is the legal effect of clauses such as:
- "Shipper's load and Count"
- "said (by shipper) to contain"
- "particulars provided by shipper"
- "weight (etc) unknown"

When clauses such as "shipper's load and count", "said (by shipper) to contain", "particulars provided by shipper", "weight (etc.) unknown" are added in the bill of lading, it is not presumed that the carrier received the goods as the described. However, these clauses are permissible only when the carrier has reasonable grounds for suspecting that the information given by the shipper is inaccurate or if he has no reasonable means of checking it. When these clauses are not permissible, carrier is deemed to have received the goods as described (marks, number of packages or pieces, the quantity or weight) and the proof to the contrary is not admissible against the holders of the bill of lading who act in good faith.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued
- if the contract of carriage is covered by a sea waybill
- if no transport document is issued

The conclusive evidence rule is necessary as far as a negotiable bill of lading or a sea way bill is issued. The conclusive evidence rule is unnecessary when the no transport document is issued except where a legitimate "electronic transport document" is used.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

The conclusive evidence rule would not benefit the fob buyer in these cases. They are not "a third party acting in good faith".

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

No. See, 1.1.1 above.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

Yes.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

The carrier can deposit the goods when the holder of the bill of lading does not co-operate or refuses to receive the goods. (See, Art. 754 of Commercial Code) In this sense, the co-operation is not necessary for delivery. While the carrier can deposit even when the goods being tendered for delivery in a damaged condition, he cannot do it if they have lost their commercial identity. A contract of carriage usually contains the carrier's right to deposit goods in a warehouse at shipper's expense and to dispose the goods at his will, because the deposit system above mentioned is burdensome for the carrier.

Commercial Code Article 754 (Deposit of the goods)

1.If the consignee has neglected to take delivery of the goods, the master may deposit them with the competent authority. In such case notice thereof shall without delay be despatched to the consignee.

2.If the consignee cannot be ascertained or if he has refused to take delivery of the goods, the master shall deposit them with the competent authority. In such case notice thereof shall without delay be despatched to the charterer or consignor.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

The holder has no direct claim against the person entitled to the goods pursuant to the contract of sales.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

The holder of the bill of lading can sue the carrier to deliver the goods to him or to compensate for the loss of the goods pursuant to the contract of carriage.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

Rights of the holder are not affected even the endorsement occurs after the delivery so long as he acts in good faith. Supreme Court Decision, Nov. 13, 1931, Minshu vol. 10, p. 1013.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

When the letters of guarantee are issued, the carrier may bring a recourse action against the buyer.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment o board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

The law requires that the bill of lading should include the date of signature and in the case of an "on board" document the date of the shipment.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

The law requires only the "name of the carrier".

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

The bill of lading should be signed by the carrier, master or agent of the carrier.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

Shipper's (charterer's) liability for the payment of the freight depends on contracts. Delivery of the goods to the consignee has no effect on the liability. Intermediate holders are not liable. When the goods are delivered, the consignee or the holder of the bill of lading who receives the goods is liable for the payment of the freight.

2.1.2 - When is the freight earned?

It is decided by the contract of carriage. If the contract is silent, it is earned on delivery.

2.1.3 - When is the freight payable?

It is decided by the contract of carriage If the contract is silent, it is payable on delivery.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

When the contract of carriage is frustrated, the carrier is entitled to freight in proportion to the carriage effected but only to an extent not exceeding the value of the goods. When the contract of carriage is discharged by the breach of the carrier, he is not entitled to the freight. See Art. 760 and 761 of Commercial Code.

Commercial Code

In the context above mentioned, "shipowner" in the following texts stands for "carrier" and "charterer" stands for "shipper".

Article 760 (Reasons for termination of contract)

1. In cases a contract of carriage has been made with reference to the whole of a ship, such contract shall be terminated by any of the following reasons :

(1) That the ship was foundered;
(2) That the ship became unable to be repaired;
(3) That the ship was captured;
(4) That the goods were lost by reason of vis major.

2. If any of the events mentioned in item (1) through item (3) of the preceding paragraph has occurred during the voyage, the charterer shall pay freight in proportion to the carriage effected, but only to an extent not exceeding the value of the goods. Article 761 (Rescission by reason of vis major)

1. If the voyage or carriage should become contrary to any law or ordinance, or if by reason of vis major the attainment of the object for which the contract was made has become impossible, either party may rescind the contract.

2. If, in cases where either of the reasons mentioned in the preceding paragraph has occurred after the commencement of the voyage, the contract of carriage has been rescinded, the charterer shall pay freight in proportion to the carriage effected.

Article 762 (Ibid: a part of goods)

1. If any of the reasons mentioned in Article 760 paragraph I item (4) and in paragraph I of the preceding Article has occurred in respect of a part of the cargo, the charterer may load other goods in so far as he does not thereby increase the burdens of the shipowner.

2. If the charterer desires to exercise the right mentioned in the preceding paragraph, he shall effect unloading or loading of the goods without delay. If he shall have neglected such unloading or loading, he shall pay the full amount of the freight.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

When the bill of lading states "freight (pre) paid", the carrier is not entitled to freight against the holder of bill of lading or the consignee. When the bill of lading states "collect", the holder of bill of lading or the consignee who receives the goods is liable for the payment of the freight.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

The "cesser" clause is not usually contained in the bill of lading for the liner trade. Because there is no case available, its effect is unclear.

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

When the freight is unpaid, the carrier acquires a possessory lien on the goods and can withhold the delivery. (Art. 753 of Commercial Code) The carrier also acquires the right for the auction of the goods. (Art. 757 of Commercial Code)
Commercial Code
In the context abovementioned, "shipowner" in the following texts stands for "carrier" and "charterer" stands for "shipper"
Article 753 (Liability of consignee)
1. When the consignee has received the goods, he is bound to pay the freight, incidental expenses, advances and anchorage charges, as well as the amount of his contribution to general average and salvage in proportion to the value of the goods, in accordance with the tenor of the contract of carriage or of the bill of lading.
2. The master is not bound to deliver the goods except upon payment of the amount specified in the preceding paragraph.
Article 757 (Shipowner's right to sell goods)
1. In order to obtain payment of the amounts specified in Article 753 paragraph 1, a shipowner may with the per-mission of the Court sell the goods by official auction.
2. A shipowner may exercise his right over the goods even after the master has delivered them to the consignee ; however, this shall not apply when two weeks have elapsed from the day of delivery or if a third person has acquired possession of such goods.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

Shipper's (or charterer's) liabilities for payment of these items depend on contracts. Intermediate holders are not liable. When the goods are delivered, consignee or holder of the bill of lading who receives the goods is liable for these items (see, Commercial Code Art.753, supra).

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

When the demurrage at the port, contributions in general average etc. is unpaid, the carrier acquires a possessory lien on the goods and can withhold the delivery. (see, Commercial Code Art.753, supra). The carrier also acquires the right for the auction of the goods. (see, Commercial Code Art.757, supra)

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

If this question asks whether the lien described in 2.2.2 extends to the other goods, the answer is yes as far as the goods belong to debtor, i.e., the consignee or the holder of the bill of lading. (Commercial Code Art. 521).
Commercial Code
Article 521 (Retention between traders) If a claim which has arisen between traders from a transaction which is a commercial transaction in respect of both parties has become due, the obligee may, until he has obtained performance thereof, retain things or valuable instruments belonging to the obligor which have come into his possession through a commercial transaction with the obligor; however this shall not apply, if there exists any different declaration of intention.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

While the rights of possessory lien disappears when the goods have passed out of the carrier's hands, the right to the auction still remains.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

Under the Japanese law, there is no general definition of "shipper" in the code. It is generally understood that a "shipper" is a contractual counterpart of the carrier.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

The person who is named in the bill of lading as the "shipper" is not necessarily a party of the contract of carriage and there is no presumption as such.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

When the bill of lading is not issued, the right to receive goods is exclusively

consignee's. When the bill of lading is issued, consignee acquires the right as a holder of bill of lading when he takes the instrument.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

All rights to the goods are transferred to the holder of the bill of lading and thence to the consignee. The right to give instruction to the carrier is also transferred (Art 582 of Commercial Code).

Commercial Code

Article 582. The consignor or the holder of the bill of lading may demand of the carrier the discontinuance of the carriage, the return of the goods or any other disposition thereof. In such case the carrier may demand payment of freight in proportion to the carriage already effected as well as of any disbursements made and of any other expenses which have arisen from such disposition. 2. The right of the consignor mentioned in the preceding paragraph shall be extinguished when the consignee has demanded delivery of the goods after their arrival at the destination.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

The shipper ceases to have contractual rights once the bill of lading is transferred to an intermediate holder. His liabilities remain. For example, even after he ceased to hold the bill of lading, the shipper shall guarantee to the carrier the correctness of the notice regarding the description of goods (Art 8. 3 of Law Concerning International Carriage of Goods by Sea) and is liable for the damage caused by the dangerous nature of the goods when he fails to notify (See, Art 11 of Law Concerning International Carriage of Goods by Sea). Shipper's liability to pay freight and other charges also remains.

Law Concerning International Carriage of Goods by Sea

Article 8 (Shipper's notice)

1. When the particulars specified in items (1) and (2) of paragraph 1 of the preceding Article have been notified with a written notice by the shipper, the entry under the said items shall be made in accordance with that notice.

2. The provisions of the preceding paragraph shall not apply when the carrier has good grounds for believing that the notices provided for in the preceding paragraph are not accurate or when he has no suitable means of checking whether such notices are accurate or not. The same shall apply also when the marks are not shown upon the goods carried or upon their cases or coverings in such a manner as should remain legible until the end of the voyage.

3. The shipper shall guarantee to the carrier the correctness of the notice provided for in paragraph 1 of this article.

Article 11 (Disposal of dangerous goods carried)

1. Goods carried of inflammable, explosive or other dangerous nature, whereof this nature has not been known to the carrier, master or agents of the carrier at the time of loading, may at any time be landed, destroyed or rendered innocuous.
2. The provisions of the preceding paragraph shall not preclude the carrier's claim against the shipper for compensation for damages.
3. Goods carried of inflammable, explosive or other dangerous nature, whereof this nature has been known to the carrier, master or agents of the carrier at the time of loading may be landed, destroyed or rendered innocuous when they become dangerous to the ship or other cargo.
4. The carrier shall not be liable for compensation for the damages to the goods carried arising from the disposition under paragraph I or the preceding paragraph.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

See, 1.3.3, 1.3.4.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

See, 1.3.3, 1.3.4.

4 - Rights to give instructions to the Carrier

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

The shipper or the holder of the bill of lading is entitled to give instructions to the Carrier (Commercial Code Art. 582). When the bill of lading is issued, only the holder is entitled to give instructions (Supreme Court Decision, 1924 Oct. 8, Horitsu-Shinbun No. 2324, p.20). When a sea waybill is issued or no contractual document is issued, only the shipper is entitled to give instructions to the Carrier.

Article 582 (Right to demand disposition of goods)

1. The consignor or the holder of the bill of lading may demand of the carrier the discontinuance of the carriage, the return of the goods or any other disposition thereof. In such case the carrier may demand payment of freight in proportion to the carriage already effected as well as of any disbursements made and of any other expenses which have arisen from such disposition.

2. The right of the consignor mentioned in the preceding paragraph shall be extinguished when the consignee has demanded delivery of the goods after their arrival at the destination.

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

The carrier is obliged to accept the instructions as to either matters relating to the goods themselves or other matters arising under the contract of carriage, as far as the Art. 582 of Commercial Code covers.
Art. 582 of Commercial Code, see 3.1.4 supra.

NETHERLANDS

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

The period of responsibility of the carrier commences when he takes over the goods. Then, they arrive in his custody. The timing of that moment is determined by the terms of the contract of carriage, or by the usage of the port or trade concerned. Therefore, the agreed moment of delivery of the goods to the carrier under the contract of carriage may well coincide with the moment of delivery by the seller under a contract of sale under FCA, CPT, CIP, CIF and FOB Incoterms 1990, but not necessarily so. This will depend on the agreed terms of the contract of carriage.

Furthermore, Dutch law follows Art. VII of the Hague-Visby Rules, *i.e.* a carrier may validly exclude his liability for the period prior to the loading on the ship on which the goods are carried by sea.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

We have no indications that, at present, a strong desire exists on the cargo side that these two moments should coincide. It may be expected, however, that the desirability of the coincidence of the moments of delivery under each contract may get a new impetus when overseas trade will more and more take place through electronic commerce systems.

Relating to this question, a further area of attention is the timing of passing of risks of loss or damage to the goods under the above Incoterms and the commencement of the period of mandatory liability of the carrier for such loss or damage. In the event that these two moments do not coincide, parties should avoid that the risk passes before the mandatory liability of the carrier commences. Otherwise, a period may be created that the buyer (or his insurer) is virtually without remedy in the case of damage to or loss of the goods because of before and after-clauses and Himalaya clauses in the bill of lading and far-reaching exclusions of liability in the terminal operator's general conditions.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Yes, these expressions define the scope of the contract of carriage. However, they leave the obligation of the carrier to exercise due diligence for the seaworthiness of the vessel, untouched. As the loading, stowing and securing of the FIO(S)-cargo by (or on behalf of) the shipper may have an impact on the seaworthiness of the vessel, it remains the carrier's responsibility that the loading, stowing and securing of FIO(S)-cargo will be made in such a way that the seaworthiness of the vessel remains unaffected.
Also, the moment of delivery of the goods to the carrier may be defined by these terms because delivery is primarily a contractual matter.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Generally, if the carrier had positive knowledge to the contrary or of the incorrectness of the information provided by the shipper. It is suggested that the same applies if the discrepancies between the information provided by the shipper and the quantity, weight, way of packaging and general condition of the goods actually loaded aboard of the ship are so considerable, that the carrier should have realized that the information provided by the shipper is misleading. In such a case the carrier may be deemed to have known better so that the overriding general principle of reasonableness and fairness precludes the carrier from relying on one of the "unknown"-clauses named under question 1.2.4 below. The burden of proving the carrier's knowledge is on the cargo-interests.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

Dutch law (Art. 8:399-1 sub *c* DCC) contains the statutory presumption that the carrier will have no reasonable opportunity to verify the quantity and weight of cargoes poured or pumped in bulk. Case law determines further that the carrier has no reasonable possibility to verify the contents of a sealed container or packed goods generally or the exact number of a large multitude of items such as metal ingots or bags of cocoa beans, if such tallying would be so time-consuming and costly as to become uneconomical.

1.2.3 - What is the meaning of 'apparent'?

"Apparent" refers to what can be seen from the outside during a reasonable and customary inspection and includes the packaging, but not the interior of the goods. A relatively superficial (visual) inspection by the carrier suffices and he need not have special expertise in relation to the goods.

1.2.4 - What is the legal effect of clauses such as:
- *"shipper's load and count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc.) unknown"*

Please answer the above questions indicating the position both as between the Carrier and the shipper and the Carrier and subsequent holders of the bill of lading.

The legal effect of such clauses is that the bill of lading holder still has to prove the particulars of the cargo, save to the extent that these relate to its apparent order and condition. This rule of evidence is based on a specific statutory provision (Art. 8:414-2 DCC) which reads: "If the bill of lading contains the "content, quality, number, weight or measure unknown"-clause or any other clause to similar effect, such data regarding the goods mentioned in the bill of lading do not bind the carrier, unless it is proven that he knew or ought to have known the content or the quality of the goods, or that they were handed over to him, counted, weighted or measured." It is the Dutch legislator's view that this provision does not conflict with Art. III, rule 3 and 4 HVR.
It makes no difference for the validity of the "unknown"-clause whether the carrier relies on it in his relation to the shipper or to a third-party holder. Failing an "unknown"-clause however, the carrier is prevented from disproving the correctness of the contents of the bill of lading against a third-party holder. This follows from the conclusive evidence-rule in Art. 8:414-1 DCC which reads: "Counter evidence against the bill of lading is not admissible when it has been transferred to a third party acting in good faith." A remarkable feature of this Dutch version of the conclusive evidence-rule is that it not only applies to the description of the goods in the bill of lading as is the case under Art. III, rule 4 HVR, but to all its contents. In addition, it equally applies whether the bill of lading is to bearer, to order or to a named consignee.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:
- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued.*

Negotiable Bill of Lading: For legal reasons the conclusive evidence-rule as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent good order and condition of the goods should be maintained for negotiable bills of lading. This rule remains paramount for shipment sales (CIF, C&F and FOB) where documents play an essential role, in particular if such sale can be characterized as a sale of documents representing goods. In respect of other sales, it seems advisable to leave the choice to the parties to the

sales contract whether they opt for a negotiable bill of lading to which the conclusive evidence rule (for what this rule is still worth in practice) is applicable or for another document, such as a sea waybill, to which this rule is not (or should not be) applicable.

Sea waybill: Under Dutch law some controversy exists whether or not a sea waybill should be regarded as a "similar document of title" in the sense of Art. I sub b HVR. The prevailing view is that a should not. It follows, that for Dutch law the question is whether or not a conclusive evidence rule should be introduced.

The answer is a clear no. In respect of sea waybills no compelling reason exists to deviate from the general principles of the law of evidence, which under Dutch law normally leave the parties in showing their evidence, as well as the courts in their evaluation of evidence, free. The sea waybill does not embody the exclusive right to claim the goods and is not a document of title representing the goods. If the parties to a contract of sale need such a document, the shipper should agree with the carrier that a bill of lading be issued. (Under Dutch law the issue of a bill of lading by the carrier on demand of the shipper is not mandatory.) In some trades, such as the ferry- and short haul liner trades, bills of lading have become so unusual that, in practice, they are no longer available to the shipper. No economic need seems to exist for a document with the characteristics of a bill of lading in this type of carriage by sea.

If no transport document is issued: In our view, the conclusive evidence rule is typically needed in respect of sale of goods covered by documents. If, *e.g.* under electronic commerce systems, such as Bolero, no document is used to perform the contract of sale, a conclusive evidence rule is pointless. Under electronic systems it may be assumed that the description of the goods, which are the subject of an electronically performed transaction, has been agreed between seller and buyer and subsequently electronically be secured. Subsequent buyers of these goods will rely on that piece of secured data information (to which they will have access) and no longer on information contained in a document issued by a carrier. Also in respect of retention and/or transfer of title to the goods the role of the document is over.

Nevertheless, as long as goods physically move, the need will remain that it can be established and proved that the discharged goods are in conformity with the goods as they are loaded. Therefore, also under electronic systems the functionality of evidence rules has to be retained. Such rules, in our view, should have more similarity to the waybill pattern than to that of a bill of lading.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

In the case of a sale of goods on FOB-terms, it is the FOB-buyer who - under the contract of sale - must arrange for transportation of the goods. As a

consequence, under Dutch law, the FOB-buyer is regarded as the contractual counterpart of the carrier. It is immaterial whether or not the FOB-buyer is named in the bill of lading as shipper or as consignee. Decisive is who entered into the contract of carriage with the carrier, not the perhaps imperfect reflection of the contractual relationship in the bill of lading. Being the contractual shipper, the FOB-buyer will, as a bill of lading holder, not be considered as the "third party acting in good faith" who enjoys the benefit of the conclusive evidence rule.
In practice, it is usual that the FOB-seller actually delivers the goods to the carrier and it is not uncommon that the FOB-seller arranges for the transportation as well. He may do so in its own name. In such event, prevailing case law takes the view that, in doing so, the FOB seller is deemed to be the representative of the FOB-buyer. Then, neither the FOB-seller, nor the FOB-buyer, will, as a bill of lading holder, have the benefit of the conclusive evidence rule.
This case law has been criticized by authors: The FOB-seller may receive a bill of lading from the carrier as a receipt for the goods and act as such as an agent of the FOB-buyer. But often the FOB-seller need the bill of lading as a principal in order to ensure payment from the FOB-buyer under the payment terms of the sales agreement. Views of authors differ as to the legal construction to support such right of the FOB-seller to receive as a principal a bill of lading from the carrier. However, authors are virtually unanimous in the view that, even if and when a FOB-seller is a bill of lading holder in its own right, neither he, nor the FOB-buyer will be protected by the conclusive evidence rule.

1.3 – Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

The period of responsibility of the carrier ends when he delivers the goods to the consignee. The timing of that moment is determined by the terms of the contract of carriage, or by the usage of the port or trade concerned. Therefore, the agreed moment of delivery of the goods by the carrier to the consignee under the contract of carriage may well coincide with the moment of delivery by the seller under DES or DEQ Incoterms 1990, but not necessarily so. This will depend on the agreed terms of the contract of carriage.
Furthermore, Dutch law follows Art. VII of the Hague-Visby Rules, *i.e.* a carrier may validly exclude his liability for the period subsequent to the discharge from the ship on which the goods are carried by sea.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

Yes, a FIO-clause defines the scope of the contract of carriage also in respect of its end.

Likewise, the moment of delivery of the goods to the consignee may be defined by a FIO-clause, because delivery is primarily a contractual matter.

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

Under Dutch law delivery of the goods is interpreted as a consensual legal act between the carrier and the consignee/bill of lading holder. Such delivery according to the terms of the contract of carriage may take place without the actual taking into receipt by the consignee (or somebody acting or deemed to be acting on his behalf). As an example: if the bill of lading stipulates that delivery of the goods by the carrier will take place upon these goods being discharged and placed on the quay, such delivery is deemed to be completed as soon as the goods have been placed on the quay and are made available to the consignee. This way, the contract of carriage has come to an end. If it happens that the consignee does not show up in order to take receipt of the goods, the carrier may continue to take care about them. If he does so, he will act in another legal capacity than as a carrier, *e.g.* as a *negotiorum gestor*.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

In that case, the carrier is entitled to put the goods in storage with a third party in a suitable warehouse or lighter for the account and risk of the consignee. With permission of the court the carrier may store the goods himself or even sell them publicly by auction or privately.
Additionally, the carrier may claim damages from the shipper and, if the consignee already has become a party to the contract of carriage, from the consignee as well.

1.4 – Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

Generally, the rights of the rightful bill of lading holder, acting in good faith, as regards the goods, whether before or after delivery to the person entitled to the goods under the contract of sale, will depend on the kind of title which such holder has to the goods. If the holder has acquired the bill of lading upon becoming owner of the goods, his rights as a holder are that of an owner of the goods. If the holder of the bill of lading is a pledgee, his rights as regards the goods are that of a pledgee. If the holder is a freight forwarder acting in its own name but as an agent of somebody else, he has no rights of its own as regards the goods at all.
The rights as regards the goods of a person entitled to these goods under the contract of sale and to whom the carrier has delivered these goods, are subject to the rights as regards these goods of a rightful bill of lading holder, acting in good faith, who acquired the bill of lading for value. The first mentioned

person knows or ought to know from the contract of sale that a bill of lading for such goods was issued and, consequently, that he runs a certain risk if he claims and receives delivery of the goods without presenting a bill of lading to the carrier. But his rights are only inferior to the rights of a bill of lading holder if the latter has acted in good faith, *i.e* if he, at the moment of his acquisition of the bill of lading, had (or ought to have had) no knowledge of that the goods themselves were transferred to a buyer without the bill of lading being used for such a transfer of the goods.
Whether Dutch law requires that such bill of lading holder should have acquired the bill of lading before delivery of the goods by the carrier to the person entitled to them under the contract of sale, in order to obtain his superior rights, is not clear. No clear statutory provision or case law is available.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

After delivery of the goods by the carrier to a person entitled to them under a contract of sale, the rights of suit of the bill of lading holder against the carrier are a claim for damages only. Such damages to be established according to Art. IV, rule 5 HVR. The holder has no other rights, e.g. to claim dissolution of the contract of carriage.
It should be noted that under Dutch law the bill of lading holder is the only person having rights of suit under the contract of carriage. It is no requirement that the holder suffers the damages himself.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

Under Dutch law it is not clear whether the rights of suit of the holder against the carrier after delivery of the goods by the carrier to a person entitled to them under the contract of sale, are effected by endorsement of the bill of lading. No provision of law exists and only some case law is available. However, most of these cases are old and none of them are leading nor very explicit.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

The buyer or owner of the goods, to whom the carrier has delivered the goods, has - as such - no rights of suit against the carrier under the contract of carriage. The one and only person who has rights of suit under the contract of carriage is the bill of lading holder.

1.5 – Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document

- *with the date of shipment on board in the case of an 'on board' document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

The answers to the questions are: no, no, yes, no. A bill of lading must be dated at the date of signature. No other requirements as to the dating of the transport documents exist. It may be assumed that failure to meet this requirement will not make the bill of lading legally invalid.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

No. But, inversely, Dutch law (Art 461-1 DCC) regards the legal entity whose letterhead is used in the bill of lading as (a) carrier under the bill of lading.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

Yes, the bill of lading must be signed by or on behalf of the carrier. In principle, a handwritten signature is required. However it may be assumed that a bill of lading signed with a type-written name or a stamp will not be denied legal effect in the absence of fraud.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

(a) In the absence of an agreement to the contrary, the shipper is liable for the payment of freight to the carrier with whom he concluded a contract of carriage.
(b) If a bill of lading is issued, the holder of the same who has become a party to the contract of carriage as laid down in such bill of lading will be liable for the payment of freight according to the terms of this bill of lading. See the answer to question 2.1.5 for the effect of a "freight-prepaid" clause. In the event that the holder of the bill of lading is also the shipper, freight is payable according to the terms of the (original) contract of carriage, unless the amount of freight according to the bill of lading is higher than the amount due according to the original contract: in that case the shipper/holder of the bill of lading owes the bill of lading freight.
(c) If no bill of lading is issued, the general view is that the consignee will be liable for the payment of the agreed freight if and when he becomes a party to

the contract of carriage. Such contract is deemed to include an implied term that the consignee agrees to pay the freight. Evidence against this assumption is allowed, however the relevant terms of the contract of sale between the shipper and the consignee are not decisive in this respect.
(d) The above liabilities are not affected by delivery of the goods to the consignee. In particular, the shipper can only be relieved from his obligation to pay the freight through a special provision or agreement, such as a "cesser" clause.

2.1.2 - When is the freight earned?

(a) Main rule is that, in the absence of an agreement to the contrary, the freight is earned after delivery of the goods at the agreed destination (Art. 8:484-1 DCC).
(b) However, the carrier is entitled to freight in so far as a non-delivery of the goods is the result of the nature of or defect in the goods or an act or omission on the part of the shipper, the consignee or the receiver of the goods (Art. 8:484-5 DCC).
(c) If the goods are delivered at a different location than the agreed destination and this constitutes a failure on the part of the carrier in the performance of his obligations (which is, for example, not the case if the carrier has complied with the shipper's request to deliver the goods elsewhere), the rule is that the carrier does not earn any freight whatsoever. So, a carrier is not entitled to freight pro rata of the voyage. It is however arguable that the shipper or receiver of the goods, if and to the extent that they actually have benefited from the carriage performed, are obliged to indemnify the carrier on the grounds of unjustified enrichment (Art. 6:212 DCC).
(d) In the event that goods must be sold during carriage because the extent of their damage does not permit their further carriage, freight is payable to a maximum of the amount of the proceeds of such sale (Art. 8:484-3 DCC).
(e) In principle, full freight is owed on cargo delivered at its destination, disregarding any damage or delay. If, however, the damage or delay is so severe that the goods are delivered in a "worthless condition", no freight is owed for such goods (Art. 8:484-5 DCC). "Worthless" must not be taken too literally: exhibition goods, for example, which are delivered too late (i.e. after the exhibition) are not without value in general terms, but are "worthless" in the sense of the above mentioned provision.
(f) If only a part of the cargo is delivered, the rule is that, in the absence of a special provision to the contrary, freight is payable on the cargo actually delivered. So, a carrier is entitled to freight pro rata of volume/weight. If the freight is determined according to the weight or volume of the goods, then it shall be determined according to these data at delivery.
(g) In the event the freight is determined on a lump-sum basis, the freight is payable in full, even if only part of the goods is delivered at their destination (Art. 8:484-2 DCC). It is not clear what proportion of the cargo must be delivered before freight is payable (will any quantity of cargo beyond a minimal amount do, or is a substantial amount required?). No lump-sum freight is earned if the goods are delivered in a "worthless condition"(see above sub e).

(h) An important exception to the principle that freight is earned only after the goods are delivered at their destination, is that freight which is to be paid in advance or has already been paid, remains payable in full, even if the goods are not delivered at their destination (Art. 8:484-4 DCC). It is questionable whether and in which instances this rule can be set aside on the grounds of reasonableness and fairness as defined in Art. 6:248-2 DCC. The mere fact that the ship is not seaworthy at the beginning of the voyage will, even if this causes the loss of the goods, probably not constitute sufficient grounds to deny the carrier his right to receive or to retain advance freight. On the other hand, it is unlikely that advance freight is not recoverable by the shipper in the event that the non-delivery of the goods is caused by willful misconduct of the carrier himself.

2.1.3 - When is the freight payable?

Main rule is that, in the absence of an agreement to the contrary, the freight is payable
when it is earned. The contracting parties are free to agree differently, *e.g.* that the freight, wholly or partly, is payable some time before or after it is earned.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

(a) Dutch maritime law (Art. 8:390, 392 – 394, 396, 398, 424 - 426 DCC) include a couple of "termination variants" which, under different events of force majeure and default, offer specific rules according to which the contract of carriage may be terminated. When the contract is terminated before the freight is earned or paid, the carrier is not entitled to freight (see for details the answers to question 2.1.2). When the freight is already earned or paid at the time the contract is terminated, the carrier probably remains entitled to the freight.
(b) If the carrier is in breach of his main obligation, i.e. to carry the goods without delay and to deliver them at the agreed destination in the same condition as he received them, the shipper/consignee or holder of the bill of lading is only entitled to claim damages: the general rules of contract law relating to dissolution of contracts do not apply.
(c) In principle and in the absence of an agreement to the contrary the carrier may not claim additional freight or special compensation when he had to overcome (unforeseen) hindrances, incurred extra costs or make additional efforts etc. in performing his duties under the contract of carriage.

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

(a) The meaning of a "freight prepaid" clause in a bill of lading is to assure the consignee/subsequent holder of the bill of lading that as between him and the carrier no liability of freight can be asserted. The expression "freight prepaid" does not prove that the shipper in fact has paid the freight to the carrier, nor is it conclusive evidence that the shipper agreed to pay the freight (in advance):

whether or not the shipper agreed to do so depends on the terms of the contract which has to be deduced from all of the relevant circumstances, including the terms of the bill of lading which is (or will be) issued.
(b) A "freight collect" clause indicates to the subsequent bill of lading holder/consignee that he will become liable for freight according to the terms of the bill of lading as from the moment that he becomes party to the contract of carriage. It does not - normally and without more - have the effect that the carrier cannot recover the freight from the shipper once the subsequent bill of lading holder/consignee is liable for the freight (but is unwilling or unable to pay ; cf. 2.1.1 sub d).

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

A "cesser" clause in the bill of lading will in principle relieve the shipper from certain payment obligations as indicated in such clause, after he parted with the bill of lading. The precise relieve depends on the wording of the "cesser" clause concerned. Often, the relieve of the shipper is restricted to such sums as the bill of lading holder is able to obtain by exercising the lien on the cargo.
Dutch law does not include any specific provision relating to "cesser" clauses. It is submitted that a "cesser" clause which includes the usual terms, will be held legally valid. It may be doubted, however, whether a "cesser" clause (as referred to in the question) purporting to relieve the shipper of all liability on shipment of the goods - without any restriction - will stand the test of the general principle under Dutch law of reasonableness and fairness.

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

A carrier may exercise the right of retention on the goods (to withhold delivery of the goods) which he detains in connection with the contract of carriage for what the consignee owes or will owe him for the carriage of these goods, as well as for what is owed or will be owed on these goods as contribution to general average. With approval of the court, the retained goods may be sold and the carrier has a priority right over the proceeds of such sale. This right of retention lapses as soon as the carrier has been paid the amount over which there is no dispute and sufficient security has been furnished for the payment of those amounts over which there is a dispute or of which the level cannot be determined (Art. 8:489-2 DCC).
Furthermore, a carrier may for any amount due to him seek recourse through attachment of the goods carried on board of a vessel during one month after the day the goods left the vessel, provided always that no bona fide right to the goods has been obtained by a third party for value (Art. 626-1 Dutch Code of Civil Proceedings). For such recourse it is not needed that the consignee is the debtor. In the event that the voyagecharterer is the debtor, a buyer/consignee is not automatically obtaining a bona fide right to the goods because such consignee, who was an owner of the cargo before its delivery by the carrier, is (or ought to be) aware that for the carriage any payment was or might fall due.

Therefore, any assumption of such consignee that the freight or charges would have been fully paid is not justified and may conflict with the requirement of his rights being bona fide as referred to above.
Irrespective of the law applicable to a contract of carriage of goods, the law of the state to which the goods are carried for discharge shall apply to the question whether and to what extent the carrier shall have a right of retention on the goods (Art. 6 Dutch Conflict of Laws Act in the field of Maritime- and Inland Navigation Law).

2.2 – Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

(a) If a bill of lading is issued, the carrier can only recover from the bill of lading holder those charges which are apparent from such bill of lading. This applies irrespective whether such bill of lading holder is the shipper, an intermediate bill of lading holder or the consignee. In addition, towards the shipper, the carrier is also entitled to invoke the terms of the contract of carriage which he concluded with him, which terms may include a shippers' liability for deadfreight and other charges. These liabilities are not affected by delivery of the goods to the consignee.
(b) As to any costs incurred in respect of the goods, which are caused by *negotiorum gestio* of the carrier (*i.e.* costs incurred due to acts performed by the carrier outside the contract of carriage), the shipper, the consignee and, in the event a bill of lading is issued, the bill of lading holder are jointly and severally liable to the carrier for the reimbursement of these costs (Art. 8:488 DCC). These liabilities are not affected by delivery of the goods to the consignee.
(c) Debtor of those general average contributions which have to be made by the cargo interests, is the consignee of such cargo (Art. 8:612 DCC). This liability is not affected by delivery of the goods to the consignee.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

The answers given to question 2.1.7. in relation to freight, apply to deadfreight and other charges as well.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from 'the merchant' in respect of other goods?

No, the rights as referred to in the answers to question 2.1.7 apply only to amounts due "for the carriage of those goods" and do not extend to any sums due in respect of other goods.
Privileged, however, on all goods on board of a vessel are claims based on salvage and contributions of those goods in general average. Further privileged

claims are those resulting from the contract of carriage of certain goods and claims for costs incurred by the carrier because of the fact that, as *negotiorum gestor*, he involved himself in looking after the interests of persons entitled to those goods, but these privileges are only over the specific goods, and only to the extent that the carrier has a right of retention on those goods (Art. 8:222-2 DCC). The privileged claims referred to above have created a privilege over the goods, with the consequence that recourse may then be taken against them by priority, even if their owner is not the debtor of these claims at the time that the privilege was created (Art. 8:226 DCC). The privileges will be extinguished upon delivery of the goods to the person who is entitled thereto and in the case of an enforced sale of the goods. The privileges, however, will remain in force as long as the goods are stored by the carrier because of the consignee not showing up in the discharge port as well as in cases that the carrier has sought recourse against the goods through their attachment according to Art 626 DCCP, as referred to in the answer to question 2.1.7.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

A right of retention cannot be exercised after delivery of the goods to the consignee, but a recourse against the goods following their attachment according to Art. 626 DCCP is possible during a month after the day that the goods left the vessel. Refer to the answer to question 2.1.7 above.
Recourse against the goods based on a privileged claim will no longer be possible after delivery of the goods to the consignee, except in the event that the consignee does not show up in the discharge port and the carrier elects to store the goods as well as in the event of, again, Art. 626 DCCP, referred to above, is applied by the carrier.

3. – Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 – Legal basis of such rights and liabilities

3.1.1 - How is 'the shipper' defined under your national law? Is there a distinction between 'the shipper' and a supplier of the goods to be shipped who is not a party to the contract of carriage?

Under Dutch law the shipper is defined as the contractual counterpart of the carrier (Art. 8:370-1 DCC). There is indeed a distinction between the shipper ("afzender") and a supplier of goods to be shipped who is not a party to the contract of carriage ("belader").

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

When determining which person is the contractual counterpart of the carrier, the general yardstick is what the parties had mutually stated to each other and

what they have inferred and could infer from each other's statements and behaviour. The designation of a party as shipper in the bill of lading is one of the circumstances to be taken into account.
According to case law the FOB-buyer is regarded as the carrier's contractual counterpart, also if the FOB-seller is stated as the shipper in the bill of lading. On the other hand, in various cases where it had to be decided, whether the forwarder who made the booking in his own name was the contractual counterpart of the carrier, or his principal, who subsequently in the forwarder's bill of lading instruction to the carrier was mentioned to be named as the shipper in the bill of lading and, accordingly, so appeared in the bill of lading, was the contractual counterpart of the carrier, the indication of a party as the shipper in the bill of lading was the decisive factor. Sometimes in such a way that in these type of cases the naming of a person as the shipper in the bill of lading may be regarded as a presumption that such person is the contractual counterpart of the carrier.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The consignee, provided he is the rightful holder of the bill of lading, has the exclusive right to demand delivery of the cargo from the carrier according to the contract as evidenced by the bill of lading.
In principle, a consignee has no exclusive liabilities, unless through a "cesser" clause or otherwise these are indicated as such in the bill of lading. This non-exclusivity applies also to those liabilities which may be inferred from the delivery of the cargo and may be based on customs of the trade/port of discharge, such as the payment of certain charges on delivery.
As to the matter of a possible obligation of the consignee to take delivery, see the answer to question 3.2.1.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

Contractual rights and liabilities only pass to a holder of the bill of lading when the holder becomes a contractual party to the bill of lading contract. He will become such a party upon his (in words or action) expressed intention thereto and the (in most cases implied) acceptance of that intention by the carrier. Case law and authors have different views, whether the taking up of the bill of lading, against consideration, expresses such intention to become a party, or that the actual exercising of any of the rights under the bill of lading brings about the becoming of a party to the contract of carriage evidenced by the bill of lading. In the latter view, no rights or liabilities will pass to an intermediate bill of lading holder, as long as he remains inert.
It is only the rights and liabilities which are knowable from the bill of lading which will be passed on. Apart from the exclusive right of the consignee to claim delivery of the cargo, the question to what extent rights and liabilities are

the exclusive rights and liabilities of the consignee depends on the terms of the contract of carriage evidenced by the bill of lading, such as a "cesser" clause.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

Generally, after the shipper has ceased to hold the bill of lading he is no longer able to claim any rights under the bill of lading, but he remains liable in respect of the liabilities.
Rights and liabilities which are closely connected to the beginning of the voyage may - by their very nature - be regarded as exclusively belonging to the shipper. Examples are: the obligation to provide the cargo to the carrier, to submit information about the goods which is relevant to their proper carriage, to provide documentation so as to enable the carrier to comply with customs- and other formalities in the loading port, etc. Also, all liabilities which are not mentioned or properly referred to in the bill of lading are exclusive liabilities of the shipper except when the consignee did not act in good faith in obtaining the bill of lading.

3.2 – Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4. above)?

The answer depends on the question whether or not a consignee has become a party to the contract of carriage. If he has, the answer is yes. If he hasn't, the answer is no. In principle, a consignee is free to opt whether or not he will become a party to a contract of carriage.
He will become such a party upon his (in words or in action) expressed intention thereto and the (in most cases implied) acceptance of that intention by the carrier. (For good order's sake: a FOB-buyer as consignee will always be regarded as a party to the contract of carriage.) If the consignee becomes a party to the contract, he will be bound to the terms (also the implied ones), which are applicable to a consignee. Such terms are regarded to include the obligation to take delivery of the goods.
If the consignee doesn't do anything, he will not become a party to the contract of carriage and, consequently, not be bound to any of its terms: he cannot claim delivery nor damages and he will not be liable for freight, demurrage or any other consignee's duties. In that event, the contract of carriage will remain a contract between the shipper and the carrier only.
In the Netherlands, controversy exists as to the question at which moment the consignee may be considered to have entered into the contract of carriage as laid down in a bill of lading. Case law and authors take different views, which can be summarized as the choice between: (1) the moment of taking up of the bill of lading from its previous holder, or, (2) the moment of demanding delivery of the goods in the discharge port. In the first view, a consignee/ bill

of lading holder is always obliged to receive the goods. In the second view, the consignee has the option to hide himself in order to escape any obligation under the contract of carriage as laid down in the bill of lading. However, views are common again that, if a consignee/bill of lading holder does not remain silent, but he makes use of his instruction rights or, for example, he requests for inspection of the goods before their delivery by the carrier, such consignee/bill of lading holder is no longer entitled to refuse delivery of the goods by the carrier.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

No. If one takes the view that a consignee is obliged to accept delivery of the goods from the carrier because he has become party to the contract of carriage, such obligation is not affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity. If the goods may have a negative value upon delivery, the costs of getting rid of them are, in principle, for the consignee (or his insurer), who may have a recourse action against the carrier.

4 – Rights to give instructions to the Carrier

4.1 - Who is the person entitled to give instructions to the carrier, and is the right to give such instructions transferable:
- *under a negotiable bill of lading*
- *undear a sea waybill*
- *if no contractual document is issued*

Under a negotiable bill of lading the person entitled to give instructions to the carrier is the holder of the full set of bills of lading.
Being tied to the holdership of a full set of bills of lading, this instruction right can be transferred by endorsement of the full set of bills of lading to a subsequent holder.

Under a sea waybill the person entitled to give instructions to the carrier is the shipper. His right expires as the consignee accepts the goods for delivery at the place of their destination.

This instruction right can be transferred, *e.g.* to a bank or to the consignee. It is required that such transfer is laid down in writing and is notified to the carrier. As a result, the transfer can be made through a clause to that effect, put on the sea waybill.

If no document is issued, the person entitled to give instructions to the carrier is the shipper. His right expires as the consignee accepts the goods for delivery at the place of their destination. This instruction right can be transferred, provided the transfer is laid down in writing and notified to the carrier.

4.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage.

(a) Instructions relating to the goods: According to Art. 8:40-1,2 DCC the carrier is obliged to accept instructions relating to the goods only if the instruction concerns a request for "delivery of the goods before their arrival at the place of their destination". The carrier is not obliged to accept such instructions:

(i) if he is not reasonably able to comply with the instructions given,

(ii) if the premature delivery would cause delay in the voyage,

(iii) if he and the parties interested in the other cargo on board of the vessel will not be indemnified for any costs and/or damages.

Dutch law is silent about any other possible instructions relating to the goods, such as to substitute the consignee for another person, to change the destination of the goods, to split the consignment of the goods and to issue delivery orders for each part of the goods, to accept (further) delivery instructions or to store the goods temporarily before their delivery. However, in practice, a carrier will comply with instructions relating to the goods themselves, provided such compliance is operationally feasible and the costs involved will be reimbursed. Sometimes, compliance with such instructions is a custom of the trade: in some commodity trades it is standard practice that bill of lading holders are entitled to split the consignment of the goods and, against surrender of (the full set of) the bills of lading, to receive delivery orders, which its holders entitle to claim delivery from the carrier of that part of the original consignment as indicated in the delivery order related to that part.
If the compliance with the instructions bring about that the contents of the bill of lading are no longer correct, such bill of lading will have to be amended by the carrier so as to reflect the carrying out of the instructions. This may even lead to withdrawal of the bills of lading and the issuing of new ones.

(b) Instructions relating to other matters arising under the contract of carriage: As to these matters
no obligation exists for the carrier to accept such instructions. In principle, parties are free to agree upon any change of the terms of the contract of carriage. In such an event, the bill of lading has to be adjusted or renewed accordingly. However, in view of the value that Dutch law attaches to the reliability of bills of lading in the hands of third parties, serious doubts may be expressed whether under Dutch law the practice of the issue of switched bills of lading, showing a different shipper and/or loading port than the first issued bills of lading do, will be upheld.

NORTH KOREA

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

Yes.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Yes.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.4 - What is the legal effect of clauses such as:
- "shipper's load and count"
- "said (by shipper) to contain"
- "particulars provided by shipper"
- "weight (etc.) unknown"

Weight unknown-carrier is not responsible for shortage of weight within the limit of allowable discrepancy between figures of b/l and of that ascertained on delivery.

1.3 - Delivery of the goods at destination

1.3.4 What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

To place cargo in warehouse for the expense and risk of the consignee.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document

- *with the date of shipment on board in the case of an 'on board' document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

With the date of signature.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

By master. In case of a time chartered ship the master signs with words "on behalf of charterer". In case of signature by the agent the power of attorney of the shipowner to be attached.

2 - Rights of the Carrier

2.1 - Freight

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

On the goods lost due to their inherent nature, vice or by the default of the charterer or shipper. The full freight shall be paid on the goods. On the goods lost by default of the carrier or by causes none of the parties concerned is liable for. No freight shall be paid.

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

"Freight prepaid" - Shipowner is not entitled to exercise lien on goods on the ground of non-payment of the freight.

NORWAY

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

The Norwegian Maritime Code of 24 June 1994, No 39, (the "MC"), section 274, reads as follows:

> "The Carrier shall be responsible for the goods while they are in his or her custody at the port of loading, during the carriage and at the port of discharge.
>
> The carrier shall be deemed to have the goods in his or her custody according to the first paragraph from the moment when the carrier receives the goods from the shipper or from any authority or other third party to whom the goods have to be delivered according to law or regulations applicable at the port of loading...."

Under a contract of sale subject to Norwegian law involving carriage of the goods, the position is that the goods will be deemed to have been delivered by the sellers to the buyers at the moment the carrier, pursuant to the terms in the contract of carriage receives the goods from the shipper (i.e. seller). See the Contract of Sale Act of 13 May 1988, No 27, Section 7 (2). Thus, the position under non-mandatory law is that the moment of delivery from the seller to the buyer under a contract of sale coincides with moment of delivery from shipper to the carrier under the contract of carriage.

When a sale is made on "shipment terms" we assume this means that delivery under the sale contract takes place when the goods are shipped onboard, whereas the period of the carrier's responsibility would under the MC commence before such time, namely upon delivery for shipment in the load port. This apparent lack of co-ordination should, however, not cause practical problems, since the seller/shipper in any event would be entitled to demand "shipped onboard" bills of lading pursuant to MC Section 338, see also 1.1.2 below.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

We believe it is desirable that the moment of delivery under the two contracts coincides. When delivery takes place to the carrier, the carrier will issue some kind of document which i.a. serves as evidence for the goods received (their weight, apparent condition etc.). It seems obviously desirable that delivery under the sales contract takes place at the same moment due to the use of such document in ascertaining the condition etc. of the goods in relation to the requirements for contractual delivery in the sales contract. This is particularly so if it is agreed under the sales contract that payment will be made against presentation of such document, see also 1.2.5 below.
A somewhat different matter is, however, that the statutory rules concerning the time of delivery under a contract of carriage is mandatorily regulated whereas delivery under sales contracts is non-mandatorily regulated. It will therefore be of importance that the non-mandatory rules on sales contracts correspond to the rule in respect of carriage of goods, which they do under Norwegian law. It may of course be that the parties to a sales contract have agreed a time of delivery which does not correspond to the time of delivery under the contract of carriage but this would then not be the fault of the legislator.
It may also be added that seen from the buyer/seller's perspective it may not be to any great disadvantage that delivery under the sales contract is agreed to take place after delivery takes place to the carrier. Under 1.1.1 above it transpires that a sale made on «shipment terms» will mean that delivery takes place under the sales contract after delivery to the carrier. Thus, «received for shipment» bills of lading will typically have been issued by the carrier before delivery under the sales contract. This, however, can easily be remedied by the fact that the seller/shipper in any event would be entitled to demand «shipped onboard» bills of lading. The function of the bill of lading in connection with performance of the sales contract would thereby be upheld while the seller/buyer would have additional protection in terms of the carriers' mandatory liability for possible pre-shipment damages whilst in his custody.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

The expression FIO(S) is defined in the MC section 336. It means that the charterer (under a charterparty) or the contracting shipper (under a bill of lading) shall provide and pay for the loading, discharge or stowing of the goods. We are aware that such terms may be seen in two different ways; as merely relieving the carrier from his (mandatory) liability in respect of these operations, or it may be seen as defining the scope of the contract of carriage. In the latter case the view would be that the carriage does not commence until the cargo is loaded (and stowed) and ends while the cargo is onboard the vessel ready for discharge.
As we see it the differing views should not be of much relevance as long as there is only questions of rights and obligations between the initial parties to a contract of carriage. When a third party (consignee) gets involved the question is, however, of importance and there are differing views among scholars. The problem is typically: If a bill of lading is issued which incorporates the terms of a charterparty containing FIOS terms, is then the

carrier relieved of responsibility towards the consignee if damage took place during loading/stowage of the cargo (which is the duty of the charterer/ shipper)?
There is an arbitration award which establishes that in such a case the otherwise mandatory rules on the scope of the contract for carriage would then be set aside in the sense that the consignee would have to accept the risk of damage to the goods during loading/stowing. Some scholars seem, however, to be of the view that the mandatorily regulated scope of carriage can not be set aside to the detriment of the consignee by contract terms in this way. Failing a binding Court decision the answer to the question therefore seems unclear.

1.2 – Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Pursuant to the MC, section 298 the carrier shall

> "... to a reasonable extent check the accuracy..."

of the information about the goods in the bill of lading. Further more if the carrier

> "... has reasonable grounds for doubting the accuracy of the information or has not had a reasonable opportunity to check its correctness..." [See sector 298, last sentence]

he shall make a reservation in the bill of lading.
What is meant by the word "reasonable" can be illustrated by some examples. If the cargo is stowed in a container, the carrier has no obligation - (nor a right) - to inspect the container. The carrier can clause the bill of lading with the expression (...container(s), said to contain...). Another example is a cargo of a very special technical nature where the carrier does not possess the necessary competence to determine whether all the components the cargo consists of are included. In such a case the clause "quantity unknown" can be used. On the other hand, the carrier would be expected to check the accuracy of the information given by the shipper as to quantum with regard to a bulk cargo by making his own measurements based on the ship's draft.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

Reference is made to the answer to question 1.2.1 above.

1.2.3 - What is the meaning of 'apparent'?

According to the MC, section 296, subsection 2:

> "A bill of lading shall contain statements on:
> 1) ...
> 2) the apparent condition of the goods and packing.
> ...."

The carrier is expected to have made a thorough check of the cargo enabling him to make a proper description in the bill of lading. If there is nothing to remark, the terms "...in apparent good order and condition" can be used. However, if for example a steel cargo is rusty, the clause "...steel plates rusty" should be included. Likewise, if the packing seems insufficient that should be included in the bill of lading.

1.2.4 - What is the legal effect of clauses such as:
- *"shipper's load and count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc.) unknown"*

As indicated above, this type of terms may relieve the carrier from responsibility, but only to the extent there was no reasonable means of checking the condition and the weight in connection with loading. If there was, these clauses will have no effect.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:
- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued.*

As stated under 1.1.2 above the document issued by the carrier in connection with receipt of the goods will typically serve a function of ascertaining whether delivery under the sales contract has been contractual. The role of the shipping document will be of particular importance when a bill of lading is issued. This is a document of title, meaning i.a. that payment under the sales contract usually is agreed to take place against the seller's production of the document.
The conclusive evidence rule in this regard means that the carrier is not entitled to introduce evidence showing that the condition of the goods was not as described in the bill of lading (with the qualifications as stated under 1.2.1 -1.2.4 above). If there were pre-shipment damages which the carrier should have but failed to state in the bill of lading, he will be liable for those as if they had taken place during the carriage.
This conclusive evidence rule in our view makes sense in protecting buyer's interest and thereby ensuring reliability of the document system at large when it is agreed that payment under the sales contract will be made against documents.
It may be added that, at least in theory, it would be so that the buyer would also have a remedy against the seller for such pre-shipment damages (since the risk would not have passed on to buyers at such time) but such a remedy could well be illusory when payment already has been made.
We may also add that if there should be no conclusive evidence rule, the

solution would be to allow the carrier to introduce evidences as to the pre-shipment condition of the cargo and that, in extension of this, the liability of the carrier would be for failing to properly clause the bills of lading. Under Norwegian law, this was the legal position before the conclusive evidence rule of the Hague-Visby Rules was introduced in the MC in 1973.
In our view the conclusive evidence rule has its advantage over the previous legal position in that it enhances the said point of ensuring reliability of the document system and also that it probably has the effect of discouraging litigation when compared with the previous system under Norwegian law.
With respect to sea waybills we, first of all, mention that the use of waybills is regulated in the MC but without the conclusive evidence rule applying, as it does to bills of lading. As will be apprehended from what is stated above, the need to have the conclusive evidence rule applying also to sea waybills would depend on the sea waybill's function (in respect of payment terms) under sales contracts. To our knowledge sea waybills are mainly not used when payment is agreed to take place against document, but rather under different types of payment terms (payment by receipt of the goods or, perhaps more commonly, on an "open account" basis between parties with well established credit lines). If, however, the tendency in the market should be an increased use of payment against document (sea waybill), then the considerations as stated above would apply accordingly.
As regards the question of no document being issued, there would obviously be no question of agreeing terms of payment against document. Therefore we do not see any point in having a conclusive evidence rule in such instances. In other words, the buyer would in such cases have no legitimate need for the special protection as against the carrier under the conclusive evidence rule.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- *if the fob buyer is named in the transport document as the shipper*
- *if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.*

Pursuant to the MC, section 299, third paragraph, the conclusive evidence rules will only benefit a third party acquiring a bill of lading in good faith in reliance on the accuracy of the statements in it. Thus, if a fob buyer is named as the "Shipper" (i.e. the bill of lading had been issued to the fob buyer by the carrier) the bill of lading will only be prima facie evidence of the conditions and quantity of goods.

1.3 – Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

We refer to our comments under 1.1.1 and 1.1.3 above, which would apply correspondingly to discharge/delivery of the goods at destination.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

See the answer to question 1.1.3 above.

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

Pursuant to the MC, section 268, the receiver shall receive the goods at the place and within the period agreed. If the receiver does not collect the goods within the period indicated, the carrier can warehouse the goods at the expense of the receiver. See the MC, section 271. If the goods have not been collected by the receiver within a reasonable period of time determined by the carrier, the goods can be sold at a public auction. See the MC, section 272. This in turn means that if the receiver should fail to carry out his obligation as stated, with the carrier exercising his right to warehousing the goods etc., the carrier will thereby be held to have duly performed the carriage with respect to earning of freight, timely delivery etc.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

See the answer to question 1.3.3 above.

1.4 – Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

We read this and the subsequent questions 1.4.2-1.4.4 to concern various aspects of one and the same type of problems, namely matters concerning the practise in various trades to deliver the cargo at destination without presentation of bills of lading (but rather against letters of indemnity from the actual receiver or other parties). We are in that respect aware that under some legal systems it may be of relevance to a suit made by the lawful holder of a bill whether the consignment to him took place after the carriage was performed, e.g. delivery made to a receiver who did not hold the original bills. In such circumstances it may be perceived as unfair if the carrier is to be held liable for the value of the cargo to a subsequent holder if the party who received the goods (without presentation of bills) at that time was in fact the true owner pursuant to the underlying sales contracts.
The MC does, however, not by its wording distinguish between such differing scenarios. In Section 302 the Code merely states that only the lawful holder of a bill of lading shall be entitled to take delivery of the goods. This means that if the carrier, in breach of this provision (and the contract of carriage), delivers to anyone else, he will be liable for any damages such lawful holder, who has acquired the bill in good faith, has suffered in consequence, and will have no right to invoke any contractual or statutory defences or limitations.
Therefore, the answers to questions 1.4.1 – 1.4.4 is that the holder of the bill

of lading has the same right of suit and the same type of claim for damages regardless of when the holder acquired the bill in relation to when delivery was made to a person without presentation of the bill of lading.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

See the answer to question 1.4.1 above.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

See the answer to question 1.4.1 above.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

See the answer to question 1.4.1 above.

1.5 – Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document
- with the date of shipment on board in the case of an 'on board' document
- with the date of signature
- with a date agreed by the shipper and the Carrier

(i) Received for shipment bill of lading
Pursuant to the MC, section 296 (b) the bill of lading shall contain the date on which the carrier received the good in his custody.

(ii) On board bill of lading
Pursuant to the MC, section 296, second paragraph, a shipped bill of lading (i.e. an on board bill of lading) shall state the date when the loading was completed.

(iii) Signature
The date of the signature does not need to be inserted.

(iv) Date agreed
There is no requirement that an agreed loading date (or date of receipt for shipment) be inserted in the transport document. On the contrary, this could easily be in contradiction of the purpose of dating as such, namely to reflect the actual date such loading (or receipt for shipment) occurred. Moreover, if an agreed loading date differs from the actual loading date and the agreed date is inserted without the actual date also being inserted, this of course entail fraud vis-à-vis third party acquirers

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

Pursuant to the MC section 296 (3) the bill of lading shall contain the name and principal place of business of the carrier. Section 295 further provides that a bill of lading signed by the master of the carrying vessel will be deemed to have been signed on behalf of the carrier.
It should be added that the "carrier" so mentioned will be the contracting carrier (as defined in the MC section 251). If therefore the carrying vessel is owned by a different party than the contracting carrier (through in-chartered tonnage) then the master's signature is deemed to have been made on behalf of the contracting carrier and not the "actual" carrier. This provision was introduced to avoid situations whereby Identity of Carrier clauses would effectively deprive the merchant of remedies for cargo claims due to the shipowning company (the actual carrier) being «mail-box» companies without financial backing. Moreover, the MC also has other provisions holding the actual carrier liable jointly and severally with the contracting carrier (as it is also provided for in Article 10 and 11 of the Hamburg Rules).

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

Pursuant to the MC, section 296, last paragraph, the bill of lading shall be signed by the carrier or a person acting on behalf of the carrier. The signature may also be produced by electronic means. Also a sea waybill shall be signed by the carrier or a person acting on behalf of the carrier.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

First some clarifying points on terminology: When the questionnaire refers to "original shipper", the corresponding terminology of the MC is the "sender", being the contracting party to the carrier as opposed to the shipper who merely delivers the goods for shipment.
The following will also entail answers to questions 2.1.6 – 2.1.7.
The system of the MC is basically that the sender/charterer remains responsible for the freight throughout. The receiver becomes responsible (in personam) upon receiving the goods, for any claims for freight and other charges which is indicated in the document of transport – if charterparty claims are involved; by incorporation of such charterparty terms.

Instead of delivering the goods to the receiver and acquiring such a claim in personam against him, the carrier may instead retain/lien the goods for any outstanding claims as stated.
Moreover, the MC contains an "anti-cesser" provision which states that the sender/charterer shall remain responsible for freight etc. even when such claims could have been recovered by retaining/liening the goods at the port of destination. The only reservation here is that to the extent the carrier knew or should have known that the sender/charterer would suffer losses as a result of the carrier not exercising such right of retention/lien, then the claim against the sender/charterer is reduced accordingly. Such loss-suffering situations will typically entail of insolvency by the receiver; the sender/charterer is unable to recover the claims for freight etc. under the sale contract and the carrier, having known about the insolvency risk, could have recovered these sums if he had exercised the right of retention/lien.
The "anti-cesser" provision is, however, non-mandatory and is inserted to mark a change from the previous MC which contained a cesser-solution as the non-mandatory rule.
There is no provision in the MC regulating the liability for freight etc. of an intermediate bill of lading holder, and it is believed that there would under the system of the MC be no room for such a right.

2.1.2 - When is the freight earned?

Unless otherwise agreed the freight will be deemed to be earned when the goods are delivered in the port of discharge.

2.1.3 - When is the freight payable?

Unless otherwise agreed the freight will be due on demand after the goods are delivered at destination.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

The MC, section 341(to which Section 265 refers), states as follows:

> "If part of the voyage has been performed when the chartering agreement is cancelled or ceases or when for some other reason the goods are discharged in a port other than the agreed port of discharge, the voyage carrier shall be entitle to distance freight...
> Distance freight is the agreed freight less an amount calculated on the basis of the properties of the remaining distance to the length of the agreed voyage..."

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

As indicated under 2.1.1 above, a "freight collect" (or "freight payable as per charterparty" etc.) stipulation will entail sufficient notice to the bill of lading holder that the carrier may bring such claims against him (or retain/lien the

goods for same) whereas "freight prepaid" bills will have the opposite effect of advising an acquirer of the bill in good faith that no such claims would be outstanding, see MC Section 299 second paragraph.

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

See 2.1.1 above.

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

See 2.1.1 above.

2.2 – Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

Similarly as under 2.1.1 above, the sender (contracting shipper)/charterer will remain responsible for such claims. To the extent such claims follow from the bill of lading (or by incorporation of charterparty terms) the receiver will be responsible (in personam) by taking delivery of the goods, or the carrier may instead retain/lien the goods for the outstanding claims. There is, however, a specific provision concerning demurrage, which, to protect the acquirer of a bill of lading , states that in order for demurrage (at load port) to be recoverable, whatever demurrage is outstanding has to be expressly stated on the bill of lading, MC Section 299 second paragraph.
There are no such liabilities for an intermediate bill of lading holder.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

If we understand the question correctly, it is asked whether the law provides for a general lien on cargo which is subject to the particular bill of lading, for any other sums due from the relevant receiver. The answer here would be "no".

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

We are not totally sure what the question is aiming at. Vis-à-vis a third party (bill of lading holder) the carrier's right of retention/lien will be confined to what is provided for in the bill of lading as stated under 2.1.1 above. We have not come across situations where as part of the claims inserted in the bill of lading there are claims expressly stated to be due which do not pertain to the shipment subject to the bill of lading carriage. If there should be a general provision for a lien right for "any sums due from the merchant" or the like, we assume that the position would be to adopt a restrictive construction of the

relevant provisions of the MC so that a right of retention/lien would be confined to sums payable in respect of the goods which are subject to the relevant bill of lading carriage.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

Any such rights of retaining possession/exercising lien can only be exercised to the extent the carrier actually retains possession of the goods – onboard the vessel or warehoused under his control. However, by taking receipt of the goods the receiver assumes liability in personam for any claims due pursuant to the terms of the bill of lading. See the MC, section 269.

3. – Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 – Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

As mentioned under 2.1.1 above, the MC defines the "shipper" as the person actually delivering the goods for carriage whereas "sender" is the term for the party entering into the contract with the carrier. Therefore there is a distinction as asked for in the question.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

We are aware of the fairly common use of the term "shipper" on the first page of standard bills of lading - although also the term "consignor" is being used. The shipper so stated may or may not be the "sender". This will depend on the terms of the sale contract (fob/cif terms) of which the carrier may not have knowledge. Therefore we believe there would be no presumption that the shipper so stated (namely the one who actually delivers the goods) is also liable for payment of freight etc. The person liable will be the one who contracted to have the goods shipped - the "sender".

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

As regards liabilities/obligations, we believe only the duty to take receipt of the goods at destination would be an obligation exclusively of the consignee. Also this obligation may, however, be seen as not fully affecting only the consignee, since if receipt of the goods is not taken in a timely manner, (see 1.3.3 above) the sender/charterer will remain responsible for any delay in terms of demurrage and/or damages for detention.

If, however, a cesser clause is agreed, the charterer/sender may be relieved of such payment obligations which the carrier ought to have made against the receiver, because of the relevant provisions in the MC being non-mandatory, see 2.1.1 above.
As regards rights exclusively of the consignee, such a right would of course be the entitlement to receipt of the goods by presentation of the bill of lading (which the shipper or other non-holder buyer in the string of sales contracts would not have). Corresponding to that right a possible right to nominate a berth etc. at discharge port could be said to be an exclusive right of the consignee. Apart from such rights relating to the consignee's role as receiver, we cannot see any exclusive rights of the receiver.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

The answer to this will partly involve what is outlined in 2.1.1. and also 3.1.3 above. The Code does not regulate this type of questions and there is scarcely any case law throwing light on what principles would apply. What is clear, however, is that the sender (contracting shipper) retains his obligations to pay freight and other charges irrespective of consignment of the bill of lading.
There might, however, be a question in respect of liability for shipment of dangerous goods. Here the MC, section 291 places liability on the sender. It may be added that this provision corresponds to that of Article 13 in the Hamburg Rules save that in the Code the responsible person is defined as the "sender" (and not the "actual shipper") whereas the Hamburg Rules makes no such distinction, e.g. the "shipper" being either the "contracting shipper" or the "actual shipper", see Hamburg Rules Article 1.
Under Norwegian law, although not expressly regulated, we doubt that there would be any basis for transferring any liability for shipment of dangerous goods from the sender to a consignee. Since such wrongful act would be committed by the sender (or the actual shipper) the transfer of rights and obligations entailed in the transfer/consignment of bills would most likely be confined to such rights and obligations which are expressly provided for in the Code as already mentioned. In other words, we believe there would be no underlying principles of law according to which such "debts" could be held to be transferred to a third party consignee.
Rights of a shipper under this heading could of course entail also the question of the right to give instructions concerning the goods en route, and the right to exercise stoppage in transitu, but we note that these points are covered under 4. below.

3.1.5- To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

We believe this question should already be sufficiently covered under 3.1.3

and 3.1.4 above, the essence being that the only exclusive liability of the sender (contracting shipper) after transfer/consignment of the bills would be liability for having shipped dangerous goods.

3.2 – Receipt of the goods

3.2.1- Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

See the answers to questions 1.3.3 and 1.3.4 above.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

Yes – the MC, section 260 provides: "For goods which no longer exists at the end of the carriage, freight can not be claimed unless the loss is a consequence of the nature of the goods, insufficiency of packing ...."
There is case law which provides some guidelines as to the degree of damage/loss necessary to forfeit the carrier's right to freight. In passing, we mention that the criteria so laid down basically correspond to the criteria as we know them from English case law.
Since the carrier is not deemed to have earned his fright when presenting goods in such damaged condition, we believe the consequence of this must be that the consignee is thereby relieved of his otherwise obligation to take delivery of the goods – in other words, it will be the carrier's obligation/risk to dispose of such damaged goods.

4 – <u>Rights to give instructions to the Carrier</u>

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

(i) Negotiable bill of lading

The right of instructions is not regulated in the MC in respect of bills of lading, apart from what is stated that the bill of lading holder of course has a right to receive the goods - and issue instructions in that regard.
With respect to a right of instruction while the vessel is en route, we shall first comment on the position in respect of bills of lading issued pursuant to charterparties. Here we believe the position would be that the charterer retains his right of instruction during the voyage – this right is often also expressly provided for in the charter (concerning heating, cooling of goods etc.). Even though the charterparty terms may be incorporated into the bill of lading, we doubt that a third party bill of lading holder (even if evidencing his position

as such a holder with a full set of bills) could have a right which takes precedence over the instruction right of the charterer. Instead the right of the bill of lading holder would come into effect only in connection with the vessel's arrival at destination, as stated.

In respect of the liner trade the answer may seem more uncertain since there are only one set of contractual terms governing the carriage. We believe, however, also here that the sender as the carrier's original contracting party, would retain the right of instruction up until the same point in time, namely the vessel's arrival at destination when the holder typically will assert his rights of taking delivery.

It should perhaps be added that there may be a limited practical need for giving instructions with respect to the goods in liner trade where the scope of the carrier's is typically confined to landing of the goods at the carrier's terminal etc., whilst under tramp bills of lading there may be options given with respect to the selection of ports/berths etc.

(ii) Sea waybill

Here the MC, section 308, second para. provides that the sender (contracting shipper) retains his right of instruction during the voyage up until the point when the consignee has "asserted" his right, which typically will consist of demanding delivery of the goods at destination. The sender may, however, irrevocably waive his right of instruction in favour of a named consignee at an earlier point in time.

(iii) No contractual document issued.

Here we contemplate a mere oral agreement between two parties to have the goods transported to a destination. In such circumstances it seems clear that the carrier is only obliged to take orders from the one with which he entered into the contract. In other words, if a third party should purport to be the true owner of the cargo at a time during the carriage, we believe it would follow from ordinary contractual law that the carrier would only be obliged to take instructions from his contracting party from whom he will receive remuneration and to whom the promise to perform the carriage is made (unless there should be indications that the "sender" had no right to the goods at the time of entering into the contract, which would involve questions of conversion and issues outside the scope of the question).

Finally, we mentioned that the MC contains a provision for the seller's right of stoppage in transitu (Section 307). This we believe, however, is outside the scope of the question since that would really not be a question of exercising a right under the transport agreement but often independently thereof.

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

As mentioned under 4.1.1. if the question involves a bill of lading issued pursuant to a charterparty, then the charterer's right of instruction and the carrier's obligation to comply would often be regulated in the charterparty – and any right of instruction by the bill of lading holder would come into play only in connection with discharge of the goods at destination. In the liner

trade such instructions would, as stated above, probably be less common. There may, nevertheless, be instances where the sender (contracting shipper) has such an interest e.g. in splitting the consignment of the goods etc. while the vessel is en route. We believe that to the extent such requests are of "innocent" nature (not entailing breach of the terms of the original bills of lading or requiring unreasonable efforts on the carrier's part), then the carrier would be obliged to follow such instructions. Also if complying with the instructions requires efforts and costs (for example re-stowing of the cargo while en route), the carrier would probably be entitled to a reasonable remuneration for expenses incurred, if those should not be expressly agreed.
As to "other matters arising under the contract of carriage" it is not totally clear to us what here is aimed at. What seems obvious is that the carrier would not be obliged to comply with any instruction/request to alter the carriage in breach of the original bill of lading terms, for example by proceeding to a different port of discharge. The same would apply to requests for alteration of bill of lading information be capable of misrepresenting the true position vis-à-vis potential bill of lading holders, such as changing the load port, the identity of the shippers etc. which is inserted in the original bills of lading. If there should be other types of instructions not relating to the goods which at the same time would not involve breach of the contract of carriage or be capable of deceiving third parties, we would respond in general terms as above, namely that if the carrier should have no reasonable grounds for refuting such compliance, he would be obliged to comply, possibly against a reasonable remuneration.
Enclosed herewith please find copy of a selected part of the Norwegian Maritime Code, containing the provisions referred to in the text.

* * *

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SPAIN

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

Negative.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

Affirmative.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

Negative. These clauses serve cost and performance allocation purposes only.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Such circumstances are a matter of fact governed by the Carrier's duty to examine the goods before taking them for shipment.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

These also constitute a matter of fact to be proven by the Carrier.

1.2.3 - What is the meaning of 'apparent'?

Apparent" is not a civil-law concept. Our equivalent version is the condition of the cargo after a visual inspection but does not extend to thorough, test-proof or likewise in-depth examinations.

1.2.4 - What is the legal effect of clauses such as:
- "'shipper's load and count"
- "said (by shipper) to contain"
- "particulars provided by shipper"
- "weight (etc.) unknown"

The legal effect of such clauses is to shift the burden of proof from the Carrier to the shipper regarding the condition of the cargo on shipment. Spain has adopted Article III, rule 4 of the Hague-Visby.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued
- if the contract of carriage is covered by a sea waybill
- if no transport document is issued.

The conclusive evidence rules should be maintained always unless the bill of lading or transport document is made non-negotiable.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

No provision available to that effect.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

Affirmative.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

Negative.

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

No, strictly speaking. Where the consignee does not co-operate the Carrier must deliver the goods into custody of the Court (judicial deposit).

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

See above under 1.3.3.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

The Carrier may not deliver the goods to anyone else but to the legitimate holder of the B/L.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

The same rights of suit as they exist under the Hague-Visby Rules for non-delivery of the cargo.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

The B/L cannot be endorsed after surrender to the Carrier for taking delivery of the goods. Where no B/L is presented and the B/L is endorsed after the cargo is delivered, then the rights of suit of the holder should not be affected by the fact that the cargo was collected by a non-holder of the B/L (presumably against a letter of indemnity).

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

Delivery without production of the B/L does not create any legal rights availing the position of someone who is not entitled to receive the goods.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document*
- *with the date of shipment on board in the case of an 'on board' document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

The B/L (not the "transport document") must be dated within 24 hours from the date of placing the goods of board the ship (Article 706 Commercial Code).

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

The B/L must bear the name and address of the Master (as at 1885), though it must be understood to refer to the Carrier at present time.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

Affirmative. By the Master and the Shipper.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

The matters relating to earning freight and to payment thereof are subject to the contractual provisions (Article 658 of the Commercial Code).

2.1.2 - When is the freight earned?

Subject to the contractual provisions.

2.1.3 - When is the freight payable?

Subject to the contractual provisions.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

Where the ship is lost or does not otherwise reach her destination, freight shall be payable pro rata to the distance performed (Article 659 C. Code); no freight shall be payable where the goods are lost by foundering or grounding of the ship (Art. 661); where vessel or goods are salved the freight shall be payable in full as the vessel, after being repaired, completes the voyage (Art. 662); where the contract is discharged by the Charterer due to lack of cargo he shall be liable to pay half of the agreed freight plus demurrage (Art. 689.1); where the vessel is loaded with cargo and the Master does not receive shippers' instructions, in the event of war or blockade, then the Master may proceed to a port of conveniency (neutral) and there bail the goods into Court (judicial deposit) and collect the freight due against the proceeds of the sale of such goods (Art. 678); the shipper may unload the goods before the voyage has commenced against payment of half of the freight due (Art. 685) and so he may discharge the contract before loading the cargo by payment of half of the freight agreed (Art. 688.1).

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

"Freight prepaid", "freight paid", "freight collect" are remarks that shall have

full effect vis-à-vis endorsees of the B/L; thus, a B/L marked "freight paid" will prevent the exercise of a lien on the cargo for a freight claim under Article 665 of the Commercial Code.

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

A "cesser" clause in a C/P may be held valid pursuant to Article 658 of the Commercial Code, and such may also be the case in a B/L by effect of Article 709 of the Commercial Code.

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

The Carrier has a right to obtain a judicial order for Court deposit (Article 665) but he may not exercise the lien on board or otherwise withhold discharge. Delivery may not be withheld against presentation of the B/L (Art. 715). Within a period of 20 days running from the date of delivery or from the deposit of the goods into the Court's custody the goods may be sold in order to collect freight that remains unpaid.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

Subject to contractual provisions.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

Please note answer under 2.1.7.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from 'the merchant' in respect of other goods?

Such rights extend to extra-freight, demurrage and damages for detention, and general average contribution. They do not extend to sums due from the merchant in respect of goods unrelated to the B/L concerned.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

Affirmative, during 20 days. But in no case where the goods have been transferred to a third party by means of sale or other monetary transaction (Art. 667).

3. - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is 'the shipper' defined under your national law? Is there a distinction between 'the shipper' and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The "shipper" is conceived to be a contractual counterpart of the Carrier who effectively provides the goods to be carried (Arts. 680 and 681 Commercial Code).

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

Affirmative, by effect of Arts. 709 and 706.4 of the Commercial Code.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The consignee, after the goods are discharged and tendered for delivery, must pay the freight and ancillary expenses immediately (Art. 686 Commercial Code); also, he must receive the cargo (Art. 668 Commercial Code); the consignee must co-operate with the Carrier in the survey or examination found to be damaged after discharge (Art. 22 Law of 22.12.49).

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

By reason of the transfer of the B/L through endorsement, so the successive endorsees of the B/L will gain title over the goods and will take over all the rights and liabilities of the original shipper (Article 708 Commercial Code).

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

Where the B/L is transferred by passing it to other(s) holders, then no rights on the cargo are retained by the Shipper. He will however retain the liabilities vis-à-vis the Carrier as defined by Arts. 14 and 15 of the Law of 22.12.49 (Arts. 14.5 and 5.3 of the Hague Rules, respectively).

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4. above)?

There is not a specified time for the Consignee to receive the goods under Spanish Law. Impliedly, he must co-operate with Carrier to complete delivery. He must present the B/L before the vessel commencing the discharge of the goods.

3.2.2 - *Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?*

Negative. However, the Carrier may rely on the provision of Article 711 (Commercial Code), whereby the B/L holder shall be solely responsible for the storing expenses and all damages caused by his inability to present the B/L to the Master before the discharge is commenced.

4 - Rights to give instructions to the Carrier

4.1 - *Who is the person entitled to give instructions to the carrier, and is the right to give such instructions transferable:*
- *under a negotiable bill of lading*
- *undear a sea waybill*
- *if no contractual document is issued*

Under a negotiable B/L, the contractual Charterer or the Shipper named in the B/L only. Under a sea waybill, the position will be the same in relation to the Shipper named therein.

4.2 - *Is the Carrier obliged to accept such instructions:*
- *as to matters relating to the goods themselves*
- *as to other matters arising under the contract of carriage.*

The Carrier is obliged to accept such instructions as to matter relating to the carriage and destination of the goods (though collecting all Bs/L previously issued in the event of a change of voyage as instructed by the Charterer/Shipper, Article 712 Commercial Code) and as to matters relating to the liability for the goods under the contract of carriage.

SWEDEN

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on "shipment terms"?

The period of the Carrier's responsibility and delivery, or passing of risk, under the contract of sale may, but does not necessarily, coincide. The contract of carriage and the contract of sale are separate contracts and the position depends on the respective terms.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

In theory yes, but no difficulties arise in practice if they do not coincide and there is no industry demand for change.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

"Liners terms" in general defines the scope of the contract of carriage including the moment of delivery to the Carrier. However, it is by no means a precise term and leaves some question marks concerning the exact scope of the contract of carriage and the exact moment of delivery.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

If the Carrier had positive knowledge of, or reasonably should have realised, the discrepancy, which the cargo owner must prove.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

It is a question of fact and what is reasonable in each case but the Carrier has no obligation to e.g. inspect a sealed container.

1.2.3 - What is the meaning of "apparent"?

Externally to all visible appearances in good condition and fit to withstand ordinary methods of transport.

1.2.4 - "What is the legal effect of clauses such as:
- "Shipper's load and Count"
- "said (by shipper) to contain"
- "particulars provided by shipper"
- "weight (etc) unknown"

The legal effect between the Carrier and the shipper is that it leaves the Carrier open grounds to challenge the information (unless the Carrier had actual knowledge, or should have had knowledge, about the correct figures, weight etc.). A Bill of Lading holder, acting in good faith, may rely on the figures, weight etc in the Bill of Lading. Accordingly, the legal effect of the clause as between the third party and the Carrier will be none.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sae Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued
- if the contract of carriage is covered by a sea waybill
- if no transport document is issued

The conclusive evidence provisions have a useful commercial function where a third party has relied on the accuracy of the transport document and should be maintained. This should be the case also where the carriage of goods is covered by a Seaway Bill.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example,
- if the fob buyer is named in the transport document as the shipper
- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

Yes, if the FOB buyer is a "third party acting in good faith".

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

See the response under 1.1.1 above.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

As per 1.1.3 above.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

No, the cooperation of the consignee/Bill of Lading holder is not necessary for a legal completion of delivery.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

The Carrier may warehouse the goods and recover the costs from the consignee assuming that he has become a party to the contract of carriage.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

The Bill of Lading is a document of title in a limited sense and rights of the holder as against the goods depend on the contract of sale.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

Only the lawful holder is entitled to take delivery and the lawful holder has rights against the Carrier.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

No.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

Again, it is the lawful holder that will carry the rights against the Carrier.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment o board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

It is a mandatory requirement that the transport documents contain the date of receipt by the Carrier in case of a "received for shipment" document, and the date of shipment onboard in the case of an "onboard" document.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

The Bill of Lading must contain the name and the principal place of business of the Carrier.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

The Bill of Lading must be signed by or on behalf of the Carrier.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

Assuming the shipper is the person with whom the Carrier has contracted to carry the goods the shipper will remain liable for the freight. The receiver also becomes liable on receiving the goods.

2.1.2 - When is the freight earned?

Freight is earned on delivery, but the contract may provide that it is deemed earned on an earlier date. The exception is that freight shall be paid if the goods have been lost due to their own propensity, insufficient packing or fault or negligence on the sender's side or if the Carrier has sold the goods for the owners' account or has discharged them, rendered them innocuous or destroyed them as being dangerous goods.

2.1.3 - When is the freight payable?

Unless otherwise agreed, the freight shall be paid upon reception of the goods.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

The main rule is that the freight is earned on deliver, i.e. if not delivered then freight is not payable. However, the corresponding amount is payable as damages provided the breach is caused by the party liable to pay freight.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

If the Bill of Lading is endorsed "freight prepaid" the Carrier cannot claim freight from a subsequent holder. A "freight collect" endorsement is noticed to subsequent holders that freight is outstanding, it does not, without more, discharge the shipper.

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

The Maritime Code contains a nonmandatory "anticesser" provision.

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

The Carrier has a lien for outstanding freight and other charges.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

As per 2.1.1 but in the case of loadport demurrage, the outstanding amount must be expressly stated on the Bill of Lading.

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

See response to 2.1.7.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

Not unless covered by very clear contractual provisions.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

No.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

"Sender" is defined as the contractual counterpart of the Carrier. The "Shipper" is defined as "the person who delivers the goods for carriage".

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

There is no presumption.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

None, subject to the effect of a cesser clause and a possible obligation to take delivery.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

The possible obligation to take delivery and other rights and obligations vested with the lawful holder/owner of the cargo.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

The shipper ceases to have a contractual right once the Bill of Lading is transferred to a lawful holder, but his liabilities remain unaffected by such transfer. Certain liabilities may not be assumed by a transferee, e.g. the obligation to supply information about the goods.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

Yes, subject the consignee having become a party to the contract of carriage.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

Not unless the goods have lost their commercial identity.

4 - <u>Rights to give instructions to the Carrier</u>

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

Under a negotiable Bill of Lading the lawful holder will have the right to give

instructions. The right will pass with the lawful transfer of the Bill of Lading to a new holder.

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

The Carrier is obliged to accept such instructions concerning the goods provided it becomes necessary to take any particular measures to preserve or carry the goods or otherwise to safeguard the goods owners' interests. As to other matters arising under the contract of carriage the answer is in general no.

TURKEY

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on "shipment terms"?

According to the Turkish Commercial Code (TKK) art. 1021, unless otherwise set by the local regulations and manner, all expenses for getting the cargo alongside the vessel (for loading) as well as same expenses for taking the delivery of the cargo from alongside of the vessel will be for the charterer's/receiver's account, the expenses for loading and unloading the cargo will be for the carrier's account. This scheme is also determining the commencement of the carrier's liability, such as the responsibility up to the moment of getting the cargo alongside the vessel which lies on the charterers during loading and the responsibility from the moment of taking the cargo from alongside the vessel is for the receiver, the carrier's responsibility commences from the moment when the cargo will be taken into the vessel and ends when the cargo will be discharged from the vessel to her alongside. We refer to the answer for 1.1.3., for the point of *"liner terms "*.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

We think that, in order to avoid difficult discrepancies, the moment of delivery under the contract of sale and the contract of carriage should not differ from each other.

1.1.3 - Does the expression "liner terms" or a FIO(S) (free in and out (stowed)) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

The answer given under 1.1.1 is for the liner terms; if the parties agree on FIO(S) terms, the commencement of the responsibility of the carrier shifts to the moment when the cargo is loaded into the holds -FIO- or alternatively when the cargo is stowed in the holds.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

According TTK Art. 1100/2, the carrier has the liberty to insert a remark on the bill of lading, if the conditions during the loading operations were not sufficient enough to confirm the information given by the shipper. The conditions are to be considered as the weather as well as the state of the loading and the time of that operation (day/night).

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

We refer for this question to Art. III.3.a of the Hague Rules: *("The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage").* In that type of circumstances the carrier will have no reasonable means of checking the particulars furnished by the shipper.

1.2.3 - What is the meaning of "apparent"?

The meaning of *"apparent"* as per Turkish Law is the condition of the cargo which can be seen from outside, this also means that there is no evidence in respect of the condition of the cargo which is inside.

1.2.4 - "What is the legal effect of clauses such as:
- *"Shipper's load and Count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc) unknown"*

The cited clauses have no legal effect at all against the subsequent holders of bill of lading, if the carrier will not place a reasonable and acceptable explanation next to those clauses.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 2; Hamburg Rules Article 16.3; CMI Uniform Rules for Sae Waybills Rule 5(ii)(b)) should be maintained/introduced as regards marks, the number, quantity or weights as furnished by the shipper, and the apparent order and condition of the goods:
- *if a negotiable bill of lading is issued*
- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued*

This is the same position under the Turkish Commercial Code Art. 1110, where

all entries on the bill of lading in respect of the cargo are establishing a prima facie evidence against the carrier. We think that this position must be maintained for alternative No. 1 and moreover be established for No. 2; on the other hand for alternative No. 3, where no transport document is issued, a different approach can be agreed.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example,

- if the fob buyer is named in the transport document as the shipper

- if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.

Under both alternatives, once the bill of lading has been issued by the carrier without any legally acceptable remark, the conclusive evidence rules in respect of marks, number, quantity or weight (as furnished by the shipper) will start to function, provided that the information is not misleadingly and deceitfully furnished by the shipper (no matter if he is at the same time the FOB buyer or not).

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on "delivered terms"?

The carrier is liable to deliver the cargo at the port of discharge (sec. 1061 i.c.w. 1052 TKK). The liability for the custody of the goods ends with the delivery. According to the law, the master would deliver the NOR whereupon the rightful receiver is required to take delivery within the agreed or customary laytime. However, the "D" Incoterms clause as well as the corresponding sec. 1133 TKK and sec. 182 *et seq.* TCO place an obligation on the seller to make available for the buyer the cargo at the place of delivery. The buyer may not necessarily be taking delivery directly from the carrier. As such, the point of time where the carrier's liability terminates may not necessarily coincide with the delivery of the goods under a sale contract.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

Where a FIO clause was agreed, the carrier's duties terminate at the moment when NOR is given and the holds are made ready for the discharging operations. Any and all responsibilities relating to the discharge operations are placed on the receiver. Thus, where the sale contract provides for "DES" and the carriage contract for "FIO", the obligations under both contracts would terminate at the same stage, namely when the goods are made ready for discharge by the buyer/receiver.

1.3.3 - Is the co-operation of the consignee/bill of lading holder necessary to complete delivery?

The co-operation of the consignee is not required to complete delivery. The law is phrased so as to enable the carrier to discharge all his responsibilities and recover all his outstandings without being dependent on the consignee. (See next sub-paragraph.).

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

If the receiver did not receive the goods within the laytime (and demurrage, where agreed) and/or did not appear upon presentation of the notice of readiness and/or could not be found/identified at all, sec. 1057 TKK confers the following rights on the carrier:

(i) to deliver the goods to a warehouse;

(ii) to claim demurrage, and where the agreed demurrage period has expired, damages for detention, for any and all delays arising from and/or in connection with the warehousing of the goods.

Delivery to a warehouse relieves the carrier from any and all liabilities under the contract of carriage (as may be defined in charterparties, bills of lading or other documents of transport), save that the carrier remains liable for the selection of the warehouse (sec. 91 c.1 TCO).

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

Where the goods have been delivered to a third party in good faith (claiming title under the sales contract), such party would have a better right as compared to the bill of lading holder (sec. 1104 TKK i.c.w. sec. 893 TCivilC). As such, the holder is not entitled to pursue any claim or remedy as against the *bona fide* receiver of the cargo.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

Delivery of the goods without surrender of the bill of lading constitutes breach of the contract and also gives rise to criminal liability. The holder is entitled to pursue the claim against the carrier for wrongful delivery of the cargo.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so, how?

Once the bill of lading has been presented to the carrier, the bill of lading may no longer be endorsed. However, up until presentation to the carrier, endorsement of the bill of lading transfers onto the endorsee any and all rights arising from and under the bill of lading against the carrier.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

This question is not clear. The person who has taken delivery without presentation of a bill of lading has no right of suit against the carrier; as indeed there would not appear to be any necessity for such a right to be granted. However, if the question was to inquire as to whether the carrier could sue under the letter of indemnity the person who has taken delivery without presentation of a bill of lading, the answer is in the affirmative.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a "received for shipment" document*
- *with the date of shipment o board in the case of an "on board" document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

According to sec. 1097 TKK, where a "received" bill of lading is issued, the date of receipt must be inserted; where the goods are taken on board the vessel, the date of the "on board" bill of lading must be inserted. The date of the signature must be identical to the date of receipt or completion of loading. Where the shipper and carrier agreed to insert a date, which is not in compliance of the actual dates, they will jointly be liable as against any and all future endorsees of the bill of lading. The liability arises also in criminal law.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier/the identity of the Carrier (e.g. "the registered owner of the carrying vessel")?

Sec. 1098(1) TKK requires that the name of the carrier is inserted. However, where the carrier was not so named in the bill of lading, sec. 1099 constitutes a presumption. According to this provision, where the name of the carrier is not indicated and the bill of lading was signed by the master or other representative of the owner, the owner is deemed to be the carrier.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

According to sec. 1097(4), the bill of lading shall be signed by the carrier or the master or any other representative of the owner. As the law stands today, electronic means of signature would not be valid.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate

holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

As the freight is a contractual obligation, the person who entered into a contract of carriage is obliged to pay it. However this obligation is transferred ex lege to the consignee (the legitimate holder of the Bill of Lading) when he takes delivery of the goods provided that the contract of carriage or the Bill of Lading, which enables him to claim delivery, stipulates that he will have to pay freight.

2.1.2 - When is the freight earned?

The parties are free to stipulate. In the absence of a stipulation, as the contract of carriage has the nature of a contract whereby the carrier undertakes a result, freight will be earned at the moment when the contract is performed in other words at the port of discharge.

2.1.3 - When is the freight payable?

This is left also to the discretion of the parties. In the lack of any express stipulation, the payment will take place at the moment of the delivery of the goods at the end.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

The parties are free to stipulate. In the absence of any stipulation the provisions of the Code of Commerce will be taken into consideration. We have special provisions as to the payment of freight in the case of the goods lost during transit, termination of the sea venture earlier than at port of discharge.

2.1.5 - What is the effect of an endorsement on the bill of lading reading "freight (pre) paid" or "freight collect"?

The endorsement of the Bill of Lading will not have the effect of imposing to the holder of it the obligation to pay freight. However, it is possible that the payment of freight or the fact of assuming the obligation to pay freight can be made a precondition for the Bill of Lading holder to claim delivery. When the B/L contains the clause "freight prepaid", the carrier can no longer claim freight from the consignee (the holder of the B/L). He will be deemed to have undertaken to deliver the goods without any claim as to the freight and/or accessories. But, in the case of a "freight collect" B/L, the situation is totally different since according to the B/L which constitutes the legal basis of the delivery, the consignee will have to accomplish the precondition (i.e. payment of the freight).

2.1.6 - What is the effect of a "cesser" clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

The cesser lien clause will have the effect of discharging the charterer and to grant a contractual lien over the goods for the sums due to the carrier.

2.1.7 - If the freight is unpaid what are the Carrier's right to lien the goods or to withhold delivery?

The carrier will not be under any obligation to deliver as long as freight is unpaid. Besides the law grants to the carrier a lien over the goods to recover the freight.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are they subject to any relevant contractual "provisions"?

What is said above is valid also for the deadfreight and other charges.

2.2.2 - If the items are unpaid, what are the Carrier's rights to lien the goods or to withhold delivery?

The carrier can refrain from delivery and exercise a lien over the cargo if the items in question are not paid.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from "the merchant" in respect of other goods?

No.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands?

The Code of Commerce states that the lien can be exercised during 30 days following the delivery provided that the goods are still in the hands of the consignee.

3 - <u>Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee</u>

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is "the shipper" defined under your national law? Is there a distinction between "the shipper" and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The shipper is the person who supplies the goods. He is not absolutely a party to the contract of carriage.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

No.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The shipper is alone entitled to claim the B/L. This is a solution adopted by virtue of the over seas sales.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

The B/L is a negotiable instrument. It can be issued "to order" and is also a document of title. The transfer of the B/L will have the effect of granting title over the goods and also the transfer of the (other) rights. Title over the goods and other rights will be transferred ultimately to the consignee (lawful current holder of the B/L).

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

After the transfer of the B/L, rights incorporated onto the B/L will no longer belong to the shipper. So the right to claim delivery at the end of the carriage will pass to the new acquirer of the B/L.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to co-operate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4 above)?

No, the Code of Commerce does not impose such an obligation. However the consignee who was late in taking delivery can be held to pay demurrage if he makes use of his right to claim the goods at the port of discharge.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

Same as above.

4 - <u>Rights to give instructions to the Carrier</u>

4.1.1 - Who is the person entitled to give instructions to the Carrier, and is the right to give such instructions transferable:
- under a negotiable bill of lading
- under a sea waybill
- if no contractual document is issued

4.1.2 - Is the Carrier obliged to accept such instructions:
- as to matters relating to the goods themselves
- as to other matters arising under the contract of carriage

The person entitled to give instructions to the carrier is the shipper when he possesses all the B/Ls. The Code of Commerce does not regulate the sea waybill. Therefore *lex contractu* will apply. If no contractual document is issued then the right to give instructions will belong to the person who entered into a contract with the carrier. On the other hand, provisions of the Code relating to transportation by road can be applied per analogiam.

UNITED KINGDOM*

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

In English law the period of the Carrier's responsibility for the goods does not necessarily commence at the same moment as delivery by the seller to the buyer under the contract of sale. The contract of carriage and the contract of sale are two distinct and separate contracts; normally the parties to the two contracts are not the same. The terms of one contract will therefore have little if any relevance to the proper construction of the other contract. The moment when the transfer of risk takes place as between seller and buyer will be governed by the contract of sale. The commencement of the carrier's responsibility for the goods will depend on the terms of the contract of carriage and will also depend in large measure on the question at what precise time the goods were in fact delivered into the possession of the carrier or the carrier's servants or agents at the place where the transit began.

A contract on "shipment terms" is understood to mean a contract of sale under whose terms the transfer of risk (though not necessarily of property) takes place when the goods are placed on board ship at the port of shipment. Under English law, the fact that the transfer of risk under the relevant contract takes place on shipment does not involve that "delivery" of the goods takes place at that stage. There is no rule in English law that risk passes on delivery and the meaning of "delivery" in CIF and FOB contracts cannot easily be stated.

Under English law, assuming INCOTERMS are not incorporated into the sale

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Anthony Diamond QC, Chairman BMLA Standing Committee on Carriage of Goods
30 September 1999

contract, FOB, CIF and C&F contracts are all examples of contracts "on shipment terms". In all three cases the risk of loss or damage passes to the buyer on shipment though under many FOB contracts and most CIF and C&F contracts the property will not pass until later. Where INCOTERMS are incorporated into the contract those terms expressly provide for each type of contract (namely for FOB, CIF and CFR contracts) that the transfer of risk is to take place when the goods "pass the ship's rail" at the port of shipment.
Traditionally loading was the joint responsibility of shipper and shipowner and it was the duty of the former at his risk and expense to bring the cargo alongside and to lift it to the ship's rail and of the shipowner thereafter to receive and stow the cargo.[1] Nowadays, however, there are a wide variety of different practices in different trades and ports under which goods may be delivered into the possession of the sea carrier at an earlier or later stage and under which one or other party may undertake the obligation to receive load and stow the cargo. Thus it is not uncommon in many liner trades for goods to be delivered by the seller to the sea carrier or his agents before the goods are taken on board ship or even before the ship has arrived at the loading port. In other circumstances a shipper or charterer may undertake to load and stow the goods so that his obligations include that part of the loading and stowing operation that takes place after the goods have passed the ship's rail.
As an overall generalisation one can say (as noted in para 16 of the introduction to INCOTERMS, 1990) that there is a lack of "synchronisation" between the commencement of the Carrier's responsibility under the contract of carriage and the passing of risk from seller to buyer under a contract of sale. It was the perceived lack of synchronisation that led to the introduction of sale contracts on FCA, CPT and CIP terms.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

In an ideal world the answer to this question might perhaps be "Yes". But any considered answer to this question should take commercial realities into account. One of the factors bearing on this question is the desire of many buyers and banks to obtain clean on-board bills of lading for the goods they have purchased or on which they are to make an advance. To satisfy this requirement the seller must tender clean bills of lading with the result that if the goods have been lost or damaged while in the custody of the carrier or the carrier's agents before shipment the seller may have to replace the damaged goods with sound goods so as to be in a position to require the carrier to issue a clean on-board bill of lading.
It thus can make good commercial sense for the parties to enter into a sale contract on "shipment terms" even if the goods are to be delivered to the sea carrier or his agents before the goods are taken on board ship.
The lack of "synchronisation" noted in the introduction to INCOTERMS has

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[1] *Harris v Best* (1892) 68 LT 76; Scrutton, on Charterparties 20th ed (1996) p.170.

not in English law, caused any difficulty in practice. While it would be neater if the moment of delivery both under the contract of sale and the contract of carriage could be made to coincide it is thought that commercial parties must be left to determine for themselves the moment of time at which the transfer of risk is to take place. Many different considerations can play a part and for this reason it is considered impracticable to lay down any general rule to ensure that the moment at which risk passes under the two contracts is made to coincide.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

The expression "liner terms" is commonly found in shipping documents and is usually understood to mean that the shipowner undertakes to arrange and bear the cost of loading (at least from the ship's rail) and of discharge (at least to the ship's rail). In a recent case dealing with the cost of discharge, the Court said:

> "Whilst this ("liner terms") is not a term of art, and its precise meaning may vary from case to case, its general meaning is clear. The shipowner undertakes both to load and to discharge the goods and to bear the cost of doing so. He may undertake responsibility also, and the question will arise in particular cases whether his undertaking, as regards either risk or expense, or both, in the case of discharge, extends beyond the ship's rail until the goods are loaded and delivered ashore. Thus, a current dictionary definition:
>
> Liner Terms Qualification to a freight rate which signifies that it consists of the ocean carriage and the cost of cargo handling at the loading and discharging ports according to the custom of those ports. This varies widely from country to country and, within countries, from port to port: in some ports, the freight excludes all cargo handling costs while in others the cost of handling between the hold and the ship's rail or quay is included. [The Marine Encyclopedic Dictionary by Eric Sullivan, FICS (1992)]
>
> 'Liner terms' therefore means always that the shipowner undertakes to arrange and to bear the costs of discharge, at least to the ship's rail".[2]

The meaning FIO(S) (free in and out (stowed)) is in a sense, the converse of "liner terms". It means that the cargo owner, shipper or charterer is to bear the cost to the shipowner of loading, stowing and discharging the cargo, including that part of those operations which take place on board ship. There are however a wide variety of clauses which can be called FIO(S) clauses. The expression "FIO(S)" is commonly found in shipping documents and where it stands alone without further definition its effect is probably confined to dealing with the cost of loading, stowing and discharging the cargo, as opposed to dealing with which party is to arrange for those operations or to assume the risks involved in them. There have been many reported cases[3] dealing with the question whether, under the words of particular contracts, the parties have effectively transferred

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2 *Ceval International Ltd v Cefetra BV* [1996] 1 Lloyd's Rep 464, 467.

from owners to shippers or charterers the duty to load, stow and discharge the cargo (so that, for example, the charterers are made liable for the consequences of bad stowage) or whether the contract deals only with the question which party is to bear the relevant costs.

A "Liner Terms" or FIO(S) clause may be relevant to the question at what moment the carrier's responsibility for the goods commences but this is very much dependent on the wording of the particular clause. Such terms standing alone normally deal only with which party is to bear the relevant costs and in such a case they do not define the scope of the contract of carriage or the moment of delivery to the carrier. If the FIO(S) clause goes further and places the whole responsibility and risk of the loading and stowage operation on the shipper it is possible that the stevedores who perform those operations may be treated as the shipper's agents; if so, delivery to the carrier would be held to occur when the stevedores place the cargo in the ship's holds. Conversely if, under a particular clause the carrier undertakes the whole responsibility and risk of loading the cargo (both before and after ship's rail) it will be clear that delivery to the shipowner takes place no later than the stage when the goods are taken up by the stevedores at the commencement of loading.

1.2 - Inspection of the goods and statements in the bill of lading

Before dealing with Questions 1.2.1 to 1.2.6 it should be mentioned that there have so far been comparatively few reported English decisions on the effect of Art III Rule 3 of the Hague Rules and the Hague Visby Rules. This may be due, in part, to the fact that, until the introduction of the Hague Visby Rules the particulars inserted in a bill of lading pursuant to the article were only "prima facie evidence of the receipt by the carrier of the goods as therein described"[4] and there was no conclusive evidence clause. Partly it may be due to the construction placed on Art. III Rule 3 in a number of cases[5] that the obligation to issue a bill of lading containing the particulars required by the article arises only "on demand of the shipper" and that simply requesting a bill of lading does not carry with it an implied request that the bill shall contain all the information set out in the article. It has been held that Art. III Rule 3(c) imposes an unqualified or "absolute" duty on the carrier to make an accurate statement of fact as to the apparent order and condition of the goods. The duty is not merely one which the shipowner or master must take reasonable care to perform.[6]

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3 See the authorities discussed in Scrutton (*op. cit.*) pp.173 to 176 and in Carver's Carriage of Goods, 13th ed. (1982), paras 1104 to 1106.

4 Art. III Rule 4 of the Hague Rules.

5 *Canada & Dominion & Sugar Co v Canadian National (WI)* SS [1947] AC 46; *Noble Resources Ltd v Cavalier Shipping Corporation (The Atlas)* [1996] 1 Lloyd's Rep 642; *The Mata K* [1998] 2 Lloyd's Rep 614; *The River Gurara* [1998] 1 Lloyd's Rep 224.

6 *Arctic Trader [1996]* 2 Lloyd's Rep 449 at p.458

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

There is no English authority on the point and it is thought that it would be a question of fact in each case whether the carrier can rely on the proviso. In considering whether a master had "reasonable grounds" for suspecting the particulars not accurately to represent the goods, a Court would probably apply the standard of a reasonably competent master. In one case, where a master refused to sign bills of lading containing figures at variance with the ship's figures the Court held that he had behaved reasonably in so doing.[7]

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

There is again no reported case where a shipper has requested that a bill of lading be issued containing certain particulars specified in Art. III Rule 3 and where the carrier has refused on the ground that he had "no reasonable means of checking" those particulars. It is thought that it would be a question of fact in each case whether the carrier can rely on the proviso. Where packages are stuffed in a sealed container the carrier would normally have no means of checking the numbers or characteristics of those packages.

1.2.3 - What is the meaning of 'apparent'?

A representation that cargo was shipped in apparent good order and condition constitutes an admission as against the shipowner that the goods were shipped externally to all appearances in good condition. The words constitute no admission as to the internal condition of the goods, or as to their quality.[8]
In the case of perishable goods, apparent good order and condition includes apparent ability to withstand ordinary methods of transport.[9]
The Court applies the test whether a Master or Chief Officer having a reasonable degree of skill and expertise, would regard the goods as being externally to all appearances in good condition. Since only external condition is in question a Master has no obligation or right to open packages to inspect their internal condition or quality.

1.2.4 - What is the legal effect of clauses such as:
- *"shipper's load and count"*
- *"said (by shipper) to contain"*
- *"particulars provided by shipper"*
- *"weight (etc.) unknown"*

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7 *The Bookadoura* [1989] 1 Lloyd's Rep 393.
8 Scrutton, *op. cit.*, p.120.
9 *Dent Line v Glen Line* (1940) 45 Com. Cas. 244.

Clauses such as these give rise to considerable difficulty in view of the terms of Art. III Rule 3 which oblige the carrier "on demand of the shipper" to issue a bill of lading containing certain particulars of the goods, as furnished in writing by the shipper, unless the proviso applies.

At common law, where the statement of the amount or quantity of the goods in the bill of lading is qualified by such words as "weight or quantity unknown" the bill of lading is not even *prima facie* evidence against the shipowner of the amount or quantity shipped provided that such amount or quantity is not drastically at odds with the quantity actually loaded[10] and the onus is on the cargo-owner of proving what in fact was shipped.[11]

Where the shipper has demanded a bill of lading showing the number of packages or pieces, or the quantity or the weight as provided by him in writing the carrier is bound under Art. III Rule 3 to issue a bill of lading showing one of these matters. The obligation is alternative. Therefore if the carrier issues a bill of lading showing both the number of pieces and the weight, he may qualify the statement as to weight, e.g. by the words "weight unknown". Such a bill of lading will then be *prima facie* evidence of the number of pieces but not of the weight.[12]

There remain difficulties in English law as regards the effect of including a qualification such as "weight unknown" in a bill of lading in circumstances where a bill of lading stating "weight unknown" would not comply with the requirements of Art. III Rule 3. It is possible that if there were evidence before the Court that the shipper had requested an unqualified statement as to the number of packages or pieces or the quantity or weight of the goods in circumstances where he was entitled to such a statement under Art. III Rule 3, a qualification such as "weight (etc) unknown" might be held to be ineffective. There has been no such evidence in any of the cases which have so far come before the Courts and, as noted above,[13] it has been held that simply requesting a bill of lading does not carry with it an implied request that the bill shall contain all the information set out in the article.

A distinction must be drawn between "weight (etc) unknown" and the other qualifications mentioned in the question such as "shipper's load and count", "said by shipper to contain" and "particulars provided by shipper". The effect of the latter clauses is far less certain since it may be held in an appropriate case that by signing the bill of lading the Master has impliedly accepted the shipper's particulars or figures. A container packed by the shipper is usually acknowledged as "one container in apparent good order and condition said to contain (the contents) as declared by the shipper". An acknowledgement in this

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10 *Conoco (UK) Ltd v Limai Maritime Co Ltd (The "Sirina")* [1988] 2 Lloyd's Rep 613.

11 This paragraph is taken from Scrutton, *op. cit.*, p.119. See also *New Chinese Co v Ocean SS Co* [1917] 2 KB 664 and *Attorney-General of Ceylon v Scindia* [1962] AC 60 and the cases cited in Scrutton, p.119 note 86.

12 This paragraph is taken from Scrutton, *op. cit.* p.432.

13 See note 5.

form does not it is thought, constitute conclusive evidence as to the condition or description of the contents in favour of an indorse of the bill of lading.[14] The questionnaire requests that, in dealing with the qualifications, the position both as between the Carrier and the shipper and the Carrier and subsequent holders of the bill of lading should be considered. Where a bill of lading contains the qualification "weight unknown" and there is no evidence before the Court that the shipper had requested an unqualified statement as to the weight of the goods or the proviso to Art. III Rule 3 applies, then (a) the bill will not be *prima facie* evidence of the weight of the goods shipped (provided, at any rate that the weight is not drastically at odds with the weight actually shipped) and both the shipper and any subsequent holder of the bill of lading will have the onus of proving the weight which in fact was shipped and (b) where the bill of lading has been transferred to a third party acting in good faith no estoppel can arise by reason of Art. III Rule 4 of the Hague Visby Rules. It is not logically possible to envisage a case where an estoppel can arise in respect of any particulars set out in a bill which are qualified by an effective reservation such as "weight (etc) unknown". It is thought that the same would apply under Art. 16.3 (b) of the Hamburg Rules.

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper, and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued
- if the contract of carriage is covered by a sea waybill
- if no transport document is issued.

It is considered that there are defects both in Art. III Rule 3 of the Hague Rules and Art. 15 of the Hamburg Rules. The former does not deal sufficiently with the effect of reservations such as "weight etc unknown" and the circumstances in which they are to be effective; the latter extends the required particulars to be included in the bill to an unnecessary extent; for example, the carrier is required to specify both the number of packages or pieces and "the weight of the goods or their quantity otherwise expressed". It is considered that the conclusive evidence rules should be limited to particulars of the goods which would be apparent on a reasonable external examination of the goods. To go further and to require particulars of weight to be stated in the circumstances

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[14] In *The River Gurara* [1998] 1 Lloyd's Rep 224 where it was conceded that "said to contain" was equivalent to a "weight (etc) unknown" provision, it was doubted by Philips LJ whether this concession had been rightly made on the ground that it was arguable that the carrier had impliedly accepted the shipper's description. In *The Mata K* [1998] 2 Lloyd's Rep 614 it was assumed that the expression "said to be" was equivalent to "weight unknown". In *The Esmeralda I* [1988] 1 Lloyds Rep 206 (decided by an Australian Court) a bill of lading which qualified the number of packages in a container by the words "said to contain — packed by shippers" and "particulars furnished by shipper of goods" was held to give rise to no estoppel and not to constitute even *prima facie* evidence of the number of packages shipped.

where it is not customary to weigh the goods at the time of shipment is to invite unnecessary litigation as to the effect of reservations inserted by the shipowner and to risk making a shipowner liable for matters over which he has no control. More generally, it is considered that the provisions of both the Hague Visby Rules and the Hamburg Rules fulfil a useful commercial function in supporting the function of a bill of lading as a receipt for the goods and in excluding or limiting the right of shipowners to resile from clear statements in the bill of lading where a third party has relied on the accuracy of the bill of lading, usually by paying for the goods shipped.

It is considered that Art. 16 Rule 3 of the Hamburg Rules constitutes an improvement over Art. III Rule 4 of the Hague Visby Rules in one respect; namely in requiring reliance on the description of the goods set out in the bill of lading as a condition for the carrier being deprived of the right to prove that the statement was inaccurate. Art. III Rule 4 of the Hague Visby Rules requires that the third party must have been acting in good faith but does not prescribe that the transferee must have relied on the statements in the bill when accepting the transfer.

It is considered that these or similar provisions (suitably amended) should be maintained for situations where negotiable bills of lading are issued and that they should be extended to cases where the contract of carriage is covered by a sea waybill so that the conclusive evidence clause would be available to a third party consignee who could show that in good faith he had acted in reliance on the description of the goods set out in the waybill. The position where no transport document is issued requires further study. There could be a case for introducing conclusive evidence rules where no transport document as such has been issued but where the contract of carriage is evidenced by electronic means, provided however that the clause should not operate unless a third party has acted in good faith in reliance on the description of the goods given by the carrier.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- *if the fob buyer is named in the transport document as the shipper*
- *if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.*

The answer to this question depends on whether the fob buyer was the original party to the contract of carriage or the bill has been transferred to him as "a third party acting in good faith" (Art. III Rule 4 of the Hague Visby Rules).

If the fob buyer is named in the transport document as the shipper this will usually be because he was the original party to the contract with the carrier so that the conclusive evidence clause will not benefit him.

If however the fob seller is named as the shipper, it is possible that the bill may have been transferred to the fob buyer on payment of the price of the goods. Under English law an unpaid vendor may take a bill of lading making the goods deliverable to his order and if he takes a bill in this form and not as agent for, or on behalf of, the purchaser, he thereby reserves to himself the power of

disposing of the goods[15] (the *ius dispondendi*); in these circumstances the property in the goods will not pass to the fob buyer on shipment but only when he pays or tenders the price against delivery of an indorsed bill of lading. If therefore the bill is taken to the order of the fob seller and is subsequently indorsed to the fob buyer the latter will probably be able to rely on the conclusive evidence clause in Art. III Rule 4.

If the fob buyer is shown in the bill of lading as the named consignee it may still be possible that the power of disposing of the goods was, on the facts, reserved by the seller so that in these circumstances, too, the fob buyer may be able to show that the bill of lading was transferred to him as a third party acting in good faith. But where the buyer is shown as the named consignee it might be held that the shipper took the bill on behalf of the buyer (the purchaser) or as his agent. This is far less likely if the bill was made out to the order of the seller.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

In English law, the time at which the goods are deemed to have been delivered under the contract of sale and the time at which the carrier is released from responsibility for the goods under the contract of carriage do not necessarily coincide. The contract of sale and the contract of carriage are two quite distinct contracts (which are likely to have been made between different parties), and it is the contract of carriage which determines when the carrier's responsibility ends.

The Hague-Visby Rules,[16] as they have been interpreted by the English courts, do not provide an answer to the question, "*when does the carrier's responsibility for the goods end?*" A literal reading of Art. III Rule 2[17] might suggest that the carrier is under an obligation to discharge the goods from the vessel, such that the carrier's responsibility for the goods cannot end before discharge is completed. However, the English courts have rejected the literal construction in favour of the view that the Rules do not define the *scope* of the carrier's obligations, they only determine the *manner* in which the obligations must be performed: the scope of the carrier's obligations (including when they begin and end) is a matter which the parties are free to determine by their own contract.[18] Accordingly, the terms of the sea waybill or bill of lading represent the starting point for determining when the carrier's responsibility ends.

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15 Sale of Goods Act 1979 Section 19.

16 The Hague-Visby Rules are given force of law in England by the Carriage of Goods by Sea Act 1971.

17 "*the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods*".

18 *Pyrene v Scindia* [1954] 2 QB 402 (Devlin J); *Renton v Palmyra* [1957] AC 149 (HL).

Many bills of lading contain clauses which make express provision for when the carrier's responsibility for the goods shall end.[19] Consistent with the principle that the parties themselves are free to determine the scope of the carrier's obligations, the Court will generally give effect to such a clause[20] according to its terms.[21] Plainly the effect of such a clause (depending upon its terms) may be that the carrier is released from responsibility for the goods before there is any delivery to the buyer or other consignee.[22] But if the clause purports to relieve the carrier from liability for loss of or damage to the goods arising from a negligent act occurring in the course of discharge (as opposed to defining the scope of the carrier's obligation to discharge the ship) the clause may be held to be invalidated by Act III Rule 8 of the Hague-Visby Rules.

Absent any express clause, the point at which the carrier's responsibility for the goods ends falls to be determined by reference to common law principles governing the bill of lading. At common law, the carrier's obligations under the bill of lading are discharged by performance (and thus the carrier's responsibility for the goods ends) when the goods are delivered to the consignee entitled to receive them under the bill of lading contract.[23] "Delivery" in this context involves placing the goods completely under the control of the consignee.[24]

The precise moment at which the goods will be taken to have been placed under the control of the consignee will depend on the facts of each case, and, in particular, on how the goods are discharged. Delivery to the consignee's agent is equivalent to the consignee itself.[25] Accordingly, in the typical case where the goods are discharged by stevedores, the carrier will be released as the goods are discharged if the stevedores are (as between carrier and consignee) to be treated as the consignee's agents. On the other hand, if the

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19 The gist of such clauses is generally that the carrier's responsibility shall cease once the goods have physically crossed the rail: for examples, see Scrutton, *op. cit.* p.296.

20 *Knight v Fleming* (1898) 5 Rettie 1070 (Court of Session). [NB: although this is a Scottish authority, it is cited by leading texts as reflecting the position under English law: see Scrutton, *op. cit.* p.290; Cooke "Voyage Charters" p.142]; *Chartered Bank of India v British Indian Steam Navigation* [1909] AC 369 (PC).

21 The Court is likely to hold, as a matter of construction, that such a clause does not release the carrier from liability for deliberate misconduct (e.g. misdelivery) at or after discharge: *Sze Hai Tong Bank v Rambler* [1959] AC 576 (PC); *The "Ines"* [1995] 2 Lloyd's Rep 144 (Clarke J).

22 This was the case in *Chartered Bank of India v British Indian Steam Navigation* [1909] AC 369 (PC). The bill provided that the liability of the carrier would *"absolutely cease"* once the goods were free of the ship's tackle. The carrier discharged the goods into the custody of its own agents. The goods were subsequently lost. The Privy Council held that the carrier had been released from responsibility, although the loss occurred before delivery to the consignee.

23 *Chartered Bank of India v British Indian Steam Navigation* [1909] AC 369 at 375 (PC); *Barclays Bank v Commissioners of Customs & Excise* [1963] 1 Lloyd's Rep 81 at 88 (Diplock J).

24 *British Shipowners' Co Ltd v Grimond* (1876) 3 Rettie 968 (Court of Session) [NB: again, a Scottish authority which is taken as reflecting the position in English law]; *Chartered Bank of India v British Indian Steam Navigation* [1909] AC 369 at 375 (PC). Accordingly, there is no delivery (and no discharge of the carrier's obligations) while the goods are subject to a carrier's lien: *Barber v Meyerstein* (1870) 4 HL 317.

25 For example, *British Shipowners' Co Ltd v Grimond* (1876) 3 Rettie 968; *Knight v Fleming* (1898) 25 Rettie 1070.

goods are discharged by the carrier's agents, then there will be no delivery until the goods are released to the consignee.[26]

In determining whether or not the stevedores are the consignee's agents, the terms of the sea waybill or bill of lading again represent the starting point. The bill may state expressly that the stevedores are the consignee's agents. Alternatively, the stevedores will be treated as the consignee's agents if the terms of the bill make the consignee responsible for discharge.

If the bill is silent as to the position of the stevedores or as to responsibility for discharge, it may be necessary to ask whether, on the facts, the stevedores who handled the cargo were the servants or agents of the carrier or of the consignee. Relevant factors would include who appointed and paid the stevedores and whether they acted under a contract made by the carrier or the consignee. In one case, where it was customary for discharge to be effected by the dock company's servants at the quay it was held, in the context of a claim for demurrage, that the stevedores were [27]the *carrier's* agents for the purposes of bringing the cargo out of the hold, but thereafter became the *consignee's* agents for the completion of discharge[28].

Accordingly, the moment at which delivery takes place under a bill of lading varies depending upon the terms of the bill of lading and the facts of the case. Thus, in any individual case, the moment of delivery will not necessarily coincide with the moment of delivery under a contract of sale on "delivered terms".

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

An FIO clause may be relevant to the question at what moment the carrier's responsibility ends but this is very much dependent on the wording of the particular clause. As explained earlier (see the answer to Question 1.1.3) the expression FIO, standing alone, has the limited effect of providing that the shipper or consignee shall pay the cost to the shipowner of loading and discharging the cargo. A clause in that limited form cannot affect the question where the carrier's responsibility ends. If the clause goes further and provides that the consignee undertakes the obligation to discharge the cargo, it is possible that the stevedores who perform the discharge may be treated as the consignee's agents; if so, delivery may be held to occur when the stevedores take up the cargo in the ship's holds.

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26 *Chartered Bank of India v British Indian Steam Navigation* [1909] AC 369 (PC), where the vessel discharged the goods into the hands of the carrier's agents, and the goods were later lost while still in the agent's custody: it was held that there had been no delivery, although discharge had been completed (but the carrier was released from responsibility by virtue of the express terms of the bill of lading).

27 Scrutton op.cit p.288. The position in relation to discharge is the converse of the common law rule in relation to loading, where it is the shipper's obligation to lift the cargo to the ship's rail, whereupon responsibility shifts to the carrier to receive and stow the cargo: Scrutton, op.cit.p.170.

28 *The "Jaederen"* [1892] p.351 (Gorrell Barnes J).

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

There is scant authority on this point in English law.

It may be argued that, conceptually, delivery is a bilateral process: the carrier must release the goods to the consignee, but equally the consignee must receive them, and there can be no delivery (and thus no end to the carrier's responsibility) unless and until the consignee does receive them.

Further, it is settled that the carrier does not fulfil the obligation to deliver simply by discharging the goods on arrival at the discharge port and leaving them in a place from which the consignee may collect them. The consignee must be given a reasonable opportunity to collect the goods. If the goods are lost or damaged after arrival but before the consignee has had reasonable opportunity to collect them, then the carrier remains liable.[29]

What happens however if the carrier does afford the consignee a reasonable period to collect the goods, but the consignee refuses or fails to do so? Does the carrier cease to be responsible for the goods at the end of the reasonable period: in other words, is a *tender* of delivery sufficient to discharge the carrier's obligations, whether or not the consignee accepts the tender?

There does not appear to be any English authority directly on point in the context of carriage of goods by sea. However, in a recent decision in a different context,[30] there was held to be an implied term of a contract of bailment that the bailee's responsibility for the goods would cease after the expiry of a reasonable time for their collection. A bill of lading contract is a contract of bailment, and application of this decision to bills of lading would suggest that the carrier who tenders goods for collection ceases, by virtue of an implied term, to be responsible for the goods if the consignee fails to collect them within a reasonable time.[31] If so, then the carrier is able, by tendering the goods for delivery, to obtain a release from responsibility without the consignee's co-operation.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

Under English law a consignee who is a bill of lading holder only incurs liability under the contract of carriage if he takes or demands delivery of the goods or makes a claim under the contract of carriage; see the answer to

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29 *Gatliffe v Bourne* (1838) 4 Bing NC 314, where the carrier discharged the goods onto the wharf immediately upon arrival and they were destroyed by fire before the consignee had had the opportunity to collect them.

30 *JJD v Avon Tyres* unrep. 19th January 1999 (Evans-Lombe J). The plaintiff had bailed moulds to the defendant under a contract for the manufacture of tyres. The contract was subsequently terminated. The defendant asked the plaintiff for instructions as to what to do with the moulds, but the plaintiff made no effort to collect them for several years, by which time they had become lost.

31 See also Palmer "Bailment" 2nd edn p.705ff.

Question 2.2.1 (*post*). Assuming, however, that the consignee eventually takes or demands delivery and thus becomes liable under the contract, his failure to collect the goods within a reasonable period will constitute a breach of contract and render him liable to the carrier for damages. Accordingly, if the carrier keeps the goods aboard the vessel, and as a result the vessel is detained waiting for the consignee to come to collect them, the carrier may be entitled to recover demurrage, if the contract so provides or damages for detention in the absence of any provision for demurrage.[32] But the carrier would be under a duty to mitigate his damages and in practice the cost and inconvenience involved in detaining the vessel may be such that the carrier's reasonable course is to discharge the goods and store them ashore. In principle, (subject to the proviso mentioned above) the carrier's storage costs should be recoverable from the consignee as damages for breach of contract.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

Under English law a bill of lading is a document of title to goods in a rather special sense. It acts as a kind of transferable "key to the warehouse"[33] and is thus a symbol of constructive possession of the goods. A bill of lading may also be used as part of the mechanism whereby the property in goods is transferred from a seller to a buyer or whereby a pledge of the goods is conferred on a lender but in such cases the transfer of the bill passes only such property or title to the goods as was intended to pass under the underlying contract of sale or pledge.[34]

Once the shipowner has delivered the goods to a person entitled to have them delivered to him a bill of lading in respect of those goods is extinguished as a document of title.[35]

In the example given in the Questionnaire, where the Carrier has delivered the goods against a letter of indemnity, the holder of the bill of lading might have a right of suit against the carrier (see the answer to question 1.4.2) but his right to claim the goods from the person to whom they had been delivered, or to recover damages in lieu, would depend on whether he or that person had title to those goods. The mere fact that the holder retained possession of the bill would not constitute proof of title since the holder might have consented to the release of the cargo against the letter of indemnity; indeed he might have

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32 *Hick v Rodoconachi* [1891] 2 QB 626 (CA); *The "Arne"* [1904] p.154 (DC).

33 *Meyerstein v Barber* (1866) LR 2 CP 38 and (1870) LR 4 HL 317; *Sanders v Maclean* (1883) 11 QBD 127.

34 *Sewell v Burdick* (1884) 10 App Cas 74; *The "Delfini"* [1990] 1 Lloyd's Rep 252 at p.268.

35 *Barber v Meyerstein* (1870) LR 4 HL 317; *London Joint Stock Bank v British Amsterdam* (1910) 16 Com Cas 102, 105; *The Future Express* [1992] 2 Lloyd's Rep 79.

ordered it. Since the bill of lading is only a document of title in the limited sense explained above, the rights of the holder as regards the *goods* after they had been released by the carrier would be dependent on the terms of the relevant contract or contracts of sale and in particular on any terms governing the passing of property and the right to possession.

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

Delivery of the cargo without presentation of the bill of lading constitutes a breach of the bill of lading contract,[36] even if the shipowner delivers the goods to the person entitled to the goods under the contract of sale.
Consequently the holder of the bill of lading would have rights of suit against the carrier if the latter delivered the goods against a letter of indemnity. Such rights of suit would be transferred to any named consignee identified in the bill and to any indorsee of the bill provided that he became the holder by virtue of a transaction made before the time when the bill of lading was extinguished as a document of title.[37]
There appears to be no reported case where a lawful holder of a bill of lading has requested a carrier to deliver the goods against a letter of indemnity and where the lawful holder has subsequently commenced proceedings against the carrier for damages for breach of contract. It is thought that it would, in those circumstances, constitute a defence to the carrier that the holder consented to the release of the cargo against the letter of indemnity. In any event the holder's remedy would be defeated by circuity of action.
In cases where the lawful holder has not consented to delivery of goods against a letter of indemnity he will be entitled to recover damages from the carrier for breach of contract, for breach of the relationship of bailment and/or for conversion of the goods.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

This is a question of some complexity in English law. It has been held that if the shipowner delivers goods against an indemnity to a person entitled at that time to have the goods delivered to him then the bill of lading is at that moment exhausted by delivery to the right person and having obtained the goods the consignee cannot thereafter by endorsement of the bill of lading convey any title to the goods to a third party.[38] Section 2(2) of the Carriage of Goods by Sea Act 1992 provides that a person shall not have any rights of suit transferred to him unless he becomes the holder of the bill of lading by virtue of a

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36 *The "Houda"* [1994] 2 Lloyd's Rep 541.

37 Ss. 2(1) and 2(2) of the Carriage of Goods by Sea Act 1992.

38 See *London Joint Stock Bank v British Amsterdam Maritime Agency* (*supra*) at p.105, where these words appear. However the title to goods passes at such time as the parties intend and intention can be evidenced by the transfer of a stale document; see Benjamin's Sale of Goods, 5th edition (1997), paras 19-084 and 19-085 and the cases there cited.

transaction effected in pursuance of any contractual or other arrangements made before the time when a right to possession of the goods ceased to attach to possession of the bill.

It would seem to follow that if the goods have been delivered at the request of the lawful holder of the bill of lading against an indemnity to the person entitled to those goods under the contract of sale, then at that moment the bill of lading is exhausted as a document of title and any person to whom the bill may subsequently be endorsed by virtue of a contractual or other arrangement made after such delivery will acquire no rights of suit against the carrier. Consequently the rights of suit, if any, will remain with the person who was the lawful holder of the bill at the time of delivery.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

The person to whom delivery has been made will have a right of suit against the Carrier (e.g. for damages for delivery of the goods in a damaged condition) in the following circumstances:

(1) if he subsequently becomes the lawful holder of the bill of lading (provided he does so by virtue of an agreement made before the time when a right to possession ceased to attach to possession of the bill) he will acquire rights of suit against the carrier under the bill of lading contract;

(2) if delivery was made by the carrier under a ship's delivery order which contained an undertaking to deliver the goods to the person to whom in fact the goods were delivered, he will acquire rights of suit against the carrier under the delivery order;[39]

(3) if a new contract can be inferred between the parties by virtue of delivery having been given against presentation of a document such as a ship's delivery order;[40]

Moreover, even if the party to whom delivery has been made has no rights of suit under the bill of lading contract, he may be able to bring proceedings against the carrier in tort if he had property in and/or the right to possession of the cargo at the time when the loss or damage occurred.[41]

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated

- with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document

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39 By virtue of s. 2(1)(c) of the Carriage of Goods by Sea Act 1992.

40 *Peter Cremer Westfälische GmbH v General Carriers SA* [1973] 2 Lloyd's Rep 366.

41 *The "Aliakmon"* [1986] AC 785.

- *with the date of shipment on board in the case of an 'on board' document*
- *with the date of signature*
- *with a date agreed by the shipper and the Carrier*

Under English law it is not essential to the validity of a transport document such as a bill of lading that it must be dated. Thus it has been held that a forged and false date does not render a bill of lading a nullity because dating is not part of the essence of a bill of lading.[42]

On the other hand the practice of dating a transport document is widespread and universal. Since a CIF seller is under a duty to tender a bill of lading on terms and in a form customary in the trade it is thought that an undated bill of lading would not normally be good tender under a CIF contract. Nor would an undated bill of lading be good tender under a letter of credit unless shipment on a named vessel had been indicated by a pre-printed wording on the bill that the goods had been shipped on a named vessel.[43]

Under English law an "on board" transport document such as a bill of lading should only be issued and dated when all of the cargo covered by the document has been loaded.[44] Similarly a "received for shipment" document should only be issued and dated when all the cargo covered by the document has been received by the Carrier.

If a Master or ship's agent issues an "on board" bill of lading bearing a date which he knows to be false (since it is earlier than the date of completion of loading), it is reasonably clear that the person so signing together with the carrier would normally be liable in fraud to anyone who suffers loss by relying on the accuracy of the date e.g. by taking up and paying for the bill of lading which he would have rejected if he had known the true date of completion of loading.[45] It would constitute no defence that the shipper colluded with the carrier in issuing a bill of lading bearing a date known to be false.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

There is no such requirement in English law. Some bills of lading contain express clauses identifying the carrier; for example most modern bills issued by the more reputable combined transport operators contain clauses identifying the carrier by name. Other bills of lading contain no such clause or are printed on paper headed with the names of vague entities such as "ABC Lines" or entities which are clearly no more than agents. Some bills of lading contain "demise" or "identity of carrier" clauses but these do not always

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42 *Kwei Tek Chao v British Traders and Shippers Ltd* [1954] 2 QB 459, 476 per Devlin J.

43 UCP 500 Art.23a.

44 *Mendala III Transport v Total Transport Corpn. (The Wilomi Tanana)* [1993] 2 Lloyd's Rep 41; Scrutton, *op. cit.*, p.66.

45 Scrutton, *op. cit.*, p.115.

resolve the difficulty of identifying the carrier. Normally, where the charter is not a demise, a bill of lading signed by the master or by the charterer as authorised agent of the master is construed as a contract with the shipowner.[46]

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

It is an undecided point in English law whether it is essential to the validity of a transport document such as a bill of lading that it must be signed. In practice however bills of lading are always signed (or otherwise authenticated) on behalf of the carrier, though the signature may be indecipherable. What is essential to the validity of a bill of lading is proof that it was issued by or on behalf of a carrier in respect of the goods covered by it. Since bills of lading are always in practice signed there would be difficulties in proving that a particular document had been issued on behalf of the carrier, or that it was more than a draft or provisional document, if it had not been signed. In addition an unsigned bill of lading would not be good tender under most forms of sale contract or under a letter of credit.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

In English law, the bill of lading is not itself the contract between the original parties; it is simply evidence of its terms.[47] Therefore the bill of lading may not in all cases establish the identity of the person liable to pay freight to the carrier. It is necessary in each case to establish with whom the carrier contracted; this is because the carriage is for reward and the personal liability to pay the reward is a contractual liability. The terms upon which the goods have been shipped may not be in all respects the same as those set out in the bill of lading. It therefore does not necessarily follow that in any given case, the named shipper is to be under a personal liability for the payment of the freight.

The personal liability is that of the person with whom the performing carrier has contracted to carry the goods.[48] This person will normally be the shipper.[49]

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46 Scrutton, *op. cit.*, p.80 and the authorities listed at note 81.

47 *The Ardennes* (1950) 84 Ll L Rep 340; [1951] 1 KB 55.

48 [1997] 2 Lloyd's Rep 641, Court of Appeal.

49 *Domett v Beckford* (1883) 5 B&Ad 521.

But the shipper may be shipping as the agent of the consignee, in which case the contract will be with the consignee.[50] If for example the consignee is the owner of the goods, he is *prima facie* liable to pay freight for them, as being the person with whom the contract of carriage is presumed to have been made.[51] Where goods have been shipped by a forwarding or shipping agent in the United Kingdom who has booked cargo space on a vessel and is known to be acting for a shipper whose name has not been disclosed, the forwarding or shipping agent incurs personal liability for the freight by reason of a long-established usage in the forwarding industry.[52]

A contract to pay the freight will not always be implied from the fact of shipment and the issue of a bill of lading.[53] It is possible for there to be more complex contractual schemes; the performing carrier may be in contractual relations with others as well, as for example where there is a voyage or time charter.

By s. 2(1) of the Carriage of Goods by Sea Act 1992, a person who becomes the lawful holder of a bill of lading has transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to the contract. By s. 3(1) of the Act, where a person in whom rights of suit are vested by virtue of s. 2(1) takes or demands delivery of any of the goods to which the bill of lading relates, or makes a claim under the contract of carriage against the carrier in respect of any of those goods, or is a person who, at a time before those rights were vested in him, took or demanded delivery from the carrier of any of those goods, that person shall become subject to the same liabilities under that contract (including any liability to pay freight) as if he had been a party to that contract. The liability of that person to the carrier is additional to, and not in substitution for, the liability of the original party to the contract of carriage: s. 3(3) of the Act. Whether the person who falls within s. 3(1) of the Act is liable to the carrier for the freight depends on whether the freight is due and unpaid, which will be determined by construing the terms of the contract of carriage.

Quite apart from the liability imposed by s. 3(1) of the Act, a person may become bound to a contract of carriage and liable to pay freight if a new contract with the carrier may be found as a fact.

2.1.2 - When is the freight earned?

Traditionally, freight has been described as "the reward payable to the carrier for the safe carriage and delivery of the goods.[54] At common law, no freight is payable unless the shipowner has substantially performed his obligation under

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50 See e.g. *Fragano v Long* (1825) 4 B&C 219, *Dickenson v Lano* (1860) 2 F&F 188.

50 *Coleman v Lambert* (1839) 5 M&W 502.

52 *Anglo Overseas Transport v Titan Industrial Corporation* [1959] 2 Lloyd's Rep 152; *Perishables Transport Co Ltd v N Spyropoulos (London) Ltd* [1964] 2 Lloyd's Rep 379; *Cory Brothers v Baldan Ltd* [1997] 2 Lloyd's Rep 58.

53 *Schmidt v Tiden* (1874) LR 9 QB 446.

54 *Kirchner v Venus* (1859) 12 Moore PC 361 at 390.

the contract of carriage by tending delivery of the goods at the discharge port, and no freight is payable if the goods are lost on the voyage or if for any reason (other than the fault of the shipper) the goods are not tendered for delivery at the port of destination.[55] If the carrier is able to deliver the goods, albeit in a damaged condition, at the port of destination, he is entitled to his freight in full without deduction for the damage,[56] although he may be liable in damages to those interested in the goods.[57]

The traditional position as to when freight is earned is often varied in practice by the inclusion of special terms in the bill of lading to the effect that freight is deemed earned on loading or on signing the bill of lading. In such circumstances, the carrier will be entitled to his freight even if the goods are lost on the voyage[58] and will be able to recover unpaid freight despite the loss of the goods.

2.1.3 - When is the freight payable?

At common law, freight is payable once it has been earned, i.e. on tender of delivery of the cargo. Payment and delivery are concurrent acts.[59] The carrier is entitled to refuse to discharge the cargo unless freight is paid for each portion as delivered.[60]

Again, special provisions in the bill of lading may determine the time of payment. Stipulations as to the time of payment vary considerably in practice, but a common form is one which provides that freight is payable within a specified number of days after completion of discharge. In *The Samos Glory*,[61] the final part of the freight was payable "after completion of discharge and settlement of demurrage". It was held that the obligation to pay the final part of freight only accrued when the demurrage liability had been determined by agreement or award.

Where the bill of lading provides that freight is deemed earned on signing the bill of lading, and then provides for when the freight shall be payable, the provision as to payment will generally be construed as providing only a mechanism for the determination of the date for payment; in the absence of clear language, the provision will not be construed as a condition precedent to the right to freight. Accordingly, if goods are lost after signature of the bill of lading but before the due date for payment, the carrier will be able to recover freight in full.[62]

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55 Scrutton, *op. cit.* p.321.

56 Scrutton, *op. cit., p.331.*

57 *The Aries* [1977] 1 WLR 185; *The Dominique* [1989] 1 Lloyd's Rep 431.

58 *The Karin Vatis* [1988] 2 Lloyd's Rep 330; *The Dominique* (*op. cit.*).

59 Scrutton, *op. cit.*, p.340.

60 Scrutton, *op. cit.*, p.341.

61 [1986] 2 Lloyd's Rep 603.

62 See *The Karin Vatis*, footnote 58 above.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

Under the doctrine of frustration, circumstances which substantially delay the performance of the contract of carriage or render its performance impossible may discharge the parties to the contract. Frustration occurs whenever the law recognises that supervening and unforeseen circumstances, arising without default on the part of either party, have rendered a contractual obligation incapable of being performed because in such circumstances performance would be something radically different from that which was undertaken by the contract.[63]

The Law Reform (Frustrated Contracts) Act 1943 does not apply to contracts of carriage.[64] Accordingly, the common law determines the consequences of frustration. At common law, the effect of the frustration of a contract is that the parties are discharged from performance of obligations for the future, but because the contract is not dissolved *ab initio*, obligations which have accrued prior to the date of frustration remain to be performed.

Accordingly, if the vessel sinks with her cargo, then in the absence of special provision in the contract of carriage, the carrier will not be entitled to any freight. If, however, the contract of carriage provides that freight is deemed earned on signing of bills of lading, then the carrier will be able to recover the unpaid freight from the shipper despite the frustration of the contract; this is because the obligation to pay freight accrued before the frustration of the contract. This will be the case, even if the contract of carriage provided that some or all of the freight deemed to be earned on signing of the bill of lading is not to be paid until a date after the frustrating event (e.g. within a certain number of days after completion of discharge), unless such provision is construed to be a condition precedent to the right to freight.[65]

Under English law, the discharge of a contract of carriage for breach operates prospectively; obligations which accrued prior to the date of discharge are unaffected. Accordingly, if freight is deemed earned on signing of the bill of lading, the carrier is entitled to recover freight in full, even if after signature of the bill of lading the carrier commits a repudiatory breach of contract which is accepted as bringing the contract to an end.[66] Again, this will be the case despite a provision as to the date when the freight is to be paid, unless such provision is to be construed as a condition precedent to the right to freight.

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

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63 Scrutton, *op. cit.*, p.23.

64 See s. 2(5)(a). The Act does apply to time charterparties and charterparties by way of demise.

65 See *The Karin Vatis*, *op. cit.*, footnote 58.

66 *The Dominique* [1989] 1 Lloyd's Rep 431.

Freight is *prima facie* payable according to the terms of the contract of carriage. A bill of lading marked with the words "freight paid" or "freight prepaid" will serve as a receipt for the freight. The question has been discussed[67] whether the words "freight paid" or "freight prepaid" can operate as an estoppel so as to prevent the carrier claiming freight from a third party who took up the bill without knowledge that in fact the freight had not been paid. Despite some authority to the contrary, the point remains an open one.
"Freight collect" bills of lading may be used under CIF or C&F sale contracts. Under these forms of sale contract, payment of the freight element in the price may be effected in one of two ways. The first way is for the seller to prepay the freight and invoice the buyer for the full CIF price, which is payable by the buyer against the shipping documents. The second way is for the seller to leave the buyer to pay the freight on the delivery of the goods, invoicing him only for the CIF price less freight. When the first method is used, the seller provides freight prepaid bills of lading. When the second method is used he provides so-called freight collect bills of lading, that is to say, bills of lading under which freight is payable by the receiver (who may be the buyer himself or a sub-buyer from the buyer) to the ship at the port of discharge. The shipowner is not obliged to deliver the cargo against the "freight collect" bill of lading before receiving payment of the freight.

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

A cesser clause in a bill of lading in a language apparently wide enough to relieve the shipper of all liability upon shipment of the goods will generally not be construed so as to relieve the shipper of all liability unless an alternative remedy is available to owners, e.g. by means of a lien under the terms of the bill of lading.[68]

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

There are two sources of a Carrier's right to lien the goods or withhold delivery: express agreement, and the common law which applies in the absence of express agreement.
At common law, a Carrier has a possessory lien for unpaid freight.[69] Such a right depends on possession of the goods. Furthermore, such a right only exists at common law if the agreed time for payment of freight is contemporaneous with the time of delivery of the goods. So in the absence of express agreement, there is no lien for unpaid freight which was payable before the delivery of the goods or for freight which is not due when delivery of the goods is sought.

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67 See *The Indian Reliance* [1997] 1 Lloyd's Rep 52 at 55; *The Nanfri* [1979] AC 757 at 784.
68 See e.g. *The Aegis Britannic* [1987] 1 Lloyd's Rep 119, CA (a charterparty case).
69 See generally Scrutton, *op. cit.*, pp.379-382.

The common law lien for freight applies to all goods coming to the same consignee on the same voyage for the freight due on all or any part of the goods.
The Carrier may do what is reasonable to maintain his lien. He will not lose his lien by warehousing the goods ashore.
The possessory lien at common law does not of itself confer any right to sell goods the subject of the lien to realise the freight due, unless the goods have been abandoned by all persons entitled to them and have thereby become the Carrier's property.
Express agreements for a lien for unpaid freight are now common and generally effect will be given to the terms of the express agreement.

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holders of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual "provisions"?

(part (i))

The shipper's liability for these charges arises as a matter of contract. The liabilities of the original party to the contract of carriage remain unaffected by the transfer of the bill.
By s. 2(1) of the Carriage of Goods by Sea Act 1992, a person who becomes a lawful holder of a bill of lading has transferred to and vested in him all rights of suit under the contract of carriage as if he had been party to that contract. However, as a statutory *quid pro quo* for this transfer of rights, a person in whom rights of suit are vested and:
(1) who takes or demands delivery from the carrier of any goods to which the bill of lading relates;
(2) who makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
(3) who, at a time before the rights of suit were vested in him, took or demanded delivery from the carrier of any of those goods;
will become subject to the same liabilities under the contract as if he had been a party to that contract (s. 3(1)).
The "lawful holder" includes:
(1) a person in possession of the bill of lading who is the named consignee;
(2) a person in possession of the bill of lading as a result of the completion by delivery of the bill of lading, or any indorsement of the bill of lading or, in the case of a bearer bill, transfer of the bill of lading;
(3) a person with possession of the bill as a result of transactions by virtue of which he would have become a holder within paragraph (a) and (b) above, had not the transaction been effected at a time when the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill of lading related (s. 5(2)). In this last case, a person will only become a

lawful holder if he does so by virtue of a transaction effected pursuant to a contractual and other arrangement entered into before the time when the right to possession to the goods ceased to attach to the bill of lading, or as a result of the rejection of the goods or documents delivered to another person in pursuance of any such arrangement.

The words "the same liabilities" are extremely wide. It would appear to have been the intention of the Law Commission, who were responsible for the drafting of the Act, that these should be interpreted widely.[70]

Accordingly, contractual obligations undertaken by the shipper in respect of deadfreight, demurrage and other charges will be assumed by the consignee and intermediate holders in the following circumstances:

(1) where such persons become "lawful holders" of the bill of lading as defined in the paragraph above; and

(2) he either:

(1) takes or demands delivery from the carrier of any goods covered by the bill of lading after becoming a lawful holder; or

(2) he had taken or demanded delivery of the goods from the carrier before becoming the lawful holder; or

(3) he makes a claim under the contract of carriage against the carrier in respect of any of the goods covered by the bill of lading.

If liabilities under the bill of lading are vested in the consignee or an intermediate holder, this does not relieve the shipper of his original liabilities (s. 3(3)). The Act does not state whether an intermediate holder who has taken one of the steps specified above in relation to any goods and afterwards endorses the bill of lading and transfers the goods to a third party is thereby discharged from the liabilities imposed on him by the Act. It has however now been decided that there is a distinction between (a) a claim or demand for delivery of the goods, which may be withdrawn or abandoned and (b) actual delivery of the goods which, once taken, is irreversible. In the case of (a), the intermediate party may withdraw the claim or demand and endorse the bill to a third party purchaser instead. In such circumstances the intermediate party remains liable only until he endorses the bill to a party who fulfills the conditions of liability set out in the Act.[71]

A liability to contribute in general average attaches, apart from contract, to those parties who were the owners of goods at the time the general average act occurred.

(part (ii))

As noted above, the liabilities of the shipper are not affected by delivery to the consignee. An intermediate holder will only become subject to such liabilities

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[70] Paragraphs 2.24 to 2.29 of the Report of the Law Commission and the Scottish Law Commission on Rights of Suit in Respect of Carriage of Goods by Sea, Law Com No 196, Scot. Law Com No 130.

[71] *Borealis AB v Stargas Ltd (The "Berge Sisar")* [1998] 2 Lloyd's Rep 475. It is however understood that an appeal is pending to the House of Lords.

if (a) he himself has sought or seeks delivery of the goods, or (b) to exercise the rights of suit vested in him. In case (a), as explained above, it has recently been decided that, if the intermediate holder's attempt to obtain delivery of the goods does not succeed, he will remain subject to those liabilities only until such time as he endorses the bill of lading to a party who does obtain delivery of the goods. In case (b), the fact that the consignee has obtained possession of the goods before or after such rights of suit are exercised will not affect the intermediate holder's liabilities.

(part (iii))

The effect of the statutory vesting of liability is to make the intermediate holder or consignee in the relevant circumstances subject to liabilities "as if he had been a party to the contract". Accordingly the terms of the relevant liability will be subject to any relevant contractual provisions.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

At common law (that is to say in the absence of a relevant contractual possession), a Carrier will have a lien for general average contributions,[72] freight and for expenses incurred in protecting and preserving the goods.[73] However, in the absence of contract he will have no lien for deadfreight,[74] demurrage[75] or other charges.

The bill of lading may give contractual rights to lien in respect of deadfreight,[76] demurrage[77] and for any other charge which may be due to the Carrier under the bill of lading.[78] The precise charges covered by any lien clause in the bill of lading will be a matter of construction of the bill. Such clauses will be strictly construed.[79]

In addition to any lien clause appearing on the bill of lading itself, it is possible that such a clause may be incorporated by reference into the bill of lading from a charterparty to which the Carrier is party. Whether or not such a clause is incorporated by reference into the bill of lading depends upon the words of incorporation used. A clause providing "freight and all other conditions as per charter" will incorporate any lien stipulated for in the charterparty for loading and discharge port demurrage[80] and deadfreight.[81] The English courts are generally more ready to hold that lien clauses in a charterparty become terms

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72 *Huth v Lamport* (1886) 16 QBD 735; Scrutton, *op. cit.*, Articles 1543 and 144).
73 Scrutton, Article 184.
74 Scrutton, Article 196.
75 Scrutton, Article 94.
76 Scrutton, Article 196.
77 Scrutton, Article 93.
78 Scrutton, Article 196.
79 *The Cebu No 2* [1993] 1 QB 1.
80 *Gullischen v Stewart* (1882) 11 QBD 186.
81 *Kish v Taylor* [1912] AC 604.

of a bill of lading by words of incorporation[82] than other terms such as arbitration clauses.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from 'the merchant' in respect of other goods?

No such lien is granted by common law, and accordingly if a Carrier wishes to obtain such a lien it is necessary for him to secure its inclusion in the bill of lading. However a Carrier may create a lien by contract to cover sums due in respect of other goods.[83] Clear words would be required for a lien to cover sums due in respect of other goods, because of the restrictive approach to the construction of liens referred to above.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

A lien arising at common law is a possessory lien, and the continuation of such a lien depends upon the Carrier or his agent maintaining possession of the goods. A Carrier will not lose his lien by consenting to hold as agent of the consignee[84] by warehousing the goods ashore provided they are held to his order.[85]

A contractual lien will also generally require the continuation of the Carrier's possession in one of the manners just described to be effective. However, some contractual lien clauses do seek to provide for a lien which continues after the Carrier has parted with possession of the goods.[86]

Such a clause may operate so as to qualify any delivery to the charterer or bill of lading holder so that the goods are still held on behalf of the Carrier and to his order.[87]

After the goods have passed from the possession of the consignee, it is difficult to see on what basis such a clause could continue to operate, unless the consignee passed possession on terms which expressly sought to preserve the Carrier's lien. Moreover it is difficult to envisage that the clause can operate once a bulk cargo has been mixed in a shore tank with other cargo.

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82 *The Miramar* [1983] 2 Lloyd's Rep 319 at p.324.

83 See for example the lien for "all previously unsatisfied freight and charges on other goods due in respect of any shipment by any steamer or steamers of the line from either shipper of consignee" cited in Scrutton, Article 191 or the wider clause in *Whinney v Moss SS Co.* (1910) 15 Com Cas 114.

84 *Allan v Gripper* (1832) 2 C&J 218.

85 Scrutton, Article 189.

86 For example Clause 21 of the Asbatankvoy charter provides:
"LIEN: The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including the attorney's fees, of recovering the same, which lien shall continue after delivery of the goods into the possession of the Charterer, or of the holders of any such Bills of Lading covering the same or of any storagemen."

87 See the suggestion at Cooke, "Voyage Charters" p.686. The difficulty of this clause, and of reconciling it with the possessory nature of the lien, was commented upon by Evans J in *Rashtriya Chemicals and Fertilizers v Huddart Parker Industries* [1988] 1 Lloyd's Rep 342 at 350.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is 'the shipper' defined under your national law? Is there a distinction between 'the shipper' and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The term "shipper" is not defined in the Carriage of Goods by Sea Act 1992 ("the Act"), which is the statute which governs the transfer of rights and liabilities under shipping documents in English law. The term "shipper" would however generally (but not invariably) be understood to mean the party by whom a contract for the carriage of goods by sea has been concluded with a carrier[88] as opposed to the supplier of goods to be shipped who is not a party to the contract of carriage. See further below.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

It is not clear whether there is any such presumption. It is probably a rebuttable inference of fact that the shipper named in the bill of lading is the contractual counterpart of the carrier[89] because, albeit the bill of lading is not a contract (for that is made before the bill of lading is signed and delivered), it is excellent evidence of the contract[90] i.e. it is evidence that there is a contract between the shipper named in the bill of lading and the carrier on the terms set out in the bill of lading (but there may be no such contract, for example where the shipper is acting as an agent for a disclosed principal).
In cases where the charterer is himself the shipper, the bill of lading is to be taken only as acknowledgement of receipt of the goods,[91] but there will of course be a contract of affreightment between the shipper and the carrier on the terms of the charterparty.

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88 See the definition of "carrier" in Article 1(a) of the Hague Visby Rules: "'Carrier' includes the owner or charterer who enters into a contract of carriage with a shipper".

89 In *Goode* (2nd ed.) 1995 the shipper is defined as follows: "*The shipper is the person to whom the carrier undertakes the duty of transporting the goods. He may be the seller or buyer under a contract of sale, a freight forwarder or any other consignor. His identity is* prima facie *established by the bill of lading, but it does not necessarily follow that the person named in the 'shipper' box is the true contracting party.*" In *Cho Yang v Coral* Hobhouse LJ at p.643 col 1 cited authority for the proposition that the shipper may be shipping as agent for the consignee in which case the contract will be with the consignee. The view expressed by the editors of *Contracts for the Carriage of Goods* (LLP 1993 ed. Yates) is as follows (§1.6.5.1.49): "*as a general rule ... a person named as a shipper in a bill of lading will normally be considered as a party to the contract of carriage ...*".

90 See Scrutton, (*op. cit.*) p.67.

91 See Scrutton, *op. cit.* p.71 and the cases there cited.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The consignee has no rights and liabilities merely by being the consignee named in the bill of lading. The carrier is not entitled to deliver the goods to the consignee named in the bill of lading, without the production of the bill of lading, and does so at his risk if the consignee is not in fact entitled to the goods.[92]

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

It is proposed to deal separately with (a) the transfer of rights of suit under the contract of carriage and (b) the question of liabilities.

(a) The transfer of rights of suit

By virtue of s. 2(1) of the Carriage of Goods by Sea Act 1992 a person who becomes the lawful holder of a bill of lading shall have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract (this is subject to the provisos stated below).
As stated in the answer to question 2.2.1 the "lawful holder" includes a person who is in possession of the bill of lading and who by virtue of being identified in the bill is the consignee of the goods to which the bill relates. It also includes a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill.[93]
The effect of the transfer of rights to the lawful holder of a bill is to extinguish any entitlement to those rights of the original party to the contract of carriage and of any previous holder from whom those rights have been transferred.[94] Thus the shipper ceases to have contractual rights once someone else becomes the lawful holder of the bill of lading and the intermediate holder ceases to have contractual rights once someone else becomes the lawful holder.
There are three provisos. First the Act does not apply to what is commonly called a "straight" bill, i.e. one which is "incapable of transfer either by indorsement of, as a bearer bill, by delivery without indorsement". But such a bill may nevertheless be a sea waybill within the meaning of the Act.[95] Second, the transfer of rights of suit effected by the Act is of rights under the

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92 See Scrutton, *op. cit.* p.292 and Yates, §§1.6.15.2.8-9 and the cases there cited.

93 S. 5(2) of the 1992 Act.

94 S. 2(5) of the 1992 Act. The position of sea waybills however is somewhat different in that the Act does not extinguish any rights deriving from a person having been an original party to a contract contained in or evidenced by a sea waybill.

95 S. 1(2)(a) of the 1992 Act. The transfer of rights under a sea waybill is without prejudice to the rights of the original party to the contract.

contract of carriage "contained in or evidenced by" the bill of lading.[96] These words probably exclude terms or incidents of the contract which are not evidenced by the document itself and of which the transferee consignee has no notice.[97]

Third, there is no transfer of rights of suit where a bill of lading is transferred after the goods have been completely delivered to the person having a right under the bill of lading to claim them (i.e. after the time when the bill is extinguished as a document of title conferring constructive possession of the goods), unless the transferee becomes the holder by virtue of a transaction effected pursuant to any contractual or other arrangements made before the time at which the right to possession of the goods ceased to attach to possession of the bill, or as a result of the rejection of goods or documents delivered to another person in pursuance of any such arrangements.[98] (This exception has been referred to in the answer to Question 1.4.3).

(b) Liabilities

The provisions of the 1992 Act have been set out and discussed in the answer to Question 2.2.1.

Liabilities do not pass under the Act from the shipper to intermediate holders of the bill of lading and thence to the consignee. The liabilities of the original party to the contract of carriage remain unaffected by the transfer of the bill. However the transferee of a bill of lading may become subject to the same liabilities as if he had been a party to the contract. This will occur only if he becomes the "lawful holder" and if he enforces his rights under the Act by taking or demanding delivery from the Carrier of any of the goods to which the bill relates (whether before or after the rights of suit are vested in him) or makes a claim under the contract of carriage against the carrier in respect of any of those goods. Accordingly liabilities under the bill are not exclusive to the consignee. It should be added that it seems probable that there is a category of liabilities which fall only on the shipper and which are not assumed by a transferee of the bill of lading even if he enforces his rights under the Act. It is doubtful whether a transferee who becomes a "lawful holder" and exercises his rights under the Act will become subject to the liability of the shipper under Art. III rule 5 of the Hague Visby Rules (guarantee of accuracy of particulars); under Art. IV rule 3 (responsibility for loss sustained by the carrier); or under Art. IV rule 6 (liability for shipping dangerous goods).[99]

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96 S. 5(1) of the 1992 Act.

97 See Scrutton, *op. cit.*, p.40.

98 S. 2(2) of the 1992 Act; Scrutton, *op. cit.*, p.38.

99 Scrutton, *op. cit.*, pp. 40, 433-4, 447 and 453; The *"The Aegean Sea"* [1998] 2 Lloyd's Rep 39 at 69-70. The question whether a transferee of the bill can become subject to the liability of the shipper for shipping dangerous cargo is a matter of considerable difficulty; see Benjamin, *op cit.*, para 18-098.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

This question has been answered in the course of dealing with the previous question.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4. above)?

In short, the answer to this question is "yes":
The general duties of the consignee (as always, subject to specific contractual or customary provisions) commence with his obligation to use due and reasonable diligence to discover when the ship carrying his cargo arrives at the discharge port.[100] The master is under no general duty to give notice of his arrival or readiness to unload, although the consignee's duty to receive the cargo from the vessel commences only when she is actually ready to discharge the particular consignee's cargo (regardless of the consignee's ignorance of her arrival).
The discharge of the consignee's cargo is a joint act of both the shipowner and the consignee: the shipowner must get the cargo out of the holds and "deliver" it to the consignee, and it is the consignee's duty to take delivery of it.[101] When the consignment is put at the consignee's disposal by the shipowner, the consignee must actually take delivery within the time (if any) stipulated by the contract. This duty is strict and unconditional, such that a consignee who fails to ensure that the cargo is discharged within that time is liable to pay demurrage or damages for detention in respect of the period during which the ship is thereby delayed,[102] except where the delay is caused by the negligence or default of the shipowner,[103] or where the delay is covered by an exception in the contract.
Where a bill of lading requires a consignee to take delivery of the cargo "immediately" or "directly" the vessel is ready to discharge, he must do so promptly, without further delay than is reasonably required.[104]
Where no time for discharge is fixed by the contract, the consignee's duty is to

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100 *Harmony v Clarke* (1815) 4 Camp 159 (in relation to goods shipped in general ships); and *Nelson v Dahl* (1879) 12 Ch D 583 (in relation to shipments under a charterparty). See also Cockburn J in *Houlder v General SN Co* (1862) 3 F&F 170 at 174: "*It is the duty of the consignee, apart from special custom or contract, to use due and reasonable diligence to discover when the ship arrives with his goods on board.*"

101 See *Petersen v Freebody & Co* [1895] 2 QB 294 (CA).

102 See *Postlethwaite v Freeland* (1880) 5 App Cas 599 (HL).

103 *Straker v Kidd* (1878) 3 QBD 223.

104 See *Alexiadi v Robinson* (1861) 2 F&F 679.

take delivery of the cargo within a reasonable time, taking into account all of the prevailing circumstances.[105] In this regard, the consignee must use reasonable diligence in receiving the cargo and must do everything which he could reasonably be expected to do in the circumstances.[106]
Whilst the master of the vessel must give the consignee a reasonable time to appear or give orders as to the discharge,[107] if the consignee fails to come forward to take delivery as required, the master may land and warehouse the cargo at the consignee's risk and expense (whether by virtue of contractual or customary power, or as part of the master's duty to deal with the cargo in a reasonable manner).[108]

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

On principle, it would seem that the duty of the consignee to take delivery of the goods should be unaffected by the fact that they are merely damaged to some extent. At the time of delivery by the carrier, it may be impossible to determine the cause and extent of the damage, and it will not therefore be clear whether the consignee has any right of action in relation to the damage at all (and if so, whether rights would lie against the carrier itself, i.e. the person to whom the consignee generally owes the duty to take delivery).
The effect on the consignee's obligation where the goods have lost their commercial identity naturally depends upon the meaning of "commercial identity". Again on principle it would seem that where goods are destroyed on the voyage (for example, where cotton bales have been turned to ashes by fire), it can readily be said that there are in fact no "goods" of which the consignee can take delivery, and therefore that there can be no duty upon him to do so. The difficulty arises where the goods are damaged such that they cease to be useful for their intended purpose (or to comply with their description), but are not destroyed nor lose their general character as goods of a particular type. Thus, where oil is contaminated with seawater to such an extent that it cannot be used for its intended purpose as fuel, but nonetheless is still "oil", it is a matter of conjecture whether it has "lost its commercial identity". Insofar as it is simply not worth as much by virtue of the damage, the position would seem to be no different from that above, where the goods could nonetheless still be called "the goods" (and hence delivery should be taken), but where the consignee may have a cause of action to recover the difference in value between the cargo as it should have been delivered, and the cargo as it was actually delivered.

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105 See *Hick v Raymond & Reid* [1893] AC 22 (HL).

106 See *Alexiadi v Robinson, supra*; *Hulthen v Stewart & Co* [1903] AC 389 (HL).

107 *Proctor Garrett v Oakwin SS Co.* [1926] 1 KB 244.

108 This latter duty to deal reasonably may, of course, equally entitle the master to retain the cargo on demurrage, provided he does not thereby detain the vessel beyond a reasonable time, or even (where discharge is otherwise impossible) return the cargo to the port of loading.

Support for the foregoing analysis (and assistance for the test of "commercial identity") can be derived from the authorities which govern the question of when liability to pay freight is extinguished by virtue of damage to or loss of the goods. In many ways this is a logical corollary to the consignee's obligation to take the goods. The general rule in that context is that freight remains payable in full for the carriage of the goods notwithstanding that the goods are delivered in a damaged or deteriorated condition, *even* if the damage arises owing to the fault of the master and crew, or is so great that the goods are no longer even worth the freight payable.[109] Thus, although the consignee may have a claim for the damage, the freight is nonetheless due in full to the shipowner unless the goods have in fact lost their merchantable character (or "commercial identity").

The test of the stage of damage or deterioration at which this identity is lost was stated by Lord Esher[110] to be whether "the nature of the thing has been altered, and it becomes for business purposes something else, so that it is not dealt with by business people as the thing it originally was." It is thus a test of degree, which will inevitably vary from case to case.[111] Nonetheless, it would appear that whenever this "commercial identity" *is* lost, the duty to pay freight would also cease. It is thought that similar principles would be held to apply to the consignee's duty to take delivery.

4 - Rights to give instructions to the Carrier

4.1 - Who is the person entitled to give instructions to the carrier, and is the right to give such instructions transferable:
- *under a negotiable bill of lading*
- *undear a sea waybill*
- *if no contractual document is issued*

4.2 - Is the Carrier obliged to accept such instructions:
- *as to matters relating to the goods themselves*
- *as to other matters arising under the contract of carriage.*

These questions are considered shortly and together since it is difficult to generalise on a matter which depends entirely on the particular terms of the particular contract of carriage and the circumstances in which the instructions are given.

It is proposed to discuss in turn (a) instructions as to the delivery of the goods and (b) other instructions.

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109 *Dakin v Oxley* (1864) 15 CB (NS) 646.

110 In *Asfar v Blundell* [1896] 1 QB 123.

111 In the more recent case of "*The Caspian Sea*" [1980] 1 Lloyd's Rep 91, Donaldson J adopted a test of whether the goods delivered could commercially be sensibly and accurately described as what they were supposed to be.

(a) Instructions as to delivery

Where a transferable bill of lading is issued, the Carrier is obliged to deliver the goods to the holder of the bill of lading upon presentation of an original bill. It is for this reason that the bill of lading has been described in the classic 19th century authorities as the "key of the warehouse" which confers constructive possession of the goods upon the holder. It follows that only the holder of the bill (whether he be the original shipper or a transferee) is entitled to demand delivery and he may do so only upon presentation of an original bill. The right to demand the goods, or a delivery order, from the carrier is thus transferable by transfer of the bill.

Even where the bill is made out to the order of a named consignee, the shipper may, nevertheless be entitled to redirect the carrier to deliver the goods to another person.[112] The shipper may if he has retained the right of disposal of the goods, delete the name of the consignee and either leave the bill deliverable to a name left blank or insert the name of another consignee. This right is however lost once the bill of lading has been delivered to the consignee so that the consignee has become the lawful holder of the bill of lading. The shipper's right to redirect the goods to someone other than the originally named consignee may be compared with the "right of disposition" or the "right to modify the contract of carriage" given to a consignor under conventions for the international carriage of goods by air, road and rail.

Where the goods are shipped on terms that a sea waybill will be issued, the waybill may name the consignee or it may entitle the shipper to nominate the consignee after shipment and in either of these cases it may make provision for his identify to be varied.[113] Under such a shipment the shipper retains the right to direct the carrier to deliver the goods to someone other than the named consignee. Accordingly such a contract would normally be construed as one to deliver the to the named consignee or to such other person as the shipper might direct. The shipper cannot exercise the right to redirect (as in the case of an order bill) merely be endorsing the document and delivering it to the newly designated consignee; he must notify the carrier that delivery is to be made to that consignee.[114]

Some waybills contain provisions for the right to redirect the goods to be transferred to the named consignee at a particular stage of the transit or in defined circumstances. So far, such provisions have not required to be considered by the Courts.

Where the shipper has exercised his power to redirect the goods by substituting C for B as consignee, C becomes "the person to whom delivery..... is to be made by the carrier" under Section 2(1) of the Carriage of Goods by Sea Act 1992 so that rights under the contract of carriage are vested in C and any rights which were previously vested in B become extinct under Section 2(5). The effect would appear to be that if the Carrier does not deliver the goods to C,

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112 Benjamin *op cit* paras 18-011 to 18-013. Scrutton *op. cit.* 184.

113 This is recognised by S.5(3) of the 1992 Act.

114 Benjamin, *op. cit.* Para 18-015.

then C will be entitled to bring an action against the carrier for non-delivery.[115] Where no contractual document is issued at the time of shipment the Carrier's obligation will normally be to deliver the goods at the contractual destination either to the shipper or to someone nominated by him. There will be no transfer of the right to give instructions and no transfer of rights of suit save that, where electronic commerce is used to effect the transaction, the Secretary of State has power to make Regulations modifying the provisions of the 1992 Act so as to make it apply to such shipments.[116] No Regulations have to date been made.

(b) Other instructions

It is common for charterparties to contain provisions entitling the charterer to give instructions to the shipowner in the course of performance of the contract.[117] It is not usual for such provisions to be included in other types of contract for carriage by sea.

Where a shipper wishes to give instructions to the carrier as to such matters as the time of delivery or the conditions under which the goods are to be carried, it is normal for the shipper and the carrier to negotiate and reach agreement upon the terms of the carriage and for those terms to be recorded in the carriage document. If the terms are so recorded then, in the event of breach, the right of suit will be transferred to the holder of the bill of lading or consignee under the relevant sea waybill. If there is an oral agreement between the shipper and the Carrier but the relevant term is not evidenced by the bill of lading or sea waybill, it is unlikely that the 1992 will effect a transfer of the right to sue for breach of that term to the holder of the bill of lading or consignee under the sea waybill.[118]

Finally, English maritime law recognises that unforeseen and extraordinary circumstances (such as a casualty) may arise in the course of a marine adventure and that if they do, the master, before dealing with the cargo in a manner not contemplated in the contract must, if possible, communicate with the owners of the cargo as to what should be done and obtain their instructions.[119] If it is not possible to communicate with cargo and obtain instructions in time, the master has authority to act as agent of necessity. If the master communicates with cargo and obtains instructions he is bound to follow them unless the instructions are inconsistent with his duty to the shipowner. These rights and obligations are incidents of a contract of affreightment and may perhaps be regarded as implied terms of such a contract. The question whether, in the event of any breach, a right of suit is transferred to the bill of lading holder or consignee under a sea waybill could well be a matter for academic debate. In practice, proprietary rights are likely to be affected and the owners of cargo will have rights of suit if, through any conduct of the master, their proprietary rights are infringed.

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115 Benjamin, *op. cit0.*, para 18-118.

116 See S.1(5) of the 1992 Act.

117 The typical employment and indemnity clause in time charters is an example of this.

118 See the answer to Question 3.1.4.

119 Scrutton, *op. cit.*pp.254 to 255.

UNITED STATES*

1 - Obligations of the Carrier

1.1 - Receipt of the goods

1.1.1 - Does the period of the Carrier's responsibility for the goods under your national law commence at the same moment as delivery by the seller under a contract of sale on 'shipment terms'?

Not necessarily. For example, if the sale contract on shipment terms specifies EXW (Ex Works), the ocean carrier's responsibility does not begin ex works, but begins upon actual delivery to the ocean carrier or its agent. Additionally, in the liquid chemical trades, for instance, delivery upon shipment under the sales contract often occurs at the flange of the loading port shore tank, and quantity/quality are based on shore tank figures.

1.1.2 - Is it desirable that the moment of delivery both under the contract of sale and the contract of carriage should coincide?

No. Such a requirement might diminish flexibility needed by the parties in the contract of sale and in the contract of carriage. The bill of lading is a contract governed by maritime law, as is delivery of cargo under such contract. Requiring that such delivery coincide with requirements of the sales contract which is governed by another body of law might lead to possible conflicts and confusion. It would not be desirable that the moment of delivery (whether delivery to the carrier or delivery to the consignee) coincide in the contract of sale and the contract of carriage.

1.1.3 - Does the expression 'liner terms' or a FIO(S) clause define the scope of the contract of carriage and the moment of delivery to the Carrier?

No. Under judicially determined domestic law, shipping terms such as "liner terms" and FIO(S) may be varied by the facts surrounding loading and discharge, but in no circumstance may such terms relieve the carrier from

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liability. The U.S. Carriage of Goods by Sea Act (COGSA) has been interpreted by the courts to place a non-delegable duty on the carrier to load, stow and discharge the goods.

1.2 - Inspection of the goods and statements in the bill of lading

1.2.1 - Under your national law in what circumstances would it be held that the Carrier had reasonable grounds for suspicion that the information given by the shipper was inaccurate?

Any open or obvious condition which would lead to a reasonable suspicion of the inaccuracy.

1.2.2 - In what circumstances would it be held that the Carrier had no reasonable means of checking the particulars furnished by the shipper?

If the particulars were not visible or otherwise apparent; if the carrier did not load or pack the sealed shipping container; or where weighing facilities are not available.

1.2.3 - What is the meaning of 'apparent'?

Something visible or easily verifiable is apparent.

1.2.4 - What is the legal effect of clauses such as:
- "shipper's load and count"
- "'said (by shipper) to contain"
- "particulars provided by shipper"
- "weight (etc.) unknown"

The answers to the questions posed in 1.2.4 in the first instance are dependent upon whether the cargo is being shipped from the U.S. or to the U.S. If the cargo is being shipped from the U.S., then the U.S. Bills of Lading (Successor to the Pomerene) Act applies. Under that Act, the carrier is entitled to rely upon the clauses referenced below. If the shipment is being shipped to the U.S., the Bills of Lading (Successor to the Pomerene) Act does not apply, and the U.S. courts will not honor the clauses referenced below. The proposed changes to U.S. COGSA will require U.S. courts to honor such clauses.[1]

1.2.5 - Do you consider that the conclusive evidence rules (Hague-Visby Rules Article III Rule 4; Hamburg Rules Article 16.3; CMI Uniform Rules for Sea Waybills Rule 5(ii) (b)) should be maintained/introduced as regards marks, the number, quantity or weight as furnished by the shipper; and the apparent order and condition of the goods:
- if a negotiable bill of lading is issued

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1 See tex of 49 U.S.C. §80113 in Appendix I.

- *if the contract of carriage is covered by a sea waybill*
- *if no transport document is issued.*

No. We would prefer that something similar to the provisions of the U.S. Bills of Lading (Successor to the Pomerene) Act be adopted.

1.2.6 - Under your national law do the conclusive evidence rules benefit a fob buyer, including, for example:
- *if the fob buyer is named in the transport document as the shipper*
- *if the fob seller is named in the transport document as the shipper and the fob buyer is/is not shown as consignee.*

The U.S. does not have a conclusive evidence rule, so a FOR buyer named as the shipper would not be benefited by the above conclusive evidence rules. The U.S. does not have a conclusive evidence rule. The buyer/consignee/owner is protected, however, so long as he is not also the shipper.

1.3 - Delivery of the goods at destination

1.3.1 - Does the period of the Carrier's responsibility for the goods under your national law end at the same moment as delivery to the buyer under a contract of sale on 'delivered terms'?

Not necessarily. For example, the carrier's responsibility may cease upon delivery of cargo to a port authority that takes total control of the cargo, and who thereafter delivers the cargo to the consignee. In such instance, the carrier's responsibility ceases upon delivery to the port authority. Generally, though, responsibility for the goods ends at physical delivery to the receiver or its agent or upon constructive delivery to the receiver or its agent.

1.3.2 - Does a FIO clause define the scope of the contract of carriage in this respect?

No. A FIO clause in the contract of carriage defines the responsibility for arranging and paying for loading and discharge of the vessel. The carrier is always responsible until proper delivery to the consignee/receiver or their agents, or to a port authority or otherwise delivered according to the custom and practice of the port. The ocean carrier may not lessen his duty to load, stow, carry, keep and care for the cargo, and is always responsible for the cargo until a proper delivery has been made under the custom of the port.

1.3.3 - Is the cooperation of the consignee/bill of lading holder necessary to complete delivery?

Not in all instances. U.S. law recognizes the concept of "constructive delivery." The cooperation of the consignee/bill of lading holder is not needed when the cargo is delivered to a third party as permitted under the custom of the port, such as to a port authority.

1.3.4 - What are the Carrier's rights if the consignee (bill of lading holder) does not co-operate or refuses to receive the goods?

The carrier may deliver the cargo to a general order warehouse. The carrier probably has an in personam right against the shipper, and any endorsee of a negotiable bill of lading who accepted the bill of lading (which may not include the current endorsee but would include previous endorsees) for damages including but not limited to storage. The carrier would also have a maritime lien against the cargo for damages including storage expenses.

1.4 - Delivery of the goods without surrender of the bill of lading

1.4.1 - Under your national law what are the rights of the holder as regards the goods after delivery to the person entitled to the goods under the contract of sale?

The U.S. Bills of Lading (Successor to the Pomerene) Act applies to outbound cargo, and courts have indicated that the Bills of Lading (Successor to the Pomerene) Act may be applicable to inbound cargo, as well. The Bills of Lading (Successor to the Pomerene) Act provides, in pertinent part.[2]

1.4.2 - What are the rights of suit of the holder against the Carrier under the contract of carriage after such delivery?

See above answer to 1.4.1.

1.4.3 - Are such rights affected by endorsement of the bill of lading after such delivery, and if so how?

Yes. If the holder endorses and transfers a negotiable bill of lading, the endorser transfers to the endorsee the right to sue the carrier.

1.4.4 - What are the rights of suit against the Carrier under the contract of carriage of the person to whom such delivery has been made?

Only the owner of the goods may sue for damage to them. Endorsement of a negotiable bill of lading acts, in effect, as an assignment of the right to sue.

1.5 - Dating and signature of the transport document

1.5.1 - Under your national law is it a requirement that the transport document be dated
- *with the date of receipt by the Carrier of the goods specified therein in the case of a 'received for shipment' document*
- *with the date of shipment on board in the case of an 'on board' document*
- *with the date of signature*

Although it is advisable and customary for such dates to be marked on the bill of lading, under U.S. law, neither the carrier nor the shipper is required by

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2 See tex in Appendix II.

statute to sign or date the bill of lading. However, under UCP 500, applicable to letter of credit transactions, banks may require signatures and dates on the document. Carriers customarily sign bills of lading since they also act as receipts for cargo.

- with a date agreed by the shipper and the Carrier

U.S. law recognizes only the date the goods were actually loaded or received. Any other date is considered fraud, especially if it operates to the detriment of a holder of a bill of lading, such as a bank.

1.5.2 - Is it a requirement that the transport document indicates on the face of the document the name and address of the Carrier /the identity of the Carrier (e.g. 'the registered owner of the carrying vessel')?

There is no statute requiring that the transport document indicate on its face the identity of the carrier. However, since the document is a contract, the name of the carrier is customarily indicated as a party to the contract. The shipper may be required to obtain this information so as to conform to UCP 500.

1.5.3 - Is it a requirement that the transport document be signed and, if so, by whom and how?

There is no statute requiring that the transport document be signed (see above answers to 1.5.1 and 1.5.2). The carrier may, however, be requested to sign the document to conform with UCP 500 requirements, as the shipper may need to negotiate the bill of lading. Bills of lading are customarily signed by or for the master as the carrier.

2 - Rights of the Carrier

2.1 - Freight

2.1.1 - Under your national law what are the respective liabilities for payment of freight of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

The shipper is liable for payment of the freight. But the carrier may lien the goods, unpaid subfreights, and perhaps unpaid sales proceeds up to the amount of unpaid subfreights (or the unpaid freight portion of the sales proceeds) for any freight due and owing. Under U.S. maritime law, the carrier is entitled to recover payment of freight in accordance with the terms of the bill of lading, i.e., prepaid, collect, etc. The general maritime law and the U.S. Bills of Lading (Successor to the Pomerene) Act give the carrier a possessory lien on the goods for all freight and charges due under negotiable bills of lading. Most liner bills of lading include a clause entitling the carrier to freight and charges "ship or goods lost or not lost" and that freight and charges shall be considered

completely earned on receipt of the goods by the carrier. Further, the clause provides that the shipper, consignee, holder of the bill of lading and the owner of the goods shall be jointly and severally liable to pay the freight and charges. Courts will enforce the payment of freight, under such clauses, even when the carrier is at fault for the loss or damage to the goods. Payment of freight due is a precondition for a demand of delivery by a consignee of a straight bill of lading or the holder of a negotiable bill of lading. Under the U.S. Ocean Shipping Reform Act of 1998, it is unlawful for a carrier to provide transportation services for less than the tariff amount.
The lien against the cargo may be preserved by contract, even after cargo is offloaded from the vessel.

2.1.2 - When is the freight earned?

Under U.S. law, freight is earned upon delivery of the cargo by the carrier to the consignee or its agent. By contract, freight may be earned upon receipt of the cargo by the carrier.

2.1.3 - When is the freight payable?

Freight is payable as consideration for delivery of the cargo. By contract, freight may become payable upon receipt of the cargo by the carrier, or the contract may provide "freight collect," in which case freight must be paid before delivery, or whenever the parties so agree by contract.

2.1.4 - To what extent are the Carrier's rights affected by frustration of the contract of carriage before the freight is earned/paid, or by the contract being discharged by breach?

If the contract is frustrated before the goods are received by the carrier, the carrier has no remedy under U.S. law. If the goods have already been received by the carrier, the carrier has a duty to protect them and may recover special charges as a maritime lien on the goods. In the U.S., courts have generally taken the view that when a contract is discharged by impossibility or frustration the parties must make restitution for the benefits conferred upon them.

2.1.5 - What is the effect of an endorsement on the bill of lading reading 'freight (pre)paid' or 'freight collect'?

Such endorsement creates rebuttable presumptions that the carrier is not entitled to lien cargo and subfreights for freight of bills of lading marked "freight (pre)paid"; but is entitled so to act in connection with cargo and subfreights of bills of lading marked "freight collect." U.S. courts have held that such endorsements are binding as between the shipper and the consignee. The carrier will be estopped from denying the validity of a prepaid freight if the freight has actually been paid by the consignee.

2.1.6 - What is the effect of a 'cesser' clause in the bill of lading purporting to relieve the shipper of all liability on shipment of the goods?

The shipper is relieved of charges which accrue after shipment, including disport demurrage, but nonetheless remains liable for freight and other pre-shipment charges and warranties (marks, contraband and dangerous cargo). A cesser clause in a bill of lading would operate to relieve the shipper from liability for charges as described, only to the extent that the carrier was able to exercise a lien for such expenses on the goods at the discharge port.

2.1.7 - If the freight is unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

In a "freight collect" situation, under common law, the carrier may lien the goods for the nonpayment of the freight by the shipper until the consignee has paid the freight. By the contract, the carrier may maintain a lien after delivery or may sell the cargo to satisfy its claim. A carrier's rights in a "freight prepaid" situation, which is often required in sales transactions, relies on different factors. Due to letter of credit requirements, the carrier may be asked to issue freight prepaid bills of lading, with actual payment occurring afterwards within a specified time period (*i.e.*, within 15 or 30 days).

2.2 - Deadfreight and other charges

2.2.1 - Under your national law what are the respective liabilities for payment of these items of the original shipper, the consignee and intermediate holder of the bill of lading? Are such liabilities affected by delivery of the goods to the consignee? Are they subject to any relevant contractual provisions?

In the absence of any exculpatory clauses in the bill of lading (*e.g.*, freight collect, cesser), the shipper is liable *in personam* for many of these sums; but not for general average, salvage, or particular charges unless the shipper takes the goods back.

If the bill of lading is endorsed on its face for such items, the carrier has a lien on the cargo for them. If the bill of lading is not endorsed, the carrier has a lien nonetheless but only for charges which accrue after shipment. Neither the consignee nor the intermediate holders of the bills of lading are liable *in personam* unless the goods are delivered in which event, the last part who is the owner of the goods before delivery becomes liable *in personam* under a principle analogous to unjust enrichment.

If the parties in the sales contract allocate such charges amongst themselves, they may give the carrier additional rights as a third party beneficiary of the contract.

See the U.S. Bills of Lading (Successor to the Pomerene) Act.[3]

[3] See tex in Appendix III.

2.2.2 - If the items are unpaid what are the Carrier's rights to lien the goods or to withhold delivery?

Although case law is sparse, it is believed that the shipper and endorsee may be responsible for storage and like costs after the date of the bill of lading. See also answer to 2.2.1, above.

2.2.3 - Do any such rights of lien extend to a general lien for any sums due from 'the merchant' in respect of other goods?

No, unless perhaps the merchant in default also happens to be the receiver of the goods.

2.2.4 - May any such rights of lien be exercised after delivery of the goods to the consignee, or after the goods have passed out of his hands.

No, except that while the carrier can no longer lien the goods after they have been delivered to the consignee, the carrier may still be entitled to lien any subfreights or sales proceeds which remain unpaid by the consignee to his supplier.

3 - Obligations to the Carrier of the Shipper, intermediate bill of lading holder and consignee

3.1 - Legal basis of such rights and liabilities

3.1.1 - How is 'the shipper' defined under your national law? Is there a distinction between 'the shipper' and a supplier of the goods to be shipped who is not a party to the contract of carriage?

The shipper is the party that contracts with the carrier. The shipper may be separate and distinct from the supplier of goods, who would be, vis-à-vis the carrier, a stranger.

3.1.2 - Is there any presumption that the person named in the bill of lading as the shipper is liable as the contractual counterpart of the Carrier?

Yes, unless the shipper is identified as an agent for a disclosed principal.

3.1.3 - What rights and liabilities are rights and liabilities exclusively of the consignee?

The consignee has the right to demand delivery and has no liabilities unless he demands delivery. The owner of the cargo has the duty to receive the cargo and not delay the ship unless the cargo is completely destroyed or is a constructive total loss.

3.1.4 - To what extent do rights and liabilities pass from the shipper to intermediate holders of the bill of lading and thence to the consignee, and to what extent are such rights and liabilities ultimately the exclusive rights and liabilities of the consignee?

Once the consignee takes delivery, or once the consignee becomes the person legally entitled to the goods, he is entitled to maintain a suit for cargo loss or damage. Procedurally, however, third parties may commence and maintain an action for the benefit of the consignee so long as the consignee is substituted as the real party in interest before trial.

3.1.5 - To what extent are rights and liabilities retained by the shipper after he has ceased to hold the bill of lading, and to what extent are such rights and liabilities exclusively the rights and liabilities of the shipper?

Once the shipper endorses a negotiable bill of lading to a new holder, the shipper is no longer the owner of the goods, and may not recover for loss or damage to the goods.

3.2 - Receipt of the goods

3.2.1 - Is it an obligation of the consignee to receive the goods timeously and to cooperate with the Carrier to enable the Carrier to fulfil his obligations as to delivery (see also questions 1.3.3 and 1.3.4. above)?

Yes. The consignee must receive the goods in a timely manner and must cooperate with the carrier. Failure to cooperate with the carrier may result in a suit in personam against the consignee or in rem against the cargo for damages.

3.2.2 - Is such an obligation affected by the goods being tendered for delivery in a damaged condition, or damaged to such an extent that they have lost their commercial identity?

The consignee may refuse delivery only if the goods have been damaged to such an extent so as to make them valueless or a constructive total loss.

4 - Rights to give instructions to the Carrier

4.1 - Who is the person entitled to give instructions to the carrier; and is the right to give such instructions transferable:
- under a negotiable bill of lading

Only the holder of the original bill of lading may give instructions to the carrier. See the applicable section of the U.S. Bills of Lading (Successor to the Pomerene) Act, reprinted below.[4]

- undear a sea waybill

Under a non-negotiable (straight) bill of lading, the shipper always retains the common law right of stoppage in transitu. The shipper under a straight bill of

[4] See tex in Appendix IV.

lading may give instructions to the carrier. Authorities are divided as to whether a consignee under a straight bill of lading may instruct the carrier after title to cargo has passed when the carrier has been made aware of the transfer. The weight of authority, however, suggests that even when the carrier is made aware of the transfer of the cargo's title to the consignee, the carrier is only bound to accept instructions from the shipper because the bill of lading is merely a contract for carriage and is not a receipt of title to the goods.

- if no contractual document is issued

If no contract of carriage is entered into, the owner of the goods may instruct the carrier.

4.2 - Is the Carrier obliged to accept such instructions:

Some instructions, such as delivery orders or stoppage in transitu, the carrier is obligated to accept. Others, such as delivery without production of original bills of lading, the carrier is free to reject.

- as to matters relating to the goods themselves

The carrier must accept instructions with regard to delivery if given by the holder of an order bill of lading or the consignee of a straight bill of lading, if given in conjunction with an offer to pay any outstanding charges, or provide a legal basis for a refusal.

- as to other matters arising under the contract of carriage.

No, the carrier is under no obligation to accept instructions with regard to routing, ports of call, management of the vessel, etc.

APPENDIX I

49 U.S.C. §80113 Liability for nonreceipt, misdescription, and improper loading

(1) Liability for nonreceipt and misdescription. - Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(2) Nonliability of carriers. - A common carrier issuing a bill of lading is not liable under subsection (a) of this section:

(1) when the goods are loaded by the shipper;

(2) when the bill:

(1) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or

(2) is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count", or words of the same meaning; and

(3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

(3) Liability for improper loading. - A common carrier issuing a bill of lading is not liable for damages caused by improper loading if:

(1) the shipper loads the goods; and

(2) the bill contains the words "shipper's weight, load, and count", or words of the same meaning indicating the shipper loaded the goods.

(4) Carrier's duty to determine kind, quantity, and number.

(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words "shipper's weight" or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words "shipper's weight, load, and count" or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.

APPENDIX II

49 U.S.C. §80109 Liens under negotiable bills

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for:

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and

(2) other charges for which the bill expressly specifies a lien is claimed to the extent the charges are allowed by law and the agreement between the consignor and carrier.

49 U.S.C. §80110 Duty to deliver goods

(1) General rules. - Except to the extent a common carrier establishes an excuse provided by law, the carrier must deliver goods covered by a bill of lading on demand of the consignee named in a nonnegotiable bill or the holder of a negotiable bill for the goods when the consignee or holder -

(1) offers in good faith to satisfy the lien of the carrier on the goods;

(2) has possession of the bill and, if a negotiable bill, offers to indorse and give the bill to the carrier; and

(3) agrees to sign, on delivery of the goods, a receipt for delivery if requested by the carrier.

(2) Persons to whom goods may be delivered. - Subject to section 80111 of this title, a common carrier may deliver the goods covered by a bill of lading to -

(1) a person entitled to their possession;

(2) the consignee named in a nonnegotiable bill; or

(3) a person in possession of a negotiable bill if -

(1) the goods are deliverable to the order of that person; or

(2) the bill has been indorsed to that person or in blank by the consignee or another indorsee.

(3) Common carrier claims of title and possession. - A claim by a common carrier that the carrier has title to goods or right to their possession is an excuse for nondelivery of the goods only if the title or right is derived from -

(1) a transfer made by the consignor or consignee after the shipment; or

(2) the carrier's lien

(4) Adverse claims. - If a person other than the consignee or the person in possession of a bill of lading claims title to or possession of goods and the common carrier knows of the claim, the carrier is not required to deliver the goods to any claimant until the carrier has had a reasonable time to decide the validity of the adverse claim or to bring a civil action to require all claimants to interplead.

(5) Interpleader. - If at least 2 persons claim title to or possession of the goods, the common carrier may -

(1) bring a civil action to interplead all known claimants to the goods; or

(2) require those claimants to interplead as a defense in an action brought against the carrier for nondelivery.

(6) Third person claims not a defense. - Except as provided in subsections (b), (d), and (e) of this section, title or a right of a third person is not a defense to an action brought by the consignee of a nonnegotiable bill of lading or by the holder of a negotiable bill against the common carrier for failure to deliver the goods on demand unless enforced by legal process.

49 U.S.C. §80111 Liability for delivery of goods

(7) General rules. - A common carrier is liable for damages to a person having title to, or right to possession of, goods when -

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;

(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or right to possession of, the goods not to make the delivery; or

(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.

(8) Effectiveness of request or information. - A request or information is effective under subsection (a)(2) or (3) of this section only if -

(1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and

(2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.

(9) Failure to take and cancel bills. - Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.

(10) Exceptions to liability. - A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if -

(1) a delivery described in subsection (c) of this section was compelled by legal process;

(2) the goods have been sold lawfully to satisfy the carrier's lien;
(3) the goods have not been claimed; or
(4) the goods are perishable or hazardous.

49 U.S.C. §80112 Liability under negotiable bills issued in parts, sets, or duplicates

(1) Parts and sets. - A negotiable bill of lading issued in a State for the transportation of goods to a place in the 48 contiguous States or the District of Columbia may not be issued in parts or sets. A common carrier issuing a bill in violation of this subsection is liable for damages for failure to deliver the goods to a purchaser of one part for value in good faith even though the purchase occurred after the carrier delivered the goods to a holder of one of the other parts.

(2) Duplicates. - When at least 2 negotiable bills of lading are issued in a State for the same goods to be transported to a place in the 48 contiguous States or the District of Columbia, the word "duplicate" or another word indicating that the bill is not an original must be put plainly on the face of each bill except the original. A common carrier violating this subsection is liable for damages caused by the violation to a purchaser of the bill for value in good faith as an original bill even though the purchase occurred after the carrier delivered the goods to the holder of the original bill.

49 U.S.C. §80113 Liability for nonreceipt, misdescription, and improper loading

(5) Liability for nonreceipt and misdescription. - Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(6) Nonliability of carriers. - A common carrier issuing a bill of lading is not liable under subsection (a) of this section -

(1) when the goods are loaded by the shipper;
(2) when the bill -
    (1) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or
    (2) is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of the same meaning; and
    (3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

(7) Liability for improper loading. - A common carrier issuing a bill of lading is not liable for damages caused by improper loading if -

(1) the shipper loads the goods; and

(2) the bill contains the words "shipper's weight, load, and count", or words of the same meaning indicating the shipper loaded the goods.

(8) Carrier's duty to determine kind, quantity, and number. -

(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words "shipper's weight" or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words "shipper's weight, load, and count" or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.

49 U.S.C. §80114 Lost, stolen, and destroyed negotiable bills

(11) Delivery on court order and surety bond. - If a negotiable bill of lading is lost, stolen, or destroyed, a court of competent jurisdiction may order the common carrier to deliver the goods if the person claiming the goods gives a surety bond, in an amount approved by the court, to indemnify the carrier or a person injured by delivery against liability under the outstanding original bill. The court also may order payment of reasonable costs and attorney's fees to the carrier. A voluntary surety bond, without court order, is binding on the parties to the bond.

(12) Liability to holder. - Delivery of goods under a court order under subsection (a) of this section does not relieve a common carrier from liability to a person to whom the negotiable bill has been or is negotiated for value without notice of the court proceeding or of the delivery of the goods.

49 U.S.C. §80115 Limitation on use of judicial process to obtain possession of goods from common carriers

(1) Attachment and levy. - Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods in the possession of a common carrier for which a negotiable bill has been issued may be attached through judicial process or levied on in execution of a judgment only if the bill is surrendered to the carrier or its negotiation is enjoined.

(2) Delivery. - A common carrier may be compelled by judicial process to

deliver goods under subsection (a) of this section only when the bill is surrendered to the carrier or impounded by the court.

49 U.S.C. §80116 Criminal penalty

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person -

(1) violates this chapter with intent to defraud; or

(2) knowingly or with intent to defraud -
   (1) falsely makes, alters, or copies a bill of lading subject to this chapter;
   (2) utters, publishes, or issues a falsely made, altered or copied bill subject to this chapter; or
   (3) negotiates or transfers for value a bill containing a false statement.

APPENDIX III

49 U.S.C. §80109 Liens under negotiable bills

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for -

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and

(2) other charges for which the bill expressly specifies a lien is claimed to the extent the charges are allowed by law and the agreement between the consignor and carrier.

APPENDIX IV

49 U.S.C. §80111 Liability for delivery of goods

(13) General rules. - A common carrier is liable for damages to a person having title to, or right to possession of, goods when -

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;

(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or right to possession of, the goods not to make the delivery; or

(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.

(14) Effectiveness of request or information. - A request or information is effective under subsection (a)(2) or (3) of this section only if -

(1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and

(2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.

(15) Failure to take and cancel bills. - Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.

(16) Exceptions to liability. - A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if -

(1) a delivery described in subsection (c) of this section was compelled by legal process;

(2) the goods have been sold lawfully to satisfy the carrier's lien;

(3) the goods have not been claimed; or

(4) the goods are perishable or hazardous.

IV

MINUTES OF THE 2ND MEETING OF THE "ROUND TABLE" ON ISSUES OF TRANSPORT LAW HELD AT Sun Court, 66/67 Cornhill, London EC3 at 09.30 on 30th June 1999

Present: Mr PJS Griggs (President of the CMI)
Mr Alexander von Ziegler (Secretary General of the CMI)
Mr S N Beare (Chairman of the CMI International Working Group on issues of Transport Law)
Mr Sean Harrington (Member of the CMI International Working Group on issues of Transport Law)
Ms Linda Howlett (ICS)
Mr Stefan Peller (IUMI)
Ms Kay Pysden (FIATA)
Mr Lloyd Watkins (IGPI)

Apologies had been received from Mr Le Garrec (IAPH).

1 **Mr Griggs** began by thanking everyone for attending. He then distributed copies of the Questionnaire, which had been despatched at the end of April to National Associations within the CMI, and extracts from the report of the 32nd session of UNCITRAL held in Vienna between 17th May and 4th June 1999. The next (33rd) session would be held in New York during the first week of July 2000. The transport law project would be on the agenda for discussion at that session and UNCITRAL would look to the CMI to produce an appropriate agenda note. In all probability an International Sub-Committee would be set up later in the year to carry the project forward. **Mr von Ziegler** added that such an International Sub-Committee would have to deliver a work product for consideration at the CMI Conference in Singapore in February 2001. It was not envisaged that this work product would be a draft convention, but it could outline the basis on which an instrument embodying a new regime could be drafted and might include some draft text.. It was accepted that the issues of liability were still regarded as most pressing, but the only practical way to deal with issues of liability was to add them to the work being done on issues of transport law.

2 **Mr Beare** explained what the Working Group had done in the year since the last meeting of the Round Table, which had immediately followed the first meeting of the Working Group. Two further meetings of the Working Group had been held in October 1998 and March 1999. Brief reports of these meetings had appeared in the CMI Newsletter. In October the Working Group considered the study papers which each member had written and an analysis was then prepared of the issues which arose from these study papers. This analysis was considered at the meeting in March 1999 and the form of Questionnaire to be circulated to National Associations was agreed. The Questionnaire was then drafted and sent out in late April. Responses have been requested by 30th September. The Working Group will hold its next meeting on 15th November to analyse the responses to the Questionnaire and, assuming that it is set up, to prepare the papers for the first meeting of the International Sub-Committee.

3 The topics specifically covered in the Questionnaire were:

The Carrier's Obligations

- Delivery to the carrier and the moment when the carrier's period of responsibility began
- Inspection of the goods and statements in the bill of lading
- The evidential effect of such statements
- Delivery (or re-delivery) at destination
- The dating and signature of the bill of lading.

The Carrier's Rights

- In respect of payment of freight, dead freight and demurrage
- To exercise a lien on the goods

The Merchant's Obligations

- To take receipt of the goods at destination
- The respective obligations of the shipper, consignee and intermediate holder of the bill of lading

The Merchant's Rights

- To give instructions to the carrier
- To bring suit against the carrier.

4 These were all areas (save for the question of statements in the bill of lading which were dealt within in the existing liability regimes) which were not covered by any of the existing Conventions. Furthermore they all impinged on other contractual relationships, such as those between buyer and seller and between the banks and their customers.

5 A number of the issues fell within the ambit of the U.K. Carriage of Goods by Sea Act 1992. When this legislation was proposed it was said that it would bring English and Scots law into line with a number of other systems. It therefore seemed likely that responses to the Questionnaire from those

National Associations would indicate a degree of uniformity. Where such uniformity did exist, it would be easier to promote a regime of unification. Where there was divergence, it would be more difficult. It should be possible for the Working Group at its next meeting in November to form a view of the more promising areas for harmonisation.

6 As regards outlining the basis on which an instrument embodying a uniform regime could be drafted, consideration would need to be given to the nature of the instrument which would be most appropriate (for example a convention, a model law or a code for voluntary adoption) and whether such an instrument should be drafted in rather general terms (e.g. the Vienna Sales Convention, which had been successful and had achieved widespread adoption), or whether it should be more specific in the way that the existing liability regimes were in relation to the topics which they covered.

7 **Mr Watkins** raised two points on the resumé given by Mr Beare. First the Questionnaire did not deal with questions of liability. The Clubs which were members of the International Group were looking for something to replace the Hague-Visby Rules and the Hamburg Rules. Second these regimes could not be replaced by a new regime which dealt only in general principles as Mr Beare had suggested.

8 **Mr von Ziegler** reminded the meeting that issues of liability had been excluded from the terms of reference of the Working Group and it followed that the Questionnaire did not deal with them. Having said that, the Working Group's terms of reference were based on the report of the 29th session of UNCITRAL held in 1996. Mr von Ziegler sensed from his attendance at the 32nd session this year that the climate was changing. In the meantime the International Sub-Committee on Uniformity of the Law of the Carriage of Goods by Sea, chaired by Professor Berlingieri, had been working on issues of liability for many years and had produced a very well prepared body of work.

9 **Mr Watkins** replied that there had never been an expectation that the work of this International Sub-Committee would lead to the preparation of a new convention, although his impression was that on the basis of the work that had been done a text could be worked up fairly quickly. He could write to the CMI on behalf of the Clubs in the International Group to urge the CMI to carry on with this work and to do it quickly if this would be helpful.

10 **Mr Harrington** recalled that this matter had been debated at the CMI Assembly in New York and that the view of the majority was that UNCITRAL's lead should be followed.

11 **Mr Griggs** said that the CMI could not produce a draft instrument without UNCITRAL's approval. In his experience it was very unhelpful to introduce a topic and a draft instrument at the same time. For a proposal to be accepted it was essential to involve in the preparatory work those whose

approval to the final text would be necessary and to carry them with you. It would however be open to include in the agenda note which the CMI would produce for the 33rd session of UNCITRAL next year a statement that the industry considered an updated and revised liability regime to be very important.

12 Mr von Ziegler said that he had prepared a draft of a short questionnaire for the consultant international organisations on the topics on which their input would be particularly appreciated. This would be circulated shortly. It was noted that IUMI would hold a congress in September and FIATA in October at which this questionnaire could be discussed. Mr von Ziegler said that all the international organisations would be invited to send delegates to the International Sub-Committee assuming that it was set up later in the year.

13 Mr. Griggs said that he would shortly be issuing a press release which would take account of the points that had been raised at the meeting. He stated that the release would have the prior approval of UNCITRAL.

14 Mr Griggs closed the meeting by thanking Ms Pysden and Hill Dickinson for hosting it.

INTERMODAL LIABILITY

The CMI was invited to attend a meeting, or "hearing", on intermodal liability at the European Commission (Directorate-General VII Transport) on 19th January 1999. I was asked to represent the CMI at the hearing as Chairman of the International Working Group on Issues of Transport Law. 33 participants attended representing about 14 organisations.

First some background. Task Force Transport Intermodality, which was set up by the Commission in 1995, carried out consultations with the industry. As a result of its report intermodal liability was earmarked by the Commission as an area which needed further examination. The Commission followed this up in its Communication on "Intermodality and intermodal freight transport in the EU". The Commission then requested a group of legal experts from European Universities to make an enquiry into the area of intermodal freight liability and, more specifically, the adverse effects of the absence of a uniform intermodal liability regime on the further development of freight intermodalism in the European Union. This group, consisting of Regina Asariotis, H.-J Bull, Malcolm Clarke, Professor Rolf Herber, Professor Aliki Kiantou-Pambouki, D. Moran-Bovio, Professor Jan Ranberg, Professor Ralph de Wit and Professor Stefano Zunarelli, produced a draft report dated July 1998. This draft report was circulated with the papers for the hearing.

An additional reason for the hearing was said to be the proposal to amend US COGSA 1936. The papers for the hearing stated that the US MLA draft included extra-territorial dimensions and that the Commission had transmitted its concerns in fora such as the Consultative Shipping Group and the EU-USA Forum on Freight Intermodalism.

The aims of the hearing were stated to be to gather the views of industry representatives on intermodal liability, to discuss the industry's views on the proposed revision to the US COGSA 1936 and to identify possible strategies. Organisations which had expressed an interest in attending were invited to submit a written statement built around a questionnaire. This questionnaire together with the Statement submitted on behalf of the CMI, will be published in the 1999 CMI Yearbook.

The Chairman, Mr. Wim Blonk, opened the hearing by explaining that development of intermodal transport was important in the context of the globalisation of economies. It would improve flexibility and the competitiveness of shippers. The Commission supported the concept of "sustainable mobility", which meant using the transport infrastructure in a

more efficient way. The Task Force had produced a "diagnosis report" which was an inventory of the problems facing the development of intermodal transport. A number of obstacles to its development had been identified. Some of these problems could easily be solved by the industry, but the three principal obstacles were:

1 The lack of liberalisation in the railway sector.
2 The lack of standardisation.
3 The lack of an intermodal liability regime.

The Chairman went on to say that solving the third problem at European level would not be a complete answer. Consequently discussions had been held with the United States, Canada and Mexico and the Central and Eastern European countries.

As regards the bill to revise US COGSA 1936, representatives of the industry had written to the Commissioner and a number of political and legal problems had been identified. The Commission's concerns had been signalled to Capitol Hill the previous week.

Regina Asariotis then made a presentation of the draft report. She began by outlining the current legal liability framework. She emphasised that no uniform regime governed liability for loss, damage or delay. The framework consisted of a complex jigsaw of international conventions, diverse national laws and standard term contracts such as FIATA FBL 1992. More than one regime might apply and different rules governed liability for delay. She identified four particular problems. First liability varied in incidence and extent depending on the applicable regime, the modal stage where loss or damage occurred and the causes of such loss or damage. Second liability was fragmented and could not be assessed in advance. Third the current regulation of liability was too complex and therefore not cost effective. Fourth there was a proliferation of national solutions. She then outlined past attempts at unification, including the 1980 UN Convention on International Multimodal Transport of Goods and the 1992 UNCTAD ICC Model Rules for Multimodal Transport Documents. She pointed out that both systems gave precedence to mandatory national and international law and that both systems were complex. The aim of any possible future regulation must be to produce liability rules which were compatible with existing regimes, cost effective and acceptable to the transport industry. To achieve compatibility with existing regimes liability should be in excess of established minimum levels. To achieve cost effectiveness the rules should be simple and transparent, should cover loss damage and delay, should operate irrespective of the modal stage where loss occurred or the causes of a loss, and should concentrate the transit risk on the carrier. Commercial acceptability would be achieved by adopting a non-mandatory "default" system which enabled a carrier who did not wish to assume extensive liability to opt out. Adherence to the regime would be a matter of commercial decision making. The function of the law in this area was to facilitate trade; there was no significant public policy consideration.

The representatives of the various organisations were then asked to make their statements, not all of whom had submitted written Statements.

The Chairman concluded the hearing by attempting to summarise his

personal impressions. The lack of an intermodal liability scheme was considered by the industry to be one of the major problems in the way of developing intermodal transport. There was a wish on the shippers' side to solve it, but the reaction from the transport side was more diverse. The railways were aware that there was a problem and the suggestion had been made that the UNCTAD/ICC Rules should be promoted. There was a reluctance amongst the shipowners to open a Pandora's box, but nevertheless they were aware that there was a problem and they were willing to continue discussions. Some representatives were in favour of a voluntary scheme and some were in favour of a regional solution, but words of warning had been given against this.

The official Minutes of the hearing state that it was agreed that the Commission would examine the costs for the industry of the absence of a uniform intermodal liability arrangement as well as simulate the economic impact of both a general use of the UNCTAD/ICC Rules and the introduction of a new voluntary intermodal regime. A steering committee consisting of not more than five members from organisations which attended the hearing will monitor progress and give input to the Commission.

STUART BEARE

STATEMENT
by the
COMITE MARITIME INTERNATIONAL

1 The Trend towards Disuniformity of the Law of the Carriage of Goods by Sea

1.1 The object of the Comité Maritime International ("CMI") is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. In pursuance of this object the CMI began the process of unification of the law relating to liability arising out of the carriage of goods by sea in 1907. It drafted the Hague Rules, which were formally adopted at the 1924 Brussels Conference, and the Visby Protocol, which was adopted at the Brussels Conference in 1968.

1.2 The degree of international uniformity established by the widespread adoption of the Hague Rules decreased when the Hague-Visby Rules entered

into force in 1977, since the majority of States parties to the Hague Rules have not ratified the Visby Protocol. This trend significantly increased with the entry into force of the Hamburg Rules in 1992 and the enactment of domestic legislation in a number of States adopting non-uniform versions of the Hague-Visby Rules.[1]

1.3 The CMI views this trend with great concern. In response to a questionnaire sent to its member national associations in 1994, the majority of those national associations which replied considered that the proliferation of legal regimes relating to liability for carriage of goods by sea was an unacceptable situation and that some effort should be made by the CMI to remedy it.[2]

1.4 The CMI then set up a International Sub-Committee ("ISC") which identified and debated the most relevant issues that a uniform law of the carriage of goods by sea should regulate. The ISC has met five times.[3] The work of the ISC will be concluded in the form of a CMI Study which will be published in 1999. It will summarise the areas where there is consensus and the areas where there are conflicting positions regarding principles of liability. No attempt to draft new rules will be made at this stage.

1.5 It is the view of the majority of the national associations that the existence of a third liability convention would introduce even greater disuniformity. To achieve unification it would be necessary for a new convention to supersede the Hague Rules, the Hague-Visby Rules and the Hamburg Rules.

1.6 It does not at present appear that there is a sufficient international consensus to ensure that such a new convention limited to a review of the Hague, Hague-Visby and, possibly, Hamburg Rules would be widely adopted. A considerable measure of consensus has however been achieved in the ISC. If the opportunity should arise in the not too distant future to work towards the adoption of a new (and most probably extended[4]) convention, the CMI believes that its forthcoming Study could form the basis on which such a convention could be drafted. Some substantial differences between national delegates remain, but it is not unusual for such differences to go forward for resolution at a diplomatic conference at which the final text of a convention is settled.

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1 For a historical outline see Sturley "The Development of Cargo Liability Regimes", a paper given to the 8th Axel Ax: son Johnson Colloquium and published by The Swedish Maritime Law Association under the general title "Cargo Liability in Future Maritime Carriage" in 1998 at p. 10.

2 The questionnaire is set out in the CMI Yearbook 1995 at p. 111 and the replies at pp. 115-177

3 Reports of the first four meetings are set out in the CMI Yearbook 1995 at pp. 229-244 and the CMI Yearbook 1996 at pp. 360-419.

4 See section 6 below.

2 Draft Bill to amend the United States Carriage of Goods by Sea Act 1936 ("US COGSA 1936")

2.1 If this Bill is enacted, it will be a further step in the trend towards disuniformity. However the CMI seeks to lead States towards uniformity principally by promoting uniform international regimes for adoption by States without the necessity for supplementary domestic legislation. It has nevertheless always been the case that domestic legislation has made provision for a State's individual circumstances and the US COGSA 1936 does not precisely enact the Hague Rules. The CMI does not seek to make formal representations to States about their proposed domestic legislation, which States have a sovereign right to enact.

2.2 The CMI is a non-governmental "federation" of its member national associations. National associations are autonomous and the CMI does not seek to influence whatever representations they may wish to make to their own governments. The Maritime Law Association of the United States ("MLA") for a long time advocated the adoption by the United States of the Visby Protocol. The CMI respects the right of the MLA to promote a compromise solution to the problems that have arisen in the United States after adoption of the Visby Protocol proved politically impossible.

3 Intermodal Transport[5]

3.1 The CMI has been concerned to promote uniformity in the law relating to intermodal transport contracts involving the carriage of goods by sea and in 1969 the CMI Tokyo Conference approved a draft convention on combined transport ("the Tokyo Rules").

3.2 The idea of a convention on combined transport did not secure general support and in 1973 the ICC drafted the ICC Rules for a Combined Transport Document ("the ICC Rules"), which were slightly revised in 1975. The ICC Rules were based, as were the Tokyo Rules, on the network principle. Many large combined transport operators apply terms and conditions based on the ICC Rules.

3.3 The 1980 United Nations Convention on the International Multimodal Transport of Goods ("the Convention") was not of course drafted by the CMI. The Convention follows the principle of a "uniform" liability, with the important exception of the monetary limits of liability. This uniform liability

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[5] The terms "intermodal transport" and "multimodal transport operator" are used in this Statement in the same sense as they are used in the draft final report to the European Commission on International Transportation and Carrier Liability ("the Experts' Report").

is based on the principle of presumed fault or neglect and follows very closely Article 5 of the Hamburg Rules. It was therefore not to be expected that States which did not adopt the Hamburg Rules would become parties to the Convention. As the Experts' Report points out (page 10) the Convention is not yet in force and this position is unlikely to change.

3.4 The UNCTAD/ICC model rules, which came into effect in 1992, did not follow the approach adopted by the Convention, but were also based on the network principle. These rules are incorporated into the FIATA FBL.

3.5 As explained in Appendix F to the Experts' Report Germany has enacted national legislation to regulate all transportation of goods with the exception of maritime transport and to regulate intermodal transport, including intermodal transport involving the carriage of goods by sea, on the basis of the network system of liability, but providing for liability to be based on the CMR where an international convention is not mandatorily applicable.

3.6 The Experts' Report goes further and suggests the adoption of a regime based on strict and unlimited liability. Whilst this regime would not be mandatory in the sense that contracting parties could opt out (the default system) any unimodal carrier could opt into the regime by contractual incorporation.

3.7 The problems associated with intermodal transport are well documented[6]. We will refer in this Statement specifically to two of them.

3.8 It is often unclear whether the multimodal transport operator ("MTO") contracts with the shipper or goods owner as principal or agent. Under the FIATA FBL he contracts as principal; under the BIFA House Bill he contracts as agent.[7] The Convention (Article 1) requires the MTO to assume responsibility as principal for the performance of the contract for the Convention to apply. It does not therefore resolve the issue as to whether or not the MTO contracts as principal or agent. The Experts' Report does not address this problem.

3.9 There is the problem of "conflict of conventions". The Convention seeks to deal with this problem in Articles 30.4 and 38. The Experts' Report refers to this problem on pages 14 and 15. It is complex and requires substantial further study; it is not appropriate to go further into it in this Statement.

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[6] See, for example, Faber "The Problems arising from Multimodal Transport" [1996] LMC LQ 503 and Professor De Wit "Combined Transport Bills of Lading". a paper given to LLP's 3rd International Bills of Lading Contemporary Issues Seminar 6-8 November 1996.

[7] Faber, supra, at pp. 506-507. See also *Aqualon (U.K.) Ltd v. Vallana Shipping Corporation* [1994] 1 LLR 669 and *Elektronska Industrija v. Transped* [1986] 1 LLR 49.

3.10 The CMI does not wish to comment on those aspects of the German legislation which do not apply to the carriage of goods by sea and it is unwilling to comment in any detail on those aspects which govern intermodal transport without the benefit of advice from the German Maritime Law Association. Nevertheless the CMI would not encourage the enactment of unilateral legislation by member States of the EU. The CMI believes that the problems of intermodal transport involving the carriage of goods by sea would best be resolved by an international and not a regional regime. For the same reasons as the enactment of the Bill to amend US COGSA 1936 will be a further step in the trend towards disuniformity, so would unilateral domestic legislation or a regional regime, particularly a regime which sought to impose a uniform basis of liability substantially at variance with the Hague-Visby Rules, to which the majority of EU States are parties.

4 A new Transport Convention

4.1 A persuasive case can be made for superseding all the existing transport conventions with one which would govern all transport contracts (including contracts made by EDI) by whatever means of transport and whether unimodal or intermodal.

4.2 The CMI however doubts whether, particularly in view of the matters referred to in Section 1 of this Statement, there is sufficient international consensus to develop and widely to adopt such a convention at the present time. The CMI believes that this should remain a longer term objective and that steps can be taken to work towards it.

5 An "Overriding" Regime

5.1 It has to be debated whether any such "overriding" regime should be developed on the network principle, or the principle of uniform liability as provided for in the Convention. This is a complex issue on which the member national associations of the CMI have not been asked to express any view, at least since the time when the Tokyo Rules were drafted. At first sight it may be thought that a uniform regime would more likely provide "predictable and reliable liability rules, which are easy to understand and operate in a cost effective way",[8] but commentary on the Convention illustrates that these objectives are not easily attained.

5.2 The Experts' Report suggests the adoption of a uniform regime which provides for strict and unlimited liability. It advocates this as being the most

[8] Experts' Report at p.11.

cost effective solution, which would make separate cargo insurance largely redundant. The CMI wishes to make the following brief comments on this proposition:

- The report suggests that losses caused by *force majeure* (for which there is no universal definition) may be excepted. If so, shippers will be exposed to liability for contributions in general average, cargo's proportion of a salvage award and war risks. They may wish to protect this exposure by taking out cargo insurance.
- In any event shippers will bear the risk of the MTO becoming insolvent and the possibility that they may be unable to recover direct from the MTO's insurers.
- The possibility of recourse actions by the MTO will oblige performing carriers to take out insurance. This element in the total insurance costs will not be reduced.

5.3 The "insurance argument" is notoriously difficult to determine[9] and any regime which seeks substantially to alter the present balanced allocation of risk is likely to encounter commercial resistance.[10]

5.4 The concept of strict **and** unlimited liability is a new concept in the area of maritime conventions. It is, for example, inconsistent with the philosophy of the 1976 Limitation Convention and the 1992 Civil Liability Convention.

5.5 The CMI does not share the confidence of the authors of the Experts' Report that the need to opt out would be more likely to achieve widespread application than the need to opt in. In general it is difficult to avoid the conclusion that the adoption of the proposals in the Experts' Report would lead to even greater disuniformity in the law of the carriage of goods by sea and intermodal transport involving such carriage.

6 Current work of the CMI

6.1 Professor Ramberg advanced a similar proposal to that in the Experts' Report, albeit not developed at length, in a paper to the 8th Axel Ax: son Johnson Colloquium in September 1997.[11] In his summary of the papers presented at the Colloquium Professor Tiberg said:

> *"It also seems to me that though [Professor Ramberg's] solution may well quench the flames, the smouldering embers underneath remain a disturbing element. So even if in one way or another we could introduce*

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[9] See, for example, (in relation to the Hamburg Rules) Sturley "Changing Rules in Marine Insurance; conflicting empirical arguments about Hague, Visby, and Hamburg in a vacuum of empirical evidence" Journal of Maritime Law and Commerce Vol. 24 No. 1 p119.

[10] See, for example, International Union of Marine Insurance Position Paper 26th March 1996.

[11] Published by the Swedish Maritime Law Association, supra, at pp. 1-5.

the overall strict liability of the contracting carrier, the absence of uniform liability for performing carriers will cause troublesome recourse actions that call for reform.
However, I think the vista of necessary reforms should be widened. The maritime law has seen enough aborted attempts at amendement of cargo damage liability rules. There is more to carriage than damage, and important aspects remain unsolved and unclarified in the countries of the world. In particular there are incompatible conceptions on the function of the bill of lading, seaway bill and corresponding electronic documents in the world we are entering into. I believe the unification work must go on, but it should be widened to include other unsolved aspects of transport and transport documents. Work is actually beginning in this direction, and may it succeed!"[12]

6.2 Work has indeed begun. At the invitation of UNCITRAL the CMI is currently engaged in organising, together with all interested organisations involved, further work on the issues of transport law referred to in paragraphs 210-215 of the report of UNCITRAL on the work of its 29th session 28th May - 14th June 1996.[13] The CMI has set up a Steering Committee to co-ordinate work on this project and the Steering Committee has in turn set up an International Working Group. The Working Group's brief is set out in a Report of the Steering Committee dated April 1998.[14] In particular the Working Group has been asked to study:

- Interfaces between carriage of goods and sales of goods;
- Relationships within the contracts of carriage;
- Transport documents;
- Bankability of transport documents;
- Ancillary contracts.

6.3 The Working Group has already held two meetings and its members have written study papers on the above subjects. The Working Group will meet again next month to review the issues which arise from these studies and it is hoped that it will then be possible to formulate a questionnaire for circulation to national associations in the Spring.

6.3 The ultimate objective of this work is to identify areas in which no uniform rules currently exist and where there is a practical possibility of achieving greater uniformity by way of extending the existing regimes. If international consensus can be reached, there is a possibility that this consensus could extend to the creation of an appropriate liability regime, as referred to in paragraph 1.7 above.

14th January 1999

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12 id at p. 255
13 Published in the CMI Yearbook 1996 at pp. 354-355.
14 To be published in the forthcoming CMI Yearbook 1998.

CMI INTERNATIONAL WORKING GROUP ON SALVAGE

DRAFT CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE

In May 1999 the Chairman of the CMI International Working Group on Salvage, Prof. R.E. Japikse, circulated to all National Maritime Law Associations the following letter:

To the Presidents of the National Maritime Law Associations.

1. The Unesco has submitted a Draft Convention on the Protection of the Underwater Cultural Heritage; a copy is attached.

2. Several provisions of the Draft Convention are thought to have an impact on, inter alia, the law of salvage, including the 1989 London Convention. See, for instance, the Draft articles 5, 6, 7, 9 and 12 in conjunction with 1 and 4; the "charter" referred to in the various articles is the 1996 ICOMOS Charter, the acronym standing for International Council on Monuments and Sites. Further, issues as to the law on insurance and as to ownership/property rights may well be affected one way or another.

3. The attached Draft includes comments made on most of its individual articles; some clarify the relevance of certain stipulations in the ICOMOS Charter. Together, those comments are believed to properly identify the areas of conflict with existing law.

4. As, in particular, the law of salvage and, specifically, the 1989 London Convention, are on CMI's agenda in the context of other recent developments, the CMI Executive Council has decided that the present IWG take upon itself also to examine the effects of the UNESCO Draft convention in the field of salvage and to report its views to the Executive Council.

5. To that end, the IWG has found it necessary to circulate the annexed Questionnaire, inter alia intending to obtain an insight into the national legislations in respect of Underwater Cultural Heritage. A survey thereof may

also indicate whether and to what extent there would be a need for some revision of the Salvage Convention on that point, and indeed whether an entirely new convention like the Unesco Draft would be justified instead of (possibly) a limited modification of the Salvage Convention.

6. You are requested to consider the questions and to let us have your replies through the CMI-Secretariat at Antwerp, preferably no later than by the end of July, 1999.

Rotterdam, May 1999

R.E. Japikse, on behalf of IWG-Salvage.

The Draft Convention mentioned in the above letter is attached as Annex I. The comments thereon are not included except those regarding the general relationship with other texts and those directly relating to the Salvage Convention.

Responses to the Questionnaire (Annex II) were received from the Associations of Australia and New Zealand, China, Germany, Indonesia, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom and United States. A synopsis of such responses is attached as Annex III.

ANNEX I

DRAFT CONVENTION ON THE PROTECTION OF TUE UNDERWATER CULTURAL HERITAGE

Text proposed by UNESCO and the United Nations Division of Ocean Affairs and Law of the Sea (DOALOS) with the advice of the International Maritime Organization (IMO)

Relationship to other texts

Many States (Colombia, France. Germany, Greece, Italy, Netherlands) considered it essential that the Convention be compatible with the United Nations Convention on the Law of the Sea (Montego Bay 1982) (UNCLOS) and Greece and Italy emphasised the importance of the Council of Europe final working paper on a draft European Convention on the matter.

The meeting of experts also asked the Secretariat to prepare an annotated reference document incorporating relevant texts and comments and categorising articles by topic to facilitate comparison. This document has been prepared and is attached (Doc. CLT-98/conf.202/4). This paper notes the debt of the ILA draft to that of the Council of Europe draft in the Preamble and many of its provisions, but notes a fundamental difference: the Council of Europe draft was intended to cover archaeological sites within the territorial sea and an adjacent seaward area. Its scope was never envisaged as extending beyond the continental shelf or 200 miles (the latter would have given virtually complete coverage of the Mediterranean area). The ILA draft, in view of its universal scope, was intended to cover sunken vessels on the sea-bed beneath the high seas also.

With respect to the United Nations Convention on the Law of the Sea (Montego Bay, 1982) (UNCLOS), it should be noted that the adoption of an Agreement for the protection of the underwater cultural heritage would implement the duty of States Parties under Art. 303(1) to protect archaeological and historical objects found at sea and to co-operate for that purpose and that Art. 303(4) states that the article is "without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature".

As indicated before, in considering the problems of protecting the underwater cultural heritage, several documents were examined. Several

States in their comments (France, Greece, Netherlands) expressed satisfaction with the ILA drafts as a basis of consideration, as did some of the participants at the Meeting of Experts. The Secretariat has, therefore, considered the ILA text when preparing the following draft, noting discussion and comment on its provisions and proposing changes where these appeared to represent a consensus. This draft has, however, suppressed one article of the ILA draft, added several more, and redrafted many of the articles for better clarity.

Preamble

The States Parties to the present Convention,

Acknowledging the importance of underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their shared heritage;

Noting growing public interest in underwater cultural heritage;

Aware of the fact that underwater cultural heritage is threatened by unsupervised activities not respecting fundamental principles of underwater archaeology and the need for conservation and research of underwater cultural heritage;

Aware further of increasing commercialisation of efforts to recover underwater cultural heritage and availability of advanced technology that enhances identification of and access to wrecks;

Conscious also of growing threats to underwater cultural heritage from various other activities, namely exploitation of natural resources of various maritime zones, construction, including construction of artificial islands, installation and structures, laying of cables and pipelines;

Believing that cooperation among States, marine archaeologists, museums and other scientific institutions, salvors, divers and their organizations is essential for the protection of underwater cultural heritage;

Considering that exploration, excavation, and protection of underwater cultural heritage necessitates the application of special scientific methods and the use of suitable techniques and equipment as well as a high degree of professional specialisation, all of which indicates a need for uniform governing criteria;

Reconizing that underwater cultural heritage should be preserved for the benefit of humankind, and that therefore responsibility for its protection rests

not only with the State or States most directly concerned with a particular activity affecting the heritage or having an historical or cultural link with it, but with all States and other subjects of international law;

Bearing in mind the need for more stringent measures to prevent any clandestine or unsupervised excavation which, by destroying the environment surrounding underwater cultural heritage, would cause irremediable loss of its historical or scientific significance;

Realizing the need to codify and progressively develop rules relating to the protection and preservation of underwater cultural heritage in conformity with international law and practice, including the United Nations Convention on the Law of the Sea of 10 December 1982;

Convinced that information and multidisciplinary education about underwater cultural heritage, its historical significance, serious threats to it, and the need for responsible diving, deep-water exploration and other activities affecting it, will enable the public to appreciate the importance of underwater cultural heritage to humanity and the need to preserve it; and

Committed to improving the effectiveness of measures at international and national levels for the preservation in place or, if necessary for scientific or protective purposes, the careful removal of underwater cultural heritage that may be found beyond the territories of States;

Have agreed as follows:

Article 1: Definitions

For the purposes of this Convention:

1. (a) "Underwater cultural heritage" means all traces of human existence underwater for at least 100 years, including:
   (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural contexts; and
   (ii) wreck such as a vessel, aircraft, other vehicle or any part thereof, its cargo or other contents, together with its archaeological and natural context.
   (b) Notwithstanding the provision of paragraph 1(a), a State Party may decide that certain traces of human existence constitute underwater cultural heritage even though they have been underwater for less than 100 years.

2. Underwater cultural heritage shall be deemed to have been "abandoned":
   (a) whenever technology would make exploration for research or recovery feasible but exploration for research or recovery has not

been pursued by the owner of such underwater cultural heritage within 25 years after discovery of the technology; or

(b) whenever no technology would reasonably permit exploration for research or recovery and at least 50 years have elapsed since the last assertion of interest by the owner in such underwater cultural heritage.

3. "Charter" means the "Charter for the Protection and Management of the Underwater Cultural Heritage" adopted by the International Council of Monuments and Sites (ICOMOS) at Sofia 1996, the operative provisions of which are annexed to this Convention.

4. "States Parties" means States which have consented to be bound by this Convention and for which the Convention is in force.

Article 2: Scope of application of the Convention

1. This Convention applies to underwater cultural heritage which has been abandoned according to Article 1, paragraph 2.

2. This Convention shall not apply to the remains and contents of any warship, naval auxiliary, other vessel or aircraft owned or operated by a State and used, at the time of its sinking, only for non-commercial purposes.

Article 3: General Principle

(UNCLOS Art. 303(1), ILA Draft Art. 3, C of E draft Art. 3)

1. States Parties shall preserve underwater cultural heritage for the benefit of humankind.

Comment on Article 4 of ILA draft which is deleted in the present draft

The ILA draft included an article excluding application of the law of salvage to underwater cultural heritage covered by the convention.

Australia, Canada and the republic of Korea expressed reservations about the application of salvage law. Poland and Tunisia would exclude it. Germany expressed reservations about its exclusion which is thought might not be compatible with the Law of the Sea Convention (Article 303(3)). However, The Salvage Convention of 1989 expressly permits reservations to the applicability of that Convention to historic shipwrecks, which suggests that the States Parties to that Convention do not share that view. It should also be noted that Article 303(4) UNCLOS states that nothing in this article affects the rights of owners, the law of salvage etc. and that paragraph must also be read subject to Article 303(4) which states that Article 303(4) is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

At the Committee of Experts, where the issue was intensively discussed,

one view was expressed that archaeologists should co-operate with industries having the hardware and economic incentives to excavate sites which archaeologists did not have the means to explore. Archaeological experts countered that there is no necessity for excavation, that such sites are better preserved in situ, and that excavation without proper provision for conservation led to the direct loss of objects and information which could have been preserved by leaving a site untouched. Finally, much damage was done by hobby-divers and treasure hunters.

At the meeting of experts the IMO expert noted that the International Convention on Salvage Law allowed the exclusion of the Convention in relation to historic wrecks. The DOALOS expert noted that the duty to preserve objects of an archaeological and historical nature according to Article 149 of UNCLOS might mean leaving them where they are. Summarising, the Chairman of the Group of Experts felt that further negotiation was needed on this issue.

The IMO Secretariat has noted that the Salvage Convention 1989 regulates conditions for the salvage of property but does not determine conditions for acquisition or loss of ownership or possession over property to be salved. It does not address the legal status of the property, namely when it has a recognizable owner, when it can be considered as abandoned, and whether after abandonment, the title of ownership goes to the State, or other public or private organizations or institutions. These matters seem to be within the scope of national legislation, although it may well be that once the draft UNESCO convention is adopted, there will be an international instrument establishing when underwater cultural heritage is considered to be abandoned and States Parties will have to abide by the regulations established in the treaty to define abandonment within their jurisdictions. There is no conflict between the Salvage Convention, which essentially regulates private law, and the public law regulations under the UNESCO draft.

However, the effect of the domestic salvage law of some States may provide an incentive to excavate wrecks, historic or otherwise, without regard to the preservation of the historical record, outside their jurisdiction by recognizing certain commercial rights in the excavator once the excavated material is brought within the jurisdiction. This problem is now dealt with in Article 13 below.

Article 4: Underwater Cultural Heritage in Internal Waters, Archipelagic Waters and Territorial Sea

1. States Parties, in the exercise of their sovereignty, have the exclusive right to regulate and authorise activities affecting underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.

2. Without prejudice to other international agreements and rules of international law regarding the protection of underwater cultural heritage, States Parties shall take all necessary measures to ensure that, at a minimum,

the operative provisions of the Charter be applied to activities affecting underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.

Article 5: Underwater cultural heritage in the Exclusive Economic Zone and on the Continental Shelf

1. States Parties shall require the notification of any discovery relating to underwater cultural heritage occurring in their exclusive economic zone or on their continental shelf.

2. States Parties may regulate and authorize all activities affecting underwater cultural heritage in the exclusive economic zone and on the continental shelf, in accordance with this Convention and other rules of international law.

3. In authorizing any such activities, States Parties shall require compliance, at a minimum, with the operative provisions of the Charter, in particular taking into account the needs of conservation and research, including the need for re-assembly of a dispersed collection, as well as public access, exhibition and education.

4. States Parties may deny authorization for the conduct of activities affecting underwater cultural heritage having the effect of unjustifiably interfering with the exploration or exploitation of their natural resources, whether living or not living.

5. States Parties shall make punishable all breaches of the terms of permits authorizing the conduct of activities affecting underwater cultural heritage.

Article 6: Non-Use of Areas under the Jurisdiction of the Coastal State

1. No State Party shall allow use of its territory, including its maritime ports and off-shore terminals, or other area under its jurisdiction such as the continental shelf or exclusive economic zone, in support of any activity affecting underwater cultural heritage and inconsistent with the operative provisions of the Charter.

2. This provision shall apply to any such activity beyond that State's territorial sea but not within an area over which another State exercises controls over exploration, excavation and management of the under water cultural heritage in accordance with Article 5(2) of this Convention unless requested by that State.

Article 7: Prohibition of Certain Activities by Nationals and Ships

1. A State Party shall take such measures as may be necessary to ensure that

its nationals and vessels flying its flag do not engage in any activity affecting underwater cultural heritage in a manner inconsistent with the principles of the Charter.

2. Measures to be taken by a State Party in respect of its nationals and vessels flying its flag shall include, among others, the establishment of regulations:

(a) to prohibit activities affecting underwater cultural heritage in areas where no State Party exercises its jurisdiction under Article 5 otherwise than in accordance with the terms and conditions of a permit or authorization granted in compliance with the provisions of the Charter;

(b) to ensure that they do not engage in activities affecting underwater cultural heritage within the exclusive economic zone or continental shelf of a State Party which exercises its jurisdiction under Article 5, in a manner contrary to the laws and regulations of that State.

Article 8: Permits

1. A State Party may provide for the issuance of permits, subject to compliance with the operative provisions of the Charter, allowing entry into its territory of underwater cultural heritage.

2. Should an excavation or retrieval of underwater cultural heritage occur without a prior authorization of a State Party, the State Party may issue permits allowing entry of such underwater cultural heritage into its territory, provided that excavation and retrieval activities have been conducted in accordance with the operative provisions of the Charter.

Article 9: Seizure of Underwater Cultural Heritage

1. Subject to Article 8, each State Party shall provide for the seizure of underwater cultural heritage excavated or retrieved in a manner not in conformity with the operative provisions of the Charter, which is brought to its territory, either directly or indirectly.

2. A State Party shall seize underwater cultural heritage known to have been excavated or retrieved from the exclusive economic zone or the continental shelf of another State Party exercising control of those areas in accordance with Article 5 paragraphs 2 to 5 above only after the request or with the consent of that State.

Article 10 - Other sanctions

1. Each State Party shall impose criminal or administrative sanctions for importation of underwater cultural heritage which is subject to seizure under Article 9.

2. States Parties agree to cooperate with each other in the enforcement of

these sanctions. Such cooperation shall include but not be limited to, production and transmission of documents, making witnesses available, service of process and extradition.

Article 11: Notification Requirements and Treatment of Seized Underwater Cultural Heritage

1. Each State Party undertakes to record, protect and take all reasonable measures to conserve underwater cultural heritage seized under this Convention.

2. Each State Party shall notify its seizure of underwater cultural heritage under this Convention to any other State Party which is known to have a cultural heritage interest therein.

Article 12: Disposition of Underwater Cultural Heritage

1. A State Party which has seized underwater cultural heritage shall decide on its ultimate disposition for the public benefit taking into account the needs of conservation and research, including the need for re-assembly of a dispersed collection, as well as public access, exhibition and education, and the interests of those States which have expressed a national heritage interest in it.

2. States Parties shall provide for the non-application of any internal law or regulation having the effect of providing commercial incentives for the excavation and removal of underwater cultural heritage.

Article 13: Collaboration and Information-Sharing

(ILA Art. 13; C of E draft Art. 4)

1. Whenever a State Party has expressed a national heritage interest in particular underwater cultural heritage to another State Party, the latter shall consider collaborating in the investigation, excavation, documentation, conservation, study and cultural promotion of the heritage.

2. To the extent compatible with the purposes of this Convention, each State Party undertakes to share information with other States Parties concerning underwater cultural heritage, such as but not limited to, discovery of heritage, location of heritage, heritage excavated or retrieved contrary to the operative provisions of the Charter or otherwise in violation of international law, pertinent scientific methodology and technology, and legal developments relating to heritage.

3. Whenever feasible, each State Party shall use appropriate international databases to disseminate information about underwater cultural heritage excavated or retrieved contrary to the operative provisions of the Charter or otherwise in violation of international law.

Article 14: Underwater cultural Heritage in the Area

Any discovery of underwater cultural heritage in the Area as defined in Article 1, paragraph 1(1) of the United nations Convention on the Law of the Sea, shall be reported by the finder to the Secretary-General of the International Seabed Authority, which shall transmit the information to the Director-General of the United Nations Educational, Scientific and cultural Organization.

Article 15: Education

(ILA Art. 14; C of E draft Art. 9(2))

Each State Party shall endeavour by educational means to create and develop in the public mind a realisation of the value of the underwater cultural heritage as well as the threat to this heritage posed by violations of this Convention and non-compliance with the Charter.

Article 16: Training in underwater archaeology

(C of E draft Art. 1 0)

States Parties shall take measures to further research in accordance with the operative provisions of the Charter by providing training in underwater archaeological investigation and excavation methods and in techniques for the conservation of underwater cultural heritage, or by encouraging the competent bodies or organizations to do so.

Article 17: Assistance of UNESCO

1. States Parties may call upon the UNESCO for technical assistance concerning underwater cultural heritage as regards information and education, consultation and expert advice, co-ordination and good offices, or in connection with any problem arising out of the application of the present Convention or the operative provisions of the Charter.

2. The Organization shall accord such assistance within the limits fixed by it, programme and by its resources.

3. The Organization may, on its own initiative, conduct research and publish studies on matters relevant to the protection of the underwater cultural heritage.

Article 18: National Services

1. In order to ensure effective implementation of this Convention, States Parties undertake to expand the activities of existing competent national services or, if appropriate, to establish national services for that purpose.

2. National services should actively encourage the participation of interested persons in preservation and study of the underwater cultural heritage and in support of archaeological research. This participation is subject to the authorization and control of the national service concerned and must respect the operative provisions of the Charter.

3. States Parties shall establish an internal procedure or procedures for resolving disputes concerning whether or not an activity affecting underwater cultural heritage is in conformity with the operative provisions of the Charter.

Article 19: Peaceful Settlement of Disputes

Any dispute between two or more States Parties concerning the interpretation or application of the present Convention or the operative provisions of the Charter and not settled by negotiation shall, at the request of any of the parties to the dispute, be submitted to arbitration. If the States Parties are unable to agree on the constitution of the arbitral tribunal within six months from the date of the request for arbitration, any of the parties to the dispute may refer the dispute to the International Court of Justice.

Article 20: Ratification, Acceptance, Approval or Accession

1. Member States of UNESCO, as well as Non-Member States of UNESCO which have been invited by the Executive Board of UNESCO, may become Parties to this Convention by depositing with the Director-General of UNESCO an instrument of ratification, acceptance, approval or accession.

2. The Convention shall enter into force three months after the deposit of the fifth instrument referred to in paragraph 1, but solely with respect to the five States that have so deposited their instruments. It shall enter into force for each other State three months after that State has deposited its instrument.

Article 21 - Reservations and Exceptions

No reservations or exceptions may be made to this Convention.

Article 22: Amendments

1. A State Party may, by written communication addressed to The Director-General of UNESCO, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the General Conference of the UNESCO for adoption.

2. Once adopted, amendments to this Convention shall subject to ratification, acceptance, approval or accession by the States Parties, unless otherwise provided in the amendment itself.

3. Articles 21 and 23 shall apply to all amendments to this Convention.

4. Amendments to this Convention shall enter into force for the States Parties accepting or acceding to them three months after the deposit of the instruments referred to in paragraph 2 by two thirds of the States Parties. Thereafter, for each other State Party it shall enter into force three months after the deposit of its instrument.

5. An amendment may provide that a smaller or a larger number of acceptances or accessions shall be required for its entry into force than are required by this article.

1. A State which becomes a Party to this Convention after the entry into force of amendments in accordance with paragraph 4 shall, failing an expression of different intention by that State
   (a) be considered as a Party to this Convention as so amended; and
   (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 23: Denunciation

1. A State Party may, by written notification addressed to Director-General of UNESCO, denounce this Convention.

2. The denunciation shall take effect twelve months after the date of receipt of the notification, unless the notification specifies a later date.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 24: The Charter

1. The operative provisions of the Charter annexed to this Convention form an integral part of it, and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the operative provisions of the Charter relating thereto.

2. The Charter may be revised from time to time by the International Council of Monuments and Sites. Revisions of the operative provisions shall be deemed to be revisions of the annexed operative provisions. The Director-General of the United Nations Educational, Scientific and cultural Organization shall notify all States Party to this Convention of the text of such revisions. States Parties shall be bound by the revisions, except those State Parties that notify the depositary of their non-acceptance in writing. Such

notification shall be made within six months after the receipt of the notification of the text of revisions.

3. A State which becomes a Party to this Convention after the adoption of amendments to the operative provisions of the Charter in accordance with paragraph 2 shall:

(a) be considered to have accepted the operative provisions of the Charter as so amended; and

(b) be considered as having accepted the unamended operative provisions of the Charter in relation to any State Party not bound by the amendments to the operative provisions of the Charter.

Article 25: Authoritative texts

This Convention bas been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

ANNEX II

QUESTIONNAIRE
SALVAGE AND UNDERWATER CULTURAL HERITAGE

1. *Has your domestic law any provisions regarding historic wrecks? If so:*
   - *(a) Are they protected from salvors and/or others interfering?*
   - *(b) Do they extend to:*
     - *(i) the territorial sea,*
     - *(ii) the EEZ,*
     - *(iii) other areas?*
   - *(c) Do they have extra territorial effect, i.e. over the high seas?*
   - *(d) Is "historic wreck" defined? If so how?*
   - *(e) Is there a provision for ownership or possession of "unclaimed wreck(s)"?*
   - *(f) Is there any provision for reporting discovery of historic wreck(s)? If so, to whom?*
   - *(g) Is there any provision for granting permits to work on historic wrecks?*
   - *(h) Is there any provision compelling the taking of advice from archaeologists or historians as to methods of investigation or recovery of artefacts?*

2. *(a) Is there any provision preventing or controlling any trade in such artefacts? If so, what are the limitations on such powers (e.g. as regards artefacts brought from a foreign jurisdiction)?*
   - *(b) Is there any provision as to ownership of wrecks or artefacts? If so, is there any provision as to:*
     - *(i) abandonment of ownership?,*
     - *(ii) ownership being vested at some stage in the State?*
   - *(c) Is your State party to:*
     - *(i) UNCLOS 1982?*
     - *(ii) Salvage Convention 1989?*
     - *(iii) Any other relevant Convention? If so, which?*

3. *Is there any provision protecting:*
   (a) sites as opposed to simply the historic wrecks themselves?
   (b) the rights of private parties such as salvors working on an historic wreck?

4. *Does your national law apply the law of salvage to the recovery of historic artefacts?*

5. *Has your country, if a party to the 1989 London Salvage Convention, effected the reservation permitted in its Article 30, par. (1) sub (d)?*

ANNEX III

SYNOPSIS OF REPLIES TO THE QUESTIONNAIRE

Question (1):

Has your domestic law any provisions regarding historic wrecks?

All the answers are in the affirmative: there is either specific domestic legislation as to (historic) wrecks, or broader domestic legislation on cultural heritage including wrecks.

Question (1)-(a):

Are they (i.e. historic wrecks) protected from salvors and/or others interfering?

Again all the answers are basically in the affirmative, but the regimes (where elaborated in the replies) show a wide variety, ranging from an almost sheer prohibition to a system of prior permission from certain Authorities; in nearly all the cases there is a duty to report (see under (1)-(f), below). One answer is qualified (U.S.): the relevant regime covers "only a slight handiful of historic wrecks", with the remainder being governed by the general maritime law of salvage or of finds.

Question (1)-(b):

Do they (i.e. domestic law provisions) extend to

(i) the territorial sea,

(ii) the EEZ,

(iii) other areas?

As to (i):

Clearly, cf. (1)-(a), all the answers are in the affirmative (however, note the one part-exception mentioned under (1)-(a)).

As to (ii):

Fifteen replies are in the negative, one in the affirmative (Mexico); in two cases (Italy and U.S.) art. 303 UNCLOS is said possibly to allow extension to the EEZ; in one case (U.K.) there is an extension to EEZ for wrecks of vessels in military service; in one further case (Sweden) there is such an extension where a wreck of over 100 years is salvaged by a national ship or brought to the country in question; finally, in one case (Portugal) "archipelagos waters, in Convention 1982 version" may be covered by the regime. As for The

Netherlands there appears to follow a specific exception from its reply to Question (1)-(c), i.e. in relation to VOC wrecks.

As to (iii):

Essentially, the same picture emerges as above under (ii), with two specific provisos where the answers to (ii) are in the negative: the continental shelf is included in the regime, wholly (Spain) respectively partly through the provisions regarding oil activities (Norway).

Question (1)-(c):

Do they (i.e. domestic law provisions) have extra territorial effect, i.e. over the high seas?

Eleven answers are a straight forward "no"; the five other ones express qualifications, relating to military vessels (U.K., see above under (1)-(b)), to VOC wrecks (The Netherlands), to historic wrecks salvaged by a national ship or brought into the country (Sweden, see above under (1)-(b), and to specific case law where Courts, applying the general maritime law, have exercised jurisdiction over salvage or finds operations in respect of historic wrecks located on the high seas (U.S.) or where a Phoenician statue brought by a national ship to the country from outside territorial waters was held discovered on national territory (Italy); those five replies seem to imply that otherwise the domestic law provisions have no effect over the high seas.

Question (1)-(d):

Is historic wreck defined? If so how?

In only three instances have, affirmatively, more or less specific definitions of "historic wrecks" been produced (Portugal, New Zealand and Australia); the different formulas used are too extensive for citation within the scope of this report (one - Portugal - being somewhat wider in referring to "subaquatic cultural patrimony", without connecting "historical value" to some precise age; New Zealand has 60 years as a yardstick, Australia 75 years coupled with a few further conditions or criteria, whilst Dutch and Papua New Guinean shipwrecks are in any event included there as a separate item).

Most of the other replies indicate that "historic wrecks" are embraced or implied by broader descriptions of goods of a cultural or historical interest, such as antiquity, (cultural) monument, historical artefact (Norway; over 100 years), property of ... historical ... interest, cultural heritage (Indonesia, over 50 years), cultural properties, stationary relic of the past (Sweden, over 100 years), historical and archaeological heritage etc.; in one legislation (U.K.) there is also a heading "historic wrecks", relating this term to a historic, archaeological or artistic importance of vessels lying wrecked.

In the remaining cases the replies are either merely in the negative without providing details of the national legislation on cultural heritage (China), or singling out specific wrecks (VOC) and, as to other wrecks, referring to a general Monument Act (The Netherlands), or setting out a system of eligibility for listing on a National Register for Historic Places (U.S.); in the latter two instances, "historic wreck" is not specifically defined either.

Question (1)-(e):

Is there a provision for ownership or possession of 'unclaimed wreck(s)'?

In one reply only a dash is here shown (Israel), which probably may be taken for an absence of such provisions.

Mixed responses came in form:

Mexico: unclaimed wrecks are property of the Nation;

Norway: State has ownership after 100 years;

Portugal: underwater historic patrimony without known owner is state property after, it seems, 5 years from the date of the loss;

Italy: archaeological objects are public property if not collected by the owner; private property is respected upon proof thereof;

Indonesia: if not claimed by the owner within 10 years, the answer seems to imply that the State acquires ownership;

U.S.: in principle, the first finder of an abandoned historic wreck is deemed to be the owner, but two Acts on shipwrecks (listing on the National Register of Historic Places; see (1)-(d) above) respectively on national marine sanctuaries have arguably brought about a vesting of title in the government;

New Zealand: deemed to be prima facie the property of the Crown (but anyone claiming a right or interest may apply to a specific Court);

China: the affirmative answer gives no details;

Germany: general rules of the Civil Code apply; if there is no owner or if he cannot be identified, the Federal State becomes the owner by law;

U.K.: under the Merchant Shipping Act, the Crown has a right to unclaimed wrecks; in the Act on protection of wrecks there is no provision on the point;

Japan: there are no specific provisions; absent ownership an object of cultural heritage should be delivered to the Agency for such affairs;

Sweden: if a stationary relict of the past, a salvaged wreck is the property of the State, provided it has no owner; see also under (1)-(b) above in respect of wrecks outside Swedish waters: in the circumstances there indicated, such wrecks become the property of the State;

Spain: archaeological patrimony goods are treated as items of "public dominion" (subject, in certain instances, to monetary rewards);

Australia: ownership of Dutch shipwrecks, relics etc. is by law vested in the Commonwealth (after some administrative procedures); other ships are open to other laws where applicable, but the Commonwealth may direct handing over possession;

The Netherlands: objects found within the territory of the country become property of the finder.

Question (1)-(f):

Is there any provision for reporting discovery of historic wreck(s)? If so, to whom?

Nearly all the replies prove to be in the affirmative. In two of them no Authority for obligatory reporting purposes is stated (China and Australia). Where stated, the Authorities appear to vary, ranging from Police to Archaeological or (Cultural) Monuments or Antiquities or Maritime or other governmental/local Authorities/Agencies (including a Receiver of wrecks) and even to regional museums; in one case several alternative authorities are summed up (Sweden).

One reply suffices to observe that substantial regulatory authority is delegated to state or federal historic preservation or resource management officials and that such authority could extend to a requirement of reporting, whilst moreover federal admiralty courts encourage salvors to disclose information to them (U.S.).

One reply is in the negative (New Zealand).

Question (1)-(g):

Is there any provision for granting permits to work on historic wrecks?

All the answers are in the affirmative; the authorities to apply to for permits seem, generally, to correspond with those to whom the reporting should be effected.

In one case (U.S.) there is a proviso, briefly to the effect that the reply here given must be read in the light of the replies to Question (1)-(a) and presumably (f) (there is still a role for federal admiralty courts left to play where historic wrecks are not covered by regulatory schemes).

Question (1)-(h):

Is there any provision compelling the taking of advice from archaeologists or historians as to methods of investigation or recovery of artefacts?

In a number of countries the law so directs (Mexico, Portugal, Indonesia, Spain, and probably also China). In one country such an obligation may be held implied in the law (Israel). In an other country the investigation is to take place by the competent authority, thereby using salvors etc. as its assistants (Norway). The systems of the further countries differ, but basically provide for an indirect obligation of the kind under reference in that a competent authority may impose it when issuing a permit to work on historic wrecks or otherwise (in one case the authority takes a consultation first upon itself and in an other it requires an applicant to submit an archaeological assessment for consent).

Question (2)-(a):

Is there any provision preventing or controlling any trade in such artefacts? If so, what are the limitations on such powers (e.g. as regards artefacts brought from a foreign jurisdiction)?

The first two parts of the question have been affirmatively answered by fourteen countries: Israel (no details stated), Mexico (obligation to conserve

and restore; merchants have to be registered and to fulfil requirements of law; as for export permission required); Germany (permission required); Norway (permission required; if artefacts given by the authorities to finders/salvors, the latter free to sell nationally but needing permission to bring them abroad); Portugal (permission required); U.K. (non-delivery to the Receiver, carrying away, and taking/selling abroad constitute criminal offences); Italy (private owners have duty to notify Ministry who shall have an option to purchase; no export allowed without permission; taking possession constitutes crime of theft); Indonesia (permission required; duty to report; powers of Minister of Trade seem unlimited); New Zealand (limited right of disposal; otherwise subject to direction of the Secretary (?) having unlimited powers); Japan (export controlled; no further details stated); China (trade subject to "identification and gradation" by cultural administrators who empowered to sell "antiques" of "low grade"); Sweden (permission required for export); Spain (authorisation required for export of objects older than 100 years; duty to report before trading the goods); The Netherlands (permission, it seems, required).

There are two replies in the negative (U.S. and Australia): no specific provisions are known to the writers, who do not though exclude powers may be hidden in other legislation (i.e. other, presumably, than that on wrecks).

As for the question's part in brackets, distinct responses are failing from Mexico, Germany, Norway, Portugal, U.K., Indonesia, U.S., New Zealand, China, Australia and The Netherlands. In at least some of those countries the position may presumably be understood to follow, by implication, from their respective replies - as set out in the foregoing - to the first two parts of Question (2)-(a), i.e. that those replies also cover, wholly or partly, artefacts brought from a foreign jurisdiction.

Specific answers in the negative have come from three countries: Israel (no restrictions), Italy (no provisions), and Japan (no provisions).

There are two specific answers in the affirmative: Sweden (trade restricting provisions also apply to foreign artefacts brought into the country - or so presumed - before the year 1840 and having a value exceeding SEK 50,000.-; if illegally brought from an EEA country, a special rule provides for the recovery of artefacts); Spain (legally imported objects cannot - save for the owners' request - be declared "Goods of Cultural Interest" for a period of 10 years, during which though a permit for export is required).

Question (2)-(b):

Is there any provision as to ownership of wrecks or artefacts? If so, is there any provision as to:

(i) abandonment of ownership?,

(ii) ownership being vested at some stage in the State?

As to both (i) and (ii), affirmative answers from Mexico and China do not give further details; Spain and Sweden merely refer to their answers to Question (1)-(e); likewise Germany refers to its answer to Question (1)-(a) (but see also (1)-(e) above), whilst Portugal does so to its answers to Questions (1)-(a) and (e); equally, in the affirmative reply of U.S. one is referred to its

answers to Questions (1), (1)-(a) and (1)-(e). Again as to (i) and (ii), Israel's reply only states that "all antiquities are deemed to be an asset in the ownership of the State", whereas New Zealand's affirmative answer repeats the same text of provisions relevant to question (1)-(e) and may so be taken to reflect, as for (i) and (ii), the contents of its reply thereto. In relation to both (i) and (ii) U.K.'s reply explains (briefly): owners of a wreck and its cargo retain title (at least initially) unless they have abandoned ownership; as to wrecked property found in U.K. waters or brought in the U.K. from outside its limits, the Receiver of Wrecks is to ascertain ownership; if no ownership of the property is established within one year, the wreck is treated as unclaimed and property in it may vest in the Crown; there is abandonment of wrecked property if its owners have physically relinquished possession or control with the intention of giving up rights of ownership (which is to be concluded from given facts; cf. "The Lusitania", 1986, 1 Lloyds 132).

As to part (i) and the remaining six countries: In Italy there is no concept of abandonment of ownership (ownership can only be lost if acquired by someone else); Indonesia's answer is incomprehensible (a bare reference to some general legislation without any further particulars seems to suggest that the answer to part (i) should be taken to be affirmative); in Norway "the State may after investigations decide to abandon the ship to the salvor or the property owner" (being apparently the only provision on abandonment); the reply from Japan just reads "no provisions", whilst similarly the one from Australia just says "No"; The Netherlands refer to their answer to Question (1)-(e), adding that, pursuant to a specific provision the maritime law section of the Civil Code, a party entitled to a salvage award may obtain ownership of the salved objects in case their owners fails to turn up within two years after the salvage operation.

As to part (ii) and the remaining six countries: Norway's sole comment is that "the ship belongs to the State" where "it is clear that it will be difficult to find out whether there is an owner or who he is", whilst in the same vein the relevant provision in Italy is that "ownership is vested in the State when the property is not owned by a known owner" (with a further comment explaining that a right of ownership is not extinguished by the lapse of time - the burden of proof being on the claiming party - and that archaeological objects are assumed not to be the property of anybody, apparently subject to the rule of proof just indicated); Indonesia's affirming reply again refers to the same general legislation mentioned under part (i); in Japan "the ownership of buried and unclaimed cultural heritage" passes to the State (with, it seems, compensation up to the value being due to finder and owner of the relevant sites); Australia points to its reply to Question (1)-(e); The Netherlands just answer "No".

Question (2)-(c):

Is your State party to:

(i) UNCLOS 1982?

(ii) Salvage Convention 1989?

(iii) Any other relevant Convention? If so, which?

As to (i):

Except for Israel all the answers are in the affirmative, however in the case of the U.S. with the reservation that constitutionally necessary ratification procedures are yet in motion.

As to (ii):

Mexico, Norway, U.K., Italy, U.S., China, Sweden, Australia and The Netherlands are a party to the 1989 Salvage Convention, whilst Israel, Portugal, Japan and Spain are not; in Germany "ratification" is "held as a matter of urgency"; in New Zealand "preliminary steps towards accession have been taken"; Indonesia's answer is not quite clear, reading: "our State was not ratification yet Salvage Convention 1989" (which perhaps suggests that ratification is being contemplated).

As to (iii):

The answers vary substantially and be best listed per country:

Israel, Norway, Italy and Japan: no other (relevant) convention(s);

Mexico: the 1972 Paris Agreement for Cultural and Natural World Heritage Protection;

Germany: "n.a." (not applicable?);

Portugal: the main Maritime International Conventions;

U.K.: the European Convention on Human Rights and the 1969 Intervention Convention (both containing provisions possibly relevant to the rights of salvors in possession; cf. Question (3)-(b));

Indonesia: apparently the 1958 Fishing and Conservation of Living Resources of the High Seas and Continental Shelf Conventions, the 1972 Regulations for Preventing Collisions at Sea, the 1973 Protocol on Space Requirements for Special Trade Passenger Ships, the 1975, 1977 and 1979 Amendments to the Inter Governmental Maritime Consultative Organisation, and the 1974 Convention on a Code of Conduct for Liner Conferences are thought to be of relevance (for unspecified reasons);

U.S.: "none applicable";

New Zealand: the Rome Convention on Suppression of Unlawful Acts against the Safety of Maritime Navigation is considered to be of "limited relevance";

China, Sweden and Spain: reply failing;

Australia: "is a State Party to hundreds of conventions, so it is difficult to select which of them may be relevant to the present question";

The Netherlands: the 1982 Valetta EU Convention on the Protection of the Archaeological Heritage (being now implemented), the 1970 Paris UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 Paris UNESCO Convention for the Protection of the World Cultural and Natural Heritage, and UNIDROIT.

Note: Remarkably, none of the other countries (save for Mexico in one respect) has mentioned the conventions identified in the Dutch reply, though most of them would at first sight indeed look relevant.

Question (3)-(a):

Is there any provision protecting: (a) sites as opposed to simply the historic wrecks themselves?

One reply is in the negative (Japan).

Fifteen replies are in the affirmative as outlined hereunder:

Israel, Norway and China: without specific details;

Mexico: pursuant to statute the President can, by decree, declare "archaeological, artistic and historic monument zones" (where monuments are - presumed to be - situated);

Germany: surroundings of the wreck are protected if necessary;

Portugal: save for possible exceptions, natural reserves, military areas, certain fishing zones, etc. are apparently protected;

U.K.: salvage, diving and related activities in a designated area around the site of a historic wreck are prevented or regulated so as to ensure that the wreck is itself protected (the Secretary of State being empowered to designate such an area as a restricted area);

Italy: sites may be protected by special laws (e.g. Pompei);

Indonesia: there are certain legislative regulations on protection and custody of sites in relation to historic wrecks;

U.S.: both under the general maritime law (as practiced by the admiralty courts) and under some special legislative regime (cf. answer to Question (1)-(a)), a need is recognized to explore and manage historic wrecks as wrecks-sites, i.e. including a safety or buffer zone around the wreck-site; the same applies to wrecks situated in national marine sanctuaries;

New Zealand: a special provision takes account of the protection of archaeological sites (cf. also the final part of the sentence in brackets at the end of Question (1)-(h) above);

Sweden: pursuant to statute, a stationary relic of the past (cf. Question (1)-(d)) includes "an area big enough to preserve the relic", such an area to be determined by the relevant authority;

Spain: pursuant to statute, a site can be declared an "archaeological zone" for goods declared to be of cultural interest;

Australia: a specific provision protects sites;

The Netherlands: after implementation of the 1992 EU Valetta sites will be protected.

Question (3)-(b):

Is there any provision protecting: (b) the rights of private parties such as salvors working on an historic wreck?

China failed to answer his question.

Israel, New Zealand and Japan have no such provisions. Australia has not either (salvors are not addressed in legislation on historic wrecks), but grants the usual rights of salvage and is a party to the 1989 Salvage Convention. Germany's answer is also in the negative except for the application of the general rules of the Civil Code (see its reply to Question (1)-(e) above).

There is one neutral reply: Sweden merely observes that by law relics of the past may not be explored without permission.

The replies from the other countries are more or less in the affirmative as set out hereunder:

Mexico: salvors have a right to reward but cannot take possession of historic wrecks;

Norway: the Government may decide to grant the salvor and/or the property owner a part of the find or a reward;

Portugal: the finder of underwater cultural patrimony goods (of which a removal must be authorized and which are to be entrusted to a competent authority within 48 hours) will be compensated by the State;

U.K.: as to the rights of ownership the reply refers to Question (2)-(b); as to the rights of a salvor in possession, these may be enforced against the property owners and others; both replies are based on authorities and implications from articles of the 1989 Salvage Convention, the rights of owners and salvors being not addressed in legislation on historic wrecks;

Italy: once having obtained a research concession for archaeological property, private parties are protected from others interfering; preference is granted to the finder of the wreck having given the first notice to the relevant authority, provided he starts salvage operations within one year of the discovery;

Indonesia: several specific provisions of law on cultural heritage protect private parties, such as salvors and wreck owners;

U.S.: where applicable, some particular legislation includes provisions requiring states, in managing historic wrecks, to develop rules and regulations allowing private parties to explore and salvage them; otherwise, the general maritime law protects the salvors to work on an historic wreck under the admiralty court's direction; in both respects reference is also made to the replies to Questions (1)-(a), (g) and (h), to which possibly (f) may be added;

Spain: there are rights to a reward for discoverers (the law on salvage appears not to apply in relation to archaeological patrimony);

The Netherlands: a reference made to Questions (1)-(f), (g) and (h) should probably be understood so as to mean that - but for a work permit and/or work method directions - the usual rights of owners and salvors apply.

Question (4):

Does your national law apply the law of salvage to the recovery of historic artefacts?

Four replies are in the negative without any further comment: Israel, Portugal, China and Japan.

Also negative (some at least in part) are the answers from:

Germany: "salvage law covers only the salvage of 'ships in distress'" (historic artefacts apparently not being regarded as such);

Sweden: "the law on cultural heritage will prevail over the law of salvage";

Spain: the law on salvage does not apply to goods of the country's historic heritage (archaeological patrimony), which are governed by special legislation (cf. Question (3)-(b) above);

The Netherlands: specifically indicated provisions of the law on salvage

exclude its application to maritime cultural property of prehistoric or archaeological or historic interest which has been situated on the sea bed for at least 50 years (cf. art. 30 of the 1989 Convention and Question (5) hereunder).

Seven replies are in the affirmative (again some at least in part):

Norway: the law of salvage applies unless the historic artefacts are over 100 years old;

Italy: special provisions in respect of wreck raising are the same as for salvage; not so are special provisions in respect of the fortuitous discovery of derelicts (the finder being entitled to reimbursement of expenses and to a premium at one-third of the property value);

U.K.: in conjunction with its reply to Question (5), salvage is considered to be claimable under the 1989 Salvage Convention whether services are rendered at floating or sunken vessels or cargoes and regardless of their antiquity (for article 30-(1), (d) of the Convention so assumes);

Indonesia: its affirmative answer goes without any specific comment;

U.S.: for its positive answer the replies to inter alia Question (1)-(a), (g) and (3)-(b) are referred to;

New Zealand: application is "subject to statutory provisions previously referred to" (see, for instance, Questions (1)-(d), (e), (g), (h), (2)-(a), (b) and (3)-(a) above);

Australia: the affirmative answer follows from the reply to Question (3)-(b).

One answer (Mexico) may perhaps be taken for an affirmative one though it looks rather cryptic, reading: "National Law leaves to the 1989 London Salvage Convention of Judgment".

Question (5):

Has your country, if a party to the 1989 London Salvage Convention, effected the reservation permitted in its Article 30, par. (1) sub (d)?

Four countries (Israel, Portugal, Japan and Spain) are not and three (Germany, New Zealand and Indonesia) not yet a party to the Convention; see Question (2)-(c), as to part (ii) above. Their replies therefore read "No" or "Not applicable" or in some other corresponding sense.

Of the nine other countries, five (Mexico, Norway, China, Sweden and The Netherlands) have effected the reservation in question and four have not (U.K., U.S., Italy and Australia).

Mexico's positive reply adds: "but later Article 25 of the Navigation Law leaves to this Convention for any sea rescue".

In the Netherlands (see Question 4 above) implementation of the reservation has restricted itself to property of the relevant kind situated on the sea bed for over 50 years.

Conclusion

Clearly, uniformity is very scarce, if indeed there is any at all. Even the regime of the 1989 Salvage Convention has failed to attract or create uniformity on the point of underwater cultural heritage, whilst domestic legislations show a picture of many and vast differences. What is clear,

however, is that most countries consulted regard the Underwater Cultural Heritage as important and have appropriate legislation in place.

It looks questionable if the UNESCO Draft Convention would improve the position to a notable degree (through adequate rules and/or widespread endorsement): national views and interests - often matters in the nature of a public law order - strongly underly the respective legislations with widely different systems, including a diversity in their approach to the rights of private parties; moreover such rights (owners, salvors, finders) will have to be better outlined and respected than the draft seems to do.

Perhaps a preferable way of tackling the problems may be to consider (as suggested by the late Mr G. Brice, Q.C.) the idea of advocating a protocol to the 1989 Salvage Convention* which could at least produce clarity on the position of salvage and salvors. This is for the CMI to decide, leaving unaffected the need to participate and urge its views on (uniformity of) salvage matters in the UNESCO deliberations.

Rotterdam, December 1999.

ERIC JAPIKSE

* The draft Protocol drawn up by the late Mr. G. Brice, Q.C. is annexed to this Synopsis.

DRAFT PROTOCOL TO THE SALVAGE CONVENTION 1989

(by the late Geoffrey Brice, QC)*

Article 1

Definitions

For the purpose of this Convention:

(a) *Salvage operation* means any act or activity to assist a vessel or any other property **(including services to or involving historic wreck)** in danger in navigable waters or in any other waters whatsoever.

(b) *Vessel* means any ship or craft, or any structure capable of navigation.

(c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

(c[1]) *Historic wreck* means a vessel or cargo or artefacts relating thereto including any remains of the same (whether submerged or embedded or not) of prehistoric, archaeological, historic or other significant cultural interest.

(c[2]) *Damage to the cultural heritage* means damage to historic wreck including damage or destruction at the salvage site of any significant information relating to the wreck or in its historical and cultural context.

(d) *Damage to the environment* means substantial physical damage to human health or marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) *Payment* means any reward, remuneration or compensation due under this Convention.

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* In this Draft Protocol there is a new text of Articles 1, 13, 18 and 30 of the Convention with the suggested amendments shown in bold type.

(f) *Organization* means the International Maritime Organization.

(g) *Secretary-General* means the Secretary-General of the Organization.

Article 13

Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the other in which they are presented below:

(a) the salved value of the vessel and other property;

(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of danger;

(e) the skill and efforts of the salvors in salving the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors or their equipment;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of the vessel or other equipment intended for salvage operations:

(j) the state of readiness and efficiency of the salvors' equipment and value thereof;

(k) in the case of historic wreck, the extent to which the salvor has:

i) protected the same and consulted with, co-operated with the complied with the reasonable requirements of the appropriate scientific, archaeological and historical bodies and organizations (including complying with any widely accepted code of practice notified to and generally available at the offices of the Organization);

ii) complied with the reasonable and lawful requirements of the governmental authorities having a clear and valid interest (for prehistoric, archaeological, historic or other significant cultural reasons) in the salvage operations and in the protection of the historic wreck or any part thereof; and

iii) avoided damage to the cultural heritage.

Article 18

The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct. **In the case of historic wreck, misconduct includes a failure to comply with the requirements set out in Article 13 paragraph (k) or causing damage to the cultural heritage.**

Article 30

Reservations

1. Any State may at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:

(a) when the salvage operations take place in inland waters and all vessel involved are of inland navigation;

(b) when the salvage operations take place in inland waters and no vessel is involved;

(c) when all interested parties are nationals of that State;

(d) when the property involved is **historic wreck** (**delete** maritime cultural property of prehistoric, archaeological or historic interest) **and is wholly or in part in the territorial sea (including on or in the seabed or shoreline) or wholly or in part in inland waters (including the seabed and shoreline thereof).**

CMI INTERNATIONAL WORKING GROUP ON MARINE INSURANCE

CHALLENGES FOR THE FUTURE

1. During its first century, the CMI has not expanded its activities to marine insurance, although there has never been any doubt that marine insurance law is part of maritime law and comes, therefore, under the domain of the CMI. In a first step, undertaken in June 1998, it has organised, together with the Norwegian Maritime Law Association and the Scandinavian Institute of Maritime Law, a Marine Insurance Symposium in Oslo. The contributions from academic and practising lawyers have encouraged the Executive Council of CMI to go one step further and set up an International working group the task of which is to find out whether there is a chance to harmonise rules of marine insurance.

2. The group which I have the honour to chair has started its work in the way which is normal in the CMI: to elaborate a questionnaire which is sent out to the national associations of maritime law for response.

It appears that the CMI has tackled this task in a period which is taking a lively interest in marine insurance. In March 1999 the Australia and New Zealand Maritime Law Association has convened a conference on shipping in the new millennium which provoked important contributions on marine insurance, particularly by Justice Cooper of the Federal Court of Australia and by David Taylor of the International Underwriting Association of London.

These contributions and chapter 10 in a book by Dr. Sarah Derrington of the University of Queensland are devoted to material problems of marine insurance which arise at all places where shipping activities are deployed and insurance is sought and granted. The authors feel a need for a reform of marine insurance law in order to allocate risks and losses equitably between underwriters and insured.

3. Marine Insurance is by itself an international business, be it hull or cargo insurance. That is why it had to be assumed that academics and practitioners would take a view at international harmonisation of the rules governing this field. Comparison had to be the first step in order to find out what eventually may be harmonised. The authors mentioned before have made that choice for comparison. It has to be added that Prof. Trine-Lise Wilhelmsen

of Oslo has summed up contributions to the Oslo's Symposium under the heading of "The Marine Insurance System In Civil Law Countries - Status and Problems" That is one side of the coin, the other one will be the Marine Insurance System in common law countries, yet unwritten.

We have seen many efforts to harmonise certain restricted fields of law between common and civil law countries, and inevitably the one or the other had to make concessions to the other side, knowing that such concession would not fit into its system of law. Otherwise the many International conventions promoted by the CMI and other bodies would not have come into existence.

In the field of marine insurance we have, however, one great advantage: the UK has enacted its system of marine insurance law in the Marine Insurance Act of 1906. I do by no means overlook the continuing importance of court decisions rendered before and after the promulgation of the MIA. This act will, however, ease an approach from civil law countries, and be it only for the purpose of comparison, and it will facilitate the understanding by common lawyers for solutions found in civil law countries.

4. That is the background in front of which we perceive the initiative taken by the CMI. I come back now to the questionnaire sent out to the national associations of maritime law.

I am not going to tell you details about the responses to our questionnaire, and that is for two reasons: we expect many more replies to come in shortly - please keep in mind that this paper had to be prepared prior to 15 August 1999. And Prof. Trine-Lise Wilhelmsen will provide the CMI with a synopsis of the replies. That is why the practitioner of marine insurance steps back and leaves the rostrum to the professor of law for this academic work.

I want to tell you about our questionnaire and why we started with it. We commence by asking whether a country has national rules of marine insurance and whether they are in the form of an act. We do not specifically ask what a country considers as marine insurance. In most if not all markets this will comprise hull and cargo insurance. This is the normal sequence: hull first and then cargo. If the economic weight would be decisive, this sequence would apply to all countries with large fleets and a small population whereas it should be the other way round for countries with a modest fleet and a large population - like my country. It may include further branches like pleasure craft or road hauliers liability - but we have to restrict ourselves to hull and cargo if we want to get somewhere.

5. The next step is to find out which legal rules on marine insurance are mandatory and which directory. That is how we can find out whether national legislation leaves any field for free choice of the parties to a marine insurance contract to design same. Take for example German law which does not contain any mandatory rules on marine insurance. The freedom of contract has been used by the interested economic circles - shipowners, cargo owners, brokers and underwriters - to modernise the law by creating general contract conditions which prevail over the rules in the Commercial Code.

The replies to this question will give us a hint into what direction further steps may lead - towards public or private legislation. For this reason we have

asked as well whether the insurance market of the respective country has adopted standard insurance conditions. If so, there was a field for free contract design, and we can look further at the body or bodies which have create the insurance conditions - whether underwriters have imposed them or discussed them prior to introduction with their insureds.

6. From there our questionnaire leads the national associations to solutions for material problems which are posed to insureds and underwriters in all places, such as the insurable interest, warranties and sanctions for breach, duty of disclosure, responsibility for the conduct of others, duty of good faith, insurable value, alteration of risk and the inevitable chain of exclusions, among which ordinary wear and tear, inadequate maintenance, unseaworthiness and breach of safety regulations.

The replies to these material problems will give us a hint how a national legislation or the bodies creating insurance conditions as a sort of private legislation tackle problems which are bound to arise in maritime adventures. We shall become aware of parallels and contradictions in the solutions found in different countries, and the replies to the preceding questions will show whether contradictions can be overcome by private legislation or only through an act of parliament.

7. I had to describe the contents of our questionnaire and what is behind it in rather broad terms. Let me give you a brief recital of the German reply to the questionnaire because it treats the law with which I am rather familiar.

We have a commercial code of 1897 into which the rules on marine insurance of the old commercial code of 1861 have been incorporated without amendment.

In 1908 our parliament has passed an act on the insurance contract valid for nonmarine and inland marine insurance but excluding expressly ocean marine insurance, that is hull and cargo. One of the reasons is that our legislative bodies felt a need for an insurance contract act in order to protect the individual insured towards the growing insurance companies. Ocean marine insurance was left out since it is a matter between commercial men who join as contract partners in a situation of equality.

That is why circles interested in ocean marine insurance, feeling the need to modernise their professional instruments, adapting them from wooden sailing ships to steel hulled steamers, created freely new contract conditions, independent from legislation. But they took over several rules from the new insurance contract act, for instance those on the alteration of risk. The German General Rules of Marine Insurance (=ADS) were introduced in 1919 and contain general rules and chapters on hull and cargo insurance. Like this public legislation influenced indirectly the design of insurance contracts.

This structure of insurance law remains unchanged in Germany to date. That is why the interested economic circles have, on the initiative of underwriters, modernised cargo insurance after World War II in 1947 and again in 1973, as well as hull insurance in 1957 and 1978. The last change has been the creation of new cargo insurance conditions in 1999, called cargo 2000 and consisting of a combination of the general part of the ADS, the 1973 cargo

conditions and those broker clauses which deserved general recognition - partly for material merits, partly for market importance.

8. Nothing is so continuous as change. Even the language changes, and a legislative body may feel that modern language has so much changed that an old act needs to be translated into modern language. Such has been the case with the MIA in Canada. The English MIA had been incorporated into the legislation of most of the provinces, but the language was deemed oldish. That is why in 1993 the Federal MIA was enacted following closely the contents of the English MIA but giving it a modern wording. It deserves close scrutiny as a model of modernisation - that may be a step any legislation may take as soon as our comparison will be at t hand.

9. Let me come back to brokers clauses: if a legislation grants freedom of contract, all market participants will seek to gain influence on the business, and since insurance is bound to rules on a restricted promise, a broker will create clauses expanding the promise in the interest of his clients. Underwriters will try to avoid such expansion, at least as long as same will not find a countervalue in premium. Thus chance and risk of contract freedom are close to each other, and the ups and downs of the shipping, trade and insurance markets will be reflected by the texture of insurance rules and conditions.

10. An eventual harmonisation of marine insurance law will further international competition since offers from different markets will be based on similar rules and conditions. Competition favours business, is a German saying, and this we shall not forget on our path with unknown end - whether it will lead us to a harmonisation of the law of marine insurance or not. At any rate such economic arguments will prevent us from forgetting that rules on marine insurance have to serve a commercial purpose: to balance the interests of the insured and the insurer. The striking thing is to find the pivot for such balance. There the systems of marine insurance law may differ - whether they find the pivot closer to the insured or the insurer, closer to the influence on the risk or the bearing of the risk.

One of the rules aiming at such balance of interest is the duty of good faith - even utmost good faith, as sect. 17 MIA says and sect. 13 ADS follows. It has proved an illusion to balance the interests of the contract parties with this instrument and, in consequence, German underwriters have not taken over this section into Cargo 2000.

11. The least we can learn from comparison is that you can tackle a problem from different angles. Let me give you this example: in cargo insurance, the physical quality of the goods insured may, due to the impact of time only, inevitably deteriorate and lead to damage or loss. Many legislations rely on the term of inherent vice and exclude from cover damage or loss so caused. United States lawyers prefer to examine whether a loss was fortuitous. That goes to the root of the insurance theory: cover should only be granted for damage or loss caused by fortuitous events sand not to inevitable occurrences. It is a good thing to be reminded of this basic principle which should be applied more often.

Such thoughts lead us inevitably to a problem which we have not dared to tackle yet - the problem of causal nexus. That is a fundamental principle of civil law for the attribution of loss or damage to a person. There will be only very few legislations which accept a particular theory for causality just for marine insurance. The only example I know of is Germany where the proximate cause is applied to marine insurance and no further field of law. This is just one example which highlights the hurdles which comparison will show and which will prove too high to overcome by harmonisation.

12. We are thus left with our expectation that the synopsis of the responses to our questionnaire will cover the ground for further treatment of our topic. If we can come to a similar approach to the inevitable material problems of marine insurance - so much the better for the economic world and the lawyers.

We have heard warning voices when taking our first step on the field of marine insurance. Dr. Malcolm Campbell from Cambridge welcomed a non-binding code like the American Restatement created by the American Law Institute which he prefers to a harmonisation of insurance conditions. He does not discover a political will in the UK to support a codification of marine insurance. Dr. Sarah Derrington from Brisbane distrusts self regulation by the insurance industry. Unctad has produced a report in 1982 favouring international harmonisation of marine insurance law, but without success.

These warning voices do not deter us from comparing the marine insurance law systems, in order to know where we stand. Only when we shall have sighted the replies to our questionnaire we will be able to discern the parallels and differences. The practising lawyer reminds himself of the old English saying: get your facts clear and the law sticks out for miles.

We need such encouragement, not only because of the warning voices. The more difficult part of our task lies ahead - to draw the conclusions from the expected synopsis of the replies.

PROF. THOMAS M. REMÉ

YORK ANTWERP RULES

QUESTIONNAIRE ON AN EVENTUAL REVISION OF YAR 1994

1. The YAR originally provided for the distribution of expenses and sacrifices over the contributing interests only as far as they were incurred for the common safety of ship and cargo. Later on the scope was extended to include expenses incurred for the common benefit – like port of refuge and substituted expenses. Do you think time has come to reduce the scope of the YAR to the principle of common safety?

2. If so, do you support

   2.1. that sacrifices and expenses should be included in G/A only if made or incurred while ship and cargo are "in the grip of a peril"?

   2.2 that temporary repairs of the vessel in a port of refuge should be excluded from G/A?

   2.3 that the same should apply to crew wages and maintenance in the port of refuge?

   2.4 that the cost of discharging, storage and reloading of cargo in the port of refuge should no longer be allowed in G/A?

   2.5 that no substituted expenses should be made good in G/A?

   2.6 that no non separation agreement should be allowed in G/A (revision of rule G)?

   2.7 that in consequence Rules X and XI should be abolished?

3. Rule D deals with the influence of fault of one of the parties to the adventure. Such fault has had to be shown under the rules of the national law applicable in addition to the YAR. Do you think any non-compliance with international conventions like the "ISM Code or STCW should be considered a fault irrespective of the merits of the individual case and the applicability of such convention?

4. Salvage cases are settled in different ways in different countries. In some countries ship and cargo join in settling salvage remuneration, in other countries they do not. Do you support the view that salvage remuneration should not be distributed in GA if settled separately by ship and cargo with the salvor?

5. Expenses preventing or minimizing damage to the environment have been included in the YAR only in 1994, evidently as a consequence of the revision of LOF and the 1989 Salvage Convention. Do you take the view that no such expenses should be allowed in G/A?

6. The YAR have not included any rule on time bar leaving this matter to national law. Do you think a rule on time bar should be introduced so as to prevail over national law?

Any additional comments you may wish to make, particularly on items not dealt with in this questionnaire but treated in the report of IUMI, will be highly welcome.

PART III

Status of ratifications to Maritime Conventions

Etat des ratifications aux conventions de Droit Maritime

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

(Information communiquée par le Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

(Information provided by the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, depositary of the Conventions).

Editor's notes:

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list of ratifications of each convention.

Convention internationale pour l'unification de certaines règles en matière d'Abordage et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

International convention for the unification of certain rules of law relating to Collision between vessels and protocol of signature

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913
Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	3.II.1913
Belize	**(a)**	3.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.XII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
Denmark	**(r)**	18.VI.1913
(denunciation 1 September 1995)		
Dominican Republic	**(a)**	1.II.1913
Egypt	**(a)**	29.XI.1943
Estonia	**(a)**	15.V.1929
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Abordage 1910		*Collision 1910*
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	29.IX.1913
Grenada	**(a)**	1.II.1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913
Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Libyan Arab Jamahiriya	**(a)**	9.XI.1934
Macao	**(a)**	20.VII.1914
Madagascar	**(r)**	1.II.1913
Malaysia	**(a)**	1.II.1913
Malta	**(a)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	11.III.1914
New Zealand	**(a)**	19.V.1913
Nicaragua	**(r)**	18.VII.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
Papua New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	2.VI.1922
Portugal	**(r)**	25.XII.1913
Romania	**(r)**	1.II.1913
Russian Federation[3]	**(r)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913

[3] Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tome and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	16.XI.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
Sri-Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
(denunciation 19 December 1995)		
Switzerland	**(a)**	28.V.1954
Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI .1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1913
Tuvalu	**(a)**	1.II.1913
United Kingdom	**(r)**	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands.		
Saint Helena, Wei-Hai-Wei	**(a)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

International convention for the unification of certain rules of law relating to

Assistance and salvage at sea

and protocol of signature

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913

Assistance et sauvetage 1910 *Assistance and salvage 1910*

Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	1.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Belize	**(a)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
(denunciation 22.XI.1994)		
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.VII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	23.VII.1958
Egypt	**(a)**	19.XI.1943
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	15.X.1913
Grenada	**(a)**	1.II 1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsability for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Salvage Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Malaysia	**(a)**	1.II.1913
Madagascar	**(r)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	12.XI.1913
New Zealand	**(a)**	19.V.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
(denunciation 9.XII.1996)		
Oman	**(a)**	21.VIII.1975
Papua - New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	15.X.1921
Portugal	**(r)**	25.VII.1913
Romania	**(r)**	1.II.1913
Russian Federation	**(a)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913
Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tomé and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	13.X.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
Sri Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI.1978

Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	1.II.1913
United Kingdom [3]	**(r)**	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena *(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)*	**(a)**	1.II.1913
United States of America	**(r)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Protocole portant modification de la convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

Signée a Bruxelles, le 23 septembre 1910

Bruxelles, 27 mai 1967
Entré en vigueur: 15 août 1977

Protocol to amend the international convention for the unification of certain rules of law relating to

Assistance and salvage at sea

Signed at Brussels on 23rd September, 1910

Brussels, 27th May 1967
Entered into force: 15 August 1977

Austria	**(r)**	4.IV.1974
Belgium	**(r)**	11.IV.1973
Brazil	**(r)**	8.XI.1982
Croatia	**(r)**	8.X.1991
Egypt	**(r)**	15.VII.1977
Jersey, Guernsey & Isle of Man	**(a)**	22.VI.1977
Papua New Guinea	**(a)**	14.X.1980
Slovenia	**(a)**	13.X.1993
Syrian Arab Republic	**(a)**	1.VIII.1974
United Kingdom	**(r)**	9.IX.1974

[3] Including Jersey, Guernsey and Isle of Man.

Convention internationale pour l'unification de certaines règles concernant la

Limitation de la responsabilité des propriètaires de navires de mer

et protocole de signature

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules relating to the

Limitation of the liability of owners of sea-going vessels

and protocol of signature

Brussels, 25th August 1924
Entered into force: 2 June 1931

Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Denmark	**(r)**	2.VI.1930
(denunciation - 30. VI. 1983)		
Dominican Republic	**(a)**	23.VII.1958
Finland	**(a)**	12.VII.1934
(denunciation - 30.VI.1983)		
France	**(r)**	23.VIII.1935
(denunciation - 26.X.1976)		
Hungary	**(r)**	2.VI.1930
Madagascar	**(r)**	12.VIII.1935
Monaco	**(r)**	15.V.1931
(denunciation - 24.I.1977)		
Norway	**(r)**	10.X.1933
(denunciation - 30.VI. 1963)		
Poland	**(r)**	26.X.1936
Portugal	**(r)**	2.VI.1930
Spain	**(r)**	2.VI.1930
Sweden	**(r)**	1.VII.1938
(denunciation - 30.VI.1963)		
Turkey	**(a)**	4.VII.1955

Convention internationale pour l'unification de certaines règles en matière de

Connaissement

et protocole de signature

"Règles de La Haye 1924"

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules of law relating to

Bills of lading

and protocol of signature

"Hague Rules 1924"

Brussels, 25 August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	2.II.1952
Antigua and Barbuda	**(a)**	2.XII.1930
Argentina	**(a)**	19.IV.1961
Australia*	**(a)**	4.VII.1955
Norfolk	**(a)**	4. VII.1955
Bahamas	**(a)**	2.XII.1930
Barbados	**(a)**	2.XII.1930
Belgium	**(r)**	2.VI.1930
Belize	**(a)**	2.XI.1930
Bolivia	**(a)**	28.V.1982
Cameroon	**(a)**	2.XII.1930
Cape Verde	**(a)**	2.II.1952
China		
Hong Kong[1]	**(a)**	2.XII.1930
Macao[2]	**(r)**	2.II.1952
Cyprus	**(a)**	2.XII.1930
Croatia	**(r)**	8.X.1991
Cuba*	**(a)**	25.VII.1977

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsability for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Règles de La Haye		*Hague Rules*
Denmark*	**(a)**	I.VII.1938
(denunciation – 1.III.1984)		
Dominican Republic	**(a)**	2.XII.1930
Ecuador	**(a)**	23.III.1977
Egypt* (3)	**(a)**	29.XI.1943
Fiji	**(a)**	2.XII.1930
Finland	**(a)**	1.VII.1939
(denunciation – 1.III.1984)		
France*	**(r)**	4.I.1937
Gambia	**(a)**	2.XII.1930
Germany	**(r)**	1.VII.1939
Ghana	**(a)**	2.XII.1930
Goa	**(a)**	2.II.1952
Greece	**(a)**	23.III.1993
Grenada	**(a)**	2.XII.1930
Guyana	**(a)**	2.XII.1930
Guinea-Bissau	**(a)**	2.II.1952
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	26.IV.1966
Ireland*	**(a)**	30.I.1962
Israel	**(a)**	5.IX.1959
Italy	**(r)**	7.X.1938
(denunciation – 22.XI.1984)		
Ivory Coast*	**(a)**	15.XII.1961
Jamaica	**(a)**	2.XII.1930
Japan*	**(r)**	1.VII.1957
(denunciation – 1. VI.1992)		
Kenya	**(a)**	2.XII.1930
Kiribati	**(a)**	2.XII.1930
Kuwait*	**(a)**	25.VII.1969
Lebanon	**(a)**	19.VII.1975
Malaysia	**(a)**	2.XII.1930
Madagascar	**(a)**	13.VII.1965
Mauritius	**(a)**	24.VIII.1970
Monaco	**(a)**	15.V.1931
Mozambique	**(a)**	2.II.1952
Nauru*	**(a)**	4.VII.1955
Netherlands*	**(a)**	18.VIII.1956
(denunciation – 26.IV.1982)		
Nigeria	**(a)**	2.XII.1930
Norway	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		

(3) On 17 February 1993 Egypt notified to the Government of Belgium that it had become a party to the U.N. Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) but that it deferred the denunciation of the 1924 Brussels Convention, as amended for a period of five years. If, as provided in Article 31 paragraph 4 of the Hamburg Rules the five years period has commenced to run on the date of entry into force of the Hamburg Rules (1 November 1992), the denunciation made on 1 November 1997 has taken effect on 1 November 1998).

Règles de La Haye *Hague Rules*

Papua New Guinea*	**(a)**	4.VII.1955
Paraguay	**(a)**	22.XI.1967
Peru	**(a)**	29.X.1964
Poland	**(r)**	4.VIII.1937
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
Sao Tomé and Principe	**(a)**	2.II.1952
Sarawak	**(a)**	3.XI.1931
Senegal	**(a)**	14.II.1978
Seychelles	**(a)**	2.XII.1930
Sierra-Leone	**(a)**	2.XII.1930
Singapore	**(a)**	2.XII.1930
Slovenia	**(a)**	25.VI.1991
Solomon Islands	**(a)**	2.XII.1930
Somalia	**(a)**	2.XII.1930
Spain	**(r)**	2.VI.1930
Sri-Lanka	**(a)**	2.XII.1930
St. Kitts and Nevis	**(a)**	2.XII.1930
St. Lucia	**(a)**	2.XII.1930
St. Vincent and the Grenadines	**(a)**	2.XII.1930
Sweden	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Switzerland*	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tanzania (United Republic of)	**(a)**	3.XII.1962
Timor	**(a)**	2.II.1952
Tonga	**(a)**	2.XII.1930
Trinidad and Tobago	**(a)**	2.XII.1930
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	**(r)**	2.VI.1930
(denunciation – 13.VI.1977)		
Gibraltar	**(a)**	2.XII.1930
(denunciation – 22.IX.1977)		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
(denunciation 20.X.1983)		
Anguilla	**(a)**	2.XII.1930
Ascension, Saint Helène and Dependencies	**(a)**	3.XI.1931
United States of America*	**(r)**	29.VI.1937
Zaire	**(a)**	17.VII.1967

Reservations

Australia

a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.

b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark

...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.

2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.

3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

Egypt

...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

France

...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

Ireland

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

Ivory Coast
Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:
1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.
2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d'Ivoire.

Japan
Statement at the time of signature, 25.8.1925.
Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) A l'article 4.
Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.
b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.
Statement at the time of ratification
...Le Gouvernement du Japon déclare
1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait
Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.
The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

Nauru
Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Netherlands
...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissement, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

concourir à son application, tout en Nous réservant le droit, par prescription légale,
1) de préciser que dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par l'article 4, par. 2 a) de la Convention;
2) d'appliquer, en ce qui concerne le cabotage national, l'article 6 à toutes les catégories de marchandises, sans tenir compte de la restriction figurant au dernier paragraphe dudit article, et sous réserve:
1) que l'adhésion à la Convention ait lieu en faisant exclusion du premier paragraphe de l'article 9 de la Convention;
2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves contraires contre le connaissement.

Norway
...L'adhésion de la Norvège à la Convention internationale pour l'unification de certaines règles en matière de connaissement, signée à Bruxelles, le 25 août 1924, ainsi qu'au Protocole de signature y annexé, est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne la Norvège:
1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées ou soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, denier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea
Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

Switzerland
...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom
...*I Declare* that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. *I Further Declare* that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13. "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United States of America

...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:

Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, signée a Bruxelles le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussells on 25 August 1924

Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	**(r)**	6.IX.1978
China		
Hong Kong[1]	**(r)**	1.XI.1980
Croatia	**(a)**	28.X.1998
Denmark	**(r)**	20.XI.1975

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	**(a)**	23.III.1977
Egypt*	**(r)**	31.I.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	10.VII.1977
Georgia	**(a)**	20.II.1996
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Lebanon	**(a)**	19.VII.1975
Netherlands*	**(r)**	26.IV.1982
Norway	**(r)**	19.III.1974
Poland*	**(r)**	12.II.1980
Russian Federation	**(a)**	29.IV.1999
Singapore	**(a)**	25.IV.1972
Sri-Lanka	**(a)**	21.X.1981
Sweden	**(r)**	9.XII.1974
Switzerland	**(r)**	11.XII.1975
Syrian Arab Republic	**(a)**	1.VIII.1974
Tonga	**(a)**	13.VI.1978
United Kingdom of Great Britain	**(r)**	1.X.1976
Bermuda	**(a)**	1.XI.1980
Gibraltar	**(a)**	22.IX.1977
Isle of Man	**(a)**	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	**(a)**	20.X.1983

Reservations

Egypt Arab Republic
La République Arabe d'Egypte déclare dans son instrument de ratification qu'elle ne se considère pas liée par l'article 8 dudit Protocole (cette déclaration est faite en vertu de l'article 9 du Protocole).

Netherlands
Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l'article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

Poland
Confirmation des réserves faites lors de la signature, à savoir: "La République Populaire de Pologne ne se considère pas liée par l'article 8 du présent Protocole".

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement telle qu'amendée par le Protocole de modification du 23 février 1968.

Protocole DTS

Bruxelles, le 21 décembre 1979
Entrée en vigueur: 14 février 1984

Protocol to amend the International Convention for the unification of certain rules relating to bills of lading as modified by the Amending Protocol of 23rd February 1968.

SDR Protocol

Brussels, 21st December 1979
Entered into force: 14 February 1984

Australia	**(a)**	16.VII.1993
Belgium	**(r)**	7.IX.1983
China		
Hong Kong[1]	**(a)**	20.X.1983
Denmark	**(a)**	3.XI.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	18.XI.1986
Georgia	**(a)**	20.II.1996
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Japan	**(r)**	1.III.1993
Mexico	**(a)**	20.V.1994
Netherlands	**(r)**	18.II.1986
New Zealand	**(a)**	20.XII.1994
Norway	**(r)**	1.XII.1983
Poland*	**(r)**	6.VII.1984
Russian Federation	**(a)**	29.IV.1999
Spain	**(r)**	6.I.1982
Sweden	**(r)**	14.XI.1983
Switzerland*	**(r)**	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	**(r)**	2.III.1982
Bermuda, British Antartic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Isle of Man, Montserrat, Caicos & Turks Island (extension)	**(a)**	20.X.1983

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

Reservations

Poland
Poland does not consider itself bound by art. III.

Switzerland
Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissement, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:
La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevaleur en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

Convention internationale pour l'unification de certaines règles relatives aux

Privilèges et hypothèques maritimes

et protocole de signature

Bruxelles, 10 avril 1926
entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules relating to

Maritime liens and mortgages

and protocol of signature

Brussels, 10th April 1926
entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Argentina	**(a)**	19.IV.1961
Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Cuba*	**(a)**	21.XI.1983
Denmark	**(r)**	
(denunciation – 1.III.1965)		
Estonia	**(r)**	2.VI.1930
Finland	**(a)**	12.VII.1934
(denunciation – 1.III.1965)		
France	**(r)**	23.VIII.1935
Haiti	**(a)**	19.III.1965
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	8.IX.1966
Italy*	**(r)**	7.XII.1949
Lebanon	**(a)**	18.III.1969
Luxembourg	**(a)**	18.II.1991

Madagascar	**(r)**	23.VIII.1935
Monaco	**(a)**	15.V.1931
Norway	**(r)**	10.X.1933
(denunciation – 1.III.1965)		
Poland	**(r)**	26.X.1936
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
Spain	**(r)**	2.VI.1930
Switzerland	**(a)**	28.V.1954
Sweden	**(r)**	1.VII.1938
(denunciation – 1.III.1965)		
Syrian Arab Republic	**(a)**	14.II.1951
Turkey	**(a)**	4.VII.1955
Uruguay	**(a)**	15.IX.1970
Zaire	**(a)**	17.VII.1967

Reservations

Cuba

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

– l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;

– la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

Convention internationale pour l'unification de certaines règles concernant les

Immunités des navires d'Etat

Bruxelles, 10 avril 1926
et protocole additionnel

Bruxelles, 24 mai 1934
Entrée en vigueur: 8 janvier 1937

International convention for the unification of certain rules concerning the

Immunity of State-owned ships

Brussels, 10th April 1926
and additional protocol

Brussels, May 24th 1934
Entered into force: 8 January 1937

(Translation)

Argentina	**(a)**	19.IV.1961
Belgium	**(r)**	8.I.1936

Brazil	**(r)**	8.I.1936
Chile	**(r)**	8.I.1936
Cyprus	**(a)**	19.VII.1988
Denmark	**(r)**	16.XI.1950
Estonia	**(r)**	8.I.1936
France	**(r)**	27.VII.1955
Germany	**(r)**	27.VI.1936
Greece	**(a)**	19.V.1951
Hungary	**(r)**	8.I.1936
Italy	**(r)**	27.I.1937
Luxembourg	**(a)**	18.II.1991
Libyan Arab Jamahiriya	**(r)**	27.I.1937
Madagascar	**(r)**	27.I.1955
Netherlands	**(r)**	8.VII.1936
Curaçao, Dutch Indies		
Norway	**(r)**	25.IV.1939
Poland	**(r)**	16.VII.1976
Portugal	**(r)**	27.VI.1938
Romania	**(r)**	4.VIII.1937
(denunciation – 21.IX.1959)		
Somalia	**(r)**	27.I.1937
Sweden	**(r)**	1.VII.1938
Switzerland	**(a)**	28.V.1954
Suriname	**(r)**	8.VII.1936
Syrian Arab Republic	**(a)**	17.II.1960
Turkey	**(a)**	4.VII.1955
United Arab Republic	**(a)**	17.II.1960
United Kingdom*	**(r)**	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	**(a)**	19.V.1988
Uruguay	**(a)**	15.IX.1970
Zaire	**(a)**	17.VII.1967

Reservations

United Kingdom

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.

Convention internationale pour l'unification de certaines règles relatives à la

Compétence civile en matière d'abordage

Bruxelles, 10 mai 1952
Entrée en vigueur:
14 septembre 1955

International convention for the unification of certain rules relating to

Civil jurisdiction in matters of collision

Brussels, 10th May 1952
Entered into force:
14 September 1955

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda	**(a)**	12.V.1965
Argentina	**(a)**	19.IV.1961
Bahamas	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Fasa	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Cote d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominican Republic	**(a)**	12.V.1965
Egypt	**(r)**	24.VIII.1955
Fiji	**(a)**	10.X.1974
France	**(r)**	25.V.1957

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsability for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999.

With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada	**(a)**	12.V.1965
Guinea	**(a)**	23.IV.1958
Guyana	**(a)**	29.III.1963
Haute Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland	**(a)**	17.X.1989
Italy	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1959
Kiribati	**(a)**	21.IX.1965
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius	**(a)**	29.III.1963
Morocco	**(a)**	11.VII.1990
Niger	**(a)**	23.IV.1958
Nigeria	**(a)**	7.XI.1963
North Borneo	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	14.III.1986
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak	**(a)**	29.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
St. Kitts and Nevis	**(a)**	12.V.1965
St. Lucia	**(a)**	12.V.1965
St. Vincent and the Grenadines	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga	**(a)**	13.VI.1978
Tuvalu	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Caiman Islands, Montserrat	**(a)**	12.V.1965
Anguilla, St. Helena	**(a)**	12.V.1965
Turks Isles and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and Dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

Costa-Rica
(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.
En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."
"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à ca compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1° lettre (b) de cette Convention.

Khmere Republic
Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.
En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l'article 1°.
En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

Convention internationale pour l'unification de certaines règles relatives à la

Compétence pénale en matière d'abordage et autres événements de navigation

Bruxelles, 10 mai 1952
Entrée en vigueur:
20 novembre 1955

Internationd convention for the unification of certain rules relating to

Penal jurisdiction in matters of collision and other incidents of navigation

Brussels, 10th May 1952
Entered into force:
20 November 1955

Anguilla*	**(a)**	12.V.1965
Antigua and Barbuda*	**(a)**	12.V.1965
Argentina*	**(a)**	19.IV.1961
Bahamas*	**(a)**	12.V.1965
Belgium*	**(r)**	10.IV.1961

Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Burman Union*	**(a)**	8.VII.1953
Cayman Islands*	**(a)**	12.VI.1965
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji*	**(a)**	29.III.1963
France*	**(r)**	20.V.1955
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany*	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	19.III.1963
Guinea	**(a)**	23.IV.1958

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[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

The following declarations have been made by the Government of the People's Republic of China:

1. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

[2] The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Compétence pénale 1952 *Penal jurisdiction 1952*

Haiti	**(a)**	17.IX.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Italy*	**(r)**	9.XI.1979
Ivory Coast	**(a)**	23.IV.1958
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Lebanon	**(r)**	19.VII.1975
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Montserrat*	**(a)**	12.VI.1965
Morocco	**(a)**	11.VII.1990
Netherlands*	**(r)**	
Kingdom in Europe, West Indies and Aruba	**(r)**	25.VI.1971
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7 XI.1963
North Borneo*	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Portugal*	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain*	**(r)**	8.XII.1953
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Helena*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Suriname	**(r)**	25.VI.1971
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	10.VII.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland*	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Anguilla	**(a)**	12.V.1965
Turks Islands and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Viet Nam*	**(a)**	26.XI.1955
Zaire	**(a)**	17.VII.1967

Reservations

Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent
The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina
(Traduction) La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1° de la Convention.

Bahamas
...Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

Belgium
...le Gouvernement belge, faisant usage de la faculté inscrite à l'article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

Belize
...Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

Cayman Islands
See Antigua.

China
Macao
The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the

Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsability for the international rights and obligations that place on a Party to the Convention

Costa-Rica
(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° and 2° de la présente Convention.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans se propres eaux territoriales".

Dominica, Republic of
... Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt
Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji
The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France
Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of
(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada
Same reservations as the Republic of Dominica

Guyana
Same reservations as the Republic of Dominica

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic
Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati
Same reservations as the Republic of Dominica

Mauritius
Same reservations as the Republic of Dominica

Montserrat
See Antigua.

Netherlands
Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria
The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo
Same reservations as the Republic of Dominica

Portugal
Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

Sarawak
Same reservations as the Republic of Dominica

St. Helena
See Antigua.

St. Kitts-Nevis
See Antigua.

St. Lucia
Same reservations as the Republic of Dominica

St. Vincent
See Antigua.

Seychelles
Same reservations as the Republic of Dominica

Solomon Isles
Same reservations as the Republic of Dominica

Spain
La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga
Same reservations as the Republic of Dominica

Tuvalu
Same reservations as the Republic of Dominica

United Kingdom
1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam
Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

Convention internationale pour l'unification de certaines règles sur la
Saisie conservatoire des navires de mer

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

International convention for the unification of certain rules relating to
Arrest of sea-going ships

Brussels, 10th May 1952
Entered into force: 24 February 1956

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda*	**(a)**	12.V.1965
Bahamas*	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.IX.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Côte d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cuba*	**(a)**	21.XI.1983
Denmark	**(r)**	2.V.1989
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji	**(a)**	29.III.1963
Finland	**(r)**	21.XII.1995
France	**(r)**	25.V.1957
Overseas Territories	**(a)**	23.IV.1958

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Gabon	**(a)**	23.IV.1958
Germany*	**(r)**	6.X.1972
Greece	**(r)**	27.II.1967
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	29.III.1963
Guinea	**(a)**	12.XII.1994
Haiti	**(a)**	4.XI.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland*	**(a)**	17.X.1989
Italy*	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Latvia	**(a)**	17.V.1993
Luxembourg	**(a)**	18.II.1991
Madagascar		23.IV.1958
Marocco	**(a)**	11.VII.1990
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Netherlands*	**(r)**	20.I.1983
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7.XI.1963
North Borneo*	**(a)**	29.III.1963
Norway	**(r)**	1.XI.1994
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	16.VII.1976
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Russian Federation*	**(a)**	29.IV.1999
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
Sudan	**(a)**	23.IV.1958
Sweden	**(a)**	30.IV.1993
Switzerland	**(a)**	28.V.1954
Syrian Arabic Republic	**(a)**	3.II.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Turks Isles and Caicos*	**(a)**	21.IX.1965
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	**(r)**	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963

Bermuda	**(a)**	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	**(a)**	12.V.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

Antigua
...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas
...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize
Same reservation as the Bahamas.

Costa Rica
(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.
Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.
Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire
Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

Cuba
(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of
Same reservation as Antigua

Egypt
Au moment de la signature le Plénipotentiaire égyptien à déclaré formuler les réserves prévues à l'article 10.
Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of
(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada
Same reservation as Antigua.

Guyana
Same reservation as the Bahamas.

Ireland
Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:
(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;
(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic
Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati
Same reservation as the Bahamas.

Mauritius
Same reservation as Antigua.

Netherlands
Réserves formulées conformément à l'article 10, paragraphes (a) et (b):
- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
- les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.

Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria
Same reservation as Antigua.

North Borneo
Same reservation as Antigua.

Russian Federation
The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.
Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the

unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:
– the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
– the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragrap 1, subparagraph (q), of the Convention.

St. Kitts and Nevis
Same reservation as Antigua.

St. Lucia
Same reservation as Antigua.

St. Vincent and the Grenadines
Same reservation as Antigua.

Sarawak
Same reservation as Antigua.

Seychelles
Same reservation as the Bahamas.

Solomon Islands
Same reservation as the Bahamas.

Tonga
Same reservation as Antigua.

Turk Isles and Caicos
Same reservation as the Bahamas.

Tuvalu
Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)
Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos

... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

Convention internationale sur la

Limitation de la responsabilité des propriétaires de navires de mer

et protocole de signature

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

International convention relating to the

Limitation of the liability of owners of sea-going ships

and protocol of signature

Brussels, 10th October 1957
Entered into force: 31 May 1968

Algeria	**(a)**	18.VIII.1964
Australia	**(r)**	30.VII.1975
(denunciation – 30.V.1990)		
Bahamas*	**(a)**	21.VIII.1964
Barbados*	**(a)**	4.VIII.1965
Belgium	**(r)**	31.VII.1975
(denunciation – 1.IX.1989)		
Belize	**(r)**	31.VII.1975
China		
Macao[1]	**(a)**	20.XII.1999
Denmark*	**(r)**	1.III.1965
(denunciation – 1.IV.1984)		
Dominica, Republic of*	**(a)**	4.VIII.1965
Egypt (Arab Republic of)		
(denunciation – 8.V.1985)		
Fiji*	**(a)**	21.VIII.1964
Finland	**(r)**	19.VIII.1964
(denunciation – 1.IV.1984)		
France	**(r)**	7.VII.1959
(denunciation – 15.VII.1987)		
Germany	**(r)**	6.X.1972
(denunciation – 1.IX.1986)		
Ghana*	**(a)**	26.VII.1961
Grenada*	**(a)**	4.VIII.1965
Guyana*	**(a)**	25.III.1966
Iceland*	**(a)**	16.X.1968
India*	**(r)**	1.VI.1971
Iran*	**(r)**	26.IV.1966
Israel*	**(r)**	30.XI.1967

[1] The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Japan	**(r)**	1.III.1976
(denunciation – 19.V.1983)		
Kiribati*	**(a)**	21.VIII.1964
Lebanon	**(a)**	23.XII.1994
Madagascar	**(a)**	13.VII.1965
Mauritius*	**(a)**	21.VIII.1964
Monaco*	**(a)**	24.I.1977
Netherlands	**(r)**	10.XII.1965
(denunciation – 1.IX.1989)		
Aruba*	**(r)**	1.I.1986
Norway	**(r)**	1.III.1965
(denunciation – 1.IV.1984)		
Papua New Guinea*	**(a)**	14.III.1980
Poland	**(r)**	1.XII.1972
Portugal*	**(r)**	8.IV.1968
St. Lucia*	**(a)**	4.VIII.1965
St. Vincent and the Grenadines	**(a)**	4.VIII.1965
Seychelles*	**(a)**	21.VIII.1964
Singapore*	**(a)**	17.IV.1963
Solomon Islands*	**(a)**	21.VIII.1964
Spain*	**(r)**	16.VII.1959
Sweden	**(r)**	4.VI.1964
(denunciation – 1.IV.1984)		
Switzerland	**(r)**	21.I.1966
Syrian Arab Republic	**(a)**	10.VII.1972
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.VIII.1964
United Arab Republic*	**(a)**	7.IX.1965
United Kingdom*	**(r)**	18.II.1959
Isle of Man	**(a)**	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, British Virgin Islands	**(a)**	21.VIII.1964
Guernsey and Jersey	**(a)**	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles*	**(a)**	4.VIII.1965
Vanuatu	**(a)**	8.XII.1966
Zaire	**(a)**	17.VII.1967

Reservations

Bahamas
...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados
Same reservation as Bahamas

China
The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the

Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Repubic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People's Republic of China will assume the responsability for the international rights and obligations that place on a Party to the Convention.

Denmark
Le Gouvernement du Danemark se réserve le droit:
1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of
Same reservation as Bahamas

Egypt Arab Republic
Reserves the right:
1) to exclude the application of Article 1, paragraph (1)(c);
2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji
Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana
The Government of Ghana in acceding to the Convention reserves the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada
Same reservation as Bahamas

Guyana
Same reservation as Bahamas

Iceland
The Government of Iceland reserves the right:
1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India
Reserve the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran
Le Gouvernement de l'Iran se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel
The Government of Israel reserves to themselves the right to:
1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;
The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati
Same reservation as Bahamas

Mauritius
Same reservation as Bahamas

Monaco
En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba
La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.
La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:
Le Gouvernement des Pays-Bas se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.
... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea
(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
(c) The Government of Paupua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal
(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia
Same reservation as Bahamas

Seychelles
Same reservation as Bahamas

Singapore
Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:
...Subject to the following reservations:
a) the right to exclude the application of Article 1, paragraph (1)(c); and
b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands
Same reservation as Bahamas

Spain
Le Gouvernement espagnol se réserve le droit:
1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga
Reservations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu
Same reservation as Bahamas

United Kingdom of Great Britain and Northern Ireland
Subject to the following observations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories

Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Protocole portant modification de la convention internationale sur la

Limitation de la responsabilité des propriétaires de navires de mer
du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

Protocol to amend the international convention relating to the

Limitation of the liability of owners of sea-going ships
of 10 October 1957

Brussels, 21st December 1979
Entered into force: 6 October 1984

Australia	**(r)**	30.XI.1983
Belgium	**(r)**	7.IX.1983

Luxembourg	**(a)**	18.II.1991
Poland	**(r)**	6.VII.1984
Portugal	**(r)**	30.IV.1982
Spain	**(r)**	14.V.1982
Switzerland	**(r)**	20.I.1988
United Kingdom of Great Britain and Northern Ireland	**(r)**	2.III.1982
(denunciation – 1.XII.1985)		
Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles (denunciation – 1.XII.1985)		

Convention internationale sur les
Passagers Clandestins

Bruxelles, 10 octobre 1957
Pas encore en vigueur

International convention relating to
Stowaways

Brussels, 10th October 1957
Not yet in force

Belgium	**(r)**	31.VII.1975
Denmark	**(r)**	16.XII.1963
Finland	**(r)**	2.II.1966
Italy	**(r)**	24.V.1963
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	13.VII.1965
Morocco	**(a)**	22.I.1959
Norway	**(r)**	24.V.1962
Peru	**(r)**	23.XI.1961
Sweden	**(r)**	27.VI.1962

Convention internationale pour l'unification de certaines règles en matière de
Transport de passagers par mer
et protocole

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

International convention for the unification of certain rules relating to
Carriage of passengers by sea
and protocol

Brussels, 29th April 1961
Entered into force: 4 June 1965

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	7.I.1963
France	**(r)**	4.III.1965
(denunciation – 3.XII.1975)		
Haïti	**(a)**	19.IV.1989
Iran	**(a)**	26.IV.1966

Carriage of passengers 1961		*Nuclear ships 1962*
Madagascar	**(a)**	13.VII.1965
Morocco*	**(r)**	15.VII.1965
Peru	**(a)**	29.X.1964
Switzerland	**(r)**	21.I.1966
Tunisia	**(a)**	18.VII.1974
United Arab Republic*	**(r)**	15.V.1964
Zaire	**(a)**	17.VII.1967

Reservations

Cuba
(Traduction) ...Avec les réserves suivantes:
1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco
...Sont et demeurent exclus du champ d'application de cette convention:
1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).
2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.
Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic
Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel

Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of Nuclear ships and additional protocol

Brussels, 25th May 1962
Not yet in force

Lebanon	**(r)**	3.VI.1975
Madagascar	**(a)**	13.VII.1965
Netherlands*	**(r)**	20.III.1974
Portugal	**(r)**	31.VII.1968
Suriname	**(r)**	20.III.1974
Syrian Arab Republic	**(a)**	1.VIII.1974
Zaire	**(a)**	17.VII.1967

Reservations

Netherlands
Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:
Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

Convention internationale pour l'unification de certaines règles en matière de

Transport de bagages de passagers par mer

Bruxelles, 27 mai 1967
Pas en vigueur

International Convention for the unification of certain rules relating to

Carriage of passengers' luggage by sea

Brussels, 27th May 1967
Not in force

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	15.II.1972

Reservations

Cuba
(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:
1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

Convention internationale relative à l'inscription des droits relatifs aux

Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention relating to the registration of rights in respect of

Vessels under construction

Brussels, 27th May 1967
Not yet in force

Croatia	**(r)**	3.V.1971
Greece	**(r)**	12.VII.1974
Norway	**(r)**	13.V.1975
Sweden	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.XIII.1974

Convention internationale pour l'unification de certaines règles relatives aux
Privilèges et hypothèques maritimes

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention for the unification of certain rules relating to
Maritime liens and mortgages

Brussels, 27th May 1967
Not yet in force

Denmark*	**(r)**	23.VIII.1977
Morocco*	**(a)**	12.II.1987
Norway*	**(r)**	13.V.1975
Sweden*	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.VIII.1974

Reservations

Denmark
L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroe les mesures d'application n'ont pas encore été fixées.

Morocco
L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway
Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:
1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden
Conformément à l'article 14 la Suède fait les réserves suivantes:
1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature
s	=	signature by confirmation

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 31st December, 1998.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 31 décembre 1998.
2. Les dates mentionnées sont les dates du depôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.

International Convention on Civil liability for oil pollution damage

(CLC 1969)

Done at Brussels, 29 November 1969
Entered into force: 19 June 1975

Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (CLC 1969)

Signée a Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

Albania	**(a)**	6.IV.1994
Antigua and Barbuda	**(a)**	21.XI.1977
Algeria	**(a)**	14.VI.1974
*(denunciation 3.VIII.1999**)*		
Antigua and Barbuda	**(a)**	21.IX.1997
Australia*	**(r)**	7.XI.1983
*(denunciation 15.V.1988**)*		
Bahamas	**(a)**	22.VII.1976
*(denunciation 15.V.1988**)*		
Bahrain	**(a)**	3.V.1996
*(denunciation 15.V.1988**)*		
Barbados	**(a)**	6.V.1994
*(denunciation 7.VII.1999**)*		
Belgium*	**(r)**	12.I.1977
*(denunciation 6.X.1999**)*		
Belize	**(a)**	2.IV.1991
*(denunciation 27.XI.1999**)*		
Benin	**(a)**	1.XI.1985
Brazil	**(r)**	17.XII.1976
Brunei Darussalam	**(a)**	29.IX.1992
Cambodia	**(a)**	28.XI.1994
Cameroon	**(r)**	14.V.1984
Canada	**(a)**	24.I.1989
*(denunciation 29.V.1999**)*		
Chile	**(a)**	2.VIII.1977
China*	**(a)**	30.I.1980
Colombia	**(a)**	26.III.1990
Costa Rica	**(a)**	8.III.1998
Côte d'Ivoire	**(r)**	21.VI.1973
Croatia	**(r)**	8.X.1991
*(denunciation 30.VII.1999**)*		
Cyprus	**(a)**	19.VI.1989
*(denunciation 15.V.1988**)*		

** Effective date

CLC 1969

Denmark	**(a)**	2.IV.1975
*(denunciation 15.V.1988**)*		
Djibouti	**(a)**	1.III.1990
Dominican Republic	**(r)**	2.IV.1975
Ecuador	**(a)**	23.XII.1976
Egypt	**(a)**	3.II.1989
Equatorial Guinea	**(a)**	24.IV.1996
Estonia	**(a)**	1.XII.1992
Fiji	**(a)**	15.VIII.1972
Finland	**(r)**	10.X.1980
*(denunciation 15.V.1988**)*		
France	**(r)**	17.III.1975
*(denunciation 15.V.1988**)*		
Gabon	**(a)**	21.I.1982
Gambia	**(a)**	1.XI.1991
Georgia	**(a)**	19.IV.1994
Germany*	**(r)**	20.V.1975
*(denunciation 15.V.1988**)*		
Ghana	**(r)**	20.IV.1978
Greece	**(a)**	29.VI.1976
*(denunciation 15.V.1988**)*		
Guatemala*	**(a)**	20.X.1982
Guyana	**(a)**	10.XII.1997
Hounduras	**(a)**	2.XII.1998
Iceland	**(r)**	17.VII.1980
India	**(a)**	1.V.1987
Indonesia	**(r)**	1.IX.1978
Ireland	**(r)**	19.XI.1992
*(denunciation 15.V.1988**)*		
Italy*	**(r)**	27.II.1979
Japan	**(a)**	3.VI.1976
*(denunciation 15.V.1988**)*		
Kazakhstan	**(a)**	7.III.1994
Kenya	**(a)**	15.XII.1992
Korea (Rep.of)	**(a)**	18.XII.1978
*(denunciation 15.V.1988**)*		
Kuwait	**(a)**	2.IV.1981
Latvia	**(a)**	10.VII.1992
Lebanon	**(a)**	9.IV.1974
Liberia	**(a)**	25.IX.1972
*(denunciation 15.V.1988**)*		
Luxembourg	**(a)**	14.II.1991

** Effective date

Malaysia	**(a)**	6.I.1995
Maldives	**(a)**	16.III.1981
Malta	**(a)**	27.IX.1991
Marshall Islands	**(a)**	24.I.1994
*(denunciation 15.V.1988**)*		
Mauritania	**(a)**	17.XI.1995
Mauritius	**(a)**	6.IV.1995
Mexico	**(a)**	13.V.1994
*(denunciation 15.V.1988**)*		
Monaco	**(r)**	21.VIII.1975
*(denunciation 15.V.1988**)*		
Morocco	**(a)**	11.IV.1974
Mozambique	**(a)**	11.IV.1974
Netherlands	**(r)**	9.IX.1975
*(denunciation 15.V.1988**)*		
New Zealand	**(a)**	27.IV.1976
*(denunciation 25.VI.1999**)*		
Nicaragua	**(a)**	4.VI.1996
Nigeria	**(a)**	7.V.1981
Norway	**(a)**	21.III.1975
*(denunciation 15.V.1988**)*		
Oman	**(a)**	24.I.1985
*(denunciation 15.V.1988**)*		
Panama	**(r)**	7.I.1976
Papua New Guinea	**(a)**	12.III.1980
Peru*	**(a)**	24.II.1987
Poland	**(r)**	18.III.1976
Portugal	**(r)**	26.XI.1976
Qatar	**(a)**	2.VI.1988
Russian Federation*	**(a)**	24.VI.1975
Saint Kitts and Nevis*	**(a)**	14.IX.1994
St.-Vincent and the Grenadines	**(a)**	19.VI.1989
Sao Tome and Principe	**(a)**	29.X.1998
Saudi Arabia*	**(a)**	15.IV.1993
Senegal	**(a)**	27.III.1972
Seychelles	**(a)**	12.IV.1988
Sierra Leone	**(a)**	13.VIII.1993
Singapore	**(a)**	16.IX.1981
*(denunciation 31.XII.1988**)*		
Slovenia (succession)	**(a)**	25.VI.1991

** Effective date

South Africa	**(a)**	17.III.1976
Spain	**(r)**	
*(denunciation 15.V.1988**)*		
Sri Lanka	**(a)**	12.IV.1983
Sweden	**(r)**	17.III.1975
*(denunciation 15.V.1988**)*		
Switzerland	**(r)**	15.XII.1987
*(denunciation 15.V.1988**)*		
Syrian Arab Republic*	**(a)**	6.II.1975
Tonga	**(a)**	1.II.1996
Tunisia	**(a)**	4.V.1976
*(denunciation 15.V.1988**)*		
Tuvalu (succession)	**(a)**	1.X.1978
United Arab Emirates	**(a)**	15.XII.1983
United Kingdom	**(r)**	17.III.1975
*(denunciation[1] 15.V.1988**)*		
Vanuatu	**(a)**	2.II.1983
Venezuela	**(a)**	21.I.1992
*(denunciation 22.VII.1999**)*		
Yemen	**(a)**	6.III.1979
Yugoslavia	**(r)**	18.VI.1976

The Convention applies provisionally to the following States:

Kiribati
Solomon Islands

** Effective date

(1) The instrument of denunciation of the United Kingdom contained the following declaration:

"In accordance with the provisions of article 31 of the 1992 Protocol to the 1971 Convention, of article VII of the 1976 Protocol to that Convention, and of article VI of the 1976 Protocol to the 1969 Convention, I hereby give notice that the Government of the United Kingdom of Great Britain and Northern Ireland denounces, with effect from 15 May 1998, the 1969 Convention and the 1976 Protocol thereto, and the 1971 Convention and the 1976 Protocol thereto, in respect of the United Kingdom of Great Britain and Northern Ireland and:

The Bailiwick fo Jersey
The Isle of Man
Falkland Islands[1]
Monserrat
South Georgia and South Sandwich Islands

being Territories for whose international relations the United Kingdom is responsible and for which the said Conventions and their related Protocols are in force at the present time".

The United Kingdom declared ratification to be effective also in respect of:

Anguilla	8.V.1984
Bailiwick of Jersey and Guernsey, Isle of Man	1.III.1976
Bermuda	1.III.1976
Belize [1]	1.IV.1976
British Indian Ocean Territory	1.IV.1976
British Virgin Islands	1.IV.1976
Cayman Islands	1.IV.1976
Falkland Islands and Dependencies [2]	1.IV.1976
Gibraltar	1.IV.1976
Gilbert Islands [3]	1.IV.1976
Hong-Kong [4]	1.IV.1976
Montserrat	1.IV.1976
Pitcairn	1.IV.1976
St. Helena and Dependencies	1.IV.1976
Seychelles [5]	1.IV.1976
Solomon Islands [6]	1.IV.1976
Turks and Caicos Islands	1.IV.1976
Tuvalu	1.IV.1976
United Kingdom Sovereign Base	1.IV.1976
Areas of Akrotiri and Dhekelia in the Island of Cyprus	1.IV.1976

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[1] Has since become an independent State and Contracting State to the Convention.

[2] The depositary received a communication dated 16 August 1976 from the Embassy of the Argentine Republic in London. The communication, the full text of which was circulated by the depositary, includes the following:

"The extension of the convention to the Islas Malvinas, Georgias del Sur and Sandwich del Sur notified by the Government of the United Kingdom of Great Britain and Northern Ireland to the Secretary-General, on 1 April 1976 ... under the erroneous denomination of "Falkland Islands and Dependencies" - [does] not in any way affect the rights of the Argentine Republic over those islands which are part of its territory and come under the administrative jurisdiction of the Territorio Nacional de Tierra del Fuego, Antártida e Islas del Atlantico Sur.

The afore-mentioned islands were occupied by force by a foreign power. The situation has been considered by the United Nations Assembly which adopted resolutions 2065(XX) and 3160(XXVIII). In both resolutions the existence of a dispute regarding the sovereignty over the archipelago was confirmed and the Argentine Republic and the occupying power were urged to negotiate with a view to finding a definitive solution to the dispute."

The depositary received the following communication dated 20 September 1976 from the Government of the United Kingdom.

"...With reference to the statement of the Embassy of the Argentine Republic ... Her Majesty's Government is bound to state that they have no doubts as to United Kingdom sovereignty over the Falkland Islands and the Falkland Islands Dependencies.

[3] Has since become the independent State of Kiribati to which the Convention applies provisionally.

[4] Cassed to apply to Hong Kong with effect from 1 July 1997.

[5] Has since become the independent State of Seychelles.

[6] Has since become an independent State to which the Convention applies provisionally.

Declarations, Reservations and Statements

Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

"Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia's understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship's operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia."

"Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic's position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia."

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

"...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

[Translation]

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."

"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."[1]

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

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[1] The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that "with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

"It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize."

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

"The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2)."

Peru [2]

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

[Translation]

"With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

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[2] The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

"...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and

sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast".

Russian Federation

See USSR.

Saint Kitts and Nevis

The instrument of accession of Saint Kitts and Nevis contained the following declaration:
"The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
"...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention".

USSR

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):
[Translation]
"The Union of Soviet Socialist Republic does not consider itself bound by the provisions of article XI, paragraph 2 of the Convention, as they contradict the principle

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jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles."

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

"...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles."

of the judicial immunity of a foreign State."[3]

Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

"On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

"(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)".

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

"...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to "the owner" of "the ship", which caused such damage, while paragraph 3 of article I of the Convention stipulates that "in the case of a ship owned by a state and operated by a company which in that state is registered as the ship's operator, "owner" shall mean such company". Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state".

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[3] The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

Protocol to the International Convention on
Civil liability for oil pollution damage

(CLC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

Protocole à la Convention Internationale sur la
Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures

(CLC PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

Albania	**(a)**	6.IV.1994
Antigua and Barbuda	**(a)**	23.VI.1997
Australia	**(a)**	7.XI.1983
(denunciation 22 June 1988[1])*		
Bahamas	**(acc)**	3.III.1980
Bahrain	**(a)**	3.V.1996
Barbados	**(a)**	3.V.1996
Belgium	**(a)**	15.VI.1989
Belize	**(a)**	2.IV.1991
Brunei Darussalam	**(a)**	29.IX.1992
Cameroon	**(a)**	14.V.1984
Canada	**(a)**	24.I.1989
China*	**(a)**	29.IX.1986
Colombia	**(a)**	26.III.1990
Costa Rica	**(a)**	8.XII.1997
Cyprus	**(a)**	19.VI.1989
Denmark	**(a)**	3.VI.1981
Egypt	**(a)**	3.II.1989
Finland	**(a)**	8.I.1981
France	**(AA)**	7.XI.1980
Georgia	**(a)**	25.VIII.1995
Germany*	**(r)**	28.VIII.1980
Greece	**(a)**	10.V.1989
Iceland	**(a)**	24.III.1994
India	**(a)**	1.V.1987
Ireland	**(a)**	19.XI.1992
(denunciation 15.V.1988)*		
Italy	**(a)**	3.VI.1983
Japan	**(a)**	24.VIII.1994
Korea, Republic of	**(a)**	8.XII.1992
Kuwait	**(a)**	1.VII.1981

* Effective date.
[1] Effective date is the date of entry into force of the 1984 Protocol

Liberia	**(a)**	17.II.1981
Luxemburg	**(a)**	14.II.1991
Maldives	**(a)**	14.VI.1981
Malta	**(a)**	21.I.1995
Marshall Islands	**(a)**	27.IX.1991
Mauritania	**(a)**	6.IV.1995
Mauritius	**(a)**	17.XI.1995
Mexico	**(a)**	13.V.1994
Netherlands	**(a)**	3.VIII.1982
Nicaragua	**(a)**	4.VI.1996
Norway	**(a)**	17.VII.1978
Oman	**(a)**	24.I.1985
Peru	**(a)**	24.II.1987
Poland	**(a)**	30.X.1985
Portugal	**(a)**	2.I.1986
Qatar	**(a)**	2.VI.1988
Russian Federation	**(a)**	2.XII.1988
Saudi Arabia	**(a)**	15.IV.1993
Singapore	**(a)**	15.XII.1981
Spain	**(a)**	22.X.1981
Sweden	**(r)**	7.VII.1978
Switzerland	**(a)**	15.XII.1987
United Arab Emirates	**(a)**	14.III.1984
United Kingdom	**(r)**	31.I.1980
(denunciation 15.V.1988)*		
Vanuatu	**(a)**	13.I.1989
Venezuela	**(a)**	21.I.1992
Yemen	**(a)**	4.VI.1979

The United Kingdom declared ratification to be effective also in respect of:

Anguilla
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize (1)
Bermuda
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands (2)

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* Effective date.

(1) Has since become an independent State and Contracting State to the Protocol.

(2) A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Gibraltar
Hong Kong
Montserrat
Pitcairn
Saint Helena and Dependencies
Turks and Caicos Islands
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):
"...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Notifications

Article V(9)(c) of the Convention, as amended by the Protocol

China

"...the value of the national currency, in terms of SDR, of the People's Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund."

Poland

"Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.
However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.
The method of conversion is that the Polish National Bank will fix a rate of exchange

of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.
The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

Switzerland

[Translation]
"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:
The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

United Kingdom

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

Protocol of 1992 to amend the International Convention on

Civil liability for oil pollution damage, 1969

(CLC PROT 1992)

Done at London,
19 November 1992
Entry into force: 30 May 1996

Protocole à la Convention Internationale sur la

Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, 1969

(CLC PROT 1992)

Signé à Londres,
le 19 novembre 1992
Entrée en vigueur: 30 May 1996

Algeria	**(a)**	11.VI.1998
Australia	**(a)**	9.X.1995
Bahamas	**(a)**	1.IV.1997
Bahrain	**(a)**	3.V.1996
Barbados	**(a)**	7.VII.1998
Belgium	**(a)**	6.X.1998
Belize	**(a)**	27.XI.1998
Canada	**(a)**	29.V.1998
Croatia	**(a)**	12.I.1998
Cyprus	**(a)**	12.V.1997
Denmark	**(r)**	30.V.1995
Egypt	**(a)**	21.IV.1995
Finland	**(a)**	8.I.1981
France	**(A)**	29.IX.1994
Finland	**(a)**	24.XI.1995
Germany*	**(r)**	29.IX.1994
Greece	**(r)**	9.X.1995
Grenada	**(a)**	7.I.1998
Iceland	**(a)**	13.XI.1998
Ireland	**(a)**	15.V.1997
Italy	**(a)**	16.IX.1999
Jamaica	**(a)**	6.VI.1997
Japan	**(a)**	13.VIII.1994
Korea (Republic of)	**(a)**	7.III.1997
Latvia	**(a)**	9.III.1998
Liberia	**(a)**	5.X.1995
Marshall Islands	**(a)**	16.X.1995
Mexico	**(a)**	13.V.1994
Monaco	**(a)**	8.XI.1996
New Zealand*	**(a)**	25.VI.1998
Netherlands	**(a)**	15.XI.1996
Norway	**(r)**	26.V.1995
Oman	**(a)**	8.VII.1994

Philippines	**(a)**	7.VII.1997
Singapore	**(a)**	18.IX.1997
Spain	**(a)**	6.VII.1995
Sweden	**(r)**	25.V.1995
Switzerland	**(a)**	4.VII.1996
Tunisia	**(a)**	29.I.1997
United Arab Emirates	**(a)**	19.XI.1997
United Kingdom	**(a)**	29.IX.1994
Uruguay	**(a)**	9.VII.1997
Venezuela	**(a)**	22.VII.1998

The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Guernsey
The Isle of Man
Falkland Islands [1]
Montserrat
South Georgia and the South Sandwich Islands

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:
"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New Zeland

The instrument of accession of New Zeland contained the following declaration:
"And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zeland with the Depositary".

[1] A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

International Convention on the

Establishment of an International Fund for compensation for oil pollution damage

(FUND 1971)

Done at Brussels, 18 December 1971
Entered into force: 16 October 1978

Convention Internationale portant

Création d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS 1971)

Signée à Bruxelles, le 18 decembre 1971
Entrée en vigueur: 16 octobre 1978

Albania	**(a)**	6.IV.1994
Algeria	**(r)**	2.VI.1975
*(denunciation 3.VIII.1998**)*		
Antigua and Barbuda	**(a)**	23.VI.1997
Australia	**(a)**	10.X.1994
*(denunciation 15.V.1998**)*		
Bahamas	**(a)**	22.VII.1976
*(denunciation 15.V.1998**)*		
Bahrain	**(a)**	3.V.1996
*(denunciation 15.V.1998**)*		
Barbados	**(a)**	6.V.1994
*(denunciation 7.VII.1998**)*		
Belgium	**(r)**	1.XII.1994
*(denunciation 6.X.1998**)*		
Benin	**(a)**	1.XI.1985
Brunei Darussalam	**(a)**	29.IX.1992
Cameroon	**(a)**	14.V.1984
Canada*	**(a)**	24.I.1989
*(denunciation 29.V.1998**)*		
China [1]		
Columbia	**(a)**	13.III.1997
Cote d'Ivoire	**(a)**	5.X.1987
Croatia [2]	**(r)**	8.X.1991
*(denunciation 30.VII.1998**)*		
Cyprus	**(a)**	26.VII.1989
*(denunciation 15.V.1998**)*		
Denmark	**(a)**	2.IV.1975
*(denunciation 15.V.1998**)*		

** Effective date.

[1] Applies only to the Hong Kong Special Administration Region

[2] On 11 August 1992 Croatia notified its succession to this Conventions as of the date of its independence (8.10.1991).

Fund 1971		*Fonds 1971*
Djibouti	**(a)**	1.III.1990
Estonia	**(a)**	I.XII.1992
Fiji	**(a)**	4.III.1983
Finland	**(r)**	10.X.1980
*(denunciation 15.V.1998**)*		
France	**(a)**	11.V.1978
*(denunciation 15.V.1998**)*		
Gabon	**(a)**	21.I.1982
Gambia	**(a)**	1.XI.1991
Germany*	**(r)**	30.XII.1976
*(denunciation 15.V.1998**)*		
Ghana	**(r)**	20.IV.1978
Greece	**(a)**	16.XII.1986
*(denunciation 15.V.1998**)*		
Guyana	**(a)**	10.XII.1997
Iceland	**(a)**	17.VII.1980
India	**(a)**	10.VII.1990
Indonesia	**(a)**	1.IX.1978
*(denunciation 15.V.1998**)*		
Ireland	**(r)**	19.XI.1992
*(denunciation 15.V.1998**)*		
Italy	**(a)**	27.II.1979
Japan	**(r)**	7.VII.1976
*(denunciation 15.V.1998**)*		
Kenya	**(a)**	15.XII.1992
Korea, Republic of	**(a)**	8.XII.1992
*(denunciation 15.V.1998**)*		
Kuwait	**(a)**	2.IV.1981
Liberia	**(a)**	25.IX.1972
*(denunciation 15.V.1998**)*		
Malaysia	**(a)**	6.I.1995
Maldives	**(a)**	16.III.1995
Malta	**(a)**	27.IX.1991
Marshall Islands	**(a)**	30.XI.1994
*(denunciation 15.V.1998**)*		
Mauritania	**(a)**	17.XI.1995
Mauritius	**(a)**	6.IV.1995
Mexico	**(a)**	13.V.1994
*(denunciation 15.V.1998**)*		
Monaco	**(a)**	23.VIII.1979
*(denunciation 15.V.1998**)*		

** Effective date.

(3) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Morocco	**(r)**	31.XII.1992
Mozambique	**(a)**	23.XII.1996
Netherlands	**(A A)**	3.VIII.1982
*(denunciation 15.V.1998**)*		
New Zeland	**(a)**	22.XI.1996
*(denunciation 25.V.1998**)*		
Nigeria	**(a)**	11.XI.1987
Norway	**(r)**	21.III.1975
*(denunciation 15.V.1998**)*		
Oman	**(a)**	10.V.1985
*(denunciation 15.V.1998**)*		
Papua New Guinea	**(a)**	12.III.1980
Poland	**(r)**	16.IX.1985
Portugal	**(r)**	11.IX.1985
Qatar	**(a)**	2.VI.1988
Russian Federation [3]	**(a)**	17.VI.1987
Saint Kitts and Nevis	**(a)**	14.IX.1994
Seychelles	**(a)**	12.IV.1988
Sierra Leone	**(a)**	13.VIII.1993
Slovenia (succession)	**(a)**	25.VI.1991
Spain	**(a)**	8.X.1981
*(denunciation 15.V.1998**)*		
Sri Lanka	**(a)**	12.IV.1983
Sweden	**(r)**	17.III.1975
*(denunciation 15.V.1998**)*		
Switzerland	**(r)**	4.VII.1996
*(denunciation 15.V.1998**)*		
Syrian Arab Republic*	**(a)**	6. II.1975
Tonga	**(a)**	1.II.1996
Tunisia	**(a)**	4.V.1976
*(denunciation 15.V.1998**)*		
Tuvalu	**(succession)**	
United Arab Emirates	**(a)**	15.XII.1983
United Kingdom	**(r)**	2.IV.1976
*(denunciation 15.V.1998**)*		
Vanuatu	**(a)**	13.I.1989
Venezuela	**(a)**	21.I.1992
*(denunciation 15.V.1998**)*		
Yugoslavia	**(r)**	16.III.1978

** Effective date.

The United Kingdom declared ratification to be effective also in respect of:

		Effective date
Anguilla		1 September 1984
*(denunciation 15.V.1998**)*		
Bailiwick of Guernsey	)	
*(denunciation 15.V.1998**)*		
Bailiwick of Jersey	)	
*(denunciation 15.V.1998**)*		
Isle of Man	)	
*(denunciation 15.V.1998**)*		
Belize [1]	)	
Bermuda	)	
*(denunciation 15.V.1998**)*		
British Indian Ocean Territory	)	
*(denunciation 15.V.1998**)*		
British Virgin Islands	)	
*(denunciation 15.V.1998**)*		
Cayman Islands	)	
*(denunciation 15.V.1998**)*		
Falkland Islands and Dependencies [2]	)	16 October 1978
*(denunciation 15.V.1998**)*		
Gibraltar	)	
*(denunciation 15.V.1998**)*		
Gilbert Islands [3]	)	
Hong Kong [4]	)	

** Effective date.

[1] Has since become the independent State of Belize.

[2] The depositary received a communication dated 16 August 1976 from the Embassy of the Argentina Republic in London. The communication, the full text of which was circulated by the depositary, includes the following:

"...the mentioning of the [Islas Malvinas, Georgias del Sur and Sandwich de Sur] in the instrument of ratification ... deposited on 2 April 1976 ... under the erroneous denomination of 'Falkland Islands and Dependencies' - [does] not in any way affect the rights of the Argentine Republic over those islands which are part of its territory and come under the administrative jurisdiction of the Territorio Nacional de Tierra del Fuego, Antártida e Islas del Atlantico Sur.

The aforementioned islands were occupied by force by a foreign power. The situation has been considered by the United Nations Assembly which adopted resolutions 2065(XX) and 3160(XXVIII). In both resolutions, the existence of a dispute regarding the sovereignty over the archipelago was confirmed and the Argentine Republic and the occupying power were urged to negotiate with a view to finding a definitive solution to the dispute."

The depositary received the following communication dated 21 September 1976 from the Government of the United Kingdom.

"With reference to the statement of the Embassy of the Argentine Republic ... Her Majesty's Government is bound to state that they have no doubts as to United Kingdom sovereignty over the Falkland Islands and the Falkland Islands dependencies."

[3] Has since become the independent State of Kiribati.

[4] Ceased to apply to Hong Kong with effect from 1 July 1997.

Montserrat)
*(denunciation 15.V.1998**)*
Pitcairn Group)
*(denunciation 15.V.1998**)*
Saint Helena and Dependencies)
*(denunciation 15.V.1998**)*
Seychelles [5])
Solomon Islands [6])
Turks and Caicos Islands)
*(denunciation 15.V.1998**)*
Tuvalu [7])
United Kingdom Sovereign Base Areas)
of Akrotiri and Dhekelia in the)
Island of Cyprus)
*(denunciation 15.V.1998**)*

Declarations, Reservations and Statements

Canada
The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):
"The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):
"that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany."

Syrian Arab Republic
The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
"...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention."

** Effective date.
[5] Has since become the independent State of Seychelles.
[6] Has since become the independent State of Solomon Islands.
[7] Has since become an independent State and a Contracting State to the Convention.

Protocol to the International Convention on the
Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force:
22 November 1994

Protocole à la Convention Internationale portant
Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1976)

Signé a Londres, le 19 novembre 1976
Entré en vigueur:
22 Novembre 1994

Albania	**(a)**	6.IV.1994
Australia	**(a)**	10.X.1994
Bahamas	**(A)**	3.III.1980
Bahrain	**(a)**	3.V.1996
Barbados	**(a)**	6.V.1994
Belgium	**(r)**	1.XII.1994
Canada	**(a)**	21.II.1995
China [1]		
Colombia	**(a)**	13.III.1997
Cyprus	**(a)**	26.VII.1989
Denmark	**(a)**	3.VI.1981
Finland	**(a)**	8.I.1981
France	**(a)**	7.XI.1980
Germany*	**(r)**	28.VIII.1980
Greece	**(a)**	9.X.1995
Iceland	**(a)**	24.III.1994
India	**(a)**	10.VII.1990
Ireland	**(a)**	19.XI.1992
*(denunciation 15.V.1998**)*		
Italy	**(a)**	21.IX.1983
Japan	**(a)**	24.VIII.1994
Liberia	**(a)**	17.II.1981
Malta	**(a)**	27.IX.1991
Marshall Islands	**(a)**	16.X.1995
Mauritius	**(a)**	6.IV.1995
Mexico	**(a)**	13.V.1994
Morocco	**(a)**	31.XII.1992
Netherlands	**(a)**	1.XI.1982

** Effective date.
[1] Applies only to the Hong Special Administrative Region.

Norway	**(a)**	17.VII.1978
Poland*	**(a)**	30.X.1985
Portugal	**(a)**	11.IX.1985
Russian Federation [2]	**(a)**	30.I.1989
Spain	**(a)**	5.IV.1982
Sweden	**(r)**	7.VII.1978
United Kingdom *(denunciation 15.V.1998**)*	**(r)**	31.I.1980
Vanuatu	**(a)**	13.I.1989
Venezuela	**(a)**	21.I.1992

** Effective date.

[2] As from 26 December 1991 the membership of the USSR in the Convernion is continued by the Russian Federation.

The United Kingdom declared ratification to be effective also in respect of:

Anguilla
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize [1]
Bermuda
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands [2]
Gibraltar
Hong Kong [3]
Montserrat
Pitcairn
Saint Helena and Dependencies
Turks and Caicos Islands
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

[1] Has since become the independent State of Belize.

[2] A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

[3] Cessed to apply to Hong Kong with effect from 1 July 1997.

Declarations, Reservations and Statements

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:
"... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West)."

Poland
(for text of the notification, see page 458)

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1992)

Done at London,
25 November 1992
Entry into force: 30 May 1996

Protocole de 1992 modifiant la Convention Internationale de 1971 portant Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1992)

Signé a Londres,
le 27 novembre 1992
Entrée en vigueur: 30 may 1996

Australia	**(a)**	9.X.1995
Bahrain	**(a)**	3.V.1996
Croatia	**(a)**	12.I.1998
Denmark	**(r)**	30.V.1995
Finland	**(a)**	24.XI.1995
France	**(A)**	29.IX.1994
Germany*	**(r)**	29.IX.1994
Greece	**(r)**	9.X.1995
Ireland	**(a)**	15.V.1997
Italy	**(a)**	16.IX.1999
Japan	**(a)**	13.VIII.1994
Korea, Republic of	**(a)**	7.III.1997
Liberia	**(a)**	5.X.1995
Marshall Islands	**(a)**	16.X.1995
Mexico	**(a)**	13.V.1994
Monaco	**(r)**	8.XI.1996
Netherlands	**(r)**	15.XI.1996
Norway	**(a)**	26.V.1995
Oman	**(a)**	8.VII.1994

Philippines	**(a)**	7.VIII.1997
Spain*	**(a)**	6.VII.1995
Sweden	**(r)**	25.V.1995
Switzerland	**(a)**	4.VII.1996
Tunisia	**(a)**	29.I.1997
United Kingdom	**(a)**	29.IX.1994
Uruguay	**(a)**	9.VII.1997

The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Guernsey
The Isle of Man
Falkland Islands [1]
Montserrat
South Georgia and the South Sandwich Islands

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration:
"By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1."

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[1] The depositary received a communication dated 21 February 1995 from the Embassy of the Argentine Republic in London.
[Translation]
"...the Argentine Government rejects the statement made by the United Kingdom of Great Britain and Northern Ireland on acceding to the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. In that statement, accession was declared to be effective in respect of the Malvinas Islands, South Georgia and South Sandwich Islands. The Argentine Republic reaffirms its sovereignty over these islands and their surrounding maritime spaces, which constitute an integral part of its national territory.
The Argentine Republic recalls the adoption, by the General Assembly of the United Nations, of resolutions 2065(XX) and 3160(XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/41, 42/19 and 43/25, acknowledging the existence of a dispute concerning sovereignty and urging the Governments of the Argentine Republic and of the United Kingdom of Great Britain and Northern Ireland to enter into negotiations with a view to identifying means of pacific and final settlement of the outstanding problems between the two countries, including all matters concerning the future of the Malvinas Islands, in accordance with the Charter of the United Nations."
The depositary received a communication dated 22 May 1995 from the Foreign and Commonwealth Office, London:
"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina regarding the extension by the United Kingdom of the application of the Convention to the Falkland Islands and to South Georgia and the South Sandwich Islands.
The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands and over South Georgia and the South Sandwich Islands and their consequent rights to extend the said Convention to these Territories. The British Government reject as unfounded the claims by the Government of Argentina."

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration: "The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New Zeland

The instrument of accession of New Zeland contained the following declaration: "And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zeland with the Depositary".

Spain

The instrument of accession by Spain contained the following declaration: *[Translation]*
"In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol".

Convention relating to Civil Liability in the Field of

Maritime Carriage of nuclear material (NUCLEAR 1971)

Done at Brussels,
17 December 1971
Entered into force: 15 July 1975

Convention relative 9 la Responsabilité Civile dans le Domaine du

Transport Maritime de matières nucléaires (NUCLEAR 1971)

Signée a Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

Argentina	**(a)**	18.V.1981
Belgium	**(r)**	15.VI.1989
Denmark [1]	**(r)**	4.IX.1974
Finland	**(A)**	6.VI.1991
France	**(r)**	2.II.1973
Gabon	**(a)**	21.I.1982
Germany*	**(r)**	1.X.1975
Italy*	**(r)**	21.VII.1980
Liberia	**(a)**	17.II.1981

(1) Shall not apply to the Faroe Islands.

Netherlands	**(a)**	1.VIII.1991
Norway	**(r)**	16.IV.1975
Spain	**(a)**	21.V.1974
Sweden	**(r)**	22.XI.1974
Yemen	**(a)**	6.III.1979

Declarations, Reservations and Statements

Federal Republic of Germany
The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):
"Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator."
This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.
The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]
"That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

Italy
The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):
"It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident".

Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

Argentina*	**(a)**	26.V.1983
Bahamas	**(a)**	7.VI.1983
Barbados	**(a)**	6.V.1994
Belgium	**(a)**	15.VI.1989
China	**(a)**	1.VI.1994
Croatia	**(a)**	12.I.1998
Egypt	**(a)**	18.X.1991
Equatorial Guinea	**(a)**	24.IV.1996
Georgia	**(a)**	25.VIII.1995
Greece	**(A)**	3.VII.1991
Guyana	**(a)**	10.XII.1997
Ireland	**(a)**	14.II.1998
Jordan	**(a)**	3.X.1995
Liberia	**(a)**	17.11.1981
Luxemburg	**(a)**	14.II.1991
Jordan	**(a)**	3.X.1995
Malawi	**(a)**	9.III.1993
Marshall Islands	**(a)**	29.XI.1994
Poland	**(r)**	28.I.1987
Russian Federation* [1]	**(a)**	27.IV.1983
Spain	**(a)**	8.X.1981
Switzerland	**(r)**	15.XII.1987
Tonga	**(a)**	15.II.1977
Ucraina	**(a)**	11.XI.1994
United Kingdom	**(r)**	31.I.1980
Vanuatu	**(a)**	13.I.1989
Yemen	**(a)**	6.III.1979

[1] As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

The United Kingdom declared ratification to be effective also in respect of:

Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands
Gibraltar
Hong Kong [1]
Montserrat
Pitcairn
Saint Helena and Dependencies

Declarations, Reservations and Statements

Argentina [2]
The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):
[Translation]
"The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals".
The instrument also contained the following reservations:
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

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[1] Ceased to apply to Hong Kong with effect from 1 July 1997.

[2] A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:
"The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated".

[Translation]
"The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there".

USSR
The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

Protocol to the
Athens Convention relating to the Carriage of passengers and their luggage by sea
(PAL PROT 1976)

Done at London,
19 November 1976
Entered into force: 10 April 1989

Protocole à la
Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages
(PAL PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 10 avril 1989

Argentina*	**(a)**	28.IV.1987
Bahamas	**(a)**	28.IV.1987
Barbados	**(a)**	6.V.1994
Belgium	**(a)**	15.VI.1989
China	**(a)**	1.VI.1994
Croatia	**(a)**	12.I.1998
Georgia	**(a)**	25.VIII.1995
Greece	**(a)**	3.VII.1991
Ireland	**(a)**	24.II.1998
Liberia	**(a)**	28.IV.1987
Luxemburg	**(a)**	14.II.1991
Marshall Islands	**(a)**	29.XI.1994
Poland	**(a)**	28.IV.1987
Russian Federation [1]	**(a)**	30.I.1989
Spain	**(a)**	28.IV.1987
Switzerland	**(a)**	15.XII.1987
Ucraine	**(a)**	11.XI.1994
United Kingdom	**(r)**	28.IV.1987
Vanuatu	**(a)**	13.I.1989
Yemen	**(a)**	28.IV.1987

The United Kingdom declared ratification to be effective also in respect of:

Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands [2]
Gibraltar
Hong Kong
Montserrat
Pitcairn
Saint Helena and Dependencies

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[1] As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

[2] For the texts of a reservation made by the Argentine Republic and a communication received from the United Kingdom, see page 471 and 472.

Declarations, Reservations and Statements

Argentina [1]
The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

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[1] The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:
"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.
The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands".

Protocol of 1990 to amend the
1974 Athens Convention relating to the Carriage of passengers and their luggage by sea
(PAL PROT 1990)

Done at London, 29 March 1990
Not yet in force

Protocole de 1990 modifiant
La Convention d'Athènes de 1974 relative au Transport par mer de passagers et de leurs bagages
(PAL PROT 1990)

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

Croatia	**(a)**	12.I.1998
Egypt	**(a)**	18.X.1991
Spain	**(a)**	24.II.1993

Convention on
Limitation of Liability for maritime claims
(LLMC 1976)

Done at London, 19 November 1976
Entered into force: 1 December 1986

Convention sur la
Limitation de la Responsabilité en matière de créances maritimes
(LLMC 1976)

Signée à Londres, le 19 novembre 1976
Entrée en vigueur: 1 décembre 1986

Australia	**(a)**	20.II.1991
Bahamas	**(a)**	7.VI.1983
Barbados	**(a)**	6.V.1994
Belgium*	**(a)**	15.VI.1989
Benin	**(a)**	I.XI.1985
China* [1]		
Croatia	**(a)**	2.III.1993
Denmark	**(a)**	30.V.1984
Egypt	**(r)**	30.III.1988
Equatorial Guinea	**(a)**	24.IV.1996
Finland	**(a)**	8.V.1984
France*	**(r)**	I.VII.1981
Georgia	**(AA)**	20.II.1996
Germany*	**(a)**	12.V.1987
Greece	**(r)**	3.VII.1991
Guyana	**(a)**	10.XII.1997

[1] Applies only to the Hong Kong Special Administrative Region.

Japan*	**(a)**	4.VI.1982
Ireland	**(a)**	2.II.1998
Liberia	**(a)**	17.II.1981
Marshall Islands	**(a)**	29.XI.1994
Mexico	**(a)**	13.V.1994
Netherlands*	**(a)**	15.V.1990
New Zealand [2]	**(a)**	14.II.1994
Norway*	**(r)**	30.III.1984
Poland	**(a)**	28.IV.1986
Spain	**(r)**	13.XI.1981
Sweden*	**(r)**	30.III.1984
Switzerland*	**(a)**	15.XII.1987
Turkey	**(a)**	6.III.1998
United Arab Emirates	**(a)**	19.XI.1997
United Kingdom*	**(r)**	31.I.1980
Vanuatu	**(a)**	14.IX.1992
Yemen	**(a)**	6.III.1979

[2] The instrument of accession contained the following statement: "AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau".

The United Kingdom declared its ratification to be effective also in respect of:

Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize [1]
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands [2]
Gibraltar
Hong Kong
Montserrat
Pitcairn
Saint Helena and Dependencies
Turks and Caicos Islands
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

[1] Has since become the independent State of Belize to which the Convention applies provisionally.

[2] For the text of communication received from the Governments of Argentina and the United Kingdom, see page 474.

Declarations, Reservations and Statements

Belgium
The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):
[Translation]
"In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)".

China
By notification dated 5 June 1997 from the People's Republic of China:
[Translation]
"In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)".

France
The instrument of approval of the French Republic contained the following reservation (in the French language):
[Translation]
"1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
Article 2, paragraph 1(d) and (e)
"The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic."
Article 8, paragraph 1
"The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]
"...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany".
"In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention"

Japan
The instrument of accession of Japan was accompanied by the following statement (in the English language):
"...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention".

Netherlands
The instrument of accession of the Kingdom of the Netherlands contained the following reservation:
"In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention".

United Kingdom
The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was "Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only".

Notifications

Article 8(4)

German Democratic Republic
[Translation]
"The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency".

China
[Translation]
"The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;"

Poland
"Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.
The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies".

Switzerland
"The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:
The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette".

United Kingdom
"...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund".

Article 15(2)

Belgium
[Translation]
"In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation".

France
[Translation]
"...- that no limit of liability is provided for vessels navigating on French internal waterways;
- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons".

Federal Republic of Germany
[Translation]
"In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.
In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons".

Netherlands
Paragraph 2(a)
"The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.
The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.
I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:
1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;
4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;
5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount

calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;

6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;

7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident;

however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

(i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;

(ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;

(iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention.

The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.

The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Switzerland
[Translation]
"In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.
Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:
II. Limitation of liability of the owner of an inland waterways vessel
Article 44a
1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:
a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
c. in respect of any other claims, half of the amounts provided under subparagraph a.
2. The unit of account shall be the special drawing right defined by the International Monetary Fund.
3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels."

United Kingdom
"...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims."

Article 15(4)

Norway
"Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4."

Sweden
"...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

Protocol of 1996 to amend the convention on
Limitation of Liability for maritime claims, 1976

(LLMC PROT 1996)

Done at London, 3 May 1996
Not yet in force

Protocole de 1996 modifiant la convention de 1976 sur la
Limitation de la Responsabilité en matière de créances maritimes

(LLMC PROT 1996)

Signée à Londre le 3 mai 1996
Pas encore en vigueur

International Convention on
Salvage, 1989
(SALVAGE 1989)

Done at London: 28 April 1989
Entered into force: 14 July 1996

Convention Internationale de
1989 sur l'Assistance
(ASSISTANCE 1989)

Signée a Londres le 28 avril 1989
Entrée en vigueur: 14 juillet 1996

Australia	**(a)**	8.I.1997
Canada*	**(r)**	14.XI.1994
China*	**(a)**	30.III.1994
Croatia	**(a)**	10.IX.1998
Denmark	**(r)**	30.V.1995
Egypt	**(a)**	14.III.1991
Georgia	**(a)**	25.VIII.1995
Greece	**(a)**	3.VI.1996
Guyana	**(a)**	10.XII.1997
India	**(a)**	18.X.1995
Iran, Islamic Republic of*	**(a)**	1.VIII.1994
Ireland*	**(r)**	6.VI.1995
Italy	**(r)**	14.VII.1995
Jordan	**(a)**	3.X.1995
Marshall Islands	**(a)**	16.X.1995
Mexico*	**(r)**	10.X.1991
Netherlands	**(A)**	10.XII.1997
Nigeria	**(r)**	11.X. 1990
Norway*	**(r)**	3.XII.1996
Oman	**(a)**	14.X.1991
Saudi Arabia*	**(a)**	16.XII.1991
Sweden*	**(r)**	19.XII.1995
Switzerland	**(r)**	12.III.1993
United Arab Emirates	**(a)**	4.X.1993
United Kingdom*	**(r)**	29.IX.1994
United States	**(r)**	27.III.1992

The United Kingdom declared its ratification to be effective in respect of:

The Bailiwick of Jersey
The Isle of Man
Falkland Islands [1]
Montserrat
South Georgia and the South Sandwich Islands

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[1] The Argentine Government rejects the statement made by the United Kingdom of Great Britain and Northern Ireland on ratifying the International Convention on Salvage, 1989. In that statement, ratification was declared to be effective in respect of the Malvinas Islands, South Georgia and South Sandwich Islands. The Argentine Republic reaffirms its sovereignty over these islands and their surrounding maritime spaces, which constitute an integral part of its national territory".
The Argentine Republic recalls the adoption by the General Assembly of the United Nations, of resolutions 2065(XX) and 3160(XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/41, 42/19 and 43/25, acknowledging the existence of a dispute concerning sovereignty and urging the Governments of the Argentine Republic and of the United Kingdom of Great Britain and Northern Ireland to enter into negotiations with a view to identifying means of pacific and final settlement of the outstanding problems between the two countries, including all matters concerning the future of the Malvinas Islands, in accordance with the Charter of the United Nations."
The depositary received the following communication, dated 9 May 1995, from the Foreign and Commonwealth Office, London:
"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina regarding the extension by the United Kingdom of the application of the Convention to the Falkland Islands and to South Georgia and the South Sandwich Islands.
The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands and over South Georgia and the South Sandwich Islands and their consequent rights to extend the said Convention to these Territories. The British Government reject as unfounded the claims by the Government of Argentina."

Declarations, Reservations and Statements

Canada

The instrument of ratification of Canada was accompanied by the following reservation:
"Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China

The instrument of accession of the People's Republic of China contained the following statement:
[Translation]

"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran

The instrument of accession of the Islamic Republic of Iran contained the following reservation:

"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland

The instrument of ratification of Ireland contained the following reservation:

"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

Mexico

The instrument of ratification of Mexico contained the following reservation and declaration:

[Translation]

"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act ".

Norway

The instrument of ratification of the Kingdom of Norway contained the following reservation:

"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Saudi Arabia [1]

The instrument of accession of Saudi Arabia contained the following reservations:

[Translation]

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[1] The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity."

"1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument."

Spain

The following reservations were made at the time of signature of the Convention:
[Translation]
"In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

- when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
- when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by 'inland waters' not the waters envisaged and regulated under the name of 'internal waters' in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as 'inland waters':

- when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Sweden

The instrument of ratification of the Kingdom of Sweden contained the following reservation:
"Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

United Kingdom

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:
"In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

(i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or

(ii) the salvage operation takes place in inland waters and no vessel is involved; or .

(iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

International Convention on Oil pollution preparedness, response and co-operation 1990

Done at London: 30 November 1990
Entered into force 13 May 1995.

Convention Internationale de 1990 sur la Preparation, la lutte et la cooperation en matière de pollution par les hydrocarbures

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

Argentina*	**(r)**	13.VII.1994
Australia	**(r)**	6.VII.1992
Brazil	**(a)**	21.VII.1998
Canada	**(a)**	7.III.1994
Chile	**(a)**	15.X.1997
China	**(a)**	30.III.1998
Croatia	**(a)**	12.I.1998
Denmark*	**(r)**	22.X.1996
Djibouti	**(a)**	19.I.1998
Egypt	**(r)**	29.VI.1992
El Salvador	**(a)**	9.X.1995
Finland	**(AA)**	21.VI.1993
France	**(AA)**	21.VII.1993
Georgia	**(a)**	20.II.1996
Germany	**(r)**	15.II.1995
Greece	**(r)**	7.III.1995
Guyana	**(a)**	10.XII.1997
Iceland	**(r)**	6.XI.1992
India	**(a)**	17.XI.1997
Iran (Islamic Republic of)	**(a)**	25.II.1998
Japan	**(a)**	17.X.1995
Liberia	**(a)**	5.X.1995
Malaysia	**(a)**	30.VII.1997
Marshall Islands	**(a)**	16.X.1995
Mexico	**(a)**	13.V.1994
Netherlands	**(r)**	1.XII.1994
Nigeria	**(a)**	25.V.1993
Norway	**(r)**	8.III.1994
Pakistan	**(a)**	21.VII.1993
Senegal	**(r)**	24. III.1994
Seychelles	**(a)**	26.VI.1992
Spain	**(r)**	12.I.1994
Sweden	**(r)**	30.III.1992
Switzerland	**(a)**	4.VII.1996
Tonga	**(a)**	1.II.1996
Tunisia	**(a)**	23.X.1995
United Kingdom	**(a)**	16.IX.1997
United States	**(r)**	27.III.1992
Uruguay	**(s)**	27.IX.1994
Venezuela	**(r)**	12.XII.1994

Declarations, Reservations and Statements

Argentina [1]

The instrument of ratification of the Argentine Republic contained the following reservation:

[Translation]

"The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas".

Denmark

The instrument of ratification of the Kingdom of Denmark contained the following reservation:

[Translation]

"That the Convention will not apply to the Faroe Islands nor to Greenland, pending a further decision".

By a communication dated 27 November 1996 the depositary was informed that Denmark withdraws the reservation with respect to the territory of Greenland.

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[1] The depositary received, on 22 February 1996, the following communication from the Foreign and Commonwealth Office of the United Kingdom:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina concerning rights of sovereignty and of territorial and maritime jurisdiction over the Falkland Islands and South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands, as well as South Georgia and the South Sandwich Islands. The British Government can only reject as unfounded the claims by the Government of Argentina."

International Convention on Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996

(HNS 1996)

Done at London, 3 May 1996
Not yet in force.

Convention Internationale de 1996 sur la responsabilité et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses

(HNS 1996)

Signée a Londres le 3 mai 1996
Pas encore en vigueur.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNITED NATIONS AND UNITED NATIONS/IMO CONVENTIONS IN THE FIELD OF PUBLIC AND PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DES NATIONS UNIES ET AUX CONVENTIONS DES NATIONS UNIES/OMI EN MATIERE DE DROIT MARITIME PUBLIC ET DE DROIT MARITIME PRIVE

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'editeur / Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

United Nations Convention on a

Code of Conduct for liner conferences

Geneva, 6 April 1974
Entered into force: 6 October 1983

Convention des Nations Unies sur un

Code de Conduite des conférences maritimes

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	**(r)**	12.XII.1986
Aruba	**(a)**	1.I.1986
Bangladesh	**(a)**	24.VII.1975
Barbados	**(a)**	29.X.1980
Belgium	**(r)**	30.IX.1987
Belarus	**(A)**	28.VI.1979
Benin	**(a)**	27.X.1975
Bulgaria	**(a)**	12.VII .1979
Burkina Faso	**(a)**	30.III.1989
Cameroon	**(a)**	15.VI.1976
Cape Verde	**(a)**	13.I.1978
Central African Republic	**(a)**	13.V.1977
Chile	**(S)**	25.VI.1975
China	**(a)**	23.IX.1980
Congo	**(a)**	26.VII.1982
Costa Rica	**(r)**	27.X.1978
Croatia	**(r)**	8.X.1991
Cuba	**(a)**	23.VII.1976
Czech Republic	**(AA)**	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	**(a)**	28.VI.1985
Egypt	**(a)**	25.I.1979
Ethiopia	**(r)**	1.IX.1978
Finland	**(a)**	31.XII.1985
France	**(AA)**	4.X.1985
Gabon	**(r)**	5.VI.1978
Gambia	**(S)**	30.VI.1975
Germany	**(r)**	6.IV.1983
Ghana	**(r)**	24.VI.1975
Gibraltar	**(a)**	28.VI.1985
Guatemala	**(r)**	3.III.1976
Guinea	**(a)**	19.VIII.1980
Guyana	**(a)**	7.I.1980
Honduras	**(a)**	12.VI.1979
Hong Kong	**(a)**	28.VI.1985
India	**(r)**	14.II.1978
Indonesia	**(r)**	11.I.1977
Iraq	**(a)**	25.X.1978

Code of conduct 1974 *Code de conduite 1974*

Italy	**(a)**	30.V.1989
Ivory Coast	**(r)**	17.II.1977
Jamaica	**(a)**	20.VII.1982
Jordan	**(a)**	17.III.1980
Kenya	**(a)**	27.II.1978
Korea, Republic of	**(a)**	11.V.1979
Kuwait	**(a)**	31.III.1986
Lebanon	**(a)**	30.IV.1982
Madagascar	**(a)**	23.XII.1977
Malaysia	**(a)**	27.VIII.1982
Mali	**(a)**	15.III.1978
Mauritania	**(a)**	21.III.1988
Mauritius	**(a)**	16.IX.1980
Mexico	**(a)**	6.V.1976
Morocco	**(a)**	11.II.1980
Mozambique	**(a)**	21.IX.1990
Netherlands (for the Kingdom in Europe only)	**(a)**	6.IV.1983
Niger	**(r)**	13.I.1976
Nigeria	**(a)**	10.IX.1975
Norway	**(a)**	28.VI.1985
Pakistan	**(S)**	27.VI.1975
Peru	**(a)**	21.XI.1978
Philippines	**(r)**	2.III.1976
Portugal	**(a)**	13.VI.1990
Romania	**(a)**	7.I.1982
Russian Federation	**(A)**	28.VI.1979
Saudi Arabia	**(a)**	24.V.1985
Senegal	**(r)**	20.V.1977
Sierra Leone	**(a)**	9.VII.1979
Slovakia	**(AA)**	4.VI.1979
Slovenia	**(AA)**	4.VI.1979
Somalia	**(a)**	14.XI.1988
Spain	**(a)**	3.II.1994
Sri Lanka	**(S)**	30.VI.1975
Sudan	**(a)**	16.III.1978
Sweden	**(a)**	28.VI.1985
Togo	**(r)**	12.I.1978
Trinidad and Tobago	**(a)**	3.III.1983
Tunisia	**(a)**	15.III.1979
Ukraine	**(A)**	26.VI.1979
United Kingdom	**(a)**	28.VI.1985
United Republic of Tanzania	**(a)**	3.XI.1975
Uruguay	**(a)**	9.VII.1979
Venezuela	**(S)**	30.VI.1975
Yugoslavia	**(r)**	7.VII.1980
Zaire	**(a)**	25.VII.1977
Zambia	**(a)**	8.IV.1988

United Nations Convention on the
Carriage of goods by sea

Hamburg, 31 March 1978
"HAMBURG RULES"

Entry into force:
1 November 1992

Convention des Nations Unies sur le
Transport de marchandises par mer

Hambourg 31 mars 1978
"REGLES DE HAMBOURG"

Entrée en vigueur:
1 novembre 1992

Austria	**(r)**	29.VII.1993
Barbados	**(a)**	2.II.1981
Botswana	**(a)**	16.II.1988
Burkina Faso	**(a)**	14.VIII.1989
Burundi	**(a)**	4.IX.1998
Cameroon	**(a)**	21.IX.1993
Chile	**(r)**	9.VII.1982
Czech Republic [1]	**(r)**	23.VI.1995
Egypt	**(r)**	23.IV.1979
Gambia	**(r)**	7.II.1996
Georgia	**(a)**	21.III.1996
Guinea	**(r)**	23.I.1991
Hungary	**(r)**	5.VII.1984
Kenya	**(a)**	31.VII.1989
Lebanon	**(a)**	4.IV.1983
Lesotho	**(a)**	26.X.1989
Malawi	**(r)**	18.III.1991
Morocco	**(a)**	12.VI.1981
Nigeria	**(a)**	7.XI.1988
Romania	**(a)**	7.I.1982
Senegal	**(r)**	17.III.1986
Sierra Leone	**(r)**	7.X.1988
Tanzania, United Republic of	**(a)**	24.VII.1979
Tunisia	**(a)**	15.IX.1980
Uganda	**(a)**	6.VII.1979
Zambia	**(a)**	7.X.1991

[1] The Convention was signed on 6 march 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.

United Nations Convention on the

International multimodal transport of goods

Geneva, 24 May 1980
Not yet in force.

Convention des Nations Unies sur le

Transport multimodal international de marchandises

Genève 24 mai 1980
Pas encore en vigueur.

Chile	**(r)**	7.IV.1982
Malawi	**(a)**	2.II.1984
Mexico	**(r)**	11.II.1982
Morocco	**(r)**	21.I.1993
Rwanda	**(a)**	15.IX.1987
Senegal	**(r)**	25.X.1984
Zambia	**(a)**	7.X.1991

United Nations Convention on the Law of the Sea (UNCLOS 1982)

Montego Bay 10 December 1982
Entered into force:
16 November 1994

Convention des Nations Unies sur les Droit de la Mer

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Algeria	11.VI.1996
Angola	5.XII.1990
Antigua and Barbuda	2.II.1989
Argentina	1.XII.1995
Australia	5.X.1994
Austria	14.VII.1995
Bahamas	29.VII.1983
Bahrain	30.V.1985
Barbados	12.X.1993
Belgium	13.XI.1998
Belize	13.VIII.1983
Benin	16.X.1997
Bolivia	28.IV.1995
Bosnia and Herzegovina	12.I.1994
Botswana	2.V.1990
Brazil	22.XII.1988
Bulgaria	15.V.1996
Cameroon	19.XI.1985
Cape Verde	10.VIII.1987
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo, Democratic Republic of	17.II.1989
Cook Islands	15.II.1995
Costa Rica	21.IX.1992

Côte d'Ivoire	28.VII.1995
Croatia	5.IV.1995
Cuba	15.VIII.1984
Cyprus	12.XII.1988
Czech Republic	21.VI.1996
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Equatorial Guinea	21.VII.1997
European Community	1.IV.1998
Fiji	10.XII.1982
France	11.IV.1996
Gabon	11.III.1988
Gambia	22.V.1984
Germany	14.X.1994
Georgia	21.III.1996
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guatemala	11.II.1997
Guinea	6.IX.1985
Guinea-Bissau	25.VIII.1986
Guyana	16.XI.1993
Haiti	31.VII.1996
Honduras	5.X.1993
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Ireland	21.VI.1996
Italy	13.I.1995
Jamaica	21.III.1983
Japan	20.VI.1996
Jordan	27.XI.1995
Kenya	2.III.1989
Korea, Republic of	29.I.1996
Kuwait	2.V.1986
Lao	5.VI.1998
Lebanon	5.I.1995
Macedonia	19.VIII.1994
Malaysia	14.X.1996
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritania	17.VII.1996
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia	29.IV.1991
Monaco	20.III.1996
Mongolia	13.VIII.1996
Mozambique	13.III.1997
Myanmar	21.V.1996
Namibia, United Nations Council for	18.IV.1983

Nauru	23.I.1996
Nepal	2.XI.1998
Netherlands	28.VI.1996
New Zeland	19.VII.1996
Nigeria	14.VIII.1986
Norway	24.VI.1996
Oman	17.VIII.1989
Pakistan	26.II.1997
Palau	30.IX.1996
Panama	1.VII.1996
Papua New Guinea	14.I.1997
Paraguay	26.IX.1986
Philippines	8.V.1984
Poland	13.XI.1998
Portugal	3.XI.1997
Romania	17.XII.1996
Russian Federation	12.III.1997
Samoa	14.VIII.1995
St. Lucia	27. III.1985
St. Kitts and Nevis	7.I.1993
St. Vincent and the Grenadines	1.X.1993
Sao Tomé and Principe	3.XI.1987
Saudi Arabia	24.IV.1996
Senegal	25.X.1984
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994
Slovakia	8.V.1996
Slovenia	16.VI.1995
Solomon Islands	23.VI.1997
Somalia	24.VII.1989
South Africa	23.XII.1997
Spain	15.I.1997
Sri Lanka	19.VII.1994
Sudan	23.I.1985
Suriname	9.VII.1998
Sweden	25.VI.1996
Tanzania	30.IX.1985
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Uganda	9.XI.1990
Ukraine	26.VII.1999
United Kingdom	25.VII.1997
Uruguay	10.XII.1992
Vanautu	10.VIII.1999
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Yugoslavia	5.V.1986
Zaire	17.II.1989
Zambia	7.III.1983
Zimbabwe	24.II.1993

United Nations Convention on Conditions for
Registration of ships

Geneva, 7 February 1986
Not yet in force.

Convention des Nations Unies sur les Conditions d'
Immatriculation des navires

Genève, 7 février 1986
Pas encore entrée en vigueur.

Egypt	**(r)**	9.I.1992
Ghana	**(a)**	29.VIII.1990
Haiti	**(a)**	17.V.1989
Hungary	**(a)**	23.I.1989
Iraq	**(a)**	1.II.1989
Ivory Coast	**(r)**	28.X.1987
Libyan Arab Jamahiriya	**(r)**	28.II.1989
Mexico	**(r)**	21.I.1988
Oman	**(a)**	18.X.1990

United Nations Convention on
the Liability of operators of transport terminals in the international trade

Done at Vienna 19 April 1991
Not yet in force.

Convention des Nations Unies sur
la Responsabilité des exploitants de terminaux transport dans le commerce international

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

Georgia	**(a)**	21.III.1996

International Convention on
Maritime liens and mortgages, 1993

Done at Geneva,
6 May 1993
Not yet in force.

Convention Internationale de
1993 su les Privilèges et hypothèques maritimes

Signée à Genève
le 6 mai 1993
Pas encore en vigueur.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNIDROIT CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS D'UNIDROIT EN MATIERE DE DROIT MARITIME PRIVE

Unidroit Convention on
International financial leasing 1988

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

Convention de Unidroit sur
le Creditbail international 1988

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

France	23.IX.1991
Hungary	7.V.1996
Italy	29.XI.1993
Latvia	6.VIII.1997
Nigeria	25.X.1994
Panama	26.III.1997

CONFERENCES

OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897
President: Mr. Auguste BEERNAERT.
Subjects: Organization of the International Maritime Committee - Collision - Shipowners' Liability.

II. ANTWERP - 1898
President: Mr. Auguste BEERNAERT.
Subjects: Liability of Owners of sea-going vessels.

III. LONDON - 1899
President: Sir Walter PHILLIMORE.
Subjects: Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900
President: Mr. LYON-CAEN.
Subjects: Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902
President: Dr. Friedrich SIEVEKING.
Subjects: International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904
President: Mr. E.N. RAHUSEN.
Subjects: Conflicts of law in the matter of Mortgages and Liens on ships. - Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905
President: Sir William R. KENNEDY.
Subjects: Limitation of Shipowners' Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

CONFERENCES

DU COMITE MARITIME INTERNATIONAL

I. BRUXELLES - 1897
Président: Mr. Auguste BEERNAERT.
Sujets: Organisation du Comité Maritime International - Abordage - Responsabilité des propriétaires de navires de mer.

II. ANVERS - 1898
Président: Mr. Auguste BEERNAERT.
Sujets: Responsabilité des propriétaires de navires de mer.

III. LONDRES - 1899
Président: Sir Walter PHILLIMORE.
Sujets: Abordages dans lesquels les deux navires sont fautifs - Responsabilité des propriétaires de navires.

IV. PARIS - 1900
Président: Mr. LYON-CAEN
Sujets: Assistance, sauvetage et l'obligation de prêter assistance - Compétence en matière d'abordage.

V. HAMBURG - 1902
Président: Dr. Friedrich SIEVEKING.
Suiets: Code international pour l'abordage et le sauvetage en mer - Compétence en matière d'abordage. - Conflits de lois concernant la propriété des navires - Privilèges et hypothèques sur navires.

VI. AMSTERDAM - 1904
Président: Mr. E.N. RAHUSEN.
Sujets: Conflits de lois en matières de privilèges et hypothèques sur navires. - Compétence en matière d'abordage - Limitation de la responsabilité des propriétaires de navires.

VII. LIVERPOOL - 1905
Président: Sir William R. KENNEDY.
Sujets: Limitation de la responsabilité des propriétaires de navires - Conflits de lois en matière de privilèges et hypothèques - Conférence Diplomatique de Bruxelles.

VIII. VENICE - 1907
President: Mr. Alberto MARGHIERI.
Subjects: Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909
President: Dr. Friedrich SIEVEKING.
Subjects: Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911
President: Mr. Paul GOVARE.
Subjects: Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913
President: Dr. J.H. KOCH.
Subjects: London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921
President: Mr. Louis FRANCK.
Subjects: International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII LONDON - 1922
President: Sir Henry DUKE.
Subjects: Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923
President: Mr. Efiel LÖFGREN.
Subjects: Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925
President: Dr. Francesco BERLINGIERI.
Subjects: Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927
President: Mr. B.C.J. LODER.
Subjects: Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

VIII. VENISE - 1907
Président: Mr. Alberto MARGHIERI.
Sujets: Limitation de la responsabilité des propriétaires de navires Privilèges et hypothèques maritimes - Conflits de lois relatifs au fret.

IX. BREME - 1909
Président: Dr. Friedrich SIEVEKING.
Sujets: Conflits de lois relatifs au fret - Indemnisation concernant des lésions corporelles - Publications des privilèges et hypothèques maritimes.

X. PARIS - 1911
Président: Mr. Paul GOVARE.
Sujets: Limitation de la responsabilité des propriétaires de navires en cas de perte de vie ou de lésions corporelles - Fret.

XI. COPENHAGUE - 1913
Président: Dr. J.H. KOCH.
Sujets: Déclaration de Londres 1909 - Sécurité de la navigation - Code international de l'affrètement - Assurance de proprétés ennemies.

XII. ANVERS - 1921
Président: Mr. Louis FRANCK.
Sujets: Convention internationale concernant l'abordage et la sauvetage en mer - Limitation de la responsabilité des propriétaires de navires de mer - Privilèges et hypothèques maritimes - Code de l'affrètement - Clauses d'exonération dans les connaissements.

XIII. LONDRES - 1922
Président: Sir Henry DUKE.
Sujets: Immunité des navires d'Etat - Privilèges et hypothèques maritimes - Clauses d'exonération dans les connaissements.

XIV. GOTHEMBOURG - 1923
Président: Mr. Efiel LÖFGREN.
Sujets: Assurance obligatoire des passegers - Immunité des navires d'Etat. - Code international de l'affrètement - Convention internationale des connaissements.

XV. GENES - 1925
Président: Dr. Francesco BERLINGIERI.
Sujets: Assurance obligatoire des passagers - Immunité des navires d'Etat. - Code international de l'affrètement - Privilèges et hypothèques maritimes.

XVI. AMSTERDAM - 1927
Président: Mr. B.C.J. LODER.
Sujets: Assurance obligatoire des passagers - Lettres de garantie - Ratification des Conventions de Bruxelles.

XVII. ANTWERP - 1930
President: Mr. Louis FRANCK.
Subjects: Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933
President: Mr. Edvin ALTEN.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937
President: Mr. Georges RIPERT.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947
President: Mr. Albert LILAR.
Subjects: Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

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