

### III. Other business and future work

157. The Secretary of the Commission recalled the decision reached by the Commission at its nineteenth session, that the eleventh session of the Working Group "should be held in 1987 at a date to be set by the secretariat that would enable the transmission to Governments for their comments of the text of the uniform rules on the liability of operators of transport terminals expected to be finalized at that session and the receipt of the comments in sufficient time to be placed before the Commission at its twenty-first session, in 1988".<sup>11</sup> The Secretary noted that, in order to conform to that mandate, the eleventh session of the Working Group could be held no later than October 1987.

158. A view was expressed that the eleventh session should be held in May or June, 1987. Opposition was expressed to holding the session during those months since it would not give sufficient time for delegations to

engage in necessary consultations with Government and industry circles.

159. Stronger support was expressed for holding the session in September or October 1987. It was stated, however, that, if the session were held then, Governments would not be able to formulate and submit comments on the text finalized by the Working Group in time for consideration by the Commission at its twenty-first session.

160. The strongest support was expressed for holding the eleventh session in January 1988. It was noted that, in such a case, the Commission could not consider the text finalized by the Working Group until its twenty-second session in 1989. It was observed that the lapse of such a long period between the time when the text was finalized and the time when it was considered by the Commission was not desirable.

161. After discussion, the Working Group decided to recommend to the Commission that the eleventh session of the Working Group should be held in January 1988, in New York.

<sup>11</sup>Report of the United Nations Commission on International Trade Law on the work of its nineteenth session, *Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17)*, para. 272.

### B. Revised draft articles 5 to 15 and new draft articles 16 and 17 of uniform rules on the liability of operators of transport terminals: note by the secretariat (A/CN.9/WG.II/WP.58)

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#### INTRODUCTORY NOTE

1. At its ninth session (1986), the Working Group on International Contract Practices engaged in an initial discussion of the draft articles of uniform rules on the liability of operators of transport terminals, which had

been prepared by the secretariat (A/CN.9/WG.II/WP.56; see Report of the Working Group on International Contract Practices on the work of its ninth session, A/CN.9/275). The Working Group prepared texts of draft articles 1 to 4 of the uniform rules with comments to serve as a basis for future consultations by

delegations and for the future work of the Working Group on those draft articles (A/CN.9/275, paras. 13, 14, and 16-58).

2. The present document contains revisions of draft articles 5 to 15, and new draft articles 16 and 17, which take into account the discussions of the Working Group at its ninth session. In general, the revisions to the draft articles as they appeared in A/CN.9/WG.II/WP.56 (hereinafter referred to as the "original draft") reflect matters upon which the Working Group was in general agreement or upon which a prevailing view emerged during the discussions. The revised draft articles also take into account suggestions at the ninth session for clarifying or improving the drafting of certain draft articles. Other drafting changes of that nature have been made upon the initiative of the secretariat. Changes in substance which have been made upon the initiative of the secretariat have been identified as such in the notes accompanying the provisions in question.

3. In view of the decision of the Working Group to decide on the form of the uniform rules after it had established the substance and content of the rules, the revision of the draft articles and the new draft articles have been prepared from the perspective of both a convention and a model law, and differences in drafting and in substance are indicated, where appropriate.

**Revised draft articles 5 to 15 and new draft articles 16 and 17 of uniform rules on the liability of operators of transport terminals**

**Article 5: Basis of liability<sup>1</sup>**

(1) The operator is liable for loss resulting from loss of or damage to the goods, as well as for delay in handing over the goods to a person entitled to receive them,<sup>2</sup> if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3 of this [Law] [Convention], unless he proves that he, his servants, agents, or other persons of whose services the operator makes use for the performance of the [safekeeping and operations]<sup>3</sup> referred to in article 3 of this [Law] [Convention],<sup>4</sup> took all measures that could reasonably be required to avoid the occurrence and its consequences.<sup>5</sup>

[(2) In determining what measures could reasonably be required to avoid the occurrence and its consequences due regard shall be had to all of the circumstances of the

<sup>1</sup>For the discussion of the Working Group on article 5, see A/CN.9/275, paras. 59-71

<sup>2</sup>With respect to delay, see A/CN.9/275, paras. 59 and 60.

<sup>3</sup>In this and in subsequent articles, these words have been placed in square brackets pending the outcome of the discussion on article 3.

<sup>4</sup>As to the "other person of whose services the operator makes use", see A/CN.9/275, para. 61.

<sup>5</sup>Pursuant to A/CN.9/275, para. 65, the bracketed sentence at the end of paragraph 1 in the original draft of this paragraph has been deleted

case, including, *inter alia*, the nature of the goods and the nature of the operations to be performed by the operator.]<sup>6</sup>

(3) Where a failure on the part of the operator, his servants, agents or other persons of whose services the operator makes use for the performance of the [safekeeping and operations] referred to in article 3 of this [Law] [Convention] to take the measures referred to in paragraph (1) of this article combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

(4) Delay in handing over the goods to a person entitled to receive them occurs when the operator fails to hand them over to such person within the time expressly agreed to by the operator or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.<sup>7</sup>

(5) If the operator does not hand over the goods to a person entitled to receive them within a period of [ ]<sup>8</sup> consecutive days following the date agreed to by the parties for handing over the goods, or, in the absence of such an agreement, following the date of the request of such person, a person entitled to make a claim for the loss of the goods may treat them as lost.<sup>9</sup>

**Article 6: Limits of liability<sup>10</sup>**

(1) [Alternative 1] The liability of the operator for loss of or damage to goods under this [Law] [Convention] is limited to [ ] units of account per package or other shipping unit, or [ ] units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.<sup>11</sup>

[Alternative 2] [As alternative 1, plus the following:] However, if the goods were transported to or from the terminal by sea, the limits of liability applicable to the operator are the limits provided in [an international convention] [the law] applicable to the carriage by sea. [If no international convention is applicable, the limits

<sup>6</sup>Paragraph (2), amended as suggested in A/CN.9/275, para. 66, has been kept in square brackets because of the differing views in the Working Group on the usefulness of the paragraph.

<sup>7</sup>Incorporates drafting improvement suggested in A/CN.9/275, para. 68.

<sup>8</sup>See A/CN.9/275, para. 71

<sup>9</sup>See A/CN.9/275, paras. 69 and 70. The Working Group may wish to note that, under paragraph (5), if a person entitled to receive the goods requests that they be handed over, but the operator does not hand them over, another person who may be entitled to make a claim for the loss of the goods would be able to treat them as lost.

<sup>10</sup>For the discussion of the Working Group on article 6, see A/CN.9/275, paras. 72-78

<sup>11</sup>See A/CN.9/275, para. 74 For the definition of the unit of account, see article 16, below, and A/CN.9/275, para. 72. For revision of the limits of liability, see article 17, below, and A/CN.9/275, para. 73.

of liability applicable to the operator are those set forth in the first sentence of this paragraph.]<sup>12, 13</sup>

[Alternative 3] The liability of the operator for loss of or damage to goods under this [Law] [Convention] is subject to the limits provided in [an international convention] [the law] applicable either to the mode of transport by which the goods were delivered to the operator or the mode of transport by which they were taken away from him, whichever are higher. [If no international convention is applicable, the liability of the operator is limited to [ ] units of account per package or other shipping unit, or [ ] units of account per kilogramme of gross weight of the good lost or damaged, whichever is the higher].<sup>12, 13</sup>

[Alternative 4] [As alternative 1, plus the following:] However, if a carrier who claims recourse against an operator for loss of or damage to the goods was, in the action against himself, subject to limits of liability higher than the amounts provided in the preceding sentence, the limits of liability applicable to the carrier shall apply to the operator in the recourse action by the carrier.<sup>13</sup>

(2) The liability of the operator for delay in handing the goods over according to the provisions of article 5 of this [Law] [Convention] is limited to an amount equivalent to [ ] times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges payable to the operator pursuant to his contract or agreement with his customer.<sup>14</sup>

(3) In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) of this article exceed the limitation which would be established under

<sup>12</sup>See A/CN.9/275, paras. 74 and 75. Alternatives 2 and 3 seek to address the point that different types of terminals handle cargo of different average values. For example, the cargo handled at an air terminal usually has a significantly higher average value than cargo handled at a bulk goods terminal. To some extent, the limits of liability established under the various international transport conventions reflect the relative values of goods customarily carried by the modes of transport covered by the conventions. It has been suggested that linking the limits of liability applicable to a terminal operator to those applicable to the relevant mode of transport would tend to make the operator similarly subject to limits which were appropriate for the value of the goods handled by him. A somewhat comparable approach has been taken in the Multimodal Convention (article 18(3); see, also, article 30(1)).

The bracketed references to an international convention may be chosen if it is desired to refer only to limits contained in international conventions, and not to those under national law, which may provide for, or enable the parties to agree upon, lower limits. In that case, the article will have to establish limits to apply when the carriage is not governed by an international convention, as in the sentence within square brackets at the end of the paragraph.

<sup>13</sup>In addition to the reason mentioned in note 12, above, another reason for linking the limits of liability of the operator to those applicable to a carrier is to protect recourse by a carrier against an operator. Alternative 4 might achieve this more completely and efficiently than alternative 3.

<sup>14</sup>This paragraph contains no change in substance from article 6(2) of the original draft. In some cases, a contract between an operator and his customer may cover several shipments of goods. The Working Group may wish to clarify whether the last phrase of the paragraph ("but not exceeding the total of such charges payable to the operator pursuant to his contract or agreement with his customer") should refer to the total contract charges, or only the charges in respect of the shipment of which the delayed goods were a part.

paragraph (1) for total loss of the goods in respect of which such liability was incurred.

(4) For the purpose of calculating which amount is the higher in accordance with paragraph (1), the following rules apply:

(a) Where a container, trailer, chassis, barge, pallet or similar article of transport or packaging is used to consolidate goods, the packages or other shipping units enumerated in a document signed or issued by the operator pursuant to article 4 of this [Law] [Convention]<sup>15</sup> as packed in such article of transport or packaging, are deemed to be packages or shipping units. Except as aforesaid the goods in such article of transport or packaging are deemed to be one shipping unit;<sup>16</sup>

(b) In cases where the article of transport or packaging itself has been lost or damaged, that article, if not owned or otherwise supplied by the operator, is considered to be one separate shipping unit.

(5) The operator may agree to limits of liability exceeding those provided in paragraphs (1), (2) and (3).

(6) Unit of account means the unit of account mentioned in article 16.

<sup>15</sup>Under article 4 as drafted by the Working Group at its ninth session, in addition to issuing a document, the operator may acknowledge receipt of the goods by signing a document produced by his customer (see A/CN.9/275, para. 58). The reference in this and subsequent articles to a document "signed" by the operator takes into account that possibility.

<sup>16</sup>See A/CN.9/275, para. 77. Under the Hamburg Rules, article 15(1)(a), and the Multimodal Convention, article 8(1)(a), the carrier or multimodal transport operator (MTO) must include in the document issued by him (i.e., the bill of lading or multimodal transport document, respectively), *inter alia*, the number of packages or pieces in accordance with such particulars as are furnished by the shipper or consignor. Under article 16(1) and article 9(1), respectively, the carrier or MTO may insert a reservation in the document if he knows or has reasonable grounds to suspect that the particulars as furnished by the shipper or consignor are not accurate or if he had no reasonable means of checking them (e.g., in the case of a sealed container stated by the shipper or consignor to contain a certain number of packages). The effect of entering such a reservation is, pursuant to article 16(3) and article 10, respectively, to negate the *prima facie* evidentiary effect of the statements in the document. Under article 6(2) and article 18(2), respectively, the per-package limit of liability is based upon the number of packages enumerated in the document.

The Working Group may wish to consider adopting a comparable approach in the uniform rules. It will be noted that article 4 as drafted by the Working Group at its ninth session (A/CN.9/275, para. 58) does not require the operator to insert in the document particulars as furnished by his customer (see *ibid.*, para. 58, article 4(1)(a) and (b)), and, consequently, does not provide for reservations to such particulars to be inserted; nor does it provide any evidentiary effect with respect to the information contained in the document, although the Working Group generally agreed that the provision concerning such evidentiary effect contained in the previous draft of article 4 was acceptable (*ibid.*, para. 51). If the Working Group agrees that those elements should be incorporated in article 4, the effect of article 6(4) as set forth above would be, comparably to the Hamburg Rules and the Multimodal Convention, to base the per-package limit of liability upon the number of packages enumerated in a document signed or issued by the operator even if the particulars concerning the number of packages were furnished by his customer. Article 6(4) could so provide whether the operator was obligated to issue a document in all cases, or only when requested to do so by his customer (see *ibid.*, para. 47). In the latter case, if the customer wished to benefit from the per-package limitation, he could request the operator to issue a document, and furnish him with the particulars concerning the number of packages that were included in the consignment.

**Article 7: Application to non-contractual claims<sup>17</sup>**

(1) The defences and limits of liability provided for in this [Law] [Convention] apply in any action against the operator in respect of loss of or damage to the goods for which he is responsible under this [Law] [Convention], as well as delay in delivery of such goods, whether the action is founded in contract, in tort or otherwise.

(2) If such an action is brought against a servant or agent of the operator, or another person of whose services the operator makes use for the performance of the [safekeeping and operations] referred to in article 3 of this [Law] [Convention],<sup>18</sup> such servant, agent or person [, if he proves that he acted within the scope of his employment,<sup>19</sup>] is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this [Law] [Convention].

(3) Except as provided in article 8 of this [Law] [Convention], the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in paragraph (2) of this article shall not exceed the limits of liability provided for in this [Law] [Convention].

**Article 8: Loss of right to limit liability<sup>20</sup>**

(1) The operator is not entitled to the benefit of the limit of liability provided for in article 6 of this [Law] [Convention] if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants<sup>21</sup> done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

(2) Notwithstanding the provision of paragraph (2) of article 7 of this [Law] [Convention], a servant or agent of the operator or another person of whose services the operator makes use for the performance of the [safekeeping and operations] referred to in article 3 of this [Law] [Convention] is not entitled to the benefit of the limit of liability provided in article 6 of this [Law] [Convention] if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

<sup>17</sup>For the discussion of the Working Group on article 7, see A/CN.9/275, paras. 79 and 80.

<sup>18</sup>See A/CN.9/275, para. 79.

<sup>19</sup>See A/CN.9/275, para. 80.

<sup>20</sup>For the discussion of the Working Group on article 8, see A/CN.9/275, para. 81.

<sup>21</sup>In accordance with the prevailing view in the Working Group (A/CN.9/275, para. 81), the words "himself or his servants" are intended to make it clear that the operator should not lose the benefit of the limit of liability as a result of the acts of his agents or other persons of whose services he made use. If the Working Group thought it desirable, that intention could be specified in paragraph (1).

**Article 9: Special rules on dangerous goods<sup>22</sup>  
[Alternative 1]<sup>23</sup>**

(1) The shipper of dangerous goods to be taken over by an operator shall mark or label the goods in a suitable manner and in accordance with any applicable international, national or other rule of law or regulation relating to dangerous or hazardous goods. If he packs dangerous goods, he shall do so in a suitable manner and in accordance with any such rule of law or regulation.

(2) When the shipper hands over dangerous goods to the operator or any person acting on his behalf, the shipper shall inform the operator of the dangerous character of the goods and, if necessary, any special handling requirements and precautions to be taken. If the shipper fails to do so and the operator does not otherwise have knowledge of their dangerous character when he takes the goods over:

(a) The shipper shall be liable to the operator for all loss resulting from such goods, including, but not limited to, damage to property of the operator, costs to the operator of taking the measures referred to in paragraph (2)(b) of this article, and any liability of the operator to another person arising from loss or damage caused by the dangerous goods; and

(b) The goods may at any time be destroyed, rendered innocuous or disposed of by other means, as the circumstances may require, without payment of compensation.

(3) The provisions of subparagraphs (a) and (b) of paragraph (2) of this article may be invoked by any operator who is responsible for the goods under this [Law] [Convention] whether or not he took over the goods from the shipper, unless the operator had knowledge of the dangerous character of the goods when he took them over.

(4) If dangerous goods become a[n] [actual]<sup>24</sup> danger to life or property in cases where the provisions of paragraph 2(b) of this article do not apply or may not be invoked, they may be destroyed, rendered innocuous or disposed of by other means, as the circumstances may require. The operator is liable for loss arising from the taking of such measures in accordance with the provisions of article 5 of this [Law] [Convention].<sup>25</sup>

<sup>22</sup>For the discussion of the Working Group on article 9, see A/CN.9/275, paras. 82-86.

<sup>23</sup>This alternative follows the approach taken in the original version of article 9 (see A/CN.9/275, para. 83), with changes as suggested in or agreed to by the Working Group (A/CN.9/275, paras. 83-86).

<sup>24</sup>The word "actual" is contained in the analogous provisions of the Hamburg Rules (article 13(4)) and the Multimodal Convention (article 23(4)). The Working Group may wish to consider whether the word adds anything of substance, or whether it may be omitted from the present draft text.

<sup>25</sup>Paragraph (4) (modelled on article 13(4) of the Hamburg Rules and article 23(4) of the Multimodal Convention) has been added pursuant to a suggestion made in the Working Group that the operator should be permitted to destroy the goods or render them innocuous even if he knew of their dangerous character at the time he took them over (A/CN.9/275, para. 84). Under this paragraph, the operator would be liable to pay compensation for loss arising from the taking of such measures unless, pursuant to article 5, he proved that he, his servants, agents, or other person of whose services he made use, took all measures that could reasonably be required to avoid the danger and the necessity to take the measures.

*[Alternative 2]<sup>26</sup>*

If dangerous goods handed over to the operator become a[n] [actual]<sup>27</sup> danger to life or property, the operator may destroy them, render them innocuous, or dispose of them by other means, as the circumstances may require. The operator shall not be liable pursuant to article 5 of this [Law] [Convention]<sup>28</sup> to pay compensation for loss arising from the taking of such measures unless:

(a) The goods were marked, labelled, packaged and documented as dangerous or hazardous goods in accordance with the legal rules<sup>29</sup> which were applicable in respect of the transport of the goods to the terminal, or which apply in respect of goods in the terminal, and such documentation was delivered to the operator at the time of or prior to the handing over of the goods to him; or

(b) At the time the goods were handed over to the operator, he otherwise knew or should reasonably have known of the dangerous character of the goods and any special handling needs or precautions to be taken with respect to them.

**Article 10: Rights of security in goods<sup>30</sup>**

(1) The operator has a right of retention over the goods for costs and claims relating to the [safekeeping and operations] performed by him in respect of the goods

<sup>26</sup>This alternative is presented in the light of two views expressed in the Working Group. According to the first view, the article should not impose upon the consignor obligations with respect to the identification and packaging of the goods, since he would often not be in a contractual relationship with the operator and may be far removed from the operator in the chain of transport. According to the second view, the purpose of the rules was to regulate the liability of the operator for loss of or damage to goods taken in charge by him and should not deal with obligations owed to him by another person (A/CN.9/275, para. 82).

Alternative 2 is designed to accord with these views by focusing upon the right of the operator to destroy or otherwise deal with goods which pose a danger, and by providing that the operator is not liable to pay compensation for the resulting loss or damage unless the goods were identified, packed and documented as required by applicable laws, or unless he otherwise had knowledge of the dangerous character of the goods and the necessary precautions to be taken. It would be in the interest of the shipper to make sure that the goods were properly identified, packed and documented in order to protect his right to compensation in the event of the loss or damage of the goods, although the article itself would not obligate him to do so. This alternative does not deal with the liability of the shipper or of the operator's customer to the operator for loss caused by the dangerous goods (cf. alternative 1, para. 2(a)).

<sup>27</sup>See note 24, above.

<sup>28</sup>The intended effect of the words "pursuant to article 5 of this [Law] [Convention]" is the following: if the goods were not properly marked, labeled, packaged and documented and the operator did not otherwise know of their dangerous character, the operator would not be liable to pay compensation for loss of or damage to the goods arising from destroying or otherwise dealing with them. If the goods were properly marked, labeled, packaged or documented, or if the operator did know of their dangerous character, he would be liable unless, pursuant to article 5, he proved that he took all reasonable measures to avoid having to destroy or otherwise deal with them.

<sup>29</sup>The applicable "legal rules" are intended to include rules under international conventions and national laws, as well as officially promulgated regulations of the terminal.

<sup>30</sup>For the discussion of the Working Group on article 10, see A/CN.9/275, paras. 87 and 88. This article reflects various views expressed in the Working Group.

during the period of his responsibility for them. However, nothing in this [Law] [Convention] prevents the operator and his customer from extending by agreement the right of retention of the operator, or affects the validity or effect of any right of security otherwise available under the law of [this State] [the State where the [safekeeping and operations] were performed].<sup>31</sup>

(2) The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in [this State] [the State where the [safekeeping and operations] were performed].

(3) In order to obtain the amount necessary to satisfy his claim, the operator is entitled to sell the goods over which he has exercised the right of retention provided in this article [to the extent permitted by and in accordance with the law of the place where the safekeeping and operations] were performed.<sup>32</sup> [Before exercising any right to sell the goods, the operator shall make reasonable efforts to notify the owner of the goods of the intended sale. The operator shall account to the customer for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale.] [The right of sale shall in other respects be exercised in accordance with the law of the place where the [safekeeping and operations] were performed.]<sup>33</sup>

**Article 11: Notice of loss, damage or delay<sup>34</sup>**

(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the working day after the day when the goods were handed over to the person entitled to take delivery of them, the handing over is *prima facie* evidence of the handing over by the operator of the goods as described in the document signed or issued by the operator pursuant to article 4 of this [Law] [Convention], or, if no such document was signed or issued, in good condition.

(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if

<sup>31</sup>The choice between the wording in the two sets of brackets would depend upon whether the rules were adopted as a model law or a convention.

<sup>32</sup>The bracketed wording, "to the extent permitted by . . .", might be included if the rules are adopted as a convention. In the case of a model law, the enacting State may wish to insert the conditions under which the right of sale may be exercised. See, e.g., the following bracketed wording ("Before exercising any right to sell the goods . . .") and note 33, below.

<sup>33</sup>In the case either of a convention or a model law, without the bracketed wording "Before exercising any right to sell the goods . . .", the exercise of the right of sale would be subject to the procedures, if any, established under national law. Including that wording would ensure that the exercise of the right of sale would be subject at least to the minimum requirements set forth therein. A State would, however, be free to impose more detailed requirements, so long as the right of sale was not abrogated. In the case of a convention, this wording, plus the final bracketed sentence, might be substituted for the bracketed wording referred to in note 32, above ("to the extent permitted by . . .").

<sup>34</sup>For the discussion of the Working Group on article 11, see A/CN.9/275, paras. 89 and 90.

notice is not given within [ ] consecutive days after the day when the goods [were handed over to the person entitled to take delivery of them] [reached their final destination [, but in no case later than [ ] consecutive days after the day when the goods were handed over to the person entitled to take delivery of them]]. [However, if the claimant had no opportunity to discover the loss or damage within the said period of time, the provisions of paragraph (1) apply correspondingly if notice is not given within [ ] consecutive days after the claimant had an opportunity to discover the loss or damage, but in no case later than [ ] consecutive days after the day when the goods were handed over by the operator.]

(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

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

(5) No compensation shall be payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

(6) (a) Notice required to be given by this article may be given in any form which provides a record of the information contained therein.

(b) For the purpose of this article, notice given to a person acting on the operator's behalf is deemed to have been given to the operator.

#### *Article 12: Limitation of actions*<sup>35</sup>

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

(2) The limitation period commences on the day on which the operator hands over the goods or part thereof to a person entitled to take delivery of them, or, in cases of total loss of the goods, on the day the operator notifies the person entitled to make a claim that the goods are lost, or, if no such notice is given, on the day that person may treat the goods as lost in accordance with article 5 of this [Law] [Convention].

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

(4) The operator may at any time during the running of the limitation period extend the period by a declaration in writing to the claimant. The period may be further extended by another declaration or declarations.

(5) A recourse action by a carrier [or another person]<sup>36</sup> against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within [90] days after

<sup>35</sup>For the discussion of the Working Group on article 12, see A/CN.9/275, paras. 91-93.

<sup>36</sup>The other person referred to might include, for example, another operator.

the carrier [or person] has been held liable in an action against himself [or has settled the claim upon which such action was based].

#### *Article 13: Contractual stipulations*<sup>37</sup>

(1) Unless otherwise provided in this [Law] [Convention], any stipulation in a contract [for the safekeeping of goods] concluded by an operator or in any document signed or issued by the operator pursuant to article 4 of this [Law] [Convention]<sup>38</sup> is null and void to the extent that it derogates, directly or indirectly, from the provisions of this [Law] [Convention]. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

(2) Notwithstanding the provisions of paragraph (1) of this article, the operator may agree to increase his responsibilities and obligations under this [Law] [Convention].

#### *Article 14: Interpretation of this Convention*<sup>39</sup>

In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the desirability of promoting international uniformity with respect to the treatment of the issues dealt with in this Convention.

#### *Article 15: International transport conventions*<sup>40</sup>

This [Law] [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 [this State] [a State which is a party to this Convention] or any law of [this State] [such State] relating to the international carriage of goods.

#### *Article 16: Unit of account*<sup>41</sup>

[For Model Law]

The unit of account referred to in article 6 of this Law is the Special Drawing Right as defined by the Inter-

<sup>37</sup>For the discussion of the Working Group on article 13, see A/CN.9/275, paras. 94-96.

<sup>38</sup>The phrase "document evidencing such a contract" in the original draft of article 13 has been changed to "document signed or issued by the operator pursuant to article 4 of this [Law] [Convention]" upon the initiative of the secretariat, since the document as envisaged in the Working Group at its ninth session would not necessarily evidence the contract between the parties (see A/CN.9/275, paras. 46-58).

<sup>39</sup>In accordance with the agreement of the Working Group as reflected in A/CN.9/275, para. 97, this provision would not appear in a model law.

<sup>40</sup>For the discussion of the Working Group on article 15, see A/CN.9/275, para. 98.

<sup>41</sup>For the decision of the Working Group that the limits of liability should be expressed in a unit of account referring to the Special Drawing Right, see A/CN.9/275, para. 72. Both versions of article 16 are modelled on the unit of account provisions adopted by the Commission in 1982 (see Report of the United Nations Commission on International Trade Law on the work of its fifteenth session (1982), *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17* (A/37/17 and Corr. 1 and 2 (English only)), para. 63 (*Yearbook of the United Nations Commission on International Trade Law* (1982), part one, A)); the use of the provisions was endorsed by the General Assembly in resolution 37/107 of 16 December 1982 (*Yearbook of the United Nations Commission on International Trade Law* (1982), part one, D).

national Monetary Fund. The amounts mentioned in article 6 are to be expressed in [the national currency] according to the value of [the national currency] at the date of judgment or the date agreed upon by the parties. [For States members of the International Monetary Fund:] The equivalence between [the national currency] and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. [For States which are not members of the International Monetary Fund:] The equivalence between [national currency] and the Special Drawing Right is to be calculated in the following manner [indicate a manner of calculation which expresses in the national currency as far as possible the same real value for the amounts in article 6 as is expressed there in units of account].

[For Convention]

(1) The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgment or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

(2) The calculation mentioned in the last sentence of paragraph (1) is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the Depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

**Article 17: Revision of limits of liability<sup>42</sup>**

[For Model Law]

The amounts set forth in article 6 of this Law shall be linked to [a specific price index which might be considered appropriate for this Law]. Those amounts

shall be adjusted on the first day of July of each year following the adoption of this Law by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the level of the index for the year ending on the last day of the previous December over its level for the prior year. The amounts shall not, however, be increased or decreased if the increase or decrease in the index does not exceed [ ] per cent. Where no adjustment was made in the previous year because the change was less than [ ] per cent, the comparison shall be made with the level for the last year on the basis of which an adjustment was made.

[For Convention]

[Alternative 1]

(1) The amounts set forth in article 6 shall be linked to [a specific price index which might be considered appropriate for this Convention]. On coming into force of this Convention, the amounts set forth in article 6 shall be adjusted by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the index for the year ending on the last day of December prior to which this Convention came into force over its level for the year ending on the last day of December [of the year in which the Convention was opened for signature]. Thereafter, they shall be adjusted on the first day of July of each year by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the level of the index for the year ending on the last day of the previous December over its level for the prior year.

(2) The amounts set forth in article 6 shall not, however, be increased or decreased if the increase or decrease in the index does not exceed [ ] per cent. Where no adjustment was made in the previous year because the change was less than [ ] per cent, the comparison shall be made with the level for the last year on the basis of which an adjustment was made.

(3) By the first day of April of each year the Depositary shall notify each Contracting State and each State which has signed the Convention of the amounts to be in force as of the first day of July following. Changes in the amounts shall be registered with the Secretariat of the United Nations in accordance with General Assembly regulations to give effect to Article 102 of the Charter of the United Nations.

[For Convention]

[Alternative 2]

(1) The Depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6:

(a) Upon the request of at least [ ] Contracting States; or

(b) When five years have passed since the Convention was opened for signature or since the Committee last met.

<sup>42</sup>For the discussion of the Working Group on mechanisms for the revision of limits of liability, see A/CN.9/275, para. 73. The version of article 17 designed for a model law is modelled on the sample price index provision adopted by the Commission in 1982, and endorsed by the General Assembly, while alternative 1 of the version designed for a convention follows that provision (see Report of the United Nations Commission on International Trade Law on the work of its fifteenth session (1982), para. 63, and General Assembly resolution 37/107 of 16 December 1982, both cited in note 41, above). Alternative 2 of the version designed for a convention follows the sample amendment procedure for limit of liability adopted by the Commission in 1982, and endorsed by the General Assembly (references as above).

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

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

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

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\*The Conference of Plenipotentiaries may wish to insert a list of criteria to be taken into account by the Committee.

accepted in accordance with this paragraph shall enter into force for all Contracting States [12] months after its acceptance.

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

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