III. LIABILITY OF OPERATORS OF TRANSPORT TERMINALS

A. Liability of operators of transport terminals: compilation of comments by Governments and international organizations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade: report of the Secretary-General (A/CN.9/319 and Add. 1 to 5)

CONTENTS

[A/CN.9/319/]

Introduction

1. The Commission, at its seventeenth session in 1984, assigned to its Working Group on International Contract Practices the task of preparing uniform rules on the liability of operators of transport terminals.[1] The Working Group commenced its work at its eighth session in 1985 with a comprehensive consideration of the issues arising in connection with the liability of operators of transport terminals (A/CN.9/260). At its ninth session in 1986 the Working Group engaged in an initial discussion of draft articles of uniform rules prepared by the secretariat, and prepared draft articles 1, 2, 3 and 4 to serve as a basis for further consultations by delegations and for its future work (A/CN.9/275). At its tenth session in 1987 the Working Group discussed the draft articles prepared by it and additional draft articles revised or prepared by the secretariat (A/CN.9/287). At its eleventh session in 1988 the Working Group considered all articles of the draft uniform rules and recommended that the uniform rules be adopted in the form of a convention (A/CN.9/298). It convened a drafting group during that session to incorporate the decisions taken by the Working Group and to establish corresponding versions of the draft Convention on the Liability of Operators of Transport Terminals in International Trade in the six languages of the United Nations. The Working Group then reviewed and approved the articles and the title of the draft Convention. The draft Convention is reproduced in annex I to document A/CN.9/298.

2. The Commission, at its twenty-first session in 1988, requested the Secretary-General to transmit the draft Convention to all States and interested organizations for comments, and requested the Secretariat to prepare and distribute a compilation of the comments as early as possible before the twenty-second session of the Commission.[2] The present compilation is submitted pursuant to that decision by the Commission.

3. As of 18 January 1989, the Secretariat had received replies from the following States and international organizations:

States: Canada, Denmark, Philippines, Poland, Spain, Sweden, Union of Soviet Socialist Republics and United States of America;

Intergovernmental international organizations: Economic Commission for Latin America and the Caribbean, International Civil Aviation Organization and United Nations Environment Programme;

Non-governmental international organizations: Council of European and Japanese Shipowners' Associations, International Chamber of Shipping, International Federation of Freight Forwarders Associations, International Rail Transport Committee and International Union of Railways.

Compilation of comments

States

CANADA

[Original: English]

1. General comments

The Government of Canada welcomes the opportunity to comment on the draft Convention on the Liability of Operators of Transport Terminals in International Trade as prepared by the Working Group on International Contract Practices.

The Government of Canada notes the draft Convention will prohibit contracting out of liability or contracting lower liability limits than set out in the Convention, matters heretofore addressed in Canada solely by the parties to a contract. The Government of Canada has therefore consulted widely with industry advisers in order to seek their views on the Convention's impact on their existing freedom of contract. Further consultations with industry will be necessary in order to reconcile the views expressed during the consultative process. These observations, therefore, reflect only the preliminary views of the Government of Canada on the draft Convention.

Both the operators of transport terminals in Canada and the consumers of their transport-related services do not have unanimous views in favour of the limits of liability

[1]Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17* (A/39/17), para. 113.

[2]Report of the United Nations Commission on International Trade Law on the work of its twenty-first session, *Official Records of the General Assembly, Forty-third Session, Supplement No. 17* (A/43/17), para. 29.

proposed in the draft Convention. As a general matter, it would appear to be useful to further review the limits of liability in the draft Convention with regard to their compatibility with the prevailing limits applicable internationally to carriers, in particular, to ocean carriers.

In addition to seeking the views of the affected industry, the Government of Canada has consulted with the provincial and territorial governments of Canada on the subject of the draft Convention. It has concluded that implementation of the Convention in Canada would be expedited by the inclusion of a federal State clause in the Convention.

In principle, the Government of Canada does not see the need to permit reservations to be made to conventions such as the draft Convention on the Liability of Operators of Transport Terminals in International Trade, subject to, of course, the final wording of the proposed Convention.

In preparing its observations, the Government of Canada has borne in mind the necessity to maintain terminals costs at a reasonable level. The clause-by-clause comments that follow have been prepared on the understanding that reasonable, adequate compensation for damage can help to create the conditions within which international trade can develop and prosper. It is the view of the Government of Canada that the Convention must respect the needs of the key participants in a field that is rapidly changing both with respect to the applicable technology and the complexity of the operations of terminal operators.

2. *Clause-by-clause commentary*

Article 1. Definitions

Further clarification should be provided on why the term "goods" in paragraph 1*(b)* should be defined as including a container, particularly in a case where the container is supplied by the carrier as opposed to the cargo interest. If containers are to be included in the definition of goods, consideration should be given to distinguishing the treatment of containers in the Convention from that given their contents.

The adjective "two" modifying "different States" is tautological and should be deleted.

Article 2. Scope of application

The scope of application is based on the definitions of "transport-related service" and "international carriage" and ultimately under article 2*(a)* on the operator's "place of business". It would appear to be preferable to apply the Convention when the transport-related services are rendered in a State party to the Convention. Such a criterion would conform with the conflict rules in private international law referred to in paragraph 2*(b)* as well as the existing international carriage conventions. It would pose fewer problems of application. As drafted, the scope of application may fail to cover all operators of transport terminals in Canada involved in international trade, impeding the goal of harmonization.

Article 4. Issuance of document

In the case of containerized cargo, it is generally impossible for the operator to form any opinion as to the accuracy of any document describing the goods and their condition. The imposition of detailed inspection procedures and the issuance of receipts would increase the costs of container handling and markedly decrease the efficiency of that handling. The absence of inspections and receipts has not resulted in dissatisfaction among container terminal customers and others interested in the cargo they carry. It would appear to be preferable to exempt containerized cargo from the requirements of article 4.

As a general matter, the issuance of a receipt for the incoming goods would be a novel situation and could result in potentially large increases in the liability of terminal operators.

Further consideration should be given to the need to require the issuance of a document at the customer's request more particularly in order to clarify the application of the rebuttable presumption in paragraph (2).

Article 5. Basis of liability

The addition of the words "subject to article 10" to article 5 would be useful in order to cross reference at this point the operator's right to retain the goods in certain circumstances.

Article 6. Limits of liability

The draft Convention may be more broadly accepted if the standardized limits of liability it establishes are compatible with the prevailing limits of liability applicable to carriers, and to ocean carriers in particular.

It may be the case that separate limits of liability should be established for containers so that the weight of the container is not added to the weight of the contents when determining liability on a per weight basis for cargo.

Article 8. Loss of right to limit liability

This provision would appear to indicate that the operator would lose the protection of the limits of liability to be established under the Convention for his own as well as the tortious or delictual or quasi-delictual acts of agents or servants acting outside the scope of their employment. The goal of harmonization and broad acceptability of the draft Convention may be better assisted if the operator would lose the right to limit responsibility only where it is proven that the loss, damage or delay in delivery resulted from his own acts or omissions, done with intent to cause loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result. Such a rule would include the acts or omissions of servants or agents acting within the scope of their employment but not the acts or omissions of servants and agents committed outside that scope. In doing so, the liability régime to be established by the draft Convention would be similar in this respect to the Hague, Hague/Visby and Hamburg Rules.

Article 9. Special rules on dangerous goods

There is an implication that the operator may not take the protective measures contemplated in paragraph 9*(a)* where the goods are marked as being dangerous or where the operator knows they are dangerous. There would appear to be sound policy grounds for expressly permitting

the operator to take such actions even where he has knowledge that the goods are dangerous or where they are properly marked because of some latent defect or inherent vice in the goods themselves or in their packaging or through the fault of a third party.

Article 10. Rights of security in goods

In some Canadian jurisdictions, the operator is now entitled to retain the container as well as the goods. Thus, the article, which is designed to assist the operator, would place some Canadian operators in a more onerous position than they are under existing law.

The nexus created in the article between the operator and the owner of the goods does not exist elsewhere in the draft Convention. In other articles, it is clear that the operator is an intermediary. In the normal course, the operator will have no dealings with the owner and will often not know, nor need to know, who the owner is. Moreover, in international dealings, the issue of who is the owner and when ownership passes is often a vexed question. Quaere whether the operator should not be required to attempt to solve that question or, in the alternative, to await a determination by a court before he is entitled to exercise his remedy. Quaere also if notice to the owner should be required prior to the exercise of a right of retention by the operator.

Article 11. Notice of loss, damage or delay

Paragraph 11(1) could be amended to read "the person entitled to take delivery of the goods *from the operator*" in order to avoid uncertainty in cases of combined transport operation or containerized cargo.

Paragraph 11(2) could be amended to read "if notice *to the operator* is not given . . . ".

Article 12. Limitation of actions

In the case of recourse actions, the operator is placed in a position of considerable uncertainty by paragraph 12(5). Further study of the limitation period for recourse actions would appear to be warranted. As it is drafted, an action for indemnity could be instituted several years after the performance of transport-related services by the operator so long as it is commenced within 90 days of settlement or resolution of the base claim. A more restrictive period for recourse actions may be desirable. In the alternative, compliance with the rules of procedure of the State where the proceedings are instituted might be added to the provision in order to provide greater certainty for the operator.

DENMARK

[Original: English]

Before turning to a few specific points regarding the individual articles in the draft Convention, the Danish Government would like to emphasize its sincere appreciation of any attempt to promote the progressive harmonization and unification of the law of international trade.

It should be borne in mind, however, that the final position of the Danish Government on the possible ratification of this specific Convention would depend on the final decision with regard to the 1978 United Nations Convention on the Carriage of Goods by Sea, the so-called "Hamburg Rules", and the 1980 United Nations Convention on International Multimodal Transport of Goods, the so-called "Multimodal Convention". The Danish Government has not yet decided on the possible ratification of these Conventions.

The following points regarding the individual articles in the draft Convention are submitted without prejudice to any final position the Danish Government will take on this issue.

The title of the Convention

The draft Convention does not only deal with the liability of operators of transport terminals, but also with the question of the operators' rights of security in goods. It would be preferable to include this in the main title of the Convention.

Articles 1 and 2. Definitions and scope of application

The scope of application is not entirely clear. It should be considered to confine the period of liability to the actual period of "warehousing" in order to avoid the very likely risk of a conflict with other transport conventions.

Article 6. Limits of liability

It could be problematic that the limitation amounts in this article are proposed to be different depending on whether the international carriage of goods involves carriage by sea or inland waterways or not. Furthermore, it is of vital importance that the amounts are in conformity with limitation amounts in other transport conventions.

Article 8. Loss of right to limit liability

It is not clear why article 8(1) goes further to limit liability than similar provisions in the Hamburg Rules (article 8(1) and the Multimodal Convention (article 21(1)), in that it leads to unlimited liability for the operator when loss, damage or delay result from a grossly negligent act or omission of *his servants or agents* with knowledge that such loss, damage or delay would probably result.

Article 10. Rights of security in goods

It might be prudent to state expressly that the operator's retention and subsequent sale of the goods can't be exercised further than to secure his actual costs and claims.

Article 12. Limitation of actions

The proposed limitation period of two years is not in conformity with other existing transport conventions, nor is the provision on recourse action in subparagrah (5). It is preferable to have conformity in this regard.

PHILIPPINES

[Original: English]

General comment

The draft Convention is timely. It is essential to fix the rights and obligations of operators of transport terminals in international trade. Provisions of the draft Convention will guide the parties accordingly.

Specific comment

Article 12. Limitation of actions

Article 12 should, perhaps, include a provision that will allow the parties in arbitration proceedings to agree on the place of arbitration, the language of arbitration, who the arbitrators could be, the procedural law to be followed (such as UNCITRAL, ICC, or AAA Rules) and the specific substantive law to be applied to a particular controversy.

POLAND

[Original: English]

Contrary to the principles expressed in the Convention on the Carriage of Goods by Sea (1978) and the Convention on International Multimodal Transport of Goods (1980), operator's liability has been correctly extended to cover also his servants or agents. In such case the operator loses the right to limit his liability.

It should be mentioned in this context that the article No. 474 of the Civil Code of the Polish People's Republic also contemplates liability of the debtor for acting or omission of the third party entrusted with or helping to perform the obligation.

There are serious reservations concerning principles of liability in respect of damages to the container itself.

In particular it is not clear whether "... kilogram of gross weight of the goods lost or damaged ..." concerns also the container itself and how the container's weight should be calculated (with or without its contents).

This extension of operator's liability will result in an increase of service charges as well as of insurance premiums. Certain reservations also concern the one day limit given to notice of loss or damage.

SPAIN

[Original: Spanish]

First comment

Article 7(3), first line

The word "accruable" ("acumulable") should be inserted in front of the words "aggregate of the amounts" towards the end of the mentioned line.

This comment is intended to give the text better clarity than in the present wording, which is ambiguous with regard to the possibility of the claimant exceeding the liability limit laid down by the Convention.

Second comment

Article 8(1), last line

A final phrase worded as follows should be added to the end of this paragraph: "... provided such occur during the fulfilment of his contractual obligations".

The proposed addition provides an equitable solution for the loss by the operator of his right to a liability limit.

The basis of the operator's liability and its scope through a fraudulent violation committed by his subordinates is the traditional doctrine of *"culpa in eligendo", inter alia.* Without doubt it is excessive to blame him to an unlimited extent when the fraudulent and damaging activity of his servant or agent is suffered by his client not only on the occasion of the performance by them of their professional activities, but also on the fringe of such. In the latter case the operator should be in a position to benefit from the liability limit.

SWEDEN

[Original: English]

General observations

The Swedish Government welcomes the work that has been carried out by the Working Group on International Contract Practices. The draft Convention constitutes a solid basis for further negotiations aiming at elaborating a liability régime for operators of transport terminals.

The Swedish Government realizes—and would like to underline—that the draft Convention represents a compromise between different views and between various legal systems. Therefore, the solutions chosen to solve different problems do not necessarily represent the position that the Swedish Government would have preferred in the first place.

The interest of establishing a liability régime in this field of transport law and filling out the existing gaps in the chain of transport must, however, be considered to be of such importance that the draft could basically be accepted.

As regards the form of the proposed régime, the Working Group has recommended a convention. In previous stages of the negotiations within the Working Group, the form of a model law has also been considered.

An important factor, when making the choice between these two alternatives, is the fact that the Hamburg Rules and the Multimodal Convention, which to a great extent have served as models for the proposed Convention, have not yet entered into force. This should not, however, be the determinant factor for the choice to be made. Of major interest is the desirability of achieving the greatest possible uniformity in this field of transport law.

The Swedish Government can accept that the liability régime in question is laid down in the form of a convention. For States which are not prepared to accept this solution and the internationally binding nature of a

convention the proposed Convention could serve as a model for national legislation. Such States could later on decide whether or not to ratify the Convention. This could also be a way to reach uniformity.

After these general remarks, the Swedish Government would like to make a few comments on some of the proposed articles of the Convention, keeping in mind as mentioned above their nature of well reasoned compromise solutions.

Comments on specific articles

Article 1

(a) One of the requirements for regarding a person as an operator of a transport terminal is that he undertakes to "take in charge" goods . . . etc. The meaning of the expression "take in charge" should be clarified to make it perfectly clear in what situation the régime is applicable or not. Would for instance some activity from the operator be required with regard to the receipt of the goods, or would it be sufficient that the goods are left on the quay for later instructions concerning their destination etc. to make the rules apply?

(b) The definition of "goods" is not entirely clear on some points. Would the definition for instance cover live animals and furniture removal (cf. article 1, paragraph (4), in the CMR)? Some clarification seems to be needed in this respect.

(e) (f) The definitions under these two paragraphs exclude the possibility of using oral notices and requests under several draft articles in the Convention. The Swedish Government is not in favour of this exclusion. It had been preferable to leave it to the parties involved to determine the appropriate form of notice to use in accordance with good commercial practice and to protect their interests. To require a specific form would furthermore create confusion within those legal systems, among them the Swedish one, where it is left to the courts to decide upon the value of the evidence presented before them, whether in writing or orally by a witness.

Article 2

The rules apply only to goods which are involved in international carriage. It could be argued that, for logical reasons, this is not the best solution. Different rules could apply to the same kind of goods in a terminal depending on the place of destination. This could cause confusion and have the result that "national goods" are treated with less care than goods headed abroad. However, the Swedish Government will not oppose the proposed solution.

Article 3

With regard to the use of the words "taken in charge" the same arguments could be put forward as under article 1.

The period of responsibility for the goods expires when the operator has handed them over or "made them available to" the person entitled to take delivery of them. This seems to be a very strict rule from the customer's point of view. It implies that the operator does not have to take care of the goods and has no responsibility for them if there is a delay in collecting the goods within the agreed period of time. It could be argued that the operator's responsibility should not be allowed to expire unless he has notified the recipient and urged him to collect the goods. If the reasoning behind the present stipulation is to avoid terminals being used for lengthy storage, it would of course be possible to counteract such practice by increasing the storage fees.

Article 5

The word "loss" in the opening words of paragraph (1) "The operator is liable for *loss* resulting from loss of or damage to the goods" might well be and has been interpreted to include consequential loss. Against this background, it has been observed that this makes the extent of the operator's liability uncertain. In the Working Group, however, it was probably thought that whether or not a claimant could recover consequential loss in a particular case would be dependent on the rules of the applicable legal system. Since the wording has given cause for some doubt, it could prove valuable to give the paragraph some further consideration.

Article 6

The Swedish Government can support the approach chosen in paragraph (1) which implies a limitation per kilogram and not—as an alternative—based on the number of packages or shipping units. As regards the arguments in favour of this solution, the Swedish Government would like to refer to those contained in the report from the tenth session of the Working Group in Vienna (A/CN.9/287, paragraph 34).

The Swedish Governmment would, for the time being, like to reserve its position with respect to the specific limitation amounts. It should, however, be stressed that the amounts ought to be adjusted to other limitation amounts in the field of transport legislation in order to make recourse actions possible on a back-to-back basis between operators and carriers.

Furthermore, it seems to be important to note that the final decision on the amounts will, among other things, depend on the reservation clauses to be elaborated by the Commission (cf. paragraphs 45 and 96 of the report of the Working Group on its eleventh session, A/CN.9/298).

Final remarks

In the view of the Swedish Government, it would have been preferable, had the draft Convention contained rules that put an obligation on the operator to cover his liability with insurance. Proposals to introduce such an obligation have not, however, met with great sympathy in the Working Group. Unfortunately, the liability régime could prove to be of less value, should the operator turn out to lack the financial means to cover claims that are made against him.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

Although, on the whole, the draft in question serves as an acceptable basis for discussion at UNCITRAL's

twenty-second session, it seems appropriate, in connection with certain of its provisions, to express the following considerations, which may be examined during the forthcoming discussion, with the relevant conclusions reflected either in the actual text of the draft Convention or in the report of the Commission.

1. While article 4, paragraph (1), of the Convention provides for the indication by the operator of the "condition" of the goods which he receives from the customer, paragraph (2) of the same article states that in the absence of such indication the goods are presumed to have been received "in apparently good condition". Would it not be useful, as a means of avoiding any differences of interpretation, to provide in paragraph (1) that in the event the operator indicates the condition of the goods, he is entitled, specifically, to do so only on the basis of the external appearance of the goods received? Although, obviously, a more detailed description by the operator of the condition of the goods received is not excluded, it is correct to consider that the operator has also fulfilled his function when he limits his indication to a reference to the external condition of the goods.

2. According to article 6, paragraph (4), the operator "may agree" to "limits of liability exceeding those provided for in paragraphs (1), (2) and (3)" of that article. The draft Convention, however, does not specify when or in what form this "agreement" may be expressed. Would it not be useful to supplement this paragraph by a reference to the fact that if this agreement has been expressed in writing at any time prior to the loss of or damage to the goods or delay in their handing over by the operator, it becomes an obligation on him?

3. In article 7, paragraph (3), there is established the impossibility of the customer's claiming an aggregate amount exceeding "the limits of liability provided for in this Convention". From the point of view of interpretation, this limitation evidently also includes the case when the operator, by virtue of article 6, paragraph (4), has assumed higher limits of liability. In order to avoid doubt and in the interest of greater accuracy, it would be useful to consider the question of supplementing article 7, paragraph (3), by a reference to article 6, paragraph (4).

4. Unlike other transport conventions, including article 13 of the United Nations Convention on the Carriage of Goods by Sea, article 9 of the draft of the new Convention does not directly provide that, when handing over dangerous goods, the customer is obliged and liable to inform the operator accordingly. Although it is understood that in the case of the operator one is dealing with a situation different from that when dangerous goods are loaded directly onto a maritime vessel or some other means of transport, nevertheless a reference to the obligation and liability of the customer might be desirable in this draft also, because of considerations *inter alia* of ecological protection. In addition, is there justification for exempting the operator from payment of compensation only for "damage to or destruction of" dangerous goods?

5. In article 9, subparagraph *(b)*, the discussion is limited to the right of the operator himself to receive reimbursement for all costs which he may incur as the result of taking precautions, including measures for the destruction of dangerous goods. This provision, however, as it must be understood, in no way implies the elimination of the customer's liability to the owners of other goods which are located at the terminal and may be damaged by the dangerous goods. This understanding, which flows from the scope of application of the Convention (article 2, paragraph (1)), might usefully be specified, if not in the text of article 9, at least in the UNCITRAL report devoted to the discussion of the draft.

In the event that the discussion of the entire draft of the new Convention is concluded at UNCITRAL's twenty-second session, it would be necessary, in the course of the work of that session, to set up a drafting group to be responsible for the finalizing of the draft text so as to ensure its authenticity in all languages.

UNITED STATES OF AMERICA

[Original: English]

I. Preliminary issues

A. *Terminal operator's period of responsibility: filling the gaps*

The purpose of the instrument is to fill gaps between existing legal régimes. Nevertheless, not all the gaps are effectively treated. Accordingly we propose a major change for article 3 which describes the terminal operator's period of responsibility for goods as being "from the time he has taken them in charge until the time he has handed them over or made them available to the person entitled to take delivery of them". This formulation would not fully fill the gap between the terminal operator and the maritime carrier in those countries (such as the United States) which continue to be subject to the Hague Rules). Thus we advocate a formulation which would make the new instrument applicable whenever another régime does not apply. We propose the following period of responsibility formulation for article 3:

> The operator shall be responsible for the goods from the time when the applicable rules of law governing carriage cease to apply until the rules applicable to the next carriage begin to apply.

The United States is open to other formulations which would accomplish the objective of matching the application of the Hague Rules to the application of the terminal operator's régime. However, we emphasize strongly the need to consider the application of the Hague Rules. Failure to close this gap would weaken the terminal operator régime seriously.

The argument may be made that the terminal operator's régime should be designed to fit the Hamburg Rules only. We disagree. The instrument on the terminal operator's liability should not be viewed as an extension of the Hamburg Rules. It is a totally independent instrument. We are of the view that the terminal operator's régime must be designed to apply up to the point when any carrier régime applies. The instrument will be more versatile and

thus more broadly acceptable if it is designed to fit either the Hague, Visby or Hamburg Rules.

B. *Application of draft instrument to stevedores who are covered by the applicable rules of law governing carriage*

This issue is related to the previous issue. The United States views the terminal operators' liability régime as being separate and distinct from the carriers' liability régimes. Consequently, to the extent that the rules of law governing carriage apply, the terminal operator's régime need not and should not apply.

Maritime carriers have established a degree of uniformity by providing in their bills of lading that each bailee of goods subject to the bill of lading have the benefit of the defenses available to a carrier under the bill. Presumably negotiations between the carriers and the stevedores might reduce the cost of loading and unloading the vessel by eliminating double insurance. However case law is not yet uniform on this point. Thus terminal operators at ports of loading and discharge of cargo moving under a port-to-port bill of lading, and those terminal operators plus others at inland points for cargo under through intermodal bills of lading, are all subject to the same liability rules. They are all treated the same as carriers. The terminal operators, including stevedores, would prefer a uniform liability régime where it can be achieved by a bill of lading clause.

The United States therefore proposes a modification of the last sentence of article 1*(a)* as follows:

> However, a person shall not be considered an operator to the extent that he is responsible for the goods under applicable rules of law governing carriage.

This modification would assure stevedores, when they handle goods under maritime bills of lading which extend to them the benefits possessed by the carriers, that they are treated no less favourably under the proposed Convention than are the carriers.

II. Detailed comments

Article 1.

1. See the comment under I, subparagraph B, above.

2. The United States does not believe that the proposed Convention extends to container depots where empty containers are stored and repaired. This view is based on the definition of "goods" which includes containers only if cargo is "consolidated or packaged therein". The records of the proposed Convention should clearly reflect this understanding.

3. Traditional paper documentation is being replaced by a new paperless system called the Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT). Electronic documents are faster, safer and less costly than traditional paper documents. UNCITRAL, the Customs Co-operation Council (CCC) and the United Nations Economic Commission for Europe are coordinating the universal adoption of EDIFACT, and most countries are introducing paperless documentation.

The United States supports the conversion to paperless documentation and proposes that all documentation under the Convention on the liability of operators of transport terminals be adaptable to computer communication without the necessity of the use of paper. It is urged that both the "notice" and the "request" in Article 1*(e)* and *(f)* be adaptable to paperless communication.

Article 2. Scope of application

No comment.

Article 3. Period of responsibility

See the comment under I(A) above.

Article 4. Issuance of document

Article 4, subparagraph (1)*(a)*, established too onerous a documentation burden on terminal operators, particularly on stevedores, who often handle the goods only for a few minutes. Therefore the United States proposes for subparagraph (1)*(a)* a simple receipt for the goods without further requirements regarding description of the condition and quantity of the goods. In consequence the reference to subparagraph (1)*(a)* in subparagraph (2) should be deleted.

Article 4, subparagraph (1)*(b)*, would not require a terminal operator to open sealed containers in his charge. The operator would not be required to ascertain the condition and quantity of the goods received, except "in so far as they can be ascertained by reasonable means of checking".

A similar situation exists under subparagraph (1)*(a)* for the terminal operator who is asked to acknowledge "his receipt of the goods by signing a document produced by the customer". This terminal operator should also not be required to open sealed containers to ascertain condition and quantity of goods received. Therefore the United States proposes that the words "in so far as they can be ascertained by reasonable means of checking" also be added to subparagraph (1)*(a)*.

Article 5. Basis of liability

No comment at this time.

Article 6. Limits of liability

It is the view of the United States that limits of liability should be established at the diplomatic conference. However, we believe that stevedores should be treated no less favourably than carriers. Only for that reason would the United States support a per package limit on liability for goods involved in maritime carriage. However, with the adoption of a limit per package we would accept a definition of "package" which excludes the container when the discrete packages therein are adequately described on the bill of lading.

Article 7. Application to non-contractual claims

No comments at this time.

Article 8. Loss of right to limit liability

It is the view of the United States that the approach towards breakability of liability limits contained in the

Hamburg Rules should not be adopted in the Convention on the liability of transport terminal operators as a matter of course. In fact the subject matter of the terminal operators' Convention differs from that of the Hamburg Rules. For example there simply is no issue of negligent navigation in the terminal operators' convention whereas negligent navigation was a significant bargaining chip in the Hamburg Rules negotiation. Consequently the United States believes that the participating States should take a fresh look at the issue of breakability and decide what is the best solution for the terminal operators. The Commission should consider economic efficiency and insurance preferences in determining whether liability limits should be breakable.

Furthermore, the United States proposes that article 8, paragraph (1), be clarified to make explicit that this paragraph is limited to the operator himself, his servants or agents and does not apply to independent contractors.

Article 9. Special rules on dangerous goods

No comments at this time.

Article 10. Rights of security in goods

The terminal operator is sometimes inconvenienced by unclaimed goods which occupy space needed for other purposes. Therefore, the United States proposes that a new subparagraph be added stating that the terminal operator may consider goods in its charge abandoned if not claimed within thirty (30) days after (i) the day until which the operator had agreed to keep the goods, or (ii) the date as to which notice of availability of the goods had been given by the operator to the person entitled to take delivery of the goods.

Article 11. Notice of loss, damage or delay

Article 11, subparagraph *(b)*, requires notice of non-apparent damage within 7 days after the day when the goods reached their final destination but in no case later than 45 days after the day when the goods were handed over to the person entitled to take delivery. In practical experience it may take considerably longer than 45 days for the goods to reach their final destination and be subject to inspection for concealed loss or damage. Therefore, the United States proposes a 90 day time period in order to provide adequate time for the final consignee to inspect the goods for concealed loss or damage.

Article 12. Limitation of actions

No comment at this time.

Article 13. Contractual stipulations

This article should be clarified to conform to the principle inherent in article 1, subparagraph *(a)*, that the terminal operator may be employed as a bailee by a carrier. If the terminal operator elects to conclude such an arrangement with a maritime carrier, then the applicable rules of law governing the carrier apply. (See discussion of this issue under I above). Consequently, the United States proposes a clarification of article 13 specifically excepting the right to extend the bill of lading to cover terminal operators from the prohibition on contractual stipulations.

Article 14. Interpretation of the convention

No comment at this time.

Article 15. International transport conventions

This article is neither clear as drafted nor necessary. It is merely a restatement and reformulation of the principle the United States proposes for article 1, subparagraph *(a)*, that a person shall not be considered to be a terminal operator to the extent that the operator is responsible for the goods under applicable laws governing carriage. There is no need to restate that principle in article 15 if it is firmly stated as proposed by the United States in I above. On that basis the United States proposes deletion of article 15.

Article 16. Unit of account

No comment at this time.

Article 17. Revision of limits of liability

No comment at this time.

Intergovernmental international organizations

ECONOMIC COMMISSION
FOR LATIN AMERICA AND THE CARIBBEAN
(ECLAC)

[Original: English]

[In the introductory remarks to its comments on the draft Convention, the organization expresses its congratulations for a carefully prepared instrument which should find wide acceptance.]

Article 1. Definitions

The definition at subparagraph *(c)* of article 1 seems to have two parts which appear unrelated. First, "International carriage" is defined as "... any carriage in which the place of departure and the place of destination are identified as being located in two different States ...", which is immediately followed by "... when the goods are taken in charge by the operator;". Whether or not the latter part is included, "International carriage" would seem to be adequately defined for purposes of the draft Convention. In fact, the latter part of subparagraph *(c)* might be construed as a limiting factor on the definition of "International carriage"; that is, an "International carriage" between two different States does not fall within the scope of application of the draft Convention unless the goods are also taken in charge by an operator of a transport terminal (OTT). Thus, consideration might be given to determining if the second part of subparagraph (c) would be adequately covered by subparagraph *(a)* entitled "Operator of a transport terminal", where it provides that "... a person who ... take(s) in charge goods involved in international carriage ...".

Article 4. Issuance of document

The draft Convention does not provide explicit standards for the safekeeping of goods. Such standards are implicit and appear satisfied if goods are delivered by the OTT in the same condition in which they were received. It might be useful to include a clause which states that any standards of care a potential bailor might want beyond this implied norm would have to be specified in the agreement between him and the OTT.

Article 10. Rights of security in goods

Paragraph (2) limits the OTT's right to retain goods if a sufficient guarantee is provided or " . . . an equivalent sum deposited with a mutually accepted third party or with an offical institution . . . ". We have some difficulty understanding exactly what the draft Convention seeks to convey with the term "official institution". Is it a country's Central Bank? Is the "official institution" to be nominated by a contracting party to the Convention? Due to these and other difficulties, you might wish to give consideration to including a definition of "official institution" in article 1.

Paragraph (3) presents two difficulties. The wording of the first sentence is not clear. Does the phrase " . . . the operator is entitled to sell the goods . . . to the extent permitted by the law . . . " refer to the amount of goods which may be sold or to the existence of a national régime which provides for their sale? To clarify this important provision you might wish to evaluate the possibility of altering the sentence to read " . . . the operator is entitled to sell part or all of the goods . . . in accordance with the law of the State . . . ".

The second sentence of paragraph (3) precludes OTTs from selling containers which are owned by persons other than carriers or shippers, unless they have carried out repairs or improvements to such units. The first part of this sentence extends the right of retention of goods to containers, provided that they are owned by either the carriers or shippers to whom "Transport-related services", as defined in subparagraph *(d)* of article 1, are rendered. Subparagraph *(b)* of article 1 includes containers within the definition of "Goods", thus making OTTs responsible for the safekeeping of containers they have received from persons other than carriers and shippers.

The latter part of the second sentence of paragraph (3) appears unrelated to the overall scope of the draft Convention. It permits OTTs to sell containers owned by persons other than carriers or shippers, if they have carried out repairs or improvements to such units. If an OTT offers container repair and improvements services, in addition to the "Transport-related services", he is engaged in two different activities. On the one hand, the OTT receives, conserves and delivers goods, which may include containers; and on the other he may repair and improve containers. In the first situation the document issued in accordance with article 4 and/or customary trade practices will govern his activities, while in the latter a contract will be executed between container owners and the OTT. For additional information concerning such contract, we would direct your attention to pages 79-82 of the enclosed document entitled *Establishing container repair and maintenance enterprises in Latin America and the Caribbean* (E/CEPAL/G.1243), May 1983. [The pages referred to contain the text of a depot agency agreement, which is not reproduced here.] This phrase might also give rise to widely differing interpretations of the draft Convention. For example, is an OTT entitled to the benefits of article 6, limits of liability, where he has repaired or improved containers? It would appear that consideration might be given to either reformulating or removing this part of the sentence.

INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

[Original: English]

The draft Convention has been reviewed by the competent ICAO officials. While they have no specific comments to offer, they have observed that the draft Convention is, from a legal point of view, a well-balanced and sound instrument and appears to cover realistically every known aspect of liability of operators of transport terminals in international trade. It is noted that the different instruments of the Warsaw system relating to international carriage by air have been retained for possible inclusion in the draft Convention with respect to the revision of the limits of liability.

UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

[Original: English]

UNEP's concern is that the environmental consequences of trade in hazardous wastes are fully taken into account in the UNCITRAL draft Convention. In that regard, our comments will be limited to that aspect of the draft.

In recent years there has been an expansion of the international trade in hazardous wastes. UNEP's Working Group of Legal and Technical Experts with a Mandate to Prepare a Global Convention on the Control of the Transboundary Movements of Hazardous Wastes have had meetings for over a year in an attempt to hammer out a Global Convention on this topic. At the most recent session in Geneva (7-16 November 1988) in his address to the Working Group, the Executive Director noted that many and varied national and international agreements and regulations already existed on the carriage and transport of hazardous goods. He underlined that the aim of the Convention was to establish control measures that would:

1. lead to major reduction in the generation of hazardous wastes and thus eliminate the need for their movement;

2. make it very difficult to get approval of movement of hazardous wastes with the goal of reducing to a minimum their transboundary movement and of ensuring that such movement is only permitted when it is equally or more environmentally sound to dispose of waste far from rather than close to where it is generated; and

3. ensure that what is internationally transported is moved and is ultimately disposed of under the most environmentally safe conditions available.

The UNEP draft, therefore, is mostly concerned with notification, rights and obligations of exporting, transit and importing States and ensuring the environmentally sound disposal of hazardous wastes. In regards to the safety of the transport itself, the UNEP draft largely defers to existing international controls on the transportation of dangerous goods. The UNEP draft in Article IV "General obligations" provides, *inter alia:* "The Contracting Parties shall:

(a) Prohibit all persons under the national jurisdiction from transporting or disposing of hazardous wastes which are the subject of a transboundary movements, unless they are authorized or allowed to perform such types of operations;

(b) Require that in all transboundary movement, hazardous wastes be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and taking into account international recommendations and practices;

(c) Require that all transboundary movements of hazardous wastes are accompanied by a hazardous wastes movement document from the point at which a transboundary movement commences to the point of disposal."

It must be emphasized, however, that the UNEP draft contains a number of brackets around provisons relating to the convention's "fit" with other conventions.

Thus, the UNEP draft contemplates that the rules regulating the transport of hazardous wastes should rely on such "generally accepted and recognized rules" on the transport of dangerous goods (i.e. the "Orange Book" of the United Nations Committee of Experts on the Transport of Dangerous Goods) in lieu of providing detailed rules on transport safety in international trade in hazardous wastes in the draft itself.

The UNEP draft also provides in Article VIII "Duty to reimport" that the country of export and the exporter "take wastes back" if the transboundary movement "cannot be completed as foreseen."

1. *"Losing" of hazardous wastes* can be a very profitable enterprise, as disposal often costs hundreds of dollars per tonne. While the UNCITRAL draft was clearly not prepared with this problem in mind, it is one that can, and does occur. There is the possibility that hazardous wastes may be shipped to a transfer site and simply not picked-up. While the provisions of the UNEP draft do provide certain rules in such cases, particularly as regards the obligations of exporters/exporting countries to re-import the wastes, it is important that the UNCITRAL draft dovetail with those provisions by not limiting the duties of "operators" to deal with hazardous wastes properly.

For example, *article 9* of the UNCITRAL draft "Special rules on dangerous goods" provides, *inter alia,* that: "if, at the time the goods are handed over to him, the operator does not otherwise know of their dangerous character, he is entitled:

(a) To take all precautions the circumstances may require, including ... *destroying the goods* ..." (emphasis added).

In the case of hazardous wastes, this response to the new situation may not be a reasonable one. As noted, the environmentally sound disposal of hazardous wastes is neither simple nor inexpensive.

2. *Liability* in the UNCITRAL draft understandably deals with liability to the owner for loss of value of the goods. In the case of hazardous wastes, this value is most often negative. The UNCITRAL draft does not make any provision for liability to third parties for injury to persons, property or the environment resulting from the escape into the environment of hazardous wastes. While there is no necessary reason that the UNCITRAL draft should make such a provision, it should be drafted so as to ensure that such liability provisions imposed by international or national rules will not be limited by the UNCITRAL draft.

At present, Article XV "Consultations on liability" of the UNEP draft provides only that the parties shall "co-operate with a view to adopting appropriate rules and procedures ... in the field of liability and compensation". While no contradiction now exists between the UNEP provisions on liability and the UNCITRAL draft, this is an area in which the UNCITRAL draft must be clear.

We assume that any provision relating to either of the above points under the UNEP draft or any subsequent protocol to it would be covered by article 15 "International transport conventions" of the UNCITRAL draft. However, as the UNEP draft is not technically a "transport convention", provision should be specifically made for the UNEP draft under that article in order to assure that the controls contemplated by the UNEP draft are not diluted.

Non-governmental international organizations

COUNCIL OF EUROPEAN AND JAPANESE NATIONAL SHIPOWNERS' ASSOCIATIONS (CENSA)

[Original: English]

The general view of CENSA is that a Convention on terminal operator's liability is unnecessary because:

i. The subject is a matter of commercial contract between the parties concerned and such commercial agreements are an important factor in the competitiveness of the terminals and in determining the relative effectiveness of ports and terminals and in promoting efficiency.

ii. The Hague and Hague/Visby rules do not require standard terms and conditions for terminal operators' liabilities.

Nevertheless, CENSA would not oppose the concept of *guideline* Model Rules provided they did not discourage competition between terminals.

INTERNATIONAL CHAMBER OF SHIPPING (ICS)

[Original: English]

1. The International Chamber of Shipping (ICS) is grateful for the opportunity of commenting on the draft Convention on the Liability of Operators of Transport Terminals in International Trade completed by the UNCITRAL Working Group on International Contract Practices at its eleventh session.

2. At first sight the shipping industry might appear to benefit from this Convention, since the principle of uniformity is generally to be supported. However, the considered view of ICS is that in the case of terminal operators' liability a convention is neither needed nor favoured, for the following reasons:

a. Agreement on the liability of terminal operators is a matter of commercial contract, and an important ingredient in competitiveness, in determining the relative effectiveness of ports and terminals and in promoting efficiency.

b. The Hague and Hague/Visby Rules do not require standard terms and conditions for terminal operators' liabilities.

3. Notwithstanding the above, ICS would not be averse to the concept of Model Rules, as long as they did not discourage the ability of terminals to compete. Such rules could be useful in promoting harmonization and ICS would hope that UNCITRAL would give further favourable consideration to this concept at its twenty-second session.

4. ICS reserves the right to revert to this matter at a later stage if necessary.

INTERNATIONAL FEDERATION OF FREIGHT FORWARDERS ASSOCIATIONS (FIATA)

[Original: English]

The relevant bodies of FIATA have studied the text and find it all in all acceptable. However, since freight forwarding requires—in the interest of our customers, the shippers—a great deal of flexibility, we want to point out that FIATA would favour that such a convention be applicable on a voluntary basis between the commercial parties concerned rather than mandatorily.

INTERNATIONAL RAIL TRANSPORT COMMITTEE

[The International Rail Transport Committee (Comité international des transports ferroviaires, CIT) informed the secretariat that the comments of the International Union of Railways (set forth below) should also be considered as comments of the International Rail Transport Committee.]

INTERNATIONAL UNION OF RAILWAYS

[Original: French]

1. The Convention may affect the railways from two standpoints. Firstly, as transport enterprises the railways may be customers of a terminal operator; secondly, they may also become operators by virtue of article 1 if they take in charge goods during international carriage, without themselves acting as carriers or multimodal transport operators. Currently, cases where railways merely provide storage or warehousing of goods are not very common in practice. This situation could change if the railways strongly develop their services.

2. For an operator who takes in charge goods by virtue of article 1, it is a question of knowing how he will determine whether the goods are involved in international or national carriage. Application of the Convention or of national law is thus liable to be uncertain. The Convention should thus define the *objective* criteria for its application clearly.

3. Our understanding is that the notion of "multimodal transport", as defined in article 1*(a)*, is identical to that in article 1 of the 1980 United Nations Convention on International Multimodal Transport of Goods.

4. The definition embodied in article 1*(c)* gives rise to ambiguity regarding the rules governing segmented carriage. There is doubt about whether or not the place of departure and the place of destination correspond to the beginning and end of the journey indicated on each individual carriage document or to the beginning and end of the whole chain of carriage operations. We therefore recommend that the provision in question be supplemented to make it clearer.

5. Our understanding is that the notion of "carrier" in the second sentence of article 1*(a)* covers both the carrier who effects the carriage himself and the principal carrier who uses one or more subcontractors to carry out all or part of the operation.

6. We do not see why the liability under article 6 should differ depending on whether carriage is by land, by sea or by inland waterway. In our view, only certain specific categories of goods could justify different limits of liability and not the mode of carriage.

The limits of liability in the Convention concerning International Transport by Rail (COTIF) are far higher than those indicated in the draft.

7. In article 9 we suggest that the following passage:

"without being marked, labelled, packaged or documented in accordance with any applicable law or regulation relating to dangerous goods . . . "

be replaced by:

"without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods that is applicable in the country in which the terminal is located".

8. We have noted the comments about the new wording of the final sentence of article 10, paragraph (4). This provision lays down that the right of sale of goods must be exercised in accordance with the law of the State where the operator has his place of business. The reference to place of business does not specify whether it concerns the legal head office of the enterprise or the place in which the enterpreneur carries out his activity with regard to the goods (terminal). We are concerned that a rule based on the criterion of the legal head office may lead to abuse, since entrepreneurs may be encouraged to select for the head office of their place of business a country whose legislation governing the right of sale of goods is most favourable to them. The right of the sale should thus be based in principle on the law of the State where the entrepreneur has rendered the transport-related services in pursuance of article 1*(d)*.

[A/CN.9/319/Add.1]

This addendum to document A/CN.9/319 contains a compilation of the comments received between 18 January 1989 and 17 March 1989.

Compilation of comments

States

FEDERAL REPUBLIC OF GERMANY

[Original: English]

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Vienna [. . .] wishes to communicate that the Federal authorities have no basic objections as to the contents of the draft Convention.

Attached, however, are observations by the Government of the Federal Republic of Germany which should find their entry into the draft.

I.

The Federal Government forwarded the draft Convention on Liability of Operators of Transport Terminals in International Trade to the competent Federal and State authorities and to the economic organizations concerned.

Views differ widely on the question whether it is advisable to unify the law governing the liability of transport terminal operators—as provided by the draft Convention.

Those who think that there is no need for such a Convention point out, *inter alia*, that cases of an international transport, which entail transport-related services in the sense of the draft Convention, tended to be exceptional. In the majority of cases these services were caused by the necessities of transport and traffic conditions and were therefore—as a mere transit operation—already covered by other rules of international transport law. Consequently, there was hardly a gap that had to be filled. Moreover, the expediency of a single set of mandatory liability provisions for transport terminal operators is called in question on the grounds that the operators of transport terminals supply a great variety of services that could hardly be covered by one set of rules only.

However, cargo owners strongly support the draft Convention, which they consider a consequential supplement to the international conventions relating to liability in road transport as well as in carriage by rail, by sea and by air.

The views expressed on the probable economic effects of the proposed Convention are controversial as well.

It is argued that an increase of indemnity insurance contributions payable by transport terminal operators would not automatically result in an equal reduction of transport insurance costs. Since transport-related services in the sense of the draft Convention were only a small segment of the whole transport operation there could be no substantial decrease in insurance premiums for carriage. Therefore it was fair to say that the carriage charges for the whole transport operation might increase rather than decrease.

However, those supporting the draft Convention insist that uniform rules that limit contracting out by transport terminal operators would enlarge their liability to recourse so that damages paid by carriers, forwarders or insurers could be more easily recoverable. Accordingly, transport insurance premiums and carriage charges would decrease.

It appears from the conflicting statements that the question whether, and how, to unify the law which governs the liability of transport terminal operators is closely interrelated with the further development of international transport law in general. In this respect the Government of the Federal Republic of Germany considers it to be reasonable that the present draft Convention conforms as far as possible with the various conventions on international carriage. However, some of these conventions have not yet been implemented by many countries. Thus, it is once more suggested that the present draft should—for the time being—merely serve as a model law. Moreover, the factual situation of transport terminals is still subject to substantial changes which require a flexible set of rules instead of a binding international instrument. Therefore, the provisions of the draft should be put to the test in the form of a model law first, i.e. before they are adopted as an international convention.

II.

As to the specific articles of the draft Convention the Federal Government submits the following observations:

1. *Article 1*

a) According to the proposed definition of an international terminal operator, the draft Convention also covers activities, which are performed in German ports not always by terminal operators as such, but also by independent entrepreneurs as, e.g., self-employed stowers. However, given that the actual handling of cargo is subject to quick changes, the Federal Government does not recommend limiting the scope of application of the Convention accordingly, but considers the delimitation contained

in letter *(a)*, sentence 2, as to carriers and multimodal transport operators to be sufficient.

b) In the opinion of the Federal Government, however, a clarifying provision with regard to segmented transport is advisable. The Federal Government draws attention to the fact that so far this specific case has not been regulated explicitly by the Convention. In view of the present definition of international carriage in letter *(c)*, the Federal Government presumes that in the case of segmented transport the decisive place of departure and of destination will be that of each segment. Thus, segments within domestic territory are not governed by the Convention. However, for these cases as well, it is up to every member State to declare the Convention applicable.

c) Due to its wide scope of application, the draft Convention also presently covers the direct handling of cargo, i.e. without intermediate safekeeping. It appears advisable to add a corresponding clarification.

2. *Article 4*

a) In accordance with the draft Convention's objective of unifying the system of liability for international transport, a regulation should be added to article 4, following the example of article 16, para. (1), of the Hamburg Rules and article 9, para. (1), of the United Nations Convention on International Multimodal Transport of Goods. Accordingly, the entrepreneur should make a reservation if he knows or has sufficient reasons to suspect that the indications contained in the document produced by the customer are not correct, or if he does not have sufficient opportunity to check these indications. In any case, it seems advisable for there to be clarification to the effect that the entrepreneur has at least the *right* to make a corresponding reservation. There should also be a determination of the legal consequences where the entrepreneur—in spite of the previously described conditions—does not make a corresponding reservation.

b) In addition, consideration should be given to regulating the question as to who is going to bear the costs of the examination of the cargo undertaken by the entrepreneur in accordance with article 4, para. (1), letter *(b)*.

3. *Article 6*

a) The Federal Government would like to suggest, once again, that article 6 be approximated to the model contained in the Convention on the Carriage of Goods by Sea (article 4, para. (5), of the Convention of August 25, 1924 as amended by the Protocol of February 23, 1968; article 6, para. (1), letter *(a)*, of the Hamburg Rules). These articles provide an alternative limit of liability per package or per kilogram of gross weight of the goods lost or damaged, whichever is higher. If one proceeds on the assumption that the desired Convention should also facilitate the recourse of the carrier—who is liable for damages to the forwarder—against the terminal operator, the regulation provided by the draft Convention is difficult to understand. There, the carrier—even if he himself is liable for a *higher* amount per package or unit—can only recover damages from the terminal operator up to the amount per kilogram of gross weight of the goods lost or damaged.

b) Furthermore, the Federal Government suggests setting up a limit of liability in accordance with the Convention on Limitation of Liability for Maritime Claims (1976) for all claims for damages resulting from a specific event. In the case of major damage, e.g. through explosion or fire, the liability per kilogram—as well as an alternative limit of liability per kilogram or package—could lead to an incalculable loss and thus to a barely insurable risk of damage. The limit of liability probably cannot be fixed uniformly for all facilities. One could consider, as a reference quantity, a certain amount per square metre of safekeeping area or the annual turnover.

4. *Article 8*

In article 8, para. (1), second alternative, the right of the international terminal operator to limit his liability should be inapplicable only if the servant acted within the scope of his employment (cf. article 25 of the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, as amended by the Hague Protocol, 1955). A corresponding clarification in the wording of the Convention appears advisable.

5. *Article 10*

a) Article 10, para. (1), should be formulated more precisely to the effect that the right of retention and the right to sell the goods over which the operator has exercised the right of retention is limited to claims that are *due*.

b) The restriction in article 10, para. (3), sentence 2, applicable to containers should be extended to all transport equipment listed in article 1, letter *(b)*. Special pallets or similar transport equipment can be of considerable value and need not belong to the owner of the cargo.

6. *Article 11*

It appears questionable whether a one-day notice will be sufficient even in cases of manifest damage. Frequently, the evaluation of the condition of the cargo and the decision to give notice involve several persons, whose coordination requires some time. Therefore, it is suggested that the time-limit be extended to a period of three working days.

III.

The foregoing observations should not be regarded as exhaustive. The Federal Government reserves the right to submit further proposals during the session of the United Nations Commission on International Trade Law.

MEXICO

[Original: Spanish]

The Mexican Government views with favour the efforts of the Working Group on International Contract Practices in connection with the preparation of a draft Convention on Liability of Operators of Transport Terminals in International Trade. It does so, in the first place, because such

a convention may be seen as supplementing the various instruments already developed by UNCITRAL and other international organizations regarding the international carriage of goods, and, in the second place, because there is a need for an international document to regulate the liability of transport terminal operators. Until now, the international instruments that apply to the carriage of goods have been limited to regulating only certain aspects of the carriage contract, and this despite the fact that it is during the intermediate stages of carriage and, above all, before and after it that goods are most frequently damaged or lost. It is to be hoped that the new Convention will have the effect of filling this legal gap in the area in question.

With regard to the text of the future Convention, it may be said that, in article 1, it would be useful to define the "person entitled to take delivery of the goods". This term is used in articles 3, 4 and 5. Particularly when one considers that article 4 also speaks of the "customer", it would be useful to make it clear who the customer is—the shipper, the carrier or the consignee. The person entitled to take delivery of the goods may be a carrier, another operator, the consignee or the holder of the bill of lading. Consideration might also be given to the definition of "customer".

Referring to article 2 of the draft, it is recommended that the Convention should define when the operator: *(a)* takes the goods in charge; *(b)* delivers the goods; and *(c)* makes the goods available to the person entitled to take delivery of them.

The circumstance that the precise moment at which these events occur is left undetermined may give rise to uncertainty in commercial practice. It would be useful to explore the possibility of inserting a rule similar to that of article 4 of the "Hamburg Rules", regarding the carrier's period of liability, which deals with the same problem in the context of the carriage of goods. It would also be advisable to take into account article 14 of the United Nations Convention on International Multimodal Transport of Goods.

Article 4, paragraph (1), provides for the operator's option—which becomes an obligation if the customer requests it—of issuing a document. What is not clear are the reasons why, when the person presenting the document is the "customer", the receipt must identify the goods and state the condition and quantity; on the other hand, if the document is produced by the operator, the document acknowledging the receipt of the goods must bear the date thereof and state their condition and quantity in so far as can be ascertained by reasonable means of checking.

Another point is that it is also not clear who determines what kind of document is to be issued—whether in accordance with subparagraph *(a)* or with subparagraph *(b)*.

With regard to paragraph (4), it is noted that article 14, paragraph (3), of the "Hamburg Rules" contains a similar definition of signature, but one that differs in some respects from that given in the draft Convention with which we are dealing; a similar definition can be found in article 5, paragraph (3), of the Multimodal Convention.

On the other hand, article 5, point *(k)*, of the United Nations Convention on International Bills of Exchange and International Promissory Notes contains yet another definition of signature, making it necessary to bring these concepts into alignment.

For all of these reasons, it is recommended: (1) to eliminate the uncertainty surrounding the concept of signature (there are three different definitions); and (2) to adopt the definition given in the United Nations Convention on International Bills of Exchange and International Promissory Notes, because of its advantages over the others.

In article 5, paragraph (1), the operator is released from responsibility if he proves that he took the measures that could reasonably be required to avoid the occurrence and its consequences. Consideration should be given to the possibility of including also reasonable measures to "reduce" the consequences. There are occasions when it is not possible to avoid the damage, but when its effects can well be reduced. Consideration might be given to the possibility of including a rule similar to that of article 77 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

In article 5, paragraphs (1) and (2), it is stated that the operator is liable for "loss" ["los perjuicios"]. In accordance with the concept of "loss" in Mexican law and, apparently, in various countries of the continental law system, damage ["daños"] represents "property loss" and loss ["perjuicios"] the "expected profit". The terminology of article 5, paragraphs (1) and (2), may lead to confusion and undesired results if a judge understands the terms that have been commented on in accordance with his national law. Two alternative solutions are recommended: (1) the use of a more descriptive formula for the phenomenon; and (2) the definition in article 1 of the term "loss" ["perjuicios"].

Article 5, paragraph (4), does not indicate who may declare the goods as lost. It should be made clear that the person who may declare their loss is the person entitled to take delivery of them. It is not logical that it should be the operator who can do this, since he could then take advantage of a situation when the goods exceed the value of the limit of liability. In any case, the right of prolonging the period should belong to the person with an interest in receiving the goods.

Article 6 establishes limits of liability that are low if one considers the limits that appear in all the international conventions—for example, article 6 of the "Hamburg Rules" and article 18 of the Multimodal Convention. To this must be added the fact that experience shows that loss and damage occur most frequently during the stages that will be covered by the Convention. For all of these reasons, it is desirable that the limits of responsibility should be raised at least to the limits stipulated in the other conventions previously mentioned.

On another point, it should be borne in mind that a protracted period of time may elapse from the moment of the occurrence of the events giving rise to the liability to the moment when compensation is actually paid. This being so, it is reasonable to stipulate, similarly to what has been done in other instruments (e.g., article 72 of the United Nations Convention on International Bills of Exchange and International Promissory Notes and article 78 of the 1980 Vienna Sales Convention), the obligation to pay interest and even to make compensation for losses due to possible fluctuations in exchange rates. Otherwise, even in the event the damaged party can bring a claim in respect of these considerations under a national law, the

party liable could argue that the limit of his liability also covers the matter of interest and losses due to exchange rates.

With respect to liability for delay in handing over the goods, which is set as part of the total of the charges payable to the operator, it seems that the limit is very low, considering that the operator risks only the payment of the charges due him.

The same article speaks of the charges payable to the operator, and in this connection it should be remembered that other additional amounts that the operator may charge do not count in forming the limit. It would be reasonable, therefore, to review this question.

Article 7, paragraph (1), provides for actions founded in contract, in tort or otherwise. The mention of the two categories of liability actions, founded in contract or in tort, would appear to exhaust the hypothetical cases. Unless there are other grounds outside this line of reasoning, it must be considered, under this comment, that the mention of "otherwise" should be deleted.

With regard to article 8, note has been taken of the arguments for and against the inclusion, in paragraph (1), of the words "other persons engaged by the operator". Taking into account that it is unlikely that these other persons will have sufficient assets, that they do not usually take out insurance, that they are frequently located in a distant country, and that it is the operator who engages them, it is preferable that they should be covered in paragraph (1) of this article.

Paragraphs (1) and (2) of article 8 employ the expression "recklessly and with knowledge", which, although it is true that it is used in the "Hamburg Rules", is open to objection. The following considerations are in order on this point. The word "temerariamente" ["recklessly"] has a connotation in Spanish that implies two elements: lack of prudence, and bravery or boldness. In the English text, the word "recklessly" is used. According to Longman's dictionary, "reckless (of a person or his behaviour—too hasty, not caring about danger)". As a consequence, the person affected, once the employee proves that he caused the damage while engaged in the normal performance of his functions, has the burden of proving that:

(a) The person who caused the damage acted *bravely* ["valientemente"], in an imprudent manner;

(b) *He knew* that the damage or delay would probably result.

If to this it is added that the operator can, in order to escape the hypothesis posed in paragraph (1), resort to the limiting phrase "person of whose services [he] makes use" (as it appears in the draft), as a practical matter the person affected will always have to bear the loss. As a consequence, it is recommended that the expression "recklessly and with knowledge or with a reasonable obligation to know . . . " ["con imprudencia y sabiendo o debiendo razonablemente saber . . . "] should be used.

In article 10, paragraph (3), the arguments adduced in document A/CN.9/298, para. 63, to justify that the sale of the goods should be governed by the law of the State where the operator has his place of business are valid. Nevertheless, this provision might dissuade some States from acceding to the Convention, for the reasons set forth in that paragraph. For example: The goods are located in State A, whose law prohibits the parties from selling goods not their own without judicial authorization. On the other hand, if the operator's place of business is located in State B, whose law permits the sale of the goods by the operator, the consequence will be that if State A is a party to the Convention, it will have to tolerate the goods being sold in accordance with a special law. This would be the situation in the case of Mexico, which would have to consider the consequences of this provision before signing and before acceding to the Convention. The difficulty noted could be eliminated if the text were to read: " . . . to the extent permitted by the law of the State where the operator has his place of business *and provided that the sale does not violate the law where the goods are located*" (the underlined words express the proposed modification).

The consequence of article 11, paragraph (2), is that, if the consignee is subject to the "Hamburg Rules" and to this Convention, he will have two different rules for the same situation. The time-period stipulated in article 19, paragraph (2), of the "Hamburg Rules" is 15 days and does not have a limit of 45 days. It is proposed that these provisions be brought into harmony.

Finally, and with regard to article 14, it should be mentioned that in general it is true that reference to "good faith" can create problems of interpretation in the international juridical community. Further, such reference serves no purpose, since it is obvious that international trade must be based on the principle of good faith. It should be noted that different texts have been used in the UNCITRAL conventions, which is undesirable. For example: the "Hamburg Rules" (article 3), the Convention on the Limitation Period in the International Sale of Goods (article 7) and this draft use one text, while on the other hand the 1980 Vienna Sales Convention (article 7, paragraph (1)) and the United Nations Convention on International Bills of Exchange and International Promissory Notes (article 4) use other language.

MOROCCO

[Original: French]

Observations on the text of the draft Convention in the order of the articles

Article 1. Definitions

1. *Paragraph* (a): *Operator of a transport terminal*

1.1 The definition of "operator" as presented in the first sentence of this paragraph is in conformity neither with commercial practice and usages in this field nor with the different aspects characteristic of "the contract" implied in the activity of a transport terminal operator. Under the terms of this definition, the operator is the person in charge of the goods when he performs or procures the performance of such services as loading, unloading, stowage, . . . (see paragraph *(d)* of the same article). The transport-related services performed by the operator fall into two categories, each of which is viewed differently by the law: on the one hand, there is warehousing or storage, which implies the custody (taking in charge) of the goods, and, on the other, there are handling operations, which are performed with no transfer in custody. Thus, an operator

may carry out handling services while the goods are in the charge either of the shipper or of the carrier. Hence, the notion of custody (taking in charge) ought not to be adopted as the basic criterion for defining the activities of a transport terminal operator.

The definition of "operator" should be more general, like the definition of "carrier" contained in the Hamburg Rules (article 1, paragraph (1)).

It is necessary to take into account the "contracts" binding the operator to the shipper or the carrier for the performance of transport-related services.

Definitions of the terms "contract", "shipper" and "carrier" should be added in light of the legal relationship that exists between the operator and the parties to the contract for the carriage of goods in international transport.

1.2 The second sentence of paragraph *(a)* of article 1 introduces an exception, namely, that the person who performs or procures the performance of transport-related services shall not be considered an "operator" to the extent that he is responsible for the goods as a carrier or multimodal transport operator under applicable rules of law governing carriage.

This exception is unjustified for the reason that it is contrary to the applicable principles of law governing contracts. The fact is that when the same person accumulates several capacities, his rights, his obligations and his liability are those that flow from the contract in the process of execution at the time of the occurrence of the event capable of leading to a claim or an action for liability. What is involved here is a definition of "operator" that in fact covers the activity of handling/storage, independently of the other capacities or activities in which the operator may be engaged.

Furthermore, this exception introduces an ambiguity in the sense that it goes beyond the requirements of a "definition" and deals implicitly with the question of the legal relationships between the operator and the parties to the contract for carriage, specifically the carrier.

As it happens, in the maritime area, loading and unloading on board vessels are carried out under the responsibility of the carrier, but are performed by handling enterprises to which the definition of "transport terminal operator" adopted in the draft Convention is applicable.

2. *Paragraph* (d): *Transport-related services*

The transport-related services are not defined, but are enumerated in a non-exhaustive manner.

These services include storage and warehousing, which imply the reception and custody (taking in charge) of the goods, as well as loading, unloading, stowage, etc., which involve simple handling of the goods. In maritime commerce, goods may be handled at the time of loading or unloading without being stored or taken in charge (as in the case of direct shipments and departures).

Paragraph *(d)* is in contradiction with paragraph *(a)* of the same article and confirms the observations offered above with regard to paragraph *(a)*.

3. *Omission of a definition of the term "customer"*

The draft Convention mentions the term "customer" in article 4.

This is a very important notion within the framework of the operator's legal relationships.

This term must, therefore, be defined in such a way as to take account of the legal rules and practices governing the storage or "bailment" of goods that have been unloaded or are to be loaded aboard a vessel.

Notwithstanding the general rules applicable to "bailment contracts", which define the relationships between the bailor and the bailee, the draft Convention must not neglect this point, which is of great importance with respect to the storage or bailment of goods in a port zone.

Port terminal operators who take in charge goods that have been or are to be involved in carriage by sea necessarily have legal ties with the maritime shippers and carriers, having regard to the transfer of custody over the goods and to the legal rules applicable to the contract for carriage by sea.

The term "customer" can only designate the person who turns over the goods to the operator, namely, the carrier and his servants and agents at the time of their import, and the shipper and his servants and agents at the time of their export.

Article 3. Period of responsibility

This article provides that "The operator shall be responsible for the goods from the time he has taken them in charge until the time he has handed them over or made them available to the person entitled to take delivery of them".

The terms of this article are too vague in the sense that they do not precisely specify any of the essential notions that constitute the actual subject of the article.

The period of responsibility of a "person who takes in charge" cannot be validly defined unless the commencement of the custody and the modalities for taking the goods in charge, as well as the end of the custody and the modalities for releasing the goods from charge, are clearly specified.

Moreover, the operator takes the goods in charge in his capacity as bailee. Now, the bailee at a port can only receive goods that are to be placed on board a particular vessel or goods that have been taken from on board a particular vessel. Consequently, the operator is performing a "bailment" contract that places him in a relationship with the bailor, namely the carrier in the case of import and the shipper in the case of export. The bailment or taking in charge begins then from the time the carrier receives the goods from the shipper or the carrier, as the case may be.

With regard to the "person entitled to take delivery" of the goods, it should be made clear that the bailee at the port may turn over the goods only to the person designated by the "bailor" on the "delivery order" or the "shipping order".

There are implications here arising out of the legal rules applicable to carriage contracts that must be taken into account, considering that the bailee has no way of knowing who is the person "entitled" to take delivery of the goods until that person has presented himself, in possession of the aforementioned documents.

This article needs to be revised in detail and should be at least as precise as, for example, article 4 of the Hamburg Rules.

Article 4. Issuance of document

This article deals with the question of the "checking of the goods".

The rule is that the "bailor" must account for what he has actually turned over to the "bailee", in the same way that the bailee must account for what he has actually received from the bailor. This rule constitutes the basis of the double check that proves the transfer of custody to the operator.

The term "customer" used in paragraph (1) is too general. In view of the importance of the double check in the settlement of disputes, the persons entitled to issue the "document" must be specified (see observations regarding article 1 and the term "customer").

Furthermore, the bailee at the port cannot reasonably acknowledge the receipt of goods until they have been sorted out and can be counted and identified. For this reason it is necessary to add "the receipt of the goods placed in storage".

The question of the issuance of a document must be carefully considered in order to protect the interests of the operator, specifically for unloaded goods. In effect, in view of the increasingly current practice of the letter of guarantee, handed over by the shipper to the carrier, and its institutionalization in the Hamburg Rules, the interests of the maritime carrier are protected even when the goods he has received on departure have not been verified. Now, since it will scarcely be possible for the bailee at the port to require a "letter of guarantee" from the carrier, the document envisaged in subparagraph *(a)* of paragraph (1) of article 4 must be a document produced at the time the goods are turned over to the operator.

Article 5. Basis of liability

A certain parallelism will be noted between the provisions of this article and those regarding the carrier, specifically in the Hamburg Rules. Here too, however, the conditions governing the liability of the operator are not set out with sufficient precision.

Paragraph (1)

This paragraph speaks of "the period of the operator's responsibility for the goods as defined in article 3 . . . ".

The inadequate precision of the notion of "custody" ("taking in charge") is evident in this article as well.

In fact, it should be made clear that the operator is responsible if the event which caused the loss, damage or delay occurred "while the goods were in his charge, under the terms of article 3" (see observations on article 3).

Considering the observations offered regarding paragraphs *(a)* and *(d)* of article 1, it will be seen that the draft Convention introduces an element of ambiguity with respect to the legal definition of the various "transport-related services".

The operator is certainly responsible for the handling and storage of the goods; still, it is the storage or "bailment" of the goods that implies the notion of custody (taking in charge) along with the rights, obligations and liability that flow therefrom.

Paragraph (2)

The principle adopted as the basis of the operator's liability is the same as that adopted by the Hamburg Rules for the maritime carrier, namely presumed fault or negligence. The terms of paragraph (1) above are practically the same as those of article 5, paragraph (1), of the Hamburg Rules.

One will also note the similarity between the present paragraph (2) and article 5, paragraph (7), of the Hamburg Rules.

However, while in the case of the carrier the principle of fault or neglect is expressly asserted (article 5, paragraph (7), of the Hamburg Rules), for the operator this principle is formulated under the term "failure".

One is again confronted with the inadequate precision that characterizes the draft Convention regarding the transport terminal operator.

Fault is a legal notion defined in internal law, whereas "failure" is a notion that will be left to the judgement of jurisprudence and practice. "Failure" can be interpreted too broadly and may lead to abuses on the part of claimants, which would contribute to an added burden of liability on the part of the bailee, contrary to the principle of equity.

Paragraphs (3) and (4)

These paragraphs envisage a new situation for the operator, but one that is provided for in the carriage conventions, namely, a delay in the delivery of the goods and the possibility of treating the goods as lost after a certain period of delay.

With regard to the operator, the period of delay is subject to the request for the handing over of the goods by the person entitled to take delivery of them. It should be made clear that the request may be addressed to the operator only after the goods in carriage have been unloaded and the document provided for in article 4 of the draft Convention has been issued.

Omissions. Exceptions to the operator's liability

As a general rule, the bailee is released from liability for loss or damage due to a cause that may not be attributed to him, such as acts of God or *force majeure*, the inherent or hidden defects of the goods, the negligence of the bailor or, as the case may be, the shippers and carriers, improper indications regarding the weight and markings of the packages and the nature of the goods, etc.

As far as a port bailee is concerned, these exceptions from liability are all the more justified in that he receives goods which have been the object of carriage by sea and for which the carrier enjoys exceptions.

Since the exceptions are linked to the notion of "custody" both of the carrier and of the "operator", the principle of equity requires that there be a balance between the liability of the maritime carrier and the port bailee. These two participants in the carriage chain are, each for his own part, jointly responsible *vis-à-vis* the rightful claimants of the goods. It would, therefore, be improper to impose a heavier liability on the maritime assistant (bailee) than on the carrier. In terms of compensation claims, this would have the effect of increasing the number of actions

brought against the bailee, at a time when the current trend is towards the simplified settlement of disputes.

It should be noted that, having regard to the specific nature of the profession of port bailee, and his links with the maritime carrier, the new maritime codes governing handlers/bailees have extended to the bailee the carriers' conditions of liability with respect to exceptions, the limits of liability and the limitation of liability actions.

Article 6. Limits of liability

This article, which sets the limits of the operator's liability, distinguishes between the limits applicable for goods involved in carriage by sea and the limit for goods "involved in international carriage which does not, according to the contracts of carriage, include carriage of goods by sea or by inland waterways".

For the first time, the draft Convention speaks of contracts of carriage and distinguishes carriage by sea from other forms of carriage.

However, the limits of liability stipulated for the operator at the port are not at all in harmony with those of the carrier, as provided for in the Hamburg Rules.

In accordance with this latter Convention on the Carriage of Goods by Sea, the carrier's liability is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

The liability of the operator at the port is limited to 2.75 units of account per kilogram of gross weight.

Now, the limit per package or other shipping unit is important with respect to the containers, pallets or any similar article of transport used to consolidate goods.

It is necessary, therefore, that an operator receiving goods involved in carriage by sea should enjoy the same limits of liability as the carrier.

This article should adopt the provisions of article 6, paragraphs (1)*(a)*, (2) and (3), of the Hamburg Rules.

It should be noted that paragraphs (2), (3) and (4) of article 6 of the present draft adopt as their principles the provisions of article 6, paragraph (1)*(b)* and *(c)* and paragraph (4), of the Hamburg Rules.

Article 10. Rights of security in goods

This article deals with the operator's right of retention over the goods.

In accordance with this right, paragraph (3) of the article provides for the possibility for the operator to sell the goods over which he has exercised the right of retention to the extent permitted by the law of the State where the operator has his place of business.

However, an exception is provided for "containers which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of repairs of or improvements to the containers by the operator".

This exception is not justified in the case of the operator because of the fact that the containers constitute "goods". The operator handles and stores the containers as such, whether they are empty or full.

Further, the operator receives the goods that have been unloaded or are to be loaded, independently of the identification of their owner. This distinction between containers according to whether they belong to the shipper, the carrier or any other person lacks an explanation.

The basis of the operator's right of retention is to enable him to recover his costs and claims in respect of the goods which he has stored and which have been the object of his services.

Now, even if the containers have not been the object of repairs or improvements by the operator, it is none the less true that they are the object of "transport-related services" in the same way as any other goods.

It should be noted that article 1 of this draft states in paragraph *(b)*: "'Goods' includes a container, pallet or similar article of packaging or transport if the goods are consolidated or packaged therein and the article of packaging or transport was not supplied by the operator".

Finally, we call attention to the case of empty containers handled by the operator.

Paragraph (4) of article 10 lays down the modalities governing the sale of the goods.

It should be pointed out that in Morocco goods stored at a port are, if necessary, sold by the customs service in accordance with customs legislation, even if the sale takes place at the request and for the account of the operator.

Article 11. Notice of loss, damage or delay

Paragraph (2)

This paragraph provides for the case of loss or damage that is not apparent at the time when the goods are turned over by the operator to the person entitled to take delivery of them.

These provisions repeat those laid down for the carrier in article 19, paragraph (2), of the Hamburg Rules.

However, the operator's situation differs on this point from that of the carrier.

With specific reference to the carriage of goods by sea, the relationships between shipper and carrier are regulated in detail, as well as the obligations and guarantees arising out of the carriage documents, bill of lading or other document.

As far as the operator is concerned, he can only answer for that which has been openly turned over to him, and he himself is not in a position to ascertain losses or damage that are not apparent, particularly in the case of goods received at the time of unloading, after numerous handling operations and transport by sea.

Furthermore, the delivery modalities in the case of the operator are not the same as those provided for the carrier.

The person entitled to take delivery of the goods is either the consignee or his agent. This person has the opportunity to establish loss or damage at the time the goods are turned over by the operator.

Moreover, the physical turning over of the goods to the person entitled to receive them discharges the operator of his obligation of custody. Because of this, he cannot be liable for damage or losses incurred by the goods following their departure from the port warehousing area.

For these reasons, paragraph (2) cannot be applied to the operator at the port, all the more since the periods contemplated—namely, seven days after the day when the goods reach their final consignee and 45 days after the day

when the goods are handed over to the person entitled to take delivery of them—are too long.

Paragraph (2) is a potential source of arbitrary behaviour and can only lead to abuses and a proliferation of actions against the operator.

It should be noted, as a secondary consideration, that the period specified for the carrier is 15 days from the day when the goods are handed over to the consignee (article 19, paragraph (2), of the Hamburg Rules).

Paragraph (4)

This paragraph discusses the "reasonable facilities" which "the operator and the person entitled to take delivery of the goods must give . . . to each other for inspecting and tallying the goods".

The same provision is stipulated for the "carrier and the consignee" in the Hamburg Rules (article 19, paragraph (4)).

The draft thus establishes a parallelism between the ties that exist, on the one hand, between the carrier and the consignee and, on the other, between the operator and the person entitled to take delivery of the goods.

This parallelism is without foundation, considering the legal relationships that flow, respectively, from a carriage contract and from a "bailment" contract.

The bailee has an obligation to the bailor, i.e., the person who turns over the goods to him.

Because of this fact, the inspection and tallying of the goods can only be carried out properly with the actual participation of the bailor and, in particular, the carrier, for the reason that losses or damage are generally detected when the goods arrive at the port at which they are unloaded.

It is thus essential to take into account the rules applicable in the area of carriage by sea and port warehousing. This paragraph must make it clear that "the operator, the carrier and the person entitled to take delivery of the goods must give all reasonable facilities . . . ".

Paragraph (5)

This paragraph contemplates the case of compensation for loss resulting from delay in delivery, whereby the claimant must give notice to the operator within 21 days after the day when the goods are handed over to the person entitled to take delivery of them.

It is necessary here to add the words: "or made available to him".

The provisions of the draft Convention that deal with "delays in handing over the goods" in article 5, paragraphs (3) and (4), specify this point.

In effect, the operator may make the goods available to the rightful claimant within the period specified without the person entitled to take delivery of them coming forward to do so.

The period of 21 days provided for in this paragraph must begin on the day on which the goods are turned over or made available to the person entitled to take delivery of them.

Article 12. Limitation of actions

This article deals with the question of claims for liability against the operator.

The conditions provided in the draft Convention are clearly to the operator's disadvantage:

— They open the way to principal actions, which may be instituted by the "person entitled to make a claim", and to recourse actions, which may be instituted by the carrier or any other persons;

— It provides for periods longer than those specified for the maritime carrier in the Hamburg Rules, a fact that affords the possibility of bringing a larger number of actions against the operator.

The problem of judicial recourse is closely linked to the question of the relationship between the port bailee and the parties to the contract for carriage by sea. This is one of the issues that has raised the most controversy.

What is involved, in fact, is the need to preserve the interests of the parties involved, namely, the person with a claim to the goods, the carrier and the operator.

It is thus essential to take account of the following factors:

— The problem of the joint causality of the damage attributable to the carrier and the bailee;

— The ties existing between the carrier/"bailor" and the operator/"bailee";

— The problem of access to evidence making it possible to determine, in the same proceedings, the respective liabilities of the carrier and the operator, having regard to the transfer of custody of the goods;

— The need for the consignee or his insurer to exercise his right of recourse against the carrier, under the carriage contract.

Recourse exercised against the operator alone can only partially protect the interests of the consignee, since the operator can only be liable for such loss or damage as is attributable to him.

— The court costs and cost of settling disputes, which it is not in the interest of either party to increase by a proliferation of actions and by long and costly proceedings.

In the light of these factors, the most satisfactory solution consists in:

— Applying the same period of limitation in the case of the maritime carrier and the bailee at the port;

— Allowing for a combined action against the maritime carrier and the bailee at the port on behalf of the person entitled to claim the goods.

Article 12 must be revised along these lines and cannot, in its current wording, be applied to the operator at the port.

We might also note, as a secondary consideration, the divergencies in the periods contemplated for the carrier in the Hamburg Rules and those specified for the operator in the present draft Convention:

— The limitation period for the carrier begins on the day when he has "delivered" the goods either to the consignee or to the operator, if the consignee does

not appear. The time spent by the goods in storage at the port is not included in the period.

— For the operator, the period begins on the day the goods are turned over to the person entitled to receive them. If that person withdraws his goods after several months of storage, the limitation period is extended by that additional amount.

The limitation period should thus begin for the operator on the day when he has received the goods, which coincides with the "delivery" by the carrier.

— The period provided for recourse action against the carrier even after the expiration of the limitation period subordinates this action to the period determined by the law of the State where proceedings are instituted.

Moreover, this period may not be less than 90 days commencing from the day when the person instituting the recourse action has been served with process in the action against himself, i.e., at the beginning of the proceedings.

— In the case of the operator, there is no reference to the time determined by the law of the State where proceedings are instituted.

The period provided for the recourse action is set at 90 days after the person instituting the recourse action has been held liable, i.e., at the end of the action against that person.

The period of 90 days provided for the operator is thus extended by the duration of the principal action brought against the person who may institute a recourse action against the operator.

Logic requires that even if a recourse action on the part of the operator is admitted, it should be instituted within a reasonable period from the day when the person instituting the recourse action has himself been served with process.

Non-governmental international organization

INTERNATIONAL ROAD TRANSPORT UNION (IRU)

[Original: French]

[The covering letter to the comments by IRU states that, on the whole, the draft Convention corresponds to the views of the International Road Transport Union.]

Article 1(b)

The International Road Transport Union (IRU) approves the definition of "goods" adopted by the Working Group (A/CN.9/298, para. 18).

Article 2(b)

Add: "When, according to the rules of private international law, the transport-related services *performed by an operator* are governed by the law of a contracting State."

Article 6

Article 6 should be revised in the sense that it is not satisfactory that the operator should be held to limits of liability which are different when the same goods are involved, but carried by different modes of transport.

If, however, article 6 is not revised, it would be preferable to alter the wording of the second sentence of article 6(1):

"However, if the goods are involved in international carriage *by rail or by road,* the liability of . . . ".

It should also be borne in mind that, by virtue of the flexibility of road transport, it may happen that during the journey the choice of the itinerary is changed by the adoption, when this is possible over part of the journey, of alternative sea or land routes without this being explicitly mentioned in the transport contract or in the consignment note.

Article 8

Should there not be a clause included exempting the operator from liability, for example, when the loss, damage or delay results entirely from the fact that a third party deliberately acted or omitted to act with the intent to cause loss, damage or delay? The same applies to causes relating to, *inter alia,* an act of war, hostilities, civil war, insurrection or a natural disaster of an exceptional and irresistible nature.

Article 9(b)

The reimbursement for all costs to the operator of taking the measures in subparagraph *(a)* is not enough. It would be desirable to add *"and all expenses, loss or damage arising out of the handing over of the goods"* by analogy with article 22 of the Convention on the Contract for the International Carriage of Goods by Road (CMR Convention).

[A/CN.9/319/Add.2]

NORWAY

[Original: English]

General observations

The Norwegian Government recognizes the general need for uniform rules in connection with international carriage of goods. Today the safekeeping of the goods may come within the scope of conventions dealing with the liability of carriers. In other cases, no existing instrument is applicable. The draft Convention on Liability of Operators of Transport Terminals may fill a gap between existing instruments. It provides a suitable basis for further discussions and elaborations, and the Norwegian Government appreciates the work of the Working Group on International Contract Practices.

It is essential that a convention dealing with the liability of operators of transport terminals takes due account

of solutions in existing transport conventions. The Norwegian Government favours conformity within this area. From that point of view, we can support the idea of using existing conventions as models for an OTT convention.

The Norwegian Government would also like to give some brief comments to the different articles of the draft Convention. The comments are submitted without prejudice to our final position.

Comments on the different articles

Article 3

According to article 3, the operator shall be responsible until he has handed over the goods or, alternatively, "made them available". In our opinion, consideration should be given to extending the period of responsibility in cases where the goods are not handed over. The words "made available" should in any case be clarified.

Article 6

The different limitation amounts for carriage by sea and inland waterways on the one hand, and other kinds of carriage on the other, might cause problems. It may prove to be difficult to calculate the limitation amounts for delay according to paragraph (2). In principle, the limitation amounts should be high in order to provide adequate compensation. However, it is important that the amounts as far as possible are in conformity with limitation amounts in other transport related legal instruments.

Article 9

This article protects the operator from damage caused by dangerous goods. Paragraph (2) gives the operator the right to reimbursement for all costs of taking preventive measures as mentioned in paragraph (1). The scope of paragraph (2) might be too limited and should be considered further.

Article 11

The article differs from similar provisions in other transport conventions. The Norwegian Government would prefer a greater extent of conformity.

[A/CN.9/319/Add.3]

This addendum to document A/CN.9/319 contains a compilation of the comments received between 22 March 1989 and 28 April 1989.

Compilation of comments

States

FINLAND

[Original: English]

The Government of Finland welcomes the opportunity to express considerations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade. The following points are, nevertheless, submitted without prejudice to any final position the Government will take on this issue. The possible ratification of this specific Convention would *i.a.* depend on whether the 1978 United Nations Convention on the Carriage of Goods by Sea and the United Nations Convention on International Multimodal Transport of Goods will come into force.

The Government supports the idea that the international liability régime in question is laid down in the form of a convention. This solution does not prevent States which are not prepared to accept this form of implementation from using the Convention as a model law. The solution proposed in article F of the draft final clauses, according to which the Convention enters into force after five ratifications, is also acceptable to the Finnish Government.

Comments on specific articles

Article 1

Paragraph (d). The Government understands that the wide definition of "transport-related services" in this paragraph reflects the purpose to cover with this Convention all possible gaps between the scope of application of different international transport conventions. Nevertheless, due to this broad definition, the scope of application of the Convention seems to cover even such operations to which the application of various articles of the Convention (e.g. articles 4 and 10) does not seem to be well-founded. It can also be questioned whether the policy underlying the Convention justifies that activities which are usually performed either under the supervision of the master of the vessel or in connection to loading and unloading also should be included in the scope of the Convention. The Finnish Government, therefore, proposes that the words "stowage, trimming, dunnaging and lashing" are deleted from the subparagraph.

Article 3

According to this article, the period of responsibility of the operator expires when he has handed the goods over or made them available to the person entitled to take delivery of them. The Finnish Government proposes that the words "made them available" are replaced with words "placed them at the disposal of". A delay in collecting the goods within the agreed period of time should not lead to complete expiration of the operator's responsibilities unless he has notified the recipient and urged him to collect the goods. The Finnish Government emphasizes that the provisions of this article on the period of responsibility should not preclude the application of the general principles of liability of the law of torts and damages to the operator.

Article 6

Paragraph (1). The limitations of liability in the article should correspond to other limitation amounts in the field of transport legislation in order to make recourse actions possible on a back-to-back basis between operators and carriers. It might therefore be preferable to include in the

article an alternative based on the number of packages and shipping units. The application of per package limitations to containers and similar cases should in this Convention be resolved similarly as in the conventions on the carriage of goods by sea.

It might be preferable to clarify the Convention in cases where the goods have been lost but found afterwards. The Convention should not be construed so that the operator *eo ipso* obtains ownership to the presumptively lost goods merely by paying compensation for total loss of goods according to article 6 after his period of responsibility has expired. If the goods are found after compensation has been paid, the question of ownership to the goods should be resolved by the applicable law. The Convention should not prevent the consignee from claiming the goods and recovering compensation for delay if he agrees to redress the operator the difference between the compensation for total loss of goods and the compensation for delay.

Article 8

Paragraph (1). In principle the Finnish Government agrees with the solution adopted in article 8, paragraph (1), according to which the operator loses his right to limit the liability in a case in which loss, damage or delay intentionally or by gross negligence was caused by a servant or an agent of the operator. Nevertheless, the operator should be entitled to benefit from the limitation of liability in cases in which his servant or agent has caused damage and there is no causal link between the damages and the performance of the professional activities of the servant. An example of this is the case in which an employee of the operator burgles the premises of the operator and steals the goods outside of working hours.

Accordingly, the loss of right to limitation of liability for damage caused by a servant of the operator should be limited to cases in which the servant or agent has acted in his capacity as such. These limits should be left to be defined by the relevant national legislation on the contracts of employment and agency.

Article 10

The operator's right of security in goods in article 10, paragraph (1), is tied to the costs and claims relating to the transport-related services performed by him in respect of the goods during the period of his responsibility for them. He is also entitled to sell the goods in order to obtain the amount necessary to satisfy his claim (paragraph (3)).

It is proposed that the right of retention and the right to sell the goods should cover costs and claims relating to the transport-related services performed by the operator *after* his period of responsibility has commenced. It is possible that the costs and claims have been incurred partly or entirely after the operator's period of responsibility has expired according to article 3 of the Convention, e.g., if the goods have not been collected from the operator within the agreed period of time and the storage fees for the agreed period of time have been paid in advance. There is no reason to deny the right of retention for this kind of costs and claims.

The operator should also have the possibility to extend his right to sell the goods to unclaimed goods even if he, e.g., due to a payment in advance, has no uncovered costs and claims. Therefore a new subparagraph should be added to the article according to which unclaimed goods may be sold if (i) the operator has notified the person entitled to take delivery of the goods of the availability of them and his intention to exercise the right to sell the goods and (ii) a period which is stated in the notice and which is not shorter than 30 days has expired and the goods have not been claimed.

An addition to the words "pallets or similar articles of packaging or transport if the goods are consolidated or packaged therein" should be made in paragraph (3) after the word "containers" in order to obtain uniformity with article 1, subparagraph *(b)*, in this respect.

Article 17

Paragraph (4). The Finnish Government proposes the following wording to paragraph (4): "Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting, on the condition that at least one half of the members shall be present at the time of voting."

GERMAN DEMOCRACTIC REPUBLIC

[Original: English]

The Government of the German Democratic Republic is of the opinion that the draft Convention as contained in document A/CN.9/298 provides a suitable basis for further discussion. Nevertheless, we believe that some of the draft articles could be further improved. In the following you will find a number of proposed amendments.

Article 2

We suggest to reformulate article 2:

"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 who has at least one place of business in a Contracting State, or

(b) when the transport-related services are performed in a Contracting State, or

(c) when, according to the rules of private international law, the transport-related services are governed by the law of a Contracting State."

The paragraphs (2) and (3) should be deleted.

Article 3

It is suggested to replace the words "made them available to" by "placed them at the disposal of".

Article 4, para. (1)

It is suggested to replace the word "produced" by "presented".

Article 5, para. (4)

The period of "30 consecutive days . . . " should be extended to a period of "60 consecutive days . . . ".

Article 8, para. (1)

It is suggested to include the words " . . . or another person of whose services the operator makes use for the performance of the transport-related services" after the word "agents":

(1) The operator is not entitled to the benefit of the limit of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants, agents or another person of whose services the operator makes use for the performance of the transport-related services 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.

Article 9(b)

... "all costs to the operator" should be replaced by "all his costs".

Article 10, paras. (1), (3), (4)

In all these paragraphs the applicable law should be the law of the place where the goods are located.

Article 11, para. (2)

It is suggested to make a full stop after the words " . . . when the goods reached their final destination." If the last part of this paragraph is maintained, the period of 45 days should be extended.

Article 12, para. (5)

In order to avoid an unnecessary increase of legal actions, a carrier or another person should be able to institute a recourse action against an operator also within a 90-day period after a claim has been settled if no action had been brought against him.

Article 14

An additional paragraph is proposed:

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

Article 17, para. (1)

An additional subparagraph is suggested:

"*(c)* If the present Convention enters 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 entered into force."

Article 17, para. (3)

This paragraph could be deleted or—if maintained—get another wording:

"In determining whether the limits should be amended, and if so, by what amount, any criteria considered to be relevant shall be taken into account determined on an international basis, among them such as the following: . . . ".

Article 17, para. (6)

Both periods of "18 months" should be changed to periods of "12 months".

NETHERLANDS

[Original: English]

General comments

The Netherlands Government has taken note of the draft Convention with much interest and appreciation. The principal reason for unifying the rules relating to the liability of terminal operators is to fill gaps in the liability régimes left by the international transport conventions before, during and after carriage as well as between different stages of the transport. On the one hand the draft Convention gives due protection to persons with interests in cargo and on the other hand it facilitates recourse by carriers, multimodal transport operators, freight forwarders and similar entities against terminal operators, when they are held liable for loss of or damage to the goods caused by the terminal operator during the period that they are responsible for the goods.

The draft Convention is applicable to terminal operators handling goods involved in international carriage by sea, air, rail, road and inland waterway. There exists a wide variety of types of operators dealing with different types of goods and performing different types of services. Furthermore the operators represent a wide range of technical and operational sophistication. In view of these different factual circumstances in which terminal operators perform their services, the Netherlands Government is not convinced that the different branches of terminal operators should necessarily be governed by the same liability régime. The draft Convention should leave the possibility to the national legislator to apply the draft Convention according to special circumstances. In the following a proposal will be made in this respect.

The following comments made on certain articles do not constitute a definitive and final expression of views of the Netherlands Government. The Government reserves the right to make further proposals for changes in these and other articles at the twenty-second session of the United Nations Commission on International Trade Law. Thus, the absence of comment now does not imply that the Netherlands Government will necessarily accept any particular article.

Articles 1 and 3. Definitions and period of responsibility

The identification of precise points of time when the responsibility of a carrier under an international transport convention begins and ends is extremely complex and subject to different interpretations. According to the

Warsaw Convention, the Hamburg Rules and the Multimodal Convention the carrier is responsible for the goods from the time he takes them in charge to the time of their delivery. According to article 3 of the draft Convention the terminal operator is responsible for the goods from the time he has taken them in charge. In view of the possibility that both the carrier and the terminal operator are in charge at the same time, the Netherlands Governments assumes that the text of the articles 1, subparagraph *(a)*, and 3 permits the draft Convention to apply when the goods are still in charge of the carrier and during this period the terminal operator performs transport-related services with respect to the goods. If the goods suffer loss or damage during this period, the carrier would be liable to the cargo interest and would seek recourse from the terminal operator.

It should be made clear that the term "transport-related services" means the physical handling of the goods and not, for example, financial services with respect to the goods. The Netherlands Government therefore would like to replace the definition of transport-related services by the following defintion:

"*(a)* 'Transport-related services' means services regarding the physical handling of the goods such as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;".

Article 4. Issuance of document

It should be made clear which person is meant by the customer. The Netherlands Government would prefer to replace the word "customer" by: the other party to the contract.

Article 8. Loss of right to limit liability

The inclusion of servants or agents in article 8 encounters serious objections.

The operator should lose the benefit of the limits of liability only in the case of his own intentional or reckless conduct and not in the case of such conduct by his servants or agents. The loss of right to limit his liability must be considered an important factor in the distribution of the risks between cargo interest, carriers and terminal operators. According to article 8, para. 1, Hamburg Rules, the carrier is not entitled to the benefit of the limitation of liability only in the case of his own intentional or reckless conduct. For insurance purposes it is important for the terminal operator to know that he can rely on the limits expressed in the uniform rules and that these limits will only be disregarded in exceptional cases.

Article 9. Dangerous goods

In case dangerous goods are handed over to the terminal operator and he has not been informed of the dangerous nature of the goods, the terminal operator is entitled to take the necessary precautions according to article 9, subparagraph *(a)*. He is entitled to receive reimbursement for all his costs of taking these measures. It is not clear, however, who is to reimburse him for all his costs. The Netherlands Government proposes to replace subparagraph *(b)* by the following:

(b) to receive reimbursement for all his costs of taking the measures referred to in subparagraph *(a)* from the person who failed to meet his obligations to inform him of the dangerous nature of the goods under any international convention or national legislation.

Article 11. Notice of loss or damage

The Netherlands Government prefers that the uniform rules require the notice to be given in writing to the terminal operator.

The Netherlands Government would like to make the following proposal as stated under the General comments:

New article

"Any State may declare at the time of signature, ratification, acceptance, approval or accession that it shall restrict the application of the rules of this Convention to certain types of terminal operators."

TRINIDAD AND TOBAGO

[Original: English]

The Government of Trinidad and Tobago welcomes the elaboration of the Convention on the Liability of Operators of Transport Terminals in International Trade. It is the view of the Government that the implementation of the Convention, when adopted, would impact positively on international trade by giving the benefit of a unified direction to the very volatile issue of operator's liability.

Comments on specific articles are submitted for consideration.

Article 3. Period of responsibility

The period of liability remains vague and should be so worded as to result in the shortest time available after discharge of goods, i.e. one or two clear days after discharge.

Article 4. Issuance of document

There needs to be included another article which confers a responsibility on the shipper or his agent to submit proper documents to the operator within a reasonable time frame. This article does not cover this aspect at all.

Article 5. Basis of liability

Paragraph (2). This article may be difficult to administer. Though the total effect of combined causes may be easily identifiable, allocation of effect by cause is not likely to follow mathematical rules of addition and subtraction. This may lead to a proliferation of practices among member States. Perhaps more specific guidelines could be generated for this article.

Article 10. Right of security in goods

Rights of security in goods should be so worded as to result in the minimum of cargo being retained. In other words, a guarantee for the sum claimed is preferable to the warehousing and retention of cargo in contention matters.

Article 11. Notice of loss, damage or delay

Time frame may be somewhat short for large consignments.

Article 16. Unit of account

This conversion may confer a definite disadvantage to developing countries or other nations, the currencies of which are "weak", comparatively speaking.

[A/CN.9/319/Add.4]

INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)

The following communication has been received by the Secretary of the United Nations Commission on International Trade Law from the Secretary General of the International Association of Ports and Harbors:

[Original: English]

1: I, as in the capacity of the Secretary General of the International Association of Ports and Harbors, respectfully submit the "Resolution Concerning a Proposed Convention to Limit Liability of Terminal Operators", which was adopted at the Plenary Session of the 16th Biennial Conference of this Association convened in Miami on April 28, 1989.

2: The text of the Resolution (numbered as Resolution No. 2 of the 16th Biennial Conference of IAPH) reads:

RESOLUTION CONCERNING A PROPOSED CONVENTION TO LIMIT LIABILITY OF TERMINAL OPERATORS

WHEREAS the Committee on Legal Protection of Port Interests has studied a Proposed Convention on Liability of Operators of Transport Terminals which will be placed before the United Nations Commission on International Trade Law at its 1989 meeting; and

WHEREAS, the Board of Directors has approved the Committee's Report on that Proposed Convention;

NOW, THEREFORE, BE IT RESOLVED by the INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS, at its Second Plenary Meeting held during the Sixteenth Conference on the 28th day of April, 1989, that IAPH hereby expresses its support of the principle of clarifying and limiting the liability of operators of transport terminals for loss of or damage to goods subject to the reservation that it wishes UNCITRAL to consider carefully the proposed concept of the operator being made responsible for intentional damage or delay to goods by the servants or agents of the operator and subject to the further reservation that the monetary limits should be set at reasonable and insurable levels.

[A/CN.9/319/Add.5]

IRELAND

[Original: English]

While the continuing increase in international trade is likely to generate increased needs for transport terminals and related operations especially in mainland Europe with the completion of the Single Market of the European Communities, Ireland sees no pressing need for an international instrument to regulate such terminals. Such an international instrument could, however, have benefits if widely implemented.

Ireland notes that earlier attempts by the Comité Maritime International to devise such an instrument were unsuccessful, due to lack of support internationally, and questions whether such support would be forthcoming now to warrant undertaking the detailed work required to finalize the text of a convention. (This obviously has a bearing on when the Convention, if adopted, should come into force internationally.)

Ireland also questions the proposed inclusion in article 17(1)*(b)* of the draft Convention of the "UN Convention on the Carriage of Goods by Sea, 1978 (Hamburg)" which has not yet been adopted by a sufficient number of States for it to come into effect internationally. Indeed, the major maritime States have not given any indication of an intention to adopt that Convention.

With regard to the scope of the proposed Convention, Ireland considers the present draft to be defective in that it does not address the vital issue of how perishable goods (notably foodstuffs) should be dealt with, and does not make any provision in relation to customs, or duties applicable to goods.

As Irish port authorities provide facilities for goods to remain in open or covered accommodation, without acceptance of responsibility and free of charge, it is Ireland's contention that a port authority does not "in the course of business, undertake to take in charge goods involved in international trade" and that, therefore, the terms of the draft Convention would not apply to Irish port authorities. Ireland seeks confirmation that this interpretation is also that of other delegations.

B. Limits of liability and units of account in international transport conventions: report of the Secretary-General (A/CN.9/320) [Original: English]

INTRODUCTION

1. During the consideration by the Commission of the draft Convention on the Liability of Operators of Transport Terminals in International Trade at the twenty-first session (1988), it was noted that the General Assembly might decide to convene a diplomatic conference to conclude the Convention. A suggestion was made that the diplomatic conference might present a good opportunity to consider a possible revision of the limits of liability and the provisions pertaining to the units of account in the United Nations Convention on the Carriage of Goods by