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**Draft convention on contracts for the international carriage  
of goods wholly or partly by sea**

**Compilation of comments by Governments and intergovernmental  
organizations\***

**Addendum**

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\* Submission of this note was delayed because of its late receipt.



## **II. Comments received from Governments and intergovernmental organizations**

### **A. States**

#### **17. Egypt**

[Original: Arabic]  
[10 June 2008]

##### **(a) Generally positive aspects of the draft**

1. The draft convention is intended to apply not only to multimodal transport operations comprising a maritime segment but also to unimodal transport carried out partially by sea. The draft convention also seeks to update maritime transport law by taking into account the need for electronic trade and the development of information science, while also safeguarding the technological development of transport by ship.
2. The draft convention is inspired by a common wish to upgrade multimodal transport and maintain the safety of maritime operations. It is designed to cover all aspects of contracts for carriage by sea in terms of both substance and performance, or more correctly speaking, non-performance, through questions of liability for loss of, damage to or delay in delivery of goods.
3. To that end, the draft convention seeks to emphasize the obligations of parties and the growth of interest in the performance of contracts for the carriage of goods by sea. It also seeks to strike a balance between the interests of shippers and carriers, in which respect it underscores the obligations of carriers without prejudice to the interests of shippers.
4. The draft convention emphasizes the obligation of the carrier to make and keep the ship in seaworthy condition throughout the entire voyage. It makes the carrier ipso facto liable for the loss of, damage to or delay in delivery of goods, with the possibility of relief from liability if it is proved that it was not at fault or in the event of an exemption from liability under article 18 of the draft, excluding nautical error or fire. As such, it is consistent with the specificity of maritime law and with safeguarding the interests of shippers.

##### **(b) Overlapping definitions**

5. Article 1, subparagraph 6 (a), of the draft convention states that: "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.
6. Paragraph 7 of the draft convention states that: "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An

inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

7. The concept of the performing party in subparagraph 6 (a) overlaps with that of the maritime performing party in paragraph 7 of the same article, insofar as the port carries out both roles within its boundaries by virtue of the laws and regulations governing its activity and not by virtue of acting on behalf of the carrier.

**(c) Proposals in regard to matters not addressed by the draft**

8. The draft does not address the question of the powers of the competent courts. If delegations fail to reach agreement on those powers or on arbitration, it may be preferable to refer to rules relating to those powers or to arbitration, in the manner of the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules).

9. The limits of the carrier's liability in the event of loss of or damage to goods are based on the value of the goods, to a maximum dependent on the weight of the goods or the number of packages, whichever is higher, with the exception of goods with a declared value. In this regard, it might be better to set a higher limit, in the manner of the Hamburg Rules of 1978.

**(d) Discrepancies requiring correction**

10. Article 1, paragraph 7, and subparagraph 15 (b):

Article 1, paragraph 7, states that: "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

View: As defined in paragraph 7, the maritime performing party is not empowered to issue a transport document on behalf of the carrier, since it is the carrier alone which issues the transport document, contrary to the provision of subparagraph 15 (b). A correction is therefore necessary.

**(e) Proposed deletion of certain articles or paragraphs**

11. Article 1, subparagraph (a), of the draft states that: "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

12. Article 1, subparagraph (b), of the draft states that:

"Performing party" does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee instead of by the carrier.

View: Delete subparagraph 6 (b) and retain only subparagraph 6 (a).

13. Article 36 has no justification insofar as it makes matters more complicated.
14. Article 47, subparagraph (b): The carrier should be given no opportunity to argue that the address of the shipper is unknown. If the addresses of all those referred to in this paragraph were unknown, then who would know what they were? More importantly, however, the paragraph does not specify what should happen to the goods, particularly if they cannot be disposed of owing to their nature, specifications or dangerous character. The view is that article 47 should be deleted, as it conflicts with Egyptian law, which provides that it cannot be agreed not to issue a transport document or electronic transport record.
15. Article 54: delete subparagraph (b).

**(f) Articles or paragraphs requiring explanation**

16. Article 1, paragraph 2, of the draft convention concerning volume contracts states that: "Volume contract" means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.
17. The question posed by the Arab Working Group concerns the term "volume contract", set forth and defined in this paragraph, namely: what is a contract that is the opposite of a volume contract? In other words, what is the term used for a contract that is not a volume contract?
18. Article 6 on specific exclusions: It is not understood why chartered vessels, particularly those chartered from the carrier itself, are excluded from the application of this convention. It is extremely dangerous to exclude charterparties from regulation.
19. Article 12, subparagraph 2 (b): As drafted, the provision whereby the responsibility of the carrier ends on delivery of the goods to an authority or other third party is unacceptable to the port insofar as the carrier remains under obligation in many cases, such as those involving dangerous goods arriving under false addresses, unloaded goods that remain in the care of the carrier owing to a confusion of marks and numbers resulting from a lack of usable documents for sorting purposes, unloaded goods in transshipment or containers that are returned empty to the port and are owned by the carrier.
20. Article 12 contains several gaps concerning the period of responsibility and is difficult to apply other than by means of other conventions. It would be better to adopt the provisions relating to the period of responsibility contained in the Hamburg Rules.
21. Article 13 of the draft convention, which relates to transport beyond the scope of the contract of carriage, is unintelligible and needs to be further clarified and more precisely worded. How, for instance, can the carrier be permitted to issue a transport document that is not covered by the contract of carriage without being under obligation to carry the goods and consequently having the same period of responsibility as the period of the contract of carriage?
22. Article 14, paragraph 1: Under this paragraph, the carrier assumes the role of the port. This text is unrealistic and unacceptable, in that a large portion of goods

carried on a ship is stored and not immediately delivered. Under paragraph 2 of the same article, the role of the port is eliminated and the shipper and the carrier take on that role simply by agreeing to do so. This may be understandable in cases where the carrier owns and manages the port, but such cases are comparatively rare. Furthermore, this article is inconsistent with international rules on responsibility during unloading, carriage or loading. The phrase “stamp to distinguish from other goods” could be added after the word “stow” in article 14, paragraph 1, to read as follows:

1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 27, properly and carefully receive, load, handle, stow, stamp to distinguish from other goods, carry, keep, care for, unload and deliver the goods.
23. Article 14: The text of paragraph 2 should be amended to read: The carrier or the shipper may agree that .... is to be performed by the shipper, the documentary shipper or the consignee, after it consents to do so.
24. Article 15: This condition applies only to the beginning of the voyage. The draft convention does not specify the type of due diligence to be exercised, article 15 being a case in point.
25. Article 18 on basis of responsibility: Subparagraph (m) relating to the loss of or damage to goods (Reasonable measures to save or attempt to save property at sea) is too general. What is the position, for instance, if lost or damaged goods are equivalent to twice those in respect of which an attempt to save at sea is made?
26. Article 18 is also inconsistent with the principle of transfer of rights, since transfers in law demand specific conditions that are not applied in this article, thus creating a type of contradiction in interpretation insofar as the legal term of transfer of rights does not apply to the meaning intended in this Convention. It should therefore be replaced with another term to avoid confusion and ambiguity. There is a difference in law between transfer of rights and endorsement.
27. Furthermore, the rules on transfer contained in civil law differ from the rules of endorsement primarily contained in trade law, as do their effects. This article confuses the transfer of rights with endorsement.
28. Needs to be studied and clarified in accordance with the contract of carriage.
29. Article 73 suggests that it is necessary to join this Convention in order to safeguard the right of owners of goods and of other rights, since clear provision is made for removal of the jurisdiction of State courts in taking provisional or protective measures.
30. Article 79 leaves wide scope for arbitration.

**(g) Articles and paragraphs requiring amendment**

31. Definitions: Article 1, paragraph 5, as it appears in the draft convention states:  
“Carrier” means a person that enters into a contract of carriage with a shipper.  
View: A person that undertakes to transport goods from one place to another in return for a fee and that is one of the parties to the contract.

32. Article 1, paragraph 8, as it appears in the draft convention states:  
“Shipper” means a person that enters into a contract of carriage with a carrier.  
View: A person that undertakes to deliver goods to a carrier for transport from one place to another and for delivery to the consignee, and that concludes the contract of carriage.
33. Article 1, paragraph 9, as it appears in the draft convention states:  
“Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.  
View: There is no practical advantage to mentioning the documentary shipper without stating its role and obligations.
34. In article 1, add to the list of definitions that of “dangerous goods”, as follows:  
“Dangerous goods”: Goods classified as dangerous under the International Maritime Dangerous Goods (IMDG) Code or recognized classifications adopted by the States Parties to the Convention as part of the established international rules.
35. Add to the list of definitions in article 1 a definition of “receipt”.  
View: Receipt of goods by the carrier or its representative and its undertaking to deliver them in accordance with the conditions of the contract of carriage.
36. Since the Convention mentions international carriage [of goods] wholly or partially [by sea], it is necessary to add a definition of partial carriage and the relationship with other modes of carriage.
37. Article 1, paragraph 17, of the draft convention states that: “Non-negotiable transport document” means a transport document that is not a negotiable transport document.
38. The Jordanian proposal is that it should be amended to read: A non-negotiable transport document is a transport document that states the name of a single consignee, no other person apart from which shall be permitted to receive the goods.
39. The Egyptian proposal is that it should be amended to read: “Transport document” means that in which the name of a single consignee is stated.
40. Article 1, paragraph 25, of the draft convention states that: “Ship” means any vessel used to carry goods by sea.”  
View: Under the definition, the term “vessel” is too general. It would be more accurate to include the term “seaworthy” so that the definition reads: “Ship” means any seaworthy vessel used to carry goods. This is supported by article 15, subparagraph (a), which states:  
Article 15. Specific obligations applicable to the voyage by sea  
The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:  
(a) Make and keep the ship seaworthy.
41. Article 2 (Interpretation of this Convention) of the draft convention states that:

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

View: A more linguistically correct version using a recognized term would be:

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the principle of good faith in international trade.

42. Article 3 of the draft convention on form requirements states that:

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 20, paragraph 3; 24, paragraphs 1 to 3; 38, subparagraphs 1 (b), (c) and (d); 42, subparagraph 4 (b); 46; 51, paragraph 3; 54, paragraph 1; 62, paragraph 1; 66; 69; and 83, paragraphs 1 and 5 shall be in writing. Electronic communications may be used for these purposes, provided the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

View: Add the phrase “or has been previously employed by both” so that it reads:

43. The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 20, paragraph 3; 24, paragraphs 1 to 3; 38, subparagraphs 1 (b), (c) and (d); 42, subparagraph 4 (b); 46; 51, paragraph 3; 54, paragraph 1; 62, paragraph 1; 66; 69; and 83, paragraphs 1 and 5 shall be in writing. Electronic communications may be used for these purposes, provided the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated or has been previously employed by both.

44. Article 4 on applicability of defences and limits of liability needs to be redrafted, as it is unclear. Add the following subparagraph 1 (e) to article 38 on contract particulars:

An adequate description of dangerous goods.

45. Add the phrase “stamp to distinguish from other goods” after the word “stow” in article 14, paragraph 1, of the Convention, to read as follows:

1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 27, properly and carefully receive, load, handle, stow, stamp to distinguish from other goods, carry, keep, care for, unload and deliver the goods.

46. Add to the end of article 16 of the draft convention on goods that may become a danger the phrase “provided that a statement of the reasons having required the carrier to take such measures is made and that no measures less harmful to the goods have been taken by a competent authority.”

47. Article 1, paragraph 15, as it appears in the draft convention states that:

15. “Transport document” means a document issued under a contract of carriage by the carrier or a performing party that satisfies one or both of the following conditions:

- (a) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; or
- (b) Evidences or contains a contract of carriage.

Add a third subparagraph (c), with the following text:

- (c) Undertakes to deliver the goods to the consignee or holder.

48. Article 18 on basis of liability: Paragraphs 4 and 5 should preferably be combined. There is no need for them to be separated, since they cover the same exclusion.

49. Under article 20, subparagraph 1 (a), the maritime performing party additionally has a duty of carriage to another State, contrary to the definition of a maritime performing party in article 1, paragraph 7, pursuant to which its role is confined to within the port. A correction is therefore needed.

50. In article 21 on joint and several liability, paragraph 1 states that: "If the carrier .... their liability is joint and several ....". It would be linguistically more correct in the Arabic text to use the legally recognized term for joint and several liability. The word "tadhamuniyah" should therefore be added after the words "jama`iyah" and "fardiyah".<sup>1</sup> Add a paragraph 3 that reads: In the case of goods with no corresponding value, their value shall be determined by an expert promptly designated by the competent court.

51. Article 23 on calculation of compensation: There is a differential between the price of goods at the time of delivery and at the time of purchase, particularly in the event of a long delivery time. It would be better to use the qualifying phrase of "whichever is best" in order to remedy the damage to the owner of the goods, since the price at purchase may be very substantially higher than the price at delivery, as a result of which the owner incurs loss from a delay in delivery or a change in the ship's route for commercial reasons that are not compelling.

52. Articles 29 and 30: Delete the words "reasonable" and "reasonably", respectively, as they weaken the text.

53. Article 37: The shipment of goods without a transport document is impermissible. It would be better to amend this article to read as follows:

The shipper, on delivery of the goods to the carrier or to the performing party for carriage, is entitled to obtain from the carrier, at the shipper's option:

- (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) A negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record.

54. Article 38: In addition to the information mentioned, this article should also mention information pertaining to the document number and the number of original copies, as well as to the statement that the document was issued in accordance with the provisions of the Convention, by adding to the contract particulars the following information:

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<sup>1</sup> *Translator's note:* The proposed amendment does not affect the English text.



- The name and address of the shipper;
- The port of shipment and the port of discharge;
- The value of the goods;
- The freight and the place where it is payable;
- The place of delivery of the goods;
- An adequate description of dangerous goods;
- The name of the company insuring the goods and the number and date of the contract of insurance;
- Agreements made by the parties to the contract so as not to conflict with the provisions of the Convention;
- The number of original copies of the document.

55. Article 39: Preferably amend the text to read as follows:

Paragraph 1: To remain as it is.

Paragraph 2: "If the name of the carrier is not identified in the contract particulars as prescribed in article 38, subparagraph 2 (b), and the goods have been loaded on board a named ship, the registered owner of that ship is thereupon presumed to be the carrier and it shall be for the claimant to prove otherwise."

Paragraph 3: The text should be reviewed. The signatory is the carrier and the burden of proof lies with any person that claims otherwise.

56. Article 42 on qualifying the information relating to the goods: Essentially, with regard to paragraph 1, the position of the carrier is not to qualify the information relating to the goods alone if it has knowledge that such information is inaccurate. On the contrary, it should first ask the shipper to correct the information so that it corresponds to the goods. It would be preferable to lay down a general rule on qualifications applicable to goods.

57. Article 43 on evidentiary effect of the contract particulars: With regard to subparagraph (c)(ii), it is similarly impermissible for the carrier to transport containers and exclude the identifying numbers of the container seals, which would undermine the basis of the process and give rise to the possibility of goods being changed or smuggled or of prohibited or dangerous items being transported as a result of the opportunity thus provided. Practical experience has shown this to be true and several cases are still being considered by the Jordanian courts for the very reason mentioned.

58. Article 55: Amend paragraph 3 in the interest of stable transactions and so that the person giving instructions to the carrier is not liable for any compensation that the carrier may become liable to pay for damage to other goods, the value of which may be adjudged by a court several years later. Before executing instructions, however, the carrier must estimate additional costs, including compensation. It is therefore proposed that the text should read as follows:

The controlling party, if so requested by the carrier, shall provide security for the amount of all additional expenses or financial obligations incurred by the carrier that may be reasonably expected to arise in connection with the execution of instructions.

59. Article 57: This article permits variations to the contract of carriage, in particular goods documents on the basis of article 53, subparagraphs 1 (b) and (c). This opens up possibilities for the smuggling and transport of prohibited and dangerous goods under false names and consequently the extinction of liabilities. While this may be admissible in the case of error, it also gives rise to responsibility for the return of the goods if the result of such variations is to prevent delivery of the goods.
60. Concerning paragraph 2 of the article:
- (a) To make variations by the controlling party to the contract of carriage other than as referred to in article 53 could make delivery of the goods impossible, in which case provision should be made for the terms of article 50 to apply.
  - (b) In the fifth line, delete “a non-negotiable transport document or incorporated in” because it constitutes a repetition.
61. Article 62, paragraph 4: Delete the words “at the date of judgement or award” and replace with “at the date of suit or referral of the case to arbitration” in the interests of fairness (and in conformity with the rules of civil procedure), as the currency price, for instance, may differ between the date of suit and the date of judgement.
62. As for the limits of liability in paragraph 4, the value of currency and the Special Drawing Right are stipulated, without regard for the loss to the holder of the right. The same applies to article 63, because in many cases the freight may be incomparable to the value of the goods.
63. Article 63: Should be reviewed for greater clarity.
64. Articles 65 and 66: These two articles conflict with the domestic laws of Jordan, which provide for one year.
65. Article 66 on extension of time for suit entitles the person against which a claim is made to extend the period as it wishes and to make declarations as it also wishes with no time limit, the result of which is that the claimant is unable to proceed.
66. Article 70, paragraph 2: A person which is not signatory to a contract cannot be bound by the clauses of that contract (rights and obligations). Consequently, no person can be bound by an agreement between the parties, even if it is within the jurisdiction of a court.
67. Chapter 13 on time for suit: Replace the word “al-fatrah” in the Arabic text with the word “al-muddah”.<sup>2</sup>
68. Article 76 on recognition and enforcement: A judge issues a judgement and not a decision.
69. Article 83 on special rules for volume contracts: Its position in the Convention should be changed, as it contains substantive provisions that it would be a mistake to place after the general provisions, which they should precede. We therefore

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<sup>2</sup> *Translator's note:* The proposed amendment does not affect the English text.

believe that the provisions relating to volume contracts should be moved to the substantive provisions prescribed before chapter 14 on jurisdiction.

70. Article 84 on special rules for live animals and certain other goods: This article does not state the reasons for excluding the obligations of the carrier and for not issuing transport documents stating the number, type, weight, destination and so on. It is of more concern, however, that there should be no such exclusion and a clear indication of compliance with other conditions, such as a certificate of freedom from disease provided by the country of origin.

71. It is therefore proposed that such provision be made to follow the articles on volume contracts.

72. We propose the addition of a provision on the discovery of goods for which compensation has been paid and the method for their disposal.

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