

**UNITED NATIONS
CONVENTION
ON THE CARRIAGE OF
GOODS BY SEA, 1978
(HAMBURG RULES)**



UNITED NATIONS

1994

This edition of the "Hamburg Rules" incorporates the explanatory note by the UNCITRAL secretariat previously issued as A/CN.9/306.

CONTENTS

	<i>Page</i>
PREAMBLE	1
PART I. GENERAL PROVISIONS	1
Article 1. Definitions	1
Article 2. Scope of application	2
Article 3. Interpretation of the Convention	3
PART II. LIABILITY OF THE CARRIER	3
Article 4. Period of responsibility	3
Article 5. Basis of liability	3
Article 6. Limits of liability	4
Article 7. Application to non-contractual claims	5
Article 8. Loss of right to limit responsibility	6
Article 9. Deck cargo	6
Article 10. Liability of the carrier and actual carrier	6
Article 11. Through carriage	7
PART III. LIABILITY OF THE SHIPPER	8
Article 12. General rule	8
Article 13. Special rules on dangerous goods	8
PART IV. TRANSPORT DOCUMENTS	8
Article 14. Issue of bill of lading	8
Article 15. Contents of bill of lading	9
Article 16. Bills of lading: reservations and evidentiary effect	10
Article 17. Guarantees by the shipper	10
Article 18. Documents other than bills of lading	11
PART V. CLAIMS AND ACTIONS	11
Article 19. Notice of loss, damage or delay	11
Article 20. Limitation of actions	12
Article 21. Jurisdiction	13
Article 22. Arbitration	14

	<i>Page</i>
PART VI. SUPPLEMENTARY PROVISIONS	15
Article 23. Contractual stipulations	15
Article 24. General average	15
Article 25. Other conventions	16
Article 26. Unit of account	16
PART VII. FINAL CLAUSES	17
Article 27. Depositary	17
Article 28. Signature, Ratification, Acceptance, Approval, Accession ..	17
Article 29. Reservations	18
Article 30. Entry into force	18
Article 31. Denunciation of other conventions	18
Article 32. Revision and amendment	19
Article 33. Revision of the limitation amounts and unit of account or monetary unit	19
Article 34. Denunciation	20
COMMON UNDERSTANDING ADOPTED BY THE UNITED NATIONS CONFERENCE ON THE CARRIAGE OF GOODS BY SEA	20
EXPLANATORY NOTE BY THE UNCITRAL SECRETARIAT ON THE UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978 (HAMBURG)	21
Introduction	21
A. Background to the Hamburg Rules	21
1. The Hague Rules	21
2. Dissatisfaction with the Hague Rules system	22
3. Steps towards revising the law governing the carriage of goods by sea	22
B. Salient features of the Hamburg Rules	23
1. Scope of application	23
2. Period of responsibility	23
3. Basis of carrier's liability	23
4. Deck cargo	24
5. Liability for delay	25
6. Financial limits of liability	25
7. Rights of carrier's servants and agents	26
8. Loss of benefit of limits of liability	26
9. Liability of the carrier and actual carrier; through carriage	26
10. Liability of the shipper	27
11. Transport documents	27
12. Claims and actions	28
13. Selected provisions	29
C. Uniformity of Law	29

United Nations Convention on the Carriage of Goods by Sea, 1978

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

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

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.
4. "Consignee" means the person entitled to take delivery of the goods.
5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, *inter alia*, telegram and telex.

Article 2. Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

(a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or

(b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or

(c) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or

(d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or

(e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

- (a) from the time he has taken over the goods from:
 - (i) the shipper, or a person acting on his behalf; or
 - (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;
- (b) until the time he has delivered the goods:
 - (i) by handing over the goods to the consignee; or
 - (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
 - (iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

Article 5. Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within

the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. (a) The carrier is liable

- (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

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

Article 6. Limits of liability

1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 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.

(b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this article, the following rules apply:

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

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

3. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7. Application to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss of or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

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

3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, 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. Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.

4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10. Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains

responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

6. Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.

Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

(a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and

(b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15. Contents of bill of lading

1. The bill of lading must include, *inter alia*, the following particulars:

- (a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
- (b) the apparent condition of the goods;
- (c) the name and principal place of business of the carrier;
- (d) the name of the shipper;
- (e) the consignee if named by the shipper;
- (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
- (g) the port of discharge under the contract of carriage by sea;
- (h) the number of originals of the bill of lading, if more than one;
- (i) the place of issuance of the bill of lading;
- (j) the signature of the carrier or a person acting on his behalf;
- (k) the freight to the extent payable by the consignee or other indication that freight is payable by him;
- (l) the statement referred to in paragraph 3 of article 23;
- (m) the statement, if applicable, that the goods shall or may be carried on deck;
- (n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
- (o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if,

as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16. Bills of lading: reservations and evidentiary effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:

(a) the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(b) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k), of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17. Guarantees by the shipper

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number,

weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case of intended fraud referred to in paragraph 3 of this article, the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18. Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

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

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

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

4. In the case of any actual or apprehended loss or damage, the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20. Limitation of actions

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

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

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

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

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

(a) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or

(b) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(c) the port of loading or the port of discharge; or

(d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this

article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4. (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;

(b) For the purpose of this article, the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;

(c) For the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2 (a) of this article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

Article 22. Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a State within whose territory is situated:

- (i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or
- (ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- (iii) the port of loading or the port of discharge; or

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of goods in favour of the carrier, or any similar clause, is null and void.

2. Notwithstanding the provisions of paragraph 1 of this article, a carrier may increase his responsibilities and obligations under this Convention.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as is either the Paris Convention or the Vienna Convention.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26. Unit of account

1. The unit of account referred to in article 6 of this Convention is the special drawing right as defined by the International Monetary Fund. The

amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the special drawing right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the special drawing right, of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

PART VII. FINAL CLAUSES

Article 27. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 28. Signature, Ratification, Acceptance, Approval, Accession

1. This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 29. Reservations

No reservations may be made to this Convention.

Article 30. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 31. Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State Party to the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States Parties to the Protocol signed on 23 February

1968 to amend the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

4. Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

Article 32. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 33. Revision of the limitation amounts and unit of account or monetary unit

1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 34. Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE AT Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

Common understanding adopted by the United Nations Conference on the Carriage of Goods by Sea

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.

**Explanatory note by the UNCITRAL secretariat
on the United Nations Convention on the
Carriage of Goods by Sea, 1978 (Hamburg)***

INTRODUCTION

1. The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (hereinafter referred to as the "Hamburg Rules") was adopted on 31 March 1978 by a diplomatic conference convened by the General Assembly of the United Nations at Hamburg, Federal Republic of Germany. The Convention is based upon a draft prepared by the United Nations Commission on International Trade Law (UNCITRAL).

2. The Hamburg Rules establish a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. Their central focus is the liability of a carrier for loss of and damage to the goods and for delay in delivery. They also deal with the liability of the shipper for loss sustained by the carrier and for damage to the ship, as well as certain responsibilities and liabilities of the shipper in respect of dangerous goods. Other provisions of the Hamburg Rules deal with transport documents issued by the carrier, including bills of lading and non-negotiable transport documents, and with limitation of actions, jurisdiction and arbitral proceedings under the Convention.

3. The Convention entered into force on 1 November 1992 for the following twenty States: Barbados, Botswana, Burkina Faso, Chile, Egypt, Guinea, Hungary, Kenya, Lebanon, Lesotho, Malawi, Morocco, Nigeria, Romania, Senegal, Sierra Leone, Tunisia, Uganda, United Republic of Tanzania, and Zambia. As of 1 August 1994, an additional two States, Austria and Cameroon, had become party to the Convention.

A. BACKGROUND TO THE HAMBURG RULES

1. The Hague Rules

4. The Hamburg Rules are the result of a movement to establish a modern and uniform international legal regime to govern the carriage of goods by sea. For many years, a large proportion of the carriage of goods by sea has been governed by a legal regime centred around the International Convention relating to the Unification of Certain Rules relating to Bills of Lading, adopted on 25 August 1924 at Brussels, otherwise known as the "Hague Rules".

*This note has been prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Convention.

5. The Hague Rules establish a mandatory legal regime governing the liability of a carrier for loss of or damage to goods carried under a bill of lading. They cover the period from the time the goods are loaded onto the ship until the time they are discharged. According to their provisions, the carrier is liable for loss or damage resulting from his failure to exercise due diligence to make the ship seaworthy, to properly man, equip and supply the ship or to make its storage areas fit and safe for the carriage of goods. However, the Hague Rules contain a long list of circumstances that exempt the carrier from this liability. Perhaps the most significant of these exemptions frees the carrier from liability if the loss or damage arises from the faulty navigation or management of the ship.

6. The Hague Rules have been amended twice since their adoption, first in 1968 (by means of a protocol hereinafter referred to as the "Visby Protocol") and again in 1979 (by means of a protocol hereinafter referred to as the "1979 Additional Protocol"). These amendments deal mainly with the financial limits of liability under the Hague Rules. They do not alter the basic liability regime of the Hague Rules or the allocation of risks effected by it.

2. Dissatisfaction with the Hague Rules system

7. There emerged over the course of time increasing dissatisfaction with the Hague Rules system. This dissatisfaction was based in part upon the perception that the overall allocation of responsibilities and risks achieved by the Hague Rules, which heavily favoured carriers at the expense of shippers, was inequitable. Several provisions of the Hague Rules were regarded as ambiguous and uncertain, which was said to result in higher transportation costs and to add further to the risks borne by shippers. The dissatisfaction with the Hague Rules was also based upon the perception that developments in conditions, technologies and practices relating to shipping had rendered inappropriate many features of the Hague Rules that may have been appropriate in 1924.

3. Steps towards revising the law governing the carriage of goods by sea

8. The question of revising the law governing the carriage of goods by sea was first raised by the delegation of Chile at the first session of UNCITRAL in 1968. Shortly afterwards, the General Assembly recommended that UNCITRAL should consider including the question among the priority topics in its programme of work. UNCITRAL did so at its second session in 1969.

9. At about the same time, the law relating to bills of lading and the carriage of goods by sea had come under study within a working group of the United Nations Conference on Trade and Development (UNCTAD). The Working Group concluded that the rules and practices concerning bills of lading, including those contained in the Hague Rules and the Hague Rules as amended by the Visby Protocol, should be examined and, where appropriate, revised and amplified and that a new international convention should be prepared. The objective of that work would be to remove the existing uncertainties and ambiguities in the existing law and to establish a balanced allocation of responsibilities and risks between cargo interests and the carriers. The Working Group recommended that the work be undertaken by UNCITRAL. In 1971, UNCITRAL decided to proceed accordingly.

10. By 1976, UNCITRAL had finalized and approved the text of a draft Convention on the Carriage of Goods by Sea. Thereafter, the General Assembly convened the diplomatic conference at Hamburg, which adopted the Hamburg Rules in 1978.

B. SALIENT FEATURES OF THE HAMBURG RULES

1. Scope of application

11. In order to achieve international uniformity in the law relating to the carriage of goods by sea, the Hamburg Rules have been given a relatively wide scope of application—substantially wider than that of the Hague Rules. The Hamburg Rules are applicable to all contracts for the carriage of goods by sea between two different States if, according to the contract, either the port of loading or the port of discharge is located in a Contracting State, if the goods are discharged at an optional port of discharge stipulated in the contract and that port is located in a Contracting State, or if the bill of lading or other document evidencing the contract is issued in a Contracting State. In addition to those cases, the Hamburg Rules apply if the bill of lading or other document evidencing the contract of carriage provides that the rules are to apply. The application of the Rules does not depend upon the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

12. The Hamburg Rules do not apply to charter-parties. However, they apply to bills of lading issued pursuant to charter-parties if the bill of lading governs the relation between the carrier and a holder of the bill of lading who is not the charterer.

13. Unlike the Hague Rules, which apply only when a bill of lading is issued by the carrier, the Hamburg Rules govern the rights and obligations of the parties to a contract of carriage regardless of whether or not a bill of lading has been issued. This is becoming increasingly important as more and more goods are carried under non-negotiable transport documents, rather than under bills of lading.

2. Period of responsibility

14. The Hague Rules cover only the period from the time the goods are loaded onto the ship until the time they are discharged from it. They do not cover loss or damage occurring while the goods are in the custody of the carrier prior to loading or after discharge.

15. In modern shipping practice carriers often take and retain custody of goods in port before and after the actual sea carriage. It has been estimated that most loss and damage to goods occurs while the goods are in port. In order to ensure that such loss or damage is the responsibility of the party who is in control of the goods and thereby best able to guard against that loss or damage, the Hamburg Rules apply to the entire period the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

3. Basis of carrier's liability

16. The basis of the carrier's liability under the Hague Rules system was one of the principal concerns of the movement for reform that eventually resulted in the

Hamburg Rules. While the Hague Rules provide that the carrier is liable for loss or damage resulting from his failure to exercise due diligence to make the ship seaworthy, to properly man, equip and supply the ship or to make its storage areas fit and safe for the carriage of goods, a long list of circumstances exempts the carrier from this liability. These provisions are based upon exemption clauses that commonly appeared in bills of lading when the Hague Rules were adopted in the early 1920's. Perhaps the most significant of these exemptions frees the carrier from liability if the loss or damage arises from the faulty navigation or management of the ship, the so-called "nautical fault" exception. As a result of these exemptions, the shipper bears a heavy portion of the risk of loss of or damage to his goods.

17. The original justifications for this liability scheme, and in particular the nautical fault exception, were the inability of the shipowner to communicate with and exercise effective control over his vessel and crew during long voyages at sea, and the traditional concept of an ocean voyage as a joint adventure of the carrier and the owner of the goods. However, subsequent developments in communications and the reduction of voyage times have rendered those justifications obsolete. The liability scheme has no parallel in the law governing other modes of transport. Moreover, it is viewed as contrary both to the general legal concept that one should be liable to pay compensation for loss or damage caused by his fault or that of his servants or agents, and to the economic concept that loss should fall upon the party who is in a position to take steps to avoid it.

18. The Hamburg Rules effect a more balanced and equitable allocation of risks and responsibilities between carriers and shippers. Liability is based on the principle of presumed fault or neglect. That is, the carrier is liable if the occurrence that caused the loss, damage or delay took place while the goods were in his charge, and he may escape liability only if he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. This principle replaces the itemization of the carrier's obligations and the long list of his exemptions from liability under the Hague Rules, and eliminates the exemption from liability for loss or damage caused by the faulty navigation or management of the ship. The liability of the carrier under the Hamburg Rules corresponds with the liability imposed upon carriers under international conventions governing carriage of goods by other modes of transport, such as road and rail.

4. Deck cargo

19. Sea cargo carried on deck was traditionally subject to high risk of loss or damage from the elements or other causes. For this reason the Hague Rules do not cover goods carried on deck by agreement of the parties, permitting the carrier to disclaim all liability for such cargo. However, developments in transport and packaging techniques, and in particular containerization, have made it possible for cargo to be carried on deck with relative safety. It is common for containers to be stored on deck in modern container ships.

20. The Hamburg Rules take these developments into account. Firstly, they expressly permit the carrier to carry goods on deck not only if the shipper so agrees, but also when such carriage is in accordance with the usage of the particular trade or if it is required by law. Secondly, they hold the carrier liable on the basis of presumed fault or neglect for loss, damage or delay in respect of goods that he is

permitted to carry on deck. If he carries goods on deck without being permitted to do so, he is made liable for loss, damage or delay resulting solely from the carriage on deck, without being able to exclude that liability by proving that reasonable measures were taken to avoid the loss, damage or delay.

5. Liability for delay

21. Historically, sea voyages were subject to innumerable uncontrollable hazards, which frequently resulted in delays and deviations. Because of this unpredictability, the Hague Rules do not cover the liability of the carrier for delay in delivery. However, as a result of modern shipping technology, the proper charting of the oceans and sophisticated and efficient methods of navigation, voyages have become less subject to delays and more predictable. Shippers have come to rely upon and expect compliance with undertakings by carriers to deliver the goods within a specified period of time. Thus, the Hamburg Rules govern the liability of the carrier for delay in delivery in the same manner as liability for loss of or damage to the goods, i.e., in accordance with the principle of presumed fault or neglect.

6. Financial limits of liability

22. The Hamburg Rules limit the liability of the carrier for loss of or damage to the goods to an amount equal 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 carrier and the shipper can agree to limits higher than those, but not to lower limits.

23. The unit of account is the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF). The Rules set forth detailed provisions as to the manner in which the limits expressed in units of account are to be converted into national currencies with special provisions for certain States that are not members of the IMF. The limits of liability under the Hamburg Rules are 25 per cent higher than those established under the 1979 Additional Protocol, which also uses the SDR as the unit of account. In the Hague Rules and the Visby Protocol the limits of liability are expressed in units of account based upon a certain quantity of gold. Because national currencies no longer have fixed values in relation to gold, the values of those limits in national currencies vary.

24. The Hamburg Rules maintain the dual per package/per kilogram system established in the Visby Protocol. The purpose of this system is to take account of the fact that the value/weight ratios of goods carried by sea differ markedly. Sea cargo ranges from cargo such as bulk commodities, which have a low value relative to their weight, to cargo such as complex heavy machinery, which has a much higher value/weight ratio.

25. Under the dual system, the relatively low limit of 2.5 units of account per kilogram would apply to unpackaged commodities carried in bulk, while the higher per-package limit would apply to items carried in packages or other shipping units. The break-even point is 334 kilograms: if a package or shipping unit is under that weight, the per-package limit would apply; above that weight, the per-kilogram limit would apply. For the purpose of calculating the limits of liability, the packages or

shipping units contained in a container are deemed to be those enumerated in the bill of lading or other transport document evidencing the contract of carriage.

26. The liability of the carrier for delay in delivering the goods is limited to 2.5 times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage.

27. The Hamburg Rules contain an expedited procedure for revising the limits of liability in the event of a significant change in the real value of the limits resulting, for example, from inflation.

7. Rights of carrier's servants and agents

28. If a servant or agent of the carrier proves that he acted within the scope of his employment, he is entitled to avail himself of the defences and limits of liability that the carrier is entitled to invoke under the Hamburg Rules.

8. Loss of benefit of limits of liability

29. A carrier loses the benefit of the limits of liability if it is proved that the loss, damage or delay resulted from an act or omission of the carrier done with intent to cause the loss, damage or delay, or recklessly and with knowledge that the loss, damage or delay would probably result. A servant or agent of the carrier loses the benefit of the limits of liability in the event of such conduct on his part.

9. Liability of the carrier and actual carrier; through carriage

30. A carrier may enter into a contract of carriage by sea with a shipper but entrust the carriage, or a part of it, to another carrier. The contracting carrier in such cases often includes in the bill of lading a clause that exempts him from liability for loss or damage attributable to the actual carrier. Shippers face difficulties in legal systems that uphold those exemption clauses because they have to seek compensation from the actual carrier; that carrier might be unknown to the shipper, might have effectively restricted or excluded his liability or might not be subject to suit by the shipper in an appropriate jurisdiction. The Hague Rules do not deal with the liability of the actual carrier.

31. The Hamburg Rules balance the interests of shippers and carriers in such cases. They enable the contracting carrier to exempt himself from liability for loss, damage or delay attributable to an actual carrier only if the contract of carriage specifies the part of carriage entrusted to the actual carrier and names the actual carrier. Moreover, the exemption is effective only if the shipper can institute judicial or arbitral proceedings against the actual carrier in one of the jurisdictions set forth in the Hamburg Rules. Otherwise, the contracting carrier is liable for loss, damage or delay in respect of the goods throughout the voyage, including loss, damage or delay attributable to the actual carrier. Where the contracting carrier and the actual carrier are both liable, their liability is joint and several.

10. Liability of the shipper

32. Under the Hamburg Rules a shipper is liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, only if the loss or damage was caused by the fault or neglect of the shipper, his servants or agents.

33. Particular obligations are imposed upon the shipper with respect to dangerous goods. He is obligated to mark or label the goods in a suitable manner and, where he hands over dangerous goods to a carrier, he must inform the carrier of their dangerous character and, if necessary, of the precautions to be taken. Failure to meet these obligations could, in particular cases, entitle the carrier to be compensated for loss suffered from the shipment of the goods. The carrier may be entitled to dispose of dangerous goods or render them innocuous without compensating the shipper if the shipper fails to meet his obligations with respect to the goods, or if the goods become an actual danger to life or property.

11. Transport documents

(a) Bills of lading

34. Under both the Hague Rules and the Hamburg Rules, the carrier must issue a bill of lading if the shipper requests one. However, the Hamburg Rules take into account modern techniques of documentation by providing that a signature on a bill of lading not only may be handwritten but also may be made by any mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

35. The Hamburg Rules itemize the types of information required to be set forth in the bill of lading. Among other things, these include the general nature of the goods, the number of packages or pieces, their weight or quantity, and their apparent condition. The itemization is more extensive than that under the Hague Rules, since the additional information is needed in order to implement the liability regime of the Hamburg Rules, which is more comprehensive than that of the Hague Rules.

36. Under the Hamburg Rules the absence of one of the required particulars does not affect the legal character of the document as a bill of lading. This resolves a question which is not dealt with in the Hague Rules and which has been resolved in disparate ways in national legal systems.

37. Under the Hamburg Rules as well as the Hague Rules, the information set forth in the bill of lading is *prima facie* evidence of the taking over or loading by the carrier of the goods as so described. The Hamburg Rules and the Visby Protocol further provide that the description of the goods is conclusive in favour of a third-party transferee of the bill of lading who in good faith has acted in reliance on the description. The Hamburg Rules provide that if the carrier did not note the apparent condition of the goods on the bill of lading, they are deemed to have been in apparent good condition. This, too, resolves a question that is uncertain under the Hague Rules.

38. If the carrier knows or reasonably suspects that information in the bill of lading concerning the general nature of the goods, the number of packages or pieces, or their weight or quantity, is not accurate, or if he had no reasonable means of

checking that information, he may, under the Hamburg Rules, insert in the bill of lading a reservation specifying the inaccuracies, grounds of suspicion or the absence of reasonable means of checking. The *prima facie* or conclusive evidentiary effect of the bill of lading is not applicable in respect of such information. These provisions are more explicit than comparable provisions of the Hague Rules.

39. Sometimes, a shipper asks the carrier to issue a "clean" bill of lading (i.e., without inserting a reservation) even though the carrier may have grounds to question the accuracy of information supplied by the shipper for insertion in the bill of lading or may have no reasonable means of checking the information, or may have discovered defects in the condition of the goods. In return, the shipper agrees to indemnify the carrier against loss suffered by him as a result of issuing the bill of lading without a reservation. The Hamburg Rules provide that such an agreement is valid as against the shipper, unless the carrier intends to defraud a third party who relies on the description of the goods in the bill of lading. However, the agreement has no effect as against a third-party transferee of the bill of lading, including a consignee.

(b) Other transport documents

40. There is a growing practice in maritime transport for carriers to issue non-negotiable transport documents, such as sea waybills, rather than bills of lading. Although non-negotiable documents have been used in certain trades for some time, the use of such documents is spreading to other trades. Non-negotiable documents avoid certain problems that have arisen in connection with the use of bills of lading, such as the arrival of the goods at their destination before the bill of lading reaches the consignee.

41. The Hamburg Rules accommodate these developments firstly, by applying to contracts for carriage of goods by sea regardless of whether or not a bill of lading is issued, and secondly, by providing that a transport document issued by the carrier, which is not a bill of lading, is nevertheless *prima facie* evidence of the conclusion of the contract of carriage by sea and of the taking over of the goods by the carrier as described in the document.

42. Since the Hague Rules apply only when a bill of lading has been issued, they do not deal with other types of transport documents.

12. Claims and actions

43. The Hamburg Rules contain provisions governing judicial as well as arbitral proceedings brought under the Rules. They expressly permit the parties to agree to submit their disputes under the Convention to arbitration. This is important because some legal systems preclude the settlement by arbitration of disputes relating to the carriage of goods by sea. Arbitration has become recognized as an effective means of resolving such disputes; thus the Hamburg Rules contain provisions to settle questions such as limitation of actions and jurisdiction in connection with arbitration. The Hague Rules do not provide for arbitration.

(a) Limitation of actions

44. A claim under the Hamburg Rules must be brought in judicial or arbitral proceedings within a two-year limitation period. The period may be extended by the

party against whom the claim is made. Under the Hague Rules suit must be brought within one year. The Hamburg Rules further provide that a party held liable under the Hamburg Rules has an additional period of time after the expiration of the two-year period to institute an action for indemnity against another party who may be liable to him. Comparable provisions are not contained in the Hague Rules, but were added by the Visby Protocol.

(b) Jurisdiction

45. The Hamburg Rules require judicial or arbitral proceedings to be brought in one of the places specified in the Rules. The specified places are broad enough to meet the practical needs of the claimant. These include the following: the principal place of business or habitual residence of the defendant; the place where the contract of carriage was made, if made through the defendant's place of business, branch or agency there; the port of loading; the port of discharge; any other place designated in the contract of carriage or arbitration agreement. Judicial proceedings may also be instituted in a place where a vessel of the owner of the carrying vessel has been validly arrested, subject to the right of the defendant to have the action removed to one of the places mentioned in the preceding sentence. Notwithstanding those options, if, after a claim has arisen, the parties by agreement designate a place where the claimant may institute judicial proceedings, the proceedings must be instituted in that place; the same is true with respect to an agreement as to the place of arbitral proceedings, if the agreement is otherwise valid. The Hague Rules do not contain provisions with respect to jurisdiction.

13. Selected provisions

46. The Hamburg Rules are mandatory in the sense that the parties to a contract of carriage by sea may not by agreement reduce the carrier's responsibilities and obligations under the Rules. However, those responsibilities and obligations may be increased.

47. Other provisions of the Hamburg Rules pertain to the relationship between the Rules and the law of general average and other international conventions. Upon becoming a party to the Hamburg Rules, a State that is a party to the Hague Rules or the Hague Rules as amended by the Visby Protocol must denounce them. Under certain conditions the denunciation may be deferred for a period of up to five years.

C. UNIFORMITY OF LAW

48. The Hamburg Rules offer the potential of achieving greater uniformity in the law relating to the carriage of goods by sea than do the Hague Rules. Firstly, since the Hague Rules apply only when a bill of lading is issued, the significant and growing portion of maritime transport in which bills of lading are not issued is not covered by them. Secondly, even when the Hague Rules do apply, many aspects of the rights and obligations of the parties to a contract of carriage are not dealt with. A question or issue that is not covered by the Hague Rules will be resolved by rules of national law, which often produce disparate solutions, or by clauses in bills of lading, which may unfairly favour one of the parties and which may be given effect to differing degrees in national legal systems.

49. The Hamburg Rules, by comparison, deal much more comprehensively with the rights and obligations of the parties to a contract of carriage. In order to achieve their potential for uniformity of law in this area, they must be adhered to by States worldwide.