

**IMO/IMLI**

**1999/2000**

*Legislative Drafting Project  
In partial fulfilment for the award of an LL.M. Degree  
in International Maritime Law*

**The Law on carriage of goods by sea, to amend Chapter VIII (Contract  
for maritime transport of cargo) and related provisions of the Maritime  
Code of Georgia**

**Name:** Eka Siradze

**Country:** Georgia

**Supervisor:** Dr. I. Vella

## Introduction

Georgia, as a transit country, bears connective functions between East and West. In this regard, especially after the realisation of the EU TRACECA (Transport Corridor Europe-Caucus-Asia) Programme, development of maritime transport has acquired a new important meaning.

However, the participation of Georgia within the international Conventions regarding carriage of goods by sea has been complicated from the very beginning. In 1995, by the decision of the Cabinet of Ministers, Georgia accepted two conventions at the same time: the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading as modified by the 1968 Protocol (i.e. Hague-Visby Rules) and the United Nations Convention on the Carriage of Goods by Sea (i.e. Hamburg Rules). This decision was reflected in Article 114.3 of the Maritime Code of Georgia, which provides, that ‘in Georgia two conventions: the Hague-Visby Rules and the Hamburg Rules are in force’. However in accordance with Article 31.4 of the Hamburg Rules ‘a Contracting State may defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of 5 years from the entry into force of this Convention’. This transitional period terminated in 1997 and consequently at the present time Georgia is a member of the Hamburg Rules. However, Georgia like many other signatories of the Hamburg Rules has not as yet enacted the necessary new national legislation (or amendments) to give effect to them. For example, the limitation of liability under Chapter VIII is still grounded on the provisions of the Hague-Visby Rules.

Obviously the existing situation has to be changed. There are two ways of avoiding this contradiction: (1) amend the Maritime Code in such a way as to give effect to the Hamburg Rules; (2) denounce the Hamburg Rules.

The importance and seriousness of the consequences of either course of action require a cautious approach.

Georgia, from the very beginning of its statehood, tried to apply international standards and rules, especially with regard to international transport and trade.

Like other European countries, Georgia strives to join the European Union. One of the main directions of modern Georgian politics is to harmonise Georgian law with European standards. In this regard we have to take into consideration that so far almost all EU member States are adherents of the Hague or the Hague-Visby Rules (except land-locked Austria).

Moreover, all our traditional trade partners and neighbours ratified or at least implemented the Hague Rules or the Hague-Visby Rules in their national legislation.

Obviously adhering to the Hamburg Rules isolates Georgia from other maritime nations.

On the other hand, we cannot escape the fact that 9 of the 25 signatories of the Hamburg Rules are land-locked States and almost 90% of the world carriage of goods by sea is governed by the Hague-Visby Rules.

At the time of adoption of the Hague Rules international carriage of goods by sea was among the world's most uniform of all international laws. At that time there were 73 States parties to the 1924 Convention, including most of the major maritime nations of the world. But in recent years it has come under attack from many quarters. With the entry into force of the Visby Protocol in 1977, the uniform system began to fracture, as only a limited number of the States parties to the Convention became parties to the Protocol. After the 1979 SDR Protocol entered into force in 1984, the fracture widened, though confined to the issue of limits of liability. After the Hamburg Rules entered into force the pace of disunification increased. The existence of two different conventions on the same subject matter leads shipping nations to go off on their own and to seek to resolve the problem by the adoption in their respective carriage of goods legislation 'hybrid' provisions, by combining elements drawn from both the Hague-Visby and the Hamburg Rules.

For example Norway, Denmark, Finland and Sweden, parties to the Hague-Visby Rules, adopted a new Maritime Code in 1974, in which Chapter 13 'Carriage of goods by Sea'

also incorporates provisions from the Hamburg Rules, which are not in conflict with the Hague-Visby Rules obligations. The USA, Australia, Japan, People's Republic of China and Ukraine are considering or have provided similar changes.

In my opinion for Georgia the best solution of the problem is to enact domestic legislation incorporating features of both the Hague Rules (as amended) and the Hamburg Rules as well as some innovations. Obviously, the first necessary step for the realisation of this approach is the denunciation of the Hamburg Rules. This allows Georgian legislation to be based on the provisions of both Conventions, utilising the advantages of each of them. For example: to include the provisions of the Hague-Visby Rules relating to limitation of liability, but the provisions of the Hamburg Rules relating to bills of lading, the contractual carrier and the actual carrier, deck cargo and live animals and arbitration clauses.

Moreover, during the last decade there have been several changes and developments in the carriage of goods, which are not included either in the Hague-Visby Rules, or in the Hamburg Rules. For example recent developments in shipping documentation which allow the transmission of information passed from one computer to another by Electronic Data Interchange (EDI). This is now gradually replacing the conventional methods of document reproduction in international trade between countries where such facilities are available. Practice has proved the vital nature of the electronic bills of lading and we cannot ignore this fact.

To go back to the Hague-Visby and the Hamburg Rules, I would like to point out one more important issue. The existing Articles 156 and 157 of the Maritime Code of Georgia provide for the carrier's exemption from liability based on the Hague-Visby Rules.

In my opinion however the relevant provisions of the Hague-Visby rules need revision in the light of recent developments. One of the most important bases of a carrier's exemption from liability under Article 4 of the Hague-Visby Rules is the error of the master, mariner, pilot or the other servant of the carrier in the navigation or the management of the ship. In this regard some authors have correctly mentioned that it is

very difficult to draw a line between an officer who acts on behalf of the carrier and an employee who acts as a servant of the carrier. It is difficult to make a distinction between fault in the management of the ship and fault in the care of the goods, for which the carrier is responsible in accordance with Article 3(2) of the Hague-Visby Rules.

On the other hand, nowadays the major international organisations such as the IMO, the ILO, the WMO, the IHO and the IMSO pay much attention to maritime safety. More qualified seafarers, new nautical charts and communication by satellite, are only some results of their widespread activities. We may argue that fault in navigation which could have been excused 50 or even 30 years ago, should not be a ground of exemption from liability in modern times.

In my view the relevant provisions of the Hamburg Rules are more acceptable in this respect because they have abolished this defence of error in the navigation and the management of the ship.

Finally, for the purpose of the due interpretation of Chapter VIII, it is preferable to add the definitions of the terms used in this Chapter.

The foregoing leads us to the conclusion that it is necessary to change and amend the Maritime Code of Georgia, particularly Chapter VIII and the relevant articles.

The intention of the proposed amendments is to harmonise the laws of Georgia with the laws of other maritime nations and, as a result, to promote foreign trade generally and maritime transport particularly.

**The Law on carriage of goods by sea,  
to amend Chapter VIII (Contract for maritime transport of cargo) and related  
provisions of the Maritime Code of Georgia**

The Parliament of Georgia decides:

I. To amend the Maritime Code of Georgia (Parlamentis Utskebebi, 1997 N 5) as follows:

1. Add in Annex 1 after the words ‘sea waybill’ the following definitions:

‘Actual carrier’ means any person who has been entrusted by the carrier with performance of the carriage of the goods or part of it.

‘Carrier’ means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

‘Consignee’ means any person who is entitled to take delivery of the goods for carriage.

‘Data message’ means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to Electronic Data Interchange (EDI), electronic mail, telegram, telex or teletype.

‘Private key’ means any technically appropriate form, such as a combination of numbers and/or letters, which the parties may agree for securing the authenticity and integrity of a transmission.

‘Shipper’ means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a carrier or any person by whom or in whose name or whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

‘The unit of account’ is the Special Drawing Right as defined by the International Monetary Fund.

‘Transport document’ means a bill of lading, sea waybill or any other document, which evidences a contract of carriage.

2. To repeal Chapter VIII entitled 'Contract for marine transport of cargo' and substitute the following Chapter:

#### Chapter VIII 'Carriage of goods by sea'

##### Article 114

1. The provisions of the present Chapter are applicable to contracts of carriage by sea in domestic traffic in Georgia.

2. In any other traffic the provisions of the present Chapter shall apply to contracts of carriage by sea between two States, where

- a) the agreed port of loading is located in Georgia; or
- b) the transport document has been issued in Georgia.
- c) the contract provides that the law of Georgia is to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

##### Article 115

1. The provisions of this Chapter shall not be applicable to charterparties. Where a bill of lading has been issued pursuant to a charterparty, the provisions of this Chapter shall apply to such a bill of lading when it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

2. If a contract provides for carriage of goods in a series of shipments during a specified period, the provisions of this Chapter apply to each shipment. However, where a shipment is made under a charterparty, the provisions of paragraph 1 of the present Article shall apply.

##### Article 116

The shipper shall deliver the goods at the place and within the period agreed with the carrier. The goods shall be delivered in such a way and in such a condition that they can conveniently be brought on board, stowed, carried and discharged.

##### Article 117

1. The carrier shall, in so far as is reasonable, examine whether the goods are packed in such a way as not to suffer damage or be able

to cause damage to any person or property. Where the goods have been delivered in a container or similar article of transport, the carrier is, however, not obliged to inspect it internally, unless there is reason to suspect that the article of transport is packed in a faulty manner.

2. The carrier shall inform the shipper of any deficiencies that he has noticed. He is not obliged to carry the goods if he cannot make them fit for transport by reasonable means.

#### Article 118

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

2. The shipper shall in due time inform the carrier or actual carrier to whom the goods are delivered of the dangerous nature of the goods and shall indicate the precautions that may be needed.

3. Where the shipper in any other case is aware that the goods are of such a nature that their carriage may involve risks or particular inconvenience to any person, vessel or goods, he shall likewise give notice to this effect.

4. If the goods require special care, the shipper shall give timely notice thereof and indicate the measures that may be needed. If necessary the goods shall be marked in a suitable manner.

5. If the shipper fails to give timely notice as indicated in paragraph 2 and the carrier or actual carrier does not otherwise have knowledge of the dangerous character of the goods:

a) the shipper is liable to the carrier and any actual carrier for any loss or damage 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.

6. Any person who, with knowledge of the dangerous character of the goods, has taken them in his charge may not invoke the provisions of paragraph 5.

7. If goods become an actual danger to person or property the carrier may, according to the circumstances, unload, render innocuous or destroy such goods without any liability to pay compensation.



#### Article 119

The shipper is entitled to have a receipt for the goods concurrently with their delivery.

#### Article 120

1. Unless otherwise agreed, the freight payable shall correspond to the freight current at the time of delivery of the goods for carriage. Freight may be payable on delivery or on shipment. Unless the contract otherwise provides, it shall be payable on delivery.

2. For goods which are not preserved at the end of carriage, freight shall be paid only if the goods have been lost due to their inherent vice, insufficient packing or fault or neglect on the part of the shipper, or if the carrier has sold the goods on the owner's behalf or has discharged them, rendered them innocuous, or destroyed them under the power conferred by paragraph 7 of Article 118.

3. Any freight paid shall be refunded if, according to paragraph 2, the carrier is not entitled to freight.

#### Article 121

1. If the shipper repudiates the contract of carriage before the carriage has commenced, the carrier is entitled to compensation for loss of freight and any other loss.

2. If the goods have not been delivered to him in due time, the carrier may cancel the contract of carriage if the delay amounts to a breach. If the carrier wishes to cancel the contract, he must notify the shipper thereof within a reasonable period after the shipper has made an enquiry, though not later than when the goods are received for carriage. If he does not do so, the right of cancellation is lost. If the contract is cancelled, the carrier is entitled to compensation for loss of freight and any other loss.

3. If the shipper requests the interruption of the carriage and the delivery of the goods takes place at any other place than the place of destination, the carrier is entitled to

compensation for loss of freight and any other loss. The carriage may, however, not be interrupted if such an interruption would cause loss or inconvenience to the carrier or to any other shipper.

#### Article 122

1. The carrier shall perform the carriage with due care and dispatch, care for the goods and also in other respects safeguard the consignee's interests from the receipt until the delivery of the goods.

2. The carrier shall exercise due diligence to make the vessel seaworthy. This obligation also includes that the vessel is properly manned and equipped and that the holds, cool and refrigerated chambers and all other parts of the vessel in which goods are carried are fit for the reception, carriage and preservation of the goods.

3. If the goods are lost, damaged or delayed on the voyage, the carrier shall give notice to any person indicated by the shipper at the earliest opportunity. If such notice cannot be given the consignee or, if he is unknown, the shipper shall be notified. The same applies if the carriage cannot be performed in the manner intended.

#### Article 123

1. Goods may be carried on deck only if such carriage is in accordance with the contract of carriage, if it is allowed by any usage or custom, of the particular trade or if it is required by legislation.

2. If according to the contract the goods shall or may be carried on deck, this shall be stated in the transport document. In the absence of such a statement, the carrier has the burden of proving that carriage on deck has been agreed or is customary. The carrier is not entitled to invoke such an agreement against a third party who has acquired the bill of lading in good faith without knowledge of the agreement.

3. Where goods are carried on deck contrary to the provisions of paragraph 1 above the carrier, notwithstanding the provisions of Articles 134-136, is liable for loss or damage to the goods, as well as for delay in delivery resulting from the carriage on deck. The extent of the liability is determined in accordance with Articles 138-140.

4. Where goods have been carried on deck contrary to an express agreement for carriage under deck, there shall be no right of limitation of liability in accordance with this Chapter.

#### Article 124

1. The shipper may cancel the contract of carriage due to the carrier's delay or other breach of the contract.

2. If the shipper wishes to cancel the contract he must notify his intention within a reasonable time from when he must be assumed to have known of the breach. If he does not do so, the right of cancellation is lost.

#### Article 125

1. Where it becomes necessary to take any particular measures to preserve or carry the goods, or otherwise to safeguard the consignee's interests, the carrier shall request instructions from the consignee.

2. If, due to time or any other circumstances, it is not possible to make a request for instructions, or if such instructions are not received on time, the carrier is authorised to take the necessary measures on behalf of the consignee and to represent the latter in matters concerning the goods. Even if a measure taken was not necessary, the consignee is bound against a third party in good faith.

3. Notice of such measures taken shall be given according to the provisions of paragraph 3 of Article 122.

#### Article 126

The consignee is responsible for measures undertaken by the carrier and for any expenses incurred due to the requirements of goods. If the carrier has acted without instructions the consignee, shall however, not be bound to a higher amount than the value of the goods affected by the measures as calculated at the beginning of the voyage.

#### Article 127

At the place of destination the consignee shall receive the goods at the place and within the time indicated by the carrier. The goods shall be delivered in such a manner that they can be conveniently and safely received.

#### Article 128

1. If the goods are delivered against a bill of lading, the consignee incurs, by receiving the goods, an obligation to pay freight and the carrier's other claims according to the bill of lading.

2. If the goods have been delivered otherwise than against a bill of lading, the consignee is obliged to pay freight and other claims according to the contract of carriage only if the consignee was notified of the claims before delivery, or if he realised or ought to have realised that the carrier had not received payment.

#### Article 129

If the carrier has claims under Article 128 or other claims for which there is security by a maritime lien on the goods under Article 350 (Chapter XXII), he is not obliged to deliver the goods before the consignee has either paid the claims or put up security therefor. After delivery of the goods the carrier can lay claim to the security, unless a court on the demand of the consignee prohibits this.

#### Article 130

1. If the goods are not collected within the time which the carrier has indicated or otherwise within a reasonable time, they may be stored in safe custody on behalf of the consignee.

2. Notice that the goods have been stored shall be given according to paragraph 3 of Article 122. The notice shall indicate a reasonable period after the expiry of which the goods may be sold or disposed of as provided in Article 131.

#### Article 131

1. After the period referred to in paragraph 2 of Article 130 has expired, the carrier is entitled to sell the stored goods to the extent necessary to cover the costs of the sale and the claims mentioned in Article 129. The carrier shall exercise due care in arranging the sale.

2. If the goods cannot be sold or if it is obvious that the proceeds of the sale would not cover the costs, the carrier may dispose of the goods in some other reasonable manner.

#### Article 132

1. If the goods are delivered to the consignee without payment of such claims against the shipper as the consignee should have paid, the shipper's liability shall be retained, unless the delivery to the consignee causes loss to the shipper, and the carrier must have known this.

2. The carrier is not obliged to sell stored goods to cover such claims against the shipper, which the consignee ought to have paid. If the goods nevertheless are sold without the claims being covered, the shipper shall remain liable for the deficit.

#### Article 133

1. The carrier is responsible for the goods while he is in custody of them at the port of loading, during the carriage and at the port of discharge.

2. The carrier is deemed to be in charge of the goods according to paragraph 1 from the time he has taken over the goods from the shipper or from an authority or other third party to whom, pursuant to law or regulations or usage applicable at the port of loading, the goods must be handed over.

3. The carrier is deemed no longer to be in charge of the goods according to paragraph 1 when he has delivered the goods:

a) by handing over the goods to the consignee; or

b) in cases where the consignee does not receive the goods from the carrier, when the goods have been stored on behalf of the consignee in accordance with the contract or with the law or with the usage applicable at the port of discharge; or

c) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations or usage applicable at the port of discharge, the goods must be handed over.

#### Article 134

1. The carrier is liable for loss resulting from the goods being lost or damaged while they are in his custody on board or ashore, unless he proves that neither his fault or neglect nor the fault or neglect of any one for whom he is responsible has caused or, subject to paragraph 2 below, contributed to the loss.

2. Where fault or neglect on the part of the carrier combines with another cause to produce loss, the carrier is liable only to the extent that the loss is attributable to such fault or neglect. The carrier must prove to what extent the loss is not attributable to fault or neglect on his part.

3. The carrier is not liable for loss or damage if he proves that such loss or damage was caused by the negligent or other wrongful act or omission of the shipper.

4. The carrier is not liable for loss resulting from measures to save life or from reasonable measures to save vessels or other property at sea.

5. If an action is brought against a servant or agent of the carrier arising out of damage or loss, such servant or agent, if he proves that he acted within the scopes of his employment, shall be entitled to avail himself of the conditions and limits of liability to which the carrier is entitled under this Chapter.

#### Article 135

1. The carrier is not liable for loss of, or damage to, live animals resulting from any special risks inherent in that kind of carriage.

2. If the carrier proves that he has complied with any special instructions given to him and that the loss or damage could be attributed to the risks mentioned in paragraph 1

above he is not liable, unless it is proved that all or part of the loss or damage has resulted from fault or neglect on his part or of any one for whom he is responsible.

#### Article 136

1. The carrier is liable in terms of Articles 134-135 for loss resulting from delay in the delivery of the goods.

2. Delay in the delivery of the goods occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage within the time agreed upon, an absence of such agreement, within the period of carriage which, having regard to the circumstances of the case, may reasonably be required of a diligent carrier.

3. If the goods have not been delivered within 30 days following the expiry of the time of delivery in accordance with paragraph 2 above, compensation may be claimed as for loss of the goods in accordance with Article 134.

#### Article 137

1. Damages in the case of the goods having been lost or damaged shall be calculated on the basis of the value of goods of the same kind at the place where, and at the time when, the goods were delivered in accordance with the contract or should have been so delivered.

2. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price. If neither can be fixed, the value shall be fixed with reference to the current value of goods of the same kind and quality.

#### Article 138

The carrier shall in no event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 667 units of account per package or other unit of the goods or 2 units of account per kilogram of the gross weight of the goods concerned, whichever is the higher.

### Article 139

Where a container, pallet or similar article of transport has been used to consolidate the goods, each package or other unit which, according to the transport document, has been placed in the article of transport, is deemed as one package or unit in applying Article 138. Except as aforesaid the goods in such an article of transport are deemed one unit. An article of transport, which is not owned or otherwise supplied by the carrier, and has been lost or damaged itself, is considered one separate unit.

### Article 140

There is no limitation of liability for the benefit of the carrier, his servant or agent, if it is proved that the loss resulted from an act or omission of the carrier, his servant or agent done with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

### Article 141

1. Where the carriage or part thereof is performed by an actual carrier, the carrier remains responsible for the entire carriage according to the provisions of this Chapter.

2. Where it is explicitly agreed that a specific part of the carriage is to be performed by a named actual carrier, the contract may provide that the carrier is not liable for loss caused by an occurrence, which takes place while the goods are in the charge of the actual carrier. The carrier must prove that the loss has been caused by such an occurrence.

3. Any stipulation excluding liability according to paragraph 2 hereof is however without effect if no judicial proceedings can be instituted against the actual carrier in a competent court under Article 159.

4. The actual carrier is liable according to the same provisions as govern the liability of the carrier for the part of the carriage performed by him. The provisions in Article 140 shall apply correspondingly.



5. Where the carrier has assumed liability not imposed by this Chapter or has waived rights conferred by this Chapter, the actual carrier is affected only if agreed to by him expressly and in writing.

6. Where both the carrier and the actual carrier are liable, their liability is joint and several.

The aggregate liability that can be imposed on the carrier and the actual carrier and the persons, for whom they are responsible, shall not exceed the limits of liability provided for in Article 138.

7. Nothing in this Chapter shall prejudice any recourse agreement as between the carrier and the actual carrier.

#### Article 142

1. Where the goods have been delivered without the consignee having given the carrier written notice of loss or damage, which he has noticed or ought to have noticed, the goods are, as *prima facie* evidence, deemed to have been delivered as described in the transport document. Where the loss or damage was not apparent on delivery, these provisions shall apply correspondingly, unless such notice has been given no later than three working days thereafter.

2. Notice in writing need not be given of loss or damage ascertained under a joint inspection of the goods.

3. The carrier shall not be liable for loss resulting from delay in delivery of the goods unless a written notice has been given to the carrier within 30 days after the goods were handed over to the consignee.

4. Such notice may be given to the actual carrier who has delivered the goods or to the carrier.

#### Article 143

The provisions of Articles 133-142 relating to the carrier's liability for loss of or damage to the goods apply also to the consignee's right to refuse contribution in general

average and to the carrier's duty to indemnify the consignee in respect of any such contribution made or any salvage paid.

#### Article 144

A bill of lading is a document that 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.

#### Article 145

1. A bill of lading may be made out to a named person, to a named person or order, or to bearer. A bill of lading made out to a named person shall be considered as an order bill of lading unless it contains a reservation against transfer by terms such as "not to order" or similar.

2. The bill of lading determines the conditions for the carriage and delivery of the goods in respect of the relationship between the carrier and any holder of the bill of lading, not being the shipper. Stipulations in the contract of carriage which have not been inserted in the bill of lading, shall not be invoked against such a holder.

#### Article 146

1. A through bill of lading is a bill of lading in which it is stated that the carriage of the goods is to be performed by more than one carrier.

2. The person who issues a through bill of lading shall ensure that a separate bill of lading issued for a part of the carriage states that the goods are carried according to a through bill of lading.

#### Article 147

1. The bill of lading must include 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 its quantity specified by other means, all such particulars as furnished by the shipper.

- b) the apparent order and 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.
- j) The statement, if applicable, that the goods shall or may be carried on deck.
- k) The freight to the extent payable by the consignee or other indicating that freight is payable by him.
- l) the place of issue of the bill of lading.
- m) the signature of the carrier or a person acting on his behalf.
- n) The Private Key to be used, if data message is issued.

2. A bill of lading signed by the master of the vessel carrying the goods is deemed to have been signed on behalf of the carrier.

3. The absence, in the bill of lading, of one or more particulars referred to in the present Article does not affect the legal character of the document as a bill of lading provided that it meets the requirements set out in Article 144.

#### Article 148

1. The carrier, after taking the goods in his charge, shall issue a bill of lading, on the shipper's demand.

2. After the goods have been loaded on board, if the shipper so demands, the carrier shall issue a shipped bill of lading. If a sea waybill has been issued, it shall be surrendered in exchange for the issuance of the shipped bill of lading or other document. A shipped bill of lading shall state the name of the vessel or vessels upon which the goods have been loaded and the date of loading.

3. The consignee shall have the right to receive separate bills of lading for parts of the goods, if it can be done without inconvenience.

#### Article 149

1. The carrier shall, to a reasonable extent, check the accuracy of the particulars included in the bill of lading according to paragraph 1 subparagraph (a) of Article 147. If he has reasonable grounds to suspect the accuracy of such particulars, or if he had no reasonable means of checking their accuracy, he may insert in the bill of lading a proper reservation to this effect.

2. In the absence of a note on the bill of lading of the apparent condition of the goods or their packing, it shall be considered to be noted on the bill of lading that the goods were in good apparent condition, unless proved otherwise.

#### Article 150

1. A bill of lading which does not set out the freight or otherwise indicate that the freight is payable by the consignee is *prima facie* evidence that no freight is payable by him. This shall apply correspondingly if no amount payable as demurrage has been entered into the bill of lading.

2. If a third party in good faith has acquired the bill of lading in reliance on the particulars therein being accurate, proof to the contrary according to subparagraphs (a) and (b) of Article 147 is not admissible. If the carrier realised or ought to have realised that a statement relating to the goods was inaccurate, he may not invoke a reservation mentioned in Article 149 unless the reservation expressly mentions the inaccuracy of the statement.

#### Article 151

When a third party suffers loss by acquiring a bill of lading in reliance on the statements therein being accurate, the carrier is liable to the third party if he realised or

ought to have realised that the contents of the bill of lading were misleading to a third party. In such a situation there is no right of limitation of liability under this Chapter.

#### Article 152

The consignee is liable to the carrier for the accuracy of the particulars relating to the goods, which have been inserted in the bill of lading at his request.

#### Article 153

1. Any person presenting a bill of lading and appearing through its content or, in the case of an order bill of lading, through a continuous chain of endorsements or through an endorsement in blank, as the rightful holder in due course, is authorised as consignee of the goods.

Where the bill of lading has been issued in several originals, it suffices for due delivery at the place of destination that the consignee proves his authority by presenting one original bill of lading. Where the goods are delivered at any other place, all other originals must also be surrendered or security furnished for any claim that a holder of any other original in circulation might raise against a carrier.

2. If several consignees claim delivery, presenting separate originals of the bill of lading, the carrier shall arrange to have the goods stored in safe custody for the account of the rightful consignee. The consignees claiming delivery shall be notified without delay.

#### Article 154

1. The consignee is entitled to receive the goods only if he deposits the bill of lading and gives receipts concurrently with the delivery of the goods.

2. After the delivery of all the goods, the bill of lading, duly receipted, shall be surrendered to the carrier.

## Article 155

1. Where a person appearing as the rightful holder of a bill of lading according to Article 153 transfers different order or bearer bill of lading originals to several persons, the person who first receives such an original in good faith shall be entitled to the goods. Where at the place of destination, the goods have been delivered to the holder of any other original such holder is not obliged to surrender what he has already received in good faith.

2. Any person who in good faith has acquired an order or bearer bill of lading is not obliged to deliver the bill of lading to another person who previously held it.

## Article 156

1. A sea waybill is a document which is evidence of a contract of carriage by sea and of the carrier having received the goods and contains an undertaking by the carrier to deliver the goods to the consignee named in the document.

2. Notwithstanding the issuance of the sea waybill the shipper may claim that the goods shall be delivered to a consignee other than the consignee indicated in the document, unless the shipper has waived this right against the carrier or the consignee has already asserted his right to the goods.

3. A shipper may in all cases demand a bill of lading and not a sea waybill in accordance with the provisions of Article 148.

## Article 157

1. A sea waybill shall contain particulars concerning the goods received for carriage, the shipper, the consignee and the carrier, the conditions of carriage and the freight and other costs to be paid by the consignee. The provisions in subparagraph (c) paragraph 1 of Article 147 and Article 149 shall have corresponding application.

2. The sea waybill shall be *prima facie* evidence of the contract of carriage and of the receipt of the goods as they have been described in the document.

#### Article 158

1. Articles 144-157 above apply to a contract of carriage by sea performed by data messages, if a paper transport document has been issued.

2. Using the data messages in a transaction does not effect the right of the carrier to issue and the right of the shipper to demand the paper transport documents prior to the delivery of the goods. In this case the use of data messages is terminated and replaced by the use of paper documents, which shall include a statement of such termination.

3. The replacement of data messages by paper documents shall not effect the rights and obligations of the parties involved.

#### Article 159

1. The plaintiff may institute an action in a court in Georgia, if one of the following places is situated in Georgia:

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

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

c) the agreed port of loading; or

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

2. Without prejudice to the provisions of paragraph 1 hereof the parties may agree on the place where the plaintiff may institute an action, after a claim has arisen.

#### Article 160

Notwithstanding the provisions of paragraph 1 of Article 159, the parties may provide by agreement evidenced in writing that any dispute shall be referred to a final decision by arbitration. Arbitration proceedings shall, at the option of the plaintiff, be instituted in Georgia if one of the places provided for in paragraph 1 of Article 159 is situated there.

The provisions of this Chapter will apply as part of the arbitration agreement’.

3. Repeal subparagraph (a) paragraph 1 of Article 369 and substitute by the following:

Article 369

Any action in respect of a contract of carriage is prescribed by the lapse of one year from the day on which the goods were delivered or should have been delivered.

4. Repeal paragraph 2 of Article 369.

**II.** The present amendments will enter into force on 1<sup>st</sup> May 2001.

President of Georgia

Tbilisi, 1<sup>st</sup> April 2000