

IMO-INTERNATIONAL MARITIME INSTITUTE

A LAW ON CARRIAGE OF GOODS BY WATER

A “DRAFTING PROJECT” SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LLM) AT THE IMO INTERNATIONAL MARITIME LAW INSTITUTE.

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NICARAGUA.

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EXPLANATORY NOTE

INTRODUCTION

It has been a true that the maritime policy of a country must give a high degree priority to the regulation of economical aspects of the maritime transport due to the fact that these activities are linked to its economical development since international trade is one of the principal generators of economic growth; it is also one of its main consequences. In other words, growth occurs when trade is created, whilst this growth itself creates more trade. So far as developing countries are concerned, maritime transport remains overwhelmingly the most important form of international transport.

One important aspect of regulating the maritime transport is to establish rules governing the relationship (rights and duties) of all parties involved in maritime transport. In this regard, it is very important to adopt laws on the carriage of goods and passengers by ship. In Nicaragua, there is not carriage of passenger by sea in the strict sense of the words; therefore, with the adoption of the present Draft the theme related with the contract of carriage by sea will be covered.

In Nicaragua the carriage of goods by water is governed by the Code of Commerce of 1914 which is based on the French and Spanish Commercial Codes of the last century. Therefore, one can say that such provisions are out-dated and inadequate to deal successful with the legal problems and difficulties which may arise where one of the parties in the contract of carriage fails to comply with his obligations as required by commercial practices and international rules adopted by the international maritime community. In this sense, it is a matter of urgency for the government to up-to-date such legislation according with such rules and practices.

The government through the competent public organ of the maritime administration has as the maim aim to review and up dating its existing maritime legislation. Task that also is doing by the rest of Central America countries with the support of the International Maritime Organization (IMO).

In the process of drafting and adopting the provisions which will be applied to the carriage of goods by water, it must be borne in mind the effectively protection of the interests of national shipper because Nicaragua is essentially a shipper country without a national merchant fleet.

The rights and duties of the parties involved in a contract of carriage of goods by sea has for a long time been the subject of international regulation. This is found in the International Convention for the unification of certain Rules of Law Relating to Bills Of Lading, 1924 and its Protocols of 1968 and 1979, and together they are known as the Hague-Visby Rules. Finally, there is the United Nations Convention on the Carriage of Goods by Sea, 1978, i.e the Hamburg Rules. All these conventions are in force.

It would not seem necessary to explain the main objective of an international convention which is to provide uniformity and harmonized solutions on the matters under its scope of application. There is however, no control mechanism over the aim having been maintained in the States Party to a convention. Nevertheless, legal regime based on international convention is a better guarantee of harmonization than no convention at all.

In the case of carriage of goods by sea, uniformity of law, at present may be difficult to achieve. This is due because there are States which are parties to the Hague-Visby Rules and others to the Hamburg Rules, therefore, in principle those States must comply with the rules contained in the convention to which they are Contracting State. On the other hand, some States are selecting rules from both conventions that are relevant to their maritime policy and adopting them to its municipal law. For instance, the Nordic Countries (Norway, Denmark, Finland, and Sweden) parties to the Hague-Visby Rules have adopted a new Maritime Code in 1974 Which Chapter 13 "Carriage of Goods by Sea", incorporates also provisions from the Hamburg Rules that are not in conflict with the Hague- Visby Rules obligations. Also, the USA and Australia are currently making their new version of carriage of goods by sea by basically mixing the Hague-Visby Rules and the Hamburg Rules regimes.

The present proposal legislation follows the technique of mixing the relevant Articles of the Hague- Visby Rules and of the Hamburg Rules which can be applied in our country according with the national maritime policy of the protecting the shipper and consignee interests without obstruct the commercial exchange. Also the Draft contains certain provisions which are not covered by both conventions but that are of common use in the commercial exchange and also will contribute in solving legal problems which may be arise from the contract of carriage.

Nicaragua is not Party neither of the Hague-Visby Rules nor of the Hamburg Rules, but the commercial practice has been to buy c.i.f and to sell f.o.b.; therefore, it seems to be clear that the liability regime (the most important matter in the contract of carriage) is governing by foreign law which regulates the contract of carriage. This fact constitutes another ground for the adoption e implementation of an appropriate legislation which allows an equilibrium between cargo interests and the carrier in the contract of carriage of goods by water.

Due to the fact that in Nicaragua there is an important cabotage traffic (river and lakes), the provisions of the Draft are applicable to such kind of transportation..

ARRANGEMENT OF CHAPTER OF THE DRAFTING

CHAPTER I : General Provisions

This section constitutes the standard format used in drafting any kind of legislation in Nicaragua. Basically, it contains rules relating to Definitions; Scope of application; and Exception.

The most important thing to comment is that the scope of application is expanded (in comparison with Hague-Visby Rules) to all contract of carriage of goods by water, whether or not covered by a bill of lading. On the other hand, the provisions applied to all kind of cargo, including live animals, whether carried on deck or under deck.

CHAPTER II : Delivery and receipt of the goods

This section contains provisions related to Delivery of the goods; Examination of the package; Dangerous goods; Receipt of the goods; Freight; and Repudiation of breach of contract.

The content of the provisions of this chapter is very important in the determination of the liability of the parties involved in the contract of carriage.

CHAPTER III : The carriage

This section covers topics related to the carrier's duty to safeguard the cargo owner's

interests; Deck cargo; The carrier's authority to act on behalf of the cargo owner; and The cargo owner's responsibility for the carrier's measures.

The Draft maintains the provision of Article 3 of the Hague-Visby Rules, prescribing the carrier's duty of performing "**the carriage with due care and dispatch**"; this consists in that the carrier must make the vessel used for the carriage seaworthy, properly manned and equipped and that all parts of the vessel in which goods are carried, fit and safe for their reception, carriage and preservation.

A vessel may be said to be seaworthy when it is in such a condition with efficient equipment and manned by a such a master and crew, that in normal circumstances cargo may be loaded, carried, cared for and discharged properly and safely on the contemplated voyage.

"duly manned and equipped" generally means that the vessel must be equipped with up-to-date charts, notices to mariners and adequate reliable navigational equipment (radar, gyro compass, etc.). The master, officers and crew must be adequate in number and qualification and properly trained and instructed in the operation of the vessel.

"that the holds, cool and refrigerated chambers and..." . In short this duty means to make the ship cargoworthy. A cargoworthy vessel may still be unseaworthy, in that the cargo can be stored safely in the hold even though it cannot travel to its destination because of a defect in the ship's engines, crew, charts, etc., but an uncargoworthy vessel will always be unseaworthy.

What is required to comply with this requirement will clearly vary according to the cargo to be carried, the nature and length of the voyage and the characteristics of the vessel.

CHAPTER IV : Delivery of the goods

This section deals with the duties of the carrier and consignee on delivery of the goods. The main duties of the carrier are to deliver safely the goods to the consignee at the place of destination and on time. The consignee's duty is to pay the freight and other claims of the carrier according to the bill of lading or to the contract of carriage.

The section also provides the measures to be taken by the carrier in case where the consignee does not collect the goods within the time indicated by the carrier. If the carrier complies with such provisions, he will be relieved of his liability.

CHAPTER V : Liability of the carrier

This section focuses on the liability of the carrier that may be considered as the most important part of this law because this topic is considered as the **corner stone** of the contract of carriage.

The period of responsibility is a particular crucial point. Under the Hague-Visby regime such period covers the time from when the goods are loaded on board until the time they are discharged from the ship, that is, responsibility begins with the taking over of the goods by the ship's tackle and ends when the goods are released from the ship's tackle. If the cargo, as today is often the case, is loaded and discharged by shore cranes, responsibility begins and ends when the cargo crosses the ship's rail. This period is very narrow compared with the period of responsibility under the Hamburg Rules.

The period of responsibility prescribed in the Draft follows the principle of the Hamburg Rules. This period is both wider and clear than that under the Hague-Visby Rules and covers the time when the carrier is in charge of the goods at the port loading, during the carriage and at port of discharge.

The paragraph 2 of Article 22 of the Draft is intended for the clarification of the period during which the carrier is in charge of the goods.

With regard to delivery of the goods, Article 22 paragraph 3 (b) expressly mentions the situation where the goods are not received by the consignee but are placed at the disposal of the consignee in accordance with the contract, local law, or usage of the particular trade. The justification for this provision is that, if the consignee does not fulfil his obligation to take delivery, the carrier should be relieved of his liability.

Article 22 paragraphs 2 and 3 (c) of the Draft deals with an important point concerning the taking over and delivery of the goods by the carrier. These provisions prescribe that the carrier is not responsible when the goods are in charge of Port authority or other third parties before shipment or after discharge in accordance with the law or regulations of the loading or discharge ports. The justification of these provisions is that, the carrier is not free to choose the facilities for handling and storage of the goods because in our country the port concerned has monopoly over such facilities and therefore, the carrier should not be liable for loss or damage to

the goods caused in that facilities.

In order to protect the shipper and consignee for loss or damage to the goods caused during the period of which the goods are in charge of the port authority, Nicaragua should adopt rules concerning liability of terminal operators.

The Draft provides in Article 23 that the liability of the carrier is based on the presumption fault or neglect of the carrier, principle that is provided by the Hague-Visby Rules and the Hamburg Rules.

The burden of proof in all cases of loss or damage to the goods is on the carrier because he would be most likely to have knowledge of the facts. However, in case of loss or damage to the goods caused by fire, the burden of proof is on part of the claimant, that is, on the cargo interests (Art. 24 paragraph 1). To assist the party who bears the burden of proof in case of loss or damage due to fire, Article 24 paragraph 2 provides for the possibility of requiring a survey in accordance with shipping practices to clarify as soon as possible the cause and circumstances of the fire.

In Article 26, the Draft following the Hamburg Rules makes the carrier liable not only for loss or damage to the goods but also for “delay in delivery”, establishing what constitutes delay. The concept of “delay” contained in such provision corresponds also to international conventions in other fields of transport, such as in Article 19 of the Warsaw convention and Article 17 of the Convention on the Contract for the International Carriage of Goods by Road (CMR).

In case where the goods have not been delivered within 60 days following the expire of the agreed time or the reasonable time, the cargo interests may claim for total loss of the goods, that is, the cargo interests have the optional right of referring either to delay or total loss after that period (Article 26 paragraph 3).

The Draft also outlines special provisions regarding to live animals and deck cargo. In the case of deck cargo the carrier is liable if the cargo is carried contrary to agreement with the shipper, usage or regulation (Article 25). The carrier’s liability is based on the same principles as in Articles 23-26, in other words the carrier has a presumed fault liability.

According to Article 25 of the Draft, the carrier can be released from liability only if the damage has arisen of a particular risk relating to the transport of live animals. If the carrier establishes that he complied with the shipper’s special instructions and there is not proof that the

loss or damage resulted from the carrier's fault or neglect, it will be presumed that any loss, damage or delay in delivery resulted from those special risk. If the presumption is not rebutted by contrary proof, the carrier will be exempt from liability or the loss, damage or delay in delivery.

Regarding to calculation of damage for loss, damage, the Draft incorporates the principles of Articles 4.5 (b) of the Hague- Visby Rules; it requires that the value of the goods lost or damaged is to be calculated according to the place where and the time when the goods were discharged in accordance with the contract or should have been so discharged. The value at this place and time follows three alternatives: either 1) the commodity exchange price, or 2) the current market price, or 3) the normal value of the goods of the same kind and quality.

Regarding to the limitation of liability for loss or damage, the draft incorporates the limits prescribed in Article 4.5 of the Hague-Visby Rules, amount that also is contained in Article 6.1 of the UNCTAD/ICC Rules for Multimodal Transport Documents, 1992 which have international acceptance.

The Hamburg Rules increases considerably the limit of liability as such a manner that it has been one of the major criticism done to the convention. This criticism is that cost increase in insurance will follow the Hamburg Rules. The insurance market plays a central role in the liability regimes concerning loss of or damage to goods carried by sea and in practice these issues are arranged by the insurance market without the parties to the contract of carriage of goods by sea necessarily being involved. The cost increase in applying the Hamburg Rules is claimed to arise due to the fact that an increase in the carrier's liability will put more pressure on P&I calls.

The Draft introduces a limit of the liability of the carrier for delay in delivery according to Article 6(1)(b) of the Hamburg Rule and Article 6.5 of the UNCTAD/ICC Rules, 1992. The Hague-Visby Rules does not provide anything in this aspect.

This right to limit liability for the carrier can be denied for loss, damage or delay in delivery resulting from acts or omission done with intent to cause loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result (Article 8(1) of the Hamburg Rules and Article 4.5(e) of the Hague-Visby Rules).

Article 32 of the Draft deals with the liability of the contracting carrier for the entire carriage where such activity is performed by an actual carrier. Moreover, the contracting carrier is responsible for the acts or omissions of the actual carrier, his servants or agents acting within the

scope of their employment (Article 10(1) of the Hamburg Rules).

Article 33 of the Draft prescribes a principle of great practical importance making the actual carrier, in respect of the carriage performed by him, liable to the cargo interests to the same extent as the contractual carriage (Article 10(2)) of the Hamburg Rules.

Article 34 of the Draft prescribes the joint and several liability of the carrier and actual carrier. This provision Which is contained in Article of 10(4) of the Hamburg Rules is also contained in the Guadalajara Convention on carriage of goods by air.

CHAPTER VI : Liability of the shipper

This section contains provisions dealing with situations where the shipper will be held liable for damage sustained by the carrier or the ship, especially in the case of carriage of dangerous goods. In this respect, the Draft follows the principles of the Hamburg Rules.

The liability of the shipper is based on his fault or neglect, or his servants or agents.

The Draft requires the shipper not only to suitably mark the goods as dangerous, but also to give proper information of necessary precautions to the carrier and actual carrier to whom the goods are delivered. There are no specifications on how the marking should be done because this topic will be cover by administrative rules.

Due to the shipper's duty to inform of dangerous goods in the above mentioned manner, it becomes clear that non information is the basic precondition for the shipper's liability. Non information is corrected if the carrier or actual carrier who takes over the goods otherwise had knowledge of their dangerous character. Correction can take place both when the goods are first taken over and when a carrier later in the chain receives them and has knowledge of the dangerous character of the goods.

Knowledge can be acquired by whatever means, such as information from the previous carrier or by the receiving carrier having noticed the dangerous character from the marking.

In case of non-information and non- knowledge on the carrier's side, the shipper has strict liability for costs and any other loss caused by the dangerous goods that he has delivered for carriage.

The need for the carrier actually in charge of the goods to take preventive measures in risk situations is self-evident. The Draft accepts the right for this carrier to take certain measures. If the shipper has not informed about dangerous goods in accordance with what has been stated above, the carrier in question is entitled to unload, render harmless or destroy the goods, as the circumstances may require. In such cases the carrier's rights result in no liability in damages for this carrier. Certain degree of care, however, has to be taken into consideration. For example, the carrier must take the least destructive measure if alternatives exist. However, if proper information has been given by the shipper, but an actual carrier is unaware of it, the latter cannot take measures with the application of this rule. In other words, it suffices that the necessary information has been sent to the chain of carriers from the beginning and any omission between the carriers is irrelevant from the shipper's point of view.

In spite of Knowledge of the dangerous character of the goods, they may have become an actual danger for person or property. In such a case, the same right of disposal without payment of compensation arises for the carrier in question.

CHAPTER VII : Transport documents

This section deals with the transport documents which the carrier must be issued once he has received the goods to be carried.

Article 38 of the Draft requires the carrier to issue to the shipper a bill of lading when so demanded by the shipper. If the shipper does not demand a bill of lading, the carrier may issue another document (e.g. a Sea Waybill). Article 38 (4) of the Draft attempts to clarify the term "signature" by giving a list of examples. These extend the meaning of "signature" to cover, in addition to handwritten signatures, signatures by any other means, mechanical, electronic or otherwise, so long as they are not inconsistent the law of the country where the bill of lading is issued. This provision facilitates the transfer of documents; including their signature by electronic means, a fact which is becoming increasingly important giving the greater use of electronic data interchange.

Article 39 of the Draft provides a list of items which "must" be included in the bill of lading. This provision is based on Article 15 (1) of the Hamburg Rules.

The main differences between the Hamburg Rules and the Hague Rules in this regard are

the followings:

1. The Article 15 (1) of the Hamburg Rules and Article 39 (a) of the Draft require that the number of packages or pieces, as well as the weight of the goods be shown on the bill of lading, Whereas, the Hague Rules in Article III rule 3 (b), require only one of these particulars. It seems to be more practical the provision of the Hamburg Rules since the weight of the goods and the number of packages are essential elements in determining the limits of liability, and therefore, they should be started on the bill of lading.

2. Article 15 (1)(c) of the Hamburg Rules and Article 39(c) of the Draft require the inclusion in the bill of lading of the name and principal place of business of the carrier. This is to identify the issuer of the bill of lading, since it is important that the bill of lading identify as clearly as possible the contracting party and where he can be found. Moreover the indication of the principal place of business of the carrier will also establish one of the places in which a claim can be brought against the carrier in accordance with Article 21 (1)(a) of the Hamburg Rules and Article 55 (1)(a) of the Draft. The Hague Rules do not contain this rule.

3. Article 15 (1)(f) of the Hamburg Rules and Article 39 (f) of the Draft require the mention in the bill of lading of the port of loading and the date of the carrier's taking in charge. Such particulars are normally included on the bill of lading for commercial purposes since a person who acquires a bill of lading needs to know where and when the carrier took the goods in charge. The Hague Rules do not provide in this regards.

4. Article 15 (k) of the Hamburg Rules and Article 39 (k) of the Draft require the inclusion in the bill of lading of a statement of the freight to the extent this payable by the consignee. The Hague Rules do not contain this rule.

Article 41 of the Draft provides for the issue of a shipped bill of lading once the goods have been loaded on board the vessel. Traditionally, a "shipped bill of lading" added the important commercial fact that the goods had been taken on board a specified vessel.

Article 1 (f) and Article 42 of the Draft establish the main legal characteristics of the bill of lading, i.e. being:

- a) evidence of the contract of the carriage;
- b) evidence of the carrier's promise of carriage;
- c) the receipt for the goods; and
- d) the negotiable document against which delivery of goods takes place.

These provisions are very important to clarify the relationship between the contract of

carriage and the bill of lading. Similar provisions are contained in Articles 1 (7) and 16 (3) of Hamburg Rules and Article III rule 4 of the Hague-Visby Rules.

Under Article 45 of the Draft, the shipper must indemnify the carrier against losses resulting from inaccuracies in the particulars furnished by him for insertion in the bill of lading. This includes, for example, extra costs incurred by the carrier as a result of the improper stowage or delivery of the goods owing to wrong information in the bill of lading. These provisions are similar to Article 17 (1) of Hamburg Rules and Article III rule 5 of Hague Rules. However, under the Draft and Hamburg Rules, there is the additional provision that the shipper remains liable even if he has transferred the bill of lading to some one else.

Article 46 of the Draft based on Article 17 (2)(3)(4) of Hamburg Rules provides for the issue of letter of guarantee and indemnity. In practice, shippers sometimes demand a “clean bill of lading”, that is, bill of lading without any reservation on the part of the carrier, even though the carrier may have grounds to question the accuracy of the information supplied by the shipper for insertion in the bill of lading or may have no reasonable means of checking that information, or may have discovered defects in the condition of the goods. If this is the case, the shipper may, in return, offer to provide the carrier with a letter of guarantee indemnifying the carrier against loss suffered by him as a result of issuing the “clean bill of lading”. Such agreement serves a commercial purpose by enabling sales transactions requiring a clean bill of lading to take place and by promoting the movement of goods.

The Hague Rules do not contain any provision related to letter of guarantee.

The Draft in Articles 47-51 contains provisions related to delivery of the goods at the place of destination which takes place against the presentation and surrender of one original bill of lading in the case of a chain of endorsements appointing the person claiming delivery as the last holder, unless the bill of lading has been issued to bearer or there is a blank endorsement. These provisions follow normal international customs of trade. Also, the Draft contains certain rules related to delivery at another place than the place of destination, more than one person claiming delivery, the original bill of lading having been lost and double endorsement of an original bill of lading. Neither the Hamburg Rules, nor the Hague-Visby Rules deal with question like these.

Article 52 of the Draft deals with the issue by the carrier of a document other than the bill of lading, giving to it the same legal characteristics of the bill of lading explained above. This provision was included in Article 18 of the Hamburg Rules because of the increasing use in

maritime transport of transport documents other than bill of lading, such as sea way bills.

CHAPTER VII : Claims and actions

This section deals with questions related to Notice of loss, damage or delay; Prescription of actions; Jurisdiction; and Arbitration.

The provisions contained in Article 53 of the Draft is based on the principles follow by Article 19 of the Hamburg Rules.

The main difference between the Hamburg Rules and the Hague Rules is the length of notices periods. For instance, according to Article 19 (1) of Hamburg Rules, notice of apparent damage must be given not later than one day after delivery of the goods; whereas, the Hague Rules require notice to be given immediately. The longer notice period under the Hamburg Rules is not unduly onerous to the carrier since the given notice itself creates no presumption but merely precludes the presumption in favour of the carrier that the goods were delivered in proper condition.

Regarding to the time bar (prescription of actions) the Article 54 of the Draft following the principles contained in Article 20 of the Hamburg Rules, provides a period of two years if judicial or arbitral proceedings have not been instituted. This period starts from the day the goods were delivered or should have been delivered. The Hague Rules provide a prescription period of one year after the goods have been delivered or should have been delivered.

The Draft adopts the time period of two years to safeguard the interests of the shipper, since the one year period prescribed in the Hague Rules very often turned out to be too short in practice. Also, the period of two years is contained in others transport conventions, such as, the Athens Convention (Article 16), the Multimodal Transport Convention (Article 25.1) and the Warsaw Convention (Article 29).

Article 55 of the Draft following the Article 21 of the Hamburg Rules, sets out the places where judicial proceedings, at the option of the plaintiff, may be instituted. Moreover, this rule takes into account the Nicaraguan Civil Procedural Code which sets out an important element in determining jurisdiction of a Court that is the amount of the claim, since the competency of a Court is not only based on the basis prescribed in Article 21 of the Hamburg Rules but also on the basis of the claimed.

The Article 55 of the Draft also provides the jurisdiction of the court were the carrying vessel or any other vessel in the same ownership has been arrested. This rule has its justification in the fact that according to Nicaraguan law the arrest of a ship constitutes a preventive legal measure to warrant the result of the judgement and therefore, the plaintiff must introduce his claim before the same court which has already ordered the arrest.

CHAPTER IX : Supplementary provisions

This section deals with the nullity of any contractual stipulations which directly or indirectly derogates the provisions contained in the Draft; but allows the carrier to increase his responsibilities and obligations under the Draft.

The Draft requires that the bill of lading or any other document evidencing the contract of carriage must contain a statement indicating that the carriage is subject to the provisions of the Draft.

CHAPTER X : Final provisions

This section establishes the competency of the Ministry of Transport and Infrastructure to issue administrative rules necessary for the implementation of the Draft.

Also contained the normal rule which all Nicaraguan law must contain which its date of entering into force and the obligation of publishing it in the official newspaper.

Law No...

The President of the Republic of Nicaragua

Hereby, informs the Nicaraguan People that;

**THE NATIONAL ASSEMBLY OF THE
REPUBLIC OF NICARAGUA**

In exercising its rights;

HAS APPROVED

The following :

LAW ON CARRIAGE OF GOODS BY WATER

**CHAPTER I
GENERAL PROVISIONS**

Art.1. Definitions.

For all effects of this law:

- a) “contract of carriage” means any contract whereby the carrier undertakes against payment of freight to carry goods by water from one port to another; however, a contract which involves carriage by water and also carriage by some other means is deemed to be a contract of carriage by water for the purposes of this law only in so far as it relates to the carriage by water;
- b) “carrier” means any person by whom or in whose name a contract of carriage has been concluded with a shipper;
- c) “actual carrier” means any person who has been entrusted by the carrier to perform the carriage or part of it;
- d) “shipper” means any person by whom or in whose name or on whose behalf a contract of carriage 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;

e) “consignee” means any person entitled to take delivery of the goods;

f) “bill of lading” includes any document which evidences a contract of carriage 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;

g) “goods” include live animals ; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, “goods” include such article of transport or packing if supplied by the shipper;

h) “port” includes any facility used for receiving vessels for the purpose of loading and unloading of goods carried by water;

i) “unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

Art.2. Scope of application.

The provisions contained in this law are applicable to all contracts of carriage if:

- a) the carriage of goods by water is from one port in Nicaragua to another port in Nicaragua;
 - b) the port of loading or discharge as provided for in the contract of carriage is located in Nicaragua;
 - c) one of the optional ports of discharge provided for in the contract of carriage is the actual port of discharge and such port is located in Nicaragua;
 - d) the bill of lading or other document evidencing the contract of carriage is issued in Nicaragua;
- or
- e) the bill of lading or other document evidencing the contract of carriage provides that Nicaraguan law is to govern the contract.

This law is applicable without regard to the nationality of the vessel, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

Art. 3. Exceptions.

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

When a contract provides future carriage of goods, in a series of shipments during an agreed period, this law applies to each shipment. However, where a shipment is made under a charter-party, the provisions of the previous paragraph shall apply.

CHAPTER II DELIVERY AND RECEIPT OF THE GOODS FOR CARRIAGE

Art. 4. Delivery of the goods.

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

Art. 5. Examination of the package.

The carrier shall to a reasonable degree examine whether the goods are packed in such a way as not to suffer damage or be apt 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.

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

Art. 6. Dangerous goods.

Dangerous goods must be suitably marked as dangerous. 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.

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

Art. 7. Goods requiring special care

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.

Art. 8. Receipt for the goods

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

Art. 9. Freight

Unless otherwise agreed, the freight payable shall correspond to the freight current at the time of delivery of the goods for carriage. The freight shall be paid upon receipt of the goods.

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 according to Article 37 of this law.

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

Art. 10. Repudiation and breach of contract

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.

If the goods have not been delivered in due time, the carrier may cancel the contract of carriage if the delay amounts to a fundamental 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.

If the shipper or the consignee requests the interruption of the carriage and the delivery of the goods takes place at any place other 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 damage expense to the carrier or to any other shipper.

CHAPTER III THE CARRIAGE

Art. 11. The carrier's duty to safeguard the cargo owner's interests

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

The carrier's duty is to make the vessel used for the carriage seaworthy, which also includes that the vessel is duly 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.

If the goods have been lost, damaged or delayed in delivery, the carrier shall give notice to the person indicated by the shipper at the earliest opportunity. If such notice cannot be given, the cargo owner or, if he is unknown, the shipper shall be notified. The same applies if the carriage cannot be performed in the manner intended.

Art. 12. Deck cargo

The carrier is entitled to carry the goods on deck only if such carriage is in accordance with the contract of carriage, or with any usage or custom of the particular trade or is required by legislation or any other statutory rules or regulations.

If according to the contract of carriage the goods shall or may be carried on deck, this

shall be stated in the bill of lading or other document evidencing the contract of carriage. In the absence of such a statement, the carrier has the burden of proving that carriage on deck has been agreed.

The carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired in good faith the bill of lading or other document evidencing the contract of carriage.

Art. 13. The carrier's breach of contract

The shipper may cancel the contract of carriage due to the carrier's delay or other breach of contract if the breach of contract is a fundamental breach. After the goods have been delivered to the carrier, the shipper may not cancel the contract if the redelivery of the goods by the carrier would involve fundamental loss to any other shipper.

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.

Art.14. The carrier's authority to act on behalf of the cargo owner

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

If, due to the 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 cargo owner and to represent the latter in matters concerning the goods. Even if a measure taken was not necessary, the cargo owner is bound against a third party in good faith.

Notice of such measures taken shall be given according to the provision of Article 11 paragraph 3 of this law.

Art. 15. The cargo owner's responsibility for the carrier's measures.

The cargo owner is responsible for measures undertaken by the carrier and for any expenses incurred due to the nature of goods. If the carrier has acted without instructions, the cargo owner 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.

CHAPTER IV DELIVERY OF THE GOODS

Art. 16. The carrier's delivery of the goods

At the place of destination the consignee shall receive the goods at the place and within the time provided for in the contract of carriage. The goods shall be delivered in such a manner that they can be conveniently and safely received. The person entitled to receive the goods has the right to inspect them before reception.

Art. 17. The consignee's duty to pay freight and other claims

Unless the freight has been pre-paid, 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.

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 upon delivery or he realised or ought to have realised that the carrier had not received payment.

Art. 18. Right of withholding the goods.

If the carrier has claims according to Article 17 or other claims for which there is security by a maritime lien on the goods according to the rules governing this matter, he is not obliged to deliver the goods before the consignee has either paid the claims or put up security therefore.

After delivery of the goods the carrier can lay claim to the security, unless a Court on the demand of the consignee prohibits this.

Art. 19. Storing of goods

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.

Notice that the goods have been stored shall be given according to Article 11 paragraph 3. The notice shall indicate a reasonable period after the expiry of which the goods may be sold or disposed of as provided for in Article 20 of this law.

Art. 20. The carrier's disposal of goods which have not been collected

After the period laid down in Article 19 paragraph 2 of this law has expired, the carrier is entitled to sell the stored goods to the extent necessary to cover sale costs and claims mentioned in Article 19 of this law. The carrier shall exercise due care in arranging the sale.

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.

Art. 21. The shipper's liability for claims

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 causes loss to the shipper, and the carrier must have known this.

The carrier is not obliged to sell stored goods to cover such claims against the shipper as 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.

CHAPTER V THE LIABILITY OF THE CARRIER

Art. 22. Period of responsibility

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

For the purpose of paragraph 1 of this Article, the carrier is deemed to be in charge of the goods from the time he has taken over the goods from the shipper or an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods have been handed over for shipment.

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

- a) by handing over the goods to the consignee;
- 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 or custom of the particular trade 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 applicable at the port of discharge, the goods must be handed over.

Reference made to the carrier or to the consignee under paragraphs 1 and 2 of this Article means, in addition to the carrier or the consignee, the servants or agents respectively of the carrier or the consignee.

Art. 23. Liability for loss or damage

The carrier is liable for loss resulting from the goods being lost or damaged while they are in his charge as defined in Article 22 of this law, unless he proves that neither his fault or neglect nor the fault or neglect of his servants or agents have caused or contributed to the loss.

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.

Where fault or neglect on the part of the carrier or of his servants or agents 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. In this case, the carrier must prove to what extent the loss is not attributable to fault or neglect on his part, his servants or agents.

Art. 24. Liability for loss or damage due to fire

The carrier is liable :

- a) for loss of or damage to the goods 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.
- b) for such loss or damage 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.

Where a fire occurs on board the vessel affecting the goods, if the claimant or the carrier so desires, a survey in accordance with the 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.

Art. 25. Liability for live animals

The carrier is not liable for loss or damage with respect to live animals, where such loss or damage arises from 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 and that the loss or damage could be attributed to such risks mentioned in paragraph 1 of this Article, it is presumed that the loss or damage was so caused and so, he is not liable, unless it is proved that all or part of the loss or damage has resulted from fault or neglect on the part of the carrier, his servants or agents.

Art. 26. Liability for loss due to delay

The carrier is liable according to Articles 23, 24 and 25 for loss resulting from delay in the delivery of the goods.

Delay in the delivery of the goods occurs when the good have not been delivered at the port of discharge provided for in the contract of carriage within the time agreed upon or, in the 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.

If the goods have not been delivered within 60 days following the expiry of the time of delivery in accordance with the paragraph 2 of this Article, compensation may be claimed as for loss of the goods according to Article 23 of this law.

Art. 27. Calculation of damages for loss or damage

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.

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.

Art. 28. Limitation of liability

The carrier's liability for loss resulting from loss of or damage to the goods according to Article 23 of this law is limited to 666,67 Special Drawing Rights (SDR) per package or other shipping unit or 2 SDR per kilogram of the gross weight of the goods concerned, whichever is the higher.

The liability of the carrier for delay in delivery according to Article 26 of this law 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.

In no case shall the aggregate liability of the carrier under both paragraph 1 and 2 of this Article exceed the limitation which would be established under paragraph 1 for total loss of the goods with respect to which such liability was incurred.

For the purposes of calculating which amount is higher in accordance with paragraph 1 of this Article, the following rules shall apply:

a) Where a container, pallet or similar article of transport has been used to consolidate the goods, each package or other shipping units which according to the transport document has been placed in the article of transport, is deemed as one package or unit and except as aforesaid the goods in such an article of transport are deemed one 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, shall be considered to be one separate shipping unit.

Nothing in this law shall preclude the carrier and the shipper from entering into any agreement to fix limits of liability exceeding those provided for in this Article.

Art. 29. Application to non-contractual claims

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

If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he has been acting within the scope of his employment or in the fulfilment of the engagement, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this law.

The aggregate liability which can be imposed on the carrier and on his servants or agents shall not exceed the limits of liability provided for in Article 28 of this law.

Art. 30. Loss of right to limit liability

There is no limitation of liability for the benefit of any person if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such person done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Art. 31. Liability for deck cargo

Where goods are carried on deck contrary to the Article 12 of this law the carrier notwithstanding the Articles 23-26 of this law, is liable for loss resulting solely from the carriage on deck. The extent of the liability is determined in accordance with Articles 28-30 of this law.

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

Art. 32. The carrier's liability for an actual carrier

Where the carriage or part thereof is performed by an actual carrier, the carrier remains responsible for the entire carriage in accordance with this law. The carrier is responsible in relation to the carriage performed for the actual carrier, for the acts and omission of the actual carrier and of his servants and agents acting within the scope of their employment.

Where it is expressly 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, damage or delay in delivery 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.

Any stipulation excluding liability according to paragraph 2 of this Article is, however, without effect if no judicial proceedings can be instituted against the actual carrier in court competent under Article 55 of this law.

Art. 33. The actual carrier's liability

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 contained in Articles 29 and 30 of this law shall have corresponding application.

Where the carrier through a special agreement assumes obligations not imposed by this law or has waived rights conferred by this law, the actual carrier shall be deemed to be bound by such assumption of obligation or waiver if he expressly agrees to be so bound but whether or not the actual carrier so agrees, the carrier shall remain bound by the obligations or waivers resulting from such special agreement.

Art. 34. Joint liability

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

The aggregate liability which can be imposed on the carrier and the actual carrier and their servants and agents shall not exceed the limits of liability provided in this law.

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

Art.35. Contribution to general average

The provisions of Articles 22 to 34 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.

CHAPTER VI LIABILITY OF THE SHIPPER

Art. 36. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, including damage sustained by the vessel, unless such loss or damage was caused by the fault or neglect on his part, his servants or agents; nor shall any servant or agent of the shipper be liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Art. 37. Special rules on dangerous goods

Where the shipper has handed over dangerous goods to the carrier or to an actual carrier without informing him according to the provisions of Article 6 of this law of the dangerous character of the goods and of the necessary precautions, and where the person who takes over the goods does not otherwise have knowledge of their dangerous character, the shipper is liable to the carrier and any actual carrier for costs and any other loss resulting from the carriage of such goods. In such a case, the carrier or the actual carrier may at any time unload, render harmless or destroy the goods, as the circumstances may require, without any liability to pay compensation.

The provisions contained in paragraph 1 of this Article may not be invoked by any person who with knowledge of the dangerous character of the goods has taken them in his charge.

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

CHAPTER VII TRANSPORT DOCUMENTS

Art. 38. Issue of bill of lading

When the carrier or the actual carrier has received the goods, the carrier must, on the shipper's demand, issue to the shipper a bill of lading.

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.

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 vessel carrying the goods is deemed to have been signed on behalf of the carrier.

The signature on the bill of lading may be in handwriting, printing 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.

Art. 39. Contents of the bills of lading

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

- a) the general nature of the goods, including information on their dangerous character, the marks necessary for identification 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 actual shipper;
- b) the apparent condition of the goods and the packing;
- 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 as provided for in the contract of carriage and the date of which the goods were taken over by the carrier at the port of loading;
- g) the port of discharge as provided for in the contract of carriage;
- h) the numbers 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, if applicable, that the goods shall or may be carried on deck;

m) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and

n) any increased limit or limits of liability where agreed in accordance with paragraph 5 Article 28 of this law.

Art.40. Absence of particulars in the bill of lading

The absence in the bill of lading of one or more particulars referred to in Article 39 of this law 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 f) of the Article 1 of this law.

Art. 41. The shipper right's to a shipped bill of lading

After the goods have been loaded on board the vessel, 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 Article 39 of this law, 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.

Art. 42. Legal character of and reservation in a bill of lading

A bill of lading is a document which :

a) is evidence of a contract of carriage by water and 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.

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 unless the bill of lading contains a reference to them.

The carrier shall to a reasonable extent check the accuracy of the particulars included in the bill of lading, in particular, the requirements prescribed in paragraph a) Article 39 of this law. If he has reasonable grounds to suspect the accuracy of such particulars or if he had no reasonable means of checking their accuracy, he must insert in the bill of lading a proper reservation to this effect.

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 otherwise proved.

Art. 43. Bill of lading not specifying particulars regarding payment of freight and demurrage

A bill of lading which does not set forth the freight or otherwise indicate that the freight is payable by the consignee according to paragraph k) Article 40 of this law is prima facie evidence that no freight is payable by him. This shall apply correspondingly if no amount payable as demurrage incurred at the port of loading has been entered into the bill of lading. In this event, 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.

Art. 44. Liability for misleading particulars in a bill of lading

When a third party suffers loss by acquiring a bill of lading in reliance in the particulars therein being accurate, the carrier is liable 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 law.

If the goods consigned do not correspond with the particulars thereof contained in the bill of lading, the carrier is obliged to declare on the consignee's demand whether the shipper has agreed to indemnify the carrier for inaccurate or incomplete particulars (letter of indemnity) and also to impart such a letter of indemnity to the consignee.

Art. 45. Guarantees by the shipper.

The shipper 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.

The shipper must indemnify the carrier against the loss resulting from inaccuracies in the particulars inserted in the bill of lading. 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 water to any person other than the shipper.

Art. 46. Letter of guarantee and indemnity agreement.

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.

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 in paragraph 1 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 Article 45 of this law.

In the case of intended fraud referred to in paragraph 2 of this Article the carrier is liable, without the benefit of the limitation of liability provided for in this law, 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.

Art. 47. Right of claiming the goods

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 in blank, as the rightful holder in due course, is authorised to receive the goods at the port of discharge thereof.

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.

Art. 48. Several holders of bill of lading

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.

Art. 49. Delivery against bill of lading

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

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

Art. 50. Delivery when the bill of lading has been lost

When an application has been filed for nullification of a lost bill of lading, the applicant, after the court has issued a public summons, may require the delivery of the goods if security is furnished for compensation corresponding to the amount which the carrier may become obliged to pay on account of the lost bill of lading.

Art. 51. Acquisition of a bill of lading in good faith

Where a person appearing as the rightful holder of a bill of lading according to Article 47 of this law 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.

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 has lost it.

Art. 52. 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 evidence of the conclusion of the contract of carriage by water and the taking over by the carrier of the goods as therein described.

CHAPTER VIII CLAIMS AND ACTIONS

Art. 53. Notice of loss, damage or delay

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.

The previous paragraph shall be applicable where the loss or damage is not apparent and notice in writing is not given within seven (7) consecutive days after the day when the goods were handed over to the consignee.

If the condition 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 or their authorized representatives at the place of delivery, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

Where there is 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.

Where there is loss resulting from delay in delivery, no compensation shall be payable unless a notice has been given in writing to the carrier within sixty (60) consecutive days after the day when the goods were handed over to the consignee.

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

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 ninety (90) consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 3 of Article 22 of this law, 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.

For the purposes of this Article, notice given to a person acting on the carrier's or 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 shall be deemed to have been given to the carrier or to the shipper respectively.

Art. 54. Prescription of actions

Any action relating to carriage of goods under this law shall be prescribed if no judicial or arbitral proceedings are instituted within a period of two years from the day on which the goods were delivered or should have been delivered.

The day on which the prescription period commences shall not be included in the period.

The prescription period may, however, be extended if the parties so agree after the cause of action has arisen.

Art. 55. Jurisdiction

Any judicial action relating to carriage of goods under this law may be instituted, at the option of the plaintiff, before 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 of carriage 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;

Notwithstanding the preceding provisions of this Article, an action may be instituted before a court of the place designated for that purpose in the contract of carriage or where the

carrying vessel or any other vessel in the same ownership has been arrested in accordance with any relevant Nicaraguan law being in force. After a dispute has arisen, the parties may agree how the dispute shall be dealt with.

Where a bill of lading has been issued pursuant to a charterparty containing provisions of the competent court or arbitration procedure without a bill of lading containing a special annotation providing that these provisions shall be binding upon the holder of the bill of lading, the carrier may not invoke such provisions as against a holder having acquired the bill of lading in good faith.

Art. 56. Arbitration

Notwithstanding the provisions of paragraph 1 of Article 55 of this law, the parties may provide by agreement evidenced in writing that any dispute shall be referred to a final decision by arbitration. Arbitration proceedings, as part of the arbitration agreement, shall at the option of the plaintiff be instituted in one of the place provided for in paragraph 1 of Article 55 of this law. Also, as part of the arbitration agreement, the arbitrators shall always apply the provisions of this law.

Notwithstanding the arbitration agreement, the provisions of paragraphs 2 and 3 of Article 55 of this law shall have corresponding application.

CHAPTER IX SUPPLEMENTARY PROVISIONS

Art. 57 Contractual stipulations

Any stipulation in a contract of carriage, in a bill of lading, or in any other document evidencing the contract of carriage is null and void to the extent that it derogates, directly or indirectly, from the provisions of this law. The nullity of such 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 the goods in favor of the carrier or any similar clause is null and void.

Notwithstanding the preceding paragraph, a carrier may increase his responsibilities and

obligations prescribed in this law.

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

CHAPTER X FINAL PROVISIONS

Art. 58. Implementation

The Ministry of Transport and Infrastructure shall effect the implementation of this law and for this purpose, it is authorized to issue rules and regulations to facilitate the administration of this law.

Art. 59. Law to be effective.

This law shall take effect sixty days after its publication in the official newspaper, “La Gaceta”.

