

IMO International Maritime Law Institute - 1996 / 1997

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Malta

MARITIME LEGISLATION DRAFTING PROJECT

entitled

Carriage by Sea Act, 1997

AN ACT providing for Malta's accession to the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as amended in 1976 and 1990 and to the 1924 International Convention for the Unification of Certain Rules relating to Bills of Lading, as amended in 1968 and 1979 and for the implementation of certain provisions of the Conventions

Explanatory Note:

This Act sets out to achieve a number of aims. The primary aim is that of introducing into Maltese law a regime regulating the carriage of passengers and their luggage by sea. Presently, Maltese law is practically silent on the issue except for some minor provisions contained in Part X of the Merchant Shipping Act 1975 (Chapter 234). The second aim is to upgrade the regulation on the carriage of goods by sea. Finally, it was considered desirable to regulate the carriage of passengers and their luggage by sea and the carriage of goods by sea in a single Act as this facilitates the adoption of a more unified approach to inter-related issues.

The need for a better regulation of the carriage of passengers and their luggage by sea has been felt for some time. It is the Government's declared intention to utilise Malta's central geographical position in the Mediterranean as a hub from where cruise liners could begin and end their cruises around the Mediterranean. Although the physical infrastructure is already in place, it was felt that the legal infrastructure was not adequate. The brief, therefore, was to develop Malta's infrastructure in this regard.

It was felt that, for a number of reasons, the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as amended in 1976 and 1990, provides the best legal framework within which the hubbing concept could be regulated. The Athens Convention presents a framework which is already known to the operators in the area. Cruise operators, therefore, should have little problems understanding the true purport of the legislation. Moreover, given the obvious restriction on the Maltese legal system, it was also considered desirable to adopt lock stock and barrel a major international piece of legislation as this guarantees adequate legal commentaries, something which would necessarily be available if a local Act were to be adopted.

The Convention, moreover, represents an adequate and sophisticated balance between the rights and duties of carriers on one hand and passengers on the other hand. In this sense, it was felt that the Convention had to be incorporated only as amended in 1976

and 1990. The original limitation of liability levels envisaged in 1974 are no longer realistic. The 1976 and 1990 amendments help to bring the said levels somewhat closer to reality. Similarly, the Special Drawing Right concept is easier to use than the gold clause to calculate the conversion of any liability in local currency.

Presently, carriage of goods by sea under bills of lading originating Malta is governed by the Hague Rules. It was felt that the present framework ought to be upgraded to the Hague Visby regime to take advantage of amendments inserted to clarify certain shortcomings identified in the Hague Rules. Among the shortcomings which the Visby Protocol attempts to tackle one finds are the notorious Vita Food Gap, the problems presented by the use of containers, the issue of whether servants, agents and subcontractors of the carrier can be sued directly by the shipper or consignee, the probative effect of statements contained in bills of lading in respect of third party holders, limitation for bulk cargoes and inflation problems.

It was not felt desirable to adopt the Hamburg Rules. The latter are in force only in a small number of countries which together affect only some two per cent of world shipping. Thus, at least until such time as the Hamburg Rules attract a more substantial following, it was felt that Malta should adopt the Hague rules as amended by the Visby and SDR protocols.

A BILL
entitled

AN ACT to provide for the regulation of carriage by sea.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Carriage by Sea Act.

General
Definitions

2. In this Act unless the context otherwise requires -

“Athens Convention” means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea adopted at Athens on the 13th December, 1974, as amended by the Protocol thereto signed at London on the 19th November 1976, [and by the Protocol thereto signed at London on the 29th March, 1990].

“Hague Convention” means the International Convention for the Unification of Certain Rules relating to Bills of Lading, adopted at Brussels on the 25th August, 1924 as amended by the Protocol thereto signed at Brussels on the 23rd February, 1968 [and by the Protocol thereto signed at Brussels on the 21st December, 1979].

“the Minister” means the Minister responsible for maritime affairs.

“national carriage” means any carriage by sea when, according to the contract of carriage or the scheduled itinerary, the place of departure or loading and the place of destination or unloading are two different ports or places within the limits of Malta;

Cap. 209

“Special Drawing Right” shall have the same meaning as that assigned to it by the Malta Membership of the International Monetary Fund Act (1968).

Ratification of
Hague and
Athens
Conventions

3. For the purpose of any law thereto applicable, the Government of Malta is hereby authorised to accede to the Hague Convention and the Athens Convention.

Application of certain provisions of the Athens Convention

4. (1) The provisions of Articles 1 to 22 of the Athens Convention, reproduced in the First Schedule to this Act shall form part of and be enforceable as the Law of Malta notwithstanding any provisions to the contrary contained in any other law.

Cap 234

Provided that nothing in this Act or the First Schedule thereto shall affect the operation of any provision contained in Part IX of the Merchant Shipping Act (1975), or the operation of any other enactment, for the time being in force, limiting the liability of ship-owners.

(2) The Minister shall have the power to extend, by the publication of a Legal Notice in the Government Gazette, the application of the provisions of the Athens Convention contained in the First Schedule to this Act to national carriage.

Application of certain provisions of the Hague Convention

5. (1) The provisions of Articles 1 to 10 of the Hague Convention reproduced in the Second Schedule to this Act shall form part of and be enforceable as the Law of Malta notwithstanding any provisions to the contrary contained in any other law.

Provided that subject to the other provisions of the section, the said provisions of the Hague Convention shall not apply if the vessel is carrying goods within the limits of Malta, that is from one island to the other or from one part of an island to another part of the same island.

Provided further that the Minister shall have the power to extend, by the publication of a Legal Notice in the Government Gazette, the application of the provisions of the Hague Convention contained in the Second Schedule to this Act to national carriage.

Cap 234

(2) Nothing in this Act or the Second Schedule thereto shall affect the operation of sections 286 to 291, both included, and of Part IX of the Merchant Shipping Act (1975), or the operation of any other enactment, for the time being in force, limiting the liability of ship-owners.

(3) There shall not be implied in any contract for the carriage of goods by sea to which the provisions of the Second Schedule apply any absolute undertaking by the carrier of the goods to provide a seaworthy vessel.

(4) For the purposes of paragraph 5 (d) of Article 4 of the Hague Convention, the amounts mentioned in sub-paragraph (a) of that paragraph shall be converted into Maltese currency at the rate applicable on the date on which the goods are discharged from the ship in accordance with the contract or should have been so discharged. Provided that if one of the Parties is not ordinarily or habitually resident or domiciled in Malta, the said amounts may be converted into such other currency as may be agreed between the Parties,

(5) Every bill of lading or similar document of title, issued in Malta, which contains or is evidence of any contract to which the provisions of the Second Schedule apply, shall contain an express statement that it is to have effect subject to the provisions of the said provisions of the Second Schedule as applied by this Act.

(6) Without prejudice to Article X (c) of the Hague Convention, the Second Schedule shall have the force of law in relation to -

(a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Hague Convention shall govern the contract, and

(b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Hague Convention is to govern the contract as if the receipt were a bill of lading,

but subject, where paragraph (b) applies, to any necessary modifications and in particular with the omission in Article III of the Hague Convention of the second sentence of paragraph 4 and of paragraph 7.

(7) If and in so far as the contract contained in or evidenced by a bill of lading or receipt within paragraph (a) or (b) of subsection 6 above applies to deck cargo or live animals, the Hague Convention as given the force of law by that subsection shall have the effect as if Article 1 (c) did not exclude deck cargo and live animals.

In this subsection "deck cargo" means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(8) If the Minister by a Legal Notice published in the Government Gazette certifies that for the purposes of the Hague Convention:

(a) a State specified in the Legal Notice is a contracting State, or is a contracting State in respect of any place or territory so specified; or

(b) any place or territory specified in the Legal Notice forms part of a State so specified (whether a contracting State or not),

the Legal Notice shall, except so far as it has been superseded by a subsequent Legal Notice, be conclusive evidence of the matters so certified.

Power to make regulations.

6. The Minister may make regulations, rules or orders, or give instructions, as are necessary for carrying into effect of the provisions of the Hague Convention and / or the Athens Convention.

Exclusive competence of the First Hall of the Civil Court

7. In Malta, the First Hall of the Civil Court shall be exclusively vested with the competence to hear and decide any action arising under any of the provisions of the Athens Convention reproduced in the First Schedule or under the provisions of the Hague Convention reproduced in the Second Schedule or under any regulations, rules, orders made or instructions given by the Minister.

Cap. 140 Repealed

8. The Carriage of Goods by Sea Act (1954) is hereby repealed.

Language

9. The Schedules to this Act shall be in the English language only, and such text shall apply also to the Maltese text of this Act.

FIRST SCHEDULE

Text of articles 1 to 20 of the 1974 Convention relating to the Carriage of Passengers and their Luggage by Sea as amended by the 1976 Protocol thereto and as further amended by the 1990 Protocol thereto.

Article 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

- 1 (a) "carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;
(b) "performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
2. "contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. "ship" means only a seagoing vessel, excluding an air-cushion vehicle;
4. "passenger" means any person carried in a ship,
 - (a) under a contract of carriage, or
 - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. "luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
 - (b) live animals;
6. "cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of

this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

7. "loss of or damage to luggage" includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

8. "carriage" covers the following periods:

(a) with regard to the passenger and his cabin luggage, the period during which the passenger and / or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

(b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;

(c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;

9. "international carriage" means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;

10. "Organisation" means the International Maritime Organisation.

11. "Secretary General" means the Secretary General of the Organisation.

Article 2

Application

1. This Convention shall apply to any international carriage if:
 - (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
 - (b) the contract of carriage has been made in a State Party to this Convention, or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

Article 3

Liability of the carrier

1. The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

Article 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

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

Article 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

Article 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

Article 7

Limit of liability for personal injury

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 175,000 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

Article 8

Limit of liability for loss of or damage to luggage

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 1,800 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 10,000 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 2,700 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 300 units of account in the case of damage to a vehicle and not exceeding 135 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

Article 9

Unit of account and conversion.

1. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 7, paragraph 1, and Article 8 shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special

Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in article 7, paragraph 1 and article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Article 7 and 8.

2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

Article 11.

Defences and limits for carriers' servants

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

Article 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

Article 13.

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 14.

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

Article 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:

- (a) in the case of apparent damage to luggage:
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

Article 16

Time-bar for actions

1. Any action for damages arising out of the death or of personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
2. The limitation period shall be calculated as follows:
 - (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

Article 17

Competent jurisdiction

1. An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State party to this Convention:

(a) the court of the place of permanent residence or principal place of business of the defendant, or

(b) the court of the place of departure or that of the destination according to the contract of carriage, or

(c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or

(d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

Article 18.

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

Article 19

Other conventions on limitation of liability

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

Article 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 19 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

Article 21

Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

Article 22

Declaration of non-application

1. Any Party may at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare in writing that it will not give effect to this Convention when the passenger and the carrier are subjects or nationals of that Party.

2. Any declaration made under paragraph 1 of this Article may be withdrawn at any time by a notification in writing to the Secretary-General.

SECOND SCHEDULE

Text of articles 1 to 10 of the 1924 International Convention for the Unification of Certain Rules relating to Bills of Lading as amended by the 1968 Protocol thereto and as further amended by the 1979 Protocol thereto

Article 1 Definitions

In this Convention, the following words are employed with the meanings set out below:

(a) "Carrier" includes the owner of the vessel or the charterer who enters into a contract of carriage with a shipper;

(b) "Contract of carriage" applies only to contracts of carriage covered by a Bill of Lading or any similar document of title, in so far as such document relates to the carriage of goods by sea; it also applies to any Bill of Lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such instrument regulates the relations between a carrier and a holder of the same;

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(d) "Ship" means any vessel used for the carriage of goods by sea;

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2 Risks

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of the such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article 3 Responsibilities and Liabilities

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to -

(a) Make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a Bill of Lading showing among other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) The apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the Bill of Lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a Bill of Lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b), and (c). However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting

from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the Bill of Lading.

If the loss or damage is not apparent, the notice must be given within three days of the delivery.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

Subject to paragraph 6 *bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

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

6 *bis*. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the Bill of Lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" Bill of Lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" Bill of Lading. At the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, it shall for the purpose of this article be deemed to constitute a "shipped" Bill of Lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect.

A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article 4

Rights and Immunities

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cold chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from -

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship:
- (b) Fire, unless caused by the actual fault or privity of the carrier:
- (c) Perils, danger and accidents of the sea or other navigable waters:
- (d) Act of God:
- (e) Act of war:
- (f) Act of public enemies:
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process:

- (h) Quarantine restrictions:
- (i) Act or omission of the shipper or owner of the goods, his agent or representative:
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general:
- (k) Riots and civil commotions:
- (l) Saving or attempting to save life or property at sea:
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods:
- (n) Insufficiency of packing:
- (o) Insufficiency or inadequacy of marks:
- (p) Latent defects not discoverable by due diligence
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or if there be no such price, according to the current market price, or if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

[The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:-

- (i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;
- (ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrams of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary in the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.】

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the Bill of Lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the Bill of Lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered

innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article 4 bis

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amount recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably ensue.

Article 5

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Convention, provided such surrender or increase shall be embodied in the Bill of Lading issued to the shipper.

The provisions of this Convention shall not be applicable to charterparties, but if Bills of Lading are issued in the case of a ship under a charterparty they shall comply with the terms of this Convention. Nothing in these rules shall be held to prevent the insertion in a Bill of Lading of any lawful provision regarding general average.

Article 6

Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or concerning his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or concerning the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no Bill of Lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

Article 7

Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Article 8

Limitation of Liability

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article 9

Gold clause / Nuclear exclusion.

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article 10

The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:

- (a) the Bill of Lading is issued in a contracting State,
- or
- (b) the carriage is from a port in a contracting State,
- or
- (c) the Contract contained in or evidence by the Bill of Lading provides that the rules of this Convention or legislation in any State giving effect to them are to govern the contract whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Objects and Reasons

The object of the Bill is to provide for the better regulation of the carriage of passengers, their luggage and goods by sea.