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WORLD MARITIME UNIVERSITY

MALMOE - SWEDEN

SHIPPING DOCUMENTATION IN SOMALIA — ASSOCIATED PROBLEMS, THE NEED TO AMEND LEGISLATION

BY

AHMED OSMAN HUSSEIN

SOMALIA

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the :

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I certify that all material in this dissertation which is not my own work has been identified and that no material is included for which a degree has been previously conferred upon me .

The contents of this dissertation reflect my personal views and are not necessarily endorsed by the University .

Signature.....

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A.O.HUSSEIN

DEDICATION

This Masterpiece is dedication to :
My Father and Mother , who have spend so much in their lives making me what I am today .

My wife Faduma and my son Hanad , my brother and my sisters .

PREFACE

For centuries is countries emerging from colonial and semi-colonial rule, economic growth has been virtually connected with an increasing share in international trade since , in general , a large proportion of GNP is composed of exports .

Investment in maritime industry presents Somalia with a diversified investment opportunity and better means of using maritime transport and ports to expand foriegn trade. The strong interdependence between trade , maritime transport and legislation governing these matters plays an important role in its development .

Besides this, shipping documentation and transactions have evolved over several hundred years and they are not easy to replace a formidable obstacle in world shipping today .

In Somalia many problems have been associated with the bill of lading over the last years e.g. there are many instances where the bill of lading is received after cargo has actually arrived , causing the cargo to be stored on the port premises pending its arrival .

This also causes cargo theft and damage due to the long time in port and tideous procedures for documents to pass through customs . deficiencies are descenerable as a result of lack of amendments being made to Somali Maritime Code , with various developments that have occurred over the last years .

In order to remedy the situation , sea way bills were introduced.this was not the only solution but has also been introduced, electronic transmission of commercial documents .

In this project (**SHIPPING DOCUMENTATION IN SOMALIA - ASSOCIATED PROBLEMS , THE NEED TO AMEND MARITIME CODE**)
I will discuss the importance of amending the Maritime Code and the need to facilitate documentation procedures . The project identifies commercial benefits that would be gained , through amendments of the code and the facilitation of trade documents .

The project is divided into five chapters ;
CHAPTER ONE is overall view and introduction to Somali , on infases on Maritime industry . The chapter will give basic information about maritime geography and economy , the Ministry of Maritime transport and Forts , and discussion of the main ports .

CHAPTER TWO gives an insight into the nature and application of the bill of lading under the Somali Maritime Code it is also an attempt to indicate the deficiencies that are discreanerable as a result of lack of amendments. There is also an analysis made regarding cargo claims and their settlement .This chapter discusses the problems associated with the bill of lading , and International rules relating to bills of lading .

CHAPTER THREE highlights some key problems facing carriers when calling at Somali ports and tideous procedures for

documentation , also the need of the Somali Maritime Administration and the port authority to evaluate existing methods of documentation and their procedures .

Finally, there is a need for the country to accede to the Convention of Facilitation of International Maritime traffic , in order to reach international standards .

CHAPTER FOUR discuses the new pattern of Sea waybills . Carriers of foriegn trade increasingly ship goods under non negotiable sea waybills . However , the absence of statutory laws regulating the use sea way bills in all countries except the United States , seems to be inhabiting the growth in usage . In this chapter advantages and disadvantages of seaway bills , present use and CMI rules are discussed . finally, Electronic Transfer of commercial documents will be discussed .

CHAPTER FIVE is recommendation and conclusion .

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1.1. INTRODUCTION

From about the middle of the 19th century to the beginning of the 20th century all ships were general purpose cargo carriers which could be employed in any trade. The shipowners were not faced with problems of obsolescence.

The introduction of steamships led to the first signs of specialization in shipping , giving rise to liners and tramps. There was little change during the early part of the 20th century but from about 1955 changes in shipping have become revolutionary, such as: introduction of specialized ships, capital intensive ships, faster turnaround times, a changing role of the shipowner e.g. ship operator , instantaneous communications , simplification of documentation, introduction of international conventions, and widespread use of computers.

As a result , the industry which for nearly 300 years had been experiencing evolutionary changes based on custom and commercial practice, has been totally overhanled in less than thirty years.

In the past, trade was conducted on trust contracts were entered into by word of mouth, as can be seen in the motto of the Baltic , OUR WORD IS OUR BOND, with very little or no documentation in some cases . Paper abounds in international trade. Different documents, sometimes in different formats can be required for different types of

cargo, different carriers and different markets. The paradigm for commercial instruments of international seaborne trade has been the bill of lading . It has largely stood the test of time as the most flexible means of accomplishing maritime transport .

Inspite of achievements in responding to the needs , and indeed fashioning the form of international commerce , certain limitations to the bill of lading have manifested themselves in recent years .

Nevertheless, the shipping industry was reluctant to undertake the examination and revision of long established procedures made necessary by the dramatic changes mentioned above . The bill of lading could not keep pace with faster turnaround times of vessels and the result was delays at ports ,which have along with others, for example, drawn attention to the potential for, and actual incidence of fraud in relation to their use.

Accordingly , it is perhaps not surprisingly that other documentary regimes have been suggested as alternatives . Unlike a bill of lading , a sea waybill is not a document of title and is not capable of negotiation in favor of the third party .

In Somalia , the bill of lading is required by law, and the use of sea waybills , which are not covered in the Somali Maritime Code, have raised the question of which rules may apply in cases of dispute. The other thing is that shipping

companies who are keen to keep their interests willing to know the laws that govern the contract of carriage when calling at Somali ports, have they ratified the International conventions concerning the matter .
This leads to a discussion of the Somali Maritime Code , international conventions, bills of lading , sea waybills, and documentation procedures .

The desirability of phasing out dated maritime code
or modifying bills of lading and their commercial procedures with a view to simplification and using alternative sea way bills is needed.

The country has not evaluated the basis for the impact of new developments and trends in trade simplification procedures and the use of automatic data procedures.It is apparent that the country has continued to view transport documentation in the traditional sense which no longer tallies with emerging commercial practices in world trade .

The project is designed to discuss the various types
of documents, mainly bills of lading and sea waybills in current use, to acquitant with issues and problems underlying international conventions relating to the contract of carriage by sea and new developments taking place in relevant areas ; and to relate these to the national interest , and thereby to facilitate an appropriate integration into national legal and commercial regimes , giving due regard to international considerations.

I hope that this project will bring to light the problems and the possible solutions relating to shipping documentation , and this will help the country to step forward and reach international standards.

The project is based on my personal views from my studies at World Maritime University , my research work and personal experience .

1.2. MARITIME GEOGRAPHY and ECONOMY

Somalia is located on the Horn of Africa and is bordered by the Indian Ocean on the east and Kenya , Ethiopia and Djibouti on the west and the Gulf of Aden to the north. It is a geographical region along the central eastern coast of Africa and stretches eastwards from the south gate of the Red sea along the Gulf of Aden to Cape Guardafui and southwards along the Indian ocean to Raskiamboni .

The Republic has a coastline of 2.000 miles , virtually the longest coastline in developing Africa. The total population of Somalia is estimated at 8.5 (published by the Ministry of Planning in 1989) . The coastal population can therefore be estimated at about two million and directly or indirectly dependent on the coast and coastal waters because the country exports and imports all goods through its principal ports . About 100,000 people are directly engaged in artisenal fishing , extraction of building materials from coastal areas , and tourism . The coastal population has been increasing partly due to natural growth but also due to migration and urbanization .

ECONOMY

Somalia is a developing country . Its economy is based upon livestock and agriculture, dominated by traditional modes of production . Potential economic growth exists , while no complete evaluation has taken place of the country's mineral

.

resources including Iron ore, Gypsum and other minerals and Uranium which have been discovered.

Livestock and agriculture represent the largest source of revenue . Animals, animal products , and agricultural crops constitute about 80% of the national income .Exports earn foreign currency , while import duties form the largest source of government revenue .

The government continues to encourage production for export and import substitution . The government intensifies its efforts to promote and diversify exports, to penetrate new markets and regain old ones . Measures are being adopted to enable private participation in banking, insurance , shipping and domestic and export trade in hides and skins , as well as frankincense, myrrah and various gums .

Banks will increase credit available for exports.Efforts will be made to provide inputs into productive sectors and encourage production for export . Production commodities will be promoted through participation in a preferential trade agreement with countries in East and South Africa and through other market research activities . Efforts will be made to identify new trading partners .Trade promotion efforts should be increased.

Efforts should be made to improve revenue collection methods and identify new sources of revenue . High priority will be given to improving tax administration and enhancing the elasticity of revenue with respect to output and prices.

The tax structure should be notified with a view to broadening the tax base . In the matter of the government to designing and implementing effective programmes , the overall and sectoral performance of the economy has been constrained by domestic structural weaknesses and some exogenous factors which have prevented full achievement of the objectives at the recent years .

1.3. SOMALI CONSTITUTION

The Italian Somali land politicians , in negotiations with Italian officials, prepared the first constitution , thus , northern politicians (on British Somali land) made a marginal effect on the constitutional draft . When the time came to ratify the constitution in June 1961 , the constitution was approved overwhelmingly in the south but got less than 50 percent support in the former British colony .

The Revolutionary Council of 1969 , created a new court,the National Security court , which has jurisdiction over such crimes as treason, embezzlement of public funds , and anti revolutionary activities . Apart from these changes , the judiciary remains intact . At the lower level , there are district courts, above which there are regional courts of appeal .

At the apex of the judicial system is the supreme court . The judicial system in use is a careful mixture of the British and Italian court systems, modified by local factors Islamic law also applies, particularly in civil cases . In the mid 1990s , the government abolished the national security court ,and its jurisdiction was given back to the supreme court and regional courts respectively according to their competence .

The above mentioned constitution was replaced by the new Somali Constitution (degree of the president of the Somali Democratic Republic no. 46 , 16 September, 1979) .Article 5 states that " Territorial sovereignty shall extend over land, the sea, the water column, sea-bed and sub-soil, continental shelf, the islands and air space " Article 4 of the constitution describes the four main sectors of the Somali economy ; the state sector , the cooperative sector, the private sector and the mixed sector , while article 42 provides that the land , natural marine environment and land-based resources shall be state property and that the state shall issue legislation to exploit these resources .

1.4. MINISTRY OF MARINE TRANSPORT AND PORTS

Because of the importance of shipping trade to the Somali economy , the Ministry of Marine Transport and Ports was established in 1977 by virtue of law no. 12 03 02 1977, for the development of marine transport and to improve services connected with the ports of the country .

The ministry is responsible for promoting and strengthening local and international navigation facilities .

The two institutions that function under the ministry are :

1- The Somali port Authority

2- The Somali shipping Agency and line .

The functions of the Ministry are suggested by their name . The functions fall into principal aims and objectives mainly exercised in the head office , by the minister and his immediate aides who carry out the duties and responsibilities of implementing strategies in the administrative and technical departments.

The main functions of the Ministry include the following.

- direction, planning, promotion, coordination, and control of port and shipping activities .

- coordination of regional development with other states.

- adoption, issue and promulgation of regulations for fees, dues and charges for ports, and for the promotion of national shipping services.

- provision of aids to navigation along the coastline in Somalia .

- promotion of affiliation to international organizations and the establishment of mutual agreements with the maritime administrations in neighboring countries .

- creation , promulgation and enforcement of rules and regulations for the safety of life at sea and the protection of the marine environment .

The duties and responsibilities of the departments are delegated to the directors who directly report to the permanent secretary.these duties include the following onse .

MARINE DEPARTMENT

- Registration of ships .
- Administration , operation and maintenance of aids to navigation.
- Administration and operation of hydrographic services.
- Registration and licensing of seafarers .

- Issue of certificates of competence to seafarers (seamen book) .

- Casualty investigation .

- Conciliation of disputes between the master and ship's crew.

FINANCE AND ADMINISTRATION

- Financial planning, budgeting and reporting.

- Financial accounting .

- Supplies, purchase and asset management.

- Personnel administration .

- General office administration.

PLANNING AND LEGAL DEPARTMENT

- Planning short and long term development projects

- Planning and evaluation of the need for port and shipping service.

- Preparation of ministerial degrees and ratification of legal instruments of international maritime conventions by the government.

- Coordination of relations with international organizations.

- Development of training programmes and training needs for personnel of the maritime transport industry .

- Coordination of development activities between the Ministry of National Planning and Ministry of Marine Transport and Ports.

TELECOMMUNICATIONS AND TECHNICAL DEPARTMENT

The telecommunications and technical works department is responsible for the technical and communications work required in the direction and control of shipping movements in the territorial waters of the country .

1.5. SOMALI PORTS

A port is fundamentally a central place of economic and cultural interchange, more specifically, it is a place where the mode of transportation changes from land to water-borne systems.

Such a place originates and grows as its functions develop in response to demand from a wide variety of sources and as a reflection of interrelationships that extend over a wide area on various scales .

As a modern mode in a multimodal system, the essential function of Somali ports is transport integration , but is the performance of this function , and for other reasons , a seaport may also become a major urban center, an important source of employment , and a influential factor in regional and national development . Somali ports system must be looked at a regional , national, and international terms, and in relation to various factors that influence its development and operation .

There is often a close relationship between the stage of economic development reached in a given country or port hinterland and the level and efficiency of port facilities available. The efficiency of port services in the third world is, however , often seriously affected by three important factors :

- The hinderance of transport infrastructure and economic systems from the colonial period,

- The continuing predominance of primary tropical products in national trade structures,

- The need to establish modern port systems at a time of rapidly changing world trading patterns; and technical development of the port also depends in the first instance on the foresight and sound judgement of the administrators . Ports with a variously , enlightened a administration full of initiative are usually developing , even under unfavorable geographic conditions , while other ports are stifled by bureaucratic routine and by a maze of unrealistic regulations, and are unable to take full advantage of possibilities .

It is natural , therefore, that establishing a sound administrative system in a new port or revitalizing administrative procedures in older ports is a matter of capital importance for the future development of every port. There is no general pattern for the best possible form of administration for all ports of the world.

Diversity rather than uniformity is and should be the prevailing rule . Long established traditions, ownership of various port installations and a host of other local conditions are among the many factors which have led to a great variety of port administrations, state controlled, municipal, autonomous and private .

The Somali Port Authority was created in 1962, as a statuary organization but was reorganized by law no 1 of January 1973. The SPA was attached to the Ministry of Marine transport and Ports , which also serves as the executing

agency of the authority for all its port operations projects . The basic dilemma of port authorities in Somalia today is, therefore, the problem of balancing national systems,

opportunities and goals against international trends in commodity flow, transport technology, and economic operations .The main commercial ports lie in the north-east, Zeila and in South Mogadishu, Merca ,and kismayu .It is these ports have brought the country onto the world scene, since the dawn of history as a trading partner , and in the nineteenth century as are of strategic importance .

Most international commodity transactions in Somalia are done by sea . The total traffic through the major ports of Mogadishu, Berbera , Merca, and kismayu, amounted to 1.128.240 tones in 1987. 65 percent of this total was imports and 35 percent exports . Livestock and bananas accounted for more than two thirds of total exports. In 1989 half imports were petroleum products.

Mogadishu port, the capital city of Somalia , is situated on the shores of the Indian Ocean and is the country's chief port. It has a estimated population of 1.000.000 it has a new deep port . Mogadishu is the most important , handling about 55 percent of the total traffic.

Berbera is the port for the northwestern part of the country, serving particularly the inland capital cities of Hargeisa and Burao . It has an estimated population of

90.000 . Most of the country's livestock exports from Somalia are through this port . The Port of Berbera handled 30 percent of the total traffic .

Kismayu port , is located on the east coast towards the south it has a population of 30,000 approximately . it has a pier harbour and possesses features which are ideal for development as a major fishing center . The port of kismayu handles 10 percent of the total exports .

Merca is an ancient city situated on the east coast. It has an estimated population of 15,000 more than a quarter of the nation's banana exports come from Merca which is very near one of the main banana growing areas. Merca handles 5 percent of the total exports. Bosaso with a population of 3.000 has a fishing community who also dry and salt the fish to be sent to Mogadishu . the sector contributes significantly to invisible earnings .

In 1987 about 200 million so. shilling profit was generated by the major ports . Smaller harbours, such as Zeila and Bosaso, which are frequented by smaller ships like dhows, contribute to regional incomes. In 1987, livestock exports from these two ports amounted to 200,000 head. The sector is also a major employer, with 2,000 permanent staff and 4,211 casually employed stevedores .

CHAPTER 2

BILLS OF LADING UNDER THE SOMALI MARITIME CODE

2.1. BACKGROUND AND PRESENT SITUATION

As seaborne trade developed over the centuries ,the document, evidenced a contract, between the shipper and the master or owners of a vessel, by which the receipt of the goods was acknowledged , took the form of a bill of lading this came to be recognized as an implied undertaking on the part of is the shipowner that the vessel was seaworthy and that the voyage would be carried out with due care and diligence , expeditiously without unwarranted deviation .

A breach of this undertaking could result in the cargo interests repudiating the contract and holding the carrier liable for any loss suffered .There are exceptions such as the act of god , but for the carrier to have the benefit of such exceptions they need to be specified in the bill of lading .Therefore,in the course of time the bill of lading specified the goods carried and the basis of any claim for non-delivery or damage. Until the latter part of the eighteenth century it was recognized that it was the shipowner's responsibility to carry and safely deliver the goods entrusted to the owners for carriage , and to deliver the goods in as good order and condition as that in which they were shipped .

Although by this time laws had been introduced relating to shipowning and the seaworthiness of vessels , the shipowners enjoyed the benefit of the freedom of contract that existed. Most shipowners took advantage of that freedom by including in their bills of lading wide exemption clauses providing the carrier with immunity from liability in respect of cargo loss or damage, however they arose . As a cargo owner might successfully find a way round an exemption clause, the carriers would close the door by either amending the clauses in the bills of lading or introducing a new clause .

Towards the end of the nineteenth century , banking and cargo interests became increasingly concerned about the practice of shipowners who embodied in the contract, evidenced of which was the bill of lading, these wide exemption clauses under which the carrier or shipowner could, and usually did, disclaim all liability for cargo loss or damage. There were not only documents of title to the goods in the hands of an endorsee but there were also the documents on which the banks and finance houses would advance the cash for the purchase of the goods described in the bill of lading .

Competition among shipowners was increasing and volume of seaborne trade developed to such an extent as to exceed the carrying capacity of shipping.There was growing concern amongst cargo interests at the manner in which the value of the bill of lading was being eroded by the action of shipowners and carriers in divesting themselves of any responsibility for the results of negligent handling of the

cargo, or in fact of any liability for any loss or damage the goods may have suffered during the time they were in the care and custody of the shipowner .

The trading nations were divided into two categories , shipowning countries and cargo oriented countries . In the light of the continuing dissatisfaction among shippers, banks , consignees and cargo underwriters, shipowners were being forced by these countries to review the terms of contracts evidenced by the bill of lading it was in these countries that the struggle between cargo and shipowning interests came to a head, resulting in the introduction of the acts and international conventions .

In Somalia, when a shipper wants to ship a consignment of goods abroad he approaches a shipping agency , either directly or more often through a forwarding agent , with a view to reserving space on a vessel . He is then instructed by the carrier when and where to deliver the goods and, having done so , is issued with a bill of lading indicating the type and quantity of goods handed over and a condition in which they were received by the carrier . From that point on the carrier normally has control of the goods and is ultimately responsible for transporting then abroad .

In the mean time, the shipper will normally acquire a copy of the carrier's bill of lading form which is obtainable from the carrier's agent .On the form he will enter details of the type and quantity of goods shipped , together with any relevant marks , and specify the port of destination and the name of the consignee .

The carrier's agent will check the cargo details against the tallies at the time of loading and if correct , will acknowledge them . After calculating the freight and entering it on the bill , the Master or his agent will sign the bill and release it to the shipper in return for delivery of the mates receipt or equivalent of advance freight due .

The shipper is then free either to dispatch the bill directly to the consignee or deliver it to a bank if the shipment forms part of an international sales transaction involving a documentary credit . In either case , the consignee may decide to sell the cargo while in transit , in which case he may endorse the bill of lading in favor of the purchase. Eventually the ultimate consignee or endorsee of the bill will surrender it at the port of discharge in return for the delivery of the goods .

The above brief account indicates the vital importance of the bill of lading in performance of the carriage contract and associated problems in Somalia will be discused next .

2.2. DEFINITION AND FUNCTIONS

In the Somali Maritime code the definition of the bill of lading is not mentioned, but it can be defined as follows:

" The Bill of Lading means a document issued by the carrier or on his behalf, which includes an acknowledgment that the

goods of a specified nature and quantity have been received for carriage or have been loaded on board, and which is designated as a bill of lading or includes a clause to the effect that the goods will be delivered only upon return of the document ".

A bill of lading is a document that usually stipulates when the goods are dispatched by sea. The bill of lading serves three distinct functions :

1. It is evidence of a contract of carriage.it defines the terms and conditions of the carriage of the goods and establishes evidence of the contract between the shipper and the carrier for the conveyance of the goods described , from one port to another, for freight charges .

2. It is a receipt for the goods.It is the final signed receipt from the ocean carrier for the goods shipped.

3. It is a document of title to the goods. It is a certificate of ownership , which covers the goods noted thereon and, if and when made out to order , endorsed and delivered to another party , passes the title in the goods . The order party , or further endorsee, can demand delivery of the goods at the port of destination . A bill of lading is, therefore,

one of the essential documents for the purpose of negotiation,sales,banking and delivery .

In the Somali Maritime Code , article 140 states that:

> "the holder of the negotiable original of the bill of lading or the delivery order is entitled to exercise the rights mentioned in the title, upon presentation of the same or of an interrupted succession of endorsements or in consequence of the heading in his favor if the title , respectively to the bearer, to the order, or nominative"

The shippers will continue to require a negotiable document for their particular needs, e.g. when using banking services for safe payment .According to the practice of law , the Somali Maritime Code shipowners are obliged to issue a bill of lading on demand from shippers .These trade practices , to a certain extent , will remain in international trade as a document of title , but all parties concerned should endeavor to minimize their use .

The bill of lading as a receipt:

The receipt function of the bill of lading raises issues concerning the quantity of the goods shipped and the apparent condition in which they are shipped .Claims between shipowner and cargo owner arise perhaps most frequently over the question of whether goods have been delivered short ,

or have been damaged during carriage.It is here that the statements about the goods appearing in the bill of lading become very important .

The obligation of the carrier is obviously to deliver what he received as he received it , but just as obviously the next question is, and this presents the real difficulty, on whom does the law place the burden of proof .Since the owner of the goods claims that the goods were not delivered as received, it is for him to prove this contention, and he can do so most easily by referring to the carriers' receipt for the goods namely, the bill of lading . Now a receipt is prime facie evidence of the truth of the statements which it contains .

If the persons who issued the bill of lading claim that it was wrong, because of a smaller number of packages or a less weight of goods than was acknowledged in the bill of lading or goods torn or dirty when he issued a bill of lading which had made no mention of such a defect on receipt , they will find it very difficult to resist a claim for damages.

In order to do so successfully he must prove affirmatively that the bill of lading was wrong, that he delivered all he received , or that the goods were torn and dirty when received on board the ship .Such proof may be difficult and expensive , perhaps involving collection of evidence in a foriegn port.It may indeed be unobtainable , in which case liability is effectively estabilished and the carrier can

only escape if he can find protection in one of exemptions applicable to his contract.

2.3. TYPES OF BILLS OF LADING

SHIPPED BILLS OF LADING :

This kind of bill of lading is issued pursuant to article 137(1) of the Somali Maritime Code states which that

> ".....the carrier after goods have been loaded on vessel, must issue the shipper a bill of lading..."

which is normally required in commerce and,in fact, is specifically called for in most CIF contracts.The shipped bills sometimes known as an onboard bill and usually described in letters of credit as shipped on board . The appropriate clause is shown on the bill and a typical one would be as follows :

> "Shipped in apparent good order and condition by the vessel first named above" .

Thus, the issuing of the shipped bill is an acknowledgment by the shipowner that the goods are in fact loaded on the vessel.

BILLS OF LADING RECEIVED FOR SHIPMENT

The received for shipment type of bill is defined as follows:

> "Received for shipment at the place of receipt the goods mentioned above in apparent good order and condition" .

In this case the shipowner is merely confirming that the goods have been delivered into his custody and might, for example, be stored in a warehouse under his control .The received bill is becoming increasingly acceptable. A number of shipping lines are now operating bills of lading with both shipped and received clauses in evidence and the appropriate deletions can be made when signatory takes place .

GROUPAGE BILL OF LADING

Some times a forwrding agent consolidates a number of consignments from different exporters on one bill of lading in order to simplify shipment , save charges and avoid minimum freight or obtain preferential rates . In such a case only one bill of lading is in existence and each individual exporter cannot, therefore, obtain a separate bill of lading certificate of shipment .

SHORT FORM BILLS OF LADING

The exact position of this type of document would appear to be a little obscure nowadys.Basically, as the name implies, the bill is an abbreviated type of document ,smaller, and containing a long list of clauses that generally appear on bills of lading.

In certain circumstances it may not, therefore, be considered a suitable form of evidence of contract of affreightment. Letters of credit and contracts of sale should always be checked carefully to see if there is any mention that short form bills will not be accepted, so that the necessary type of bill of lading can be obtained from the shipping line .

THROUGH BILL OF LADING

This document contains a contract for carriage of goods from one place to another in separate stages, of which at least one stage is done by sea.The sea transit may itself be divided into separate stages to be performed by different shipowners by a process of transshipment.Sea transit is often coupled with a stage of transit by some other means , e.g. , by road , rail, or air, in which case the through bill of lading is sometimes called a combined transport bill of lading.

2.4. ISSUE AND INDICATIONS

Once the cargo is taken on board, the bill of lading is issued to the shipper .The bill of lading blanks are supplied by the ocean carrier or his agent , but are prepared by the shipper or the foriegn freight forwarder .

In the Somali Maritime Code article 137, it states that;

> " except for transport to be carried out by means of dhows or a ship not exceeding 150 GRT , the carrier, after goods have been loaded on the vessel , must issue the shipper a bill of lading , dated and signed by the carrier, or by his representative or the master ....."

The required number of bills of lading are generally as follows:

for the shipper one original and duplicate signed and a variable number of copies, for the carrier, three to eight copies, non-negotiable only one original , signed bills of lading are needed to secure delivery at destination. In the Somali Maritime Code article 139 it states that:

> "duplicates of the original bill of lading issued to the shipper can be issued on request from the person having the right to dispose of the title.Duplicates , however, do not attribute the rights indicated, sub article 138,third paragraph"

This paragraph states that:

> " the transfer of this original is effected by the delivery of the title, if to the bearer , by endorsing the title and signing of the endorser, if to the holder, by the transfer made by noting on the title the name of the acquired to be made by the person who has issued the bill of lading , or by endorsement authenticated by a notary, if nominative" .

In the Somali Maritime Code , article 138, first paragraph states that

> " the bills of lading are issued in two originals .The original, kept by the carrier which is signed by the shipper or by his representatives, is not negotiable and contains the indication of non-negotiability". "the original issued to the shipper is signed by the carrier or his represenттives or the master , and confers on the holder entitled .....the right to the delivery of the goods thereby specified, the possession of the same and the right to make use of them by disposal of the title".

A time consuming and costly practice established long ago by the internatinal community concerns the issue of full sets of original bills of lading, with a minimum of three originals and the preparation of up to 25 identical duplicates thereof on a single shipment, some times more , which must be produced for each consignment ,and are to be used by shippers

or frieght forwarders , shipowners and their agents, customs, ports and other authorities.

The direct cost of preparing and processing documents has become substantial , and a reduction would be in the interests of all parties involved .

These came to an end on October 1 ,1975 ,when a overwhelming number of United States and foriegn ocean carriers encouraged by the efforts of the national committee on international documentation, started to issue only one original bill of lading unless specifically requested otherwise .

In Somalia ,these steps are necessary to issue only one original bill of lading.However,the Maritime Code is the obsticale to taking such measures , and needs to be amended in the article dealing with the original bill of lading, to ensure that it can follow international shipping developments .

Bills of lading should specify the vessel, the shippers, and the consignee's name , the notifying party to whom the arrival notice is to be sent , at the port of loading and discharge , destination of goods , a exact makes and number of packages ,the kinds of packages , and description of goods.

Issue of a signed bill of lading does not necessarily imply that the cargo has been loaded on board the vessel.

It serves as proof that the maritime engagement has commenced, and that the goods were recieved for shipment.

2.5. HOW CARGO CLAIMS ARISE AND ARE SETTLED

Most disputes in Somali courts and arbitration regarding maritime affairs pertain to claims for loss or damage to cargoes occurring during the course of sea carriage, or during handling , between the shipowners on the one hand , and cargo interests and their respective injures parties on the other . These parties will need to have available , for constant reference , rules of law relative to bills of lading .

2.5.1. CARGO CLAIMS

The cargo owner, or his representative, collects his goods from the shipowner, or his agent, on the arrival of the carrying vessel at the port of destination .

In practice, he collects the goods from the port or other depository into whose custody the ship will have delivered the goods under local laws and customs.

The cargo owner usually finds his goods in apparently sound outward condition when he proceeds to take delivery from the carrier or his agent at the port of destination, but he may also find that:

A- the goods are not available, i.e short landed.

B- they are damaged , so far as he can tell from the outward appearance.

The warehouse usually issues an outturn report, or certificate purporting to state the condition of the goods as received from the vessel, or certifying their short landing.

The document either alone or together with the survey report, forms, the basic bad order document on which the claimant then bases his claim for compensation.

Article 135 of the Somali Maritime code states that:

> "loss and average suffered during carriage by sea , the goods carried must be notified by the Receiver , in contradictory to the Master or his carriers Representatives , at the time of their redilevery, if loss or averages are separate, or within three days from the redelivery if the same are not apparent".

In same article (2) it states that:

> " in default of the ascertainment in contradictory, the goods are presumed redilevered by the carrier in accordance with the indications contained in the transport document or with what was agreed upon in connection with the transport".

The usual procedure with regard to the first situation is that the cargo owner , on obtaining his bad order or short-landing certificate , claims for the loss of his goods against the carrier.The carrier then institutes general enquires as to whether the goods were shipped or stowed on the vessel , landed at earlier ports of call or overcarried to subsequent ports.

It may take many months before any kind of a definite answer as to the location and condition of his goods can be given to the cargo owner .

The nature of contract of carriage is such that the carrier is , in such cases , entitled to make investigations and searches before agreeing to consider the claim , and cargo owners should expect a reasonable period of time to elapse in this process.

The usual procedure with regard the second situation is for the cargo to call at a survey of apparently damaged goods, to be conducted in the presence of a representative of the carrier and such other observers as may be required by local laws or regulations.A survey report is issued after the damage has been itemized and valued, and an opinion given, wherever possible , as to the cause.Now, whilst this document, the survey report, constitutes only one item of evidence in most jurisdictions, it nevertheless usually forms the basis , together with the outturn report,of any critical examination of a particular dispute about a claim in respect of a particular cargo.

It is essential, for the purpose of establishing liability , to determine the cause , time and place of loss or damage.Most of the differences and misunderstandings between cargo owners and shipowners arise at this point , precisely because it is difficult to establish where , how and when the loss or damage occurred, and the burden of proof on the parties, all vital considerations for establishing liability.

From the cargo receiver's point of view , if the goods are short landed or damaged, he has suffered loss while they were entrusted to the carrier. Explanations are necessary as to why he cannot obtain immediate relief, particularly when it is argued that the loss or damage occurred when the goods were not in the carrier's custody or arose from negligence in the management of the ship , or in navigation, or from perils of the sea.

When cargo owners are faced with such arguments they tend to take the view that it should not be any concern of theirs that the shipowner has parted with custody of the goods in such a manner as to prevent the cargo owner from exercising his rights , or has negligently managed his business and employed mariners who failed to care for the goods or were unable to cope with the perils of the sea and navigation risks .

Cargo owners hold that carriers , who are directly concerned with the business of ship management and the craft of seamanship and navigation , should be well able to cope with most situations arising in the course of transport without having to shelter behind the immunities conferred by rules.

The cargo owner also becomes frustrated if, having claimed against the carrier , the only party with whom he understands himself to be in a legal relationship , he is told to apply instead to a third party,the warehouse, to which the carrier, under local regulations , has delivered his goods .

He is then usually faced with the warehouse's answer that it is protected by its own by laws and regulations , either exempting or limiting its liability or imposing unreasonably short time limitations .

Another source of frustration may be the shipowners insistence on a full set of original claim papers, i.e invoice, bill of lading, certificate of origin, insurance certificate e.t.c. and tallying documents appropriate to the port.Cargo owners often find great difficulty in presenting this complete set of papers quickly to the shipowners in support of a claim that is there is a delay in settling claims .

The cargo owners , when faced by such substantative and procedural conditions, often stop pursuing the claim further against their insurers .Claims are often barred by the expiry of the statutory period within which proceedings must be instituted. In the Somali Maritime Code article 136 it states that :

> "Rights deriving from the carriage contract of the goods are time barred within one year from the redelivering of the goods, or in case of total loss, from the day in which the goods should have arrived at the destination".

The cargo owner faces the hurdle of the procedural laws of the country in which he prosecutes his claim .

The Somali Democratic Republic does not have a comprehensive Maritime Code , a situation which has caused a great deal of litigation. There have been attempts to achieve some degree of uniformity, but they have been piecemeal and frequently unsuccessful.

No one doubts that every nation may adopt its own Maritime Code . Japan may adopt one , England another . still the convenience of the commercial world , bound together as it is by mutual relations of trade and intercourse, demands that, in all essential things where in those relations bring them in contact , there should be a uniform law founded on natural reason and justice.

Hence ,the adoption by all commercial nations of general maritime law as the ground work of all their maritime regulations . However, no nation regards itself precluded from making occasional modifications suited to its locality and the genius of its own people and institutions, especially in matters that are of merely of local and municipal consequence and do not affect other nations . It will be found therefore, that the maritime codes of France , Sweden , Argentina and others are not the same in every detail . Whilst there is a general correspondence between them arising from the fact that each adopts the essential principles, and the great mass of the general maritime law as the basis of its system , there are varying shades of difference corresponding to their respective territories , history and climate .

Each state adopts maritime laws , not as a code having any independent or inherent force, but as its own laws, with such qualifications and modifications as it sees fit . Thus adopted and thus qualified in each case, it becomes the maritime law of a particular nation that adopts it .

Many maritime nations subsidize shipping by laws authorizing cargo preference , cabotage, tax benefits, loans, operating and construction subsidies, and export credits, and hard currency control .

The Somali Maritime Code of 1959 consists of six parts : part one deals with the administrative organization of navigation, part two deals with ownership and fitting of vessels , part three deals with obligations relating to the operation of vessels, part four deals with procedural provisions , part five with Maritime crimes, part six deals with provisions; governing discipline and transitory and final provisions.

The code deals with contract of carriage supported by a bill of lading .The articles that deal with the contract of carriage are articles 127 to 140 .

2.5.2. ARBITRATION

As mentioned earlier, most disputes in the country regarding cargo claims are settled in arbitration before they reach the courts .

The usefulness and signifance of arbitration is demonstrated by its increasing use by the bussiness community in many countries of the world .

The primary advantage is the speed with which disputes can be resolved by arbitration , compared with the long delays in ordinary court procedures .The expert technical knowledge of the customs and usage of trade makes testimony by others and much documentation unnecessary , thereby eliminating expenses connected with court procedures.

The privacy of the arbitration procedure is also much valued by the parties to a dispute. Arbitration is commonly resorted to for the resolution of cargo disputes in the country .

Conciliation and mediation are more common in the settlement of master and crew disputes normally done by the Marine Department of the Ministry of Marine Transport and Ports .

Arbitration is expensive and mostly dealt within the case of high value cargo , nevertheless ,arbitration deals also with small claims with less value .

The 1958 United Nations Convention for the Recognition and Enforcement of Arbitration Awards, known as the 1958 New York convention , facilitates the enforcement of international arbitration awards ,as the convention has been ratified by the governments of over 80 countries .Somalia has not ratified the above convention but the arbitration awards are enforceable .

2.5.3. THE LORD BYRON CASE

Maritime frauds which amount to more than several billion US dollars each year, are the product of the shipping recession and developed with the assistance of technological advances and the open registry system .It is also one of the major problems the international trade community is facing today. Experience has shown that developing countries are the most vulnerable , due to the heavy dependance on foreign trade and the fact that a large number of their shippers and importers have not developed safety or defensive mechanisms. A number of countries including Somalia become victims of maritime documentary frauds running into several million dollars. The Lord Byron case is a typical maritime documentary fraud.

The case falls under two types of fraud.

1- Non - existent cargo.

2- Less quantity of cargo.

1- Non - existent cargo

In May 1974, the Somali Government , through the services of a kenyan firm, agreed to purchase 10,000 tons of sugar from Crescent Impex Pte. Ltd, a Singaporean firm. Crescent Impex arranged the shipment through a Thai supplier, who requested a letter of credit for US$ 5.9 million, to be opened in favor of another company in Singapore, Australia S.E.A. Holdings. On 24th June ,1974 , Australia S.E.A. Holdings

presented documents to the paying bank, and collected US 5.9 million on 11th July, 1974.As per the documents, the 10,000 tons of sugar was loaded aboard M.V.DELWIND IN Thailand on 20th June, 1974. The bill of lading was issued by C.C.Line, Consolidated Cosmopolitian line .

The above brief account of events described stage one in the incident.This was a typical case of documentary fraud. M.V.DELWIND was dry docked in Japan on 20th June.

The Consolidated Cosmopolitan line did not exist. Australia S.E.A. Holdings was established in May 1974, on a paid up capital of US dollar 2 million. All documents required i.e bill of lading, certificate of origin, certificates of quantity and quality, were forgeries.

Once again the fraud could have been detected if the paying bank had checked on the movements of M.V.DELWIND, and the existence or rather non-existence of their Consolidated Cosmopolitan Lines who issued the bill of lading.Since the bank took 17 days to pay, it can be argued that there was adequate time to check on the above details .

It appears that the government did not take sufficient care in safeguarding their interests. It is alleged that they simply invited open tenders to supply 10,000 tons of sugar, and choose the lowest bid. It is also suggested that the buyer's hands were not entirely clean .For example, it is alleged that a certain Mr. Hatimi of the Kenyan intermediaries, received a commission of US $ 1.5 million,

which may have been shared by certain Somalian interests .

Finally, it took 5 months for the Somali Government to send an investigating committee to the Far East. By this time , very little evidence was available. The sellers decided to ship a part consignment of sugar, the reason for which remains unexplained. The Lord Byron comes into the picture at this stage.

2- Less Quantity of Cargo

The Lord Byron, a Greek vessel, was time chartered to a Dutch Firm, Scheller Shipping & Chartering Co. Ltd, for one year,commencing 12th June, 1974. She was sub-chartered to consolidated Cosmopolitian Lines of Bangkok for a voyage from south-east Asia to East Africa , on 3rd September, 1974.

The Lord Byron loaded 687 tons of sugar at Bangkok for Somalia during 8th September 1974 to 21st September ,1974. The vessel issued a mate's receipt for the above quantity.The loading was completed in the early hours of Sunday, and the master was told that the bill of lading and the cargo manifest would be sent to the discharge port.The vessel stopped at Singapore and loaded 2,200 tons of timber for Hodeidah.

The Lord Byron arrived in Bebera on 10th October, 1974, and spent the next 5 years of her life there. What followed after her arrival in Berbera, was a tragic experience for the master and the owners of Lord Byron. Apparently, the shippers informed the Somali buyers that M.V. DELWIND had suffered a

general average loss and the Lord Byron was to carry her cargo of sugar .

The irate Somali buyers, after discovering that only 687 tons, instead of 10,000 tons of sugar, was on board the vessel Lord Byron, arrested the master and impounded the vessel. A court trial took place at Mogadishu in February 1976, and the master was committed to 4 years in prison, and the vessel was ordered to be detained until compensation US dollar 5 million plus detention charges were paid to the buyers . The master was released 9 months later, under an amnesty, only to die of a heart attack after reaching his home. The Lord BYRON was finally released in early 1980.

The internationally of maritime fraud is highlighted in the Lord Byron case.The Countries directly involved were ; Somalia, Kenya, Greece, Singapore, Thailand and the U.K (the voyage charter party was signed in London).

The trial in Somalia was held by the National Security Court, and the case was decided under Somali maritime law. The master was held to have contravened Article 200 of the Somali maritime law, which pertained to falsifying a ship's log book or false statement made to the customs and Port Authorities. the vessel was held to be guilty of contravening Article 2 of law No.45, which relates to acts injurious to the Somali economy. An objective view of the facts of this case, would surely disagree with the decision of the court .

Unfortunately, what transpired between the owners of Lord Byron, the hull underwriters and the Dutch charterers was not made public.

2.5.4. CLEAN AND UNCLEAN BILLS OF LADING

The basis of the documentary credit transaction is that the bank pays the agreed amount to the beneficiary after it has examined the document presented and found it to be in accordance with the terms and conditions of the documentary credit.This examination forms the security which the transaction gives the buyer.It should be underlined that the bank has no liability for the actual quantity and condition of the goods, but only ensures that the documents are in accordance with the instructions given to the bank.Most legal problems arising under a documentary transaction emanate from the documents tendered and examined.

From the buyer's point of view , it is important for the transport document to give him some information about the type of goods and their invoice to rely on when asked to pay. It is also of great importance for the seller or shipper to have a clean bill of lading issued by the carrier, otherwise the buyer will refuse to pay for the documents or , under a documentary credit, the paying banks will refuse to pay against such a document tendered . The ocean carrier has a duty to enter such particulars into the bill of lading.

Under payment by the documentary credit the uniform customs and practice also prescribe that the bill of lading, although remarks should be entered, in exchange for the bill of lading the seller, shipper then issues a letter of indemnity in favor of the carrier, whereby he assumes liability for all consequences of the owner issuing a clean bill of lading .

Such a backup letter may have a limited value and it should again be underlined that P&I , Insurance does not give the owner any protection in case of damage due to incorrect statements in a bill of lading .

The Somali Maritime Code in article 137 paragraph 2 states that:

> "the carrier or his representive or the master issuing the bill of lading has the option to include in his remarks in the same when he cannot carry out, wholly or partially, a normal verification of the indications furnished by the shipper on the nature , quality and quantity of the goods as well as on the number of packages and stamps in default or remarks , the above data are presumed to be in conformity with the indications of the bill of lading, unless otherwise proved".

When the goods are delivered to the carrier in poor condition that is, either damaged ,broken,inadequately packed, or otherwise in or objectionable condition, such a state is noted on the bill of lading.

This is then called unclean or claused bill of lading .
The carrier is entitled after inspection to stamp , write or type clauses on the bill of lading to indicate that the packing is unsuitable or insufficent or that the condition of the goods is below the normal standard or that damage exists or evidence of possible damage is apparent . Clauses of that kind indicate that the carrier modifies, to that extent, his statement that the goods are in apparent good order and condition , and consequently reduces his liability to the extent that damage on delivery can be identified with or directly attributed to the defects and conditions recorded in such clauses.

The problem of unwanted clauses in the bill of lading is sometimes avoided by offering an indemnity to the carrier in consideration for leaving the bill of lading clean.

This, however, is a dangerous practice, when the acceptance of the indemnity involves the suppression of material facts which the consignee has a right to know.It has been judicially held that the carrier is an accomplice in deceit or fraud,and indemnity itself is illegal and therefore void.

It is true, on the other hand , that sometimes the information contained in the clause is of minor importance and perhaps even already known to any person experienced in the trade itself.In such cases it is probable that no deceit would be either intended or committed .

To safequard the interests of their clients , forwarders see to it that only undamaged goods, properly packed, and for which a clean bill of lading can be issued, will be delivered to the carrier .

They also instruct the receiving clerks at the docks of the carrier's company, which whom they mentain regular dealings not to load any damaged cargo on board the vessel.

2.5.5. CONFLICT OF LAWS

The parties to a bill of lading are often resident in different countries , and the place or places where the contract is applicable .This is called the governing law of the contract.It is the law through which the parties intended to imply their intentions, will be ascertained by the intention expressed in the contract .Otherwise the flag governs contracts of carriage by sea is subject to the paramount rule of the intention of the parties which may be expressed or implied from the circumstances of the case.

There appears to be some doubt as to the law governing a contract for through carriage, partly by land and partly by sea.Probably the best view is that as regards the land journey the law of that country applies , while the law of the flag governs sea transit, unless a contrary intention is expressed in, or can be implied from the contract.

Where there is an express statement by the parties of their intention to select the law of contract, it is difficult to see what qualifications are possible, provided there is no reason for avoiding the choice on the grounds of public policy.

2.6. THE BILL OF LADING CONVENTIONS

We have seen the principle behind the provisions of the code relating to the bills of lading under the Somali Maritime Code .Since the international conventions relating to the contract of carriage of goods by sea will be discussed in this section in order to avoid repition of analysis of principles , it is preferable to discuss the Hague Rules and other regimes of relevance and universal application .

2.6.1. THE HAGUE RULES AND HAGUE/VISBY RULES

The international convention for the unification of certain rules of law relating to bills of lading was adopted in Brussles, August 25, 1924. In September 1921 a meeting of international law association was held at the Hague with the object of securing adoption by the countries represented of a set of rules relating to bills of lading , so that the rights and liabilities of the cargo -owners and shipowners respectively might be subject to rules of general application.

The rules agreed upon, thereforth known as the Hague Rules, were revised and were embodied in the articles of an international convention signed, in Brussels in August, 1924. The convention was later on amended by a protocol signed there on February 23, 1968, named the Visby Protocol .

The Hague Rules have broadly speaking succeeded in their two main objectives, that of producing standardization of the most important terms of the bill of lading, and of redressing the imbalnace which had formerly existed between ship and cargo as regards the risk of loss or damage occurring to goods in the course of sea transit. In place of wide exception clauses exempting shipowners from almost every conceivable loss or damage occurring in the course of a sea voyage, the rules have produced a more or less balanced division of risks as between ship on cargo .

Great Britain , on behalf of Somaliland (former British Somaliland) made accession to the rules in 1930, but there is no evidence that the Somali Government ratified or acceded to the Hague Rules and the subsequent amendment, and there is no reference in the Maritime Code indicating that the provisions relate to the contract of carriage . When British Somaliland and the Italian protectorate united on 1st July, 1960. only the rules that were enforce in the Italian protectorate were extended in the British Somaliland.In 1966 Codice Maritimo Somalo (Somali Maritime Code) set down by the Italians before independence in 1959 was extended to somaliland.

The basic formula for application of the rules focuses on the document covering the carriage contract rather than on the contract of carriage itself.

Thus Article 1 b states:

> "that the rules are applicable only to contracts of carriage covered by a bill of lading or any similar

document of title in so far as such a document relates to the carriage of goods by sea".

This approach is reinforced by the Somali Maritime Code , article 137 which states that:

" the carrier must issue a bill of lading...".

The rules are not designed to cover contracts of carriage which envisage the issue of a way bill or other non-negotiable document, since these do not constitute documents of title, nor do the rules apply to the charterparties.

The Hague/Visby Rules have a considerable wider ambit extending to every bill of lading relating to the carriage of goods between ports in two different states if :

1 - The bill of lading is issued in a contracting state.

2- The carriage is from a port in a contracting state.

3- The contract contained in or evidenced by the bill of lading provides that these rules , or legislation of 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.

Two of the situations satisfy the basic requirements that a bill of lading be issued , namely, where the bill is issued

in a contracting state and also where the bill expressly incorporates the rules, irrespective of the geographical location of the port of loading in eithercase.

The third alternative (which we can categorize the country) involves carriage from the port in a contracting state.Here there is a latent ambiguity since, unless the outward shipment itself automatically triggers the operation of the rules, their application could be avoided by the carrier issuing some form of non-negotiable document in place of the bill of lading.

The parties are free expressly to incorporate the Hague/Visby Rules into a bill of lading in situations where the rules would not otherwise be applicable, formerly the incorporation was treated purely as a matter of contract and, in the event of any conflict between the provisions of the Rules and the remaining terms of the contract , the courts attempt to resolve it a matter of construction.

The Hague/Visby Rules were not conceived of as a comprehensive and selfsufficient code regulating the carriage of goods by sea. The Rules imposed on the carrier to provide a seaworthy ship, which replaced by an obligation to use due diligence and care of the cargo.In the Somali Maritime Code article 118 states that:

> " prior to the commencement of the voyage the carrier must use due diligence in order that the vessel be prepared in good seaworthiness conditions , suitable rigged and equipped .

> He must also take care that the holds and any other part of the vessel destined to loading are in good condition for reception preservation , contrary agreement the carrier receives or redilivers the goods alongside under the vessels tackle .

The carrier exercises a standard roughly equivalent to that of reasonable care.The Hague Rules limited the liability of the carrier to US dollar 100 gold value per package or unit.

In the Somali Maritime Code, article 129, third paragraph states that:

> "indemnization due by the carrier cannot exceed , however , the real and intrinsic value of the goods and in any case it is limited to a maximum of 2000 Somali shillings .

Inflation over succeeding years has resulted in these limits now bearing little relation to the actual damage suffered by cargo owners , but few states have seen fit to amend their respective figures in the light of developments.

The Somali government should amend the code and adjust figures , giving consideration to inflation . The Hague/ Visby Rules have retained the package or unit limitation of liability for individual items of cargo of high value, but have also introduced an .alternative formula based on the weight of the cargo, the shipper being entitled to invoke whichever alternative produces the higher amount .

2.6.2. THE HAMBURG RULES

The Hamburg Rules apply to contracts of carriage by sea which are defined as any contracts of carriage by sea undertaking payment of freight to carry goods from one port to another . Where the contract envisages some form of multimodal carriage the application of the rules will be restricted to the sea leg.

The Hamburg Rules are immaterial whether a bill of lading or a non-negotiable receipt is issued. However its provisions are not applicable to charterparties or to bills of lading issued pursuant to them unless such a bill governs the relationship between the carrier and the holder, i.e. it has been issued or negotiated by a party other than the charterer.

The convention is restricted to contracts of carriage by sea between ports in two different areas, i.e. it does not apply to coastal trade and the range of voyages covered are roughly similar to those of the Hague/Visby Rules ,with one important exception.The Hamburg Rules govern both inward and outward bills . The parties can also expressly incorporate the rules into the bill of lading or other document as evidence of the contract.Whereas the Hague/Visby Rules are only applicable from tackle to tackle , the Hamburg Rules are designed to operate throughout the entire period during which the carrier is in charge of the goods at the port of loading during carriage and at the port of discharge .

The Hamburg RULES have adopted the argument long advanced by cargo interests that carrier liability should be based exclusively on fault and that a carrier should be responsible without exception for all loss of, and damage to cargo that results from his own fault or the fault of his servants or agents .

One major shift of responsibility is envisaged by the abolition of the exemption covering negligence in the navigation or management of the ship .

Cargo interests have long contended that it is a invidious situation that a carrier, in complete control of vessel and cargo , should exclude such liability which is basic to the contract of carriage . Moreover, it is a form of protection which is not extended to the carrier in any other mode of transport .Carrier interests are naturally reluctant to forgo such traditional protection and argue strongly that such a change would result in a substantial increase in freight rates.

Resistance to the abolition of the exemption covering fault in the management of the ship is more muted since it is generally recognized that the conflict between this exception and the carriers' duty of care in relation to the cargo has resulted in considerable uncertainty and litigation.

The obligation of the carrier to provide a seaworthy ship is limited to a duty to exercise due diligence , while he was required to look properly and carefully after the cargo .

Throughout the carriage, the introduction of a uniform test of liability based on fault was designed to obviate these problems .The carriers duty to provide a seaworthy ship under the Hamburg Rules is to be judged on the same basis as his duty towards the cargo, and both obligations are to run throughout the period of carriage .

The only issue remaining to be resolved will be the construction to be placed by national courts on the carriers duty to take all measures that could reasonably be required to avoid the occurrence and its consequences .

Hamburg Rules introduce three new requirements for the shipment of dangerous goods.First, the shipper must mark or label the goods in such a way as to indicate that they are dangerous.Secondly, he must inform the carrier of the dangerous character of the goods and any necessary precautions to be taken and , finally, the bill of lading must include an express statement that the goods are dangerous, otherwise the sanctions for failure to comply with these requirements appear to be practically identical with those provided in the Hague/Visby Rules .

In the event of a claim being brought in respect of contract for carriage of the goods governed by this convention , the plaintiff is given a wide choice of courts in which to initiate judicial or arbitration proceedings .Provided that the court is selected in competent in terms of its own

domestic law, the plaintiff has the option of instituting proceedings in any court within the jurisdiction of which are situated one of the following places:

a- the principal place of business or, in the absence thereof, the habitual residence of the defendant.

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

c- the port of loading or the port of discharge of any additional place designated for the purpose in the contract of carriage by sea.

In addition ,an action may be brought in the courts of any part place in a contracting state at which the carrying vessel or sister ship has been arrested in accordance with the normal legal procedures .In such an event , however , the defendant can demand the removal of the hearing to one of the jurisdictions listed above.

The Hamburg Rules will become effective on the expiration of one year from the date of the deposit of the twenty instrument of the ratification, acceptance, approval or accession.In recent years interest has been shown by a number of developed countiers and today it has nineteen ratifications . opposition from shipowning interest to the implementation of the convention is based on a number of factors .First, there is a strong objection to the abolition of the catalogue of exceptions , and in particular to the removal of traditional exclusion of liability for negligent navigation.

Secondly, fears have been expressed about the new formulation of the fire exemption, while the extension of the limitation period for instituting proceedings to two years is far from popular more general and concern surrounds the adoption of the language and terminology of the new convention.All these factors , together with the substantial rise in liability limits have led the opponents of the convention to the view that its implementation would inevitably result in a substantial increase in freight rates.The cargo owner has a wide choice of forums in which to institute proceedings and will naturally select one which offers him the most effective remedy.

2.6.3. UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS

This convention was drafted under the auspices of UNCTAD and the provisions are broadly in line with the regime established by the Hamburg Rules. Accordingly it is unlikely to be ratified until such time, if any , as the latter becomes operative .

The convention is made applicable to a single multimodal transport operator (MTO) acting as principal , and a consignor, for the through movement of goods from place of receipt in one country to place of delivery in another by more than one form of transport.It is also essential that either the place where the goods are taken in charge, or a

place where they are delivered, is located in a contracting state.

The MTO remains responsible for the goods throughout the period from the time of their delivery.His liability follows the pattern established by the Hamburg Rules, being based on the concept of presumed fault, through subject to a similar limitation based on weight of the goods. An interesting innovation here is that if no sea leg is involved in transit then the limitation is based solely on weight, i.e 8.33 units account per kilo, where MTO delegates performance of the sub contractor, such actual carrier is entitled to invoke any of the convention defences available to the MTO, including the limitation provisions .

CHAPTER 3

SHIPPING DOCUMENTATION PROCEDURES

3.1 Port Facilities

Services provided at ports are divided into terminal and port, according to the facilities offered to either ship or cargo.Charges are levied for these services by the government.

The government imposes fees, taxes, quarantine, including customs clearance and entry of the vessels, tonnage dues, pilotage fees, port facilities by vessel and cargo handling, stevedoring, storing, and other miscellanies costs.

Low cost and rapid handling constitute the bulk of the work continous expansion of world seaborne trade. strengthening this framework is the satisfactory layout and operation of the port facilities.

Contracting with the swift development of bigger, faster merchant vessels and improvement of air, rail, and motor transportation, the progress in terminal operations has greatly legged.Practically, this has nullified the advances in other phases of ship operations . Cognizance was granted only a few years ago to the fact that there are bottlenecks in the free flow of goods , in terms of exorbitant of our exporters to compete successfully for business aboard.

In the present circumstances the port authority exercises limited power in practice. Too many people are involved , no one wholly responsible and no one is wholly to blame when things go wrong . Ports can earn bad reputations for causes which may not be within the control of the port authority , whether it be cargo handling , the number of employees, operational practices , the activities of agencies of one sort or another or indeed , the actual berthing and working of ships .The remedy is for the port authority to have power of control over every activity within its area of jurisdiction . The port authority must be master in its own house , a dictum which, may well be unpopular with many people .

A substantial aid program aimed at easing cargo bottlenecks and boosting port efficiency is underway in the country. The international Development Agency (IDA) has approved 22.6 Mn of a total of 24.4 Mn in funds for schemes, which centre on three of the country's ports.

In the capital ,Mogadishu, new container handling equipment is to be installed whilst a box park will be paved and a ro/ro ramp constructed.A port training school is also planned. Meanwhile , at Berbera , a container station is to be built along with workshops and stores at Kismayu. The Somali port authority , which is providing the balance of the finance , plans to implement the scheme in phases, but first signs are that it is already running behind schedule.

Ships can only earn when in action. when at a standstill in port, they lose money; each day an average cargo vessel lying in port costs from two to five thousand dollars, an amount which equals the vessel movement costs of five to six thousand miles , Consequently, the time spent by a ship in port for turnaround should definitely be reduced to permit increased earning power by scheduling more voyages per year. This can , and will be accomplished, if cargo transference problems, the handling of cargo on the dock, and ships' hold, are boldly attacked.

Typical problems of those which attempts to include :

A:- The efficiency of the stevedore in cargo handling:
The economies of costs , A shipowner and operator normally want quick and efficient turnround in ports for the ship and the cargo. Persistent labour troubles constitute the most likely cause of delay to a shipowner and operator , and that will only lead in the long term to diverting traffic away from Somali ports .

B: Administrative matters concerning customs and port Authorities :

There are two parties to an international trade transaction , i.e. customs and banking. with regulatory body and monetary power respectively , which can play an important role in seeing the effective application of any solution to the problems of documentation procedure . The import and export cargo activities require handling of the same types of cargo .

Appropriate customs entires will be made and supervised by the same group of officers who ,while ensuring that regulations are complied with, can also ensure that delays are avoided by prompt inspections and rapid clearance of documents .

This is important , and depends upon the documents being correctly completed . Some 40 per cent of documents submitted to customs are incorrect and cause delays and extra costs to exporters . A firm and personal link with customs will ensure that the nature of errors is clearly understood, so that they may be avoided next time .

Where major changes in customs practice occur, a close link will alert export staff to the need for retraining programmes . besides these links, which may be said to be essential to the actual functioning of the port, a host of other links is necessary . Such bodies as the Somali shipping agency and line ,Ministry of Commerce , and other bodies have all some part to play in assisting efficiency of documentation flow and simplification in export and import cargoes .

Further key factors in smooth functioning are efficiency of motor transportation which backs up the terminal , and the accessible transportation methods to the floor of the transit shed and apron of the dock.

3.2. CARGO RELEASE PROCEDURE.

The simplifying of documents is attracting earnest attention as a means of reducing transport costs, speeding up of cargo movements and also for fighting port congestion .

Customs acts as the custodian of the goods which have been temporarily entrusted to their care. The import procedure, starting with the preparation of the customs entry, which is based on the foriegn shipper's commercial or customs invoice , includes the calculation of the amount of duties in accordance with regulations.

The completion of the entry and the payment duties due. continues until the final liquidation by customs authorities has been accomplished, under the laws of the customs procedure prescribing the forms of entry.

In Somalia, delays in the delivery of unloaded goods are often due to cumbersome procedures established by ports, which may be caused by customs and other authorities which intervene in the process .This is some times due to lack of cooperation and coordination between these official bodies.

Port Authorities will not release goods to importers before customs clearance formalities are accomplished.Customs cannot start clearance before foriegn trade control and exchange control formalities have been completed. The clearance of these documents takes time and the flow of documents through these offices also takes time .

Every one requires a number of copies for its own , which mainly causes the inefficiency of various offices , because of lack of trained personnel .

A special permit for immediate delivery of a shipment prior to entry may be issued for perishable goods and other merchandise for which delivery can be permitted with safety to the revenue, when immediate release of such cargo is necessary to avoid unusual loss or inconvenience to the importer or to the carrier bringing the merchandise to the port , or more effectively to utilize customs manpower or to eliminate or reduce congestion in port.

The shipping documents required in Somalia are shipping documents which should be forwarded direct to a consignee to arrive before the merchandise,and other special documents. No consular documents are required.

1: shipping documents required are as follows:

a- commercial invoice 3 must show names of the shipper and consignee, gross weight (in kilograms) and measurement (in metric units).It must contain all information necessary to establish the CIF value , signed by a shipper. A packing list is recommended.

b- Certificate of origin 3 , when required .In general form, sold by commercial printers , certified by the Chamber of Commerce and Industry of that country, it requires an additional notarized copy for its files.

C- Bills of lading , no special requirements , shipping marks and numbers correspond with those on the invoices and on the merchandise.

2: Import licence
required by the importer for most goods, a tolerance of 10% is allowed on value, weight or quantity

3: Special documents
a- Sanitary certificate, required for plants, seeds, animals and animal products.
b- fumigation certificate, required for used clothing.

4: Insurance
must be covered in Somalia except for AID shipments.

3.3 OTHER SHIPPING DOCUMENTS

3.3.1 MATES RECEIPT

It is usual practice for a mates' receipt to be given for the goods to the shipper when the goods are brought alongside the ship at the port of loading, and for the mates' receipt to be subsequently surrendered to the master in exchange for the bill of lading .

The holder of the mates receipt is prima facie evidence entitled to be issued with the bill of lading .Where no bill of lading has been issued , the holder of the mates receipt is prima facie evidence entitling a claim on the delivery of the goods, but this presumption can resulted.The mates' receipt is not a document of title , and the holder of the mates receipt acquires no rights whatsoever against the person entitled to the goods.

The statements , contained in the mates' receipt are prima facie evidence of the truth of such statements, but do not operate as an estoppel against either party.

3.3.2. DELIVERY ORDER

Where the buyer is receiving only part of a parcel of goods shipped under a single bill of lading, it will not be practicable to transfer to him the bill of lading in respect of the whole parcel .In such case the contract would normally provide that the seller should perform his obligations by delivering to the buyer a delivery order for the part sold rather than a bill of lading .

The Somali Maritime Code in article 139 ,third paragraph, states that:

> "in case, the carrier or his representative is obliged at the time of issue of the delivery orders, to take note of the same on the negotiable original of the bill

of lading , with the indication of the nature , quantity of the goods specified in each delivery order and with his own signature that of the applicant ,they are also obliged to withdraw the negotiable original of the bill of lading when the entire cargo covered by the bill of lading is divided among various delivery order"

A delivery order is an order addressed to a person in possession of the goods ordering him to deliver them to the holder, provided such a person in possession has attorned to the buyer by accepting the order. A delivery order is not as valuable as a bill of lading, for it is not a negotiable instrument, and it may not, indeed usually does, enable the buyer to bring an action against the shipowner for any loss or damage to the goods.

3.4. CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC.

An International Conference on facilitation of maritime travel and transport convened by IMO took place in 1965. This diplomatic conference adopted the convention on facilitation of international maritime traffic ,1965, which obtained the required number of acceptances by January 1967, thus enabling it to enter into force in march 1987.

The purpose of the Convention on Facilitation of International Maritime Traffic, 1965, as amended , is to facilitate maritime transport by simplifying and minimizing the formalities. Documentary requirements and procedures are associated with the arrival , stay and departure of ships engaged in international voyages.

This includes all documents required by customs , emigration , health, and other public authorities pertaining to the ship, its crew and passengers , baggage, cargo and mail. Unnecessary paper work is a problem in most industries, but the potential for red tape is probably greater in shipping than in others, because of its international nature and the traditional acceptance of formalities and procedures.

The convention emphases the importance of facilitating maritime traffic and demonstrates why authorities and operators concerned with documents required on arrival , stay and departure of ships ,should adopt the standardized documentation system developed by IMO and recommend by its assembly for worldwide use.

The actual number of separate documents required varies from port to port , yet the information sought is often identical. the number of copies required of some of these documents can often become excessive. IMO has developed standardized forms for six of these documents.
The standardized forms are as follows:

- General declaration,
- Cargo declaration,

- Ships stores declaration,
- Crews effect declaration ,
- Crew list,
- Passenger list.

46 countries are using the forms, partly or all of them, Somalia is not one of them , but Somalia has to change the excisting documents , and use the standard forms.
The use of standard forms would facilitate inspection in the port and prevent unnecessary delays .

CHAPTER 4

MODERN DOCUMENTATION IN COMMERCIAL TRADE POSITION OF SOMALIA

4.1 THE MODERN PATTERN OF SEA WAYBILLS: DEFINITION, NATURE AND FUNCTIONS .

Sea waybills are documents that acknowledge the carriage of goods by sea.When signed and issued by a carrier , a sea waybill acts as a receipt to the shipper for the goods taken into his charge.It also expresses an undertaking by the carrier to transport and deliver the goods to a particular consignee.

In addition , it includes or refers to the carriers' condition for carriage of the goods, and thus it provides evidence of the terms of his contract with the shipper.

Sea waybills have no other functions , they only provide evidence concerning the transportation of goods. Unlike bills of lading, sea waybills are not documents of title and cannot be negotiated or transferred to the ownership of the goods.

In general appearance, a sea waybill is similar to a bill of lading , for it records all familiar details of movement of

goods by sea.Indeed, a sea waybill might be mistaken for a bill of lading but for one apparently small and extremely significant difference.A sea waybill is marked non-negotiable on its face and can only be made out to a named consignee. A bill of lading , being negotiable, is marked as being for the benefit of the consignee or to order.It is the absence of these two words which ultimately distinguishes the two kinds of document.

In some parts of the world, a non-negotible form of bill of lading is issued to perform the same functions as the sea waybill.Though named a bill of lading, since it states that it is not negotiable ,it cannot be used to transfer the ownership of goods.

Consequently it can only be used as a receipt for goods described and evidence of a contract for their carriage. This type of document is variously called a non negotiable, straight or nominative bill of lading.The name, sea waybill , bears technical or legal significance.Liner companies which have offered them have used other terms to signify they are providing non-negotiable receipts. however , sea way bills is a convenient phrase in several respects.It clearly separate this class of document from bill of lading, while at the same time implicity draws an appropriate analogy with air waybills and the receipts of other carriage.

Sea way bills may appear in long form, but are more commonly used in short form or blanck-back styles. The long form of

sea waybill typically sets out the standard trading conditions of the carrier vebratim on the back of the document .The short form of sea waybill contains only few particular clauses and merely refers to the rest of the carriers' standard conditions for reverse side but it introduces the carriers' trading conditions and the application of the International Rules for the Carriage of Goods by Sea.

4.2. ADVANTAGES AND DISADVANTAGES OF SEA WAY BILLS

The use of sea way bills might help to prevent certain documentary frauds,facilitate the delivery of cargoes, while reducing documentary costs and procedures.In 1987 world trade was estimated US dollar 1.9 trillion.Cost of paperwork in international trade was estimated at 7 to 15% of the value of the goods.

The occasion for fraud is greatly enhanced by the presence of a document of title . When a bill of lading is used, it represents the goods while they are afloat. A person intending to comet a fraud therefore knows that all the participants in the ocean transport system will accept the bill of lading at face value and will implicitly rely upon its contents. Such trust in the document ,as if it were the goods it describes ,is the very foundation for its negotiability in facilitating trade, where the resale of goods during carriage is expecte.It simultaneously affords a very favorable opening fraud.

Most documentary frauds are committed by shippers, but consignees and carriers can also be involved. A fraudulent shipper typically dupes his victims by forging a bill of lading for goods that do not exist or represent much less in value or quantity than those contracted .A fraudulent consignee may take delivery of the goods from the carrier upon the assurance of a letter of indemnity, just as he receives the endorsed bill of lading, which he then resells to an unsuspecting purchaser. A dishonest carrier might fraudulently issue more than one set of original bills of lading for the same cargo and sell the extra sets for him self.

While the trust placed in a negotiable bill of lading contributes to a favorable climate for fraud, replacement of that document by another cannot prevent all these kinds of fraudulent transactions. Where the perpetrator of fraud dupes his victim into paying for goods in advance of their delivery and against a document which he is able to forge as an original , the form of that document makes no difference to the outcome. A fraudulent shipper or carrier can just as easily forge a sea way bill as a bill of lading.

A fraudulent consignee, however, would find his activities obstructed by a sea way bill, since he would not able to negotiate it in favor of his intended victim. To a limited extent , therefore, the use of sea way bills would stop documentary frauds.

In addition, greater use of sea waybills might tend to inhibit the climate that leads to fraud. when a negotiable

document is not necessary , it would be more sensible to avoid the use of a bill of lading . A sea waybill would serve equally well to record the transport of goods but, since it is not a document of title, it would not be relied on as representing the goods.

Thus, the general use of sea way bills could perhaps contribute to a greater awareness of the risks of buying unseen goods on the promise of an unknown seller, and this might help to reduce the frequent of other types of documentary frauds.

The most noted advantage to be gained from the use of sea waybills flows from their non-negotible character. since it is not a document of title, the sea way bills don't need to be presented at the destination port surrendered against delivery of the goods . Thus, the use of sea waybills could simplify the procedures for delivering cargoes and overcome the problems associated with bills of lading in the port of destination.

The speed and efficiency of modern ships and ports on some routes , such as the European and Transatlantic container trades , has reversed traditional experience whereby goods always travel slower than the documents relating to them. Increasingly postal services deliver the documents after the ship has arrived with the goods. Since the master should not release goods carried under a bill of lading ,except against production and surrender of an original of that document ,both time and money are wasted waiting for its

arrival.if the goods are held on board, the ship is uselessly detained . If the problem occurs on many ships , in extreme cases, the waiting vessels may cause congestion in port .If the goods are discharged and warehoused, the receiver is put to expense of unnecessary storage.In any event, he may also suffer the consequences of delayed delivery, for example, the loss of his market for the goods or the breach of his contract for their supply.

The serious commercial consequences of delayed bills of lading have encouraged the development of ways to circumvent the problem.

If a sea waybill is issued instead of a bill of lading, the aggravation of delayed or missing documents and the risks attending the substitutes used in their absence may be avoided. Since a sea waybill is not negotible , the carrier is bound to deliver the goods only to the named consignee. Consequently, the identity of the receiver does not depend on the transport document which, therefore, does not have to be produced before delivery of the goods can made .

However , release of the goods is still controlled when sea waybills are used. However,release of the goods is still controlled when sea waybills are used. The machanisim consists of proof of the identity of the named consignee. Rather than wait to receive and examine a document, the carrier has only to satisfy himself as to the identity of the person who claims the goods.

Sea way bills also promote efficiency in the processing of transport documentation and thereby reduce the burden of administrative expenses and other costs not attributable to the ships or goods themselves.The paper routine can be greatly simplified because the sea waybill does not have to be presented at destination.

The sea waybill system demands both less paper and less processing. One original sea waybill is sufficient, so wasteful duplication of efforts to produce a set of documents is avoided. Modern methods of reproducing documents ensure that as many copies as may be called for can be swiftly and easily made from a single master. Advantage may also be taken of sea way bills in a black-back style and neutral format.Their standardization minimizes printing costs and obvitiates the need to store hundreds of forms of different shipping lines .

Furthermore , a neutral sea waybill can also be included in a set of documents covering the complete sale and delivery of goods, which may also be filed at once .

The consequent reduction of expenses for paper,printing, storage and particularly processing associated with the use of sea waybills could be a substantial benefit to all concerned with maritime transport and trade.

In addition to the direct savings to be gained from the simplified documentary procedures made possible by the use of sea waybills , further consequential benefits can be

expected. Other documents which typically have to wait to be a combined by a bill of lading, such as a certificate of origin , surveys of quality and like , do not have to be held up when a sea waybill is used .

Thus ,essential documents for the consignee can be transmitted sooner and the commercial burden of delys can be minimized . Customs clearance may also be streamlined and administrative costs of importing goods thereby reduced . Provided national laws do not require the presentation of a document of title , a copy of the sea way bill naming the consignée and the port of destination ought to be sufficient evidence of the goods to be delivered and imported .

This information may be made available to national authorities as soon as it is issued, that is ,as soon as the carrier has received the goods for shipment , and so the necessary customs procedures can be greatly facilitated.

In practice sea waybills have not given rise to difficulties. Those persons who are experienced in their use declare their satisfaction and encounter no problems However , some parties point to potential difficulties .

These uncertainties concern legal doubts about the application of the international rules on carriage and the transfer of the carriage contract.They concern the means of cargo control, the practice of banks and diverse restrictions .

The principal legal query is how the international rules on the carriage of goods by sea apply to sea waybills.There is no doubt that the Hamburg Rules , when they come into force will govern sea waybills. Meanwhile, some question surrounds the application of the existing regime found in the Hague rules and their amended version, the Hague/Visby Rules. Both these rules expressly limit contracts of carriage covered by a bill of lading .

The application of the international rules is usually avoided by arranging for the rules inclusion contractually.Sea waybills typically incorporate some version of the Hague Rules by express reference. However, there is a difference in the legal impact of the rules depending on whether they are applied by legislation or by contract . When the Hague Rules or Hague /Visby Rules operate with statutory force, they have mandatory effect and contractual clauses to the contrary are void and ineffectual, but when they are applied by contacts of the parties , there remains the possibility that other conditions of carriage may conflict with them .

A difficult question of interpretation will then arise as to whether the relevant articles of the Hague Rules are overriding or are overriden, and a judicial determination may be necessary.The practice of incorporating the Hague Rules into sea waybills is common.

The use of sea way bills surrounds the documentary means of controlling cargo .

This is a practical matter which involves the certainty of delivery instructions .In the case of the consignee , even though the rights and duties under the carriage contract may have been transferred to him, he might need assurance that goods he has paid for in advance of their delivery cannot be rerouted by fraudulent shippers to some other destination. Conversely, the shipper might want to be sure that, in the absence of payment, he may prevent the delivery of the goods according to the sea waybill to a defaulting consignee.

The key to these concerns is a secure system for notifying and verifying transit instructions to the carrier.At present, sea waybills do not seem to provide as great a degree of cargo control as might be desirable , but it is possible to imagine a procedure which would do so .

The problem of cargo control appears much more serious to a bank that is involved in financing the sale and transportation of goods.Its its concern typically arises when it advances money under a letter of credit . Frequently,banks require some security in the goods to protect their own interests in the event that their advances are not rapid .

They have found bills of lading ideal for this purpose. Varying degrees of security are possible , including mere possession of the bill of lading, pledge or endorsement as owner, since sea waybills do not provide this kinds of protection for banks .

Since sea waybills do not have to be surrendered against delivery, their possession by a bank gives it no control over the goods. Since they are not negotiable , a bank can not take a secured interest in the goods simply endorsed .

For many years , it was possible for the banks to assert that sea waybills were unacceptable transport documents to support a documentary credits because they were not mentioned in the uniform customs and practice for documentary credits, but the revised version includes sea waybills .

Nevertheless, many banks still do not favor sea waybills because they want the control , even the security , of the goods.

In fact , however, a bank can protect its financial interests by becoming a party to the sea waybill. If it arranges to be named both as shipper and consignee , it will have complete control over the goods throughout transit.

No-one can instruct the carrier contrary to the banks,' apparent objections to this procedure are that may become responsible for the cargo handling arrangements at destination and may be embroiled in disputes about the goods upon delivery.In return, it may be observed that the same risks attend banks which become endorsees of bills of lading and that banks regularly employ waybills in other modes of carriage.

4.4. POSSIBLE USE AND PRESENT USE

The scope of their possible use is very wide . One can say in a general way that it would be reasonable to use a sea waybill for all maritime transportation where traditionally a bill of lading would have been issued, except when resales of goods at sea are anticipated or particular national laws cause restrictions .

The kinds of transits for which sea waybills would be suitable replacement for bills of lading include port to port ,groupage , container and general cargo, as well as the sea leg of multimodal movements.In other words , sea waybills could be used for all sorts of liner traffic at least.

The types of commercial arrangements which would be facilitated by sea waybills are what may be termed as safe payment transactions , such as long term credit sales , foriegn aid projects, open account trading with buyers of long standing, cash against documents and cash on delivery deals, inter-corporate transfers, and deliveries to a trusted third party as sellers' agent.To all these trusted accounts must be added sundry movements where no sale and purchase is involved , such as household removals and merchandise samples. Furthermore as a result of the revision of UCP , sea waybills ought to be acceptable in connection with letter of credit transactions as well.

The sorts of trade for which sea waybills would be practicable include all that do not regularly involve resales of cargoes while in transit. Some of the exceptions commonly mentioned are oil, wool and other agricultural products. These cargoes will have to continue to be covered by a bill of lading since a negotiable document of title is necessary to permit their purchase and sale in the course of carriage . The other genuine exceptions are all trades to those countries which maintain national regulations that place restrictions on the use of sea waybills.

Some countries use them regularly ,others utilize sea waybills for short sea voyages in Northern Europe and Transatlantic container traffic to both east and west coasts of North America.

The transitions where sea waybills are used are predominantly said to concern payment without letters of credit, shipments to affiliates or trusted receivers, and short transit times. Other factor is the lack of knowledge about sea waybills.

4.5. THE POSITION OF SOMALIA AND OTHER COUNTRIES

There are restraints on the use of sea waybills as a result of national regulations .

A large number of countries have legislative or administrative requirements which, by direct or indirect means , inhibit the use of sea waybills .These impediments are quite varied .In some Ccountries a particular document , typically a bill of lading , may be required by law .

The reasons for this are very diverse . Customs controls are commonly cited. Authorities demand a bill of lading like any country, for import clearance , while others except it for licensing and foreign exchange controls.

In other countries the use of sea waybills is equally effectively prevented by laws regarding the form and evidence of contractual undertakings . For instance , some civil law countries require specific approval in writing of contractual clauses disclaiming or limiting liability .The typical short form sea waybills do not satisfy such strict formalities.

It would seem possible , therefore, that the Somali government could revise the legislative and administrative requirements so as to accommodate sea waybills while leaving economic and legal policies undisturbed.

Sea way bills have not caused problems in the United States, perhaps , because of the recognition of the straight Bills of Lading Act, 1916(The Pomerence Act) .

Sea waybills in Somalia are not defined in national statutes and so the terms of sea way bills themselves, which may

vary from case to case, will give different rights to different consignees. However, the maritime industry needs a better understanding of sea waybills.

In my country sea waybills are used for foriegn aid projects , households removals of students abroad , and merchandize samples .These items are not taxed , and their delivery does not cause delays at the port for their clearence is simple not due in their nature but the use of sea waybills , for which the letter of credit is not involved .

4.5 THE CMI RULES FOR SEA WAYBILLS.

The International Maritime Committee (CMI) has taken up the matter of sea waybills .A working group on sea waybills was appointed pursuant to a colloquium on bills of lading held in Vencie in 1983. The work of this group was reported to CMI during its XXXIII International Conference at Lisbon in 1985. The subject of sea waybills was widely discussed and it was decided to appoint an international sub committee. The international sub-committee was to follow up and expand upon the work initiated by Professor Gonfers after the Vencie colloquium. Work on the more broader base.

The need for uniform rules arises chiefly from the fact that a sea waybill is not a document of title , and does not need to be presented by the consignee in order to obtain delivery of the goods from the carrier .

Most national legislation and international conventions governing carriage of goods by sea apply to bills of lading and similar documents of title , but not to other contracts of carriage . Provision is, therefore, needed to incorporate the Hague Rules or other legislation which would have applied , If the carriage of the goods had been covered by a bill of lading rather a sea waybill.

In 1989 the CMI drafted uniform rules concerning sea waybills , and also an electronic bill of lading . The path forward could be an International Convention on Sea waybills defining and regulating their use in a way similar to that which applies to documents of carriage .

4.6. THE ELECTRONIC TRANSMISSION OF COMMERCIAL DOCUMENTS.

In international transactions many parties such as shippers, consignees, carriers, forwarders, bankers, e.t.c. are usually involved .Their role and their interrelationships have to be recorded in various documents.

The use of the computer was then thought to be the way to save the cost of documentation. Computers were , and still are used to produce paper documents which are exchanged between the parties in a traditional way.

Obviously , very little could be gained from using this method , apart from storing the data of these documents.

The second step was to transmit the data directly between the parties to a transaction. A computer to computer connection was established . The parties have set up their own electronic data interchange EDI message formats . In this way, negotiation of the transaction and exchange of the data is recorded .

In the absence of common standards , such a method ,has little impact on the export/import industry,although it brings reduced clerical handling , no time consuming re-entry of data , no duplication of data, decreased risk of errors, 24 hours a day availability , time zone independence, timeliness of information and reduced costs, which are certain advantages to the parties concerned.

The main difficulties in introducing EDI are technical,legal, and to do with security.The legal difficulties are complex because the existing rules are directed to paper documents with express terms.The transmission of information in these documents electronically would require changing the excisting rules and introducing new ones.

How can the negotiable character of the bill of lading be preserved ? How can one correct an error in the letter of credit ? The most important issue is whether the documents produced by automatic data processing techniques are acceptable to public authorities and whether they can be used in evidence. Public authorities accept information conveyed by any legible and understandable medium, including documents handwritten in ink or indelible pencil or produced

by automatic data processing techniques. Stipulations on the admissibility of a document produced by computer as evidence are to be found in municipal law. generally spaeking , it is important to know how the information was stored by computer. It is essential to find out how the record was produced. information may have been transferred from paper documents or other machines.

The use of computers and the transmission of commercial documents electronically would not eliminate legal disputes. In ,fact a number of disputes have risen and most of them have been settled before reaching the court.

Abuse of systems ,fraud and security of data are of paramount importance and they represent a potential risk to electronic innovation. Offences and illegal actions are usually dealt with by the municipal law.

It is, however, fair to say that we are now entering a new age, where it will be possible to cut away the red tape that is choking the system, with no more multiple capture of data at each stage of the process and no more enormous unstandrized bundles of paper requiring experts highly skilled in each aspect of data exchange operations.The new aids for automated data exchange will soon be widely available at a low price .

4.6.1. EDI AND SOMALIA

In Somalia the purchase of computers, and the acquisition of the necessary outside expertise to exploit and apply them, usually means assigning significant drain on scarce hard currency resources. Customs and commercial banks are primary candidates, followed by ports, airports and large units among companies, forwarders and carriers engaged in external trading.

This financial priority is reinforced by operational presures . Customs collect over half the state revenue end exports provide the main source of hard currency.

The Somali government have to reconcile vital tasks of control and deal with the daily realities of modern marketing and transport techniques.

A great deal of data has to be handled relatively quickly and as traditional documentry systems are usually at once profuse and primitive , computerization provides at any rate, some under -pass relief at points of commercial pressure.

However, useful assistance could come from lending and aid agencies and governments which have themselves an interest in seeing that investment in and grants for Somalia's computer resources are linked to provisions which will ensure maximum benefit from systems intercommunication.

CHAPTER 5

5. CONCUSION AND RECOMMENDATIONS

5.1. RECOMMENDATIONS

Shipping being an international industry , the servant of trade,is a capital intensive industry , and in the chain of the transport of goods from door to door. To improve its activities in Somalia requires a comprehensive Maritime Code, a simplification of shipping documents and to follow developments in shipping activities . Among important points related to this project , the following recommendations are suggested .

1. The project identified the weaknesses of the Somali Maritime Code. Somalia has not ratified or acceded to the Hague Rules and the subsequent amendments and there is no reference in the Code , which indicates that the provisions of the Somali Maritime Code pertain to the bill of lading to be taken from the Hague Rules . The government should amend the Maritime Code , mainly the articles relating to the contract of carriage of goods by sea and should incorporate The Hague Rules .

The government should accommodate the sea waybill clearly in the code , like bills of lading , in order for the industry to get the chance of benefiting from these new simple

documents . The Code is therefore crucially important in development updating.

2.Non-negotiable sea waybills to use as a alternative to bills of lading .

All integrated parties, i.e, exporters, importers, carriers, banks, and insurers and the relevant national authorities , should endeavor to minimize the use of negotiable transport documents and encourage the use of the alternative simpler sea waybills which do not have to be surrender at destination to secure delivery of the goods .

A sea way bill is a document by which the transport operator declares to the shipper or his agent that the goods have been received for shipment. It is a non-negotaible document, which means that it need not be presented at the port of destination as a condition for receiving the goods .Without waiting for the document to arrive , the goods will be released by the shipowner or his agent to the consignee . The procedure is simple, and especially advisable when the seller and the buyer are well established trading partners .

The sea waybills can be used under documentry credit , However it cannot be issued to order.Transport terms and conditions are identical with those of the negotiable bill of lading .

3. Single original negotiable bill of lading .

To the extent that a negotiable bill of lading continues

to be required , e.g in the case of documentry credits , only one original should be requested and issued.If a single original negotiable bill of lading is lost , similar procedures should apply as in the event of loss of any other document of title .

4. limitation of number of copies :
   The parties involved including Somali Shipping Agency and Line , agents, consignees, customs, and the Somali port authority , should limit their requests for copies of bills of lading and other related documents to those which are absolutely required.
   The number of copies should insert provisions to accomodate for local circumstances . Legislation couldn't then be very general indeed , leaving the choice of copies to the industry .

5. As the part of maritime facilitation traffic the government should ratify and implement the IMO convention of facilitation of international maritime traffic. Implementation of facilitation convention would require rules aimed at the customs and the port authority . In general , restriction of documentry requirements and simplification of procedures for handling of documents in port may greatly facilitate and promote documents in port . In addition , it may be useful for practical purposes to draw up a comprehensive list of documents to be carried on foriegn ships visiting Somali ports . The six standard forms developed by IMO are the best ones that the country can use .

6. banks and customs also should change the regulations relating documentry transactions which are very tideos . Control of hard currency is the main factor. This caused a drop in exports and a raise in inflation .

7. The country also should step forward and benefit from modern communications offered by computers and this new system of EDI. The customs as more than half the income source of the government should plan to use computers to safeguard government earnings.Ports also should plan in the future to rely on computers, one may say its reduclus but it is the way it will affect us in a time that we
are not even prepared for.

8. To train Somali nationals through internationally recognized standards, available to administer maritime legislation .The training system , the recruitment policy and good coordination within all the departments attached to shipping are also important .

5.2. CONCLUSION

Maritime transport is one of the main functions in international trade and the procedures related to transport are therefore of the utmost importance for its efficency.

These procedures mainly involve the selection and contracting of transport services, the determination of

responsibility for goods under transport ,the recording of the goods carried, advice of action to be taken, and claims for payment for services rendered.

The documents used in connection with transport reflect these main areas of activity and can be taken as examples of contract documents (bills of lading). Copies of transport contract documents often serve to advice of the arrival of goods, but specific documents for this purpose exist as well, such as arrival notices.

The desirability of phasing out or modifying outmoded ocean and related transport commercial procedures and maritime code or documentry techniques with a view to simplification and contemporary application to a changed situation is apparent.

The margin of opportunity for using waybills is very great. Their greater use is widely favored and with good reason , for they can provide considerable benefits to carrier and cargo interests alike. There are grounds for believing that the use of sea way bills would reduce maritime fraud committed by consignees who falsely endorse bills of lading after the goods have already been delivered to them in return for a letter of indemnity.

The more widespread use of sea way bills could perhaps begin with shipments between trusted parties on short sea routes, where no document of title is necessary , to benefit trade and transport between neighboring states, especially developing countries.

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*Applicable only when document used as a Through Bill of Lading

Shipper

NON-NEGOTIABLE SEA WAYBILL

UK Customs Assigned No. SWB No.

Shipper's Reference

F/Agent's Reference

Consignee

Name of Carrier

Notify Party and Address (leave blank if stated above)

The contract evidenced by this Waybill is subject to the exceptions, limitations, conditions and liberties (including those relating to pre-carriage and on-carriage) set out in the Carrier's Standard Conditions of Carriage applicable to the voyage covered by this Waybill and operative on the date of issue of the carriage is one where had a Bill of Lading been issued the provisions of the Hague Rules contained in the International Convention for unification of certain rules relating to Bills of Lading dated Brussels 25th August 1924, as amended by the Protocol signed at Brussels on the 23rd February, 1968 (the Hague Visby Rules) would have been compulsorily applicable under Article II, the said Standard Conditions contain or shall be deemed to contain a Clause giving effect to the Hague Visby Rules. Otherwise the said Standard Conditions contain or shall be deemed to contain a Clause giving effect to the provisions of the Hague Rules. In neither case shall the provisions of the first paragraph of Article V of the Hague Rules or the Hague Visby Rules apply. The Carrier hereby agrees (a) that to the extent of any inconsistency the said clause shall prevail over the said Standard Conditions in respect of any period to which the Hague Rules or the Hague Visby Rules by their terms apply, and (b) that for the purpose of the terms of the Contract of Carriage this Waybill falls within the definition of Article 1(b) of the Hague Rules and the Hague Visby Rules.

The Shipper accepts the said Standard Conditions on his own behalf and on behalf of the Consignee and the owner of the goods and warrants that he has authority to do so. The Consignee by presenting this Waybill and/or requesting delivery of the goods further undertakes all liabilities of the Shipper hereunder, such undertaking being additional and without prejudice to the Shipper's own liability. The benefits of the contract, evidenced by this Waybill shall thereby be transferred to the Consignee or other persons presenting this Waybill.

Notwithstanding anything contained in the said Standard Conditions, the term Carrier in this Waybill shall mean the Carrier named on the front thereof.

A copy of the Carrier's said Standard Conditions applicable hereto may be inspected or will be supplied on request at the office of the Carrier or the Carrier's Principal Agents.

Pre-Carriage by* | Place of Receipt by Pre-Carrier*

Vessel | Port of Loading

Port of Discharge | Place of Delivery by On-Carrier*

Marks and Nos; Container No.	Number and kind of packages; Description of Goods	Gross Weight	Measurement

Particulars declared by Shipper

Freight Details: Charges etc.

RECEIVED FOR CARRIAGE as above in apparent good order and condition, unless otherwise stated hereon, the goods described in the above particulars.

Ocean Freight Payable at

Place and Date of Issue

Signature for Carrier; Carrier's Principal Place of Business

GCBS
SWB
1979

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International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, August 25, 1924

rticle 1

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

(a) 'Carrier' includes the owner or the charterer who enters into a ntract of carriage with a shipper.

(b) 'Contract of carriage' applies only to contracts of carriage covered by bill of lading or any similar document of title, in so far as such document lates to the carriage of goods by sea, including any bill of lading or any nilar document as aforesaid issued under or pursuant to a charter party om the moment at which such bill of lading or similar document of title gulates the relations between a carrier and a holder of the same.

(c) 'Goods' includes goods, wares, merchandise and articles of every kind hatsoever except live animals and cargo which by the contract of carriage 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 e loaded on to the time they are discharged from the ship.

rticle 2

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

rticle 3

(1) The carrier shall be bound before and at the beginning of the voyage 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 ground 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 § 3, (a), (b) and (c).

(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 indemnity 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 of 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, or, if the loss or damage be not apparent, within three days, 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 of the goods.

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.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

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

) After the goods are loaded the bill of lading to be issued by the ier, master, or agent of the carrier, to the shipper shall, if the shipper so ands, be a 'shipped' bill of lading, provided that if the shipper shall have viously taken up any document of title to such goods, he shall surrender same as against the issue of the 'shipped' bill of lading, but at the option he carrier such document of title may be noted at the port of shipment he carrier, master, or agent with the name or names of the ship or ships n which the goods have been shipped and the date or dates of shipment, when so noted, if it shows the particulars mentioned in § 3 of Article 3, ll for the purpose of this Article be deemed to constitute a 'shipped' bill lading.

8) Any clause, covenant, or agreement in a contract of carriage relieving carrier or the ship from liability for loss or damage to, or in connexion h, goods arising, from negligence, fault, or failure in the duties and ligations provided in this Article or lessening such liability otherwise than provided in this Convention, shall be null and void and of no effect. A nefit of insurance in favour of the carrier or similar clause shall be emed to be a clause relieving the carrier from liability.

rticle 4

(1) Neither the carrier nor the ship shall be liable for loss or damage ising of resulting from unseaworthiness unless caused by want of due ligence on the part of the carrier to make the ship seaworthy and to secure at the ship is properly manned, equipped and supplied, and to make the olds, refrigerating and cool chambers and all other parts of the ship in hich goods are carried fit and safe for their reception, carriage and reservation in accordance with the provisions of § 1 of Article 3. Whenever ss or damage has resulted from unseaworthiness the burden of proving the xercise of due diligence shall be on the carrier or other person claiming xemption under this Article.

(2) Neither the carrier nor the ship shall be responsible for loss or amage 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, dangers 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 lockouts 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 actual 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 or servants 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) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connexion with goods in an amount exceeding 100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connexion 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 damage 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 5

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 obligations 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 charter parties, but if bills of lading are issued in the case of a ship under a charter party 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

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 his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or 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 a reasonably to justify a special agreement.

Article 7

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 connexion 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

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

The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national concurrency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

Article 10

The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.

Article 11

After an interval of not more than two years from the day of which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the Powers who have acceded to it. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

Article 12

Non-signatory States may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

rticle 13

The High Contracting Parties may at the time of signature, ratification or ccession declare that their acceptance of the present Convention does not nclude any or all of the self-governing dominions, or of the colonies, verseas possessions, protectorates or territories under their sovereignty or uthority, and they may subsequently accede separately on behalf of any elfgoverning dominion, colony, overseas possession, protectorate or terri- ory exluded in their declaration. They may also denounce the Convention eparately in accordance with its provisions in respect of any self-governing ominion, or any colony, overseas possession, protectorate or territory nder their sovereignty or authority.

rticle 14

The present Convention shall take effect, in the case of the States which ave taken part in the first deposit of ratification, one year after the date of he protocol recording such deposit.

As respects the States which ratify subsequently or which accede, and also n cases in which the Convention is subsequently put into effect in accordance ith Article 13, it shall take effect six months after the notifications pecified in paragraph 2 of Article 11 and paragraph 2 of Article 12 have een received by the Belgian Government.

rticle 15

In the event of one of the contracting States wishing to denounce the resent Convention, the denunciation shall be notified in writing to the elgian Government, which shall immediately communicate a duly certified opy of the notification to all the other States, informing them of the date n which it was received.

The denunciation shall only operate in respect of the State which made he notification, and on the expiry of one year after the notification has eached the Belgian Government.

rticle 16

Any one of the contracting States shall have the right to call for a fresh onference with a view to considering possible amendments.

A State which would exercise this right should notify its intention to the ther States through the Belgian Government, which would make arrange- nents for convening the Conference.

DONE at Brussels, in a single copy, August 25th, 1924.

PROTOCOL OF SIGNATURE

At the time of signing the International Convention for the unification of certain rules of law relating to bills of lading the Plenipotentiaries whose

signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.

The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.

They may reserve the right:

(1) To prescribe that in the cases referred to in paragraph 2 (c) to (p) of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a).

(2) To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

DONE at Brussels, in a single copy, August 25th, 1924.

RATIFICATIONS, DENUNCIATIONS AND ACCESSIONS

Ratification		
Belgium	June 2	1930
France	Jan. 4	1937
German Democratic Republic		
Germany, Federal Republic of	July 1	1939
Great Britain and Northern Ireland	June 2	1930
Hungary	June 2	1930
Italy	Oct. 7	1938
Japan	July 1	1957
Poland	Oct. 26	1936
Rumania	Aug. 4	1937
Spain	June 2	1930
United States of America	June 29	1937
Yugoslavia	Apr. 17	1959
Denunciation		
Great Britain and Northern Ireland (also valid for the Isle of Man)	June 13	1977
Accession		
Algeria	Apr. 13	1964
Angola	Feb. 2	1952
Argentina	Apr. 19	1961
Australia	July 4	1955
Papua and Norfolk	July 4	1955
Nauru and New Guinea	July 4	1955

arbados	Dec. 2	1930
ameroon	Dec. 2	1930
ape Verde Isles	Feb. 2	1952
uba	July 25	1977
yprus	Dec. 2	1930
enmark	July 1	1938
cuador	Mar. 23	1977
gypt	Nov. 29	1943
iji	Oct. 10	1970
inland	July 1	1939
ambia	Dec. 2	1930
oa	Feb. 2	1952
Great Britain and Northern Ireland: Antigua, Bahamas, Belize, Bermuda, Caicos & Turks Islands, Caymans, Dominica, Falkland Islands, Gibraltar, Grenada, Hong-Kong, Montserrat, St. Christopher Nevis, Anguilla, Virgin Islands, Seychelles, Solomon Islands, St. Lucia, St. Vincent.	Dec. 2	1930
Ascension, St. Helena	Nov. 3	1931
Guiana	Dec. 2	1930
Guinée-Bissau	Feb. 2	1952
Iran	Apr. 26	1966
Ireland	Jan. 30	1962
Israël	Sept. 5	1959
Ivory Coast	Dec. 15	1961
Jamaica	Dec. 2	1930
Kenya	Dec. 2	1930
Kiribati	Dec. 2	1930
Kuwait	July 25	1969
Lebanon	July 19	1975
Macao	Feb. 2	1952
Federated Malay States	Dec. 2	1930
Unfederated Malay States	Dec. 2	1930
Malaysia	Dec. 2	1930
Malgache Republic	July 13	1965
Mauritius	Aug. 24	1970
Monaco	May 15	1931
Mozambique	Feb. 2	1952
Netherlands	Aug. 18	1956
Nigeria	Dec. 2	1930
Norway	July 1	1938
Palestine	Dec. 2	1930
Paraguay	Nov. 22	1967
Peru	Oct. 29	1964
Portugal	Dec. 24	1931
Sabah (Southern Borneo)	Dec. 2	1930

Sao Tome e Principe (Iles)	Feb. 2	1952
Sarawak	Nov. 3	1931
Senegal	Feb. 14	1978
Sierra Leone	Dec. 2	1930
Singapore	Dec. 2	1930
Somaliland	Dec.2	1930
Sri Lanka	Dec. 2	1930
Sweden	July 1	1938
Switzerland	May 28	1954
Syrian Arab Republic	Aug. 1	1974
Tanzania	Dec. 3	1962
Timor	Feb. 2	1952
Tonga	Dec. 2	1930
Trinidad & Tobago	Dec. 2	1930
Turkey	July 4	1955
Tuvalu	Dec. 2	1930
Zaïre Republic	July 17	1967

Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on 25th August 1924, Brussels February 23, 1968. (Visby Rules)

Article 1

(1) In Article 3, paragraph 4, shall be added:

'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.'

(2) In Article 3, paragraph 6, sub-paragraph 4 shall be deleted and replaced by: '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.'

(3) In article 3, after paragraph 6, shall be added the following paragraph 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.'

Article 2

Article 4, paragraph 5, shall be deleted and replaced by the following:

'(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 the equivalent of 10 000 francs per package or unit or 30 francs per kilo 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 the packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900'. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.

(e) Neither the carrier nor the ship shall be entitled to be 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 sub paragraph (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 of agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (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 of value thereof has been knowingly misstated by the shipper in the bill of lading.'

Article 3

Between Articles 4 and 5 of the Convention shall be inserted the following 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 a 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 amounts 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 result.'

Article 4

Article 9 of the Convention shall be deleted and replaced by the following:

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

Article 5

Article 10 of the Convention shall be deleted and replaced by the following:

'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 evidenced by the bill of lading provides that the rules of this Convention or legislation of 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.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.

This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs.'

Article 6

As between the Parties to this Protocol the Convention and the Protocol shall be read and interpreted together as one single instrument.

A Party to this Protocol shall have no duty to apply the provisions of this Protocol to bills of lading issued in a State which is a Party to the Convention but which is not a Party to this Protocol.

Article 7

As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 15 thereof, shall not be construed

Protocol.

Article 8

Any dispute between two or more Contracting Parties concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article 9

(1) Each Contracting Party may at the time of signature or ratification of this Protocol or accession thereto, declare that it does not consider itself bound by Article 8 of this Protocol. The other Contracting Parties shall not be bound by this Article with respect to any Contracting Party having made such a reservation.

(2) Any Contracting Party having made a reservation in accordance with paragraph 1 may at any time withdraw this reservation by notification to the Belgian Government.

Article 10

This Protocol shall be open for signature by the States which have ratified the Convention or which have adhered thereto before the 23rd February 1968, and by any State represented at the twelfth session (1967–1968) of the Diplomatic Conference on Maritime Law.

Article 11

(1) This Protocol shall be ratified.

(2) Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention.

(3) The instruments of ratification shall be deposited with the Belgian Government.

Article 12

(1) States, Members of the United Nations or Members of the specialised agencies of the United Nations, not represented at the twelfth session of the Diplomatic Conference on Maritime Law, may accede to this Protocol.

(2) Accession to this Protocol shall have the effect of accession to the Convention.

(3) The instruments of accession shall be deposited with the Belgian Government.

Article 13

(1) This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five

shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.

(2) For each State which ratifies this Protocol or accedes thereto after the date of deposit of the instrument of ratification or accession determining the coming into force such as is stipulated in § 1 of this Article, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article 14

(1) Any Contracting State may denounce this Protocol by notification to the Belgian Government.

(2) This denunciation shall have the effect of denunciation of the Convention.

(3) The denunciation shall take effect one year after the date on which the notification has been received by the Belgian Government.

Article 15

(1) Any Contracting State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories under its sovereignty or for whose international relations it is responsible, are those to which the present Protocol applies.

The Protocol shall three months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Protocol in respect of such State.

(2) This extension also shall apply to the Convention if the latter is not yet applicable to those territories.

(3) Any Contracting State which has made a declaration under § 1 of this Article may at any time thereafter declare by notification given to the Belgian Government that the Protocol shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government; it also shall apply to the Convention.

Article 16

The Contracting Parties may give effect to this Protocol either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Protocol.

Article 17

The Belgian Government shall notify the States represented at the twelfth session (1967–1968) of the Diplomatic Conference on Maritime Law, the acceding States to this Protocol, and the States Parties to the Convention, of the following:

(1) The signatures, ratifications and accessions received in accordance with Articles 10, 11 and 12.

(2) The date on which the present Protocol will come into force in accordance with Article 13.

(3) The notifications with regard to the territorial application in accordance with Article 15.

(4) The denunciations received in accordance with Article 14.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorized, have signed this Protocol.

DONE at Brussels, this 23rd day of February 1968, in the French and English languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

RATIFICATIONS AND ACCESSIONS

State	*Date*
Ratification	
Belgium	Sept. 6 1978
Denmark	Nov. 20 1975
Egypt	Jan. 31 1983
Finland	Dec. 1 1984
France	Mar. 10 1977
Great Britain	Oct. 1 1976
Netherlands, The	Apr. 26 1986
Norway	Mar. 19 1974
Poland	Feb. 12 1980
Sweden	Dec. 9 1974
Switzerland	Dec. 11 1975
Accession	
Bermuda	Nov. 1 1980
Ecuador	Mar. 23 1977
German Dem. Rep.	Feb. 14 1979
Gibraltar	Sept. 22 1977
Lebanon	July 19 1975
Singapore	Apr. 25 1972
Sri Lanka	Oct. 21 1981
Syrian Arab Republic	Aug. 1 1974
Tonga	June 13 1978

Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, August 25, 1924 as Amended by the Protocol of February 23, 1968, Brussels, December 21, 1979

Article I

For the purpose of this Protocol, 'Convention' means the International Convention for the unification of certain rules of law relating to bills of lading and its Protocol of signature, done at Brussels on 25th August 1924, as amended by the Protocol, done at Brussels on 23rd February, 1968.

Article II

(1) Article 4, paragraph 5, (a) of the Convention is replaced by the following:

'(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.'

(2) Article 4, paragraph 5, (d) of the Convention is replaced by the following:

'(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 the 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 milligrammes 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 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'.

Article III

Any dispute between two or more Contracting Parties concerning the interpretation of application of the present Protocol, which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organisation of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article IV

(1) Each Contracting Party may at the time of signature or ratification of this Protocol or of accession thereto, declare that it does not consider itself bound by Article III.

(2) Any Contracting Party having made a reservation in accordance with paragraph (1) may at any time withdraw this reservation by notification to the Belgian Government.

Article V

This Protocol shall be open for signature by the States which have signed the Convention of 25 August 1924 or the Protocol of 23 February 1968 or which are Parties to the Convention.

Article VI

(1) This Protocol shall be ratified.

(2) Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification of the Convention.

(3) The instruments of ratification shall be deposited with the Belgian Government.

Article VII

(1) States not referred to in Article V may accede to this Protocol.

(2) Accession to this Protocol shall have the effect of accession to the Convention.

(3) The instruments of accession shall be deposited with the Belgian Government.

Article VIII

(1) This Protocol shall come into force three months after the date of the deposit of five instruments of ratification or accession.

(2) For each State which ratifies this Protocol or accedes thereto after the fifth deposit, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article IX

(1) Any Contracting Party may denounce this Protocol by notification to the Belgian Government.

(2) The denunciation shall take effect one year after th date on which the notification had been received by the Belgian Government.

Article X

(1) Each State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories for whose international relations it is responsible, are those to which the present Protocol applies. The Protocol shall three months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Protocol in respect of such State.

(2) This extension also shall apply to the Convention if the latter is not yet applicable to these territories.

(3) Any Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Protocol shall cease to extend to such territories. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

Article XI

The Belgian Government shall notify the signatory and acceding States of the following:

(1) the signatures, ratifications and accessions received in accordance with Articles V, VI and VII.

(2) the date on which the present Protocol will come into force in accordance with Article VIII.

(3) the notifications with regard to the territorial application in accordance with Article X.

(4) the declarations and communications made in accordance with Article II.

(5) the declarations made in accordance with Article IV.

(6) the denunciations received in accordance with Article IX.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE AT Brussels, this 21st day of December 1979, in the English and French languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

RATIFICATIONS AND ADHERENCES

Ratification		
Spain	Jan. 6	1982
Signature		
Belgium	Dec. 21	1979
Chile	Dec. 21	1979
Denmark	Nov. 3	1983
The State of the Vatican City	Dec. 21	1979
Poland	Dec. 21	1979
Portugal	Dec. 21	1979
Finland	Dec. 1	1984
Norway	Dec. 1	1983
The United Kingdom of Great Britain and Northern Ireland	Dec. 21	1979
Singapore	Dec. 21	1979
Sweden	Nov. 14	1983
Switzerland	Dec. 21	1983
Syria	Jan. 11	1980
Italy	Oct. 30	1980

95. United Nations Convention on the Carriage of Goods by Sea, Hamburg, March 31, 1978

PART I GENERAL PROVISIONS

DEFINITIONS

Article 1

In this Convention:

(1) 'Carrier' means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

(2) 'Actual carrier' means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the

carrier, and includes any other person to whom such performance has been entrusted.

(3) 'Shipper' means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

(4) 'Consignee' means the person entitled to take delivery of the goods.

(5) 'Goods' includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, 'goods' includes such article of transport or packaging if supplied by the shipper.

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

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

(8) 'Writing' includes, *inter alia*, telegram and telex.

SCOPE OF APPLICATION

Article 2

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

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

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

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

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

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

(2) The provisions of this Convention are applicable without regard to the

nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

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

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

Interpretation of the Convention

Article 3

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

Part II Liability of the Carrier

Period of responsibility

Article 4

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

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

(a) from the time he has taken over the goods from:

(i) the shipper, or a person acting on his behalf; or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) until the time he has delivered the goods:

(i) by handing over the goods to the consignee; or

(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

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

(3) In paragraphs 1 and 2 of this article, reference to the carrier or to the

consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

Basis of liability

Article 5

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

(2) Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

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

(4) (a) The carrier is liable

(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

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

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

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

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

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

LIMITS OF LIABILITY

Article 6

(1) (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

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

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

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

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

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

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

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

APPLICATION TO NON-CONTRACTUAL CLAIMS

Article 7

(1) The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the

goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

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

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

LOSS OF RIGHT TO LIMIT RESPONSIBILITY

Article 8

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

(2) Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

DECK CARGO

Article 9

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

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

(3) Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely

rom the carriage on deck, and the extent of his liability is to be determined n accordance with the provisions of article 6 or article 8 of this Convention, is the case may be.

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

LIABILITY OF THE CARRIER AND ACTUAL CARRIER

Article 10

(1) Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

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

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

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

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

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

THROUGH CARRIAGE

Article 11

(1) Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which

takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

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

PART III LIABILITY OF THE SHIPPER

GENERAL RULE

Article 12

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

SPECIAL RULES ON DANGEROUS GOODS

Article 13

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

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

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

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

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

(4) If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of

compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV TRANSPORT DOCUMENTS

ISSUE OF BILL OF LADING

Article 14

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

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

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

CONTENTS OF BILL OF LADING

Article 15

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

(a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods of their quantity otherwise expressed, all such particulars as furnished by the shipper;

(b) the apparent condition of the goods;

(c) the name and principal place of business of the carrier;

(d) the name of the shipper;

(e) the consignee if named by the shipper;

(f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;

(g) the port of discharge under the contract of carriage by sea;

(h) the number of originals of the bill of lading, if more than one;

(i) the place of issuance of the bill of lading;

(j) the signature of the carrier or a person acting on his behalf;

(k) the freight to the extent payable by the consignee or other indication that freight is payable by him;

(l) the statement referred to in paragraph 3 of article 23;

(m) the statement, if applicable, that the goods shall or may be carried on deck;
(n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
(o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

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

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

BILLS OF LADING: RESERVATIONS AND EVIDENTIARY EFFECT

Article 16

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

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

(3) Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:
(a) the bill of lading is *prima facie* evidence of the taking over or, where a 'shipped' bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and
(b) proof to the contrary by the carrier is not admissible if the bill of

lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

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

GUARANTEES BY THE SHIPPER

Article 17

(1) The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

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

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

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

Documents other than bills of lading

Article 18

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

Part V Claims and Actions

Notice of loss, damage or delay

Article 19

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

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

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

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

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

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

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

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

LIMITATION OF ACTIONS

Article 20

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

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

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

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

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

JURISDICTION

Article 21

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

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

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

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

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

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

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

(3) No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

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

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

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

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

Arbitration

Article 22

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

(2) Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing

carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

(3) The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places;

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

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

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

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

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

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

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

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

PART VI SUPPLEMENTARY PROVISIONS

CONTRACTUAL STIPULATIONS

Article 23

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

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

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

(4) Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to the extent required in

order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

General average

Article 24

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

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

Other conventions

Article 25

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

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

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

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

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

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

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

Unit of account

Article 26

(1) The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

(2) Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

12 500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.

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

(4) The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the

depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

Part VII Final Clauses

Depositary

Article 27

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

Signature, Ratification, Acceptance, Approval, Accession

Article 28

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

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

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

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

Reservations

Article 29

No reservations may be made to this Convention.

Entry into force

Article 30

(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession.

(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the 20th instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first

day of the month following the expiration of one year after the deposit of the appropriate instruments on behalf of that State.

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

Denunciation of other conventions

Article 31

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

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

(3) The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

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

Revision and amendment

Article 32

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

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

REVISION OF THE LIMITATION AMOUNTS AND UNIT OF ACCOUNT OR MONETARY UNIT

Article 33

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

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

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

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

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

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

DENUNCIATION

Article 34

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

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

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

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

RATIFICATIONS AND ACCESSIONS

Barbados	Feb. 2	1981
Chile	July 9	1982
Egypt	Apr. 23	1979
Hungary	July 5	1984
Lebanon	Apr. 4	1983
Morocco	June 12	1981
Romania	Jan. 7	1982
Tanzania	July 24	1979
Tunisia	Sept. 15	1980
Uganda	July 6	1979

United Nations Convention on International Multimodal Transport of Goods, Geneva, May 24, 1980

PART I GENERAL PROVISIONS

Article 1: Definitions

For the purposes of this Convention:

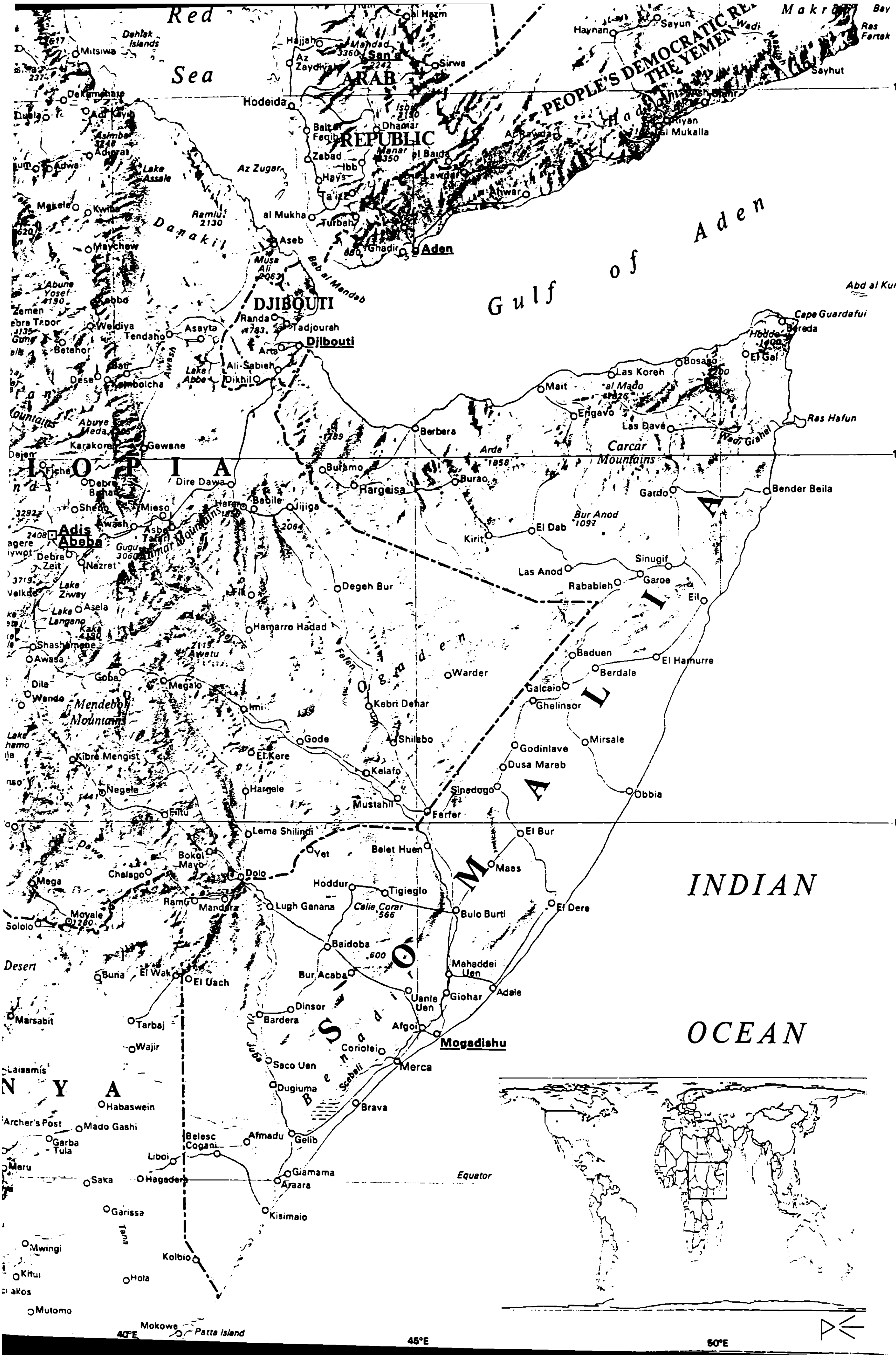
(1) 'International multimodal transport' means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport.

(2) 'Multimodal transport operator' means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

(3) 'Multimodal transport contract' means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport.

(4) 'Multimodal transport document' means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.

(5) 'Consignor' means any person by whom or in whose name or on whose behalf a multimodal transport contract has been concluded with the multimodal transport operator, or any person by whom or in whose name or



Red Sea
Dahlak Islands
Gulf of Aden
ARAB REPUBLIC
PEOPLE'S DEMOCRATIC REPUBLIC OF THE YEMEN
DJIBOUTI
Djibouti
ETHIOPIA
SOMALIA
KENYA
INDIAN OCEAN
Ogaden
Benadir
Danakil
Carcar Mountains
Mendebo Mountains
Ahmar Mountains
Hadhramaut
Bab al Mandab
Cape Guardafui
Ras Hafun
Ras Fartak
Abd al Kuri
San'a
Aden
Hodeida
Ta'izz
Ibb
al Mukha
Zabad
Dhamar
al Baida
Sirwa
al Hazm
Hajjah
Sayun
Haynan
Sayhut
al Mukalla
Ahwar
Lawdar
Asmara
Mitsiwa
Adwa
Mekele
Kwiha
Maychew
Weldiya
Tendaho
Asayta
Dese
Kombolcha
Karakore
Gewane
Fiche
Debre Berhan
Dire Dawa
Harer
Babile
Jijiga
Adis Abeba
Nazret
Debre Zeit
Asela
Awasa
Shashamene
Goba
Dila
Negele
Filtu
Mega
Moyale
Dolo
Mandera
El Wak
El Uach
Buna
Marsabit
Tarbaj
Wajir
Habaswein
Mado Gashi
Garba Tula
Meru
Saka
Hagadera
Garissa
Mwingi
Kitui
Hola
Mutomo
Kolbio
Mokowe
Patta Island
Assab
Randa
Tadjourah
Arta
Ali-Sabieh
Dikhil
Berbera
Burao
Hargeisa
Buramo
Las Koreh
Mait
Erigavo
Bosaso
Bereda
El Gal
Las Dave
Bender Beila
Gardo
El Dab
Kirit
Las Anod
Sinugif
Garoe
Rabableh
Eil
Baduen
Berdale
El Hamurre
Galcaio
Ghelinsor
Mirsale
Godinlave
Dusa Mareb
Obbia
Sinadogo
Warder
Degeh Bur
Hamarro Hadad
Kebri Dehar
Shilabo
Gode
Imi
Megalo
El Kere
Kelafo
Hargele
Mustahil
Ferfer
Lema Shilindi
Yet
Belet Huen
El Bur
Maas
El Dere
Hoddur
Tigieglo
Bulo Burti
Lugh Ganana
Baidoba
Bur Acaba
Mahaddei Uen
Giohar
Adale
Uanle Uen
Afgoi
Mogadishu
Dinsor
Bardera
Coriolei
Merca
Saco Uen
Dugiuma
Brava
Afmadu
Gelib
Belesc Cogani
Liboi
Giamama
Araara
Kisimaio
Equator
15°
10°
5°
40°E
45°E
50°E