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Draft convention on the carriage of goods

[wholly or partly] [by sea]⁴⁶⁸



⁴⁶⁸ UNCITRAL, A/CN.9/WG.III/WP.81.



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Transport Law

Draft convention on the carriage of goods [wholly or partly] [by sea]

Note by the Secretariat

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Introduction

1. At its thirty-fourth session, in 2001, the Commission established Working Group III (Transport Law) and entrusted it with the task of preparing, in close cooperation with interested international organizations, a legislative instrument on issues relating to the international carriage of goods such as the scope of application, the period of responsibility of the carrier, obligations of the carrier, liability of the carrier, obligations of the shipper and transport documents.ⁱ The Working Group commenced its deliberations on a draft instrument on the carriage of goods [wholly or partly] [by sea] at its ninth session in 2002. The most recent compilation of historical references regarding the legislative history of the draft instrument can be found in document A/CN.9/WG.III/WP.80.

2. This document consists of a consolidation of revised provisions for the draft convention on the carriage of goods [wholly or partly] [by sea] prepared by the Secretariat for consideration by the Working Group for the third reading of the draft convention. Changes to the consolidated text most recently considered by the Working Group (contained in document A/CN.9/WG.III/WP.56) have been indicated in footnotes to the text indicating those changes and, where applicable, by reference to the working paper in which the revised text appeared, or to the paragraph of the report in which such text appeared.

ⁱ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr. 3), para. 345.

Draft convention on the carriage of goods [wholly or partly] [by sea]

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this Convention:

1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.¹

2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.²

3. “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.³

4. “Non-liner transportation” means any transportation that is not liner transportation.⁴

5. “Carrier” means a person that enters into a contract of carriage with a shipper.

6. “Performing party” means a person other than the carrier that performs⁵ or undertakes to perform any of the carrier’s obligations⁶ under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, discharge or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control. It includes employees, agents and subcontractors of a performing party to the extent that they likewise perform or undertake to perform any of the carrier’s obligations

¹ Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

² Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

³ Text as set out in para. 16 of A/CN.9/WG.III/WP.61, as considered by the Working Group in paras. 121 to 133 of A/CN.9/594.

⁴ The Working Group may wish to consider whether the definition of “non-liner transportation” is necessary in light of the definition of “liner transportation”.

⁵ As a drafting improvement, the word “physically” has been deleted from its previous placement in the text in A/CN.9/WG.III/WP.56 prior to the word “perform(s)” in two places in this sentence, since the translation of this phrase in some languages was unclear, and since the list of functions set out in the provision makes it clear that the performing party must take some concrete action in the performance of the contract of carriage in order to be included in the definition.

⁶ In order to standardize the text, the word “obligations” has been substituted for the word “responsibilities”, where appropriate.

under a contract of carriage,⁷ but does not include any person that is retained by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee, or is an employee, agent or subcontractor of a person (other than the carrier) who is retained by a shipper, by a documentary shipper, by the consignor, by the controlling party or by the consignee.

7. “Maritime performing party” means a performing party to the extent⁸ that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship⁹, but, in the event of a trans-shipment, does not include a performing party that performs any of the carrier’s obligations inland during the period between the departure of the goods from a port and their arrival at another port of loading.

8. “Non-maritime performing party” means a performing party to the extent that it is not a maritime performing party.¹⁰

9. “Shipper” means a person that enters into a contract of carriage with a carrier.

10. “Documentary shipper” means a person other than the shipper that accepts to be named as “shipper” in the transport document or electronic transport record.¹¹

11. “Consignor” means a person that delivers the goods to the carrier or to a performing party for carriage.

12. “Holder” means:

(a) A person that is in possession of a negotiable transport document; and
(i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

⁷ The opening phrase of this sentence has been added to clarify further the definition.

⁸ The addition of the phrase “to the extent” is suggested to further clarify the definition to take into account the possibility that the same person may perform both a maritime part and an inland part of the transport.

⁹ The phrases “[or, in case of trans-shipment, at the first port of loading]” and “[or final port of discharge as the case may be]” have been deleted in order to clarify the text and to make it consistent with the definition of “performing party” in the paragraph above. Refinements with respect to the liability of the maritime performing party have been made to draft art. 19. As set out in an earlier note, it was suggested at para. 31 of A/CN.9/544 that a rail carrier, even if it performed services within a port, should be deemed to be a non-maritime performing party. The Working Group may wish to consider this suggestion.

¹⁰ Revised text to maintain consistency with technique used elsewhere in the draft convention, for example, in the definition of “non-liner transportation”. The Working Group may wish to consider whether this definition is necessary, since the term “non-maritime performing party” is used only in draft art. 20(3).

¹¹ This definition was moved from its former position in the first sentence of former draft article 34 as it appeared in A/CN.9/WG.III/WP.56.

(b) The person to which a negotiable electronic transport record has been issued or transferred and that has exclusive control of that negotiable electronic transport record in accordance with the procedures in article 9.¹²

13. “Consignee” means a person entitled to delivery¹³ of the goods under a contract of carriage or a transport document or electronic transport record.

14. “Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 11.¹⁴

15. “Controlling party” means the person that pursuant to article 53 is entitled to exercise the right of control.

16. “Transport document” means a document issued under a contract of carriage by the carrier or a performing party that satisfies one or both of the following conditions:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; or

(b) Evidences or contains a contract of carriage.

17. “Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.

18. “Non-negotiable transport document” means a transport document that is not a negotiable transport document.

19. “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.¹⁵

¹² The phrase “in accordance with the procedures in article 9” has been added to allow for the deletion of the second sentence of former draft article 1(u) as it appeared in A/CN.9/WG.III/WP.56, which defined “exclusive control” in a circular fashion by referring to the procedure of draft article 9. If the Working Group decides to delete draft article 59, the definition may require further drafting adjustment.

¹³ The word “take” that had been placed before “delivery” has been deleted as redundant and potentially misleading.

¹⁴ Definition of “right of control” drawn from the chapeau of draft article 52, formerly draft art. 54 as it appeared in A/CN.9/WG.III/WP.56.

¹⁵ Suggested clarification to ensure that the draft convention does not draw an unnecessary distinction between the means of transmission and the form in which the data are stored. The definition of “electronic communication” draws on the definition of “data message” in art. 2 of the United Nations Model Law on Electronic Commerce, 1996 (“MLEC”), without the illustrative list of techniques. In the MLEC and the United Nations Convention on the Use of Electronic Communications in International Contracts (“Electronic Contracting Convention”), Annex I to *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17*, (A/60/17), not all data messages are capable of having the same value as written paper documents, which is only possible in respect of data messages that are “accessible so as to be

20. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier or a performing party, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier or a performing party, so as to become part of the electronic transport record, that satisfies one or both of the following conditions:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; or

(b) Evidences or contains a contract of carriage.

21. “Negotiable electronic transport record” means an electronic transport record:

(a) That indicates, by statements such as “to order”, or “negotiable”, or other appropriate¹⁶ statements recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and

(b) The use of which meets the requirements of article 9, paragraph 1.

22. “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.

23. The “issuance” and the “transfer” of a negotiable electronic transport record means the issuance and the transfer of exclusive control over the record.¹⁷

24. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

25. “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.¹⁸

26. “Ship” means any vessel used to carry goods by sea.

usable for subsequent reference”. In the draft instrument, the notion of “electronic communication”, also incorporates the criteria for the functional equivalence between data messages and written documents on art. 6 of MLEC and art. 9, para. 2 of Electronic Contracting Convention. Thus, an “electronic communication” under the instrument must always be capable of replicating the function of written documents.

¹⁶ The Working Group may wish to consider whether the word “appropriate” is necessary in light of the use of the phrase “recognized as having the same effect” and whether similar language in draft para. 1(17) should be aligned accordingly.

¹⁷ Text as set out in para. 207 of A/CN.9/576, and as approved for further discussion in para. 210 of A/CN.9/576, but for the second sentence, which has been deleted as a drafting improvement in favour of the addition of the phrase “in accordance with the procedures in article 9” at the end of draft article 1(12)(ii).

¹⁸ The phrase “or a performing party” has been deleted since it should be clear that the performing party is included by way of the use of the phrase “supplied by or on behalf of the carrier”.

27. “Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

28. “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.¹⁹

29. “Domicile” means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, as appropriate, (ii) central administration, or (iii) principal place of business, and (b) the habitual residence of a natural person.²⁰

30. “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over a matter.²¹

Article 2. Interpretation of this Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Article 3. Form requirements²²

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 3; 23, paragraphs 1 to 3; 37, subparagraphs 1(b), (c) and (d); 41, subparagraph 3(b); 45; 50, paragraph 3; 53, paragraph 1; 61, subparagraph (d); 62, paragraph 1; 66; 69; and 89, paragraphs 1 and 5 shall be in writing. Electronic communications may be used for these

¹⁹ Deletion of this definition is proposed given the deletion of the chapter on freight and the inclusion of “freight” in the definition of “contract of carriage” in para. 1(a).

²⁰ Suggested adjustments to text as set out in para. 115 of A/CN.9/576. It is suggested that reference should be made to associations, since these legal entities often own ships, but may not be included in “other legal persons”. “Place of incorporation or registered office” have been added for certainty, since “statutory seat” is not universally recognized. All of these changes conform with the text of art. 60 of Council Regulation (EC) No. 44/2001, 22 Dec. 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters [Official Journal L 12 of 16.01.2001] (“Brussels I”), from which the original text was drawn. Further, the Working Group may wish to note that the definitions of “time of receipt” and “place of receipt” and “time of delivery” and “place of delivery” that formerly appeared in square brackets as draft articles 1(aa) and (bb) in A/CN.9/WG.III/WP.56 have been deleted as redundant, since these terms are already specified in the text as necessary at draft articles 5, 11 and 69.

²¹ As agreed by the Working Group in para. 73 of A/CN.9/591. The phrasing is the same as that used in article 5(3)(b) of the Convention on Choice of Court Agreements, 2005.

²² The Working Group may wish to note that this list is not closed, pending further examination. Further, the Working Group may wish to consider whether it is advisable to include with the final text an explanatory note that any notices contemplated in this convention that are not included in art. 3 may be made by any means including orally or by exchange of data messages that do not meet the definition of “electronic communication”. It is implicit in the definition of “electronic communication” that it must be capable of replicating the function of written documents (see *supra*, note to definition of “electronic communication”).

purposes, provided the use of such means is with the consent²³ of the person by which it is communicated and of the person to which it is communicated.

Article 4. Applicability of defences and limits of liability

The defences and limits of liability provided for in this Convention and the obligations imposed by this Convention apply in any action against the carrier or a maritime performing party for loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention,²⁴ whether the action is founded in contract, in tort, or otherwise.²⁵

CHAPTER 2. SCOPE OF APPLICATION

*Article 5. General scope of application*²⁶

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage²⁷ and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:²⁸

- (a) The place of receipt;
- (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.

2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

Article 6. Specific exclusions

1. This Convention does not apply to the following contracts of carriage in liner transportation:

- (a) Charterparties; and

²³ The phrase “express or implied” that had formerly been inserted before the word “consent” in the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted as redundant.

²⁴ The addition of “the breach of any other obligation” is thought to have made the reference to “[or in connection with]” the goods unnecessary.

²⁵ Draft article 4(2) as it existed in A/CN.9/WG.III/WP.56 has been deleted as redundant given the text of draft article 19(4).

²⁶ Revised draft based on A/CN.9/WG.III/WP.61, para. 19, as agreed by the Working Group (A/CN.9/594, paras. 123 and 128).

²⁷ Revised draft based on A/CN.9/WG.III/WP.61, para. 19, as agreed by the Working Group (A/CN.9/594, paras. 123 and 128). The phrases “of a sea carriage” and “of the same sea carriage” have been reinserted into the text in order to emphasize the sea carriage aspect and for enhanced clarity.

²⁸ The phrase “according to the contract of carriage, any one of the following places is located in a Contracting State” has been added to the end of the chapeau in order to allow for deletion of that phrase from the sub-paragraphs that follow. Further, the sub-paragraphs as they appeared in A/CN.9/WG.III/WP.56 have been divided into separate paragraphs so as to make clear that each component listed must be agreed in the contract of carriage.

(b) Contracts for the use of a ship or of any space thereon, whether or not they are charterparties.²⁹

2. This Convention does not apply to contracts of carriage in non-linear transportation except when:

(a) There is no charterparty or contract for the use of a ship or of any space thereon between the parties, whether such contract is a charterparty or not; and

(b) The evidence of the contract of carriage is a transport document or an electronic transport record that also evidences the carrier's or a performing party's receipt of the goods.³⁰

*Article 7. Application to certain parties*³¹

Notwithstanding article 6, this Convention applies as between the carrier and the consignor, consignee, controlling party or holder³² that is not an original party to the charterparty or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.³³

CHAPTER 3. ELECTRONIC TRANSPORT RECORDS

Article 8. Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(a) Anything that is to be in or on a transport document pursuant to this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent³⁴ of the carrier and the shipper; and

(b) The issuance, control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

²⁹ New draft based on A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 129-133).

³⁰ Redrafting of text in A/CN.9/WG.III/WP.61, para. 23 (agreed by the Working Group A/CN.9/594, paras. 129-133), not intended to change meaning of paragraph.

³¹ Text based on A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 134-140).

³² The phrase "or the person referred to in article 34 (now article 33)", as considered by the Working Group in paras. 138 and 140 of A/CN.9/594, has been deleted from the text in A/CN.9/WG.III/WP.61, para. 23 as a clarification, since the application of draft article 7 to the documentary shipper in draft article 33 would be to that person in its capacity as controlling party or holder, but not in its capacity as the documentary shipper.

³³ Text from A/CN.9/WG.III/WP.61, para. 23, as agreed by the Working Group (A/CN.9/594, paras. 134-140), with slight adjustments intended to improve the drafting but to leave unchanged the substance of the draft article.

³⁴ The phrase "express or implied" that had formerly been inserted before the word "consent" in A/CN.9/WG.III/WP.56 has been deleted as redundant.

Article 9. Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:

(a) The method for the issuance and the transfer of that record to an intended holder;

(b) An assurance that the negotiable electronic transport record retains its integrity;

(c) The manner in which the holder is able to demonstrate that it is the holder; and

(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 49, subparagraphs (a)(ii) and (c), the negotiable electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.³⁵

Article 10. Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(c) The negotiable transport document ceases thereafter to have any effect or validity.

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) The electronic transport record ceases thereafter to have any effect or validity.

³⁵ As set out in footnote 34 in A/CN.9/WG.III/WP.47, and as agreed in paras. 198-199 of A/CN.9/576, the term "readily ascertainable" was used to indicate without excessive detail that the necessary procedures must be available to those parties who have a legitimate interest in knowing them prior to entering a legal commitment based upon the validity of the negotiable electronic transport record. It was further noted that the system envisaged would function in a manner not dissimilar to the current availability of terms and conditions of bills of lading. The Working Group may wish to consider whether related detail should be specified in a note or a commentary accompanying the draft convention.

CHAPTER 4. PERIOD OF RESPONSIBILITY

Article 11. Period of responsibility of the carrier

1. Subject to article 12, the period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.³⁶

2. The time and location of receipt of the goods for carriage and of delivery of the goods are the time and location agreed in the contract of carriage, or, failing such agreement, the time and location that are in accordance with the customs, practices, or usages of the trade. In the absence of such agreement or of such customs, practices, or usages:

(a) The time and location of receipt of the goods for carriage are when and where the carrier or a performing party actually takes custody of the goods; and

(b) The time and location of delivery are that of the discharge or unloading of the goods from the final means of transport in which they are carried under the contract of carriage.³⁷

3. If the consignor is required to hand over the goods at the place of receipt, or if the carrier is required to hand over the goods at the place of delivery, to an authority or other third party to which, pursuant to the law or regulations of the place of receipt or delivery, the goods must be handed over and from which the carrier, or the consignee, as the case may be, may collect them:³⁸

(a) The time and location of the carrier's collection of the goods from the authority or other third party are the time and location of the receipt of the goods by the carrier pursuant to subparagraph 2(a) of this article; and

(b) The time and location of such handing over at the place of delivery are the time and location of delivery of the goods by the carrier pursuant to subparagraph 2(b) of this article.

4. For the purposes of determining the carrier's period of responsibility and subject to article 14, paragraph 2, the contract of carriage may not provide that:

(a) The time of receipt of the goods is subsequent to the commencement of their initial loading under the contract of carriage; or

³⁶ The phrase "to the consignee" has been deleted from this paragraph and from subpara. 3(b) as unnecessary, since 'delivery' as it is referred to in these provisions concerns not the obligation of the carrier, but rather the actual delivery that defines the end of the period of responsibility of the carrier.

³⁷ Para. 2 combines and replaces former paragraphs 2 and 4 of this draft article as previously set out in A/CN.9/WG.III/WP.56. The change is intended as a drafting improvement and not as a change in substance.

³⁸ This paragraph is proposed by the Secretariat to address the situation when the consignor is required to hand over the goods to an authority, such as a customs authority, prior to them being handed over to the carrier. Further, para. 3 combines and replaces former paragraphs 3 and 5 of this draft article as previously set out in A/CN.9/WG.III/WP.56. The change is intended as a drafting improvement and not as a change in substance.

(b) The time of delivery of the goods is prior to the completion of their final discharge under the contract of carriage.³⁹

*Article 12. Transport not covered by the contract of carriage*⁴⁰

On the request of the shipper, the carrier may agree to issue a single transport document or electronic transport record that includes specified transport that is not covered by the contract of carriage. In such event, [the responsibility of the carrier covers the period of the contract of carriage and, unless otherwise agreed, the carrier, on behalf of the shipper, shall arrange the additional transport as provided in such transport document or electronic transport record.] [the carrier shall exercise due diligence in selecting the other carrier, conclude a contract with such other carrier on usual and normal terms, and do everything that is reasonably required to enable such other carrier to perform duly under its contract.]⁴¹

CHAPTER 5. OBLIGATIONS OF THE CARRIER

Article 13. Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage,⁴² carry the goods to the place of destination and deliver them to the consignee.

Article 14. Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 11, and subject to article 26, properly and carefully receive,⁴³ load, handle, stow, carry, keep, care for, discharge and deliver the goods.

2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 5 and to chapters 6 to 8,⁴⁴ the parties may agree that the loading, handling, stowing or discharging of the goods is to be performed by the shipper, any person referred to in article 34, paragraph 1, the controlling party or the consignee. Such an agreement shall be referred to in the contract particulars.

³⁹ Para. 4 is suggested in order to ensure that fictions may not be included in the contract of carriage in order to reduce the carrier's period of responsibility.

⁴⁰ The Working Group may wish to consider whether art. 12 is properly placed within chapter 4 on period of responsibility.

⁴¹ Since the first sentence of Variant B of this draft article as it appeared in A/CN.9/WG.III/WP.56 was intended only as a clarification of para. 1 of Variant A, the two variants have been combined into one, where the text in square brackets in the second sentence presents two alternative approaches: the first changes the obligation of the carrier in its arrangement of additional transport from one of due diligence to whatever is agreed in the contract of carriage or elsewhere, and the second alternative maintains an obligation of due diligence on the part of the carrier.

⁴² Suggested deletion of "[properly and carefully]" as unnecessary and repetitious, since "subject to this Convention" already includes proper and careful carriage. Further, draft art. 13 is intended as a general obligation that is enhanced in subsequent articles.

⁴³ "Receive" and "deliver" have been added to ensure they are recognized as carrier's obligations.

⁴⁴ The opening phrase "Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 5 and to chapters 6 to 8" has been added to achieve greater clarity.

*Article 15. Goods that may become a danger*⁴⁵

Notwithstanding articles 13, 14, and 16, paragraph 1, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless if the goods are, or appear likely to become during the carrier's period of responsibility an actual danger to persons, to property or to the environment.⁴⁶

Article 16. Specific obligations applicable to the voyage by sea

1. The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

(a) Make and keep the ship seaworthy;

(b) Properly crew,⁴⁷ equip and supply the ship and keep the ship so crewed,⁴⁸ equipped and supplied throughout the voyage; and

(c) Make and keep the holds and all other parts of the ship in which the goods are carried, including any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

[2. Notwithstanding articles 13, 14, and 16, paragraph 1, the carrier or a performing party may sacrifice goods when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.]⁴⁹

CHAPTER 6. LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

*Article 17. Basis of liability*⁵⁰

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance⁵¹ that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

⁴⁵ The revised text of this draft article combines what appeared as Variant A and Variant B in A/CN.9/WG.III/WP.56.

⁴⁶ The concept of "an illegal or unacceptable danger" to the environment that appeared in the text in A/CN.9/WG.III/WP.56 has been changed to a "danger to the environment" in an effort to make the standard more objective.

⁴⁷ As set out in footnote 56 of A/CN.9/WG.III/WP.36, the gender-neutral word "crew" had been inserted in place of the word "man".

⁴⁸ Ibid.

⁴⁹ As noted at para. 157 of A/CN.9/544, the Working Group decided to maintain draft para. 16(2) in square brackets in its current location, with a view to considering at a later stage whether it should be moved to chapter 17 on general average.

⁵⁰ Redraft of text set out in paras. 31 and 75 of A/CN.9/572, as broadly accepted in paras. 33 and 80 of A/CN.9/572, and as published in A/CN.9/WG.III/WP.56. The redraft of this draft article, which is drawn entirely from the previous text as accepted, is only intended to improve the drafting by simplifying the structure of the draft article, and is not intended to change the content of the provision in any way.

⁵¹ The word "occurrence" has been replaced with "event or circumstance" to standardize the text used elsewhere in the draft article and for greater clarity. Reference to "event or circumstance"

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18, paragraph 1.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

- (a) Act of God;
- (b) Perils, dangers, and accidents of the sea or other navigable waters;
- (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
- (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18, paragraph 1;⁵²
- (e) Strikes, lockouts, stoppages, or restraints of labour;
- (f) Fire on the ship;
- (g) Latent defects in the [ship] [means of transport]⁵³ not discoverable by due diligence;
- (h) Act or omission of the shipper[, the consignor]⁵⁴ or any person referred to in article 34,⁵⁵ paragraph 1, the controlling party, or the consignee;
- (i) Loading, handling, stowing, or discharging⁵⁶ of the goods performed pursuant to an agreement in accordance with article 14, paragraph 2, unless the carrier [or a performing party] performs such activity on behalf of the shipper.
- (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (k) Insufficiency or defective condition of packing or marking not performed by [or on behalf of] the carrier;
- (l) Saving or attempting to save life at sea;
- (m) Reasonable measures to save or attempt to save property at sea;
- (n) Reasonable measures to avoid or attempt to avoid damage to the environment;

has been standardized throughout the draft article.

⁵² Further examination is needed whether the reference to art. 18, paragraph 1, is necessary.

⁵³ The Working Group may wish to consider which of the terms in square brackets is intended to be addressed in this paragraph.

⁵⁴ The Working Group may wish to decide whether draft article 34 is intended to include the “consignor” or not, and should expressly include it in draft article 34, if that is the intention. If draft article 34 includes “consignor”, this reference is not needed.

⁵⁵ Further examination is needed whether the reference to art. 34 is necessary.

⁵⁶ “Discharging” is suggested in order to be consistent with the language in draft art. 14.

(o) Acts of the carrier⁵⁷ in pursuance of the powers conferred by articles 15 and 16, paragraph 2.⁵⁸

4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay if the claimant proves:

(a) That the fault of the carrier or of a person referred to in article 18, paragraph 1, caused or contributed to the event or circumstance on which the carrier relies; or

(b) That an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18, paragraph 1.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried (including any containers supplied by the carrier in or upon which the goods are carried) were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier can prove neither that the loss, damage, or delay was not caused by any of the events or circumstances referred to in subparagraph 5(a) of this article nor that it complied with its obligation to exercise due diligence pursuant to article 16, paragraph 1.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 18. Liability of the carrier for other persons⁵⁹

1. The carrier is liable for the breach of its obligations pursuant to this Convention caused by the acts or omissions of:

(a) Any performing party; and

⁵⁷ The phrase “or a performing party” that appeared after the word “carrier” in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant, since the performing party has no powers under draft articles 15 and 16.

⁵⁸ The square brackets around this draft paragraph have been removed and the phrase “when the goods have become a danger to persons, property, or the environment or have been sacrificed” have been deleted as unnecessary in light of the Working Group’s consideration of draft arts. 15 and 32 (see A/CN.9/510, paras. 128-130, A/CN.9/591, paras. 157-170, and A/CN.9/594, paras. 195-198).

⁵⁹ Note that former draft art. 18 as it appeared immediately prior to this provision in A/CN.9/WG.III/WP.56 was deleted following the Working Group’s deliberations on draft article 28 (A/CN.9/594, para. 186). The opening phrase of para. 1 as set out in A/CN.9/WG.III/WP.56, “Subject to article 20, paragraph 4”, has been deleted as a drafting improvement to avoid an unnecessary cross-reference.

(b) Any other person,⁶⁰ that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.⁶¹

[2. The carrier is liable pursuant to paragraph 1 of this article only when the performing party's or other person's act or omission is within the scope of its contract, employment, or agency.]⁶²

Article 19. Liability of maritime performing parties

1. A maritime performing party [that initially received the goods for carriage in a Contracting State, or finally delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State]⁶³:

(a) Is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's rights and immunities provided by this Convention if the occurrence that caused the loss, damage or delay took place during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge from a ship, when it has custody of the goods or at any other time to the extent that it is participating in the performance of any of the activities contemplated by the contract of carriage, and

(b) Is liable for the breach of its obligations pursuant to this Convention caused by the acts and omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage.⁶⁴

⁶⁰ The phrase "including a performing party's employees, agents and subcontractors" that appeared after the word "carrier" in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant, since that phrase is now included in the definition of "performing party" in draft article 1(6).

⁶¹ The phrase "as if such act or omissions were its own" that appeared in the text in A/CN.9/WG.III/WP.56 has been deleted as redundant.

⁶² The Working Group may wish to consider deleting this paragraph as it may cause evidentiary problems in some jurisdictions where, for example, employees who have started fires with cigarettes or who have stolen cargo have been found to be acting outside of their scope of employment or contract. Deletion of the paragraph would leave the issue of what is within the scope of employment to national law. Similar treatment should be given to para. 2 of draft art. 34.

⁶³ The phrase "that initially received the goods for carriage in a Contracting State, or finally delivered them in a Contracting State" has been inserted as preferred drafting to the insertion of para. 5 as set out in A/CN.9/WG.III/WP.61, para. 44, as agreed by the Working Group (A/CN.9/594, paras. 140-145). The text of para. 5, as it appeared in A/CN.9/WG.III/WP.61, read as follows: "5. This article does not apply unless the place where the goods are initially received by the maritime performing party or the place where the goods are finally delivered by the maritime performing party is situated in a Contracting State." In addition, the phrase "or performed all of its activities with respect to the goods in a single port in a Contracting State" has been inserted as a drafting improvement to further refine the provision.

⁶⁴ As a drafting improvement and to be consistent with draft article 19, former draft article 20(1)(a) and (b) as they appeared in A/CN.9/WG.III/WP.56 have been combined into one paragraph, and former draft article 20(3) as it appeared in A/CN.9/WG.III/WP.56 has been moved to become subparagraph (b) of draft article 19(1).

2. [A maritime performing party is liable pursuant to paragraph 1 of this article only when the act or omission of the person concerned is within the scope of its contract, employment, or agency.]⁶⁵

3. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that its liability is higher than the limits imposed pursuant to articles 63, 62⁶⁶ and 25, paragraph 5, a maritime performing party is not bound by this agreement unless the maritime performing party expressly agrees to accept such obligations or such limits.

4. If an action⁶⁷ is [brought against a maritime performing party]⁶⁸ [brought against an employee or agent of the carrier or a maritime performing party]⁶⁹ [brought against any person referred to in article 18, paragraph 1, or subparagraph 1(a) of this article, other than the carrier,]⁷⁰ that person is entitled to the defences and limits of liability available to the carrier under this Convention if [it proves that]⁷¹ it acted within the scope of its contract, employment, or agency.

Article 20. Joint and several liability and set-off

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several [, such that each such party is liable for compensating the entire amount of such loss, damage or delay, without prejudice to any right of recourse it may have against other liable parties,]⁷² but only up to the limits provided for in articles 25, 62 and 63.

⁶⁵ As a drafting improvement and to be consistent with draft article 18, the last sentence of former draft article 20(1)(b) as it appeared in A/CN.9/WG.III/WP.56 has been moved to draft article 19(2). Square brackets have been inserted around this phrase to mirror the treatment of similar phrases elsewhere in the text. See also footnote 62 above to draft art. 18(2), and footnote 110 below to draft article 34(2).

⁶⁶ As set out in footnote 69 of A/CN.9/WG.III/WP.36, the Working Group took note of the suggestion to limit the reference to draft art. 62, since it was stated that, while the reference to paras. (1), (3) and (4) of draft art. 62 was acceptable, para. (2) of draft art. 62 should not be referred to since the performing party was not liable in case of non-localized damage. The Working Group decided that this suggestion might need to be further discussed after a decision had been made regarding the inclusion of para. (2) of draft art. 62 in the draft convention.

⁶⁷ The phrase “under this Convention” has been deleted from the text as it appeared in A/CN.9/WG.III/WP.56 in order to broaden the application of this provision, which is then limited by the use of the phrase “under this Convention” at the end of the subparagraph.

⁶⁸ This approach was formerly reflected in Variant A of former draft article 20(4) as it appeared in A/CN.9/WG.III/WP.56.

⁶⁹ This approach reflects that taken in former draft article 4(2) as it appeared in A/CN.9/WG.III/WP.56.

⁷⁰ This approach reflects that taken in Variant B of former draft article 20(4) as it appeared in A/CN.9/WG.III/WP.56. Further, the phrase “including employees or agents of the contracting carrier or of a maritime performing party” as it appeared in this provision in A/CN.9/WG.III/WP.56 has been deleted to correspond with the inclusion of that concept in the definition of “maritime performing party” in draft article 1.

⁷¹ The Working Group may wish to consider whether the bracketed text should be deleted in order to reduce the burden of proof on the person entitled to claim the benefit of the defence of limit of liability of the carrier.

⁷² As decided at paras. 12 and 17 of A/CN.9/552, the phrase in square brackets was added for clarification of the meaning of “joint and several liability”. However, the Working Group may wish to consider the use of the term “joint and several liability” in numerous international

2. Without prejudice to article 64, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.

[3. If a claimant obtains compensation from a non-maritime performing party for the loss of, damage to, or delay in delivery of the goods, the amount received by the claimant shall be set off against any subsequent claim for that loss, damage or delay that the claimant makes against the carrier or a maritime performing party.]⁷³

Article 21. Delay

Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time expressly agreed upon or, in the absence of such agreement, within the time it would be reasonable to expect of a diligent carrier, having regard to the terms of the contract, the customs, practices and usages of the trade,⁷⁴ and the circumstances of the journey.

Article 22. Calculation of compensation

1. Subject to article 62, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 11.

2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 19.

Article 23. Notice of loss, damage, or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless

instruments, including: para. 10(4) of the Hamburg Rules; para. 27(4) of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail, as amended by the Protocol of Modification of 1999 ("CIM-COTIF 1999"); para. 4(5) of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000 ("CMNI"); para. 30(3) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by protocols in 1955 and 1975 ("Warsaw Convention"); and para. 36(3) of the Convention for the Unification of Certain Rules for the International Carriage by Air, Montreal 1999 ("Montreal Convention").

⁷³ As decided at paras. 14 and 17 of A/CN.9/552, a revised draft has been prepared, pending further discussion regarding the preparation of a uniform rule on set-off, or of leaving the issue to domestic law. The Working Group may wish to consider whether this paragraph is necessary or whether it can be deleted. Further, should the Working Group decide to delete the definition of "non-maritime performing party", the phrase "a performing party other than a maritime performing party" could be substituted for the phrase "a non-maritime performing party".

⁷⁴ In order to be consistent with other provisions of the draft convention, such as draft article 11, the phrase "customs, practices and usages of the trade" has been inserted instead of the phrase "characteristics of the transport" found in this provision in A/CN.9/WG.III/WP.56.

notice of loss of or damage to⁷⁵ the goods, indicating the general nature of such loss or damage, was given⁷⁶ to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within [three working days][seven days][seven working days at the place of delivery][seven consecutive days] after the delivery of the goods. Such a notice is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to whom they have been delivered⁷⁷ and the carrier or the maritime performing party against which liability is being asserted.⁷⁸

2. No compensation is payable pursuant to articles 21 and 63 unless notice of loss due to delay was given to the carrier within 21 consecutive days following delivery of the goods.

3. When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

4. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

CHAPTER 7. ADDITIONAL PROVISIONS RELATING TO PARTICULAR STAGES OF CARRIAGE

Article 24. Deviation during sea carriage

When pursuant to national law, a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in article 64.⁷⁹

Article 25. Deck cargo on ships⁸⁰

1. Goods may be carried on the deck of a ship only if:
 - (a) Such carriage is required by law; or

⁷⁵ "In connection with" deleted as unnecessary in this paragraph.

⁷⁶ The phrase "[by or on behalf of the consignee]" has been deleted to improve drafting since it is irrelevant from whom the notice comes as long as notice is given.

⁷⁷ The term "consignee" has been replaced with "person to whom they have been delivered" in order to clarify that what is meant in this provision is joint inspection by the person who receives the goods who may not actually be the consignee in a legal sense.

⁷⁸ Variant A of para. 1 as set out in A/CN.9/WG.III/WP.56 has been chosen for insertion over Variant B as representing better drafting with greater clarity and entailing no substantive difference in meaning.

⁷⁹ Variants A and B as they appeared in A/CN.9/WG.III/WP.56 have been deleted as confusing due to their overlap with draft articles 17(3)(l) and (m), which could be seen to created confusing different standards. The text that has been substituted is based on that previously found in footnotes 105 and 424 of A/CN.9/WG.III/WP.56, which was thought to contain preferable drafting.

⁸⁰ Drafting improvements have been made to clarify the text of this draft article as set out in A/CN.9/WG.III/WP.56, but to keep its meaning intact.

(b) They are carried in or on containers⁸¹ on decks that are specially fitted to carry such containers; or

(c) The carriage on deck is in accordance with the contract of carriage, or⁸² the customs, usages, and practices of the trade in question.

2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1(a) or (c) of this article.⁸³

3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defenses provided for in article 17.

4. The carrier is not entitled to invoke subparagraph 1(c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.⁸⁴

[5. If the carrier and shipper [expressly] agreed that the goods would be carried under deck, the carrier is not entitled to limit its liability for any loss of, damage to or delay in the delivery of the goods [[that solely][to the extent that such damage] resulted from their carriage on deck]⁸⁵.]⁸⁶

*Article 26. Carriage preceding or subsequent to sea carriage*⁸⁷

1. When loss of or damage to goods, or an event or circumstances causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another

⁸¹ The phrase "[fitted to carry cargo on deck]" has been deleted as redundant.

⁸² The square brackets that were formerly around the phrase "the contract of carriage, or" have been deleted, since they were added pending consideration by the Working Group of freedom of contract issues, pursuant to paragraph 106 of A/CN.9/552, and this consideration has already occurred.

⁸³ As discussed at paras. 108 and 109 of A/CN.9/552, para. 2 may need to be discussed in greater detail in conjunction with draft para. 17(6), however, changes to para. 17(6) may have rendered this discussion unnecessary.

⁸⁴ As discussed at paras. 110 and 111 of A/CN.9/552, discussion of this paragraph, which formerly appeared as draft article 26(3) in A/CN.9/WG.III/WP.56, and whether it should cover third-party reliance on non-negotiable transport documents and electronic transport records would continue after discussion of third-party rights and freedom of contract.

⁸⁵ As decided at paras. 113-114 and 117 of A/CN.9/552, square brackets were placed around "that exclusively resulted from their carriage on deck". A further alternative has been added.

⁸⁶ As decided at paras. 116 and 117 of A/CN.9/552, square brackets were placed around para. 5, for discussion at a future session, with further study of its relationship with draft art. 64.

⁸⁷ The redrafted text of draft paragraph 1 of this article from the text as set out in A/CN.9/WG.III/WP.56 is intended as improved drafting only, and is not intended to change the content of the provision in any way.

international instrument⁸⁸ [or national law] that, at the time of such loss, damage or event or circumstance causing delay:

(a) [Variant A of subparagraph (a)]: Pursuant to the provisions of such international instrument [or national law] apply to all or any of the carrier's activities under the contract of carriage during that period;⁸⁹

[Variant B of subparagraph (a)]: Pursuant to the provisions of such international instrument [or national law] would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;⁹⁰

(b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

(c) Cannot be departed from by contract⁹¹ either at all or to the detriment of the shipper under that instrument [or national law].

[2. Paragraph 1 of this article does not affect the application of article 62, paragraph 2.⁹²]

[3. Except where otherwise provided in [paragraph 1 of this article and 62, paragraph 2], the liability of the carrier and the maritime performing party for loss of or damage to the goods, or for delay, shall be solely governed by the provisions of this Convention.⁹³]

⁸⁸ The word "convention" has been changed to "instrument" here and in subparas. 1(a) and (c) in order to include the mandatory regulations of regional organizations.

⁸⁹ Variant A is the text of former article 27(1)(b)(i) as it appeared in A/CN.9/WG.III/WP.56, with slight drafting improvements. Further, as set out in para. 55 of A/CN.9/WG.III/WP.21, the bracketed text "[irrespective whether the issuance of any particular document is needed in order to make such international convention applicable]" reflected the situation under the 1980 Convention concerning International Carriage by Rail ("COTIF"). Since the 1999 Protocol for the Modification of COTIF entered into force in July 2006, the bracketed text has been deleted in both Variants.

⁹⁰ Variant B is based upon the drafting suggestion set out in para. 224 of A/CN.9/616 and agreed at para. 228.

⁹¹ The word "private" has been deleted from before the word "contract" as redundant.

⁹² If para. 62(2) is deleted, this paragraph should also be deleted.

⁹³ Paragraph 3 as it appeared in A/CN.9/WG.III/WP.56 has been replaced with the text set out in paragraph 36 of A/CN.9/WG.III/WP.78, as considered by the Working Group in paragraphs 233 and 235 of A/CN.9/616. Although the text of this paragraph has changed, it is intended to fulfil the same purpose as the previous text, which was, as set out in para. 54 of A/CN.9/WG.III/WP.21, as a conflict of law provision that was intended to safeguard the applicability of inland transport conventions.

CHAPTER 8. OBLIGATIONS OF THE SHIPPER TO THE CARRIER

*Article 27. Delivery for carriage*⁹⁴

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and discharging, and that they will not cause harm to persons or property.

[2. When the carrier and the shipper have made an agreement referred to in article 14, paragraph 2, the shipper shall properly and carefully load, handle, stow or discharge the goods.]

3. When a container or trailer is packed by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or trailer and in such a way that they will not cause harm to persons or property.

Article 28. Obligation of the shipper and the carrier to provide information and instructions

Without prejudice to the shipper's obligations in article 30, the carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods, if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.⁹⁵

*Article 29. Shipper's obligation to provide information, instructions and documents*⁹⁶

1. The shipper shall provide to the carrier in a timely manner such information, instructions, and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably⁹⁷ necessary:

(a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(b) For the carrier to comply with law, regulations or other requirements of public⁹⁸ authorities in connection with the intended carriage, provided that the

⁹⁴ Revised text intended to simplify the text of this article (see paras. 113 and 120 of A/CN.9/591), taking into account the text in footnotes 116 and 435 of A/CN.9/WG.III/WP.56, and to clarify that draft para. 1 refers to the condition of the goods themselves and to their packaging, while draft paras. 2 and 3 refer to the proper stowage of the goods. Draft para. 2 takes into consideration the situation where there has been an agreement on a FIO(S) clause pursuant to draft article 14(2).

⁹⁵ Revised draft based on A/CN.9/WP.67, para. 14, Variant C, as agreed by the Working Group (A/CN.9/594, para. 186). The Working Group may wish to consider whether this draft article should be included in light of the content of draft article 29.

⁹⁶ Revised draft based on A/CN.9/WG.III/WP.69, para. 6, with elements from Variant A of A/CN.9/WG.III/WP.67, para. 20, as agreed by the Working Group (A/CN.9/594, paras. 187-194).

⁹⁷ The Working Group may wish to consider whether this second "reasonably" may be deleted, since the word "necessary" may be considered sufficient.

⁹⁸ The phrase "public authorities" has been reintroduced in paragraphs 1 and 2 of this draft article

carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 30. Basis of shipper's liability to the carrier

1. [Variant A of the first sentence⁹⁹: The shipper is liable for loss¹⁰⁰ or damage sustained by the carrier[, including loss or damage caused by delay,] if the carrier proves that such loss or damage was caused by the goods¹⁰¹ or by a breach of the shipper's obligations pursuant to articles 27 and 29, subparagraphs 1(a) and (b).] [Variant B of the first sentence¹⁰²: The shipper is liable to the carrier for loss, [or] damage [or delay] caused by the breach of its obligations pursuant to articles 27 and 29, provided such loss, [or] damage [or delay] was due to the fault of the shipper or of any person referred to in article 34.] Except as provided in articles 31 and 32, the shipper is relieved of all or part of its liability if it proves that the cause or one of the causes of the loss[, or] damage [or delay] is not attributable to its fault or to the fault of any person referred to in article 34.

2. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss[, or] damage [or delay] that is attributable to its fault or to the fault of any person referred to in article 34.¹⁰³

*Article 31. Information for compilation of contract particulars*¹⁰⁴

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 37, subparagraphs 1(a), (b) and (c); the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

for drafting and translation purposes, and to be consistent with its use in draft article 17(3)(d).

⁹⁹ Revised draft based on the Working Group's deliberations at the 16th session (A/CN.9/591, paras. 136-153). Both Variants A and B of former paragraph 2 as it appeared in A/CN.9/WG.III/WP.56, as well as former paragraph 3, have been deleted from this draft article accordingly, and the substance of Variants A and B of paragraph 2 regarding strict liability for the provision of accurate information has been moved to a new provision in draft art. 31. The text of Variant A of para. 1 mirrors draft article 17(1).

¹⁰⁰ This loss could include loss resulting from delay.

¹⁰¹ The Working Group may wish to consider whether the phrase "caused by the goods" is appropriate in this context.

¹⁰² Variant B is taken from the text set out in para. 25 of A/CN.9/WG.III/WP.67, with the addition of the second sentence from Variant A, to facilitate the operation of draft para 2.

¹⁰³ Para. 2 is a new provision patterned on draft article 17(6) and is intended to ensure similar treatment of shippers and carriers in this regard.

¹⁰⁴ Removed into a separate provision from former draft article 30, subpara. (c), as set out in A/CN.9/WG.III/WP.56, as agreed by the Working Group (see A/CN.9/591, paras. 148 and 153).

2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against all loss, [or] damage [or delay] resulting from the inaccuracy of such information or documents.

*Article 32. Special rules on dangerous goods*¹⁰⁵

When goods by their nature or character are, [or become,] or reasonably appear likely to become, a danger to persons or property or to the environment:

(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before the consignor delivers them to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for all loss, [or] damage, [or delay] and expenses resulting from [the carriage of such goods][such failure to inform] and

(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for all loss, [or] damage, [or delay] resulting from such failure.

*Article 33. Assumption of shipper's rights and obligations by the documentary shipper*¹⁰⁶

1. A documentary shipper¹⁰⁷ is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 57, and is entitled to the shipper's rights and immunities provided by this chapter and by chapter 14.

2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or immunities of the shipper.

*Article 34. Liability of the shipper for other persons*¹⁰⁸

1. The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations as if such acts or omissions were its own[, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier to which it has entrusted the performance of its obligations pursuant to this chapter].¹⁰⁹

¹⁰⁵ Revised draft based on text found in A/CN.9/WG.III/WP.67, para. 31, without paragraph 4, as agreed by the Working Group (A/CN.9/594, paras. 195-198).

¹⁰⁶ Revisions in this draft article as agreed in paras. 171 to 175 of A/CN.9/591.

¹⁰⁷ The first sentence of this draft paragraph as it appeared in A/CN.9/WG.III/WP.56 has been moved to draft article 1(10) as the definition of "documentary shipper."

¹⁰⁸ Revised draft based on A/CN.9/WG.III/WP.55, para. 41, as agreed by the Working Group (A/CN.9/591, paras. 178-180). As noted with respect to draft article 17(3)(h), the Working Group may wish to decide whether draft article 34 includes the "consignor" or not, and should expressly include it in draft article 34, if that is the intention.

¹⁰⁹ The bracketed text has been moved to para. 1 from its original location in para. 2 of the draft article as it appeared in A/CN.9/WG.III/WP.56, in order to mirror the text in draft article 18. The bracketed text was intended to deal with the FIO(S) issue in draft article 14(2), but the reference

[2. The shipper is liable pursuant to paragraph 1 of this article only when the act or omission of the person concerned is within the scope of that person's contract, employment or agency.]¹¹⁰

*Article 35. Cessation of shipper's liability*¹¹¹

A term in the contract of carriage according to which the liability of the shipper or any other person identified in the contract particulars as the shipper will cease, wholly or partly, upon a certain event or after a certain time is not valid:

(a) With respect to any liability pursuant to this chapter of the shipper or a person referred to in article 35; or

(b) With respect to any amounts payable to the carrier under the contract of carriage, except to the extent that the carrier has adequate security for the payment of such amounts.

[(c) To the extent that it conflicts with article 61, subparagraph (d)(iii).¹¹²]

CHAPTER 9. TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

*Article 36. Issuance of the transport document or the electronic transport record*¹¹³

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice in the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party:

(a) The consignor is entitled to obtain a non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record that evidences only the carrier's or performing party's receipt of the goods; and

(b) The shipper or, if the shipper consents,¹¹⁴ the documentary shipper, is entitled to obtain from the carrier, at the shipper's option, an appropriate negotiable

in draft article 17(3)(i) to actual performance of obligations by the shipper, any person referred to in art. 35 (now draft art. 34), or other parties has now been deleted in favour of the phrase "performed pursuant to an agreement in accordance with article 14, paragraph 2, unless the carrier [or a performing party] performs such activity on behalf of the shipper".

¹¹⁰ The Working Group may wish to consider whether this paragraph could be deleted as it may cause evidentiary problems in some jurisdictions where, for example, employees who have started fires with cigarettes or who have stolen cargo have been found to be acting outside of their scope of employment or contract. Deletion of the paragraph would leave the issue of what is within the scope of employment to national law. Similar treatment should be given to para. 2 of draft art. 18.

¹¹¹ Former para. 43(2) of A/CN.9/WG.III/WP.32, moved to this placement from the now-deleted chapter 9 on freight.

¹¹² Paragraph (c) could be deleted if the chapter on transfer of rights is deferred for future work.

¹¹³ Draft article amended as agreed by the Working Group (A/CN.9/594, paras. 223 and 224). Additional drafting suggestions made to clarify the application of custom, usage or practice in the trade.

¹¹⁴ The phrase "instructs the carrier" was thought to be too inflexible and too narrow, and has thus been replaced with the word "consents".

or non-negotiable transport document or, subject to article 8, subparagraph (a), a negotiable or non-negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage, or practice in the trade not to use one.¹¹⁵

*Article 37. Contract particulars*¹¹⁶

1. The contract particulars in the transport document or electronic transport record referred to in article 36 shall include the following information, as furnished by the shipper:

- (a) A description of the goods;
- (b) The leading marks necessary for identification of the goods;
- (c) The number of packages or pieces, or the quantity of goods; and
- (d) The weight of the goods, if furnished by the shipper.

2. The contract particulars in the transport document or the electronic transport record referred to in article 36 shall also include:

- (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
- (b) The name and address of a person identified as¹¹⁷ the carrier;
- (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
- (d) The number of originals of the negotiable transport document, when more than one original is issued.

3. For the purposes of this article, the phrase “apparent order and condition of the goods” in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:

- (a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
- (b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or the electronic transport record.

¹¹⁵ As set out in footnote 127 of A/CN.9/WG.III/WP.32, with respect to para. (a), it was acknowledged that, since not all transport documents as defined under draft art. 1(16) served the function of evidencing receipt of the goods by the carrier, it was important to make it clear that, under para. (a), the transport document should serve the receipt function.

¹¹⁶ Para. 1 of this draft article as set out in A/CN.9/WG.III/WP.56 has been redrafted as agreed by the Working Group (A/CN.9/594, paras. 225-233), and has been split into paras. 1 and 2 for greater clarity in that para. 1 concerns information furnished by the shipper.

¹¹⁷ As agreed by the Working Group at paragraphs 18 and 28 of A/CN.9/616.

*Article 38. Identity of the carrier*¹¹⁸

1. If the carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.¹¹⁹

[2. Variant A

If the contract particulars fail to identify the carrier but indicate that the goods have been loaded on board a named ship, the registered owner of the ship is presumed to be the carrier. The registered owner can defeat this presumption if it proves that the ship was under a bareboat charter at the time of the carriage that transfers contractual responsibility for the carriage of the goods to an identified bareboat charterer. [If the registered owner defeats the presumption that it is the carrier pursuant to this article, the bareboat charterer at the time of the carriage is presumed to be the carrier in the same manner as that in which the registered owner was presumed to be the carrier.]]¹²⁰

Variant B

If no person is identified in the contract particulars as the carrier as required pursuant to article 37, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may defeat any presumption of being the carrier in the same manner.¹²¹

3. Nothing in paragraph 2 of this article prevents the claimant from proving that any person other than the registered owner is the carrier.¹²²

¹¹⁸ This new draft article has been inserted to draw together the provisions regarding the identity of the carrier into a single identifiable draft provision. The first paragraph of this new draft article consists of para. 4 of A/CN.9/WG.III/WP.79, while Variant A of the second paragraph consists of former draft article 40(3) as it appeared in A/CN.9/WG.III/WP.56, and Variant B of the second paragraph consists of paragraph 5 of A/CN.9/WG.III/WP.79.

¹¹⁹ This text is a modification of the text of para. 4 of A/CN.9/WG.III/WP.79, which the Working Group agreed to include in the draft convention in para. 28 of A/CN.9/616. The modification was made to ensure that the principle agreed upon by the Working Group could be applied with similar result in the case of both transport documents and electronic transport records.

¹²⁰ Variant A is the text of former draft article 40(3) as it appeared in A/CN.9/WG.III/WP.56.

¹²¹ Variant B is based on the text suggested in paragraph 5 of A/CN.9/WG.III/WP.79.

¹²² The Working Group may wish to consider the inclusion of a provision such as this to ensure that cargo interests remain free to advance their claims against the carrier they believed to be responsible for the loss or damage, as supported by the Working Group in paragraphs 23 and 28 of A/CN.9/616.

Article 39. Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.¹²³
2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf.¹²⁴ Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

Article 40. Deficiencies in the contract particulars

1. The absence of one or more of the contract particulars referred to in article 37, paragraphs 1 or 2, or the inaccuracy of one or more of those particulars, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.
2. If the contract particulars include the date but fail to indicate its significance, the date is deemed¹²⁵ to be:
 - (a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship,¹²⁶ if the contract particulars indicate that the goods have been loaded on board a ship; or
 - (b) The date on which the carrier or a performing party received the goods,¹²⁷ if the contract particulars do not indicate that the goods have been loaded on board a ship.
3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them from the consignor, the contract particulars are deemed to have stated¹²⁸ that the goods were in apparent good order and condition at the time the consignor delivered them to the carrier or a performing party.¹²⁹

¹²³ Although the Working Group agreed at paras. 12 and 13 of A/CN.9/616 to substitute the phrase "by or on behalf of the carrier" for the phrase "by the carrier or a person having authority from the carrier", the Working Group may wish to consider whether the drafting suggested more effectively achieves its goal of leaving issues such as agency and proper authority to the applicable law. The drafting formulation suggested is the same as that taken in article 15(1)(j) of the Hamburg Rules.

¹²⁴ Ibid.

¹²⁵ Text changed from "considered" to "deemed" to render it more conclusive as agreed by the Working Group in paras. 16 and 28 of A/CN.9/616.

¹²⁶ This drafting suggestion to reverse the order of the two phrases as they existed in the previous text is intended to improve the clarity of the subparagraph.

¹²⁷ Ibid.

¹²⁸ While draft para. 3 was approved in substance (see para. 26 of A/CN.9/616), a drafting clarification has been made to the text to ensure conformity with the changes made to draft article 42 and to take into account the approach taken in article 16(2) of the Hamburg Rules.

¹²⁹ The Working Group may wish to consider whether reference should be made in this article to the number of original bills of lading now required in the contract particulars pursuant to draft article 37(2)(d).

*Article 41. Qualifying the description of the goods in the contract particulars*¹³⁰

1. The carrier may qualify the information referred to in article 37, subparagraphs 1(a), (b), (c) or (d) in the circumstances and in the manner set out in this article in order to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper, and shall do so if:

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is materially false or misleading; or

(b) The carrier reasonably believes that a material statement in the transport document or electronic transport record is false or misleading.¹³¹

2. When the goods are not delivered for carriage to the carrier or a performing party in a closed container, the carrier may qualify the information referred to in article 37, subparagraphs 1(a), (b), (c) or (d) if:

(a) The carrier had no physically practicable or commercially¹³² reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier reasonably considers the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

3. When the goods are delivered for carriage to the carrier or a performing party in a closed container, the carrier may include a qualifying clause in the contract particulars with respect to:

(a) The information referred to in article 37, subparagraphs 1(a), (b), or (c), if:

(i) Neither the carrier nor a performing party has in fact inspected the goods inside the container; or

(ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record;

(b) The information referred to in article 37, subparagraph 1(d), if:

(i) Neither the carrier nor a performing party weighed the container, and the shipper and the carrier had not agreed prior to the shipment that the container would be weighed and the weight would be included in the contract particulars; or

¹³⁰ The draft article has been reformulated to simplify and better align its structure and to take into account the issues raised in A/CN.9/WG.III/WP.62, paras. 36-39, and the deliberations at the Working Group's eighteenth session (A/CN.9/616, paras. 29-39).

¹³¹ As agreed by the Working Group (paras. 35-37, 39, 41 and 43-44, A/CN.9/616).

¹³² The phrase "the carrier can show that" has been deleted here and in draft paras. 4(a) and (b) pursuant to the decision of the Working Group (para. 38, A/CN.9/616). Further, the phrase "physically practicable or commercially" has been included here to allow for the deletion of former draft article 42(a), as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (paras. 43-44, A/CN.9/616).

- (ii) There was no physically practicable or commercially¹³³ reasonable means of checking the weight of the container.

*Article 42. Evidentiary effect of the contract particulars*¹³⁴

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 41:¹³⁵

(a) A transport document or an electronic transport record that evidences receipt of the goods is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;¹³⁶

(b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:

(i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith, or

(ii) A non-negotiable transport document or a non-negotiable electronic transport record that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith.¹³⁷

(c) Proof to the contrary by the carrier shall not be admissible against a consignee acting in good faith in respect of contract particulars referred to in article 37, subparagraph 2 (a) included in a non-negotiable transport document or a non-negotiable electronic transport record, when such contract particulars are furnished by the carrier. For the purpose of this paragraph, the information referred to in article 37, subparagraph 2 (a), as well as the number, type and identifying numbers of the containers, but not the identifying numbers of the container seals, is deemed to be information furnished by the carrier.¹³⁸

*Article 43. "Freight prepaid"*¹³⁹

If the contract particulars¹⁴⁰ contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the

¹³³ The phrase "physically practicable or commercially" has been included here to allow for the deletion of former draft article 42(a), as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (paras. 43-44, A/CN.9/616).

¹³⁴ The drafting adjustments to the text are made to the provision as it appeared in para. 58 of A/CN.9/616.

¹³⁵ The contents of the chapeau of draft article 42 was located in former draft article 44, as it appeared in A/CN.9/WG.III/WP.56, which has been deleted.

¹³⁶ The Working Group may wish to note that this paragraph represents an expansion of the coverage of this principle from that set out in article IV(5)(f) of the Hague-Visby Rules.

¹³⁷ This subparagraph has been reformulated to avoid the difficult notion of conclusive evidence by using the construction of article 16(3)(b) of the Hamburg Rules, which has, however, been expanded to include non-negotiable transport documents and electronic transport records.

¹³⁸ The clarifications made to draft para. (c) as compared with the version of the text that appeared in para. 58 of A/CN.9/616 are those agreed to by the Working Group in para. 59 of A/CN.9/616.

¹³⁹ Former draft para. 44(1) from A/CN.9/WG.III/WP.32 retained as agreed (see paras. 162 to 164 of A/CN.9/552) in draft art. 43.

¹⁴⁰ The phrase "in a negotiable transport document or a negotiable electronic transport record" has been deleted in order to render the provision neutral as between negotiable and non-negotiable documents, as agreed by the Working Group (paras. 81-82, A/CN.9/616).

consignee the fact that the freight has not been paid.¹⁴¹ This article does not apply if the holder or the consignee is also the shipper.

CHAPTER 10. DELIVERY OF THE GOODS

Article 44. Obligation to accept delivery

When the goods have arrived at their destination, the consignee that [exercises any of its rights under][has actively involved itself in] the contract of carriage¹⁴² shall accept delivery of the goods at the time and location referred to in article 11, paragraph 2.

Article 45. Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt¹⁴³ of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Article 46. Delivery when no negotiable transport document or negotiable electronic transport record is issued¹⁴⁴

When no negotiable transport document or no negotiable electronic transport record has been issued:

(a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 11, paragraph 2. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier.

(b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address.

(c) If the name or the address of the consignee is not known to the carrier or if the consignee, after having received a notice of arrival, does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier shall so advise the controlling party or, if, after reasonable effort, it is unable to locate the controlling party, the shipper. In such event, the controlling party or shipper shall give instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to locate the controlling party or the shipper, the documentary shipper is deemed to be the shipper for purposes of this paragraph.

¹⁴¹ As agreed by the Working Group (para. 80, A/CN.9/616), the text suggested in para. 59 of A/CN.9/WG.III/WP.62 has been included in the provision.

¹⁴² As set out in footnote 160 of A/CN.9/WG.III/WP.32, a preference was expressed for the obligation to accept delivery not to be made dependent upon the exercise of any rights by the consignee, but rather that it be unconditional.

¹⁴³ It was thought that deletion of the phrase “shall confirm delivery” and replacement with the phrase “must acknowledge receipt” was preferable since the consignee could confirm its own act, but not the fulfilment of the carrier’s obligation.

¹⁴⁴ Revised text as agreed by the Working Group (A/CN.9/591, paras. 226 and 230), but with the order of paras. (a) and (b) reversed from their former position in the draft article in A/CN.9/WG.III/WP.56.

(d) The carrier that delivers the goods upon instruction of the controlling party or the shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.¹⁴⁵

[Article 47. Delivery when a non-negotiable transport document that requires surrender is issued¹⁴⁶

When a non-negotiable transport document has been issued that [provides] [indicates] [specifies] that it shall be surrendered in order to obtain delivery of the goods:

(a) The carrier shall deliver the goods at the time and location referred to in article 11, paragraph 2 to the consignee upon proper identification of it on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity.

(b) If the consignee does not claim delivery of the goods from the carrier after their arrival at the place of destination or the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, the carrier shall so advise the shipper. In such event, the shipper shall give instructions in respect of delivery of the goods. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper is deemed to be the shipper for the purpose of this paragraph.

(c) The carrier that delivers the goods upon instruction of the shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.^{147]}

[Article 48. Delivery when a non-negotiable electronic transport record that requires surrender is issued¹⁴⁸

When a non-negotiable electronic transport record has been issued that [provides] [indicates] [specifies] that it shall be surrendered in order to obtain delivery of the goods:

¹⁴⁵ Paragraph (d) of this draft article consists of the final sentence of former paragraph (c) of this draft article, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁴⁶ Draft article based on proposed new article 48 bis as set out in A/CN.9/WG.III/WP.68, para. 15, with slight drafting adjustments, which the Working Group agreed to include in the draft convention (A/CN.9/594, paras. 208-215).

¹⁴⁷ Paragraph (c) of this draft article consists of the final sentence of former paragraph (b) of this draft article as it appeared in A/CN.9/WG.III/WP.68, para. 15, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁴⁸ Draft article based on proposed new article 48 ter as set out in A/CN.9/WG.III/WP.68, para. 16, with slight drafting adjustments, which the Working Group agreed to include in the draft convention (A/CN.9/594, paras. 208-215).

(a) The carrier shall deliver the goods at the time and location referred to in article 11, paragraph 2 to the person named in the electronic record as the consignee and that has exclusive control of the electronic record. Upon such delivery the electronic record ceases to have any effect or validity. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier, and shall refuse delivery if the person claiming to be the consignee is unable to demonstrate in accordance with the procedures referred to in article 9 that it has exclusive control of the electronic record.

(b) If the consignee does not claim delivery of the goods from the carrier after their arrival at the place of destination or the carrier refuses delivery in accordance with subparagraph (a) of this article, the carrier shall so advise the shipper. In such event, the shipper shall give instructions in respect of delivery of the goods. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper is deemed to be the shipper for the purpose of this paragraph.

(c) The carrier that delivers the goods upon instruction of the shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the person to which the goods are delivered is able to demonstrate in accordance with the procedures referred to in article 9 that it has exclusive control of the electronic record.^{149]}

Article 49. Delivery when a negotiable transport document or negotiable electronic transport record is issued¹⁵⁰

When a negotiable transport document or a negotiable electronic transport record has been issued:

(a) Without prejudice to article 44, the holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 11, paragraph 2, to the holder, as appropriate:

- (i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 12(a)(i), upon proper identification; or
- (ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, subparagraph 1(c), that it is the holder of the negotiable electronic transport record.

(b). The carrier shall refuse delivery if the conditions of subparagraph (a)(i) or (a)(ii) are not met.

¹⁴⁹ Paragraph (c) of this draft article consists of the final sentence of former paragraph (b) of this draft article as it appeared in A/CN.9/WG.III/WP.68, para. 16, but it has been placed in a separate paragraph to be consistent with the treatment of the similar paragraph in draft article 49.

¹⁵⁰ Revised text as agreed by the Working Group (A/CN.9/591, paras. 231-239, and A/CN.9/595, paras. 80-89). As a drafting improvement to avoid repetition, former subparas. (a)(i) and (ii) as set out in A/CN.9/WG.III/WP.56 have been combined to form paras. (a) and (b) in this article.

(c) If more than one original of the negotiable transport document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, subparagraph 1(d).

(d) If the holder does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier shall so advise the controlling party or, if, after reasonable effort, it is unable to locate the controlling party, the shipper. In such event the controlling party or shipper shall give the carrier instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to locate the controlling party or the shipper, the documentary shipper shall be deemed to be the shipper for purposes of this paragraph.

(e) The carrier that delivers the goods upon instruction of the controlling party or the shipper in accordance with subparagraph (d) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, that it is the holder.

(f) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph (e) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods.

(g) Notwithstanding subparagraphs (e) and (f) of this article, the holder that did not have or could not reasonably have had knowledge of such delivery at the time it became a holder acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record.

Article 50. Goods remaining undelivered

1. Unless otherwise agreed and without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee,¹⁵¹ if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:¹⁵²

(a) To store the goods at any suitable place;

(b) To unpack the goods if they are packed in containers, or to act otherwise in respect of the goods, including by moving the goods or causing them to be destroyed; and

¹⁵¹ Former draft article 50 as set out in A/CN.9/WG.III/WP.56 has been deleted, and its substance incorporated into draft article 50 in this text, in light of the Working Group's deliberations at the 17th session (A/CN.9/594, paras. 90-93). See also subpara. 2(b) of this article.

¹⁵² Paragraph 1 is a slightly amended version of former draft art. 51(2) as set out in A/CN.9/WG.III/WP.56, with amendments and corresponding changes to the chapeau as per deliberations of the Working Group (A/CN.9/594, paras. 97 to 99).

(c) To cause the goods to be sold in accordance with the practices, or pursuant to the law or regulations of the place where the goods are located at the time.

2. For the purposes of this article, goods shall be deemed to have remained undeliverable if, after their arrival at the place of destination:¹⁵³

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 11, paragraph 2;

(b) The controlling party or the shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 46, 47, 48 and 49;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 46, 47, 48 and 49;¹⁵⁴

(d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(e) The goods are otherwise undeliverable by the carrier.

3. The carrier may exercise these rights only after it has given reasonable advance notice of arrival of the goods at the place of destination to the person stated in the contract particulars as the person if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.¹⁵⁵

4. If the goods are sold pursuant to subparagraph 1(c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.¹⁵⁶

5. The carrier shall not be liable for loss of or damage to goods that remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.¹⁵⁷

¹⁵³ Paragraph 2 is a slightly amended version of former draft art. 51(1)(a) as set out in A/CN.9/WG.III/WP.56, with amendments and corresponding changes to the chapeau as per deliberations of the Working Group (A/CN.9/594, paras. 96 and 99).

¹⁵⁴ The Working Group may wish to consider the addition of subpara. 2(c) in order to include the situation when the goods remain undelivered because the carrier is entitled or required to refuse delivery.

¹⁵⁵ Paragraph 3 reflects the incorporation into draft article 50 of former article 52 as set out in A/CN.9/WG.III/WP.56, which the Working Group wished to see placed earlier in the text (A/CN.9/594, paras. 102-106).

¹⁵⁶ This paragraph was formerly draft art. 51(3) of the text as set out in A/CN.9/WG.III/WP.56, with slight modifications to reflect the views of the Working Group (A/CN.9/594, paras. 100-101).

¹⁵⁷ This draft paragraph consists of a combination of the second sentence of former draft art. 46 and of the spirit of former draft art. 53, both as set out in A/CN.9/WG.III/WP.56, and revised so as to reflect the Working Group's deliberations (A/CN.9/594, paras. 107-113). The Secretariat suggests that placement of the revised provision would be best in this draft article.

*Article 51. Retention of goods*¹⁵⁸

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

CHAPTER 11. RIGHTS OF THE CONTROLLING PARTY¹⁵⁹

*Article 52. Exercise and extent of right of control*¹⁶⁰

1. The right of control may be exercised only by the controlling party and is limited to:

(a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

(c) The right to replace the consignee by any other person including the controlling party.

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 11, paragraph 1.

Article 53. Identity of the controlling party and transfer of the right of control

1. When no negotiable transport document or no negotiable electronic transport record is issued:¹⁶¹

(a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party;

(c) The controlling party shall produce proper identification when it exercises the right of control.

2. When a non-negotiable transport document or a non-negotiable electronic transport record has been issued that [provides] [indicates] [specifies] that it shall be surrendered in order to obtain delivery of the goods:

(a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document or the electronic transport record

¹⁵⁸ This new draft paragraph is based on the text contained in para. 14 of A/CN.9/WG.III/WP.63 and reflects the Working Group's deliberations (A/CN.9/594, paras. 114-117).

¹⁵⁹ Title of the chapter revised to better reflect its content.

¹⁶⁰ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 10-16), with drafting alterations to reflect that the definition of "controlling party" has been placed in draft article 1(15).

¹⁶¹ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 23-36 and 68-71). Former draft article 56(1)(d) as set out in A/CN.9/WG.III/WP.56 has been moved to become a separate para. 5 of this article.

by transferring the document to this person without endorsement, or by transferring the electronic transport record to it in accordance with the procedures referred to in article 9. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control;

(b) In order to exercise its right of control, the controlling party shall produce the document and proper identification, or, in the case of an electronic transport record, shall demonstrate in accordance with the procedures referred to in article 9 that it has exclusive control of the electronic transport record. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

3. When a negotiable transport document is issued:

(a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 59. If more than one original of that document was issued, all originals shall be transferred in order to effect a transfer of the right of control;

(c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 12(a)(i), the holder shall produce proper identification. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.¹⁶²

4. When a negotiable electronic transport record is issued:

(a) The holder is the controlling party;

(b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9;

(c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, that it is the holder.¹⁶³

5. The right of control ceases when the goods have arrived at destination and have been delivered in accordance with this Convention.¹⁶⁴

[6. Notwithstanding article 61, a person, not being the shipper or the documentary shipper, that transferred the right of control without having exercised that right, is upon such transfer discharged from the liabilities imposed on the controlling party by the contract of carriage or by this Convention.]¹⁶⁵

¹⁶² Revised draft as agreed by the Working Group (A/CN.9/594, paras. 37-40).

¹⁶³ Revised draft as agreed by the Working Group (A/CN.9/594, para. 41).

¹⁶⁴ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 23-36 and 68-71). This paragraph was formerly draft para. 56(1)(d) as set out in A/CN.9/WG.III/WP.56, and has been moved to this placement to improve clarity.

¹⁶⁵ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 42-45). The Working Group agreed that this paragraph should be placed in square brackets pending its possible modification or deletion, following further consideration of the issues raised and of the text in draft para. 60(1).

Article 54. Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 52 if:¹⁶⁶

(a) The person giving such instructions is entitled to exercise the right of control;

(b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

(c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

2. In any event, the controlling party shall reimburse the carrier any additional expense that the carrier may incur and shall indemnify the carrier against any loss or damage that the carrier may suffer as a result of executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to [or for delay in delivery of] other goods being carried.¹⁶⁷

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods [or for delay in delivery] resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 62 to 64.¹⁶⁸

Article 55. Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 52, subparagraph 1(b), are deemed to be delivered at the place of destination, and the provisions of chapter 10 relating to such delivery apply to such goods.

Article 56. Variations to the contract of carriage¹⁶⁹

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 52, subparagraphs 1(b) and (c).

2. Variations to the contract of carriage, including those referred to in article 52, subparagraphs 1(b) and (c), shall be stated in a negotiable transport document or incorporated in a negotiable electronic transport record, or, at the option of the controlling party, shall be stated in a non-negotiable transport

¹⁶⁶ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 46-49).

¹⁶⁷ Revised draft as agreed by the Working Group (A/CN.9/594, paras. 50-51).

¹⁶⁸ New provision replacing former article 57(4), as it appeared in A/CN.9/WG.III/WP.56, as requested by the Working Group (A/CN.9/594, paras. 55-58).

¹⁶⁹ Draft article moved here from its previous placement as former draft article 55 earlier in the chapter as set out in A/CN.9/WG.III/WP.56. Revised draft of provision as agreed by the Working Group (A/CN.9/594, paras. 17-22).

document or incorporated in a non-negotiable electronic transport record.¹⁷⁰ If so stated or incorporated, such variations shall be signed in accordance with article 39.

3. Variations to the contract of carriage made pursuant to this article shall not affect the rights and obligations of the parties prior to the date on which they are signed in accordance with article 39.

Article 57. Providing additional information, instructions or documents to carrier

If the carrier or a performing party during the period that it has custody of the goods reasonably requires information, instructions, or documents in addition to those referred to in article 29, subparagraph 1(a), the controlling party, on request of the carrier or such performing party, shall provide such information, instructions or documents to the extent that it is able to do so. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions, or documents to the carrier, the shipper or the documentary shipper shall do so.¹⁷¹

Article 58. Variation by agreement

The parties to the contract of carriage may vary the effect of articles 52, subparagraphs 1(b) and (c), 53, paragraph 5 and 54. The parties may also restrict or exclude the transferability of the right of control referred to in article 53, subparagraph 1(b).¹⁷²

[CHAPTER 12. TRANSFER OF RIGHTS]¹⁷³

Article 59. When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

- (a) If an order document, duly endorsed either to such other person or in blank; or,
- (b) If a bearer document or a blank endorsed document, without endorsement; or,

¹⁷⁰ The non-negotiable transport document and electronic transport record that require surrender in draft articles 47 and 48 should be included here should the Working Group decide that they will constitute conclusive evidence.

¹⁷¹ The Working Group at para 63 of A/CN.9/594 suggested that a difference could be drawn based on whether the controlling party has been active or passive. However, the Secretariat suggests that this may be unnecessary, since the controlling party should always be aware if it is a controlling party, and text as it stands indicates other parties who may be contacted for additional information if the controlling party is not identified or found.

¹⁷² The Secretariat suggests the deletion of the following closing phrase as redundant: "If a negotiable transport document or a negotiable electronic transport record is issued, any agreement referred to in this article shall be stated or incorporated in the contract particulars."

¹⁷³ The original text of this chapter is taken from A/CN.9/WG.III/WP.32, with some drafting improvements suggested to that text. The Working Group has not yet taken a final decision regarding the disposition of this chapter, following its decision in paras. 77-78 of A/CN.9/594 to defer for future discussion the consideration of chapter 12 on transfer of rights.

(c) If a document made out to the order of a named person and the transfer is between the first holder and the named person, without endorsement.¹⁷⁴

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9.¹⁷⁵

Article 60. Liability of holder

1. Without prejudice to article 57, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes [any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record] [the liabilities imposed on the controlling party pursuant to chapter 11 and the liabilities imposed on the shipper for the payment of freight, dead freight, demurrage and compensation for detention to the extent that such liabilities are incorporated in the negotiable transport document or the negotiable electronic transport record].¹⁷⁶

3. For the purpose of paragraphs 1 and 2 of this article [and article 44]¹⁷⁷, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(b) It transfers its rights pursuant to article 59.

¹⁷⁴ As set out in footnote 201 of A/CN.9/WG.III/WP.32, there was strong support in the Working Group to maintain the text of draft para. 59(1) as drafted in order to promote harmonization and to accommodate negotiable electronic transport records. The concern raised in para. 132 of A/CN.9/526 regarding nominative negotiable documents under certain national laws was noted.

¹⁷⁵ As set out in footnote 202 of A/CN.9/WG.III/WP.32, para. 2 was discussed during the fifteenth session of the Working Group in conjunction with the other provisions in the draft convention regarding electronic transport records.

¹⁷⁶ As set out in footnote 204 of A/CN.9/WG.III/WP.32, the Working Group requested the Secretariat to prepare a revised draft of para. 2 with due consideration being given to the views expressed. However, the views expressed in the preceding paras. 137 to 139 of A/CN.9/526 were not consistent. Those that favoured a revision of the text requested that the subparagraph stipulate which liabilities the holder that exercised any right under the contract of carriage would assume pursuant to that contract, and an attempt has been made to revise the text. It should be noted that there is a relevant type of liability that ought perhaps to be considered: the liability in respect of loss, damage or injury caused by the goods (but excluding in any event that for breach of the shipper's obligations under draft art. 27).

¹⁷⁷ Inclusion of the text in square brackets will depend upon the decision of the Working Group regarding the inclusion of the bracketed text in draft art. 44.

Article 61.¹⁷⁸ When no negotiable transport document or negotiable electronic transport record is issued

When no negotiable transport document or no negotiable electronic transport record is issued:

(a) The transfer of rights pursuant to a contract is subject to the law applicable to the contract for the transfer of such rights;

(b) The transfer of rights other than by contract is subject to the law applicable to such other mode of transfer;

(c) The transferability of rights is subject to the law applicable to the contract of carriage; and

(d) Regardless of the law applicable pursuant to subparagraphs (a) and (b) of this article,

(i) A transfer that is otherwise permissible pursuant to the applicable law may be made by electronic means,

(ii) A transfer shall be notified to the carrier by the transferor or, if applicable law permits, by the transferee, and

(iii) The transferor and the transferee are jointly and severally liable for liabilities that are connected to or flow from the right that is transferred.]

CHAPTER 13: LIMITS OF LIABILITY

Article 62. Limits of liability

1. Subject to articles 63 and 64, paragraph 1, the carrier's liability for breaches of its obligations under this Convention¹⁷⁹ is limited to [...] units of account per package or other shipping unit, or [...] units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value¹⁸⁰ of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

Variant A of paragraph 2¹⁸¹

[2. Notwithstanding paragraph 1 of this article, if (a) the carrier cannot establish whether the goods were lost or damaged [or whether the delay in

¹⁷⁸ Draft art. 61, formerly draft art. 61 bis, has replaced draft arts. 61 and 62 from A/CN.9/WG.III/WP.32, as agreed by the Working Group in para. 213 of A/CN.9/576, following its consideration of the electronic commerce aspects of art. 63, as set out in para. 12 of A/CN.9/WG.III/WP.47, and its consideration of replacing former draft arts. 61 and 62 with draft art. 61 in paras. 212 and 213 of A/CN.9/576.

¹⁷⁹ The addition of breaches of the carrier's obligations is thought to have made the reference to "[or in connection with]" the goods unnecessary.

¹⁸⁰ Further to the decision of the Working Group (paras. 172 and 174, A/CN.9/616), reference to the "nature" of the goods has been deleted.

¹⁸¹ If draft article 62(2) is retained, its text should be adjusted based on the final text of draft article 26. Variant A is intended as a clarification of the text of Variant B, and is not intended to change the suggested approach.

delivery was caused]¹⁸² during the sea carriage or during the carriage preceding or subsequent to the sea carriage and (b) provisions of an international convention [or national law] would be applicable pursuant to article 26 if the loss, damage, [or delay] occurred during the carriage preceding or subsequent to the sea carriage, the carrier's liability for such loss, damage, [or delay] is limited pursuant to the limitation provisions of any international convention [or national law]¹⁸³ that would have applied if the place where the damage occurred had been established, or pursuant to the limitation provisions of this Convention, whichever would result in the higher limitation amount.]

Variant B of paragraph 2

[2. Notwithstanding paragraph 1 of this article, if the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused]¹⁸⁴ during the sea carriage or during the carriage preceding or subsequent to the sea carriage, the highest limit of liability in the international [and national]¹⁸⁵ mandatory provisions applicable to the different parts of the transport applies.]

3. When goods are carried in or on a container, pallet, or similar article of transport used to consolidate goods, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport are deemed one shipping unit.

4. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award 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 that 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 that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

*Article 63. Limits of liability for loss caused by delay*¹⁸⁶

Subject to article 64, paragraph 2, compensation for physical loss of or damage to the goods caused by delay shall be calculated in accordance with article 22 and [, unless otherwise agreed,] liability for economic loss caused by delay is limited to an amount equivalent to [one times] the freight payable on the goods delayed. The total amount payable pursuant to this article and article 62,

¹⁸² See, *infra*, note 184.

¹⁸³ Text placed in square brackets to mirror the text in art. 26(1), pending a decision by the Working Group.

¹⁸⁴ Draft para. 2 was maintained in square brackets, and reference to delay in delivery was introduced in square brackets, for future discussion.

¹⁸⁵ See *supra*, note 183.

¹⁸⁶ Variant B has been deleted and Variant A has been retained from the text as it appeared in A/CN.9/WG.III/WP.56, as agreed by the Working Group (para. 181, A/CN.9/616).

paragraph 1 may not exceed the limit that would be established pursuant to article 62, paragraph 1 in respect of the total loss of the goods concerned.

Article 64. Loss of the benefit of limitation of liability

1. Neither the carrier nor any of the persons referred to in article 18, paragraph 1, is entitled to the benefit of the limitation of liability as provided in article 62¹⁸⁷, or as provided in the contract of carriage,¹⁸⁸ if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in article 18, paragraph 1, is entitled to the benefit of the limitation of liability as provided in article 63 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

CHAPTER 14. TIME FOR SUIT

Article 65. Limitation of actions

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention¹⁸⁹ may be commenced after the expiration of a period of two years.¹⁹⁰

2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods, or, in cases in which no goods have been delivered, or only part of the goods have been delivered,¹⁹¹ on the last¹⁹² day on which the goods should have been delivered. The day on which the period commences is not included in the period.¹⁹³

¹⁸⁷ As discussed at paras. 55 and 62 of A/CN.9/552, the suggestion to add a reference to art. 22 might need to be further discussed in the context of chapter 19.

¹⁸⁸ As agreed by the Working Group (para. 198 and 200, A/CN.9/616), the square brackets around the words "[or as provided in the contract of carriage,]" were deleted and the text retained.

¹⁸⁹ The insertion of the phrase "in respect of claims or disputes arising from a breach of an obligation under this Convention" is intended to provide for the same scope of coverage in this provision as in draft article 62.

¹⁹⁰ In keeping with the decision made by the Working Group (see paras. 127-133, A/CN.9/616), Variant B of the text as it appeared in A/CN.9/WG.III/WP.56 was used as the basis for a revised draft by the Secretariat. The text suggested in this regard is intended to contain the essential elements agreed to by the Working Group, but to rephrase the provision in such a fashion so as to avoid consideration of whether rights or actions have been extinguished or time-barred.

¹⁹¹ As agreed by the Working Group, reference to draft article 11 has been deleted (paras. 136 and 143, A/CN.9/616) and accommodation has been made for cases of partial delivery, as provided for in article 20(2) of the Hamburg Rules (para. 138, A/CN.9/616).

¹⁹² The square brackets have been removed from around the word "last" as agreed by the Working Group (paras. 133 and 139).

¹⁹³ As set out in footnote 216 of A/CN.9/WG.III/WP.32, the Working Group requested the Secretariat to retain the text of former draft art. 70, as it appeared in A/CN.9/WG.III/WP.56, with consideration being given to possible alternatives to reflect the views expressed. That text has now been moved into this paragraph, and former draft article 70, as it appeared in

3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.¹⁹⁴

Article 66. Extension of limitation period

The limitation period provided in article 65 shall not be subject to suspension or interruption,¹⁹⁵ but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

Article 67. Action for indemnity

An action for indemnity by a person held liable under this Convention may be instituted after the expiration of the period referred to in article 65 if the indemnity action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) 90 days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself¹⁹⁶, whichever is earlier.¹⁹⁷

Article 68. Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 38, paragraph 2,¹⁹⁸ may be instituted after the expiration of the period referred to in article 65 if the action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) 90 days commencing from the day when the carrier has been identified or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 38, paragraph 2.¹⁹⁹

A/CN.9/WG.III/WP.56, has been deleted. In addition, the last sentence of this paragraph has been added from article 20(3) of the Hamburg Rules.

¹⁹⁴ In keeping with the Working Group's decision to allow for set-off of claims as a defence even when the limitation period had expired (paras. 130-131, 133, and 154 A/CN.9/616), the Secretariat has prepared draft paragraph 3, based on article 25(2) of the Convention on the Limitation Period in the International Sale of Goods. Former article 73 of the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted as a consequence of the inclusion of this text.

¹⁹⁵ Reference to suspension or interruption of the limitation period has been included further to the agreement in the Working Group (paras. 132-133, A/CN.9/616).

¹⁹⁶ Further to the decision made by the Working Group (para. 152, A/CN.9/616), Variant B of the text as it appeared in A/CN.9/WG.III/WP.56 has been deleted and the text of Variant A retained.

¹⁹⁷ The phrase "whichever is earlier" has been added for clarification in those situations where service of process has already taken place, and discussions regarding settlement occur later.

¹⁹⁸ Drafting clarifications and corrections made to text in light of the revisions made as a consequence of former draft article 40(3), as it appeared in A/CN.9/WG.III/WP.56, now found in draft article 38(2).

¹⁹⁹ Consequential drafting changes have been made to this provision as a result of the revised text of former draft article 40(3), as it appeared in A/CN.9/WG.III/WP.56, now found in draft article 38(2).

CHAPTER 15. JURISDICTION²⁰⁰*Article 69. Actions against the carrier*

Unless the contract of carriage contains an exclusive choice of court agreement that complies with²⁰¹ article 70 or 75, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

(a) In a competent court within the jurisdiction of which is situated one of the following places:

- (i) The domicile of the carrier;²⁰²
- (ii) The place of receipt agreed in the contract of carriage;²⁰³
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.²⁰⁴

Article 70. Choice of court agreements²⁰⁵

1. The jurisdiction of a court chosen in accordance with article 69, paragraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated; or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement;²⁰⁶ and

(b) Clearly²⁰⁷ designates the courts of one Contracting State or one or more specific courts of one Contracting State.

²⁰⁰ The suggested drafting changes are made to the version of this chapter as it appeared in the annex to A/CN.9/WG.III/WP.75, as considered by the Working Group in paras. 245-266 of A/CN.9/616.

²⁰¹ "Complies with" is suggested as preferable to "is valid", which appeared previously in the text.

²⁰² Reference corrected to "carrier" rather than to "defendant" in order to be consistent with draft article 71 regarding actions against maritime performing parties.

²⁰³ Subparagraphs (ii) and (iii) were placed in separate subparas. from the previous text as it appeared in A/CN.9/WG.III/WP.75 for the purposes of clarity.

²⁰⁴ The text in subparagraph (b) replaces that of both former subparagraph (d) and former draft article 76(1), as they appeared in the text in A/CN.9/WG.III/WP.75, and which have been deleted in this version of the draft convention.

²⁰⁵ The first paragraph of this provision as it appeared in the annex to A/CN.9/WG.III/WP.75 has been deleted and, as a drafting improvement, replaced with a reference to draft article 69(b) in paragraph 1.

²⁰⁶ The phrase "sections of" has replaced the phrase "location within" as accurately reflecting the text of draft article 89(1)(b).

²⁰⁷ The phrase "clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State" has been retained and the square brackets deleted in accordance with the decision taken by the Working Group (para. 256, A/CN.9/616). Further, former draft

2. A person that is not a party to the volume contract is only bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article if:

(a) The court is in one of the places designated in article 69, paragraph (a);

(b) That agreement is contained in the contract particulars of a transport document or electronic transport record that evidences the contract of carriage for²⁰⁸ the goods in respect of which the claim arises;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) [The law of the court seized²⁰⁹][The law of the [agreed] place of delivery of the goods][The law of the place of receipt of the goods [by the carrier]][The applicable law pursuant to the rules of private international law of the law of the forum]²¹⁰ recognizes that that person may be bound by the exclusive choice of court agreement.

[3. This article does not prevent a Contracting State from giving effect to a choice of court agreement that does not meet the requirements of paragraphs 1 or 2 of this article. Such Contracting State shall give notice to that effect [to _____].²¹¹

4. (a) Nothing in paragraph 3 of this article or in a choice of court agreement effective pursuant to paragraph 3 of this article prevents a court specified in article 69[, paragraph (a)] and situated in a different Contracting State from exercising its jurisdiction over the dispute and deciding the dispute under this Convention.

(b) Except as provided in this chapter, no choice of court agreement is exclusive with respect to an action [against a carrier] under this Convention.²¹²]²¹³

paragraph (c), as it appeared in A/CN.9/WG.III/WP.75 has been deleted as agreed by the Working Group (para. 257, A/CN.9/616).

²⁰⁸ As agreed in the Working Group, the square brackets around draft paragraph (b) have been deleted, and the phrase “that evidences the contract of carriage for” has replaced the phrase “issued in relation to” (para. 258, A/CN.9/616).

²⁰⁹ The Working Group may wish to consider whether further clarification may be necessary to ascertain whether the “court seized” will necessarily be the competent court, or whether it may be another court.

²¹⁰ Various alternatives for this provision have been added as agreed by the Working Group (para. 259, A/CN.9/616).

²¹¹ The Working Group may wish to consider the interplay between this approach and the final clauses.

²¹² Separate paragraph provided for this provision in order to avoid making it subject to paragraph. 4 of this article, as suggested by the Working Group in paragraph 80 of A/CN.9/591.

²¹³ Square brackets have been inserted around draft paragraphs 4 and 5 to indicate the Working Group’s agreement that if the decision were made to include a reservation or “opt in” clause regarding the entire chapter on jurisdiction, these paragraphs could be deleted (para. 260, A/CN.9/616).

*Article 71. Actions against the maritime performing party*²¹⁴

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the maritime performing party; or
- (b) The port where the goods are initially received by the maritime performing party or the port where the goods are finally delivered by the maritime performing party, or the port in which the maritime performing party performs its activities with respect to the goods.²¹⁵

*Article 72. No additional bases of jurisdiction*²¹⁶

Subject to articles 74 and 75, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to articles 69, [or] 71 [or pursuant to rules applicable due to the operation of article 77, paragraph 2]²¹⁷.

*Article 73. Arrest and provisional or protective measures*²¹⁸

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

- (a) The requirements of this chapter are fulfilled; or
- (b) An international convention that applies in that State so provides.²¹⁹

Article 74. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is valid pursuant to articles 70 [or] 75 [or pursuant to rules applicable due to the operation

²¹⁴ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. A slight variation has been made to the chapeau for drafting purposes only in order to ensure that the chapeau mirrors that of article 69, and text has been suggested in paragraph (b) to accommodate maritime performing parties that operate in a single port. Further, the Working Group may wish to clarify the relationship between articles 70 and 71.

²¹⁵ The square brackets have been deleted from the text as it appeared in the annex to A/CN.9/WG.III/WP.75, in addition to the deletion of the words “single” and “all of”, as agreed by the Working Group (para. 261, A/CN.9/616).

²¹⁶ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84, with a clarification concerning proceedings against the carrier or a maritime performing party.

²¹⁷ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77(2).

²¹⁸ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84.

²¹⁹ The square brackets in the text have been removed as agreed in the Working Group (para. 262, A/CN.9/616) and the text inside retained, and the phrase “according to its rules of application” has been deleted as redundant.

of article 77, paragraph 2]²²⁰, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 69 and article 71. If there is no such court, such action may be instituted in a court designated pursuant to article 71, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is valid pursuant to articles 70 [or] 75 [or pursuant to rules applicable due to the operation of article 77, paragraph 2]²²¹, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 69 or 71²²² shall at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 69 or 71, whichever is applicable, where the action may be recommenced²²³

Article 75. Agreement after dispute has arisen and jurisdiction when the defendant has entered an appearance²²⁴

1. After the dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent²²⁵ court in a Contracting State before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 76. Recognition and enforcement²²⁶

1. A decision made by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with

²²⁰ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77 (2).

²²¹ The phrase in square brackets would be necessary if a “partial opt-in” approach to this chapter were adopted pursuant to draft article 77 (2).

²²² The text “seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum under articles 69 or 71” has been inserted and the alternative texts that appeared in A/CN.9/WG.III/WP.75 have been deleted in keeping with the decision of the Working Group (para. 263, A/CN.9/616).

²²³ It is suggested that the closing phrase of the previous text as it appeared in A/CN.9/WG.III/WP.75 “and may recommence it in one of the courts designated under articles 69 or 71, whichever is applicable, as chosen by the defendant” be replaced with the phrase “once the defendant has chosen a court designated pursuant to article 69 or 71, whichever is applicable, where the action may be recommenced” in order to make clear that the defendant is required to choose a court in which the case should be heard, and cannot simply avoid the action by failing to choose a court.

²²⁴ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. The opening phrase “Notwithstanding the preceding articles of this chapter” has been deleted as redundant, as references to article 75 have been added to articles 69, 70 and 74, and opening phrase of the second paragraph has been clarified from “a competent court” to “a court in a Contracting State”.

²²⁵ The word “competent” has been inserted as agreed in the Working Group (para. 264, A/CN.9/616).

²²⁶ The suggested drafting changes are made to the version of this draft article as it appeared in the annex to A/CN.9/WG.III/WP.75, in order to accommodate the possible adoption by the Working Group of a whole or partial reservation or “opt in” approaches with respect to chapter 15, in keeping with paras. 265-266 of A/CN.9/616.

the law of that Contracting State when both States have made a declaration in accordance with article 77.

2. A court may refuse recognition and enforcement:

(a) Based on the grounds for the refusal of recognition and enforcement available pursuant to its law;

(b) If the action in which the decision was rendered would have been subject to withdrawal pursuant to article 74, paragraph 2, had the court that rendered the decision applied the rules on exclusive choice of court agreements of the State in which recognition and enforcement is sought; or

(c) If a court of that Contracting State had exclusive jurisdiction in a dispute resulting in the decision in respect of which recognition and enforcement is sought pursuant to the rules applied as a result of a declaration made pursuant to article 77, paragraph 2.

3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgments as between member states of the regional economic integration organization, whether adopted before or after this Convention.

Article 77. Application of chapter 15²²⁷

[Variant A]

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession, in accordance with article 94, that it will not be bound by the provisions of this chapter.]

[Variant B]

The provisions of this chapter shall bind only Contracting States that declare [at the time of signature, ratification, acceptance, approval or accession,] [at any time thereafter] in accordance with article 94, that they will be bound by them.]

[Variant C] would consist of Variant B plus the following text as a second para.:

A Contracting State that makes a declaration pursuant to paragraph 1 of this article may at the same time declare that it will not be bound by article 70 and its courts shall instead apply the rules which would be otherwise applicable in that Contracting State.]

²²⁷ Variant A is intended to represent the reservation approach to the chapter on jurisdiction, while Variant B is intended to represent the “opt-in” approach, and Variant C, which would consist of both Variants B and C, is intended to represent a “partial opt-in” approach (see A/CN.9/616, paras. 246-252).

CHAPTER 16. ARBITRATION²²⁸*Article 78. Arbitration agreements*

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.

2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at²²⁹:

(a) Any place designated for that purpose in the arbitration agreement; or

(b) Any other place situated in a State where any of the places specified in article 69, subparagraph (a), (b) or (c), is located.

3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if it is contained in a volume contract that clearly states the names and addresses of the parties and either

(a) Is individually negotiated; or

(b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of²³⁰ the volume contract containing the arbitration²³¹ agreement.

4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

(a) The place of arbitration designated in the agreement is situated in one of the places referred to in article 69, subparagraph (a), (b) or (c);

[(b) The agreement is contained in the contract particulars of a transport document or electronic transport record that evidences the contract of carriage for the goods in respect of which the claim arises;]

(c) The person to be bound is given timely and adequate notice of the place of arbitration; and

(d) Applicable law²³² permits that person to be bound by the arbitration agreement.

5. The provisions of paragraphs 1, 2, 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 to the extent that it is inconsistent therewith is void.

²²⁸ The suggested changes to the text of this chapter are to the version of the provision as it appeared in para. 270 of A/CN.9/616.

²²⁹ The phrase "one of the following locations" has been deleted as redundant.

²³⁰ The phrase "sections of" has replaced the phrase "location within" as accurately reflecting the text of draft article 89(1)(b).

²³¹ The phrase "containing the arbitration" has replaced "of that" for greater precision.

²³² It is suggested that the phrase "[for the arbitration agreement]" be deleted as it has caused confusion regarding the applicable law in the past.

*Article 79. Arbitration agreement in non-linear transportation*²³³

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-linear transportation to which this Convention or the provisions of this Convention apply by reason of:

- (a) The application of article 7; or
- (b) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.

2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this Chapter unless:

(a) The terms of such arbitration agreement are the same as the terms of the arbitration agreement in the charterparty or other contract of carriage excluded from the application of this Convention by reason of the application of article 7; or

(b) Such an arbitration agreement: (i) incorporates by reference the terms of the arbitration agreement contained in the charterparty or other contract of carriage excluded from the application of this Convention by reason of the application of article 7; (ii) specifically refers to the arbitration clause; and (iii) identifies the parties to and the date of the charterparty.

Article 80. Agreements for arbitration after the dispute has arisen

Notwithstanding the provisions of this chapter and chapter 15, after a dispute has arisen, the parties to the dispute may agree to resolve it by arbitration in any place.

*Article 81. Application of chapter 16*²³⁴

[Variant A

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession, in accordance with article 94, that it will not be bound by the provisions of this chapter.]

[Variant B

The provisions of this chapter shall be binding only on Contracting States that declare [at the time of signature, ratification, acceptance, approval or accession,] [at any time thereafter] in accordance with article 94, that they will be bound by them.]

²³³ In response to the views of the Working Group as set out in paras. 276-277 of A/CN.9/616 and in order to clarify this provision in general, this draft article has been substantially adjusted from the version set out in para. 270 of A/CN.9/616.

²³⁴ For the purposes of consistency, the drafting approach taken in both Variants A and B is similar to that taken in draft article 77, with respect to the chapter on jurisdiction. Variant A is intended to represent the reservation approach to the chapter on arbitration, while Variant B is intended to represent the "opt-in" approach. A "partial opt-in" approach was considered with respect to the chapter on arbitration, as suggested in discussion in the Working Group (see A/CN.9/616, paras. 278-279), but was not considered necessary or practicable with respect to arbitration.

CHAPTER 17. GENERAL AVERAGE

Article 82. Provisions on general average

Nothing in this Convention prevents the application of terms in the contract of carriage or provisions pursuant to national law regarding the adjustment of general average.

CHAPTER 18. OTHER CONVENTIONS

*Article 83. Denunciation of other conventions*²³⁵

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924; 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; or to the Protocol to amend the International Convention for the Unification of certain Rules relating to Bills of Lading as Modified by the Amending Protocol of 23 February 1968, signed at Brussels on 21 December 1979; or, alternatively, to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978, shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect.

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978, shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect.

3. For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article are not effective until such denunciations as may be required on the part of those States in respect of these instruments have themselves become effective. The depositary of this Convention shall consult with the Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary co-ordination in this respect.²³⁶

Article 84. International conventions governing the carriage of goods by air

Nothing in this Convention prevents a Contracting State from applying the provisions of any other international convention regarding the carriage of goods by air to the contract of carriage when such international convention according to its provisions applies to any part of the contract of carriage.²³⁷

²³⁵ Draft article 83 consists of former article 102 as it appeared in A/CN.9/WG.III/WP.56, which has been moved to this location from its previous location in the chapter on Final Clauses. It is thought that chapter 18 on Other Conventions reads more logically with the addition of former article 102, now draft article 83, on denunciations to this location.

²³⁶ Text based on paras. 99(3) and (6) of the United Nations Convention on Contracts for the International Sale of Goods. See also art. 31 of the Hamburg Rules.

²³⁷ Suggested approach along the lines of former draft article 89 as it appeared in A/CN.9/WG.III/WP.56 to ensure that there is no conflict of conventions with the Montreal Convention, as considered by the Working Group in paras. 225 and 234-235 of A/CN.9/616.

Article 85. Global limitation of liability

This Convention does not modify the rights or obligations of the carrier, or the performing party provided for in international conventions or national law applicable to the limitation of liability of owners of seagoing ships or the limitation of liability for maritime claims.²³⁸

Article 86. Other provisions on carriage of passengers and luggage

No liability arises under this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is liable under any convention or national law applicable to the carriage of passengers and their luggage.

Article 87. Other provisions on damage caused by nuclear incident

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the additional Protocol of 28 January 1964, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) By virtue of national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

CHAPTER 19. VALIDITY OF CONTRACTUAL TERMS²³⁹*Article 88. General provisions*²⁴⁰

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;

(b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or

²³⁸ The phrase “for maritime claims” has been added in order to reflect the terminology of the Convention on Limitation of Liability for Maritime Claims, 1976 and its 1996 Protocol.

²³⁹ The Working Group may wish to consider whether this chapter would be better placed before chapter 17 on general average, or merged into chapter 2 on scope of application.

²⁴⁰ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 46, as requested by the Working Group (A/CN.9/594, paras. 147 and 153). The word “provision” has been substituted for “stipulation”.

(c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18, paragraph 1.

[2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes, limits, [or increases] the obligations under this Convention of the shipper, consignor, consignee, controlling party, holder, or documentary shipper; or

(b) Directly or indirectly excludes, limits, [or increases] the liability of the shipper, consignor, consignee, controlling party, holder, or documentary shipper for breach of any of its obligations under this Convention.]

*Article 89. Special rules for volume contracts*²⁴¹

1. Notwithstanding article 88, as between the carrier and the shipper,²⁴² a volume contract to which this Convention applies may provide for greater or lesser rights, obligations, and liabilities than those set forth in this Convention provided that the volume contract contains a prominent statement that it derogates from this Convention, and:

(a) Is individually negotiated; or

(b) Prominently specifies the sections of the volume contract containing the derogations.

2. A derogation pursuant to paragraph 1 of this article shall be set forth in the volume contract and may not be incorporated by reference from another document.

3. A carrier's public schedule of prices and services, transport document, electronic transport record, or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 16, subparagraphs (1)(a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does paragraph 1 of this article apply to any liability arising from an act or omission referred to in article 64.²⁴³

²⁴¹ Revised draft based on alternative version in A/CN.9/WG.III/WP.61, para. 49, with amendments to paras. 4 and 5 requested by the Working Group (A/CN.9/594, paras. 163-167). Drafting adjustments have been made to the text of para. 5 with the intention of improving clarity but not changing the substance, and former subpara. 5(c) as it appeared in para. 49 of A/CN.9/WG.III/WP.61 has been moved into a separate para. 6.

²⁴² The phrase "as between the carrier and the shipper" has been added to this paragraph to accommodate the simplified version of para. 5 now inserted into the draft convention by ensuring the inclusion of the text in former subpara. 5(a) of the draft article as set out in para. 49 of A/CN.9/WG.III/WP.61, which stated "Paragraph 1 of this article applies between the carrier and the shipper".

²⁴³ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 49, with amendments regarding the reference to draft art. 64 as requested by the Working Group (A/CN.9/594, paras. 158-162).

5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 1 of this article, apply between the carrier and any person other than the shipper provided that:

(a) Such person received information that prominently states that the volume contract derogates from this Convention and gives its express consent to be bound by such derogations; and

(b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document, or electronic transport record.²⁴⁴

6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

*Article 90. Special rules for live animals and certain other goods*²⁴⁵

Notwithstanding article 88 and without prejudice to²⁴⁶ article 89, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(a) The goods are live animals except when the claimant proves that the loss of or damage to the goods, or delay in delivery resulted from an act or omission of the carrier or of a person referred to in article 18, paragraph 1, or of a maritime performing party done recklessly and with knowledge that such loss or damage,²⁴⁷ or that the loss due to delay, would probably result; or

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

CHAPTER 20. FINAL CLAUSES

Article 91. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.²⁴⁸

²⁴⁴ Drafting adjustments have been made to the text of para. 5 as set out in para. 49 of A/CN.9/WG.III/WP.61 with the intention of improving clarity but not changing the substance. Former subpara. 5(c) as it appeared in para. 49 of A/CN.9/WG.III/WP.61 has been moved into a separate para. 6.

²⁴⁵ Revised draft based on text in A/CN.9/WG.III/WP.61, para. 62, as requested by the Working Group (A/CN.9/594, paras. 163-167).

²⁴⁶ In the opening phrase of para (a), the phrase "without prejudice to" has been added to the text as set out in para. 62 of A/CN.9/WG.III/WP.61 to better reflect the nature of articles 88 and 89.

²⁴⁷ In order to avoid repetition, the phrase "would probably occur or recklessly and with knowledge" has been deleted from the text as set out in para. 62 of A/CN.9/WG.III/WP.61.

²⁴⁸ Text taken from art. 15 of the Electronic Contracting Convention and art. 27 of the Hamburg Rules.

Article 92. Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States [at [...] from [...] to [...] and thereafter] at the Headquarters of the United Nations in New York from [...] to [...].
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.²⁴⁹

Article 93. Reservations

No reservations are permitted except those expressly authorized in this Convention.²⁵⁰

Article 94. Procedure and effect of declarations²⁵¹

1. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.
4. Any State that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 95. Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

²⁴⁹ Text taken from art. 16 of the Electronic Contracting Convention.

²⁵⁰ Revised text to accommodate the possible inclusion of reservations regarding chapters 15 and 16.

²⁵¹ Suggested text to accommodate the possible inclusion of reservations regarding chapters 15 and 16.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration pursuant to this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration pursuant to paragraph 1 of this article, the Convention is to extend to all territorial units of that State.²⁵²

*Article 96. Participation by regional economic integration organizations*²⁵³

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization when the context so requires.

Article 97. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of [one year] [six months] after the date of deposit of the [twentieth] [third] instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the [twentieth] [third] 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] [six months] after the deposit of the appropriate instrument on behalf of that State.

²⁵² Text is taken from art. 18 of the Electronic Contracting Convention. See also art. 52 of the Convention on International Interests in Mobile Equipment, Cape Town, 16 November 2001.

²⁵³ Text from sixteenth session of Working Group, para. 73 of A/CN.9/591, where it was not discussed, as noted in para. 83 of A/CN.9/591.

3. Each Contracting State shall apply this Convention to contracts of carriage concluded on or after the date of the entry into force of this Convention in respect of that State.²⁵⁴

Article 98. Revision and amendment

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

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.²⁵⁵

Article 99. Amendment of limitation amounts²⁵⁶

1. The special procedure in this article applies solely for the purposes of amending the limitation amount set out in article 62, paragraph 1 of this Convention.

2. Upon the request of at least [one fourth²⁵⁷] of the Contracting States to this Convention,²⁵⁸ the depositary shall circulate any proposal to amend the limitation amount specified in article 62, paragraph 1, of this Convention to all the

²⁵⁴ Text is taken from art. 30 of the Hamburg Rules. Note that the second suggested time period in square brackets is drawn from art. 23 of the Electronic Contracting Convention. The time selected for entry into force, which is a function of both the number of ratifications required and of the length of time required after the deposit of the appropriate instrument, is generally the time considered appropriate for business practice to adjust to the new regime.

²⁵⁵ Text is taken from art. 32 of the Hamburg Rules. Amendment procedures are not common in UNCITRAL texts, but the Hamburg Rules have a general provision in art. 32 and a special provision in art. 33 for revision of the limitation amounts and the unit of account. In the Electronic Contracting Convention, the Commission decided not to have a provision on amendments because the States parties to that Convention may initiate an amendment procedure under general treaty law (typically, with a diplomatic conference and an amending protocol, such as in the case of the Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol of 11 April 1980, New York, 14 June 1974), if applicable, after discussion in the Commission. Note that the amendment provisions at draft arts. 103 and at draft art. 104 may be adopted independently.

²⁵⁶ Text as set out in para. 7 of A/CN.9/WG.III/WP.39, including footnotes. The proposal is based upon the amendment procedure set out at art. 23 of the 2002 Protocol to the Athens Convention (“Athens Convention”) and at art. 24 of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (“OTT Convention”). Similar approaches have been taken in a number of International Maritime Organization (“IMO”) conventions, such as the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969; the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (not yet in force) (“2003 Protocol to the IOPC Fund 1992”); the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976; and the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

²⁵⁷ Para. 23(2) of the Athens Convention refers to “one half” rather than “one quarter” of the Contracting States.

²⁵⁸ Para. 23(2) of the Athens Convention includes the phrase “but in no case less than six” of the Contracting States.

Contracting States²⁵⁹ and shall convene a meeting of a committee composed of a representative from each Contracting State to consider the proposed amendment.

3. The meeting of the committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

4. Amendments shall be adopted by the committee by a two-thirds majority of its members present and voting.²⁶⁰

5. When acting on a proposal to amend the limits, the committee will take into account the experience of claims made under this Convention and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.²⁶¹

6. (a) No amendment of the limit pursuant to this article may be considered less than [five²⁶²] years from the date on which this Convention was opened for signature or less than [five] years from the date of entry into force of a previous amendment pursuant to this article.

(b) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention increased by [six] per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.²⁶³

(c) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention multiplied by [three].²⁶⁴

7. Any amendment adopted in accordance with paragraph 4 of this article shall be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of [eighteen²⁶⁵] months after the date of notification, unless within that period not less than [one fourth²⁶⁶] of the States that were Contracting States at the time of the adoption of the amendment

²⁵⁹ Para. 23(2) of the Athens Convention also includes reference to Members of the IMO.

²⁶⁰ Para. 23(5) of the Athens Convention is as follows: "Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as revised by this Protocol present and voting in the Legal Committee ... on condition that at least one half of the Contracting States to the Convention as revised by this Protocol shall be present at the time of voting."

²⁶¹ This provision has been taken from para. 23(6) of the Athens Convention. See, also, para. 24(4) of the OTT Convention.

²⁶² Paras. 11 and 12 of A/CN.9/WG.III/WP.34 suggest that the time period in this draft paragraph should be seven years rather than five years.

²⁶³ No similar provision is found in the OTT Convention. An alternative approach as suggested in paras. 11 and 12 of A/CN.9/WG.III/WP.34 could be: "No limit may be increased or decreased so as to exceed an amount which corresponds to the limit laid down in this Convention increased or decreased by twenty-one per cent in any single adjustment."

²⁶⁴ No similar provision is found in the OTT Convention. An alternative approach as suggested in paras. 11 and 12 of A/CN.9/WG.III/WP.34 could be: "No limit may be increased or decreased so as to exceed an amount which in total exceeds the limit laid down in this Convention by more than one hundred per cent, cumulatively."

²⁶⁵ Paras. 11 and 12 of A/CN.9/WG.III/WP.34 suggest that the time period in draft paras. 7, 8 and 10 should be twelve months rather than eighteen months.

²⁶⁶ The OTT Convention specifies at para. 24(7) "not less than one third of the States that were States Parties".

have communicated to the depositary that they do not accept the amendment, in which case the amendment is rejected and has no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 of this article enters into force [eighteen]²⁶⁷ months after its acceptance.

9. All Contracting States are bound by the amendment unless they denounce this Convention in accordance with article 100 at least six months before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.

10. When an amendment has been adopted but the [eighteen]-month period for its acceptance has not yet expired, a State that becomes a Contracting State during that period is bound by the amendment if it enters into force. A State that becomes a Contracting State after that period is bound by an amendment that has been accepted in accordance with paragraph 7 of this article. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

Article 100. Denunciation of this Convention

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. If 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.²⁶⁸

DONE at [...], this [...] day of [...], [...], in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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

²⁶⁷ Recent IMO conventions have reduced this period to twelve months when urgency is important. See, for example, the 2003 Protocol to the IOPC Fund 1992, at para. 24(8).

²⁶⁸ Text is taken from art. 34 of the Hamburg Rules. The second sentence of para. 2 is not strictly necessary but is present in the Hamburg Rules and in some other UNCITRAL treaties, including the Electronic Contracting Convention. It is not present, for instance, in art. 27 of the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (the most recent text deposited with the Secretary-General), which provides some slightly modified alternative language:

“1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.”



联合国国际贸易法委员会
第三工作组（运输法）
第十九届会议
2007年4月16日至27日，纽约

运输法

[全程或部分][海上]货物运输公约草案

秘书处的说明

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导言

1. 委员会 2001 年第三十四届会议成立了第三工作组（运输法），委托该工作组与有关国际组织密切合作，拟订关于国际货运问题的法律公约，这些问题包括适用范围、承运人的责任期、承运人的义务、承运人的赔偿责任、托运人的义务和运输单证等。ⁱ 工作组在 2002 年第九届会议开始审议一份[全程或部分][海上]货物运输公约草案。关于公约草案立法过程的历史参考资料的最新汇编，可查阅 A/CN.9/WG.III/WP.80 号文件。
2. 本文件载有秘书处编拟的[全程或部分][海上]货物运输公约草案的合编修订条文，供工作组对公约草案三读时审议。对工作组最近审议过的合订案文（载于 A/CN.9/WG.III/WP.56 号文件）作出的修改，在相关案文的脚注中注明，有出处的，则注明载有订正案文的工作文件或载有此种案文的报告的段落。

ⁱ 《大会正式记录，第五十六届会议，补编第 17 号》及更正（A/56/17 和 Corr.3），第 345 段。

[全程或部分][海上]货物运输公约草案

第 1 章. 总则

第 1 条. 定义

在本公约中，

1. “运输合同”是指承运人收取运费,承诺将货物从一地运至另一地的合同。合同应当就海上运输作出约定,并可以对海上运输之外的其他方式的运输作出约定。¹

2. “批量合同”是指在约定期间内分批装运约定总量货物的运输合同。货物总量可以是最低数量、最高数量或一定范围的数量。²

3. “班轮运输”是指通过公告或类似方式向公众提供,并使用船舶根据公布的船期表在特定港口之间定期运营的运输服务。³

4. “非班轮运输”是指不属于班轮运输的任何运输。⁴

5. “承运人”是指与托运人订立运输合同的人。

6. “履约方”是指承运人以外的履行⁵或承诺履行承运人在运输合同下有关接收、装载、操作、积载、运输、照料、卸载或交付货物任何义务⁶的人,以该人直接或间接地在承运人的要求、监督或控制下行事为限。“履约方”包括履约方的受雇人、代理人及分合同人,但以其同样履行或承诺履行运输合同下⁷承运人义务为限,但不包括托运人、单证托运人、发货人、控制方或收货人所用的任何人,或托运人、单证托运人、发货人、控制方或收货人所用人(不包括承运人)的受雇人、代理人或分合同人。

¹ 案文原载于 A/CN.9/WG.III/WP.61 第 16 段,工作组有关审议情况见 A/CN.9/594 第 121 至 133 段。

² 案文原载于 A/CN.9/WG.III/WP.61 第 16 段,工作组有关审议情况见 A/CN.9/594 第 121 至 133 段。

³ 案文原载于 A/CN.9/WG.III/WP.61 第 16 段,工作组有关审议情况见 A/CN.9/594 第 121 至 133 段。

⁴ 工作组似应考虑,鉴于已经有了“班轮运输”的定义,是否还需要“非班轮运输”的定义。

⁵ 为了改进行文措辞,已将 A/CN.9/WG.III/WP.56 案文中在这句话中出现两次的“履行”一词前面的“实际”一词删除,原因是这一用语在有些语文中含义不清,而且本条文所列职能已经清楚表明,履约方必须采取某种具体行动履行运输合同,才能包括在本定义的范围之内。

⁶ 为了使案文的用词保持一致,已酌情将“责任”一词改成“义务”。

⁷ 这句话加上了起始语,以进一步澄清本定义。

7. “海运履约方”是指如果⁸在货物到达船舶装货港至其离开船舶卸货港⁹期间履行或承诺履行承运人任何义务的履约方，但在转运情形中，从货物离开一港口至其到达另一装货港的内陆期间履行承运人任何义务的履约方，不是海运履约方。

8. “非海运履约方”是指不是海运履约方的履约方。¹⁰

9. “托运人”是指与承运人订立运输合同的人。

10. “单证托运人”是指托运人以外的，同意在运输单证或电子运输记录中被指定为“托运人”的人。¹¹

11. “发货人”是指将货物交给承运人或履约方运输的人。

12. “持有人”是指：

(a) 持有可转让运输单证的人，并且(一)若单证为指示单证，该人为单证所载明的托运人或收货人，或者是单证的适当被背书人；或者(二)若单证为空白背书的指示单证或不记名单证，该人是单证的持有人；或者

(b) 可转让电子运输记录的受签发人或受让人并且根据第 9 条中的程序对该可转让电子运输记录拥有排他性控制的人。¹²

13. “收货人”是指根据运输合同或者根据运输单证或电子运输记录有提货权¹³的人。

14. 货物“控制权”是指根据第 11 章在运输合同下向承运人发出有关货物的指示的权利。¹⁴

15. “控制方”是指根据第 53 条有权行使控制权的人。

⁸ 建议为进一步澄清本定义而加上“如果”一词，以便考虑到同一人既履行海运部分又履行陆运部分的义务的可能性。

⁹ 删除了“[或者，在转运情形中，到达船舶第一装货港]”和“[或者酌情可能是最后卸货港]”这两段词语，以使案文更加清楚，并使之上款“履约方”的定义相一致。已对第 19 条草案中海运履约方的赔偿责任作了调整。如先前一份说明所述，A/CN.9/544 第 31 段建议，铁路承运人即使在一港口内提供服务，也应当视为非海运履约方。工作组似应考虑这一建议。

¹⁰ 为与公约草案别处的写法保持一致而修订的案文，例如，“非班轮运输”的定义。工作组似应考虑是否需要这条定义，因为“非海运履约方”一语只在第 20(3)条草案中使用过。

¹¹ 这条定义取自 A/CN.9/WG.III/WP.56 所载原第 34 条的第一句。

¹² 增加了短语“根据第 9 条中的程序”，以便能够删除 A/CN.9/WG.III/WP.56 所载原第 1(u)条草案的第二句，后者以提及第 9 条草案中的程序的间接方式界定了“排他性控制”。若工作组决定删除第 59 条草案，该定义可能也要调整。

¹³ “delivery”前面的“take”一词被认为多余，而且可能引起误解，因此已予删除。

¹⁴ “控制权”的定义取自第 52 条草案的前导句，该条原为 A/CN.9/WG.III/WP.56 所载第 54 条草案。

16. “运输单证”是指由承运人或履约方在运输合同项下签发的单证，该单证满足下列一项或两项条件：

- (a) 证明承运人或履约方收到了运输合同项下的货物；或
- (b) 证明或包含一项运输合同。

17. “可转让运输单证”是指通过“凭指示”或“可转让”等词语，或单证所适用的法律认定具有相同效力的其他适当词语，表明货物已交运并应按托运人的指示或收货的人指示交付，或应交付给持单人，而且未明确声明其为“不可转让”或“不得转让”的运输单证。

18. “不可转让运输单证”是指不是可转让运输单证的运输单证。

19. “电子通信”是指以电子、光学、数字或类似方式生成、发送、接收或存储信息、使通信内容可以获得以供此后援引使用。¹⁵

20. “电子运输记录”是指由承运人或履约方在运输合同项下以电子通信方式发出的一条或多条电文，包括成为电子运输记录的一部分，作为附件与电子运输记录有着逻辑联系的或承运人或履约方在发出电子运输记录的同时或随后以其他方式相链接的信息，该信息满足下列一项或两项条件：

- (a) 证明承运人或履约方收到了运输合同项下的货物；或
- (b) 证明或包含一项运输合同。

21. “可转让电子运输记录”是指

(a) 通过“凭指示”或“可转让”等表述，或由该记录所适用的法律确认具有相同效力的其他适当¹⁶表述，表示货物已交运并应按托运人的指示或按收货人的指示交付，而且未明确表明其为“不可转让”或“不得转让”的电子运输记录；并且

(b) 其使用符合第9条第1款的要求。

22. “不可转让电子运输记录”是指不是可转让电子运输记录电子运输记录。

¹⁵ 建议作出的澄清，以确保公约草案不对传递手段和数据储存的形式作不必要的区分。“电子通信”的定义借鉴了1996年《联合国电子商务示范法》（“电子商务示范法”）第2条“数据电文”的定义，但不包括其中作为示例列出的各种技术手段。在《电子商务示范法》和《联合国国际合同使用电子通信公约》（“电子订约公约”）（《大会正式记录，第六十届会议，补编第17号》（A/60/17）附件一）中，并非所有数据电文都能够具有与书面纸质文件同等的价值，只有那些“可以存取通信内容供此后援引使用”的数据电文才可能具有同等价值。在本文书草案中，“电子通信”的概念还包括《电子商务示范法》第6条和《电子订约公约》第9条第2款关于数据电文与书面文件等同功能的标准。因此，本文书下的“电子通信”必须始终能够重视书面文件的功能。

¹⁶ 工作组似应考虑，鉴于使用了短语“确认具有相同效力的”，是否还需要“适当”一词。工作组还似应考虑是否应对第1(17)条草案的类似措辞作相应的调整。

23. “签发”和“转让”可转让电子运输记录是指对该记录的排他性控制的签发和转让。¹⁷

24. “合同事项”是指运输单证或电子运输记录中与运输合同或与货物有关的任何信息（包括条款、注释、签名和背书）。

25. “货物”是指承运人根据运输合同承运的任何种类的制品、商品和物件，包括非由承运人提供或代表其提供的包装和任何设备及集装箱。¹⁸

26. “船舶”是指用于海上货物运输的任何船只。

27. “集装箱”是指任何种类的集装箱、可运输罐或平台、可交换式车厢，或用于拼装货物的任何类似货载单元，以及附属于这种货载单元的任何设备。

28. “运费”是指应向承运人支付的根据运输合同运输货物的报酬。¹⁹

29. “住所”是指(a)公司、其他法人、自然人社团或法人社团的(一)法定处所、成立地或中心注册办事处地（按具体情形而定），(二)中心管理机构，或(三)主营业地；和(b)自然人的惯常居住地。²⁰

30. “有管辖权的法院”是指缔约国内，根据本国法院之间管辖权内部划分规则可对某一事项行使管辖权的法院。²¹

第 2 条. 本公约的解释

在解释本公约时，应考虑本公约的国际性、促进公约适用的统一和在国际贸易中遵守诚信的需要。

¹⁷ 案文原载于 A/CN.9/576 第 207 段，并经核准载于 A/CN.9/576 第 210 段供进一步讨论，但是，并没有使用原来案文中的第二句，为了改进行文措辞已删除第二句，以便在第 1(12)(c)条草案结尾处添加以下短语：“根据第 9 条中的程序”。

¹⁸ “或履约方”一语已予删除，因为应当明确，使用“由承运人提供或代表其提供”这样的词语，履约方已经包括在内。

¹⁹ 建议删除这条定义，因为已经删除有关运费的章节，并在第 1(a)款“运输合同”的定义中列入了“运费”。

²⁰ 按照建议对 A/CN.9/576 第 115 段所载案文的调整。建议应当提及协会，因为这些法律实体常常拥有自己的船舶，但可能并未包括在“其他法人”中。为了确定起见增加了“组建地或注册办事处地”，因为“法定处所”并非普遍承认的术语。所有这些改动均符合原文的出处，即欧盟 2000 年 12 月 22 日关于管辖权和民事及海事中承认和执行判决的《第 44/2001 号理事会条例 (EC)》第 60 条的案文[2001 年 1 月 16 日 L 12 号公报]（“布鲁塞尔一号”）。另外，工作组似应注意，作为 A/CN.9/WG.III/WP.56 第 1(aa)和(bb)条草案原载于方括号内的“收货时间”和“收货地”以及“交货时间”和“交货地”被认为多余，已予删除，因为案文第 5、11 和 69 条草案已对这些术语有必要的具体说明。

²¹ 如工作组在 A/CN.9/591 第 73 段中所商定。措辞与 2005 年《法院选择协议公约》第 5(3)(b)条相同。

第 3 条. 形式要求²²

第 19 条第 3 款、第 23 条第 1 至 3 款、第 37 条第 1 款(b)、(c)和(d)项、第 41 条第 3 款(b)项、第 45 条、第 50 条第 3 款、第 53 条第 1 款、第 61 条第(d)项、第 62 条第 1 款、第 66 条、第 69 条、第 89 条第 1 款和第 5 款述及的通知、确认、同意、约定、声明和其他通信必须采用书面形式。经收发人²³同意的，可以为此目的使用电子通信。”

第 4 条. 抗辩和赔偿责任限制的适用

本公约规定的抗辩和赔偿责任限制以及本公约设定的义务，适用于就运输合同所涉及的货物遭受的灭失、损坏或此类货物的迟延交付，或者就违反本公约规定的其他任何义务而对承运人或海运履约方提出的任何诉讼，²⁴而不论该诉讼的依据是合同、侵权还是其他依据。²⁵

第 2 章. 适用范围

第 5 条. 一般适用范围²⁶

1. 除第 6 条另有规定外，本公约适用于收货地和交货地位于不同国家且海上运输²⁷装货港和同一海上运输的卸货港位于不同国家的运输合同，条件是运输合同约定以下地点之一位于缔约国：²⁸

- (a) 收货地；
- (b) 装货港；
- (c) 交货地；或

²² 工作组似应注意，本条并没有列出所有条款，有待进一步审议。此外，工作组似应考虑是否宜在最后案文中加入一项解释性说明，即第 3 条中未列入的本公约所设想的通知可以采取任何形式，包括口头形式或使用不符合“电子通信”定义的数据电文交换。“电子通信”的定义暗示通信必须能够重现书面文件的功能（见前文，关于“电子通信”的定义的注）。

²³ 原来在 A/CN.9/WG.III/WP.56 案文中“同意”一词之前插入的“明示或默示”一语被认为多余，已予取消。

²⁴ 认为增加的“违反其他任何义务”使提及“[或与货物有关]”变得多余。

²⁵ 考虑到第 19(4)条草案的案文，原载于 A/CN.9/WG.III/WP.56 的第 4(2)条草案被认为多余，已予删除。

²⁶ 按照工作组商定意见（A/CN.9/594，第 123 和 128 段），在 A/CN.9/WG.III/WP.61 第 19 段基础上修订的草案。

²⁷ 按照工作组商定意见（A/CN.9/594，第 123 和 128 段），在 A/CN.9/WG.III/WP.61 第 19 段基础上修订的草案。重新插入短语“海上运输”和“同一海上运输的”，以强调海上运输方面，并使案文更加清楚。

²⁸ 在起首句结尾处增加短语“运输合同约定以下地点之一位于缔约国”，以便能够从随后的几项中删除该短语。此外，原载于 A/CN.9/WG.III/WP.56 的几项被分成单独的几款，以明确所列每个组成部分必须在运输合同中约定。

(d) 卸货港。

2. 本公约的适用不考虑船舶、承运人、履约方、托运人、收货人或任何其他利益方的国籍。

第 6 条. 特定除外情形

1. 本公约不适用于班轮运输中的下列运输合同：

- (a) 租船合同，和
- (b) 使用船舶或其中任何舱位的合同，而不论其是否系租船合同。²⁹

2. 本公约不适用于非班轮运输中的运输合同,但下列情形除外：

(a) 当事人之间不存在租船合同或使用船舶或其中任何舱位的合同，而不论此种使用船舶或其中任何舱位的合同是否为租船合同；并且

(b) 运输合同的证明是运输单证或电子运输记录，该单证或记录证明承运人或履约方收到了货物。³⁰

第 7 条. 对某些当事方的适用³¹

虽有第 6 条的规定，如果发货人、收货人、控制方或持有人³²不是被排除在本公约适用范围之外的租船合同或其他运输合同的原始当事方，本公约仍在承运人与此等当事方之间适用。但是，如果当事方是根据第 6 条被排除在外的运输合同的原始当事方，本公约不适用。³³

第 3 章. 电子运输记录

第 8 条. 电子运输记录的使用与效力

在不违反本公约所述要求的情况下：

²⁹ 按照工作组商定意见（A/CN.9/594，第 129 和 133 段），在 A/CN.9/WG.III/WP.61 第 23 段基础上新拟订的草案。

³⁰ （按照工作组商定意见，A/CN.9/594，第 129 和 133 段）重新拟订 A/CN.9/WG.III/WP.61 第 23 段的案文，但无意改变本款的意思。

³¹ 按照工作组商定意见（A/CN.9/594，第 134 和 140 段），以 A/CN.9/WG.III/WP.61 第 23 段为基础拟订的草案。

³² 按照 A/CN.9/594 第 138 和 140 段所载工作组审议情况，从 A/CN.9/WG.III/WP.61 第 23 段案文中删除了短语“第 34 条（现在的第 33 条）所述的人”，目的在于澄清，因为在第 7 条草案适用于第 33 条草案中的单证托运人时，指的是适用于作为控制方或持有人的人，而非作为单证持有人的人。

³³ 按照工作组商定意见（A/CN.9/594，第 134 至 140 段），取自 A/CN.9/WG.III/WP.61 第 23 段的案文，只是略作调整以改进行文措辞，但本条草案的实质内容未作改动。

(a) 凡应载入或载于运输单证的内容均可在电子运输记录中加以记录，但电子运输记录的签发和随后的使用须得到承运人和托运人的同意³⁴；且

(b) 电子运输记录的签发、控制或转让与运输单证的签发、占有或转让具有同等效力。

第 9 条. 可转让电子运输记录的使用程序

1. 使用可转让电子运输记录必须遵守包含以下内容的程序：

(a) 该记录向预期持有人签发和转让的方法；

(b) 对可转让电子运输记录保持其完整性的保证；

(c) 持有人能够证明其持有人身份的方式；和

(d) 已向持有人交货的确认方式，或根据第 10 条第 2 款或第 49 条(a)(二)项可转让电子运输记录已失效的确认方式。

2. 本条第 1 款中的程序应当在合同事项中述及并且必须易于查明。³⁵

第 10 条. 可转让运输单证或可转让电子运输记录的替换

1. 已签发可转让运输单证的，而且承运人和持有人均同意以可转让电子运输记录替换该单证的：

(a) 持有人应向承运人提交该可转让运输单证，签发一份以上单证的，应提交所有单证；

(b) 承运人应向持有人签发一份可转让电子运输纪录，其中应包括一项关于替换该可转让运输单证的声明；并且

(c) 该可转让运输单证随即失去效力。

2. 已签发可转让电子运输记录的，而且承运人和持有人均同意以可转让运输单证替换该电子记录的：

(a) 承运人应向持有人签发一份替换该电子运输记录的可转让运输单证，其中应包括一项关于替换该可转让电子运输记录的声明；并且

(b) 该电子运输记录随即失去效力。

³⁴ 原来在 A/CN.9/WG.III/WP.56 案文中“同意”一词之前插入的“明示或默示”短语被认为多余，已予取消。

³⁵ 如 A/CN.9/WG.III/WP.47 脚注 34 所述，并如 A/CN.9/576 第 198-199 段商定，使用“易于查明”一语是为了不必过于详细地指明，必须将必要的程序提供给在以可转让电子运输记录的效力为依据作出法律承诺以前对了解此类程序具有正当利害关系的当事人。另指出，所设想的制度的运作方式应无异于目前提供提单条款和条件的情况。工作组似应考虑在公约草案的说明还是在评注部分详述相关细节。

第 4 章. 责任期间

第 11 条. 承运人责任期间

1. 除第 12 条另有规定外，承运人根据本公约对货物的责任期间从承运人或履约方为运输而接收货物时开始，到货物交付给收货人时结束。³⁶

2. 为运输而接收货物以及交付货物的时间和地点是运输合同中约定的时间和地点，运输合同中无此种约定的，是符合行业习惯、做法或惯例的时间和地点。无此种约定或无此类习惯、做法或惯例的，：

(a) 为运输而接收货物的时间和地点是承运人或履约方实际接管货物的时间和地点；

(b) 交付货物的时间和地点是根据运输合同货物从最后一种运输工具卸下的时间和地点。³⁷

3. 发货人在收货地或承运人在交货地被要求将货物交给当某当局或其他第三方，而依照收货地或交货地的法规货物应交给该当局或第三方，并且承运人或收货人（视情况而定）可以从该当局或该其他第三方提取该货物的，则：³⁸

(a) 承运人自该当局或该其他第三方提取货物的时间和地点是本条第 2 款(a)项规定的承运人接收货物的时间和地点；

(b) 在交付地上述移交货物的时间和地点是本条第 2 款(b)项规定的承运人交付货物的时间和地点。

4. 除第 14 条第 2 款另有规定外，为确定承运人责任期间，运输合同不得约定：

(a) 接收货物的时间是在根据运输合同开始最初装货之后；或

(b) 交付货物的时间是在根据运输合同完成最后卸货之前。³⁹

第 12 条. 运输合同未涵盖的运输⁴⁰

应托运人的要求，承运人可以同意就运输合同中未涵盖的特定运输签发单一的运输单证或电子运输记录。在此种情况下，[承运人的责任涵盖运输合同的期间，除非另有约定，承运人应当代表托运人安排此种运输单证或电子运输记

³⁶ “给收货人”一语被认为不必要，已从本款和 3(b)项中删除，因为这些条款中所提及“交货”涉及的不是承运人的义务，而是决定承运人责任期间结束的实际交货。

³⁷ 第 2 款合并并取代 A/CN.9/WG.III/WP.56 所载本条草案原第 2 和 4 款。改动意在改进行文措辞，而非改变实质内容。

³⁸ 秘书处提出本款是为了处理发货人被要求在将货物交给承运人之前先将货物交给有关当局如海关当局的情况。此外，第 3 款合并并取代 A/CN.9/WG.III/WP.56 所载本条草案原第 3 和 5 款。改动意在改进行文措辞，而非改变实质内容。

³⁹ 提出第 6 款是为了确保不得在运输合同中包括各种假定以缩短承运人的责任期间。

⁴⁰ 工作组似应考虑在关于责任期间的第 4 章中列入第 12 条是否恰当。

录所规定的附加运输。[[承运人应当以合理的谨慎选择其他承运人，按惯常条款与该其他承运人订立合同，并采取一切合理要求的措施使该其他承运人得以适当地履行合同。]]⁴¹

第 5 章. 承运人的义务

第 13 条. 货物的运输和交付

承运人应当根据本公约并依照运输合同的条款，⁴²将货物运至目的地并将其交给收货人。

第 14 条. 具体义务

1. 在第 11 条规定的责任期间内，除第 26 条另有规定外，承运人应当妥善地、谨慎地接收、⁴³装载、操作、积载、运输、保管、照料、卸载和交付货物。

2. 虽有本条第 1 款的规定，在不影响第 5 章的其他规定和第 6 至第 8 章的规定的情况下，⁴⁴当事各方可约定由托运人或者第 34 条第 1 款述及的任何人、控制方或收货人装载、操作、积载和卸载货物。此种约定应当在合同事项中述及。

第 15 条. 可能形成危险的货物⁴⁵

虽有第 13 条、第 14 条和第 16 条第 1 款的规定，如果货物已经或者显现有可能在承运人责任期间内对人身、财产或环境形成实际危险，承运人或履约方可拒绝接收或装载货物，并且可采取包括将货物卸下、销毁或使之不能为害等其他合理的措施。⁴⁶

第 16 条. 特别适用于海上航程的义务

1. 承运人应当在开航前、开航当时和海上航程中谨慎处理：

(a) 使船舶处于并保持适航状态；

⁴¹ 由于 A/CN.9/WG.III/WP.56 所载本条草案备选案文 B 的第一句只是为了澄清备选案文 A 第 1 款，现将两个备选案文合二为一，第二句中中方括号内的案文提供两个备选办法：第一个备选办法将承运人在安排附加运输方面的义务从合理谨慎改为运输合同或以其他方式约定的任何条件，第二个备选办法保留承运人须合理谨慎的义务。

⁴² 按建议删除了多余和重复的“[妥善地、谨慎地]”，因为“根据本公约”已经包括了妥善、谨慎地运输。另外，第 13 条草案意在作为一项在随后各条进一步加强的一般义务。

⁴³ 增加了“接收”和“交付”，以确保承认这两项是承运人的义务。

⁴⁴ 增加起始句“虽有本条第 1 款的规定，在不影响第 5 章的其他规定和第 6 至第 8 章的规定的情况下”，以使案文更加清楚。

⁴⁵ 本条草案的修订案文合并了 A/CN.9/WG.III/WP.56 中备选案文 A 和备选案文 B 的内容。

⁴⁶ A/CN.9/WG.III/WP.56 案文中对环境构成“非法的或不能接受的威胁”的概念改成“对环境形成危险”，以便使标准更加客观。

(b) 妥善地配备船员⁴⁷、装备船舶和补给供应品，并在整个航程中保持此种配备⁴⁸、装备和补给；

(c) 使并保持货舱和船舶所有其他载货处所，包括由承运人提供的装载货物的集装箱，适于并能安全地收受、运输和保管货物。

[2. 虽有第 13 条、第 14 条和第 16 条第 1 款的规定，承运人或履约方仍可牺牲货物，但此种牺牲应是为了共同安全或是为了避免同一海上航程中人命或其他财产遭受危险而合理作出的。]⁴⁹

第 6 章. 承运人对灭失、损坏或迟延交付承担的赔偿责任

第 17 条. 赔偿责任基础⁵⁰

1. 如果索赔人证明货物的灭失、损坏或迟延交付或造成或促成灭失、损坏或迟延交付的事件或情形⁵¹是在第 4 章规定的承运人责任期间内发生，承运人应当对货物的灭失或损坏以及迟延交付承担赔偿责任。

2. 如果承运人证明造成灭失、损坏或迟延交付的原因或原因之一不是承运人本人的过失或者第 18 条第 1 款述及的任何人的过失，承运人免除其根据本条第 1 款承担的全部或部分赔偿责任。

3. 除证明不存在本条第 2 款规定的过失之外，承运人还可通过证明下列一种或多种事件或情形造成或促成了灭失、损坏或迟延交付，免除其根据本条第 1 款规定承担的全部或部分赔偿责任：

- (a) 天灾；
- (b) 海上或其他通航水域的风险、危险和事故；
- (c) 战争、敌对行动、武装冲突、海盗、恐怖活动、暴乱和民变；
- (d) 检疫限制；政府、公共当局、统治者或人民的干涉或造成的障碍，包括非由承运人或第 18 条述及的任何人所造成的滞留、扣留或扣押；⁵²
- (e) 罢工、关厂、停工或者劳动受限；

⁴⁷ 如 A/CN.9/WG.III/WP.36 脚注 56 所述，用不反映性别的文字“crew”取代“man”。

⁴⁸ 同上。

⁴⁹ 如 A/CN.9/544 第 157 段所指出，工作组决定继续将第 16(2)条草案放在方括号内，目前的位置不变，以便今后再考虑是否应当移至有关共同海损的第 17 章。

⁵⁰ 对原来案文的重拟稿，原来的案文载于 A/CN.9/572 第 31 和 75 段，在 A/CN.9/572 第 33 和 80 段中获广泛接受，并在 A/CN.9/WG.III/WP.56 中公布。对本条草案的重拟稿完全取自已获接受的原来的案文，重拟的目的只是通过简化本条草案的结构而改进行文措辞，无意对条款的内容作任何改变。

⁵¹ “情形”一词改成了“事件或情形”，以便统一本条草案其他地方使用的案文并使案文更加清楚。在本条草案中，“事件或情形”的提法已成为标准提法。

⁵² 需要进一步审查提及第 18 条第 1 款是否必要。

- (f) 船上发生的火灾；
- (g) 通过合理的谨慎而无法发现的[船舶][运输工具]⁵³的潜在缺陷；
- (h) 托运人[、发货人]⁵⁴或第 34 条⁵⁵第 1 款述及的任何人、控制方或收货人的作为或不作为；
- (i) 根据第 14 条第 2 款按照约定进行的装载、操作、积载或卸载⁵⁶，除非承运人[或履约方]代表托运人实施此项活动；
- (j) 由于货物固有缺陷、品质或瑕疵而造成的数量或重量的损耗或其他任何灭失或损坏；
- (k) 非由承运人[或代其行事的人]所做的包装或标记的欠缺或缺陷；
- (l) 救助或试图救助海上人命；
- (m) 救助或试图救助海上财产的合理措施；
- (n) 避免或试图避免对环境造成危害的合理措施；
- (o) 承运人⁵⁷根据第 15 条和第 16 条第 2 款所赋权力的作为。⁵⁸
4. 虽有本条第 3 款规定，如果索赔人能够作出以下证明，承运人仍对灭失、损坏或迟延的全部或部分承担赔偿责任：
- (a) 承运人或第 18 条第 1 款述及的人的过失造成或促成了承运人所援引的事件或情形；
- (b) 本条第 3 款所列事件或情形以外的事件或情形促成了灭失、损坏或迟延，并且承运人无法证明该事件或情形既非其过失也非第 18 条第 1 款述及的任何人的过失所致。
5. 虽有本条第 3 款的规定，在下列情况下，承运人也仍应对灭失、损坏或迟延的全部或者部分承担赔偿责任：
- (a) 索赔人证明造成或可能造成，促成或可能促成灭失、损坏或迟延的原因是：(一)船舶不适航；(二)配备船员、装备船舶和补给供应品不当；或(三)货舱或

⁵³ 工作组似应考虑本款打算处理方括号内的哪一个措词。

⁵⁴ 工作组似宜决定第 34 条草案是否打算包括“收货人”，若打算包括，应在第 34 条草案中明确列入。如果第 34 条草案包括“收货人”，就不需要这种提法了。

⁵⁵ 需要进一步审议提及第 34 条是否必要。

⁵⁶ 建议增加“卸载”一词是为了与第 14 条草案的措词保持一致。

⁵⁷ A/CN.9/WG.III/WP.56 案文中“承运人”一词之后“或履约方”一词被认为多余，已予删除，因为履约方不享有第 15 和 16 条草案所赋予的权力。

⁵⁸ 根据工作组对第 15 和 32 条草案的审议（见 A/CN.9/510，第 128-130 段，A/CN.9/591，第 157-170 段以及 A/CN.9/594，第 195-198 段），本款草案前后的方括号被去掉，“在货物已对人身、财产或环境造成危害或被牺牲时”一语被认为不必要，也予删除。

船舶的其他载货处所（包括由承运人提供的装载货物的集装箱）不适于且不能安全地收受、运输和保管货物；并且

(b) 承运人既无法证明灭失、损坏或迟延不是本条第 5 款(a)项述及的任何事件或情形造成的，也无法证明其遵守了第 16 条第 1 款所规定的合理谨慎的义务。

6. 承运人根据本条规定被免除部分赔偿责任的，承运人仅对其根据本条应承担赔偿责任的事件或情形所造成的那部分灭失、损坏或迟延承担赔偿责任。

第 18 条. 承运人为其他人承担的赔偿责任⁵⁹

1. 下列人的作为或不作为违反本公约规定的义务，承运人应承担赔偿责任：

(a) 任何履约方；和

(b) 直接或间接地根据承运人的请求或者在承运人的监督或控制下作为，履行或承诺履行承运人在运输合同下的义务的任何其他人⁶⁰；⁶¹

[2. 承运人仅对履约方或其他人在其合同、雇用或代理范围内的作为或不作为承担本条第 1 款规定的赔偿责任。]⁶²

第 19 条. 海运履约方的赔偿责任

1. 海运履约方[，在缔约国最初收到货物的，或者在缔约国最终交付货物的，或者在缔约国某一港口履行与货物有关的各种活动的⁶³：

(a) 受本公约规定的有关承运人义务和赔偿责任的约束，并且有权享有本公约规定的有关承运人的权利和免责，但造成灭失、损坏或迟延的事件须发生

⁵⁹ 注意，按照工作组对第 28 条草案的审议（A/CN.9/594，第 186 段），A/CN.9/WG.III/WP.56 中本条文前面的原第 18 条草案已被删除。A/CN.9/WG.III/WP.56 中第 1 款的起始句“在服从于第 20 条第 4 款的前提下”已被删除，以改进行文措辞，避免不必要的相互参照。

⁶⁰ A/CN.9/WG.III/WP.56 案文中“承运人”一词之后的短语“包括履约方的雇员、代理人和分包人”被认为多余，已予删除，因为第 1(6)条草案“履约方”的定义中现已包括该短语。

⁶¹ A/CN.9/WG.III/WP.56 案文中短语“如同这种作为或不作为系承运人本人所为或不为”被认为多余，已予删除。

⁶² 工作组似应考虑删除本款，因为本款在有些法域引起证据问题，如在有些法域，吸烟引起火灾或者偷盗货物的雇员被认为所作所为不属于雇用或合同的范围。删除本款将把哪些内容属于雇用范围这一问题留给国内法处理。第 34 条草案第 2 款应作类似处理。

⁶³ 插入短语“[，在缔约国最初收到货物的，或者在缔约国最终交付货物的]”，因为这样做在行文措辞上优于按照工作组商定意见（A/CN.9/594，第 140-145 段）插入 A/CN.9/WG.III/WP.61 第 44 段所载第 5 款的做法。A/CN.9/WG.III/WP.61 所载第 5 款案文内容如下：“5. 本条不予适用，除非海运履约方的最初收货地或海运履约方的最终交货地位于一缔约国。”此外，插入短语“或者在缔约国某一港口履行与货物有关的各种活动的”短语，以改进行文措辞，使本条规定进一步完善。

在货物到达船舶装货港至货物离开船舶卸货港的期间内，并且货物在其掌管之下或者其参与履行运输合同所涉及任何活动的任何其他时间内，并且

(b) 应对由其委托履行承运人在运输合同项下的任何义务的人违反本公约对其规定的义务的作为和不作为承担赔偿责任。⁶⁴

2. [海运履约方仅对相关人员在⁶⁵其合同、雇用或代理范围内的作为或不作为承担本条第 1 款规定的赔偿责任。]

3. 承运人同意在本公约对其规定的义务的范围之外承担义务的，或者同意其承担的赔偿责任高于第 63 条、第 62⁶⁶条和第 25 条第 5 款所规定的限额的，海运履约方不受该协议的约束，除非海运履约方明确同意接受该义务或该限额。

4. 如果[对海运履约方]⁶⁷[对承运人或海运履约方的雇员或代理人]⁶⁸[对承运人以外的，第 18 条第 1 款或本条第 1 款(a)项述及的任何其他人]⁶⁹提起诉讼⁷⁰，[经其证明]⁷¹其是在其合同、雇用或代理范围内行事的，该人有权享有本公约为承运人规定的抗辩和赔偿责任限额。

第 20 条. 连带赔偿责任和扣除

1. 承运人和一个或一个以上的海运履约方对于货物的灭失、损坏或迟延交付负有赔偿责任的，此种责任为连带责任，[即，任何一方均对此种灭失、损

⁶⁴ 为了改进行措辞并与第 19 条草案保持一致，A/CN.9/WG.III/WP.56 中原第 20(1)(a)和(b)条草案被合并成一款，A/CN.9/WG.III/WP.56 中原第 20(3)条草案被挪动位置，成为第 19(1)条草案(b)项。

⁶⁵ 为了改进行措辞并与第 18 条草案保持一致，A/CN.9/WG.III/WP.56 中原第 20(1)(b)条草案被移到第 19(2)条草案。给本短语加上方括号以与别处案文对类似短语的处理相对应。另见上文对第 18(2)条草案的脚注 62 和下文对第 34(2)条草案的脚注 110。

⁶⁶ 如 A/CN.9/WG.III/WP.36 脚注 69 所述，工作组注意到有人建议限制提及第 62 条草案，因为据指出，虽然提及第 62 条草案第(1)、(2)、(3)和(4)款是可以接受的，但是不应提及第 62 条草案第(2)款，因为在损坏地点未确定的情况下，履约方不承担责任。工作组决定需在就是否在决议草案中列入第 62 条草案第(2)款作出决定之后进一步讨论该建议。

⁶⁷ 短语“根据本公约”从 A/CN.9/WG.III/WP.56 案文中删除，以扩大本条文的适用范围，然后通过在该项结尾处使用“根据本公约”，使本条文的适用范围受到限制。

⁶⁸ 这种用法以前反映在 A/CN.9/WG.III/WP.56 原第 20(4)条草案的备选案文 A 中。

⁶⁹ 这种用法反映了 A/CN.9/WG.III/WP.56 第 4(2)条草案的用法。

⁷⁰ 这种用法反映了 A/CN.9/WG.III/WP.56 原第 20(4)条草案备选案文 B 的用法。此外，A/CN.9/WG.III/WP.56 中本条文中的短语“包括订约承运人或海运履约方的雇员或代理人在内”被删除，因为这一概念已包括在第 1 条草案“海运履约方”的定义中。

⁷¹ 工作组似应考虑是否应删除方括号内的案文，以减少有权要求享有承运人赔偿责任限制抗辩权的人的举证责任。

坏或迟延负全额赔偿责任，而不影响其可能向负有赔偿责任的其他责任人行使追偿的权利，]72但仅限于第 25 条、第 62 条和第 63 条所规定的限额。

2. 在不影响第 64 条规定的情况下，上述所有人的累计赔偿责任不应超过本公约所规定的赔偿责任总限额。

[3. 索赔人就货物的灭失、损坏或迟延交付从非海运履约方获得赔偿之后，索赔人已经获赔的数额应当在其随后就灭失、损坏或迟延向承运人或海运履约方提出索赔的数额中扣除。]73

第 21 条. 迟延

未能在明确约定的时间内在运输合同规定的目的地交付货物，或者无此类约定时，未能在考虑到合同条款、行业习惯、做法和惯例74以及运程情况之后在勤勉的承运人理应做到的期间内在运输合同规定的目的地交付货物，为迟延交付。

第 22 条. 赔偿额的计算

1. 除第 62 条另有规定外，承运人对货物灭失或损坏应支付的赔偿额，参照货物在第 11 条确定的交货地和交货时的价值计算。

2. 货物的价值根据商品交易价格确定，无此种价格的，根据其市场价格确定，既无商品交易价格又无市场价格的，参照交货地同种类和同品质货物的通常价格确定。

3. 货物发生灭失或损坏的，承运人对超出本条第 1 款和第 2 款所规定的赔偿额不负任何赔偿责任，除非承运人和托运人在第 19 章规定的限度内约定了赔偿额的不同计算方法。

第 23 条. 灭失、损坏或迟延的通知

1. 在没有相反证据的情况下，除非已在交货前或交货时，或者在灭失或损坏不明显的情况下，在交货后[三个工作日][七天][交货地七个工作日][连续七

⁷² 按照 A/CN.9/552 第 12 和 17 段的决定，增加了带方括号的短语，以澄清“连带赔偿责任”的含义。不过，工作组似应审议“连带赔偿责任”这一用语在多项国际文书中的使用情况，其中包括：《汉堡规则》第 10(4)条；经 1999 年《修订议定书》修正的《国际铁路货物运输合同统一规则》（1999 年“《铁路运输公约——铁路货运合同统一规则》”）第 27(4)条；2000 年《关于内河航道货物运输合同的布达佩斯公约》（“《内河货运公约》”）第 4(5)条；经 1955 年和 1975 年议定书修正的《统一国际航空运输某些规则的公约》（“《华沙公约》”）第 30(3)条；1999 年蒙特利尔《统一国际航空运输某些规则的公约》（“《蒙特利尔公约》”）第 36(3)条。

⁷³ 按照 A/CN.9/552 第 14 和 17 段的决定，已拟订了一项修订草案，有待就拟订一项关于抵消问题的统一规则进行进一步讨论或将这一问题留给国内法处理。工作组似应审议本款是否必要，或可否删除。此外，若工作组决定删除“非海运履约方”的定义，可以用短语“海运履约方以外的履约方”取代“非海运履约方”。

⁷⁴ 为了与公约草案其他条款如第 11 条草案保持一致，插入短语“行业习惯、做法和惯例”，取代 A/CN.9/WG.III/WP.56 本条文中的“运输特点”一语。

天]内向承运人或实际交付货物的履约方提交了⁷⁵表明货物灭失或损坏的一般性质的货物⁷⁶灭失或损坏通知，否则推定承运人已按照合同事项中有关货物的记载交付了货物。被交付货物的人⁷⁷、承运人或当时被要求承担赔偿责任的海运履约方对货物进行了联合检验的，无需就联合检验所查明的灭失或损坏提交此类通知。⁷⁸

2. 除非因迟延造成损失的通知在交货后的 21 个连续日内提交承运人，否则无须根据第 21 条和第 63 条支付任何赔偿金。

3. 向实际交付货物的履约方提交本条所指的通知，与向承运人提交通知具有同等效力；向承运人提交通知，与向海运履约方提交通知具有同等效力。

4. 关于任何实际产生的或预计产生的灭失或损坏，与争议有关的各当事方应当为检查和清点货物相互提供一切合理便利，并且应当为查询有关货物运输的记录和文件提供机会。

第 7 章. 有关运输特定阶段的补充条款

第 24 条. 海上运输途中的绕航

绕航按照国内法构成违反承运人义务的，此种绕航本身不应剥夺本公约为承运人或海运履约方提供的任何抗辩或赔偿责任限制，但第 64 条规定的情形除外。⁷⁹

第 25 条. 船舶上的舱面货⁸⁰

1. 仅在下列情形下可以在船舶舱面上运载货物：

(a) 根据法律要求进行的此种运输；或

(b) 货物载于舱面载运的集装箱⁸¹之内，而此舱面系专门用于载运此类集装箱的；或

⁷⁵ 本款中“与该货物有关的”被认为不必要，已予删除。

⁷⁶ 短语“收货人或代表收货人行事的人”被删除，以便改进行文措辞，因为只要通知提交了，通知由谁提交无关紧要。

⁷⁷ 以“被交付货物的人”取代“收货人”，以澄清本条文指的是由收到货物的人进行的联合检验，而该人实际上可能不是法律意义上的收货人。

⁷⁸ 选择用 A/CN.9/WG.III/WP.56 所载第 1 款备选案文 A 而不是备选案文 B 插入，是因为备选案文 A 行文措辞更好，更加清楚，并且不会导致重大歧义。

⁷⁹ A/CN.9/WG.III/WP.56 中备选案文 A 和 B 因与第 17(3)(l)和(m)重叠而被认为引起混淆，已予删除，这两个备选案文可被视为建立了引起混淆的不同标准。用来取而代之的案文以先前载于 A/CN.9/WG.III/WP.56 脚注 105 和 424 的案文为基础，据认为该案文行文措辞更佳。

⁸⁰ 已在行文措辞上加以改进，以使 A/CN.9/WG.III/WP.56 所载本条草案案文更加清楚，但其意思保持不变。

⁸¹ 短语“[适合在舱面上载货]”被认为多余，已予删除。

(c) 舱面运输系运输合同或⁸²符合行业习惯、惯例和做法。

2. 本公约有关承运人赔偿责任的规定适用于根据本条第 1 款在舱面上载运的货物的灭失、损坏或迟延交付，但是，根据本条第 1 款(a)项或(c)项运载货物的，对于舱面载运货物涉及的特殊风险所造成的货物的灭失、损坏或迟延交付，承运人不负赔偿责任。⁸³

3. 不是在本条第 1 款所准许的情形下在舱面上运载了货物的，对于完全由于在舱面上运载货物所造成的货物的灭失、损坏或迟延交付，承运人负赔偿责任，并且无权享有第 17 条所规定的抗辩。

4. 善意第三方已经取得可转让运输单证或可转让电子运输记录的，承运人无权对其援用本条第 1 款(c)项的规定，除非合同事项载明可以在舱面上运载货物。⁸⁴

[5. 承运人和托运人[明确]约定货物将载于舱内的，承运人无权对[[仅仅由于货物载于舱面而造成的][货物载于舱面而造成损失这一限定范围内的]货物的任何灭失、损坏或迟延交付]⁸⁵享受赔偿责任限制。]⁸⁶

第 26 条. 海上运输之前或之后的运输⁸⁷

1. 如果货物的灭失或损坏或引起延迟交付的事件发生在承运人的责任期间内，但发生的时间仅在货物装船之前或者仅在货物卸离船舶之后，本公约的规定不得优先于其他国际文书⁸⁸[或国内法]的下述条文，在此种灭失、损坏或引起延迟交付的事件发生时：

⁸² 短语“系运输合同或”前后原有的方括号已予删除，因为加上方括号是为了等待工作组对合同自由问题进行审议，现在已经进行了这一审议。

⁸³ 如 A/CN.9/552 第 108 和 109 段所述，可能需要结合第 17(6)款草案对第 2 款进行更详尽的讨论，但对第 17(6)款的改动可能使讨论变得没有必要。

⁸⁴ 如 A/CN.9/552 第 110 和 111 段所述，将在对第三方权利和合同自由进行讨论之后继续讨论原来作为 A/CN.9/WG.III/WP.56 中第 26(3)条草案的本款，并讨论本款是否应涵盖第三方依赖于不可转让运输单证和电子运输记录的情形。

⁸⁵ 按照 A/CN.9/552 第 113-114 和 117 段的决定，在“仅仅由于货物载于舱面而造成的”前后加上方括号。还增加了另一组备选词语。

⁸⁶ 按照 A/CN.9/552 第 116 和 117 段的决定，在第 5 款前后加上方括号，供今后的届会讨论，并将进一步研究本款与第 64 条草案的关系。

⁸⁷ 重新拟订的原载于 A/CN.9/WG.III/WP.56 的本条第 1 款草案的案文，目的只是改进行文措辞，而无意对本条文的内容作任何改动。

⁸⁸ 此处和第 1(a)和(c)项中的“公约”一词改成了“文书”，以包括区域组织的强制性规定。

(a) [(a)项备选案文 A: 根据该国际文书或[国内法]的规定, 适用于这一期间承运人在运输合同下的一切或部分活动的条文;⁸⁹]

[(a)项备选案文 B: 根据该国际文书或[国内法]的规定, 如果托运人已经就发生货物灭失或损坏或者引起货物迟延交付的事件或情形的特定运输阶段与承运人订有单独和直接的合同, 本应适用于承运人的一切或部分活动的条文;⁹⁰]

(b) 就承运人的赔偿责任、赔偿责任限制或诉讼时效作了具体规定的条文, 并且

(c) 根据该文书[或国内法]完全不能或不能在损害托运人利益的情况下通过订立合同⁹¹加以背离的条文。

[2. 本条第 1 款不影响第 62 条第 2 款的适用。⁹²]

[3. 除[本条第 1 款和第 62 条第 2 款]另有规定外, 承运人和海运履约方对货物灭失或损坏或者迟延交付的赔偿责任, 应当完全由本公约的规定加以调整。⁹³]

第 8 章. 托运人向承运人履行的义务

第 27 条. 交付运输⁹⁴

1. 除非运输合同另有约定, 托运人应当交付备妥待运的货物。任何情况下, 托运人交付的货物必须处于能够承受住预定运输的状态, 包括货物的装载、操作、积载、绑扎、加固和卸载, 且不会造成对人身或财产造成伤害。

[2. 承运人与托运人订有第 14 条第 2 款述及的约定的, 托运人应当妥善而谨慎地装载、操作、积载或卸载货物。]

⁸⁹ 备选案文 A 是 A/CN.9/WG.III/WP.56 所载原第 27(1)(b)(-)条草案的案文, 只是略微改进了行文措辞。此外, 如 A/CN.9/WG.III/WP.21 第 55 段所述, 方括号内的案文 “[不论是否需要签发任何特定单证以适用该国际公约]” 反映了 1980 年《国际铁路运输公约》(“《铁路运输公约》”) 所规定的情况。由于 1999 年《铁路运输公约修订议定书》已于 2006 年 7 月生效, 两个备选案文中方括号内的案文已经去掉。

⁹⁰ 备选案文 B 以 A/CN.9/616 第 224 段提出并在第 228 段中商定的起草建议为基础。

⁹¹ “合同”一词前面的“私人”被认为多余, 已予删除。

⁹² 若删除第 62(2)款, 本款也应删除。

⁹³ 已用 A/CN.9/WG.III/WP.78 第 36 段中的案文取代 A/CN.9/WG.III/WP.56 中的第 3 款, 工作组有关审议情况载于 A/CN.9/616 第 233 和 235 段。虽然本款的案文发生变化, 但其目的与以前案文相同, 正如 A/CN.9/WG.III/WP.21 第 54 段所述, 作为一则冲突法条文, 目的是维护内陆运输公约的适用性。

⁹⁴ 经过修订的案文, 意在根据 A/CN.9/WG.III/WP.56 脚注 116 和 435 所载案文简化本条的案文 (见 A/CN.9/591 第 113 和 120 段), 并澄清第 1 款草案指的是货物本身的状况和包装, 而第 2 和第 3 款草案指的是货物的正确积载。第 2 款草案考虑到根据第 14(2)条草案就船方不负装卸货费用条款达成协议的情况。

3. 托运人装载集装箱或拖车的，托运人应当对集装箱或拖车之内或之上的货物进行妥善而谨慎地积载、绑扎和加固，并且使货物不会对人身或财产造成伤害。

第 28 条. 托运人和承运人提供信息和指示的义务

在不影响第 30 条对托运人规定的义务的情况下，如果有关货物正确操作和运输的信息处于被请求人的占有之下，或者有关货物正确操作和运输的指示是在被请求人能够合理提供的范围之内，并且请求人无法以其他合理方式获取此种信息和指示，承运人和托运人应当答复对方提出的提供此种信息和指示的请求。⁹⁵

第 29 条. 托运人提供信息、指示和单证的义务⁹⁶

1. 托运人应当及时向承运人提供承运人无法以其他合理方式获取的，而且是为下述目的而合理⁹⁷需要的与货物有关的信息、指示和单证：

(a) 为了货物的正确操作和运输，包括承运人或履约方应采取的预防措施；和

(b) 为了承运人遵守公共⁹⁸当局关于预定运输的法律、规章或其他要求，但承运人应及时向托运人发出关于他所需要的信息、指示和单证的通知；

2. 本条任何规定概不影响根据公共当局有关预定运输的法律、规章或其他要求提供有关货物的某些信息、指示和单证的任何特定义务。

第 30 条. 托运人对承运人赔偿责任的基础

1. [第一句的备选案文 A⁹⁹：对于承运人遭受的灭失¹⁰⁰或损坏[，包括迟延造成的灭失或损坏]，如果承运人证明此种灭失或损坏是货物造成的¹⁰¹或者是因为违反第 27 条和第 29 条第 1 款(a)和(b)项对托运人规定的义务而造成

⁹⁵ 按照工作组商定意见（A/CN.9/594，第 186 段），根据 A/CN.9/WG.III/WP.67 第 14 段备选案文 C 修订的草案。工作组似应根据第 29 条草案的内容考虑是否将本条草案包括在内。

⁹⁶ 按照工作组商定意见（A/CN.9/594，第 187-194 段），根据 A/CN.9/WG.III/WP.69 第 6 段修订的草案，有些内容取自 A/CN.9/WG.III/WP.67 第 20 段备选案文 A。

⁹⁷ 工作组似应考虑第二个“合理”可否删除，因为“需要”一词被认为已经足够。

⁹⁸ 本条草案第 1 和 2 款为起草和翻译目的再次使用“公共主管当局”短语，并且是为了与第 17(3)(d)条草案中的用法保持一致。

⁹⁹ 根据工作组第十六届会议的审议情况（A/CN.9/591，第 136-153 段）修订的草案。A/CN.9/WG.III/WP.56 中原第 2 款备选案文 A 和 B 以及原第 3 款相应从本条草案中删除，第 2 款备选案文 A 和 B 中有关提供准确信息的严格赔偿责任移到了第 31 条草案的一个新条文中。第 1 款备选案文 A 的案文依照第 17(1)条草案的写法。

¹⁰⁰ 这种灭失可以包括迟延造成的灭失。

¹⁰¹ 工作组似应审议“货物造成的”一语放在此处是否恰当。

的，托运人应当承担赔偿责任。[[第一句的备选案文 B¹⁰²：对于违反第 27 条和第 29 条对托运人规定的义务而造成的灭失、[或]损坏[或迟延]，如果此种灭失、[或]损坏[或迟延]是由于托运人或第 34 条述及的任何人的过失而造成的，托运人应当对承运人负赔偿责任。]除第 31 条和第 32 条规定的情形外，如果托运人证明造成此种灭失、[或]损坏[或迟延]的原因或原因之一不是托运人本人的过失或第 34 条述及的人的过失所致，可以免除托运人的全部或部分赔偿责任。

2. 托运人根据本条被免除部分赔偿责任的，托运人仅对因其过失或第 34 条提及的任何人的过失所造成的那部分灭失、[或]损坏[或迟延]承担赔偿责任。¹⁰³

第 31 条. 拟定合同事项所需要的信息¹⁰⁴

1. 托运人应当及时向承运人提供拟定合同事项以及签发运输单证或电子运输记录所需要的准确信息，包括第 37 条第 1 款(a)、(b)和(c)项所述及的事项；合同事项中拟载明为托运人的当事方名称；有收货人的，收货人名称；须凭指示签发运输单证或电子运输记录的，指示人名称。

2. 承运人收到根据本条第 1 款提供的信息时，理当认为托运人已经对信息的准确性给予保证。托运人应当就此种信息或单证的不准确所导致的一切灭失、[或]损坏[或迟延]向承运人作出赔偿。

第 32 条. 关于危险货物的特别规则¹⁰⁵

当货物因其本身性质或特性而对人身或财产或环境有，[或形成]，或者适度显现有可能形成危险时：

(a) 托运人应当在发货人将货物交付给承运人或履约方之前，将货物危险性质或特性及时通知承运人。托运人未履行该项义务，承运人或履约方又无法以其他方式了解货物的危险性质或特性的，托运人应当就[运输此种货物][未获通知]所导致的一切灭失、[或]损坏[或迟延]以及费用而向承运人承担赔偿责任。

(b) 托运人应当根据货物预定运输任何阶段所适用的公共主管当局的法律、条例或其他要求，对危险货物加标志或标签。托运人未履行该项义务的，应当为由此导致的一切灭失、[或]损坏[或迟延]而向承运人承担赔偿责任。

¹⁰² 备选案文 B 取自 A/CN.9/WG.III/WP.67 第 25 段所载案文，增加了取自备选案文 A 的第二句，以便利第 2 款草案的适用。

¹⁰³ 第 2 款是仿照第 17(6)条草案拟订的一个新条文，目的是确保托运人和承运人在这方面受到类似的待遇。

¹⁰⁴ 按照工作组商定意见（见 A/CN.9/591 第 148 和 153 段），从 A/CN.9/WG.III/WP.56 所载原第 30 条草案(c)项移至此处，作为一个单独的条文。

¹⁰⁵ 按照工作组商定意见（A/CN.9/594 第 195-198 段），根据 A/CN.9/WG.III/WP.67 第 31 段（不包括第 4 款）所载案文修订的案文。

第 33 条. 单证托运人承担托运人的权利和义务¹⁰⁶

1. 单证托运人¹⁰⁷必须承担本章和第 57 条对托运人规定的义务和赔偿责任，并且有权享有本章和第 14 章对托运人规定的权利和免责。
2. 本条第 1 款规定不影响托运人承担义务、赔偿责任并享有权利或免责。

第 34 条. 托运人对其他人的赔偿责任¹⁰⁸

1. 托运人对任何接受其委托履行托运人任何义务的人违反本公约规定的义务的作为或不作为承担赔偿责任，如同该作为或不作为系托运人本人所为或不为一样，此类人包括托运人的受雇人、代理人和分合同人[，但是，托运人对于根据本章规定受托履行托运人义务的承运人或代表承运人行事的履约方的作为或不作为不承担赔偿责任]。¹⁰⁹

[2. 托运人根据本条第 1 款对相关人员的作为或不作为仅限于在该人员合同、受雇或代理范围内承担赔偿责任。]¹¹⁰

第 35 条. 托运人责任的终止¹¹¹

如果根据运输合同的条款，托运人或合同事项中指明为托运人的其他任何人的赔偿责任在特定事件发生之时或在特定时间之后将全部或部分终止，该条款对下述情形无效：

- (a) 本章对托运人或第 35 条述及的人规定的任何赔偿责任；
- (b) 根据运输合同应付给承运人的任何款项，但承运人已经就该款项的偿付获得足额担保的情形除外。
- [(c) 该条款与第 61 条(d)(三)项有冲突的。¹¹²]

¹⁰⁶ 本条草案按照 A/CN.9/591 第 171-175 段商定的意见修订。

¹⁰⁷ A/CN.9/WG.III/WP.56 所载本款草案第一句移至第 1(10)条草案，作为“单证托运人”的定义。

¹⁰⁸ 按照工作组商定意见（见 A/CN.9/591 第 178 和 180 段），根据 A/CN.9/WG.III/WP.55 第 41 段修订的草案。正如第 17(3)(h)脚注所述，工作组似应决定第 34 条草案是否包括“收货人”，若打算包括，应在第 34 条草案中明确列入。

¹⁰⁹ 方括号内的案文从 A/CN.9/WG.III/WP.56 所载本条草案第 2 款中的原来位置移至第 1 款，以反映第 18 条草案的案文。方括号内的案文意在处理第 14(2)条草案中的船方不承担装卸货费用问题，但是第 17(3)(-)条草案中现已不再提及托运人、第 35 条（现在的第 34 条草案）所述及的任何人或其他人实际履行义务，以照顾短语“根据第 14 条第 2 款按照约定进行的装载、操作、积载或卸载，除非承运人[或履约方]代表托运人实施此项活动。”

¹¹⁰ 工作组似应考虑可否删除本款，因为本款在有些法域引起证据问题，如在有些法域，吸烟引起火灾或者偷盗货物的雇员被认为所作所为不属于雇用或合同的范围。删除本款将把哪些内容属于雇用范围这一问题留给国内法处理。第 18 条草案第 2 款应作类似处理。

¹¹¹ A/CN.9/WG.III/WP.32 原第 43(2)款，从现已删除的关于运费的第 9 章移至此处。

¹¹² 若延后处理关于权利转让的一章，(c)款可以删除。

第 9 章. 运输单证和电子运输记录

第 36 条. 运输单证或电子运输记录的签发¹¹³

除非托运人和承运人约定不使用运输单证或电子运输记录，或者不使用运输单证或电子运输记录系行业习惯、惯例或做法，否则，货物一经向承运人或履约方交付运输：

(a) 发货人即有权获得不可转让运输单证或根据第 8 条(a)项获得不可转让电子运输记录，但只能以此证明承运人或履约方收到了货物；并且

(b) 托运人，或经托运人同意¹¹⁴的单证托运人，有权根据托运人的选择从承运人处获得适当的可转让或不可转让运输单证，或者根据第 8 条(a)项获得可转让或不可转让电子运输记录，除非托运人和承运人约定不使用可转让运输单证或可转让电子运输记录，或者不使用可转让运输单证或可转让电子运输记录系行业习惯、惯例或做法。¹¹⁵

第 37 条. 合同事项¹¹⁶

1. 第 36 条述及的运输单证或电子运输记录中的合同事项应当包括由托运人提供的下列信息：

- (a) 货物记载；
- (b) 识别货物所必需的主标志；
- (c) 货物包数、件数或数量；
- (d) 货物重量（托运人提供的）。

2. 第 36 条述及的运输单证或电子运输记录中的合同事项应当包括：

- (a) 承运人或履约方收到待运货物时货物的表面状况说明；
- (b) 载明为¹¹⁷承运人的人的名称和地址；
- (c) 承运人或履约方收到货物的日期，或货物装船的日期，或运输单证或电子运输记录的签发日期；和

¹¹³ 按照工作组商定意见（A/CN.9/594，第 223 和 224 段）修正的条文草案。已提出额外的起草建议，以澄清行业习惯、惯例或做法的适用。

¹¹⁴ 据认为，短语“向承运人发出指示”太不灵活，含义太狭隘，因此用“同意”一词取代之。

¹¹⁵ 如 A/CN.9/WG.III/WP.32 脚注 127 所述，关于(a)款，认识到第 1(16)条草案界定的运输单证并非都具有证明承运人收到货物的功能，因此必须充分说明，在(a)款中，运输单证应具有收据功能。

¹¹⁶ 按照工作组商定意见（A/CN.9/594，第 225-233 段），A/CN.9/WG.III/WP.56 所载本条草案第 1 款经重新拟订，并分成第 1 款和第 2 款，以使案文更加清楚，因为第 1 款涉及托运人提供的信息。

¹¹⁷ 按照 A/CN.9/616 第 18 和 28 段所载工作组商定意见。

(d) 签发一份以上正本的，可转让运输单证的正本份数。

3. 就本条而言，本条第 2 款(a)项中的“货物表面状况”一词是指在下述基础上确定的货物状况：

(a) 托运人将货物交付承运人或履约方时对包装货物进行的合理外部检查；

(b) 承运人或履约方在签发运输单证或电子运输记录之前实际进行的任何其他检查。

第 38 条. 指明承运人¹¹⁸

1. 合同事项中指明承运人名称的，运输单证或电子运输记录中凡是与此不一致的有关承运人身份的其他信息一概无效。¹¹⁹

[2. 备选案文 A

合同事项未指明承运人但注明货物已装上指定船舶的，推定该船舶的注册船东为承运人。注册船东能够证明运输货物时该船舶处于光船租用之中，合同规定的运输货物义务因而转移至指明的光船承租人的，注册船东可以推翻这一推定。[注册船东根据本条推翻其为承运人的推定的，则以推定注册船东是承运人的同样方式推定运输货物时的光船承租人为承运人。]¹²⁰

备选案文 B

合同事项中未按第 37 条第 2 款(b)项指明任何人为承运人，但合同事项注明货物已装上指定船舶的，推定该船舶的注册船东为承运人，除非注册船东能够证明运输货物时该船舶处于光船租用之中，并且指明该光船承租人并注明其地址，在这种情况下，推定该光船承租人为承运人。或者，注册船东可以通过指明承运人和注明其地址，推翻将其当作承运人的推定。光船承租人可以以同样方式推翻将其作为承运人的任何推定。^{121]}

3. 本条第 2 款中的任何规定不妨碍索赔人证明注册船东以外的任何人是承运人。¹²²

¹¹⁸ 插入这一新的条文草案是为了将有关承运人身份的规定合并成单一的可识别的条文草案。新的条文草案的第 1 款由 A/CN.9/WG.III/WP.79 第 4 段组成，第 2 款备选案文 A 由原载于 A/CN.9/WG.III/WP.56 的第 40(3)条草案组成，第 2 款备选案文 B 由 A/CN.9/WG.III/WP.79 第 5 段组成。

¹¹⁹ 本案文是 A/CN.9/WG.III/WP.79 第 4 段案文的修订，工作组在 A/CN.9/616 第 28 段中同意将后者列入公约草案。修订是为了确保工作组商定的原则可以适用，以便对运输单证和电子运输记录产生同样的效果。

¹²⁰ 备选案文 A 以 A/CN.9/WG.III/WP.56 所载原第 40(3)条草案案文为基础。

¹²¹ 备选案文 B 以 A/CN.9/WG.III/WP.79 第 5 段所建议案文为基础。

¹²² 工作组似应考虑纳入这样的类似规定，以确保货主仍然可以对其认为对灭失或损坏负责的承运人提出索赔，在 A/CN.9/616 第 23 和 28 段中，工作组对此给予支持。

第 39 条. 签名

1. 运输单证应当由承运人或代其行事的人签名。¹²³
2. 电子运输记录应当包含承运人或代其行事的人的电子签名。¹²⁴ 凭借此种电子签名应当能够识别与电子运输记录有关的签名人，并且表明承运人对该电子运输记录的授权。

第 40 条. 合同事项中缺少必要内容

1. 合同事项中缺少第 37 条第 1 款或第 2 款中述及的一项或几项内容或者上述事项记载不准确，不影响运输单证或电子运输记录的法律性质或有效性。
2. 合同事项包含日期但未指明其含义的：¹²⁵
 - (a) 如果合同事项注明货物已经装船，该日期视为运输单证或电子运输记录中注明的所有货物的装船日期¹²⁶；或者
 - (b) 如果合同事项没有注明货物已经装船，该日期视为承运人或履约方收到货物的日期¹²⁷。
3. 合同事项未注明承运人或履约方从发货人处接收货物时的货物表面状况的，该合同事项视为已注明¹²⁸发货人将货物交付承运人或履约方时货物的表面状况良好。¹²⁹

第 41 条. 合同事项中货物记载的保留条款¹³⁰

1. 根据本条规定的情形和方式，承运人可以对第 37 条第 1 款(a)项、(b)项、(c)项或(d)项中述及的信息作出保留，以表明承运人对于托运人所提供信息的准确性不负责任，并且应当是在下列情况下作出这样的保留：

¹²³ 虽然工作组在 A/CN.9/616 第 12 和 13 段商定将“由承运人或经其授权的人”一语改为“由承运人或其代表”，但工作组似应考虑所建议的措辞是否更有效地实现其目标，即把机构和适当主管部门等问题留待有关法律处理。提议的行文措辞与《汉堡规则》第 15(1)(j)条所用的措辞相同。

¹²⁴ 同上。

¹²⁵ 按照工作组在 A/CN.9/616 第 16 和 28 段中商定的意见，案文中“considered”改为“deemed”，以使其含义更加确定。

¹²⁶ 这一起草建议提出颠倒原案文中两个短语的顺序，目的是使本项更加清楚。

¹²⁷ 同上。

¹²⁸ 虽然第 3 款草案的内容已经核准（见 A/CN.9/616），还是在行文措辞上对案文作了澄清，以确保与第 42 条草案的改动相一致，并考虑到《汉堡规则》第 16(2)条的写法。

¹²⁹ 工作组似应考虑本条是否应当提及按照第 37(2)(d)条草案规定现在合同事项所要求的原始提单份数。

¹³⁰ 本条草案经过重新拟订，以简化、理顺其结构，并考虑到 A/CN.9/WG.III/WP.62 第 36-39 段提出的问题，以及工作组第十八届会议的审议情况（A/CN.9/616，第 29-39 段）。

(a) 承运人实际了解运输单证或电子运输记录中的任何重要声明有重大虚假或误导内容；或者

(b) 承运人合理认为运输单证或电子运输记录中的任何重要声明有重大虚假或误导内容。¹³¹

2. 货物不是放在封闭集装箱内交付给承运人或履约方运输的，承运人可以对第 37 条第 1 款(a)项、(b)项、(c)项或(d)项述及的信息作出保留，条件是：

(a) 承运人没有实际可行或商业上¹³²合理的方式核对托运人提供的信息，在这种情况下，承运人可以注明其无法核对的信息；或者

(b) 承运人合理认为托运人提供的信息不准确，在这种情况下，承运人可以列入一个条款以提供其合理认为准确无误的信息。

3. 货物是放在密封集装箱内交付给承运人或履约方运输的，承运人可就下列信息在合同事项中包含一个保留条款：

(a) 第 37 条第 1 款(a)项、(b)项或(c)项述及的信息，条件是：

(一) 无论承运人还是履约方都没有对集装箱内的货物进行过实际检查；或者

(二) 无论承运人还是履约方在签发运输单证或电子运输记录之前都不会以其他方式实际了解集装箱内货物的情况；

(b) 第 37 条第 1 款(d)项述及的信息，条件是：

(一) 无论承运人还是履约方都没有对集装箱称重，而且托运人和承运人未在装运货物之前约定对集装箱称重并将其重量记载在合同事项中；或者

(二) 没有实际可行或商业上¹³³合理的方式核对集装箱重量。

第 42 条. 合同事项的证据效力¹³⁴

除根据第 41 条规定的情形和方式对合同事项作出保留之外：¹³⁵

¹³¹ 按照工作组商定意见（A/CN.9/616，第 35-37、39、41 和 43-44 段）。

¹³² 按照工作组的决定（A/CN.9/616，第 38 段），此处以及第 4(a)和(b)款草案中“承运人能够证明”一语已删除。此外，按照工作组商定意见（A/CN.9/616，第 43-44 段），此处添加了“实际可行或商业上”一语，以便能够删除 A/CN.9/WG.III/WP.56 所载原第 42(a)条草案。

¹³³ 按照工作组商定意见（A/CN.9/616，第 43-44 段），此处添加了“实际可行或商业上”一语，以便能够删除 A/CN.9/WG.III/WP.56 所载原第 42(a)条草案。

¹³⁴ 对 A/CN.9/616 第 58 段所载条文的案文在行文措辞上作了调整。

¹³⁵ 第 42 条草案前导句的内容原来的位置在 A/CN.9/WG.III/WP.56 所载原第 44 条草案中，后者已被删除。

(a) 证明收到货物的运输单证或电子运输记录是承运人收到合同事项中所注明的货物的初步证据；¹³⁶

(b) 承运人就任何合同事项中提出的相反证据，在此种合同事项系下述两种情况之一时不予接受：

(一) 其载于已转让给善意行事的第三方的可转让运输单证或可转让电子运输记录，或者

(二) 其载于注明必须交出方可提货并且已转让给善意行事的收货人的不可转让运输单证或不可转让电子运输记录。¹³⁷

(c) 承运人就第 37 条第 2 款(a)项中述及的载于不可转让运输单证或不可转让电子运输记录中的合同事项针对善意行事的收货人提出的相反证据，在此种合同事项是由承运人提供时不予接受。为本款之目的，第 37 条第 2 款(a)项中述及的信息以及集装箱的号码、型号和识别号（而非集装箱封条的识别号）视为由承运人提供的信息。¹³⁸

第 43 条. “运费已预付”¹³⁹

合同事项¹⁴⁰载有“运费已预付”的声明或类似性质声明的，承运人不得以运费尚未支付这一事实对抗持有人或收货人。¹⁴¹持有人或收货人也是托运人的，本条不适用于。

第 10 章. 货物交付

第 44 条. 接受交货的义务

当货物到达目的地时，[行使运输合同下任何权利的][实际参与运输合同¹⁴²的]收货人应当第 11 条第 2 款述及的时间和地点接受交货。

¹³⁶ 工作组似应注意，本款扩展了《海牙-维斯比规则》第四(5)(f)条所载的本原则适用范围。

¹³⁷ 本项采用《汉堡规则》第 16(3)(b)条的结构重新拟订，以避免最终证据这一难以理解的概念，但是，《汉堡规则》第 16(3)(b)条被扩展，以包括不可转让运输单证和电子运输记录在内。

¹³⁸ 与 A/CN.9/616 第 58 段所载案文版本相比，对(c)款草案作了澄清，工作组在 A/CN.9/616 第 59 段已就这些澄清达成一致意见。

¹³⁹ 按照商定意见（见 A/CN.9/552，第 162-164 段），A/CN.9/WG.III/WP.32 所载原第 44(1)款保留在第 43 条草案中。

¹⁴⁰ 按照工作组商定意见（A/CN.9/616，第 81-82 段），“可转让运输单证或可转让电子运输记录内的”一语已删除，以便不使该条文在可转让和不可转让单证之间有所偏重。

¹⁴¹ 按照工作组商定意见（A/CN.9/616，第 80 段），A/CN.9/WG.III/WP.62 第 59 段所建议的案文列入本条文。

¹⁴² 正如 A/CN.9/WG.III/WP.32 脚注 160 所述，有人表示倾向于规定接受交货的义务不取决于收货人行使任何权利，而规定这项义务是无条件的。

第 45 条. 确认收讫的义务

收货人应当按交付货物的承运人或履约方的请求，以交货地的习惯方式确认从承运人或履约方处收讫货物¹⁴³。收货人拒绝确认收讫货物的，承运人可以拒绝交付。

第 46 条. 未签发可转让运输单证或可转让电子运输记录时的交付¹⁴⁴

可转让运输单证或可转让电子运输记录未签发的：

(a) 承运人应当在第 11 条第 2 款述及的时间和地点将货物交付给收货人。声称是收货人的人不按照承运人的请求表明其为收货人的，承运人可以拒绝交付。

(b) 如果收货人的名称和地址不能根据合同事项确定，控制方应当在货物抵达目的地之前或之时将收货人的名称和地址告知承运人。

(c) 如果承运人不知道收货人的名称或地址，或者收货人在收到到货通知后没有在货物到达目的地之后向承运人主张提取货物，承运人应当通知控制方，或者，如果承运人经合理努力无法确定控制方，则其应当通知托运人。在这种情况下，控制方或托运人应当就货物的交付发出指示。如果承运人经合理努力无法确定控制方或托运人，单证托运人视为本款中的托运人。

(d) 承运人根据本条(c)项按照控制方或托运人的指示交付货物的，解除其在运输合同下交付货物的义务。¹⁴⁵

[第 47 条. 签发必须提交的不可转让运输单证时的交付¹⁴⁶

签发不可转让运输单证，其中[规定][注明][指明]必须交单方可提取货物的：

(a) 承运人应当在收货人按照承运人的要求适当表明其为收货人并提交不可转让单证时，在第 11 条第 2 款述及的时间和地点将货物交付给收货人。声称是收货人的人未按照承运人的请求表明其为收货人的，承运人可以拒绝交付。所签发不可转让单证有一份以上正本的，提交一份正本单证即可，其余正本单证的效力即告终止。

(b) 收货人在货物抵达目的地后没有向承运人主张提取货物，或者承运人因收货人未适当表明其为收货人或者未提交单证而拒绝交付的，承运人应当通

¹⁴³ 据认为删除“将确认收到”并使用“必须确认收讫”更好一些，因为收货人可以确认自己的行为，但不能确认承运人的义务得到履行。

¹⁴⁴ 按照工作组商定意见（A/CN.9/591，第 226 和 230 段）修订的案文，只是颠倒了(a)款和(b)款原来在 A/CN.9/WG.III/WP.56 本条草案中的顺序。

¹⁴⁵ 本条草案(d)款由本条草案原(c)款最后一句组成，但单独作为一款，以便与第 49 条草案中对类似款项的处理办法相一致。

¹⁴⁶ 本条草案以 A/CN.9/WG.III/WP.68 第 15 段所载提议的新第 48 条之二为基础，只是在行文措辞上略作调整，工作组曾同意将其列入公约草案（A/CN.9/594，第 208-215 段）。

知托运人。在这种情况下，托运人应当就货物的交付发出指示。如果承运人经合理努力无法确定托运人，单证托运人视为本款中的托运人。

(c) 承运人根据本条(b)项按照托运人的指示交付货物的，解除其在运输合同下交付货物的义务，而不考虑不可转让运输单证是否已经提交。^{147]}

[第 48 条. 签发必须提交的不可转让电子运输记录时的交付¹⁴⁸

签发不可转让电子运输记录，其中[规定][注明][指明]必须交单方可提取货物的：

(a) 承运人应当在第 11 条第 2 款述及的时间和地点将货物交付给电子运输记录中记名为收货人的对该电子记录拥有排他性控制的人。货物一经交付，电子记录的效力即告终止。声称是收货人的人无法按照承运人的请求适当表明其为收货人的，承运人可以拒绝交付，声称是收货人的人无法根据第 9 条述及的程序证明其拥有该电子记录的排他性控制的，承运人应当拒绝交付。

(b) 收货人在货物抵达目的地后没有向承运人主张提取货物，或者承运人根据本条(a)项拒绝交付的，承运人应当通知托运人。在这种情况下，托运人应当就货物的交付发出指示。如果承运人经合理努力无法确定托运人，单证托运人视为本款中的托运人。

(c) 承运人根据本条(b)项按照托运人的指示交付货物的，解除其在运输合同下交付货物的义务，而不考虑实际提取货物的人是否能够根据第 9 条述及的程序证明其拥有该电子记录的排他性控制。^{149]}

第 49 条. 签发可转让运输单证或可转让电子运输记录时的交付¹⁵⁰

签发可转让运输单证或可转让电子运输记录的：

(a) 在不影响第 44 条规定的情况下，可转让运输单证或可转让电子运输记录的持有人有权在货物抵达目的地后向承运人主张提取货物，在这种情况下，承运人应当酌情按照下述两种方式之一在第 11 条第 2 款述及的时间和地点将货物交付给该持有人：

(-) 提交可转让运输单证，持有人是第 1 条第 12 款(a)(-)项述及的人的，适当表明其身份；或者

¹⁴⁷ 本条草案(c)款由载于 A/CN.9/WG.III/WP.68 第 15 段的本条草案原(b)款最后一句组成，但单独作为一款，以便与第 49 条草案中对类似款项的处理办法相一致。

¹⁴⁸ 本条草案以 A/CN.9/WG.III/WP.68 第 16 段所载提议的新第 48 条之三为基础，只是在行文措辞上略作调整，工作组曾同意将其列入公约草案 (A/CN.9/594, 第 208-215 段)。

¹⁴⁹ 本条草案(c)款由 A/CN.9/WG.III/WP.68 第 16 段所载本条草案原(b)款最后一句组成，但单独作为一款，以便与第 49 条草案中对类似款项的处理办法相一致。

¹⁵⁰ 按照工作组商定意见 (A/CN.9/591, 第 231-239 段, 和 A/CN.9/595, 第 80-89 段) 修订的案文。为了改进行文措辞以避免重复, A/CN.9/WG.III/WP.56 所载原(a)(-)和(-)项被合并, 组成本条的(a)款和(b)款。

(c) 根据第 9 条第 1 款(c)项述及的程序，持有人证明其是可转让电子运输记录的持有人。

(b) (a)(-)项或(a)(-)项所列条件未得到满足的，承运人应当拒绝交付。

(c)所签发可转让运输单证有一份以上正本的，提交一份正本单证即可，其余正本单证的效力即告终止。可转让电子运输记录已被使用的，根据第 9 条第 1 款(d)项规定的程序一经向持有人交付货物，该电子运输记录的效力即告终止。

(d) 货物抵达目的地后，持有人未向承运人主张提取货物的，承运人应当通知控制方，或者，如果承运人经合理努力无法确定控制方，则其应当通知托运人。在这种情况下，控制方或托运人应当就货物的交付向承运人发出指示。如果承运人经合理努力无法确定控制方或托运人，单证托运人应当视为本款所指的托运人。

(e) 承运人根据本条(d)项按照控制方或托运人的指示交付货物的，解除其在运输合同下向持有人交付货物的义务，而不考虑该可转让运输单证是否已经提交给承运人，也不考虑凭可转让电子运输记录主张提货的人是否已经根据第 9 条述及的程序证明其是持有人。

(f) 某人是在承运人已根据本条(e)项交付货物之后成为可转让运输单证或可转让电子运输记录的持有人，但根据货物交付前的合同或其他安排取得对承运人除主张提货权以外的运输合同下的权利。

(g) 虽有本条(e)项和(f)项的规定，持有人在成为持有人时不了解或不可能合理地了解此项交货的，取得可转让运输单证或可转让电子运输记录所包含的权利。

第 50 条. 货物处于无法交付状态

1. 除非另有约定，在不影响承运人可以向托运人、控制方或收货人主张任何其他权利的情况下，¹⁵¹如果货物一直处于无法交付状态，承运人可以由有权提取货物的人承担风险和费用，根据情况的合理要求就货物采取行动，其中包括：¹⁵²

(a) 将货物存放在任何合适的地方；

(b) 货物装载于集装箱内的，可以拆箱，或对货物采取其他行动，包括转移货物或将其销毁；

(c) 根据惯例或按照货物当时所在地的法律或条例将货物出售。

¹⁵¹ 按照工作组第十七届会议的审议（A/CN.9/594，第 90-93 段），A/CN.9/WG.III/WP.56 所载原第 50 条草案已经删除，其实质内容包含在本案文第 50 条草案中。另见本条 2(b)项。

¹⁵² 第 1 款由 A/CN.9/WG.III/WP.56 所载原第 51(2)条草案稍加修正而来，并按照工作组的审议（A/CN.9/594，第 97-99 段）对前导句作了修正和相应的改动。

2. 在本条中，货物到达目的地之后，有下列情形之一的，该货物应被视为仍未交付的货物：¹⁵³

(a) 收货人未根据本章在第 11 条第 2 款述及的时间和地点接受货物；

(b) 无法找到控制方或托运人，或者控制方或托运人未按照第 46 条、第 47 条、第 48 条和第 49 条向承运人发出适当指示；

(c) 根据第 46 条、第 47 条、第 48 条和第 49 条，承运人有权或必须拒绝交付货物；¹⁵⁴

(d) 根据被请求交货地的适用法律或条例，不允许承运人向收货人交付货物；

(e) 承运人无法交付货物的其他情形。

3. 承运人只有在其已经向合同事项中载明的货物抵达目的地时的被通知方（如果有的话）并且根据下列顺序向承运人知道的收货人、控制方或托运人其中之一发出合理的到货预先通知之后，方可行使这些权利。¹⁵⁵

4. 货物根据本条第 1 款(c)项出售的，承运人应为有权提取货物的人的利益而代为保管出售货物的价款，但可从中扣除承运人承担的任何费用和应付给承运人的与这些货物的运输有关的其他任何款项。¹⁵⁶

5. 承运人对于本条所规定的货物处于无法交付状态的灭失或损坏不承担赔偿责任，除非索赔人证明此种灭失或损坏是由于承运人未能在当时的情况下为保存货物采取应当采取的合理措施而造成的，并且承运人已经知道或者本应知道不采取此种措施将会给货物造成的灭失或损坏。¹⁵⁷

第 51 条. 货物留置¹⁵⁸

本公约任何规定概不影响承运人或履约方根据运输合同或适用法律留置货物，以作为应付款的偿付担保的权利。

¹⁵³ 第 2 款由 A/CN.9/WG.III/WP.56 所载原第 51(1)(a)条草案稍加修正而来，并按照工作组的审议（A/CN.9/594，第 96-99 段）对前导句作了修正和相应的改动。

¹⁵⁴ 工作组似应考虑增加第 2(c)项，以包括因为承运人有权或必须拒绝交付货物而使货物仍未交付的情况。

¹⁵⁵ 第 3 款反映出已将 A/CN.9/WG.III/WP.56 所载原第 52 条草案加入第 50 条草案，工作组希望及早将原第 52 条草案放在案文中（A/CN.9/594，第 102-106 段）。

¹⁵⁶ 本款是 A/CN.9/WG.III/WP.56 所载案文原第 51(1)条，只是略作修订，以反映工作组的观点（A/CN.9/594，第 100-101 段）。

¹⁵⁷ 本款草案系合并 A/CN.9/WG.III/WP.56 所载原第 46 条草案第二句和原第 53 条草案的精神而来，并经过修订，以反映工作组的审议情况（A/CN.9/594，第 107-113 段）。秘书处建议将修订条文放在本条草案中最好。

¹⁵⁸ 该新增条款草案以 A/CN.9/WG.III/WP.63 第 14 段所载案文为基础，反映了工作组的审议情况（A/CN.9/594，第 114-117 段）。

第 11 章. 控制方的权利¹⁵⁹

第 52 条. 控制权的行使及范围¹⁶⁰

1. 控制权只能由控制方行使，并且仅限于：
 - (a) 发出或修改与货物有关的不构成对运输合同变更的指示的权利；
 - (b) 在计划挂靠港，或者在内陆运输情况下运输途中的任何地点提取货物的权利；和
 - (c) 由包括控制方在内的其他任何人代替收货人的权利。
2. 控制权存在于第 11 条第 1 款规定的整个承运人责任期间。

第 53 条. 指明控制方和转让控制权

1. 未签发可转让运输单证或可转让电子运输记录的：¹⁶¹
 - (a) 托运人为控制方，除非订立运输合同时托运人指定收货人、单证托运人或其他人为控制方；
 - (b) 控制方有权将控制权转让给其他人。此种转让在转让人向承运人发出转让通知并且受让人成为控制方之时产生效力；
 - (c) 控制方行使控制权时应当提交适当的身份证明。
2. 签发不可转让运输单证或不可转让电子运输记录，其中[规定][注明][指明]必须交单方可提取货物的：
 - (a) 托运人是控制方，并且可以将控制权转让给运输单证或电子运输记录中指定的收货人，或是不经背书将单证转让给该人，或是根据第 9 条所述及的程序将电子运输纪录转让给该人。所签发的单证有一份以上正本的，应当转让所有正本单证方可实现控制权的转让；
 - (b) 为了行使控制权，控制方应出示单证和适当的身份证件，如果是电子运输纪录，应根据第 9 条述及的程序证明其对该电子运输单证拥有排他性控制权。所签发的单证有一份以上正本的，应当出具所有正本单证，否则不能行使控制权。
3. 签发可转让运输单证的：
 - (a) 持有人是控制方，或者，签发了一份以上正本可转让运输单证的，所有正本单证的持有人是控制方；

¹⁵⁹ 本章标题经过修订，以更好地反映其内容。

¹⁶⁰ 按照工作组商定意见（A/CN.9/594，第 10-16 段）修订的草案，在行文措辞上作了改动，以反映“控制方”的定义已载于第 1(15)条草案中。

¹⁶¹ 按照工作组商定意见（A/CN.9/594，第 23-36 和第 68-71 段）修订的草案。A/CN.9/WG.III/ WP.56 所载原第 56(1)(d)条草案移来成为本条中单独的第 5 款。

(b) 持有人可以通过根据第 59 条将可转让运输单证转让给其他人而转让控制权。所签发的单证有一份以上正本的，应当转让所有正本单证方可实现控制权的转让；

(c) 为了行使控制权，持有人应当向承运人出示可转让运输单证，持有人是第 1 条第 12 款(a)(一)项所述的其中一种人的，该持有人应当出示适当的身份证件。所签发的单证有一份以上正本的，应当出具所有正本单证，否则不能行使控制权。¹⁶²

4. 签发可转让电子运输记录的：

(a) 持有人是控制方；

(b) 持有人可以通过根据第 9 条述及的程序转让可转让电子运输记录而将控制权转让给其他人；

(c) 为了行使控制权，持有人应当根据第 6 条规定的程序，证明其为持有人。¹⁶³

5. 当货物抵达目的地并且已经根据本公约交付时，控制权即告终止。¹⁶⁴

[6. 虽有第 61 条的规定，非托运人或者非单证托运人的人，未行使控制权而将控制权转让的，在此种转让之时即被解除运输合同或本公约对控制方规定的赔偿责任。]¹⁶⁵

第 54 条. 承运人执行指示

1. 除非本条第 2 款和第 3 款另有规定，承运人应当执行第 52 条述及的指示，只要：¹⁶⁶

(a) 发出此种指示的人有权行使控制权；

(b) 该指示送达承运人之时能够按指示中的条件合理地执行；并且

(c) 该指示不会干扰承运人的正常营运，包括其交付作业。

2. 在任何情况下，控制方均应当补偿承运人因执行本条规定的任何指示而增加的费用并赔偿承运人因执行本条规定的任何指示而遭受的灭失或损坏，包括赔偿承运人可能就其他货物灭失或损害或[迟延交付]而承担的赔偿责任。¹⁶⁷

¹⁶² 按照工作组商定意见 (A/CN.9/594, 第 37-40 段) 修订的草案。

¹⁶³ 按照工作组商定意见 (A/CN.9/594, 第 41 段) 修订的草案。

¹⁶⁴ 按照工作组商定意见 (A/CN.9/594, 第 23-36 和第 68-71 段) 修订的草案。本款为 A/CN.9/WG.III/WP.56 所载原第 56(1)(d)条草案，移至此处以使案文更加清楚。

¹⁶⁵ 按照工作组商定意见 (A/CN.9/594, 第 42-45 段) 修订的草案。工作组商定本款应置于方括号内，待进一步审议第 60(1)条的案文和其中提出的问题之后可能予以修订或删除。

¹⁶⁶ 按照工作组商定意见 (A/CN.9/594, 第 46-49 段) 修订的草案。

¹⁶⁷ 按照工作组商定意见 (A/CN.9/594, 第 50-51 段) 修订的草案。

3. 对于承运人合理预计的执行本条规定的指示所产生的额外费用、灭失或损坏，承运人有权从控制方获得担保。未提供此种担保的，承运人可以拒绝执行指示。

4. 对于承运人违反本条第 1 款规定的义务未遵守控制方的指示所造成的货物灭失或损坏[或迟延]，承运人承担的赔偿责任应当根据第 17 条至第 23 条确定，承运人的赔偿数额应当根据第 62 条至第 64 条确定。¹⁶⁸

第 55 条. 视为交货

货物按照第 52 条第 1 款(b)项所规定的指示交付的，视为在目的地交付货物，并且第 10 章中有关此种交货的规定适用于此种货物。

第 56 条. 运输合同的变更¹⁶⁹

1. 控制方是唯一可以与承运人约定对运输合同的变更的人，但第 52 条第 1 款(b)项和(c)项述及的内容除外。

2. 对运输合同的变更，包括第 54 条第 1 款(b)项和(c)项述及的内容，应当在可转让运输单证上记载或并入可转让电子运输记录中，或者，由控制方选择，应当在不可转让运输单证上记载或并入不可转让电子运输记录中。¹⁷⁰凡作此记载或并入的变更均应当根据第 39 条签名。

3. 根据本条对运输合同的变更，不影响根据第 39 条对变更进行签名的日期之前各方当事人的各项权利和义务。

第 57 条. 向承运人提供额外的信息、指示或单证

承运人或履约方在其保管货物期间合理地需要获得第 39 条第 1 款(a)项述及内容之外的信息、指示或单证的，应承运人或该履约方的请求，控制方应当在其能够提供的范围内提供此种信息、指示或单证。承运人经合理努力无法确定控制方的，或者控制方无法向承运人提供适当信息、指示或单证的，托运人或单证托运人应当如此行事。¹⁷¹

¹⁶⁸ 按照工作组要求（A/CN.9/594，第 55-58 段），取代 A/CN.9/WG.III/WP.56 所载原第 57(4)条的新条文。

¹⁶⁹ 本条草案从原来的位置移至此处，原来在 A/CN.9/WG.III/WP.56 所载的本章中是第 55 条草案。按照工作组商定意见（A/CN.9/594，第 17-22 段）对条文草案作了修订。

¹⁷⁰ 若工作组决定第 47 条和第 48 条草案中要求交出的不可转让运输单证和电子运输记录构成最后证据，此处应将它们包括在内。

¹⁷¹ 工作组在 A/CN.9/594 第 63 段提出，可以根据控制方是主动还是被动作出区分。不过，秘书处提出这种区分是不必要的，因为控制方应始终意识到它是控制方，现有案文表明若控制方不能确定或找到，可以联系其他当事人以得到补充信息。

第 58 条. 协议变更

运输合同当事人可以协议变更第 52 条第 1 款(b)项和(c)项、第 53 条第 5 款和第 54 条的效力。当事人还可以限制或排除第 53 条第 1 款(b)项述及的控制权的可转让性。¹⁷²

[第 12 章. 权利转让¹⁷³

第 59 条. 签发可转让运输单证或可转让电子运输记录的

1. 签发可转让运输单证的，持有人可以通过向其他人转让该单证而转让其中包含的各项权利：

(a) 是指示单证的，须适当背书给他人或者须空白背书；或

(b) 是不记名单证或空白背书单证的，无须背书；或

(c) 是凭记名人指示开出的单证且转让发生在第一持有人与该记名人之间的，无须背书。¹⁷⁴

2. 签发可转让电子运输记录的，不论该电子运输记录是凭指示还是凭记名人指示开出的，持有人均可以根据第 9 条述及的程序通过转让电子运输记录而转让其中包含的各项权利。¹⁷⁵

第 60 条. 持有人的责任

1. 在不影响第 57 条规定的情况下，非托运人的持有人未行使运输合同下任何权利的，不能仅因是持有人而承担运输合同下的任何责任。

2. 非托运人的持有人行使运输合同下任何权利的，承担[运输合同下的任何责任，但该责任以载入可转让运输单证或可转让电子运输记录或可从其中查明为限][第 11 章规定的控制方的责任以及托运人应当支付运费、亏舱费、滞期费和延滞赔偿费的责任，但该责任以载入可转让运输单证或可转让电子运输记

¹⁷² 秘书处认为结尾处的下述词语纯属多余，建议删除：“签发可转让运输单证或可转让电子运输记录的，必须在合同事项中说明或纳入本条提及的任何协议。”。

¹⁷³ 本章的原始案文取自 A/CN.9/WG.III/WP.32，根据建议在行文措辞上对案文作了改进。工作组在 A/CN.9/594 第 77-78 段中决定将对关于权利转让的第 12 章延至今后讨论，此后尚未就如何处理本章做出最后决定。

¹⁷⁴ 如 A/CN.9/WG.III/WP.32 脚注 201 所述，工作组中强烈支持按现在的措辞保留第 59(1)条草案的案文，以便促进统一并照顾到可转让电子运输记录。注意到 A/CN.9/526 第 132 段就某些国家的法律允许使用的记名可转让单证提出的关切。

¹⁷⁵ 如 A/CN.9/WG.III/WP.32 脚注 202 所述，工作组第十五届会议期间结合公约草案中有关电子记录的其他条文对第 2 款进行了讨论。

录为限]。¹⁷⁶

3. 就本条第 1 款和第 2 款[以及第 44 条]¹⁷⁷而言, 非托运人的持有人不能仅因下列原因而被视为行使运输合同下的任何权利:

(a) 根据第 710 条该持有人与承运人约定以可转让电子运输记录替代可转让运输单证或以可转让运输单证替代可转让电子运输记录; 或

(b) 根据第 59 条该持有人转让其权利。

第 61 条.¹⁷⁸ 未签发可转让运输单证或可转让电子运输记录的

未签发可转让运输单证或可转让电子运输记录的:

(a) 根据一项合同转让权利, 由适用于该权利转让合同的法管辖;

(b) 不是根据合同转让权利, 由适用于此种其他转让方式的法律管辖;

(c) 权利的可转让性, 由适用于运输合同的法律管辖; 并且

(d) 不论依照本条(a)项和(b)项适用何种法律,

(一) 凡根据适用的法律允许的其他转让, 均可通过电子方式进行,

(二) 转让人应当向承运人发出转让通知, 或者, 适用法律允许的, 应当由受让人向承运人通知转让事宜, 并且

(三) 对于与被转让的权利相关的责任或者随之转移的责任, 转让人和受让人承担连带责任。]

第 13 章. 赔偿责任限制

第 62 条. 赔偿责任限制的基础

1. 除第 63 条和第 6 条第 1 款另有规定外, 承运人对于违反本公约规定的义务¹⁷⁹所承担赔偿责任的限额, 按照货物的件数或者其他货运单位计算, 每件或每个其他货运单位[……]个计算单位, 或者按照索赔或争议所涉及的货物的毛

¹⁷⁶ 如 A/CN.9/WG.III/WP.32 脚注 204 所述, 工作组请秘书处适当考虑到所提出的意见的情况下拟定第 2 款的修订草案。但是前面 A/CN.9/526 第 137-139 段中提出的意见不一致。主张修订这一案文的与会者请求, 本项应对行使运输合同下任何权利的持单人根据该合同应承担哪些责任作出规定, 因而为修订案文作出了尝试。应当注意的是, 有一类相关的赔偿责任可能应加以考虑: 对货物造成的灭失、损坏或损害的赔偿责任(但在任何情况下都不包括对违反第 27 条草案规定的托运人义务的赔偿责任)。

¹⁷⁷ 是否插入方括号内的案文将取决于工作组就是否插入放在方括号内的第 44 条草案的案文所作出的决定。

¹⁷⁸ 工作组审议了 A/CN.9/WG.III/WP.47 第 12 段所载第 63 条的电子商务方面, 并在 A/CN.9/576 第 212 和 213 段中审议了以第 61 条草案取代原第 61 和 62 条草案, 在此之后, 按照工作组在 A/CN.9/WG.III/WP.32 第 213 段商定的意见, 第 61 条草案即原第 61 条之二草案现已取代 A/CN.9/WG.III/WP.32 中的第 61 和 62 条草案。

¹⁷⁹ 增添的违反承运人义务这段话被认为使提及“[与该货物有关的]”这些词语变得不必要。

重计算，每公斤[……]个计算单位，以两者中赔偿限额较高者为准，但是，货物的价值¹⁸⁰已由托运人申报并在合同事项中载明的，或者承运人与托运人已另行约定高于本条所规定的赔偿责任限额的除外。

第 2 款备选案文 A¹⁸¹

[2. 虽有本条第 1 款的规定，如果(a)承运人无法确定货物灭失或损坏[或造成迟延交付的原因]¹⁸²是在海上运输期间内还是在海运期间之前或之后的运输期间发生的，并且(b)灭失、损坏[或迟延]发生在海运期间之前或之后的运输期间内的，根据第 26 条将适用国际公约[或国内法]的规定，则承运人对此种灭失、损坏[或迟延]的赔偿责任，以可确定损失发生地情形下应适用的国际公约[或国内法]¹⁸³的责任限额条款的规定为限，或者以本公约的责任限额条款的规定为限，以两者中所得出的赔偿限额较高者为准。]

第 2 款备选案文 B

[2. 虽有本条第 1 款的规定，如果承运人无法确定货物灭失或损坏[或造成迟延交付的原因]¹⁸⁴是在海上运输期间内还是在海运期间之前或之后的运输期间发生的，则适用不同运输区段所适用的国际[和国内]¹⁸⁵强制性规定中的赔偿责任最高限额。]

3. 货物用集装箱、货盘或者类似装运器具集装的，合同事项中载明的装于该装运器具之内或之上的货物件数或者其他货运单位数，视为货物件数或货运单位数。未载明的，装运在此种装运器具之内或之上的货物视为一个货运单位。

4. 本条述及的计算单位系国际货币基金组织定义的特别提款权。本条述及的限额，需按一缔约国的货币在判决日或当事人约定日的币值折算成该国货币。缔约国系国际货币基金组织成员国的，其本国货币对特别提款权的比价，按国际货币基金组织当日对其业务和交易实行的计价换算方法计算。缔约国不是国际货币基金组织成员国的，其本国货币对特别提款权的比价，按该国确定的方式计算。

¹⁸⁰ 按照工作组的决定（A/CN.9/616，第 172 和 174 段），已删除提及货物“性质”的字样。

¹⁸¹ 如保留第 62(2)条草案，应根据第 26 条草案的最后案文调整其案文。备选案文 A 是为了澄清备选案文 B 的案文，无意改变所建议的处理方式。

¹⁸² 见下文，脚注 184。

¹⁸³ 案文放在方括号内，与第 26(1)条的案文相对应，有待工作组作出决定。

¹⁸⁴ 第 2 款草案保留在方括号内，并增加了放在方括号内提及迟延交货的词语，供今后讨论。

¹⁸⁵ 见上文，脚注 183。

第 63 条. 迟延造成的损失的限制¹⁸⁶

除第 64 条第 2 款另有规定外，对迟延造成的货物的实际灭失或损坏的赔偿额，应当按照第 22 条计算，并且[，除非另有约定，]对迟延造成的经济损失的赔偿责任，以相当于该被迟延交付货物应付运费的[一倍]为限。根据本条及第 62 条第 1 款确定的赔偿总额，不得超过所涉货物全损时根据第 62 条第 1 款确定的限额。

第 64 条. 赔偿责任限制权的丧失

1. 如果索赔人证明由于承运人违反本公约规定的义务而造成的损失是因为请求限制赔偿责任的人本人故意造成这种损失的作为或不作为导致的，或在其明知可能造成这种损失的情况下轻率地作为或不作为导致的，则承运人或第 18 条第 1 款述及的任何人无权根据第 62¹⁸⁷条的规定或运输合同的规定¹⁸⁸限制其赔偿责任。

2. 如果索赔人证明迟延交付是由于请求限制赔偿责任的人本人故意造成迟延损失的作为或不作为导致的，或在明知可能造成这种损失的情况下轻率地作为或不作为导致的，则承运人或第 18 条第 1 款述及的任何人无权根据第 63 条的规定限制其赔偿责任。

第 14 章. 诉讼时效

第 65 条. 诉讼时效

1. 两年期限期满后，不得就违反本公约下的一项义务所产生的索赔或争议¹⁸⁹提起司法程序或仲裁程序。¹⁹⁰

2. 本条第 1 款述及的期限自承运人交付货物之日起算，或者，未交付货

¹⁸⁶ 按照工作组商定意见（A/CN.9/616，第 181 段），已删除 A/CN.9/WG.III/WP.56 案文中的备选案文 B，保留备选案文 A。

¹⁸⁷ 按照 A/CN.9/552 第 55 和 62 段的讨论情况，有关同时提及第 22 条的建议需要结合第 19 章进一步讨论。

¹⁸⁸ 按照工作组商定意见（A/CN.9/616，第 198 和 200 段），删除“[或运输合同的规定]”词语前后的方括号，保留案文。

¹⁸⁹ 插入“就违反本公约下的一项义务所产生的索赔或争议”一语，目的是规定本条文与第 62 条草案有相同的适用范围。

¹⁹⁰ 按照工作组的决定（见 A/CN.9/616，第 127-133 段），A/CN.9/WG.III/WP.56 所载案文中备选案文 B 被秘书处用作修订草案的基础。这方面建议的案文旨在既包含工作组商定的实质内容，同时又对本规定加以改写，以避免考虑权利或诉讼是否消灭或丧失时效的问题。

物或只交付了部分货物的，¹⁹¹自本应交付货物最后¹⁹²之日起算。期限起算当日不包括在该期限内。¹⁹³

3. 即使本条第 1 款规定的期限期满，一方当事人仍可作为抗辩或为抵消对方当事人提出的索赔而援用其索赔。¹⁹⁴

第 66 条. 时限期的延长

第 65 条中规定的时限期不得暂停或中断，¹⁹⁵但是，被索赔人可以在期限内任何时间通过向索赔人声明而延长该期限。期限可经再次声明或多次声明进一步延长。

第 67 条. 赔偿诉讼

根据本公约被认定负有责任的人可以在第 65 条述及的期限期满后提起赔偿诉讼，提起赔偿诉讼的时间以下列期限较晚者为准：

(a) 提起诉讼程序管辖地适用法律所允许的时间内；或

(b) 提起赔偿诉讼的人自索赔争议解决之日或者自收到向其本人送达的起诉书¹⁹⁶之日（以较早者为准）起 90 天内。¹⁹⁷

第 68 条. 对被指明为承运人的人的诉讼

对光船承租人或者对根据第 38 条第 2 款被指明为承运人的人的诉讼，¹⁹⁸可以在第 65 条述及的期限期满后提起，提起赔偿诉讼的时间以下列期限较晚者为准：

¹⁹¹ 按照工作组商定意见，提及第 11 条草案的字样已删除（A/CN.9/616，第 136-143 段），并按照《汉堡规则》第 20(2)条的规定照顾到部分交付的情况（A/CN.9/616，第 138 段）。

¹⁹² 按照工作组商定意见（A/CN.9/616，第 133 和 139 段），“最后”一词前后的方括号已删除。

¹⁹³ 正如 A/CN.9/WG.III/WP.32 脚注 216 所述，工作组请秘书处保留 A/CN.9/WG.III/WP.56 所载原第 70 条草案的案文，并考虑可能的备选案文以反映所表达的观点。该案文现移至本款，A/CN.9/WG.III/WP.56 所载原第 70 条草案已删除。此外，新增本款最后一句，取自《汉堡规则》第 20(3)条。

¹⁹⁴ 按照工作组关于即使时限期届满也可作为抗辩而抵消索赔的决定（A/CN.9/616，第 130-131、133 和 154 段），秘书处以《国际销售货物时效期限公约》第 25(2)条为基础起草了第 3 款草案。由于本案文的采用，A/CN.9/WG.III/WP.56 所载案文中原第 73 条已删除。

¹⁹⁵ 按照工作组商定意见（A/CN.9/616，第 132-133 段），列入了提及时限期暂停或中断的字样。

¹⁹⁶ 按照工作组的决定（A/CN.9/616，第 152 段），删除了 A/CN.9/WG.III/WP.56 所载案文的备选案文 B，保留备选案文 A。

¹⁹⁷ 增加了“以较早者为准”短语，以澄清诉讼文书已经送达、尔后进行关于解决办法的讨论的情况。

¹⁹⁸ 由于 A/CN.9/WG.III/WP.56 所载原第 40(3)条草案即现在的第 38(2)条草案作了修订，根据这些修订在行文措辞上对案文作了澄清和改动。

- (a) 提起诉讼程序管辖地适用法律所允许的范围内；或
- (b) 自承运人被指明身份之日或者自注册船东或光船承租人根据第 38 条第 2 款推翻其为承运人的推定之日起 90 天内。¹⁹⁹

第 15 章. 管辖²⁰⁰

第 69 条. 对承运人的诉讼

除非运输合同载有一项符合²⁰¹第 70 条或第 75 条的排他性法院选择协议，否则原告有权根据本公约在下列管辖法院之一对承运人提起司法程序：

- (a) 该管辖法院在下列地点之一拥有管辖权：
 - (一) 承运人的住所；²⁰²
 - (二) 运输合同约定的收货地；²⁰³
 - (三) 运输合同约定的交货地；或
 - (四) 货物的最初装船港或货物的最终卸船港；或
- (b) 该一个或多个管辖法院由托运人和承运人为决定本公约下可能产生的对承运人的索赔事项而在其相互之间的协议中指定。²⁰⁴

第 70 条. 选择法院的协议²⁰⁵

1. 只有经合同当事人协议约定并且授予管辖权的协议符合下列条件的，根据第 69 条(b)项所选择的法院才对合同当事人之间的纠纷具有排他性管辖权：

- (a) 载于批量合同中，该合同清楚列明各方当事人的名称和地址，并且(一)系单独谈判而成；或(二)含有一则显著声明，指出存在一项排他性的选择法院的协议，并指明载有该协议的批量合同的章节；²⁰⁶并且

¹⁹⁹ 因修订 A/CN.9/WG.III/WP.56 所载原第 40(3)条草案即现在的第 38(2)条草案的案文而在行文措辞上对本条文作了改动。

²⁰⁰ 按照工作组在 A/CN.9/616 第 245-266 段的审议情况，对 A/CN.9/WG.III/WP.75 附件所载本章版本在行文措辞上作了所建议的改动。

²⁰¹ 提出“符合”要好于案文中原来使用的“有效”。

²⁰² 对“原告”的提法改成了“承运人”，以便与关于对海运履约方的诉讼的第 71 条草案保持一致。

²⁰³ 第(二)和(三)项取自 A/CN.9/WG.III/WP.75 所载原来的案文，放在单独的项中是为了使案文更加明确。

²⁰⁴ (b)项案文取代 A/CN.9/WG.III/WP.75 所载原(d)项和原第 76(1)条草案案文，在本版公约草案中原(d)项和原第 76(1)条草案案文都已删除。

²⁰⁵ A/CN.9/WG.III/WP.75 附件所载本条文第 1 款被删除，改为在第 1 款提及第 69(b)条，以改进行文措辞。

²⁰⁶ “章节”一语取代“在……中的位置”，以便与第 89(1)(b)条的案文完全对应。

(b) 清楚²⁰⁷指定某一缔约国的数个法院或某一缔约国的一个或多个特定法院。

2. 根据本条第 1 款订立的排他性选择法院的协议，仅在满足下列条件的情况下方能约束非批量合同当事人的人：

(a) 该法院位于第 69 条(a)项指定的地点之一；

(b) 运输单证或电子运输记录可作为索赔所涉货物的运输合同证明²⁰⁸的，该协议包含在其中的合同事项中；

(c) 诉讼提起地的法院已将其拥有排他性管辖权的情况及时而正确地通知该人；并且

(d) [受理案件的法院的法律²⁰⁹][[约定]交货地的法律][[承运人]收货地的法律][根据诉讼地法律的国际私法规则确定的适用法律]²¹⁰承认排他性选择法院的协议对该人具有约束力。

[3. 本条的规定不妨碍缔约国对不符合本条第 1 款或第 2 款的选择法院的协议赋予效力。该缔约国应当[向]发出相应的通知。²¹¹

4. (a) 本条第 3 款或者根据本条第 3 款具有效力的选择法院的协议，概不妨碍第 69 条[(a)项]中指明的位于不同缔约国的法院对争议行使管辖权和根据本公约对争议进行裁定。

(b) 除本章另有规定外，对于根据本公约[对承运人]提起的诉讼，一切选择法院的协议均不具有排他性。²¹²²¹³

²⁰⁷ 按照工作组的决定 (A/CN.9/616, 第 256 段)，保留“清楚指定某一缔约国的数个法院或某一缔约国的一个或多个特定法院”一语，并删除方括号。此外，按照工作组商定意见 (A/CN.9/616, 第 257 段)，删除了 A/CN.9/WG.III/WP.75 所载原(c)款草案。

²⁰⁸ 按照工作组商定意见，删除了(b)项草案前后的方括号，“对……签发的”一语改为“作为……运输合同证明的” (A/CN.9/616, 第 258 段)。

²⁰⁹ 工作组似应考虑，是否需要进一步的澄清，以确定“受理案件的法院”必须是主管法院，还是也可是另一个法院。

²¹⁰ 按照工作组商定意见 (A/CN.9/616, 第 259 段)，增加了本条文的各种备选案文。

²¹¹ 工作组似应考虑这种办法与最后条款之间的相互作用。

²¹² 按照工作组在 A/CN.9/591 第 80 段中提出的建议单独为本条文规定的款项，以避免使之服从于本条第 4 款。

²¹³ 在第 3 和第 4 款草案前后插入方括号，以表明工作组同意，若决定列入对有关管辖的整个一章的保留或“选择适用”条款，这两款可以删除 (A/CN.9/616, 第 260 段)。

第 71 条. 对海运履约方的诉讼²¹⁴

原告有权根据本公约在对下列地点之一拥有管辖权的管辖法院对海运履约方提起司法程序：

- (a) 海运履约方的住所；或
- (b) 海运履约方最初接收货物的港口或者海运履约方最终交付货物的港口，或者海运履约方履行与货物有关的所有活动的港口。²¹⁵

第 72 条. 不另外增加管辖权地²¹⁶

除第 74 条和第 75 条另有规定外，不得在不是根据第 69 条[或]第 71 条[或根据因适用第 77 条第 2 款而适用的规则]指定的法院根据本公约对承运人或海运履约方提起司法程序。²¹⁷

第 73 条. 扣留或者临时或保全措施²¹⁸

本公约任何规定概不影响临时或保全措施，包括扣留的管辖权。除非符合下列条件，否则临时或保全措施执行地所在国家的法院不享有裁定案件实体的管辖权：

- (a) 符合本章的要求；或
- (b) 一项国际公约在该国适用的，该国际公约作出如此规定。²¹⁹

第 74 条. 诉讼的合并和转移

1. 除非根据第 70 条[或]第 75 条[或根据因适用第 77 条第 2 款而适用的规则]²²⁰存在一项有效的排他性选择法院的协议，就同一事件而同时对承运人和海运履约方提出一项共同诉讼的，该诉讼只能在根据第 69 条和第 71 条共同指定的一个法院提起。无上述这类法院的，可以在根据第 71 条(b)项指定的一个法院，在其存在的情况下提起该诉讼。

²¹⁴ 工作组第十六届会议在 A/CN.9/591 第 73 段提出的案文，其实质内容在第 84 段已获接受。仅在行文措辞上对前导句略作改动，以确保前导句与第 69 条前导句相对应，提出(b)款中的案文是为了顾及只在某一港口运营的海运履约方。此外，工作组似应澄清第 70 条和第 71 条的关系。

²¹⁵ 按照工作组商定意见 (A/CN.9/616, 第 261 段)，方括号被从 A/CN.9/WG.III/WP.75 附件所载案文中删除，此外还删除了“某一”和“所有”两词。

²¹⁶ 工作组第十六届会议在 A/CN.9/591 第 73 段提出的案文，其实质内容在第 84 段已获接受，就对承运人或海运履约方提起程序一事作了澄清。

²¹⁷ 若根据第 77(2)条草案通过对本章采取“部分选择适用”办法，方括号内的短语将是必要的。

²¹⁸ 工作组第十六届会议在 A/CN.9/591 第 73 段提出的案文，其实质内容在第 84 段已获接受。

²¹⁹ 按照工作组商定意见 (A/CN.9/616, 第 262 段)，取消案文中的方括号，保留其中的案文，“按其适用规则”一语被认为多余，已经删除。

²²⁰ 若根据第 77(2)条草案通过对本章采取“部分选择适用”办法，方括号内的短语将是必要的。

2. 除非根据第 70 条[或]第 75 条[或根据因适用第 77 条第 2 款而适用的规则]²²¹存在一项有效的排他性选择法院的协议，承运人或海运履约方提起的诉讼寻求一项不承担赔偿责任声明的，或者提起的任何其他诉讼将剥夺一人根据第 69 条或第 71 条选择诉讼地的权利的²²²，应当在被告可以重新提起诉讼的情况下，在被告已经选择第 69 条或第 71 条（两者以适用者为准）指定的法院时，根据被告的请求撤回该诉讼。²²³

第 75 条. 争议发生后达成的协议和被告已应诉时的管辖权²²⁴

1. 争议发生后，争议当事方可约定在任何有管辖权的法院解决争议。

2. 被告在一缔约国有管辖权的²²⁵法院应诉，没有根据该法院的规则提出管辖权异议的，该法院对案件拥有管辖权。

第 76 条. 承认和执行²²⁶

1. 根据本公约拥有管辖权的一法院作出的判决，应根据该缔约国的法律，在这两个国家已经根据第 77 条作出声明的情况下，在另一缔约国内得到承认和执行。

2. 一法院可以在下列情况下拒绝给予承认和执行：

(a) 根据其法律所提供的拒绝承认和执行的理由；

(b) 作出判决的法院一旦适用被要求给予承认和执行的国家的排他性选择法院协议的规则，作出该判决的诉讼本来必须根据第 74 条第 2 款予以撤回；
或

(c) 根据因作出第 77 条第 2 款规定的声明而适用的规则，要求承认和执行某一争议所产生的判决，而该缔约国的法院对该争议拥有排他性管辖权。

²²¹ 若根据第 77(2)条草案通过对本章采取“部分选择适用”办法，方括号内的短语将是必要的。

²²² 按照工作组的决定（A/CN.9/616，第 263 段），插入案文“寻求一项不承担赔偿责任声明的，或者提起的任何其他诉讼将剥夺一人根据第 69 条或第 71 条选择诉讼地的权利的”，删除 A/CN.9/WG.III/WP.75 所载备选案文。

²²³ 建议将 A/CN.9/WG.III/WP.75 所载原先案文中最后的词语“并可按照被告的选择，在所适用的第 69 条或第 71 条指定的法院之一重新启动诉讼”改为“在被告可以重新提起诉讼的情况下，在被告已经选择第 69 条或第 71 条（两者以适用者为准）指定的法院时”，以便说明被告必须选择审理案件的法院，而不能仅仅通过没有选择法院而回避诉讼。

²²⁴ 工作组第十六届会议在 A/CN.9/591 第 73 段提出的案文，其实质内容在第 84 段已获接受。开头语“虽有本章以上各条款”被认为多余，已经删除，因为除提及第 69、70 和 74 条之外又提及了第 75 条，并且第二款开头语中已将“有管辖权的法院”澄清为“某一缔约国有管辖权的法院”。

²²⁵ 按照工作组商定意见（A/CN.9/616，第 264 段），插入“有管辖权的”一语。

²²⁶ 按照 A/CN.9/616 第 265-266 段，对 A/CN.9/WG.III/WP.75 附件所载版本的本条草案在行文措辞上作了所建议的改动，以顾及工作组可能采用对第 15 章采取全部或部分保留或“选择适用”的办法。

3. 本章不得影响已加入本公约的区域经济一体化组织有关承认或执行判决的规则在该区域经济一体化组织成员国之间的适用，不论这些规则的通过时间是在本公约之前还是之后。

第 77 条. 第 15 章的适用²²⁷

[备选案文 A]

缔约国可以根据第 94 条在签署、批准、接受、核可或加入时声明其不受本章的规定约束。]

[备选案文 B]

本章的规定只能对根据第 94 条[在签署、批准、接受、核可或加入时][在此后任何时间]声明其不受本章的规定约束的缔约国具有约束力。]

[备选案文 C 将由备选案文 B 和作为第 2 款的以下案文组成：

根据本条第 1 款作出声明的缔约国可以同时声明其不受第 70 条的约束，而且其法院应当适用该缔约国本来应当适用的规则。]

第 16 章. 仲裁²²⁸

第 78 条. 仲裁协议

1. 除非本章另有规定，当事人可以约定，任何根据本公约运输货物可能产生的争议均应提交仲裁。

2. 仲裁程序应当根据对承运人提起索赔的人的选择²²⁹：

(a) 在仲裁协议中为此目的指定的任何地点进行；或

(b) 一国有第 69 条(a)、(b)或(c)项所规定的任何地点的，在位于该国的任何其他地点进行。

3. 仲裁协议中指定的仲裁地，对仲裁协议当事方之间的争议具有约束力，条件是，载有该仲裁协议的批量合同清楚指明这些当事方的名称和地址，而且该批量合同属于下列情况之一：

(a) 是分别谈判订立的；

(b) 以显而易见的方式声明订有仲裁协议并指明批量合同中载有该仲裁²³⁰

²²⁷ 备选案文 A 旨在反映对关于管辖的一章予以保留的办法，而备选案文 B 旨在反映“选择适用”的办法，备选案文 C 同时包括备选案文 B 和 C，旨在反映“部分选择适用”的办法（见 A/CN.9/616，第 246-252 段）。

²²⁸ 建议的对本章案文的改动以 A/CN.9/616 第 270 段所载版本的条文为基础。

²²⁹ 短语“在下列地点之一”被认为多余，已予删除。

²³⁰ “章节”一语取代“在……中的位置”，以便与第 89(1)(b)条的案文完全对应。

协议的章节²³¹。

4. 仲裁协议已根据本条第 3 款订立的，该协议中指定的仲裁地，只在下列情况下对不是批量合同当事方的人具有约束力：

(a) 该协议中指定的仲裁地位于第 69 条(a)、(b)或(c)项中提及的地点之一；

[(b) 运输单证或电子运输记录可作为索赔所涉货物运输合同的证据的，该协议载于其中的合同事项中；]

(c) 仲裁地通知及时、适当地发给了受仲裁协议约束的人；并且

(d) 适用法律²³²准许该人受该仲裁协议的约束。

5. 本条第 1 款、第 2 款、第 3 款和第 4 款的规定，视为每一仲裁条款或协议的一部分，此种条款或协议的任何规定，与其不一致的，一概无效。

第 79 条. 非班轮运输中的仲裁协议²³³

1. 本公约的规定概不影响由于下列原因而适用本公约或本公约规定的非班轮运输中的运输合同所载仲裁协议的可执行性：

(a) 适用第 7 条；或

(b) 当事各方自愿在本来不受本公约管辖的运输公约中纳入本公约。

2. 虽有本条第 1 款的规定，由于适用第 7 条而适用本公约的运输单证或电子运输记录中的仲裁协议仍受本章的管辖，除非：

(a) 此种仲裁协议的条款与由于适用第 7 条而被排除在本公约适用范围之外的租船合同或其他运输合同中的仲裁协议的条款相同；或

(b) 此种仲裁协议：(一)以提及方式纳入了由于适用第 7 条而被排除在本公约适用范围之外的租船合同或其他运输合同中的仲裁协议的条款；(二)具体指明了该仲裁条款；并且(三)注明了该租船合同的当事人和日期。

第 80 条. 争议产生后的仲裁约定

虽有本章和第 15 章的规定，在争议产生后，争议当事方仍可约定在任何地点以仲裁方式解决争议。

²³¹ “载有该仲裁协议的”一语取代“该协议”，以便更加精确。

²³² 建议删除“[仲裁协议的]”一语，因为过去它曾在适用法律上引起混乱。

²³³ 为响应工作组在 A/CN.9/616 第 276-277 段提出的观点，并且为了澄清整个条文，本条草案与 A/CN.9/616 第 270 段所载案文相比有很大调整。

第 81 条. 第 16 章的适用²³⁴

[备选案文 A

缔约国可以根据第 94 条在签署、批准、接受、核可或加入时声明其不受本章的规定约束。]

[备选案文 B

本章的规定只能对根据第 94 条[在签署、批准、接受、核可或加入时][在此后任何时间]声明其不受本章的规定约束的缔约国具有约束力。]

第 17 章. 共同海损

第 82 条. 共同海损条款

本公约的任何规定不妨碍运输合同或国内法中关于共同海损理算规定的适用。

第 18 章. 其他公约

第 83 条. 退出其他公约²³⁵

1. 一国是 1924 年 8 月 25 日在布鲁塞尔签署的《统一提单若干法律规则国际公约》、1968 年 2 月 23 日签署的修正 1924 年 8 月 25 日在布鲁塞尔签署的《统一提单若干法律规则国际公约》的议定书或 1979 年 12 月 21 日在布鲁塞尔签署的修正经由 1968 年 2 月 23 日修正议定书修改的《统一提单若干法律规则国际公约》的议定书缔约国的，或者一国是 1978 年 3 月 31 日在汉堡缔结的《联合国海上货物运输公约》缔约国的，应当在批准、接受、认可或加入本公约的同时，通过向比利时政府提供相应的通知，退出已是其缔约国的该公约及其议定书。

2. 一国是 1978 年 3 月 31 日在汉堡缔结的《联合国海上货物运输公约》缔约国的，应当在批准、接受、认可或加入本公约的同时，通过向联合国秘书长提供相应的通知，退出该公约。

3. 就本条而言，本条第 1 款和第 1 款所列文书的缔约国对本公约的批准、接受、认可和加入，只有在这些国家按照要求对这些文书的退出生效之后

²³⁴ 为了保持一致，备选案文 A 和 B 所采用的起草方法都与第 77 条草案类似，后者针对关于管辖的一章。备选案文 A 旨在反映对关于仲裁的一章予以保留的办法，备选案文 B 旨在反映“选择适用”办法。按照工作组讨论中提出的建议（见 A/CN.9/616，第 278-279 段），曾考虑过对关于仲裁的一章采取“部分选择适用”的办法，但认为这种办法对于仲裁不必要或不可行。

²³⁵ 第 83 条草案由 A/CN.9/WG.III/WP.56 所载原第 102 条草案组成，原来属于关于最后条款的一章，现移至此处。认为此处加上关于退出的原第 102 条即现第 83 条草案后，关于其他公约的第 18 章读起来更合理些。

方可生效。本公约保管人应当与作为本条第 1 款所列文书保管人的比利时政府进行协商，以确保这方面的必要协调。²³⁶

第 84 条. 管辖航空货运的国际公约

如果其他任何有关航空货运的国际公约按照其规定适用于运输合同的任何部分，本公约的规定概不妨碍缔约国对该运输合同适用此种公约的规定。²³⁷

第 85 条. 赔偿责任总限制

本公约并不改变适用于远洋船舶船东赔偿责任限制或海事索赔赔偿责任限制的国际公约或国内法所规定的承运人或履约方的权利或义务。²³⁸

第 86 条. 有关旅客和行李运输的其他规定

对于任何行李灭失、损坏或迟延交付，凡根据适用于旅客及其行李运输的公约或国内法应由承运人承担赔偿责任的，均不产生本公约下的赔偿责任。

第 87 条. 关于核事故造成损害的其他规定

对于核事故造成的损害，根据下列文书应由核设施的经营人承担赔偿责任的，不产生本公约下的任何赔偿责任：

(a) 经 1964 年 1 月 28 日附加议定书修正的 1960 年 7 月 29 日《关于核能领域第三方责任巴黎公约》、经 1988 年 9 月 21 日《关于适用维也纳公约和巴黎公约的联合议定书》修正并且经 1997 年 9 月 12 日《修正 1963 年核损害民事责任维也纳公约的议定书》修正的 1963 年 5 月 21 日《核损害民事责任维也纳公约》、或 1997 年 9 月 12 日《关于核损害补充赔偿公约》，包括就核设施经营人对核事故造成损害的赔偿责任对这些公约以及任何新公约的任何修正；或

(b) 适用于此类损害赔偿责任的国内法，但以该国内法在各方面同《巴黎公约》、《维也纳公约》或《关于核损害补充赔偿公约》一样有利于可能遭受损害的人作为条件。

²³⁶ 案文以《联合国国际货物销售合同公约》第 99(3)和(6)条为基础。另见《汉堡规则》第 31 条。

²³⁷ 根据工作组在 A/CN.9/616 第 225 和 234-235 段的审议情况，以 A/CN.9/WG.III/WP.56 所载原第 89 条草案大意为基础提出的办法，以确保公约草案与《蒙特利尔公约》没有冲突。

²³⁸ 添加“海事索赔”一语，以与 1976 年《海事索赔赔偿责任限制公约》及其 1996 年议定书的术语相对应。

第 19 章. 合同条款的有效性²³⁹

第 88 条. 一般规定²⁴⁰

1. 除本公约另有规定外，运输合同中的任何条款，有下列情形之一的，一概无效：

- (a) 直接或间接排除或限制承运人或海运履约方在本公约下义务的；
- (b) 直接或间接排除或限制承运人或海运履约方对违反本公约下的义务承担赔偿责任的；或
- (c) 将货物的保险权益转让给承运人或第 18 条第 1 款述及的人的。

[2. 除本公约另有规定外，运输合同中的任何条款，有下列情形之一的，一概无效：

- (a) 直接或间接排除、限制[或增加]托运人、发货人、收货人、控制方、持有人或单证托运人在本公约下的义务的；或
- (b) 直接或间接排除、限制[或增加]托运人、发货人、收货人、控制方、持有人或单证托运人对违反其在本公约下的任何义务承担赔偿责任的。]

第 89 条. 关于批量合同的特别规则²⁴¹

1. 虽有第 8 条的规定，在承运人和托运人之间，²⁴²本公约所适用的批量合同可以规定增加或减少本公约中列明的权利、义务和赔偿责任，条件是批量合同中载有减损本公约的明确声明，并且该批量合同：

- (a) 是个别谈判订立的，或
- (b) 明确指明批量合同中载有减损内容的章节。

2. 根据本条第 1 款所作的减损应当在批量合同中载明，并且不得以参见另一文件的方式并入。

²³⁹ 工作组似应考虑，本章置于关于共同海损的第 17 章之前或并入关于适用范围的第 2 章是否更好些。

²⁴⁰ 按照工作组要求（A/CN.9/594，第 147 和 153 段），以 A/CN.9/WG.III/WP.61 第 46 段案文为基础修订的案文。“provision”一词取代了“stipulation”。

²⁴¹ 以 A/CN.9/WG.III/WP.61 第 49 段所载备选版本为基础修订的草案，按照工作组的要求（A/CN.9/594，第 163-167 段）对第 4 和 5 款作了修正。对第 5 款案文在行文措辞上作了调整，目的是使案文更加清楚，但无意改变实质内容，A/CN.9/WG.III/WP.61 第 49 段所载原第 5(c)项挪动位置，成为单独的第 6 款。

²⁴² 本款增加了“在承运人和托运人之间”一语，以顾及现插入公约草案的简化版第 5 款，这样可以确保列入 A/CN.9/WG.III/WP.61 第 49 段所载本条草案原第 5(a)项的案文，其中规定“本条第 1 款适用于承运人和托运人之间的关系”。

3. 承运人的公开运价表和服务表、运输单证、电子运输记录或类似单证不是本条第 1 款所规定的批量合同，但批量合同可通过提及方式并入此类单证的内容后将其作为合同条款。

4. 本条第 1 款不适用于第 16 条第 1 款(a)项和(b)项、第 29 条和第 32 条中规定的权利和义务或因违反上述规定而产生的赔偿责任，本条第 1 款也不适用于因第 64 条述及的作为或不作为而产生的任何赔偿责任。²⁴³

5. 批量合同满足本条第 1 款要求的，批量合同中减损本公约的条款在承运人和非托运人的其他任何人之间适用，条件是：

(a) 该人所收到的信息明确声明该批量合同减损本公约，并且明确同意受减损内容的约束；并且

(b) 此种同意不单独体现在承运人的公开运价表和服务表、运输单证或电子运输记录上。²⁴⁴

6. 主张从减损公约中获得利益的一方，负有证明减损公约的各项条件已经得到满足的举证责任。

第 90 条. 关于活动物和某些其他货物的特别规则²⁴⁵

虽有第 88 条的规定，在不影响²⁴⁶第 89 条的情况下，运输合同可排除或限制承运人和海运履约方的义务或赔偿责任，条件是：

(a) 货物是活动物，除非索赔方证明货物的灭失、损坏或迟延交付是承运人或第 18 条第 1 款述及的人或海运履约方明知可能发生此种灭失、损坏²⁴⁷或迟延损失而轻率地作为或不作为所导致的；或

(b) 货物的性质或状况或进行运输的情况和条件，使得有合理的理由达成一项特别协议，但须以此种运输合同不涉及正常贸易过程中所进行的正常商业货运并且未对该货物的运输签发可转让运输单证或可转让电子运输记录为条件。

²⁴³ 以 A/CN.9/WG.III/WP.61 第 49 段为基础修订的草案，并按照工作组的要求（A/CN.9/594，第 158-162 段）对提及第 64 条草案的字样作了修正。

²⁴⁴ 对 A/CN.9/WG.III/WP.61 第 49 段所载第 5 款案文在行文措辞上作了调整，目的是使案文更加清楚，但无意改变实质内容。A/CN.9/WG.III/WP.61 第 49 段所载原第 5(c)项挪动位置，成为单独的第 6 款。

²⁴⁵ 按照工作组的要求（A/CN.9/594，第 163-167 段），以 A/CN.9/WG.III/WP.61 第 62 段为基础修订的草案。

²⁴⁶ 在(a)款开头句中，在 A/CN.9/WG.III/WP.61 第 62 段所载案文中增加“在不影响……的情况下”一语，以便更好地反映第 88 和 89 条的性质。

²⁴⁷ 为避免重复，从 A/CN.9/WG.III/WP.61 第 62 段所载案文中删除“而仍轻率作为或不作为及明知”一语。

第 20 章. 最后条款

第 91 条. 保存人

兹指定联合国秘书长为本公约保存人²⁴⁸。

第 92 条. 签署、批准、接受、认可或加入

1. 本公约自[···]年[···]月[···]日至[···]日在[···]开放供各国签署，随后直至[···]年[···]月[···]日在纽约联合国总部开放供各国签署。
2. 本公约须经签署国批准、接受或认可。
3. 自开放供签署之日，本公约对所有未签署国开放供加入。
4. 批准书、接受书、认可书和加入书应当交存联合国秘书长。²⁴⁹

第 93 条. 保留

除本公约明确授权的保留之外，不准许对本公约作出保留。²⁵⁰

第 94 条. 声明的程序和效力²⁵¹

1. 在签署时作出的声明，须在批准、接受或认可时加以确认。
2. 声明及其确认，应以书面形式提出，并应正式通知保存人。
3. 声明在本公约对有关国家开始生效时同时生效。但是，保存人于此种生效后收到正式通知的声明，应于保存人收到该项声明之日起满六个月后的下一个月第一日生效。
4. 根据本公约的规定作出声明的任何国家，可以在任何时候以书面形式正式通知保存人更改或撤回该项声明。此种更改或撤回于保存人收到通知之日起满六个月后的下一个月第一日生效。

第 95 条. 对本国领土单位的效力

1. 一缔约国拥有两个或多个领土单位，各领土单位对本公约所涉事项适用不同法律制度的，该国得在签署、批准、接受、认可或加入时声明本公约适用于本国的全部领土单位或仅适用于其中的一个或数个领土单位，并且可以随时提出另一声明来修改其所做的声明。
2. 此种声明应通知保存人，并且明确指明适用本公约的领土单位。
3. 由于根据本条规定作出一项声明，本公约适用于缔约国的一个或数个领土单位但不是全部领土单位，而且一方当事人的营业地位于该国之内的，为

²⁴⁸ 案文取自《电子订约公约》第 15 条和《汉堡规则》第 27 条。

²⁴⁹ 案文取自《电子订约公约》第 16 条。

²⁵⁰ 修订的案文，以顾及可能列入对第 15 章和第 16 章的保留条款。

²⁵¹ 建议的案文，以顾及可能列入对第 15 章和第 16 章的保留条款。

本公约之目的，除非该营业地位于本公约适用的领土单位内，否则该营业地视为不在缔约国内。

4. 一缔约国未根据本条第一款作出声明，本公约适用于该国的所有领土单位。²⁵²

第 96 条. 区域经济一体化组织的参与²⁵³

1. 由主权国家组成并对本公约管辖的某些事项拥有管辖权的区域经济一体化组织同样可以签署、批准、接受、认可或加入本公约。在此情况下，区域经济一体化组织享有的权利和负有的义务应与缔约国相同，但仅限于本组织对本公约管辖的事项具有管辖权的范围。当涉及本公约下缔约国数目时，区域经济一体化组织内的成员国为本公约缔约国的，该区域经济一体化组织不能算作一个缔约国。

2. 区域经济一体化组织应当在签署、批准、接受、认可或加入时应向保存人提出一项声明，指明对本公约所管辖的哪些事项的管辖权已由其成员国转移给本组织。根据本款提出的声明中所指明的管辖权分配如发生任何变化，包括管辖权的新的转移，区域经济一体化组织应迅速通知保存人。

3. 在情况需要时，本公约中对“一缔约国”或“各缔约国”的任何提及均同等适用于区域经济一体化组织。

第 97 条. 生效

1. 本公约于第[二十][三]份批准书、接受书、认可书或加入书交存之日起满[一年][六个月]后的下一个月第一日生效。

2. 一国于第[二十][三]份批准书、接受书、认可书或加入书交存之日起成为本公约缔约国的，本公约于该国的相应文书交存之日起满[一年][六个月]后的下一个月第一日对该国生效。

3. 对于在本公约对本国生效之日或之后订立的运输合同，每一缔约国应当适用本公约。²⁵⁴

第 98 条. 修订和修正

1. 在不少于三分之一的本公约缔约国的请求下，保存人应当召开缔约国会议修订或修正本公约。

2. 本公约修正案生效后交存的任何批准书、接受书、认可书或加入书，

²⁵² 案文取自《电子订约公约》第 18 条。另见 2001 年 11 月 16 日开普敦《移动设备国际利益公约》第 52 条。

²⁵³ 工作组第十六届会议在 A/CN.9/591 第 73 段提出的案文，如 A/CN.9/591 第 83 段所指出，当时未加讨论。

²⁵⁴ 案文取自《汉堡规则》第 30 条。注意第二组方括号内提出的时间段出自《电子订约公约》第 23 条。所选定的生效时间由所要求的批准书数量和所要求的交存相应文书之后时间长度共同决定，一般认为这一时间适合商业惯例逐步调整以适应新的制度。

视为适用于经修正的公约。²⁵⁵

第 99 条. 对责任限额的修正²⁵⁶

1. 本条中的特别程序仅为修正本公约第 62 条第 1 款所确定的赔偿责任限额的目的而适用。

2. 在有至少[四分之一²⁵⁷]的本公约缔约国提出请求时，²⁵⁸保存人须向所有缔约国²⁵⁹分发关于修正本公约第 62 条第 1 款所指明的赔偿责任限额的任何提案，并应召开由来自每个缔约国的一名代表组成的委员会会议审议拟议的修正。

3. 委员会会议应当在举行联合国国际贸易法委员会下一届会议的时间和地点召开。

4. 修正案应当由委员会出席并参加表决的成员的三分之二的多数通过。²⁶⁰

5. 在就修正限额的提案采取行动时，委员会将考虑到根据本公约提起索赔的经验，特别是由此产生的损失金额、币值²⁶¹变化和拟议修正案对保险费用的影响。

²⁵⁵ 案文取自《汉堡规则》第 32 条。修正程序在贸易法委员会的法规中并不常见，但对于修订责任限额和记算单位，《汉堡规则》在第 32 条有一项总则，在第 33 条中有一项专门规定。在《电子订约公约》中，委员会决定不制订关于修正程序的规定，因为该公约的缔约国可以在适用情况下经由委员会讨论根据一般条约法启动修正程序（一般是召开一次外交会议和通过一项修正议定书，例如 1974 年 6 月 14 日在纽约订立的《国际货物销售时效期限公约》经由 1980 年 4 月 11 日议定书修正就是这种情况）。注意第 103 条草案和第 104 条草案中的修正条文可分别适用。

²⁵⁶ 案文原载于 A/CN.9/WG.III/WP.39 第 7 段，包括脚注。本提案依据的是《雅典公约 2002 年议定书》（“《雅典公约》”）第 23 条和《国际贸易运输港站经营人赔偿责任公约》（“《运输港站经营人公约》”）第 24 条规定的修正程序。在国际海事组织（“海事组织”）的一些公约中也采用了类似做法，例如《1992 年议定书》修正 1969 年《油污损害民事责任国际公约》；《1992 年议定书》修正 1971 年《关于设立油污损害赔偿国际基金的国际公约》；《2003 年议定书》随附 1992 年《关于设立油污损害赔偿国际基金的国际公约》（尚未生效）（“《1992 年油污损害赔偿国际基金的 2003 年议定书》”）；《1996 年议定书》修正 1976 年《海事索赔赔偿责任限制公约》；以及 1996 年《国际海上运载有害和有毒物质造成损害的责任和赔偿公约》。

²⁵⁷ 《雅典公约》第 23(2)条提及“半数”而不是“四分之一”缔约国。

²⁵⁸ 《雅典公约》第 23(2)条载有“绝不少于六个”缔约国这一短语。

²⁵⁹ 《雅典公约》第 23(2)条还提及海事组织成员。

²⁶⁰ 《雅典公约》第 23(5)条内容如下：“修正案应由出席……法律委员会并参加表决的经本议定书修订的公约的缔约国的三分之二多数通过，但在表决时，至少应有经本议定书修订的公约的缔约国的半数出席。”

²⁶¹ 本条文案文取自《雅典公约》第 23(6)条。另见《运输港站经营人公约》第 24(4)条。

6. (a) 根据本条对限额提出的修正自从本公约开放供签署之日起不满[五²⁶²]年的或者自根据本条作出的上一次修正生效之日起不满[五]年的，不予审议。

(b) 对限额的任何增加均不得超过本公约所规定的限额自本公约开放供签署之日起按复合方法计算每年递增百分之[六]的相应数额。²⁶³

(c) 对限额的任何增加均不得超过本公约所规定的限额乘以[3]所得出的相应数额。²⁶⁴

7. 保存人应当将根据本条第 4 款通过的任何修正案通知所有缔约国。在通知之日后[十八²⁶⁵]个月的期限结束时，该修正案被视为已获接受，除非在此期间有不少于[四分之一²⁶⁶]的缔约国在该修正案被通过时已经通知保存人其不接受该修正案，在此种情况下，该修正案即被否决并属无效。

8. 根据本条第 7 款被视为已获接受的修正案在其获接受后满[十八²⁶⁷]个月时生效。

9. 所有缔约国均受该修正案的约束，但是在该修正案生效前至少六个月已根据第 100 条退出本公约的缔约国不在此列。此种退出在该修正案生效时生效。

10. 当一修正案已获通过，但其获得接受所需要的[十八]个月期限未届满时，在此期间内成为缔约国的国家在该修正案生效时受其约束。在此期限后成为缔约国的国家，根据本条第 7 款的规定，受已被接受的修正案的约束。在本款所述情况下，一国或者在修正案生效时，或者在本公约对该国生效时受该修正案的约束，以较迟者为准。

第 100 条. 退出本公约

1. 缔约国可以通过向保存人发出书面通知于任何时候退出本公约。

²⁶² A/CN.9/WG.III/WP.34 第 11 和 12 段建议本款草案中的期限应当为七年，而不是五年。

²⁶³ 运输港站经营人公约》中没有类似的条文。A/CN.9/WG.III/WP.34 第 11 和 12 段中建议的替代做法可以是：“对限额的任何增加或减少，均不得超过任何单次调整中本公约的规定限额增加或减少百分之二十一之相应数额。”

²⁶⁴ 《运输港站经营人公约》中没有类似的条文。A/CN.9/WG.III/WP.34 第 11 和 12 段中建议的替代做法可以是：“对限额的任何增加或减少，其累计额均不得超过本公约的规定限额百分之一百以上的数额。”

²⁶⁵ A/CN.9/WG.III/WP.34 第 11 和 12 段中建议，第 7、8 和 10 款草案中的期限应为十二个月，而不是十八个月。

²⁶⁶ 《运输港站经营人公约》第 24(7)条中规定“已成为缔约国的国家中至少有一分之一的国家”。

²⁶⁷ 对于紧迫性成为重要考虑的情形，海事组织最近的一些公约已将这一期限减为十二个月。例如，见《1992 年国际油污赔偿基金 2003 年议定书》，第 24(8)条。

2. 退约自保存人收到通知十二个月期满后下一个月第一日起生效。通知中指定更长期限的，退约自保存人收到通知后该更长期限期满时生效。²⁶⁸

[...]年[...]月[...]日订于[...], 正本一份, 阿拉伯文、中文、英文、法文、俄文和西班牙文文本同为作准文本。

兹由经各国政府正式授权的下列署名全权代表签署本公约, 以昭信守。

²⁶⁸ 案文取自《汉堡规则》第 34 条。第 2 款的第二句并非绝对必要, 但见诸于《汉堡规则》和贸易法委员会其他一些条约, 包括《电子订约公约》。这句话没有出现在例如 2005 年《联合国制止核恐怖主义行为国际公约》(交存秘书长的最新法规) 第 27 条中, 该条采用了略加改动的另一种措辞:

- “1. 任何缔约国可书面通知联合国秘书长退出本公约。
2. 退出应在联合国秘书长收到通知之日起一年后生效。”