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Working Party dealing with Legal Questions

(Fifth session)

CARRIER'S RESPONSIBILITY

The following extract from the draft Convention regarding the contract of international carriage of goods by road prepared at the fifth session of the Tripartite Committee on the International Road Transport Contract, held at Pallanza, is circulated to the members of the Working Party.

CHAPTER V

Liability of the carrier

Article 17

- (1) The carrier shall be liable for total or partial loss of the goods or damage thereto and for delay in delivery, from the moment when the goods were taken over by the carrier until the moment of delivery.
- (2) The carrier shall be relieved of this liability if he proves that the loss, the damage or the delay was occasioned by circumstances outside the control of the carrier himself, his representatives or his servants, or that it was not within their power to remedy.
- (3) The carrier shall not be liable for loss, damage or delay due to one or more of the following causes:
 - (a) Act of war, act of public enemies, arrest or restraint of governments or authorities; seizure under legal or administrative process.

(b) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general; riots or civil commotions.

(c) Sanitary precautions or precautions against diseases affecting animals or plants.

(d) Act or omission of the person entitled to dispose of the goods or his representatives or his servants.

(e) Handling, loading or stowage of the goods by the consignor or unloading by the beneficiary.

(f) Special nature of the goods normally making them liable to breakage, leakage, deterioration or to any other wastage in bulk or to spontaneous combustion; inherent defect of the goods; vice of the goods, insufficiency of packing; insufficiency or inadequacy of marks or numbers upon the goods.

(g) Effect of heat, cold, variations in temperature or in the humidity of the air, provided that in the event of transport being performed in vehicles specially equipped to protect goods from these effects, the carrier proves that due diligence was exercised in the choice, in the maintenance and in the use of such equipment.

(h) Use of open vehicles without tilts, when such use is customary or has been agreed.

(i) The special risks to which live animals are exposed by transport, provided that the carrier proves that all precautions which, in the light of the circumstances in the case, normally are incumbent upon the carrier were taken and that he had observed the instructions received.

If, in the actual circumstances, the loss, damage or delay may have been caused by one or more of the above-mentioned causes, then shall be prima facie evidence that it in fact resulted from one of those causes, without prejudice, however, to the act or omission of the carrier or of his representatives or servants, which might have contributed to the loss, damage or delay.

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Article 18

The delivery period shall be agreed upon between the consignor and the carrier.

There is delay in delivery when the goods have not been delivered in the delivery period agreed upon or, in the absence of such a period, when, in the light of the circumstances of the case, the period of carriage was clearly unreasonable.

In the case of less than vehicle load consignments allowance shall be made, in estimating these circumstances, particularly for a reasonable period to collect a vehicle load consignment of normal condition.

Article 19

The person entitled may, without being required to furnish other proof, regard goods as lost when they have not been delivered within thirty days following the expiry of the delivery period agreed upon, and, in the absence of such a delivery period, within sixty days following the taking over of the goods by the carrier.

Article 20

If the goods are delivered to the beneficiary without recovery of the cash on delivery which should have been collected by the carrier under the provisions of the contract of carriage, the carrier is liable for payment to the consignor of the cash on delivery, without prejudice to his right of recovery from the beneficiary.

Article 21

(1) Goods of an inflammable, explosive, or dangerous nature, to the acceptance whereof the carrier has not consented with knowledge of their nature may at any time or place be unloaded, destroyed or rendered innocuous by the carrier without compensation; further, the consignor shall be liable for all damages and expenses arising out of their acceptance.

(2) If the carrier, knowing the nature of the goods, has consented to their carriage, he shall not be entitled to unload, destroy or render them innocuous except in the event of their endangering the vehicle or the load; in such case no compensation shall be payable.

Article 22

(1) When, under the provisions of this convention, the carrier is liable for compensation in the case of loss of the goods, such compensation shall be calculated in accordance with the value of the goods at the place and time at which the goods were accepted for carriage. The value of the goods shall be determined in accordance with the exchange price or, failing such price, in accordance with the current market price or, failing both the foregoing, in accordance with the ordinary value of goods of the same nature and quality. Nevertheless, the compensation shall not exceed x francs per kg. of gross weight short; the franc being regarded as referring to the gold franc weighing 10/31 grammes of gold 900 fine.

The transport charges, Customs duties and other disbursements in respect of the carriage of the goods lost shall also be refunded, without, however, any payment of damages.

(2) In the case of damage to the goods, the compensation shall not exceed:

(a) If the whole consignment has been deteriorated, the sum that would have been payable in the case of total loss;

(b) If the value of only part of the consignment has been depreciated by the damage, the sum that would have been payable in case of loss of the part deteriorated.

(3) The liability of the carrier for delay shall be limited to the transport charges.

(4) Higher compensation shall only be payable if a declaration of the value of the goods or a declaration of interest in delivery has been made in accordance with article 23.

(5) When the price
goods are expressed
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(5) When the prices to be taken as a basis in calculating the value of the goods are expressed in a currency other than of the State in which payment is claimed, conversion shall be effected at the rate of exchange at the date and place of payment of the compensation.

Article 23

(1) The consignor may declare, in the way-bill, a value for the goods exceeding the limit laid down in article 22, and may also fix the amount of a special interest in delivery, both in the case of loss or damage and in the case of delay, against payment, at the request of the carrier, of a surcharge to be argued.

(2) The declaration of a special interest in delivery in the case of delay presupposes a delivery period agreed upon.

(3) In the case of loss, damage or delay for which the carrier is liable, the declaration of a special interest in delivery shall be regarded as prima facie evidence of the amount of the damage sustained, in the absence of proof to the contrary furnished by the carrier.

Article 24

As regards the removal of furniture without packing this convention is completed by Annex 3.

Article 25

If according to the law of the Court trying the action the same damage caused by the same act or fault, can give rise not only to a liability founded on contracts but also to a liability founded on torts committed, and if the first mentioned liability is governed by this convention, then even the second liability shall be governed by this convention.

Article 26

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability or which reverse the burden of proof, if the damage is caused by his wilful misconduct or by such

default on his part as, in accordance with the law of the Court trying the action, is considered to be equivalent to wilful misconduct.

(2) Similarly, the carrier shall not be entitled to avail himself of the said provisions, if the damages caused as aforesaid by any representative or servant of the carrier acting within the scope of his employment. Nevertheless, in this case, the compensation to be paid by the carrier may not exceed the limits provided for in this convention unless the carrier was aware of or ought to be aware of the value of the goods.

Article 27

If the liability of the carrier is engaged by virtue of this convention, but the latter does not determine the extent of the liability, this determination shall be done according to the law which the Court trying the action finds applicable.