



IUMI Conference

Copenhagen / 9-12 September 2007



UNCITRAL – WHERE ARE WE NOW ?

Prof. Dr. Alexander von Ziegler



„TEN YEARS AFTER“

- from Paris
- to Copenhagen
- via Berlin



„THE UNCITRAL PROJECT“

- from Hague
- to Vienna
- via Hamburg



Main features of the UNCITRAL draft Convention

- **Trade:**

Trade transactions are the “*raison d’être*” of the **shipping** industry

- **Maritime Transportation:**

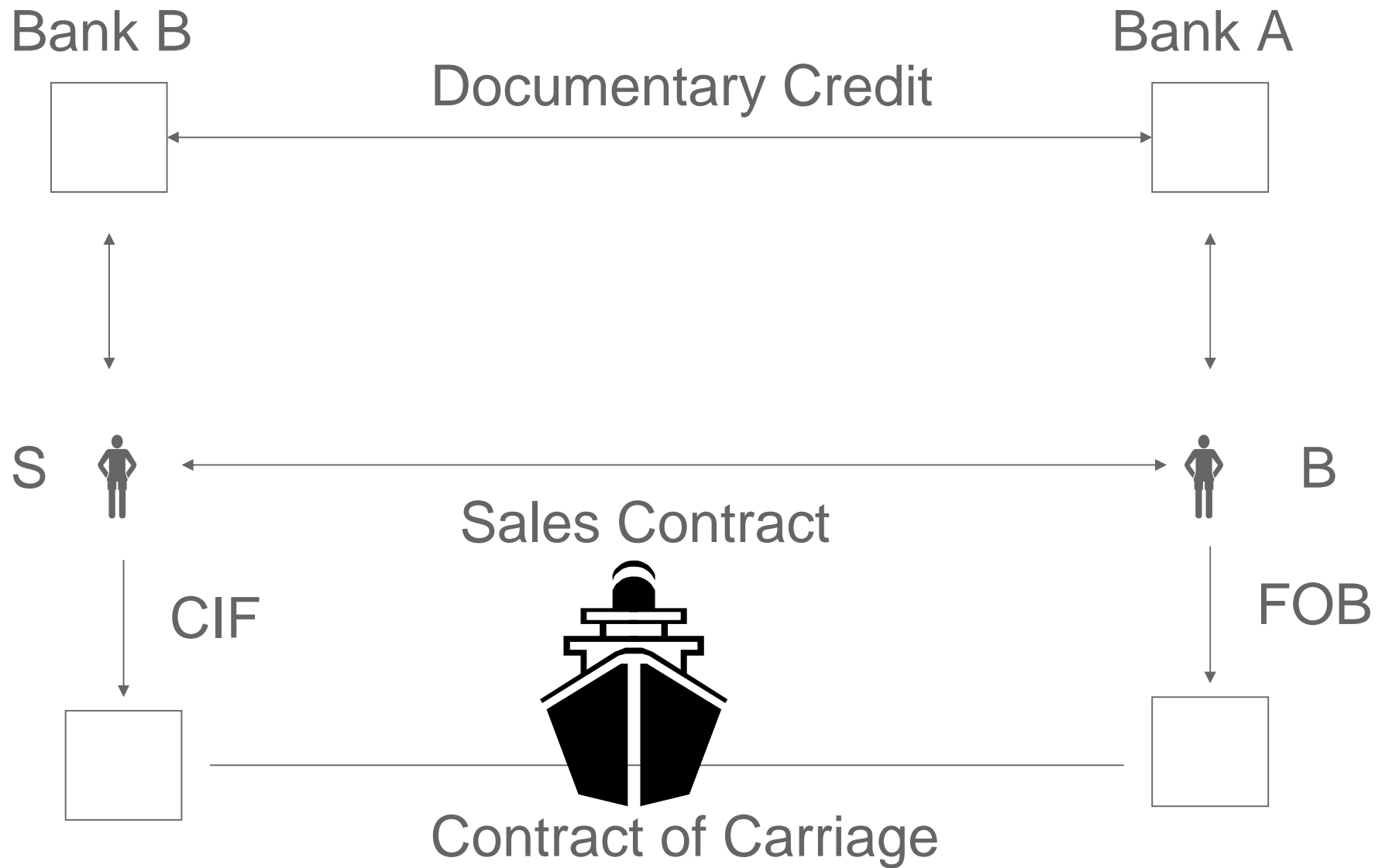
Movements of goods are the **backbone of international trade**

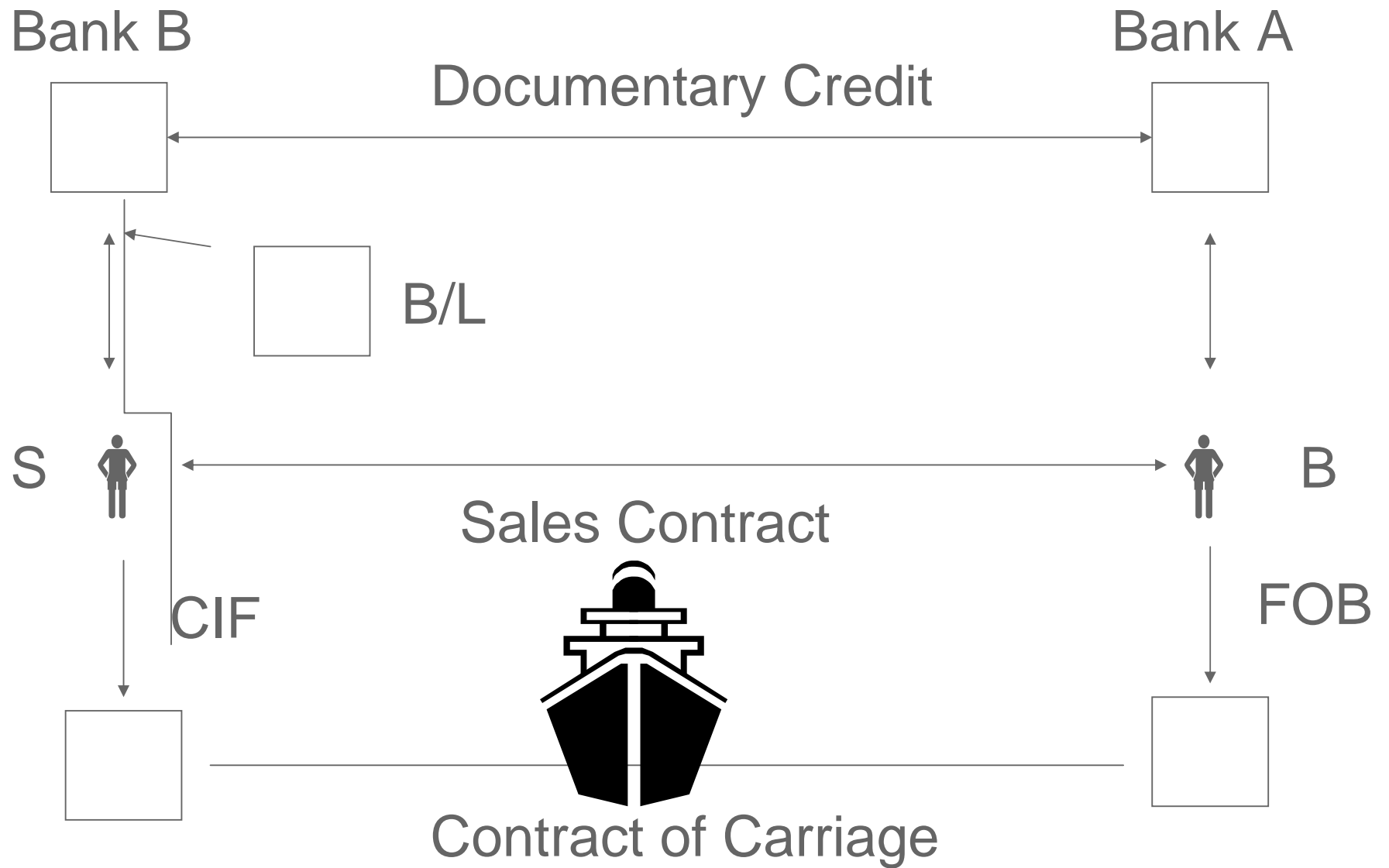


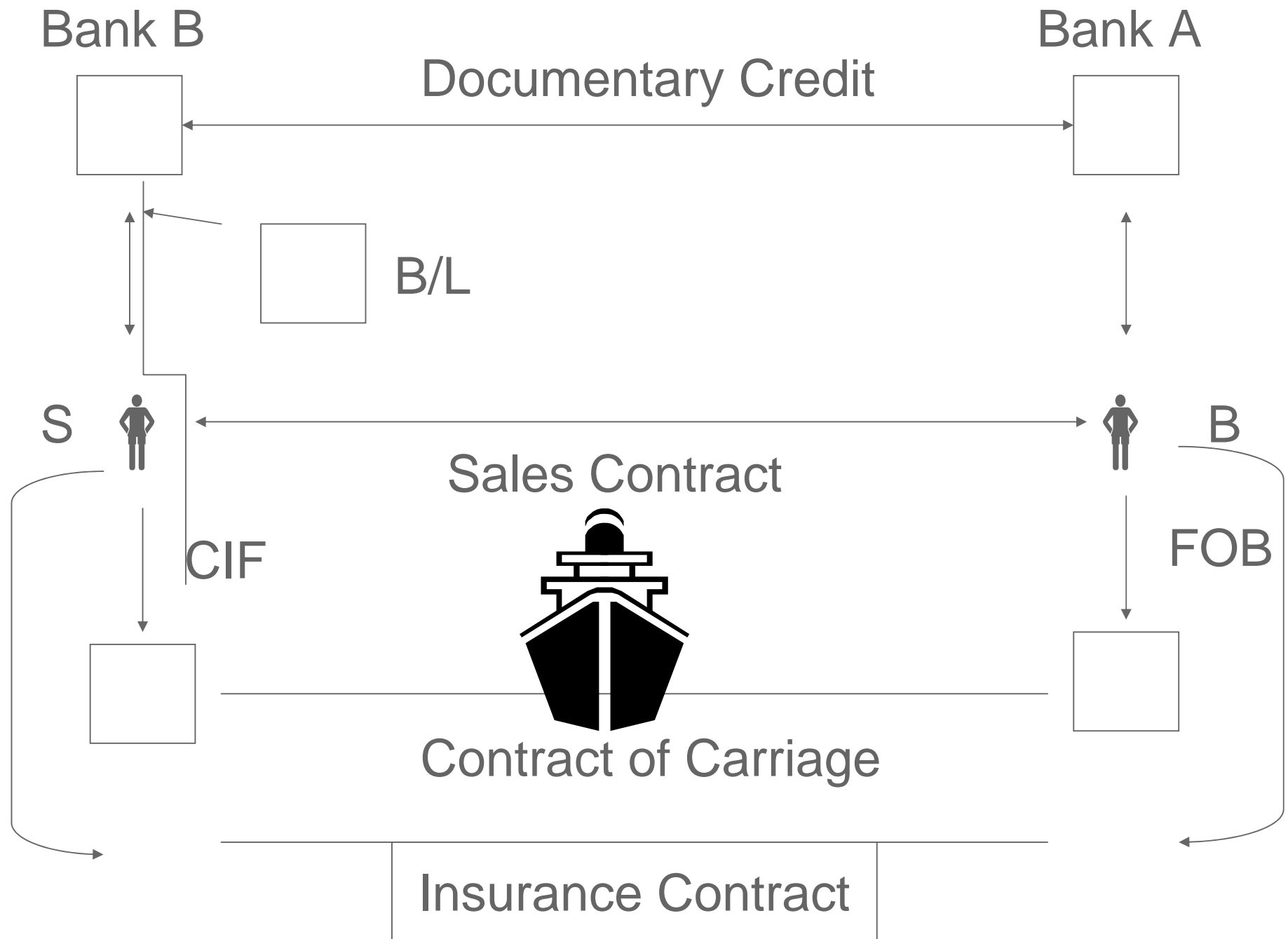
„Simple“ transaction

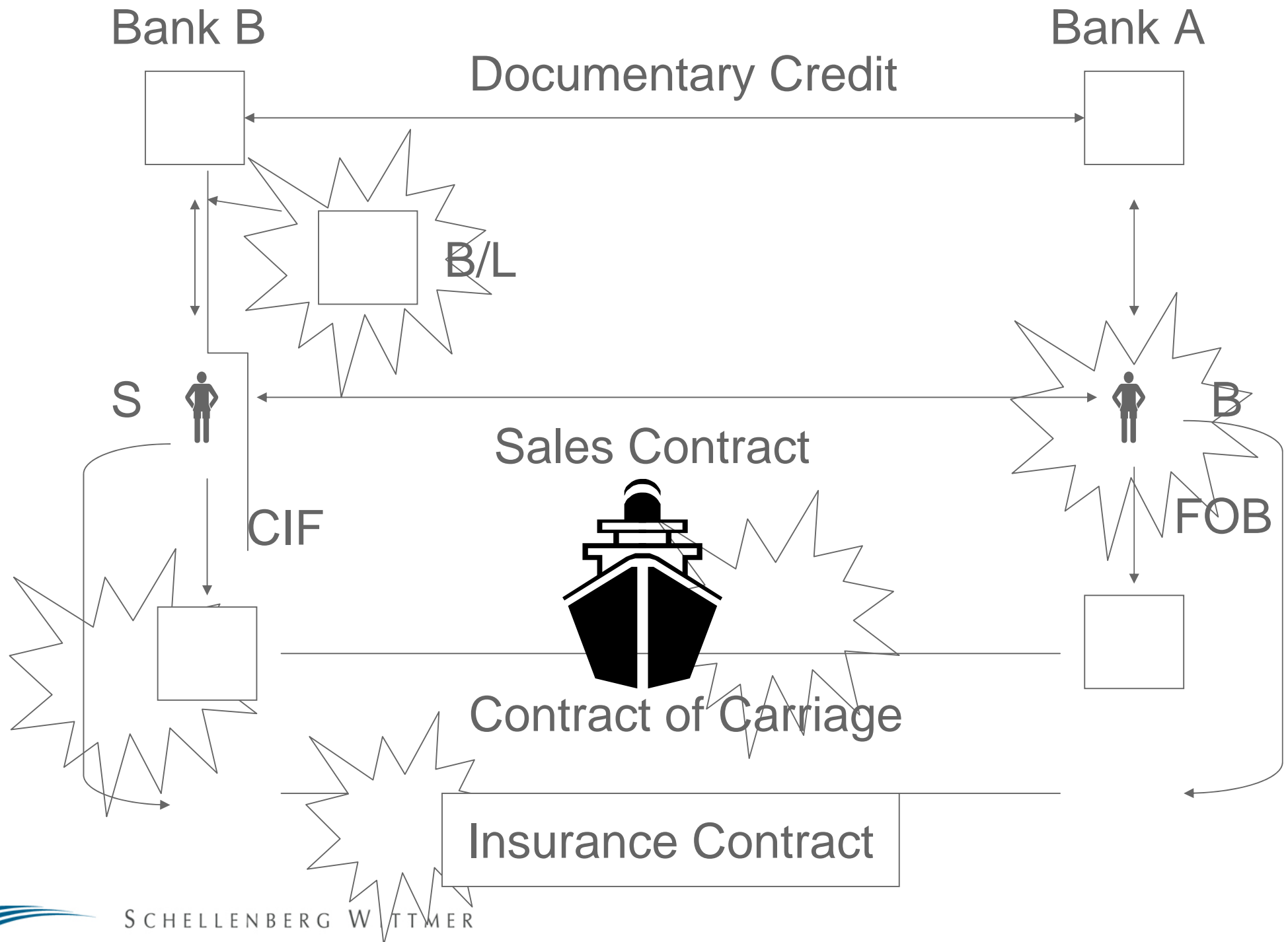




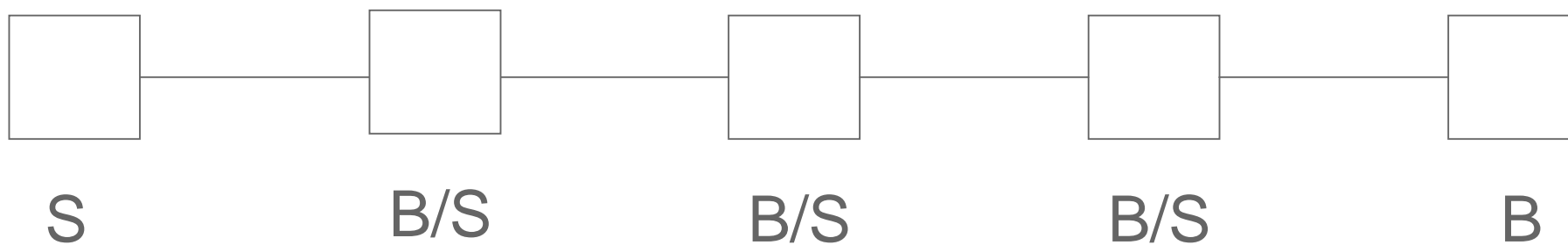


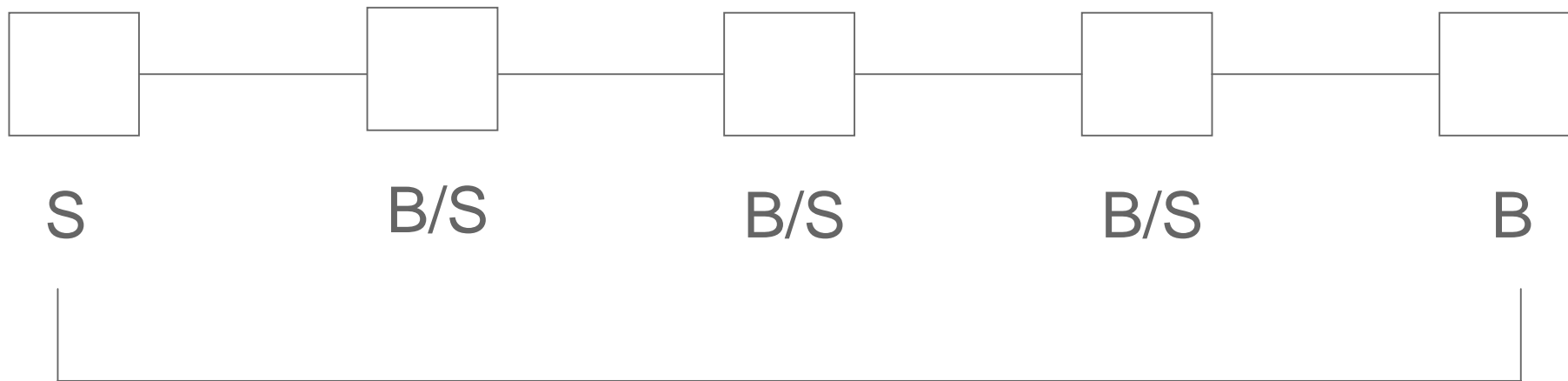






String Sale

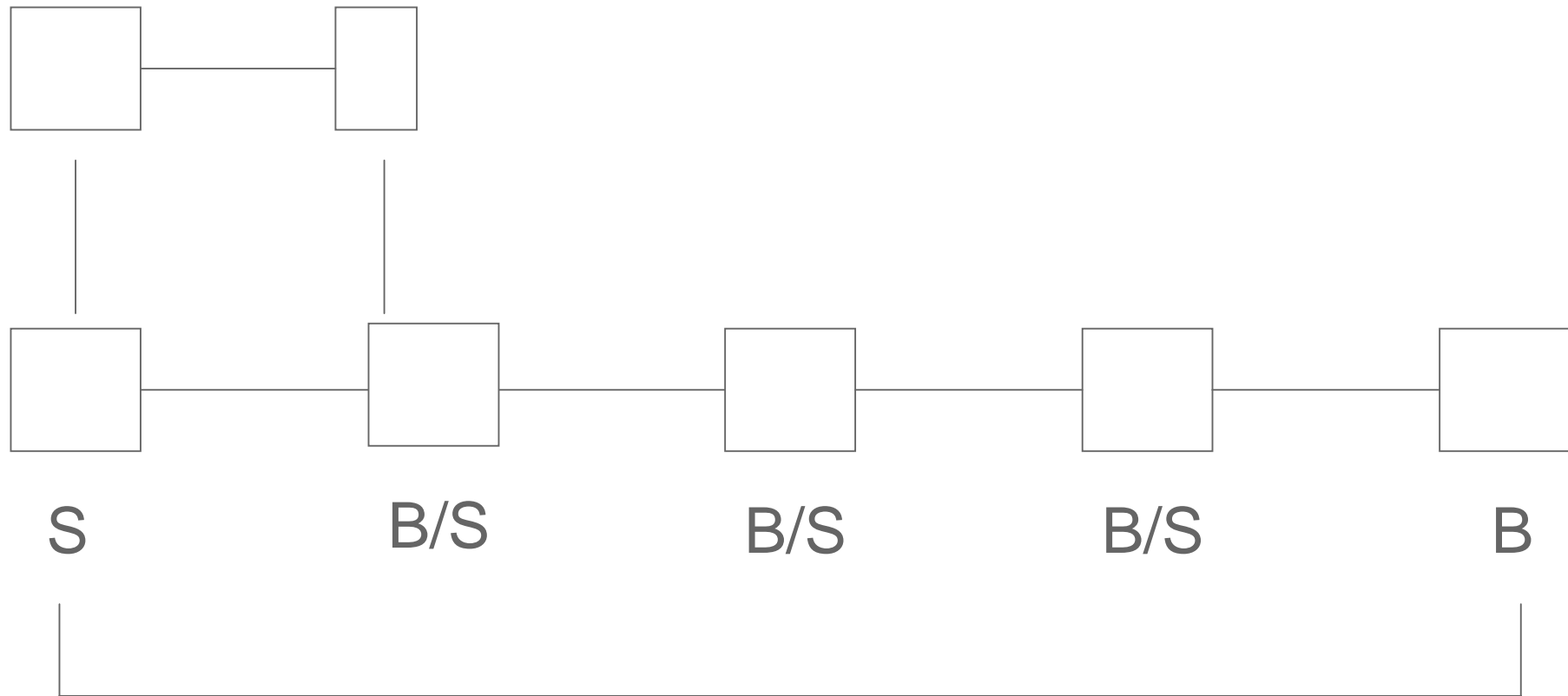




Contract of Carriage



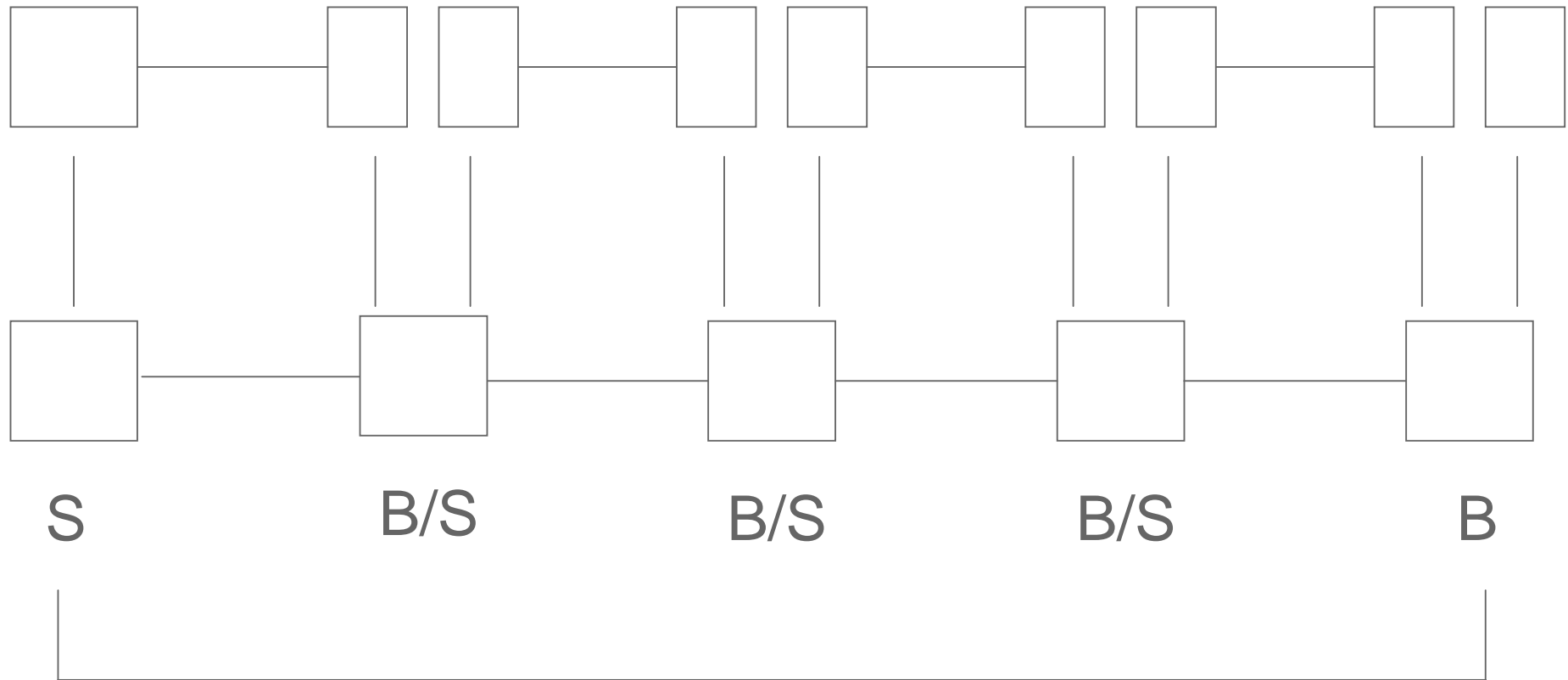
Documentary Credit



Contract of Carriage



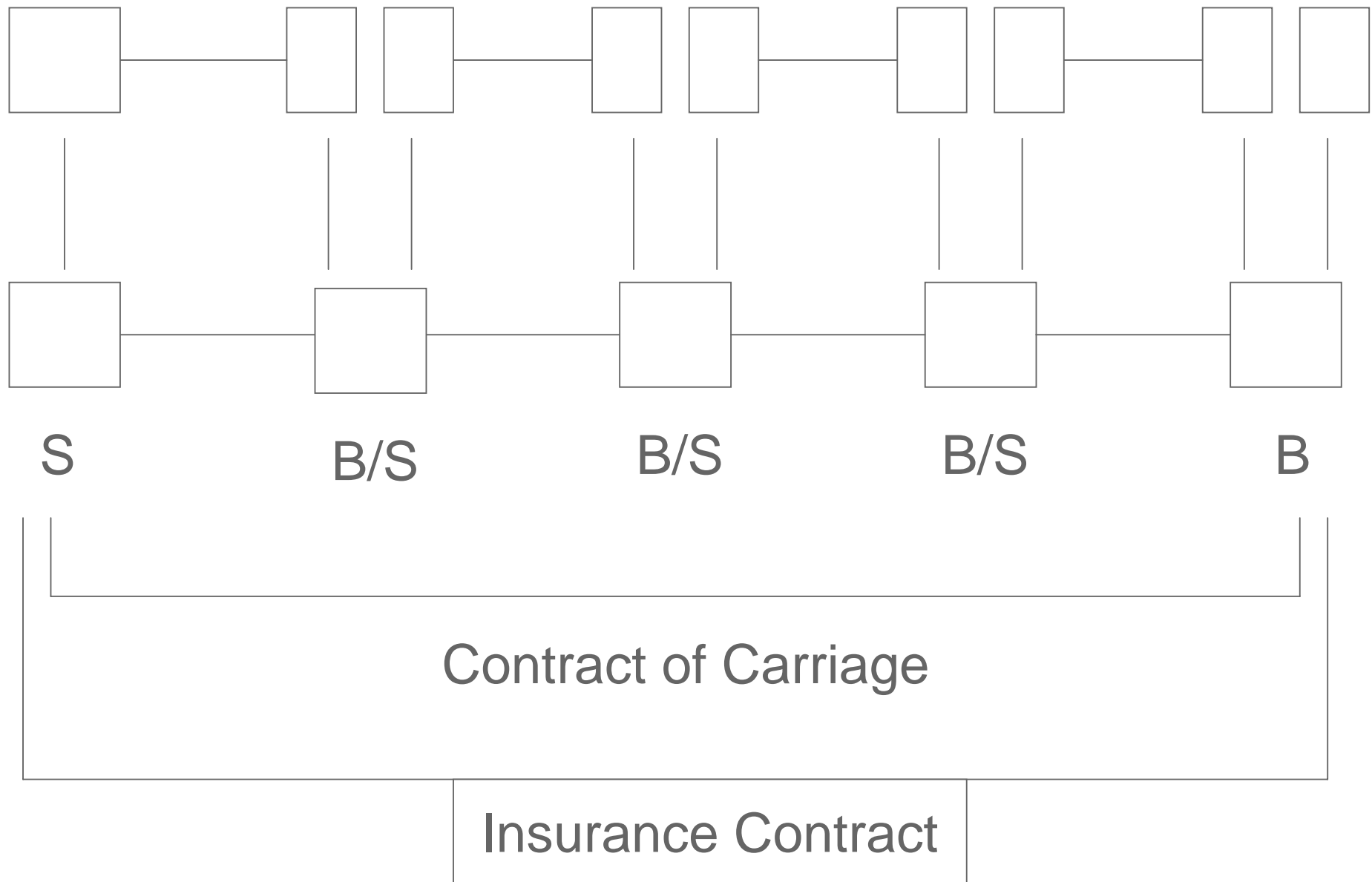
Documentary Credit



Contract of Carriage



Documentary Credit



Main features of the UNCITRAL draft Convention

- Contractual approach versus documentary approach
 - Extension of the scope from a liability convention to a convention on the contract of carriage
 - Recognition of the particularities of the contract of carriage and the transport documents in the context of international trade
 - Inclusion of electronic trade and “documentation”

Main features of the UNCITRAL draft Convention

- From “tackle to tackle” to “door to door”
 - Extension of the scope of application
 - Conflict with land transportation conventions (CMR / COTIF)?

Main features of the UNCITRAL draft Convention

- Revised Liability Regime
 - Deletion of the “error in navigation”
 - Liability for delay
 - Liability of both contractual and actual (maritime) carriers
 - Liability of the shipper

Article 17

Liability of the Carrier for Loss, Damage or Delay

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 **circumstance** that caused or contributed to it took place **during the period of the carrier's responsibility** as defined in chapter 4.
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;
- e) Strikes, lockouts, stoppages, or restraints of labour;
- f) Fire on the ship;
- g) Latent defects in the [ship] [means of transport] not discoverable by due diligence;
- h) Act or omission of the shipper[, the consignor] or any person referred to in article 34, paragraph 1, the controlling party, or the consignee;

- (i) Loading, handling, stowing, or discharging 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;
- o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16, paragraph 2.

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.**



Main features of the UNCITRAL draft Convention

- Limits of Liability



Chapter 13 / 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 Convention 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 value 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 2

- [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 delivery was caused] **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] 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] **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] 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.



Main features of the UNCITRAL draft Convention

■ Transport Documents

- Bills of Lading
- Door to door B/L
- Sea waybills
- Electronic “documents”



Main features of the UNCITRAL draft Convention

■ Transfer of Rights

- Bills of Lading
- Sea waybills
- Electronic equivalent



Main features of the UNCITRAL draft Convention

- Right of Control
 - “Mirror” of the “right of stoppage in transit”
 - Role of the type of document: Bills of Lading / Sea Waybills
Electronic equivalent

Main features of the UNCITRAL draft Convention

- Right and Obligations at Destination
 - Consignee's right to request delivery from the carrier
 - Carrier's right to request delivery by the consignee
 - The rights of the carrier when the cargo cannot be delivered at destination
 - Delivery when B/L is not available (LOI)
 - Right of Retention



Main features of the UNCITRAL draft Convention

- Freedom of Contract



Main features of the UNCITRAL draft Convention

- Jurisdiction and Arbitration



How will the draft Convention affect international trade?

- Carriers
- Freight forwarders
- Shippers
- Consignees
- Traders
- Banks



How will the draft Convention affect international marine insurers?

- Initial “learning” investment
- initial “co-existence” with Hague Rules
- modernized liability system
- new Convention will hopefully overcome the proliferation of liability systems
- harmonized regime in synchronicity with the standard warehouse – to warehouse marine cargo policy

How will the draft Convention affect international marine insurers?

- harmonized door-to-door liability system for recourse actions
- harmonized door-to-door liability system for marine liability insurance
- harmonized law in matters outside pure liability issues
→ less frictions in the performance of trade and transportation → less circumstances in which claims can arise

UNCITRAL WEBSITE

You can find the current version of the UNCITRAL draft Convention on the UNCITRAL website:

- www.uncitral.org
- www.uncitral.org/uncitral/en/commission/working_groups/3Transport.html
- Official document no.: **A/CN.9/WG.III/WP.81**

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