

**UNCITRAL**  
**- United Nations Commission on**  
**International Trade Law -**

**Project to develop a new Liability**  
**Convention**

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## **Project to develop a new Liability Convention**

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### **1. General presentation**

- **Transport Law**
- **United Nations Commission on International Trade Law (UNCITRAL)**
- **Draft convention on the carriage of goods wholly or partly by sea**
- **Project**
  - a new legislative instrument on issues relating to the international carriage of goods such as : scope of application, period of responsibility, obligations of the parties...
- **Working Group**
  - Composition
  - first deliberations

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## 2. Introduction

### ■ Reasons of the draft

- Convention of Aug. 25th. 1924 ; Hague Visby Rules ; Hambourg Rules, ... : the "explosion" of the sources of maritime transport law

### ■ The philosophy of the draft

- to cover all the aspects of the contract of carriage by sea
- to ensure the safety of maritime operations
- to achieve a balance between the interests of the carrier and those of the shipper
- to modernize maritime transport law
- to promote good faith in international trade

### ■ Main provisions

- Contract's borders : port-to-port or door-to-door ?
  - Qualification of contracts : contract of carriage or contract of transport ?
  - Contractual freedom : mandatory rules or non mandatory rules ?
  - Performance of the contract : carrier, sub-carrier, performing party, servants ...
- Procedural questions : exclusive or non exclusive jurisdiction ?

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### 3. Scope of application

- **Geographic scope of application**
  - International contract
  - Localization in a contracting State (receipt or delivery or paramount clause)
- **Types of contracts**
  - **Contract of carriage by sea and eventually by road, by train ...**
    - ☛ "maritime plus"
  - **Exclusions :**
    - charter-parties ; other contracts in non liner-transportation ; contracts for the use of a ship or a space ; volume contracts
  - **Inclusions :**
    - contracts of carriage in non liner-transportation contained in a transport doc. transport document issued pursuant to a charter-party
- **Period of responsibility**
  - Responsibility of the carrier ☛ from the receipt to the delivery
  - Carriage preceding or subsequent to sea carriage ☛ international conventions (CMR, ...) prevail over the provisions of the draft
  - Mixed contracts of carriage and forwarding ☛ the contract of carriage, the additional transport

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### 4. Derogation

- **Principle**
- **Nullity of any provision - excluding or limiting**
  - the obligations of the carrier
  - the liability of the carrier
  - the obligations of the shipper
- **Exceptions :**
  - **Live animals**
  - **Special transport**
  - **"services contracts" :**
    - possibility to provide for greater or lesser duties ... if exemption "individually negotiated" or "prominently specifies the section of the contract containing the derogation "
    - impossibility to derogate to fundamental obligations
    - exemption applies between the carrier and the shipper and any other party that has expressly consented

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### 5. Conclusion of contract

- **Documents**
- **Delivery**
  - equivalency e-document and paper document
- **Functions :**
  - contractual, evidentiary, commercial
- **Transfer of rights :**
  - negotiable transport document issued
  - negotiable transport document not issued
- **Parties :**
  - **Consignor and shipper and controlling party**
  - **Carrier and performing party :**
    - Definition
    - Liability
    - and maritime performing party
      - ... is subject to the responsibilities and liabilities imposed on the carrier
  - **Consignee and holder**

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### 6. Obligations of the carrier

- **Principal obligations**
  - Receipt
  - Carriage
  - Delivery
    - obligation of the carrier and obligations of the shipper
- **Ancillary obligations :**
  - Loading, handling, stowing ...freedom of contract ?
- **Additional obligations applicable to the voyage by sea :**
  - At beginning and during the voyage : due diligence to make and keep the ship seaworthy
  - General average

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### 7. Obligations of the shipper

- **To deliver the goods ready for carriage**
- General obligation to deliver the goods ready for carriage, unless otherwise agreed
- Carrier's obligation to provide information and instructions
- Shipper's obligation (and liability for failure) to provide information, instructions and doc
- Basis of shipper's general liability
- **Special rules on dangerous goods**
  - Definition
  - Carrier's right to destroy goods



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### 8. Liability of the carrier

- **Basis of liability**
  - Presumption of liability in case of damage or loss
  - Relieving of liability : . "no-fault "
  - Events listed ("cas exceptés") : act of God ... error in navigation or in management deleted
  - Partially or totally relieving ? : mixed faults
- **Compensation**
  - Calculation : nothing decided (Hague Visby ? Hambourg ? New Rules ?)
  - Basis of limitation : damage to the goods ; damage in connection with the goods
  - Loss of the right to limit liability : wilful misconduct
- **Specific rules on delay**
  - Time agreed and time not agreed
  - Compensation : one times the freight ?

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### 9. Procedural issues

- **Notice of loss, damage or delay**
- **Rights of suit**
  - Shipper, consignee, third party to which rights have been transferred
  - Third party that has acquired rights by subrogation (insurer)
- **Time for suit**
  - Limitation of actions
  - Counterclaims
- **Jurisdiction and arbitration**
  - Grounds of jurisdiction
  - Exclusive jurisdiction clause : a strong and difficult debate
  - Concursus, suits in solidum, lis pendens

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### 10. Conclusion (temporary)

- **A new Maritime Convention on carriage wholly or partly by sea for the XXI century ?**
  - Are the aims reached ?
  - What about the balance of interests ?
  - Multimodal option preserved ?
- **The effects on marine insurance**
  - New risks ?
  - New obligations for the shipper and his insurer ?
- **Maritime, transportation and marine insurance law : a wide part of international trade law**