Handbook on the Conventions for the International Carriage of Goods

TT CLUB IS MANAGED BY **THOMAS MILLER**

Handbook on the Conventions for the International Carriage of Goods

First Edition 1999
Second Edition 2009
Third Edition 2024

Through Transport Mutual Services (UK) Ltd
90 Fenchurch Street
London
EC3M 4ST
Telephone: +44 (0)20 7204 2626

Disclaimer
The materials contained in this Handbook have been prepared for information purposes only, and are not a substitute for legal advice. Whilst every care has been taken to ensure the accuracy of the materials, the editor, any contributor or the TT Club accept no responsibility for loss or damage which may arise from reliance on information contained herein.

Foreword

International commerce has been a core activity between communities over millennia. Wherever such trade developed, there followed a need to transport the goods that were traded.

Miguel d'Orey
Orey Shipping, Portugal
and Director, TT Club

Thus, those involved in international transport and logistics sought to establish acceptable conditions to define the responsibilities between parties, being both those who are trading goods and all those involved in moving them. This multi-stakeholder and international nature of trade developed, ultimately, in such conditions being transposed into carefully crafted conventions agreed between countries to provide common rules and legal certainty. These legal standards necessarily cover all modes of transport – sea, inland waterway, road, rail, air, and multimodal services.

The logistics supply chain encompasses all kinds of legal complexities that need to be understood and applied by all those involved in the movement of goods. One example is the interfaces between the international conventions compiled in this book, and national law and contractual conditions that may apply for any given consignment of cargo as it transits the globe.

This handbook provides helpful guidance to navigate this complexity, particularly for those needing to know what may be applicable for their own business transactions, adopting a straightforward question and answer approach.

This work is both thorough and accessible; we can all learn from it.

Contents


426220 9
45G1
MAX. GROSS 32.500 KG 71.650 LB
TARE 3.860 KG 8.510 LB
NET 28.640 KG 63.140 LB
CU. CAP. 76.4 CU.M 2.700 CUFT
616469 3
42G1
32.500 KGS. 71.650 LBS.
3.570 KGS. 7.870 LBS.
28.930 KGS. 63.780 LBS.
67.7 CU.M. 2.390 CU.FT.
426220 9
45G1
32.500 KGS 71.650 LBS
3.630 KGS 8.000 LBS
28.870 KGS 63.650 LBS
Bridgetown, Barbados
504288 1
42G1
32.500 KGS 71.650 LBS
3.700 KGS 8.160 LBS
28.800 KGS 63.492 LBS
67.8 CUM. 2.394 CU.FT.
439732 2
42G1
MAX. GROSS 32.500 KGS 71.650 LBS
TARE 3.700 KGS 8.160 LBS
NET 28.800 KGS 63.490 LBS
CUB.CAP. 67.7 CU.M. 2.390 CU.FT.
MAX. WT.
TARE WT.
PAYLOAD
CU. CAP.
MAX. GROSS
TARE
NET
CUB.CAP.

Introduction

This "Handbook on the International Carriage Conventions" is part of a series of loss prevention guides published by TT Club. The Handbook aims to explain, in straightforward terms, the core operation of the conventions relating to the international carriage of goods and related conditions.

TT published the first edition of this Handbook in 1999, in cooperation with Holman Fenwick & Willan (London). This was thoroughly revised for the second edition in 2009, while retaining the original user-friendly format. However, this had a narrowed focus, covering conventions and multimodal conditions only, while drawing in a broader jurisdictional perspective. This third edition maintains the focus of the second edition, while reflecting updates in law and practice.

In summary:

Part I – on the Basics of cargo claims handling is drawn from the experience gained by the TT Club's Managers, Network Partners and Correspondents.

Part II – covers all modes of carriage (with a brief introduction to each mode)

Part III – provides web links to the list of Member States of each convention and a worldwide list of the carriage conventions in force in each country.

Owing to the legal complexity of the international carriage conventions, this Handbook cannot offer comprehensive advice, but aims to address the most important questions under each convention.

It is hoped that this Handbook will serve as a guide in helping practitioners to prepare for claims that you will face that fall under the international carriage conventions.

Part I

Basics of Cargo Claims

1 Transport Operator's liability to its customer

2 Transport Operator's recourse against its subcontractor

Basics of Cargo Claims

1. Transport Operator's liability to its customer

What is a "Transport Operator"?

1.1 TT Club defines a "Transport Operator" as a person undertaking transport of cargo, either directly or through a subcontractor. Thus, a main activity of a Transport Operator is the organisation of the carriage of goods. Your TT Club Transport & Logistics Operator (TLG) insurance cover protects you with regard to your liability to the party who has a property interest in the goods, or "Cargo interests" - this term includes the seller (shipper), buyer (consignee), owner and Cargo insurer. Based on your requirements, your TT cover can include services such as: Freight forwarding, Warehouse operations, Slot/space charter on ships, NVOC (Non vessel owning carrier) activities, Ship operator (short sea), Barge operator, Haulage operator, Rail operator, Stack train operator, Tank operator, Air charter, Cargo broker, Truck broker or Customs broker. TT cover also responds to the changing requirements of the industry by offering tailored packages to cover the wide range of "add-on" services provided by modern logistics operators.

Has the "cargo interest" suffered a loss?

1.2 You can only ever be liable to a Cargo Interest if it has actually suffered a loss with a financial value. In any legal proceedings, the Cargo Interest will have to demonstrate and to explain (or substantiate) its loss. If a customer is dissatisfied with your service but has not suffered a financial loss as a result of the level of your services, its dissatisfaction may have commercial consequences, but does not generally have legal implication. TT's insurance covers your legal liabilities, but not claims you settle purely for commercial reasons.

What type of loss has the "cargo interest" suffered?

1.3 Identifying the type of loss suffered (eg: total loss of cargo, consequential loss due to a delay during the carriage, damage to third party property) is essential both in dealing with a cargo interest's claim against you and in assessing TT's cover of your liability to the cargo interest. Some losses may not generally attract compensation because the law considers them too remote (for instance, loss of profits above the market rate). The Club can advise you if you feel an alleged loss is too remote.

What is the alleged monetary value of the loss?

1.4 Please ask your customer for the alleged value of its claim and strongly advise that the customer is legally obliged to mitigate its loss as far as possible; for example: by finding an alternative buyer if the buyer has rejected damaged cargo. Please bear in mind that you also have a duty to mitigate your customer's loss if you are able to do so.

Should the TT Club be notified?

1.5 Please notify TT Club of any accident or occurrence which is likely to lead to a claim under your insurance with the Club. Please include claims which are below your deductible under your policy if it is likely that they will later rise above the deductible, and notify all claims where there is a possibility of bodily injury. Please report claims without delay so the Club can appoint a cargo surveyor or instruct lawyers, or take other necessary steps in good time.

Can the party who has suffered the loss actually sue?

1.6 Sometimes the party who has suffered a loss is not entitled to claim against you directly. The law may require that the claim be directed against another party. For example, the party intending to buy cargo from the consignee of the goods usually cannot sue you for its losses, but must sue the consignee who will then claim the amount, in recourse, from you.

When can the cargo insurer claim against the Transport Operator?

1.7 Cargo interests may insure their risks in relation to the goods with a cargo insurer. When a loss takes place which is covered by a cargo insurer, the legal rights on the goods ordinarily pass, by subrogation, from the cargo interest to the cargo insurer. The effect of subrogation is that the Cargo Insurer steps into the shoes of cargo interest by assuming the same rights and obligations which the cargo interests had in relation to the goods. Thus, your customer's cargo insurer can normally only sue you directly after it has settled the claim with your customer.

1.8 TT Club also provides freight forwarders and those involved in logistics the ability to offer immediate insurance cover for their customer's cargo[1].

---

[1] https://www.ttclub.com/products-and-services/forwarders-cargo-cover/

Is there a contract with the party who has suffered the loss?

1.9 If you assumed liability for carriage or agreed to carry the goods in return for freight, you will normally be a party to a contract of carriage with the person who is required to pay you the freight. However, the identity of the party paying or receiving the freight is not always decisive in establishing who the parties to the carriage contract are. If you concluded the carriage contract with the shipper, the consignee of the goods is likely to become a party to the carriage contract at some point.

Must the carriage contract be in writing

1.10 Although strictly speaking a contract does not have to be written to be binding, oral contracts should always be avoided as they lead to uncertainty. If you first speak to your client, confirm the oral agreement in a letter or e-mail.

Have standard trading conditions been incorporated in the carriage contract?

1.11 It is vital that you bring your standard trading conditions (STCs) to the attention of your customer before you conclude the contract. If you are unable to establish that your STCs were incorporated into the contract, even the most expertly drafted conditions will be useless. Some TT Club Members refer to their STCs in all their e-mail correspondence and/or have their STCs easily visible on their website and require their customer to agree to the STCs by clicking during the online booking process. Under many legal systems it is best to have STCs which limit your liability without eliminating it entirely. Failure to incorporate your STCs in the contract may prejudice your insurance cover.

Do standard trading conditions work for international carriages?

1.12 For international carriage of goods, one of a number of international carriage conventions may apply. These conventions, which are explained in detail in Part II of this Handbook, apply to a particular mode of international carriage by mandatory force of law, that is to say their provisions overrule, or take precedence over, clauses in your contract which conflict with them.

1.13 However, these international carriage conventions do not address a number of important aspects; for instance, your right to lien your customer's cargo. Therefore, even when an international carriage convention applies to your carriage contract, you should still ensure that your standard trading conditions are part of the contract, because the international carriage convention and reputable standard trading conditions (such as the terms of national Freight Forwarders Associations) complement each other and tend to offer you as much protection as possible. If you are not a Member of a national Freight Forwarders Association, you could consider trading subject to the TT Club Series 400 Freight Forwarders Conditions - please ask the TT Club for further advice.

1.14 As stated above, standard trading conditions complement the international carriage conventions. But it is important that the conditions include a clause stating that, if there is a conflict with a mandatory convention, the convention will take precedence over the conditions to the extent of the conflict only. Otherwise there is a risk that a court may invalidate all of the conditions as being repugnant to mandatory law.

Can someone sue without a contract?

1.15 If there is no contract, a party can still sue in tort if it can show that it has ownership or a title based on possession (a possessory title) to the goods. If you had a duty of care to that party and that party suffered physical loss (i.e. not merely pure economic loss) as a result of your negligent conduct, the party can claim damages from you.

Agent or Principal?

1.16 Whether, in relation to a particular carriage, you are deemed to have acted as merely an intermediary (agent) or as a carrier (principal) depends on the applicable law. Usually, you are liable as a carrier if you perform the carriage yourself or if the circumstances indicate that you assumed liability as a contracting carrier. You may be deemed to have acted as an intermediary for one portion, but as a carrier for another portion, of the carriage.

1.17 When a court decides your role for a particular carriage, it may consider a variety of individual factors, for instance the following:

(i) In which role do you appear in the carriage document you issued to your customer? If you issue the document in your own name and appear in the document as "Carrier", you will be deemed to have assumed liability as a carrier (see, for example, on the FIATA BILL: Part II, 6.4.3). On the other hand, if you issued another party's carriage document merely "as agent", you are likely to have done so as agent on behalf of another party who acted as the carrier.

(ii) What did you agree to do for your client? If you agreed to "undertake" the carriage rather than merely to "arrange" it, it is more likely that you will be deemed to have contracted as a carrier. A court may look at expressions such as these, although they were not used by the parties to the contract with the intention to define your legal role.

(iii) Under some legal systems, you are more likely to be liable as a carrier if you bill your client an all-in charge rather than charging him a commission fee for your services. Some contracts attempt to avoid this inference by including a clause stating that an all-in charge will not affect a party's status as agent.

1.18 If you act as a carrier (principal) you assume liability for the carriage; this includes liability for any losses caused by your subcontractors. Conversely, if you act as an intermediary (agent), you generally have a duty only to act with reasonable skill, for instance, in selecting your subcontractor carrier or in issuing documentation.

Where can a claimant sue?

1.19 Some of the international carriage conventions discussed below in Part II define the jurisdictions in which a claimant can sue, examples are: Hamburg Rules 1978 (section 1.4), CMR (section 3.2), CIM 1999 (section 4.2), Warsaw/Hague Rules 1955 (section 5.2) and Montreal Convention 1999 (section 5.3). Conversely, other international carriage conventions, such as Hague Rules 1924 and Hague-Visby Rules 1968 (sections 1.2 and 1.3) and the Budapest Convention (CMNI) 2001 (section 2.2), do not stipulate where the claimant can sue you, which means that general rules on jurisdiction will apply.

1.20 Where there is no international convention, or the convention is silent on the matter of jurisdiction, the domestic law of the state where jurisdiction is sought will determine jurisdiction. The basic rule is that the claimant will have to sue a defendant where the latter has its domicile. However, there are many exceptions. In some cases, the matter may be governed by treaty, or by European Union law (Brussels and Rome Regulations) or by superseding post-Brexit UK law. It is often the case that, once proceedings are started in one jurisdiction, a court in another jurisdiction will not hear proceedings between the same parties and on the same facts, the second court seized must decline jurisdiction. This may mean that urgent, tactical action is necessary in order to "get in first", possibly by seeking a declaratory judgment before proceedings are started by a cargo claimant, in the most convenient jurisdiction (compare 3.2.25 and 3.2.29 below).

1.21 Please ask the TT Club for further advice.

2. Transport Operator's recourse against its subcontractor

What is the legal position of a carrier which subcontracts its carriage obligation?

2.1 If you are in a chain of two carriage contracts between your customer (a cargo interest) and your subcontractor (an "actual" carrier), you normally have two roles - one for each contract. You are in the "carrier" role in the "upstream" carriage contract with your customer and in "cargo interest" role in the "downstream" carriage contract with your subcontractor. If your customer sues you under the "upstream" carriage contract, you will try to take recourse against your subcontractor under the "downstream" carriage contract.

Against which party is recourse possible?

2.2 Please study the terms of the contract with your subcontractor in order to ascertain whether this subcontractor is the contracting or performing carrier under the carriage contract. A bill of lading may state in a "demise", or identity of carrier, clause that the party who you thought was your subcontractor merely issued the document on behalf of another party who is the real party to the carriage contract. This type of clause is most common in a bill of lading which is concluded by a charterer as agent for the shipowner. Demise clauses are not accepted in all jurisdictions, but if the clause is upheld you would have to take recourse against the "real" party.

2.3 If you do not have a contract with the party against which you seek recourse, you may be able to sue in tort. Many contracts allow an action in tort as an alternative to action under the contract, if this is more convenient.

What legal rules govern a contract with a subcontractor?

2.4 Please examine whether an international convention applies to this carriage contract or whether your subcontractor can rely on its standard trading conditions.

When is a written notice of claim required?

2.5 Once you have identified which legal rules apply to the contract with your subcontractor, you should check whether these terms require you to send to your subcontractor a written notice of claim within a specified period. Under CMR and CIM 1999, a formal written letter of claim suspends the limitation period until your subcontractor rejects the claim (see

Part II, 3.2.16 and 4.2.23). Even if the contract terms do not appear to require you to send a written notice of claim, it is good practice to do so immediately after you discover a loss.

Where can the subcontractor be sued?

2.6 While your contract with your customer may provide for the law and jurisdiction at your domicile, it is possible that your contract with your subcontractor requires you to sue under foreign law in a foreign jurisdiction. In such situations, it is likely that your customer's chances of making a successful recovery against you are considerably better than your own prospects of recourse against your subcontractor. Please contact the Club for further advice.

When must notification be made and proceedings started?

2.7 Please pay particular attention to any limitation periods and to any requirements to notify the loss or damage of the goods. If an applicable international carriage convention or other mandatory law or the terms of your contract with your subcontractor provide for a time bar which is shorter than the time bar in your contract with your customer, you must request a time extension from your subcontractor. This is to prevent your recourse action from becoming time barred before the expiry of the time bar in your "upstream" contract with your customer. If your subcontractor refuses to grant you a time extension, you should ask TT Club to issue (or to threaten to issue) legal proceedings in order to protect time.

2.8 You should also note that in a few jurisdictions time extensions are absolutely unenforceable, and proceedings must be started within the stipulated period if time is to be protected.

Is full recovery against the subcontractor possible?

2.9 Please ascertain whether an applicable international carriage convention or other mandatory law or the liability limits in the contract with your subcontractor entitle you to recover from your subcontractor the whole sum which you will be obliged to pay to your customer.

Does the subcontractor have liability insurance?

2.10 TT Club recommends that you find out whether your subcontractor has its own liability insurance before concluding a carriage contract with it. (In some cases we agree that this should be a term of your insurance.) If possible, please obtain from your subcontractor's liability insurer confirmation of the cover. Depending on the applicable law and jurisdiction, you may be able to pursue a recourse action directly against this insurer.

What evidence should be obtained?

2.11 You should obtain copies of:

(i) your contract with your customer;

(ii) your contract with your subcontractor;

(iii) your subcontractor's invoices which illustrate its charges to you;

(iv) any correspondence produced both before and after the incident;

(v) any relevant survey or police reports; and

(vi) any other documentation which might have a bearing on the claims.

Please send copies of these documents to the TT Club as soon as possible.

2.12 It may often be strongly advisable to take steps to ensure that an allegedly damaged cargo is not moved, or "interfered with" before it is surveyed jointly by your surveyor and the cargo interests' surveyor.

Part II

The International Carriage Conventions

1 International carriage by SEA

2 International carriage by INLAND WATERWAY

3 International carriage by ROAD

4 International carriage by RAIL

5 International carriage by AIR

6 International MULTIMODAL (COMBINED) carriage

The International Carriage Conventions

Special Drawing Right (SDR)

The Special Drawing Right (SDR) is the unit of account under the following international carriage conventions:

- Sea: Hague-Visby Rules 1968 (as modified by the SDR Protocol 1979), Hamburg Rules 1978
- Inland Waterway: Budapest Convention (CMNI) 2001
- Road: CMR 1956 (with Protocol 1978)
- Rail: COTIF (CIM) 1980, COTIF (CIM) 1999
- Air: Montreal Protocol No. 4 and Montreal Convention 1999

The Special Drawing Right (SDR) is not a currency, but an international reserve asset, created by the International Monetary Fund (IMF) in 1969. The currency value[2] of the Special Drawing Right (SDR) is determined by summing up the values of a basket of major currencies: Euro, Japanese yen, Pound sterling and US dollar. Currently (July 2024) 1 SDR is worth 1.33 US dollars.

[2] http://www.imf.org/external/np/fin/data/rms_five.aspx

International carriage by **SEA**

1. International carriage by SEA

1.1 Introduction to sea carriage

1.1.1 The Hague Rules 1924 (see section 1.2) was the first international convention on the international carriage of goods by sea. In the United States, the Hague Rules were implemented into domestic law by the Carriage of Goods by Sea Act 1936 ("COGSA 1936") (see 1.2.23).

1.1.2 An amended version of the Hague Rules 1924, the Hague-Visby Rules 1968 was subsequently agreed. One resulting change was the enhancement of the claimant's position by the insertion of "6 bis" (see 1.3.18-20 below).

1.1.3 Both the Hague Rules 1924 and the Hague-Visby Rules 1968 depended on inconvenient limitation systems. Hague required reference an ambiguous gold standard (see 1.2.21) and Hague-Visby 1968 expressed the relevant amounts in francs. The Hague-Visby Rules 1968 were therefore amended by the "SDR Protocol 1979" (see section 1.3), which introduced the familiar limitation amounts of SDR 666.67 per package and SDR 2 per kilo.

1.1.4 Not all Hague states, notably including the United States (see 1.1.1) "updated" to Hague-Visby 1968). And, of those that did, not all adopted the SDR Protocol 1979. Some countries (for instance Canada) have incorporated the Hague-Visby Rules into their domestic law but are not convention states (on this point, see also Part III, 2.5). In other cases (notably Germany from 2013) the Rules are incorporated into domestic law with important amendments.

1.1.5 Other countries, particularly those in Africa and Eastern Europe, have adopted the more "adventurous" Hamburg Rules 1978 (see section 1.4). These aim to provide a liability regime which generally favours cargo interests to a larger extent than the Hague or Hague-Visby Rules.

1.1.6 The Chinese Maritime Code combines elements of the Hague-Visby Rules 1968 (list of exemptions from liability, level of liability limits) and the Hamburg Rules 1978 (general application to sea carriage contracts, delay addressed).

1.1.7 Still other countries, for example United Arab Emirates and India, have their "own" maritime codes or COGSAs (Carriage of Goods by Sea Acts) which are based on, but vary from, Hague-Visby.

1.1.8 The UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Party by Sea ("Rotterdam Rules"), when (or if) it enters into force, will apply to unimodal sea carriage and to multimodal transport provided such transport includes a sea portion (for more details, see 6.1.2-6.1.6).

1.2 The Hague Rules 1924

Who normally trades under Hague?

1.2.1 Hague applies to shipowners, ship charterers (Article I(a)) as well as Transport and Logistics Operators, or "Non-vessel owning carriers" (NVOCs), involved in carriage by sea as contracting carriers. The United States effectively incorporates Hague through the Carriage of Goods by Sea Act (US COGSA). Where US COGSA deviates from Hague, this is mentioned below.

How does Hague apply?

1.2.2 Hague applies to carriage of goods by sea "tackle to tackle, meaning from the time when the goods are loaded on to the time when they are discharged from the ship (Article I(e)), unless the parties agree to extend this period. In some countries, domestic legislation extends Hague to carriage by inland waterway, but please be aware that the Budapest Convention (CMNI) 2001 (see section 2.2) has come into force in a growing number of European countries.

1.2.3 Hague applies to a carriage contracts under which a carrier undertakes liability for, or performs, the sea carriage, provided that he issues (or intends to issue - see 1.2.7 below) a bill of lading or similar document of title (Article 1(b)), and:

(i) the bill of lading is issued for export from a contracting state (a state which has ratified Hague or otherwise made it part of its domestic law (Article X) (under US COGSA this also applies to imports) or

(ii) a clause in the bill of lading expressly provides that Hague applies (Clause Paramount).

1.2.4 See below for a note on sea waybills.

1.2.5 Pursuant to Article X, Hague applies "to all bills of lading issued in any of the contracting states".

1.2.6 Some Hague Contracting States in their domestic law require also that the bill of lading contain a "Clause Paramount", a provision which expressly incorporates Hague into the carriage contract. There is a line of US cases on this point, beginning with *Shackman v Cunard White Star Ltd, SD NY (1940)*.

1.2.7 Even if the carrier does not issue a bill of lading but the parties had the intention that one would be issued, Hague probably applies (*Pyrene v Scindia Navigation (1954)* on Hague-Visby).

1.2.8 Sea waybills (often in the form of electronic bills) are used instead of bills of lading in many "roll on – roll off" ("ro-ro") short sea movements and for some trades or routes. Please be aware that a sea waybill is not a "bill of lading or similar document of title" in the sense of Hague. Hague will therefore only apply if it is expressly incorporated by a clause in the waybill.

1.2.9 In the *"Rafaela S" (2005)* the UK House of Lords held that a "straight" bill of lading (which names the consignee, and is not made "to order") was a "bill of lading or similar document of title" for the purposes of the article in the Hague-Visby Rules 1968 which corresponds to Article X of the Hague Rules.

1.2.10 Hague does not apply to you if you contract as a mere agent, meaning that you do not assume liability as a sea carrier.

How does Hague affect agreements between carrier and customer and how can the carrier improve its legal position under it?

1.2.11 Hague overrides any contractual provisions that you as carrier might have agreed with your customer (for instance your standard trading conditions) to the extent that these contractual provisions relieve you from liability for loss or damage to or in connection with the goods (Article III(8)). However, if Hague does not apply by mandatory force of law, and you incorporate it voluntarily into the contract with your customer through a "clause paramount", you have the option to exclude Article III(8) from this incorporation. You may then be able to rely on expressly agreed terms which lessen your obligations under Hague. In particular, the inconvenient limitation regime, addressed at 1.2.21, may be avoided in this way.

1.2.12 Hague allows you to improve your customer's position by increasing your responsibilities and obligations under them. However, if you intend to improve your customer's position in this manner, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

1.2.13 The lawful holder of the bill of lading who has title to sue (usually the shipper, consignee or endorsee).

What defences are there?

1.2.14 If you have issued to the shipper a clean bill of lading which indicated the good order of the goods and the claimant can show loss or damage to the goods at the port of discharge, your liability is presumed. Except in cases where the claimant is a party who relied in good faith on the description of the goods in your bill of lading (usually the consignee is such a party), you have the chance to defeat this presumption by proving that the goods sustained loss or damage before loading (Article III(4)). If you cannot defeat the claim in this way, you will have to rely on one of the defences listed below.

1.2.15 You are under a duty to use due diligence to make the vessel seaworthy (which includes cargo worthiness) before and at the beginning of the voyage (Article III(1) and Article IV(1)). Most authorities put the initial burden of proof in establishing that you did not discharge this duty on the claimant rather than on the carrier.

1.2.16 Provided the vessel is seaworthy as required in Article III(1) and Article IV(1), you can defeat the presumption of your liability by proving that the loss/damage occurred due to one of the causes specified in the following sub-paragraphs of Article IV(2):

(a) error of navigation or in the management of the ship

(b) fire during the voyage, unless the fire was caused by your or the shipowner's personal negligence

(c) perils of the sea - the interpretation of "perils of the sea" varies: for example under English law, the test is whether the perils were foreseeable, but US courts (under US COGSA) examine whether the perils "are of an extraordinary nature or arise from irresistible force or overwhelming power" (The *Giulia*)

(d) act of God

(e-h/j-k) war, pirates, seizure, quarantine, strikes/lockouts and riots

(i) wrongful act or failure to act by the shipper or owner of the goods

(l) saving or attempts to save life or property at sea (see also Article IV(4))

(m) iinherent vice (defects) of the goods

(n) insufficient packing of the goods - this heading includes poor stuffing of the goods inside a container

(o) inadequate marks on the goods

(p) latent defects in the vessel or other relevant machinery or equipment not discoverable by your or your agent's diligent efforts

(q) any other cause which occurred without any negligence or fault by you, the ship owner, or your agents/servants.

Please note, though, that courts regularly interpret these defences narrowly and give cargo claimants the benefit of doubt.

When and how must the claimant notify a loss?

1.2.17 If there is no joint survey held on discharge, a written notice must be given to you or to your agent at the discharge port:

(i) if the damage is apparent:
at the latest when the consignee takes over the goods

(ii) if the damage is not apparent:
within three days after the consignee has taken possession (Article III(6))

1.2.18 Failure to notify in writing within the relevant period creates under Hague a presumption in your favour that the goods were delivered as described in the bill of lading (Article III(6)), but the claimant has the opportunity to refute this presumption, and in practice the limit at 1.2.17(ii) is not particularly important.

When must the claimant send a formal written letter of claim?

1.2.19 Hague does not require that the claimant send a formal written letter of claim – apart from the notice referred to at 1.2.17 above.

When does the claimant lose its right to sue?

1.2.20 You will be discharged from liability if Cargo interests fail to sue you within one year from the date of delivery, or from the date on which they should have been delivered (Article 3(6)). If there is a choice between those two dates, the claimant can probably choose the later one. There is no equivalent under Hague of Hague-Visby 6 bis (see 1.3.18-20).

What limitation is available?

1.2.21 *Cargo loss or damage/No declared value:*
If the bill of lading does not include a "Declared Value", or "Special Declaration", you must compensate the claimant with the reduction in value of the goods. Unlike the Hague-Visby Rules 1968, the Hague Rules do not refer to the "Sound Arrived Value" and a court might uphold an "invoice value clause" in your bill of lading. If the reduction in value of the goods exceeds "£100" per "package or unit", you can limit your liability to that amount (Article IV(5) first paragraph) - there is no weight limitation (per kilogramme). The Contracting States have converted "£100" differently under their domestic laws. For example, the English High Court held that "£100" meant "£100 gold value", which was £6,630.50 in modern money (*the "Rosa S" (1988)*). Defining "package" and "unit" has also caused problems. Where Hague does not apply by mandatory law (see 1.2.11 above), Article 9, which stipulates the limitation amounts, is often not incorporated and replaced by a more convenient provision.

1.2.22 *Cargo loss or damage/Declared value:*
If the bill of lading includes a "declared value" for the goods (Article IV(5) first and second paragraphs), or if you otherwise agree with the shipper higher liability limits (Article IV(5) third paragraph), the maximum amounts of compensation are raised beyond the limit of "£100 per package or unit" (Article IV(5) first paragraph), and your liability to the claimant amounts either to the declared (or otherwise agreed) value or to the value of the goods, whichever is the lower. The declared value is prima facie evidence only, i.e. you are entitled to prove that the Declared Value was incorrect (Article IV(5) second paragraph). If only a portion of the goods is affected, your liability is calculated proportionally. You will typically only agree to a Declared Value if you are paid increased freight. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the Declared Value may prejudice your insurance cover.

1.2.23 *US Carriage of Goods by Sea Act*

US COGSA deviates from Hague in specifying a limit of USD 500 per package or "customary freight unit". This low limit frequently provokes litigation in cargo claims, much of which focusses on the definition of customary freight unit. US COGSA follows Hague in allowing for declaration of a higher value the bill of lading. Attempts to "modernise" this area of US law have so far been unsuccessful.

1.2.24 *Delay:*
Hague does not state whether the carrier is liable at all for delay in delivering the goods. If the delay leads to physical damage to the goods, this is a "damage" situation. Although Article IV(5) only mentions liability for loss or damage, your duty to use care in handling the goods (Article III(2)) could serve as a basis to hold you liable for delay. Therefore, if the delay causes economic loss (such as loss of market), you might be held liable under Hague, as well as under special domestic legislation or general principles of law.

Can the right to limit be lost?

1.2.25 The Hague Rules (unlike the Hague-Visby Rules 1968) do not contain a provision which entitles your customer to "break" your liability limits.

Where can a claimant sue?

1.2.26 Hague does not contain provisions on jurisdiction. Please see Part I, 1.18-1.20 "Where can a claimant sue?".

1.3 The Hague-Visby Rules 1968 (as amended by the SDR Protocol 1979)

Who normally trades under Hague-Visby?

1.3.1 Hague-Visby applies to shipowners, ship charterers (Article I(a)) as well as Transport and Logistics Operators, or "Non-vessel owning carriers" (NVOCs), involved in carriage by sea as contracting carriers.

How does Hague-Visby apply?

1.3.2 Hague-Visby applies to carriage of goods by sea "tackle to tackle", from the time when the goods are loaded on to the time when they are discharged from the ship (Article I(e)), unless the parties agree to extend this period. In some countries, domestic legislation extends Hague-Visby to carriage by inland waterway, but please be aware that the Budapest Convention (CMNI) 2001 (see 2.2) has come into force in a growing number of European countries.

1.3.3 Hague-Visby applies to a carriage contract under which a carrier undertakes liability for, or performs, the sea carriage, provided that it issues a bill of lading or similar document of title (Articles I(b) & X(a)-(c)), and:

(i) the bill of lading is issued in a contracting state (a state which has ratified Hague-Visby or otherwise made it part of its domestic law (Article X) *or*

(ii) the sea carriage commences from a port in a Contracting State *or*

(iii) a clause in the bill of lading expressly provides that Hague-Visby applies (Clause Paramount).

1.3.4 Even if the carrier does not issue a bill of lading but the parties had the intention that one would be issued, Hague-Visby probably applies (*Pyrene v Scindia Navigation (1954)* on Hague-Visby).

1.3.5 Sea waybills (often in the form of electronic bills) are used instead of bills of lading in many "roll on – roll off" ("ro-ro") short sea movements and for some trades or routes. Please be aware that a sea waybill is not a "bill of lading or similar document of title" in the sense of Hague-Visby. Hague-Visby will therefore only apply if it is expressly incorporated by a clause in the waybill.

1.3.6 In the *"Rafaela S" (2005)* the UK House of Lords held that a "straight" bill of lading (which names the consignee, and is not made "to order") was a "bill of lading or similar document of title" for the purposes of Article I(b).

1.3.7 Hague-Visby does not apply to you if you contract as a mere agent, and do not assume liability as a sea carrier.

How does Hague-Visby affect agreements between carrier and customer and how can the carrier improve its legal position under it?

1.3.8 Hague-Visby overrides any contractual provisions that you might have agreed with your customer (for instance your standard trading conditions) to the extent that these contractual provisions relieve you from liability for loss or damage to or in connection with the goods (Article III(8)). However, if Hague-Visby does not apply by mandatory force of law, when you incorporate it voluntarily into the contract with your customer through a "clause paramount", you have the option to exclude Article III(8) from this incorporation. You may then be able to rely on expressly agreed terms which lessen your obligations under Hague-Visby.

1.3.9 Hague-Visby allows you to improve your customer's position by increasing your responsibilities and obligations under them. However, if you intend to improve your customer's position in this manner, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

1.3.10 The lawful holder of the bill of lading who has title to sue (usually the shipper, consignee or endorsee).

What defences are there?

1.3.11 If you have issued to the shipper a clean bill of lading which indicated the good order of the goods and the claimant can show loss or damage to the goods at the port of discharge, your liability is presumed. Except in cases where the claimant is a party who relied in good faith on the description of the goods in your bill of lading (usually the consignee is such a party), you have the chance to defeat this presumption by proving that the goods sustained loss or damage before loading (Article III(4)). If you cannot defeat the claim in this way, you will have to rely on one of the defences listed below.

1.3.12 You are under a duty to use due diligence to make the vessel seaworthy (which includes cargo worthiness) before and at the beginning of the voyage (Article III(1) and Article IV(1)). Most authorities put the initial burden of proof in establishing that you did not discharge this duty on the claimant rather than on the carrier.

1.3.13 Provided the vessel is seaworthy as required in Article III(1) and Article IV(1), you can defeat the presumption of your liability by proving that the loss/damage occurred due to one of the causes specified in the following sub-paragraphs of Article IV(2):

(a) error of navigation or in the management of the ship (this does not apply under German law - see 1.1.4)

(b) fire during the voyage, unless the fire was caused by your or the shipowner's personal negligence (this does not apply under German law - see 1.1.4)

(c) perils of the sea - the interpretation of "perils of the sea" varies: for example under English law, the test is whether the perils were foreseeable. Compare the position under US COGSA, addressed at 1.2.16

(d) act of God

(e-h/j/k) war, pirates, seizure, quarantine, strikes/lockouts and riots

(i) wrongful act or failure to act by the shipper or owner of the goods

(l) saving or attempts to save life or property at sea (see also Article IV(4))

(m) inherent vice (defects) of the goods

(n) insufficient packing of the goods - this heading includes poor stuffing of the goods inside a container

(o) inadequate marks on the goods

(p) latent defects in the vessel or other relevant machinery or equipment not discoverable by your or your agent's diligent efforts

(q) any other cause which occurred without any negligence or fault by you, the ship owner, or your agents/servants.

Please note, though, that courts regularly interpret these defences narrowly and give cargo claimants the benefit of doubt.

When and how must the claimant notify a loss?

1.3.14 If there is no joint survey held on discharge, a written notice must be given to you or to your agent at the discharge port:

(i) if the damage is apparent:
at the latest when the consignee takes over the goods

(ii) if the damage is not apparent:
within three days after the consignee has taken possession (Article III(6))

1.3.15 Failure to notify in writing within the relevant period creates under Hague-Visby a presumption in your favour that the goods were delivered as described in the bill of lading (Article III(6)), but the claimant has the opportunity to refute this presumption, and in practice the limit at 1.2.17(ii) is not particularly important.

When must the claimant send a formal written letter of claim?

1.3.16 Hague-Visby does not require that the claimant send a formal written letter of claim – apart from the notice referred to in para 6 above.

When does the claimant lose its right to sue?

1.3.17 You will be discharged from liability if Cargo interests fail to sue you within one year from the date of delivery, or from the date on which they should have been delivered (Article III(6)). If there is a choice between those two dates, the claimant can probably choose the later one.

1.3.18 If the party who sues you is itself a contracting carrier or NVOC, who was sued by cargo interests, this party has a period of "not less than three months", which start only on the day when this party was served with court proceedings (in the action brought by this party's own claimant) or when this party settled with its own claimant (Article III(6bis)). The precise duration of this "period of not less than three months" is determined by the law of the court seized in the claim by this party against you; depending on the applicable law, this period can be significantly longer.

1.3.19 If you were sued by cargo interests or by another contracting carrier or NVOC, you may in turn be able to rely on the period in Article III(6bis) against the shipping line (provided Hague-Visby applies to that contract).

1.3.20 The rule in Article III(6bis) is equivalent to Article 20(5) of Hamburg (see 1.4.19-1.4.21) and Article 24(4) of CMNI (see 2.2.15-2.2.17), but not under Hague (see 1.2.20).

What limitation is available?

1.3.21 *Cargo loss or damage/No declared value:*
If the bill of lading does not include a "declared value", or "special declaration", you must compensate the claimant with the reduction in value of the goods calculated by reference to their "sound arrived value", meaning their value at the place and time at which they were (or should have been) discharged from the vessel (Article IV(5)(b)). However, if this reduction in value exceeds:

(i) 666.7 SDR per "package" or "unit" *or*

(ii) 2 SDR per kilogramme of the lost or damaged goods

you can limit your liability to the higher of these two amounts (Article IV(5)(a)).

Where a container or pallet is used, the number of "packages" or "units" enumerated in the bill of lading is significant (Article IV(5)(c)). If the bill of lading merely states "one container - general merchandise", the container itself will be the "package". But the bill of lading will usually contain a more detailed enumeration of its contents, and in this case each of the contents which are enumerated will be regarded as a "package". Compare the remarks on "customary freight unit" under US COGSA at 1.2.23 above.

A "unit" will probably be defined as an identifiable item (for example: a car) other than a package.

1.3.22 *Cargo loss or damage/Declared value:*
If the bill of lading includes a "Declared Value" for the goods (Article IV(5)(a)+(f)), or if you otherwise agree with the shipper higher liability limits (Article IV(5)(g)), the maximum amounts of compensation are raised beyond the limits stated in Article IV(5)(a), and your liability to the claimant amounts either to the declared (or otherwise agreed) value or the value of the goods pursuant to Article IV(5)(b), whichever is the lower. The declared value is prima facie evidence only, and you are entitled to prove that the declared value was incorrect (Article IV(5)(f)). If only a portion of the goods is affected, your liability is calculated proportionally. You will typically only agree to a Declared Value if you are paid increased freight.

Before agreeing on a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

1.3.23 *Delay:*
Hague-Visby does not state whether you are liable at all for delay in delivering the goods. If the delay leads to physical damage to the goods, this is a "damage" situation. Although Article IV(5)(a) only mentions liability for loss or damage, your duty to use care in handling the goods (Article III(2)) could serve as a basis to hold you liable for delay. Therefore, if the delay causes economic loss (such as loss of market), you might be held liable under Hague-Visby, as well as under special domestic legislation or general principles of law.

Can the right to limit be lost?

1.3.24 You will lose the right to limit your liability if the claimant can prove that the loss or damage resulted from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result (Article IV(5)(e)). Please note, however, that limitation will only be "broken" in this way if the intentional or reckless conduct is that of the carrier as a company, and is attributable to the "directing mind and will" of the company.

Where can a claimant sue?

1.3.25 Hague-Visby does not contain provisions on jurisdiction. Please see Part I, 1.19-1.21 "Where can a claimant sue?"

1.4 The Hamburg Rules 1978[3]

Who normally trades under Hamburg?

1.4.1 The Hamburg Rules 1978 apply to ship owners, ship charterers as well as Transport and Logistics Operators. Hamburg defines these parties act as "carrier" if they conclude the contract with the shipper (Article 1(1)) or as "actual carrier" if they perform the carriage (Article 1(2)). A non-vessel owning carrier (NVOC) will be a "carrier" for these purposes.

How does Hamburg apply?

1.4.2 The Hamburg Rules apply only to sea carriage "from one port to another" (Article 1(6)). You may be able to avoid liability in case of "Through carriage" where another named person actually performs the carriage (Article 11).

1.4.3 Hamburg applies to an international contract for carriage of goods by sea (Art 2(a)-(e)):

1.4.4
(i) if any of the following ports is located in a contracting state (a state which has ratified Hamburg or otherwise made it part of its domestic law):
- the agreed port of loading, *or*
- the agreed port of discharge, *or*
- one of the agreed optional ports of discharge, if in fact used for discharge *or*

(ii) if the bill of lading or other document evidencing the contract of carriage is issued in a contracting state *or*

(iii) if a clause in the bill of lading, or other document evidencing the contract of carriage, expressly provides that Hamburg applies ("Clause Paramount").

1.4.5 Thus, in contrast to Hague and Hague-Visby, Hague applies if the parties concluded a carriage contract, whether or not they contracted under a "bill of lading or similar document of title". As a result, Hague/Hague-Visby and Hamburg might be in conflict, for instance if sea carriage is from a Hague/Hague-Visby country to a Hamburg country.

---

[3] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/hamburg-rules-commonwealth.pdf

1.4.6 While Hague and Hague-Visby apply "tackle to tackle" (see 1.2.2 and 1.3.2), Hamburg covers the entire period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge (Article 4(1)).

1.4.7 Hamburg does not apply to you if you contract as a mere agent, and you do not assume liability as a sea carrier.

How does Hamburg affect agreements between carrier and customer and how can the carrier improve its legal position under it?

1.4.8 Hamburg overrides any contractual provisions that you might have agreed with your customer (for instance, your standard trading conditions) to the extent that these contractual provisions deviate directly or indirectly from Hamburg (Article 23(1)).

1.4.9 However, if Hamburg does not apply by mandatory force of law, and you incorporate it voluntarily into the contract with your customer through a "clause paramount", you have the option to exclude Article 23(1) from this incorporation. You may then be able to rely on expressly agreed terms which lessen your obligations under Hamburg.

1.4.10 Hamburg allows you to improve your customer's position by increasing your responsibilities and obligations under it. However, if you intend to improve your customer's position in this manner, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

1.4.11 The lawful holder of the bill of lading who has title to sue (usually the shipper, consignee or endorsee).

What defences are there?

1.4.12 If the occurrence which caused the loss, damage or delay took place while the goods were in your charge, Hamburg presumes your liability. However, you are not liable if you can prove that you took all measures that that could reasonably be required to avoid the occurrence and its consequences (Article 5(1)).

1.4.13 In contrast to the Hague and Hague-Visby Rules, under the Hamburg Rules, fault in the navigation or in the management of the ship does not exclude liability. Again, in contrast to Hague and Hague-Visby, fire does not exclude liability, but in this case the burden of proof is on the claimant (Article 5(4)). (Compare the current position in Germany under Hague-Visby, addressed at 1.3.13(a) and (b)).

When and how must the claimant notify a loss?

1.4.14 *Cargo loss or damage:*

(i) If the loss or damage is apparent:
The consignee must give notice by the next working day after the day the goods were handed over to it (Article 19(1)).

(ii) If the loss or damage is not apparent:
The consignee must give notice within 15 calendar days after the day the goods were handed over to it (Article 19(2)).

1.4.15 Receipt by the person entitled to delivery of checked cargo without complaint is prima facie evidence that the cargo has been delivered in good condition (Article 19(1)).

1.4.16 *Delay:*
A claim for delay in delivery will be excluded if the claimant does not give notice within 60 calendar days after the day when the goods were handed over to the consignee (Article 19(5)).

All notices must be in writing (Article 19(1)).

When must the claimant send a formal written letter of claim?

1.4.17 Hamburg does not require that the claimant send a formal written letter of claim - apart from the notice referred to in 1.4.14-1.4.16 above.

When does the claimant lose its right to sue?

1.4.18 The parties have a period two years in which to sue (Article 20(1)). This two year period applies also to actions by the carrier against cargo interests, or against the "Actual carrier". It starts on the day the goods were delivered or should have been delivered (Article 20(2)).

1.4.19 If the party who sues you is itself a contracting carrier or NVOC, who was sued by cargo interests, this party has a period of "not less than 90 days", which start only on the day when this party was served with court proceedings (in the action brought by this party's own claimant) or when this party settled with its own claimant (Article 20(5)). The precise duration of this "period of less than 90 days" is determined by the law of the court seized in the claim by this party against you; depending on the applicable law, this period can be significantly longer.

1.4.20 If you were sued by cargo interests or by another contracting carrier or NVOC, you may in turn be able to rely on the period in Article 20(5) against the shipping line (provided Hamburg applies to that contract). In cases where the shipping line sues you (for example: when the goods damage the ship), you may rely on the period in Article 20(5) against cargo interests.

1.4.21 The rule in Article 20(5) is equivalent to Article III(6bis) of Hague-Visby (see 1.3.18-1.3.20) and Article 24(4) of CMNI (see 2.2.15-2.2.17).

What limitation is available?

1.4.22 *Cargo loss & damage/No declared value:*
If the bill of lading does not include a "declared value", you must compensate the claimant with the reduction in value of the goods calculated by reference to their "sound arrived value", meaning their value at the place and time at which they were (or should have been) discharged from the vessel. However, if this reduction in value exceeds:

(i) 835 SDR per "package" or "unit" *or*

(ii) 2.5 SDR per kilogramme of the lost or damaged goods

you can limit your liability to the higher of these two amounts (Article 6(1)(a)).

Where a container or pallet is used, the number of "packages" or "units" enumerated in the bill of lading is significant (Article 6(2)(a)). If the bill of lading merely states "one container - general merchandise", the container itself is the "package". But the bill of lading will usually contain a more detailed enumeration of its contents, and in this case each of the contents which are enumerated will be regarded as a "package".

A "unit" will probably be defined as an identifiable item (for example: a car) other than a package.

1.4.23 *Cargo loss & damage/Declared value on delivery:*
If you agree with the shipper to increase the liability limits under Hamburg (Article 6(4)), your liability to the claimant amounts either to the agreed increased liability limit or to the value of the goods, whichever is the lower. If only a portion of the cargo is affected, your liability is calculated proportionally. You will typically only agree to a declared value if you are paid increased freight. Before agreeing to a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

1.4.24 *Delay:*
In contrast to Hague and Hague-Visby, Hamburg addresses delay. Liability for delay in delivery is limited to 2.5 times the freight payable for the goods delayed, as long as this does not exceed the total freight payable to you under the sea carriage contract (Article 6(1)(b)).

Can the right to limit be lost?

1.4.25 You will lose the right to limit your liability if the claimant can prove that the loss or damage resulted from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result (Article 8). Please note, however, that limitation will only be "broken" in this way if the intentional or reckless conduct is that of the carrier as a company, and is attributable to the "directing mind and will" of the company.

Where can a claimant sue?

1.4.26 A claimant can sue in any one of the following jurisdictions (Article 21):

(i) the country where the defendant has its principal place of business

(ii) the country where the carriage contract was made (provided that the defendant a place of business, branch or agency in the country through which the carriage contract was made)

(iii) the country where the agreed port of loading is situated

(iv) the country where the agreed port of discharge is situated

(v) the country(ies) agreed by the parties in the carriage contract.

1.4.27 If you want to sue the shipper under Articles 12-13 (for example: because its goods damaged other cargo), this choice of jurisdictions is also at your disposal.

International carriage by **INLAND WATERWAY**

2. International carriage by INLAND WATERWAY

2.1 Introduction to inland waterway carriage

China

2.1.1 In China, the volume of carriage by inland waterway is increasing strongly. Combined river/sea transport is considered by the Chinese Maritime Code as "Maritime Transport".

Europe

2.1.2 In Europe, the Rhine and Danube rivers are important for inland waterway carriage.

The Rhine

2.1.3 The Final Act of the Vienna Congress (1815) ensured freedom of navigation and instituted the Central Commission for Navigation on the Rhine (CCNR). Principles for navigation on the Rhine were established in the Mannheim Convention 1868 and confirmed in the Strasbourg Convention 1963 and in a number of Protocols.

The Danube

2.1.4 The Belgrade Convention 1948 ensured free navigation. The implementation of the convention is supervised by the Danube Commission.

Budapest Convention

2.1.5 CCNR, the Danube Commission and the United Nations Economic Commission for Europe (UNECE) cooperated in drafting the "Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway", also called CMNI (see section 2.2.2). The Budapest Convention was based on work by the International Institute for the Unification of Private Law (UNIDROIT), finalised at a diplomatic conference in October 2000 and made available for Signature from 22 June 2001 onwards.

2.1.6 Articles 11 of the Budapest Convention (CMNI) 2001 requires the carrier to issue a "transport document", but even without such a document there is still a valid carriage contract. In 2006, industry bodies created a "CMNI transport document" based on Articles 11-12 of the convention. The document excludes the carrier's liability for nautical fault, fire/explosion and defects of the vessel prior to sailing as allowed by Article 25(2), see also 2.2.5 below.

2.2 Budapest Convention (CMNI) 2001[4]

Who normally trades under Budapest?

2.2.1 CMNI applies to ship owners, ship charterers, NVOCs (Non-Vessel Owning Carriers) and Transport and Logistics Operators. These parties are defined as "carrier" if they conclude the contract of carriage with the shipper (Article 1(2)) or as "actual carrier" if the performance of the carriage (or part of it) has been entrusted to them by the "carrier" (Article 1(3)).

How does Budapest apply?

2.2.2 CMNI defines "Contract of carriage" as "any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway" (Article 1(1)). Thus, in principle, CMNI does not apply to multimodal carriage. The only exception is that it does apply to combined carriage by inland waterway and sea ("waters to which maritime regulations apply") carriage, provided that:

(i) the goods are not being transhipped between the inland waterway and sea carriage *and*

(ii) no maritime bill of lading has been issued for the carriage *and*

(iii) the sea leg (the "portion to which maritime regulations apply") is the smaller leg.

2.2.3 CMNI automatically applies to any contract for the carriage of goods by inland waterway between two different states, if either the port of loading (or the place of taking over the goods) or the port of discharge (or place of delivery) is in a convention state (Article 2(1)). CMNI therefore applies when either the place of taking over the goods or the place of discharge is in a convention state - even though both the port of loading and the port of discharge are in the same non-convention state. Nevertheless, liability for loss, damage or delay occurring before the goods were loaded on the vessel or after they were discharged from the vessel is not governed by CMNI, but by the applicable domestic law (Article 16(2) and Article 29).

2.2.4 CMNI does not apply to you if you contract as a mere agent, i.e. if you do not assume liability as a carrier.

---

4. https://unece.org/fileadmin/DAM/trans/main/sc3/cmniconf/cmni.pdf

How does Budapest affect agreements between carrier and customer and how can the carrier improve its legal position under it?

2.2.5 CMNI overrides any contractual provisions such as your standard trading conditions to the extent that these contractual provisions deviate directly or indirectly from CMNI (Article 25(1)). The only exception to this is that the parties can agree that the carrier or the actual carrier is not liable for losses arising from nautical fault, fire or explosion on board the vessel and pre-existing defects of the vessel, (Article 25(2)(a)-(c), see section 2.2.10 below for details).

2.2.6 Unlike the other carriage conventions (except CMR, see 3.2.7), CMNI does not allow the carrier to improve its customer's position (Article 25(1)). The only exceptions to this principle are that the parties may:

(i) specify in the transport document the nature and higher value of the goods

(ii) expressly agree higher maximum limits of liability (Article 20(4))

(iii) extend the periods of notice under Article 23.

Who can claim?

2.2.7 CMNI is silent on this point. The general law will therefore apply. If you issued a consignment note (Articles 11-12), in particular a CMNI transport document, the shipper is initially entitled to sue you because it is the party with which you concluded the carriage contract (Article 1(4)) and which has disposal of the goods (Article 14(1)). However, the shipper's right to claim is likely to pass to the consignee once the latter has received the original consignment and therefore has disposal of the goods (Article 14(2)(a)). If you issued a bill of lading (Article 13), the lawful holder of the bill (the shipper, consignee or possibly an endorsee) can claim against you.

What defences are there?

2.2.8 If the occurrence which caused the loss, damage or delay took place while the goods were in your charge, CMNI presumes your liability, unless you can show that the loss was due to circumstances which a diligent carrier could not have prevented (Article 16(1)). Please bear in mind that loss, damage, or delay before the goods are loaded on the vessel or after they are discharged is not governed by CMNI - domestic law will therefore apply (Articles 16(2) and 29).

2.2.9 You are under a duty to use due diligence to make the vessel seaworthy (which includes cargo worthiness) before and at the beginning of the voyage (Article 3(1)). Provided you fulfil this duty, you can defeat the presumption of your liability by proving that the loss/damage occurred due to (Article 18(1)(a)-(h)):

(a) acts or omissions of cargo interests

(b) handling, loading, stowage or discharge of the goods by cargo interests

(c) carriage on deck or in open vessels, if agreed with the shipper, in accordance with trade practice or required by regulations

(d) nature of the goods

(e) lack or defective condition of packing

(f) insufficiency or inadequacy of marks identifying the goods

(g) (attempted) rescue or salvage operations

(h) carriage of live animals.

2.2.10 Additionally, the parties can agree that the carrier or the actual carrier is not liable for losses arising from (Article 25(2)(a)-(c)):

(a) nautical fault (provided the carrier complied with the seaworthiness obligation)

(b) fire or explosion on board the vessel (unless the claimant can prove that it was caused by the fault of the carrier, actual carrier or their servants or agents)

(c) defects of the vessel which already existed before the start of the carriage.

The "CMNI Transport Document", mentioned above, incorporates these three exclusions.

When and how must the claimant notify a loss?

2.2.11 *Cargo loss or damage:*
Acceptance without timely written reservation of the goods by the consignee is prima facie evidence of delivery by the carrier of the goods in the same condition and quantity as that in which they were handed over to the carrier (Article 23(1)).

If there is no joint survey held on discharge, a written notice must be given to you or to your agent at the discharge port:

(i) if the damage is apparent
at the latest when the consignee takes over the goods (Article 23(3))

(ii) if the damage is not apparent
within three days after the date of delivery (Article 23(4)).

2.2.12 *Delay:*
A claim for delay in delivery will be excluded if the claimant does not give notice within 21 calendar days after the day when the goods were handed over to the consignee (Article 23(5)).

When must the claimant send a formal written letter of claim?

2.2.13 CMNI does not require the claimant to send a formal letter of claim. Whether a formal letter of claim suspends or interrupts the limitation period (see 2.2.14 below) will be determined by the law applicable to the carriage contract (Article 34(3) and Article 29).

When does the claimant lose its right to sue?

2.2.14 Under CMNI parties have a period of one year in which to sue. This one year period applies also to legal actions by carriers against cargo interests or actual carriers. It starts on the day that the goods are delivered, or should have been delivered, to the consignee (Article 24(1)). Even if damage is caused with intent or recklessness (Article 21), the limitation period remains one year. The limitation period can be extended by written declaration (Article 24(2). The applicable domestic law (Article 29) determines the conditions under which the limitation period can be suspended or interrupted, but the filing of a claim in proceedings to apportion liability will always interrupt the period (Article 24(3)).

2.2.15 If the party who sues you is itself a contracting carrier or NVOC, who was sued by cargo interests, this party has a period of "90 days", which start only on the day when this party was served with court proceedings (in the action brought by this party's own claimant) or when this party settled with its own claimant. However, the period of "90 days" can be (significantly) longer pursuant to the law of the court seized in the claim by this party against you (Article 24(4)).

2.2.16 If you were sued by cargo interests or by another contracting carrier or NVOC, you may in turn be able to rely on the period in Article 24(4) against the shipping line (provided CMNI applies to that contract). In cases where the shipping line sues you (for example: when the goods damage the ship), you may rely on the period in Article 24(4) against cargo interests.

2.2.17 The rule in Article 24(4) is equivalent to Article III(6bis) of Hague-Visby (see 1.3.18-1.3.20) and Article 20(5) of Hamburg (see 1.4.19-1.4.21).

What limitation is available?

2.2.18 *Cargo loss or damage/No declared value (1)*
The general rule is that, if the bill of lading does not include a "declared value", you must compensate the claimant with the reduction in value of the goods calculated by reference to their "sound arrived value", meaning their value at the place and time at when they were (or should have been) delivered (Article 19(1)). However, if this reduction in value exceeds:

(i) 666.7 SDR per "package" or "other shipping unit" *or*

(ii) 2 SDR per kilogramme of the lost or damaged goods

you can limit your liability to the higher of these two amounts (Article 20(1)).

2.2.19 *Cargo loss or damage/No declared value (2)*
Limitation will depend on the enumeration in the carriage document:

(i) If the carriage document enumerates the "packages" or "other shipping units":

Limitation will apply as specified in the "General Rule" above

(ii) If the carriage document fails to enumerate the "packages" or "other shipping units":

- *In the case of a container:*
  666.7 SDR at (i) under the "General Rule" above is replaced by 1,500 SDR in respect of the container itself and by 25,000 SDR for the goods inside the container (Article 20(1), 2nd sentence). The carrier is liable for these amounts or for 2 SDR per kilogramme of container and contents, whichever methods yield the higher sum.
- *In the case of a pallet or "similar article of transport":*
  Limitation will apply as specified in the "General Rule" above (Article 20(2) 2nd sentence).

- *In the case of breakbulk (where there is no container, pallet or "similar article of transport");*
  It is thought that limitation of 2 SDR per kilogramme will apply, although CMNI does not directly address this issue.
- A *"package"* implies some external protection of the goods - complete wrapping is not required
- A *"shipping unit"* must be comparable to a "package" and is an individual piece of a consignment - a container or pallet would be a "shipping unit"
- A *"similar article of transport"* includes a trailer

2.2.20 *Cargo loss or damage/Declared value*

If:

(i) the transport document expressly specifies a higher value for the goods and you have not refuted these specification or

(ii) you expressly agree with your shipper higher maximum liability limits

the maximum amounts of compensation are raised beyond the limits stated in Article 20(1) (Article 20(4)), that is to say, your liability to the claimant amounts either to the expressly specified/agreed value or the value of the goods pursuant to Article 19, whichever is the lower. If only a portion of the goods is affected, your liability is calculated proportionally. You will typically only agree to a Declared Value if you are paid increased freight. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the Declared Value may prejudice your insurance cover.

2.2.21 *Delay:*

In the event of loss due to delay in delivery, your liability will not exceed the amount of the freight you charged (Article 20(3)). The aggregate liability for loss or damage (Article 20(1)) and delay (Article 20(3)) cannot exceed the compensation under Article 20(1) for total loss.

Can the right to limit be lost?

2.2.22 Limitation can be "broken" if the claimant proves that the loss, damage or delay resulted from an act or omission with the intent to cause the loss, damage or delay, or recklessly and with knowledge that the loss, damage or delay would probably result (Article 21). Please note, however, that limitation

will only be broken in this way if the intentional or reckless conduct is that of the carrier as a company, and is attributable to the "directing mind and will" of the company.

Where can a claimant sue?

2.2.23 CMNI does not contain provisions on jurisdiction. Please see the note "Where can a claimant sue?" under Part I.

International carriage by **ROAD**

3. International carriage by ROAD

3.1 Introduction to road carriage

3.1.1 CMR, Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva in 1956 governs international road carriage in Europe and extends into parts of Asia and Africa. The "SDR Protocol 1978"to CMR, which now applies in most CMR jurisdictions, defines the liability limit, as 8.33 SDR. A large body of case law has accrued on CMR, which is not always consistent between jurisdictions, and expert authors worldwide have produced detailed CMR commentaries and text books.

3.1.2 Please bear in mind that it is sufficient for CMR to apply (in a CMR member state) if only either the agreed country of departure or country of destination of the road carriage is a CMR member state. CMR applies in principle even if no CMR consignment note is being issued.

3.1.3 In 2008 seven countries signed an Additional Protocol to CMR ("eCMR")[5]. This came into force in 2011. It provides a legal framework for a digital CMR consignment note. issued through electronic communication by the carrier, the sender or any other party interested in the performance of a CMR carriage contract (Article 1). It contains the same data as the CMR paper consignment note (Article 4). For its authentication the parties are required to use a "reliable digital signature" (Article 3). Use requires the consent of all "parties interested in the performance of the contract" (Article 5). Apart from the CMR consignment note, any demand, declaration, instruction, request, reservation or other communication relating to the performance of a CMR carriage contract may be made by electronic communication (Article 2). The fact that not all road carriages are subject to CMR, and not all CMR member states have ratified the Protocol, means that a "hybrid" approach often has to be adopted, retaining a paper consignment note as back up to the digital version. Nevertheless, it is planned that the digital consignment note will become mandatory by 2026.

[5] https://unece.org/DAM/trans/conventn/e-CMRe.pdf

3.2 **CMR 1956**[6] (as amended by the SDR Protocol 1978[7])

Who normally trades under CMR?

3.2.1 CMR applies to road hauliers, Transport and Logistics Operators and liner operators who contract as an international road carrier or actually perform international road carriage.

How does CMR apply?

3.2.2 CMR applies to contracts for the international carriage of goods by road - usually (of course) by truck (Article 1). CMR also applies to carriage by any other mode where the goods remain inside or on top of the road vehicle, for example, where a truck carries goods from England to France on a cross-channel ferry (Article 2). English courts (and apparently courts in some other countries) apply CMR also to the international road portion of a multimodal carriage contract, see *Quantum v Plane Trucking (2002)* and *Datec v UPS (2007)*.

3.2.3 CMR applies compulsorily to contracts to carry goods between two different states, of which at least one has incorporated CMR into its national law (and is therefore a member state). Some Member States have extended the application of CMR to domestic road carriage. Naturally, CMR can be incorporated by agreement between the parties into any contract for road carriage - to the extent that no mandatory rules apply. CMR does not apply to funeral, postal or furniture carriages (Art 1.4).

3.2.4 CMR does not apply to you if you contract as a mere agent, and do not assume liability as a carrier.

3.2.5 Carriage performed by successive carriers has its own chapter in Articles 34-40 CMR. Successive carriage under CMR occurs if a single road carriage contract is performed by "successive" road carriers, each of whom becoming a party to the carriage contract "by reason of its acceptance of the goods and the consignment note" (Article 34). Due to widely diverging interpretations of the requirements of a contract of successive carriage (such as "acceptance of the goods", "acceptance of the consignment note"), Articles 34-40 have a high importance in some CMR countries (in particular in

---

6. https://unece.org/DAM/trans/conventn/cmr_e.pdf

7. https://unece.org/DAM/trans/conventn/CMR_prot.pdf

the United Kingdom), but are almost irrelevant in practice elsewhere (for example: in Germany). If Articles 34-40 apply, cargo claims can be brought against the first carrier, last carrier, or the carrier who performed the carriage portion during which the loss, damage or delay occurred (Article 36). Between the successive carriers there are specific rules on recourse (Article 37-38, Article 40) and jurisdiction/ enforcement (Article 39(1)-(3)) with a particular rule on the commencement of the Article 32 limitation period in Article 39(4). Please seek the TT Club's legal advice before you attempt to rely on Article 39(4).

How does CMR affect agreements between carrier and customer and how can the carrier improve its legal position under it?

3.2.6 CMR overrides any contractual provisions which you have agreed with your customer, such as your standard trading conditions, to the extent that these contractual provisions deviate directly or indirectly from CMR.

3.2.7 Unlike other international carriage conventions (apart from the Budapest Convention (CMNI) 2001, see section 2.2), CMR does not allow you to improve your customer's position either (Article 41). This is believed, at least partially, to mitigate restraint of trade. However, the parties have the option to agree on a declared value of the goods which can exceed the limit of 8.33 SDR per kilogramme (see also 3.2.24 below).

Who can claim?

3.2.8 As CMR is silent on this point, the applicable domestic law will identify the parties entitled to sue. If you have issued a CMR consignment note to cargo interests, this document is prima facie evidence of the parties to the contract. The consignor and the consignee named in the CMR consignment note are therefore normally entitled to sue you. Under some legal systems the "actual" consignee or the owner of the goods may also be able to sue, especially if no CMR consignment note has been issued or if the note is inconclusive as to the identity of the parties. In case of successive carriage (see 3.2.5 above), particular rules apply (Article 36).

What defences are there?

3.2.9 The carrier's liability is presumed if the claimant proves that it has suffered a loss or damage or if there was delay in delivery (Article 17(1)).

3.2.10 Unless the loss was caused by the defective condition of your vehicle (Article 17(3)), you can defeat this presumption if you can show that the loss, damage or delay was caused by (Article 17(2)):

(i) the claimant's (negligent) action or failure to act

(ii) the claimant's instructions, provided you did not contribute to the problem

(iii) inherent vice

(iv) circumstances which you could not avoid and the consequences of which you could not prevent. In many jurisdictions this is difficult to establish. Traffic jams or adverse weather are unlikely to be sufficient excuse in any jurisdiction.

3.2.11 Unless the claimant can prove that the loss, damage or delay was caused by your specific act or default, you can avoid liability under the following special circumstances (Article 17(4)):

(i) open unsheeted vehicles (if their use has been expressly agreed and specified in the consignment note)

(ii) inadequate packing by the sender

(iii) inappropriate handling, loading, stowage or unloading by the sender

(iv) the nature of certain goods which particularly exposes them to loss or damage

(v) insufficient or inadequate identification marks or numbers

(vi) carriage of livestock (provided the driver handles the animals reasonably).

3.2.12 If the defective condition of your vehicle contributed to the loss or damage, liability will be apportioned between you and the claimant.

When and how must the claimant notify a loss?

3.2.13 *Total loss:*
No notice is required.

3.2.14 *Partial loss/Cargo damage:*
If the damage or partial loss is apparent on reasonable inspection, oral or written notice must be given to the driver or carrier immediately on delivery. If the damage or partial loss is not apparent on reasonable inspection, notice must be given to the driver or carrier within seven days of delivery (Article 30(1)). Failure to give notice creates a presumption that the goods were received in the condition described in the consignment note - but does not bar the claimant from suing.

3.2.15 *Delay:*
Notice in writing must be sent to the carrier within 21 days from the eventual delivery date (Article 30(3)). Failure to do so creates a presumption that no delay was suffered - but does not bar the claimant from suing.

When must the claimant send a formal written letter of claim?

3.2.16 CMR does not require the claimant to send a formal written letter of claim. However, if it does do so, the time bar (see below) will be suspended until the defendant rejects the claim in writing and returns any documents sent in support of it (Article 32(2)). This provision is largely similar to Article 48(3) of CIM 1999 (see 4.2.23).

When does the claimant lose its right to sue?

3.2.17 *Partial Loss, damage and delay:*
One year from date the cargo was delivered (Article 32(1)(a)).

3.2.18 *Total Loss:*
One year and 30 days after the agreed delivery date. If there was no specific agreed delivery date, one year and 60 days from the date when the carrier took over the goods (Article 32(1)(b)).

3.2.19 *Other Losses:*
One year and three months from the date of the contract (Article 32(1)l).

3.2.20 *Wilful misconduct:*
Three years (Article 32(1) first paragraph). Please see 3.2.27 below for a definition of "wilful misconduct".

3.2.21 The limitation periods in Article 32(1) apply to all legal actions "arising out of the carriage", and therefore also to claims by the carrier against cargo interests.

3.2.22 In case of successive carriage (see 3.2.5 above), particular rules on the commencement of the Article 32 limitation period apply (Article 39(4)). Please seek the Club's legal advice before you attempt to rely on Article 39(4).

What limitation is available?

3.2.23 *Cargo loss & damage/No declared value:*
If the CMR consignment note does not include a declared value, you must compensate the claimant with the reduction in value of the cargo calculated by reference to the value of the goods at the place and time when you accepted them for carriage (Article 23(1)). This is usually established by reference to the sales invoice or FOB value. Please note that this is an unusual provision. Under most international conventions (and private contracts) the value of lost or damaged cargo is based on the "sound arrived" or CIF value.

3.2.24 If the difference in value exceeds 8.33 SDR per kilogramme of cargo affected, you can limit your compensation to the per kilogramme amount plus carriage charges.

3.2.25 Duty on spirits and tobacco can be much higher than the value of the goods themselves. The interpretation of Article 23(4) varies significantly between CMR member states, and astute parties will attempt to force legal proceedings into a jurisdiction that favours them ("forum shopping"). Defendants may try to influence jurisdiction before the claimant has started proceedings through a declaration of non-liability ("negative declaration"). The English law on CMR and customs duty is stated in *Buchanan v Babco Forwarding (1978)*. You should note that CMR does not explicitly exclude "procedures suspending duties", as CIM does (see 4.2.32 below), and treatment of duty in these cases is likely to vary between jurisdictions. If a claimant claims against you in respect of duty which appears to fall into this category, you should contact the Club for advice.

3.2.26 *Cargo loss & damage/Declared value on delivery:*
If the CMR consignment note contains a declared value, this will replace the liability limit of 8.33 SDR per kilogramme (Article 24), and your liability to the claimant amounts to either the declared value or the value of the goods pursuant to Article 23(1)+(2), whichever is the lower. If only a portion of the goods is affected, your liability will be calculated proportionally. You will typically only agree to a declared value if you are paid increased freight. Before agreeing a declared

value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

3.2.27 *Delay:*
The claimant must prove that the goods were not delivered after an agreed date or, in the absence of an agreed date, after a "reasonable" period (Article 19). If the claimant can show that a delay has occurred and that it has suffered a financially quantifiable loss as a result, you must compensate the claimant with that amount - unless it exceeds your total freight charges for the movement in which case reimbursement is limited to your carriage charges (Article 23(5)).

3.2.28 *Special Interest in Delivery:*
If the CMR consignment note specifies a "special interest in delivery" regarding loss/damage or delivery on a particular date, and the goods suffer such loss, damage or delay, you must pay the claimant the amount of special delivery as agreed with your customer and entered in the consignment note in addition to the normal compensation pursuant to Articles 23-25 (Article 26), but you are only liable to the extent that the claimant can prove his additional loss up to the agreed amount. Before agreeing to a "special interest in delivery", please make your intention known to the Club who will inform you to what extent you are covered. Failure to inform the Club may prejudice your insurance cover.

Can the right to limit be lost?

3.2.29 You will lose your right to limit your liability if the claimant can prove that the loss occurred due to your (or your employees", agents" or sub-contractors" etc) "wilful misconduct" (Article 29). Interpretations of this vary widely according to jurisdiction: for instance in England, "wilful misconduct" requires wrongful or reckless conduct without care for the consequences, but in Germany the concept extends to the carrier's gross negligence. Astute parties are aware of these variations throughout the CMR member states and will attempt to force legal proceedings into a jurisdiction that is favourable to them ("forum shopping"). Defendants may try to influence jurisdiction before the claimant has started proceedings through a declaration of non-liability ("negative declaration").

Where can a claimant sue?

3.2.30 A party can sue under the carriage contract in any of the following countries (Article 31(1)):

(i) where the defendant is domiciled

(ii) where the defendant has its principal place of business

(iii) where the defendant has the branch or agency through which the carriage contract has been made

(iv) where the carrier actually took over the goods for carriage

(v) where the place designated for delivery is situated

(vi) where the parties have previously agreed jurisdiction.

3.2.29 Please note that, with the exception of case (vi) above, the countries where jurisdiction is taken do not necessarily need to be CMR member states. In case of successive carriage (see 3.2.5), particular rules apply (Article 39(2)).

3.2.31 Article 31(1)+(2) CMR is largely similar to Article 46(1)+(2) of CIM 1999 (see 4.2.34).

International carriage by **RAIL**

4. International carriage by RAIL

4.1 Introduction to rail carriage

4.1.1 COTIF 1980 (the Convention concerning International Carriage by Rail) was the traditional basis of international rail carriage in Europe and parts of North Africa (Algeria, Morocco, Tunisia) and Asia (Iran, Iraq). COTIF 1980 was modified by the "Protocol 1990 and then more fundamentally by the Vilnius Protocol 1999 which replaced it with the new CIM (COTIF) 1999 (see 4.2) This is now in force in all previous COTIF 1980 states (the "stragglers" in Europe were Ireland, Italy and Sweden).

4.1.2 While the old CIM (COTIF) 1980 applied only to railways, that is to say to performing rail carriers, the new CIM (COTIF) 1999 expressly applies to contracting rail carriers - in particular to "rail forwarders" who do not actually run railways. Please bear in mind that CIM (COTIF) 1999 only applies if it is in force in both the country of departure and the country of destination of the rail carriage. Unlike CIM (COTIF) 1980, CIM (COTIF) 1999 applies even if no rail consignment note has been issued.

4.1.3 SMGS ("Agreement on international freight traffic by rail") is a second significant international rail carriage convention, which still applies in a number of Eastern European and Asian countries, including Russia and China. A number of countries are Member States to both CIM 1999 and SMGS.

4.1.4 While there are many differences between SMGS and CIM, in general the two regimes are broadly similar in terms of the articulation of liabilities. Consequently, the following analysis concentrates on CIM (COTIF) 1999 only.

4.1.5 In order to facilitate rail traffic between CIM and SMGS Member states, CIT (Comité International des Transports ferroviaires) and OSShD (Organisation for the Collaboration of Railways) have cooperated in creating a *combined CIM/ SMGS rail consignment note* (in paper or electronic form) and an explanatory handbook. The TT Club has also designed a Rail Forwarders Document (S850) which similarly combines potential liability under CIM and SMGS.

4.2 CIM (COTIF) 1999[8]

Who normally trades under CIM 1999?

4.2.1 The old CIM 1980 only applied to railway operators who performed the rail carriage and a rail consignment note was obligatory. CIM 1999 applies not only to railway operators as "substitute carriers" (Article 3(b)), but in particular also to rail operators or Transport and Logistics Operators who undertake liability as a "carrier", but do not perform part or all of the carriage themselves (Article 3(a)) - and applies whether or not a rail consignment note is issued.

How does CIM 1999 apply?

4.2.2 CIM 1999 primarily applies to rail carriage contracts when the (agreed?) place of taking over the goods and the place designed for delivery are situated in two different member states (Article 1(1)). CIM applies also in principle to transit through a country which is not a member state, but domestic law in these states may digress ("derogate") from CIM (Article 4(2)). A country that belongs to another international rail carriage convention, in particular SMGS, may declare CIM applicable only to part of its railway infrastructure (Article 1(6)).

4.2.3 In addition, CIM applies to some multimodal carriage contracts with a rail portion:

(i) If a single carriage contract under which a road or inland waterway leg within a member state supplements international rail carriage, the internal road or waterway carriage will also be subject to CIM (Article 1(3)).

(ii) If a rail carriage - be it international or merely domestic - is supplemented by sea carriage or by international inland waterway carriage which is registered in the "CIM list of maritime and inland waterway services" (as mentioned in Article 24(1) of COTIF 1999), CIM will apply to the entire transport (Article 1(4)).

4.2.4 CIM 1999 automatically applies to any contracts under which a carrier agrees, as principal, to carry goods by rail between two CIM member states of CIM (Article 1(1)).

---

8. https://otif.org/en/?page_id=172

4.2.5 CIM 1999 also takes precedence over other legal rules, at least in courts of CIM member states, if (Article 1(2)):

(i) either the (agreed?) place of taking over the goods or the place designated for delivery is located in a Member State, and

(ii) the parties agree to subject the contract to CIM 1999 without modifications.

Thus, Article 1(2) is a means of extending CIM, at least in courts of CIM member states, to non-member (even SMGS) states, such as Russia.

4.2.6 Naturally, the parties can always incorporate CIM 1999 into their contract, even for carriage between two non-member states or for domestic carriage, but in these cases any mandatory law will take precedence over CIM 1999.

4.2.7 CIM does not apply to you if you contract as a mere agent, and do not assume liability as a carrier.

4.2.8 Carriage performed by *successive carriers* under CIM occurs if carriage governed by a single contract is performed by several successive carriers, each of whom becomes a party to the carriage contract by taking over the goods with the consignment note (Article 26). Legal action can be brought against the carrier who has the duty to deliver the goods if the carrier is entered with its consent on the consignment note, even though it never received the goods or consignment note (Article 45(2)). In contrast to Articles 34-40 CMR, there is no specific chapter on "successive carriage" in CIM 1999.

How does CIM 1999 affect agreements between carrier and customer and how can the carrier improve its legal position under it?

4.2.9 CIM 1999 overrides any contractual provisions which you have agreed with your customer, such as your standard trading conditions, to the extent that these contractual provisions deviate directly or indirectly from CIM (Article 5).

4.2.10 You may improve your customer's position under CIM by increasing your responsibilities and obligations. However, if you propose to do this, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

4.2.11 Initially the consignor, subsequently the consignee. Other parties are not entitled to sue. The right to claim passes from the consignor to the consignee when the consignee takes possession of the consignment note or accepts the goods (Article 44(1)). The consignee can also claim once loss of the goods is established, or if the goods have not arrived within thirty days after the expiry of the "transit period" (agreed or defined duration of the carriage, Article 16), see Articles 17(3), 29(1) and 44(1).

4.2.12 If you are the "carrier" with whom the consignor concluded the carriage contract (Article 3(a)), the consignor or consignee (whichever of the two is entitled to claim) can always sue you. If you are not the only carrier involved, the consignor or consignee can only sue you if you were the first carrier, the last carrier or the carrier who performed the critical portion of the carriage (Articles 45(1) and 45(6)). This rule applies generally, not only in situations of "successive carriage" as defined by Article 26. In the case of successive carriage pursuant to Article 26 CIM 1999 (see also 4.2.8 above), legal action can also be brought against the carrier who has the duty to deliver the goods if the carrier is entered with his consent on the consignment note, even though it never received the goods or consignment note (Article 45(2)).

4.2.13 The consignor or consignee as claimant must meet formal requirements. The consignor must produce the duplicate of the consignment note, an authorisation from the consignee, or proof that the consignee has refused to accept the goods (Article 43(3), Article 44(5)). The consignee must produce the consignment note if it has received it (Article 43(4), Article 44(6)). The claim must be made in writing (Article 43(1)). It is not permissible to substitute other documents for the consignment note, either in original or in copy (Article 43(5)).

4.2.14 If the claimant has a choice under CIM to sue one of several carriers, this right of choice is extinguished as soon as it brings an action against any one of them (Article 45(7)).

What defences are there?

4.2.15 Your liability is presumed if the claimant proves that it has suffered a loss or damage or that there was delay in delivery (Article 23(1)).

4.2.16 You can defeat this presumption if you can prove that the loss, damage or delay was caused by (Article 23(2)):

(i) the claimant's fault

(ii) the claimant's instructions, provided you did not contribute to the problem

(iii) inherent defect of the goods carried

(iv) circumstances which you could not avoid and the consequences of which you could not prevent.

4.2.17 Unless the claimant can prove that the loss, damage or delay was caused by your specific act or default (Article 25(2)), you can avoid liability under the following special circumstances (Article 23(3)):

(i) carriage in open wagons, (either pursuant to your General Conditions of Carriage, see Article 3(c), or when such carriage has been expressly agreed and specified in the rail consignment note)

(ii) inadequate packing by the consignor

(iii) inappropriate loading (by the consignor) or unloading (by the consignee)

(iv) the nature of certain kinds of goods which particularly exposes them to loss or damage

(v) irregular, incorrect or incomplete description or numbering of packages

(vi) carriage of live animals

(vii) carriage accompanied by an attendant (if the loss or damage results from a risk which the attendant was intended to avert).

4.2.18 If the defective condition of your vehicle contributed to the loss or damage, liability will be apportioned between you and the claimant.

When and how must the claimant notify a loss?

4.2.19 *Total loss:*
No notice is required.

4.2.20 *Partial loss or Cargo damage:*
Acceptance of the goods by the person entitled extinguishes all rights of action against the carrier arising from the contract of carriage (Article 47(1)), unless:

(i) apparent loss or damage is ascertained in accordance with Article 42 before acceptance of the goods by the person entitled (Article 47(2)(a))

(ii) apparent loss or damage is not ascertained solely because of the carrier's fault

(iii) the "person entitled" requires ascertainment immediately after discovery of non-apparent loss or damage - but no later than seven days after acceptance of the goods (Article 47(2)(b))

(iv) the "person entitled" proves that non-apparent loss or damage occurred between taking over and delivery of the goods by the carrier.

The "person entitled" is the party who has the right to dispose of the goods pursuant to Article 18.

If you discover or suspect partial loss or damage, or this is alleged by the "person entitled", you are obliged to draw up a loss/damage report. You should do this "without delay" and, if possible, in the presence of the "person entitled" (Article 42(1)). You are not entitled to change by mutual agreement the mandatory notification periods stated at Article 47.

4.2.21 *Delay:*
Acceptance of the goods by the "person entitled" extinguishes all rights of action against the carrier arising under the contract of carriage (Article 47(1)), unless the person entitled asserts within six days its right against one of the carriers against whom an action can be brought pursuant to Article 45(1) (Article 47(2)(c)). You are not entitled to change by mutual agreement the mandatory notification periods stated at Article 47.

4.2.22 *Intent to cause loss or damage or recklessness:*
A right of action against is not extinguished if the person entitled proves that the loss or damage results from an act or omission, done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result (Article 47(3)).

When must the claimant send a formal written letter of claim?

4.2.23 CIM does not require the claimant to send a formal written letter of claim. However, if it does do so, the time bar (see 4.2.24-4.2.26) will be suspended until you reject the claim in writing and return any documents sent you in support of it. (Article 48(3)). This provision is largely similar to Art 32(2) of CMR (see 3.2.16).

When does the claimant lose its right to sue?

4.2.24 In principle, the limitation period for legal actions arising from the carriage contract, which includes claims by the carrier against cargo interests is one year. However, the limitation period is two years in the case of legal actions (Article 48(1)):

(i) to recover a cash on delivery payment which you collected from the consignee

(ii) to recover the proceeds of a sale

(iii) for loss or damage resulting from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result

(iv) based on one of the carriage contracts prior to "reconsignment" (the consignee sending on the goods to a further destination, Article 28).

4.2.25 The limitation period starts the day after the following dates (Article 48(2)):

(i) *total loss:* thirty days after expiry of the "transit period" (agreed or defined duration of the carriage, Article 16);

(ii) *partial loss,* damage and delay: the day when delivery occurred;

(iii) *all other situations:* the day when a party can exercise the right of action.

4.2.26 Whether the limitation period can be suspended or interrupted will be determined by the applicable domestic law (Article 48(5)). But once a right of action has become time-barred, it can never be revived (Article 48(4)).

What limitation is available?

4.2.27 *Total or partial loss, not caused by delay (no "declared value", no "special interest in delivery"):*
If the consignment note does not include a "declared value" or a "special interest in delivery", you must compensate the claimant with the reduction in value of the cargo calculated by reference to the value of the goods at the place and time when you accepted them for carriage (Article 30(1)). This is usually established by reference to the sales invoice or FOB value. Please note that this is an unusual provision. Under most international conventions (and private contracts) the value of lost or damaged cargo is based on the "Sound arrived" or CIF value. If the difference in value exceeds 17 SDR per kilogramme of cargo affected, you can limit your compensation 17 SDR per kilogramme (Article 30(1)).

4.2.28 *Damage, not caused by delay (no "declared value", no "special interest in delivery"):*
If the consignment note does not include a "declared value" or a "special interest in delivery", you must compensate the claimant with the reduction in value of the cargo calculated by reference to the value of the goods at the place and time when you accepted them for carriage (Article 32(1)). If the difference in value exceeds 17 SDR per kilogramme of cargo affected, you can limit your compensation to 17 SDR per kilogramme (Article 30(2)).

4.2.29 *Declared value:*
If you agree with your customer that the customer declare in the consignment note a value for the goods which exceeds the limit of 17 SDR per kilogramme pursuant to Article 30(2), this declared value will replace 17 SDR as the liability limit (Article 34). This means that your liability will amount to either this declared value or the value of the goods pursuant to Article 30 (in case of total or partial loss) or Article 32 (in case of damage), whichever is the lower. You will typically only agree to a declared value if you are paid increased freight. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

4.2.30 *Delay (no "special interest in delivery"):*
If the claimant proves that the "transit period" (agreed or defined duration of the carriage, Article 16) has been exceeded and that loss or damage was caused by this, you are liable up to an amount of four times your carriage charge (Article 33(1)). However:

(i) in respect of total loss this compensation is not payable in addition to what is provided for by Article 30 (Article 33(2)

(ii) in case of partial loss, no further compensation is payable (Article 33(3).

4.2.31 In case of damage not caused by delay (as defined at Article 32) the compensation provided for at Article 33(1) is payable in addition to that provided for at Article 32 (Article 32(4)). However, in no case can total compensation exceed the compensation which would be payable in case of total loss (Article 33(5)).

4.2.32 If you agree the "transit period" (duration of the carriage) with your customer (Article 16(1) 1st sentence), you can also agree a basis of compensation which differs from four times the carriage charge under Article 33(1) as mentioned above (Article 33(6)) and which results in a higher or lower amount.

4.2.33 *""Special interest in delivery:"*
If you agree with your customer that it declare, by entering a figured amount in the consignment note, a "special interest in delivery", your customer can claim further compensation for loss, damage or delay, that is to say compensation in addition to that already provided for elsewhere in CIM. You will typically only agree to a "special interest in delivery" if you are paid increased freight. Before agreeing "special interest in delivery", please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the "special interest in delivery" may prejudice your insurance cover.

4.2.34 *Consequential Loss:*
You are in principle not liable for consequential loss ("to the exclusion of all other damages", Article 30(1)). You are liable for carriage charges, customs duty already paid and other sums "paid in relation to the carriage of the goods lost. However, Article 30(4) specifically excludes "excise duties for goods carried under a procedure suspending those duties". This can be significant as duty on spirits and tobacco can be much higher than the value of the goods themselves. If a claimant claims against you in respect of duties which appear to fall into this category, you should contact the Club for advice.

Can the right to limit be lost?

4.2.35 The carrier will lose the right to limit its liability if the claimant can prove that the loss or damage results from its act or omission done with intent to cause the loss or damage or recklessly and with knowledge that such loss or damage would probably result (Article 36). Please note, however, that limitation will only be "broken" in this way if the intentional or reckless conduct is that of the carrier as a company, and is attributable to the "directing mind and will" of the company.

Where can a claimant sue?

4.2.36 The carrier or cargo interests can sue under the carriage contract in any one of the following countries (Article 46(1) CIM)):

(i) where the defendant is domiciled;

(ii) where the defendant has its principal place of business

(iii) where the defendant has the branch or agency through which the carriage contract has been made

(iv) where the carrier actually took over the goods for carriage

(v) where the place designated for delivery is situated.

(vi) where the parties have previously agreed jurisdiction.

4.2.37 Please note that, with the exception of case (vi) above, the countries where jurisdiction is taken do not necessarily need to be CIM member states.

4.2.38 Article 46(1)+(2) is largely similar to Article 31(1)+(2) CMR (see 3.2.28).

International carriage by **AIR**

5. International carriage by AIR

5.1 Introduction to air carriage

Air carriage conventions

5.1.1 The Warsaw Convention 1929 was the start of the "Warsaw system" of international air carriage conventions. One significant feature of the original Warsaw Convention 1929 is the long list of information that the carrier must include in his air waybill ("air consignment note") in order to ensure that he can rely on the liability limits (Articles 8-9).

Moreover, the carrier cannot rely on the liability limits in the convention if its conduct amounts, according to the law of the court seized of the case, to "wilful misconduct" (Article 25). A substantial body of case law on the original Warsaw Convention 1929 accrued particularly in respect of carriage to or from the United States.

5.1.2 The Hague Protocol 1955 amended the original Warsaw Convention 1929, creating the Warsaw/Hague Rules 1955 (see section 5.2). Warsaw/Hague shortened the list of mandatory information in the bill of lading, but particularly required that the air waybill contain a Notice which reminds the shipper that carriage can be subject to Warsaw/Hague with its liability limits. If the air waybill lacks a clearly worded Notice, the carrier cannot limit his liability (Fujitsu v Bax Global (2005)). Furthermore, the carrier cannot limit liability if it acts - or its "servants or agents" act - "with intent to cause damage or recklessly and with knowledge that damage would probably result" (Article 25). Warsaw/Hague was widely adopted worldwide and was the dominant air carriage liability regime for many years.

5.1.3 The Guadalajara Convention 1961 supplements the "Warsaw Convention", either in its original 1929 version or as amended by the Hague Protocol 1955. Guadalajara clarifies who is liable as a carrier under the "Warsaw Convention" by introducing the concepts of "contracting carrier" and "actual carrier": the former is liable for the entire agreed carriage, the latter for the portion it performs. In relation to carriage performed by the "actual carrier", cargo interests can sue either of the two carriers or both together or separately; in addition to the choice of jurisdictions under Article 28 of Warsaw or Warsaw/Hague, cargo interests can also sue where the actual carrier has its principal place of business.

5.1.4 The Montreal Protocol No. 4 (signed in 1975) amends "the Warsaw Convention 1929 as amended by the Hague Protocol 1955". The Montreal Protocol No. 4 replaces the liability system of Warsaw and Warsaw/Hague by a concept of "presumed fault" but introduces an unbreakable liability limit of 17 SDR per kilogramme. It expressly provides that the air waybill can be replaced by "any other means which would preserve a record of the carriage", opening the door for electronic documentation. Lastly, it clarifies that the Guadalajara Convention 1961, if in force in the countries concerned, applies to it also.

5.1.5 The Montreal Convention 1999 - unlike the four instruments listed above - is outside the "Warsaw system", and is a separate convention. However, many of the provisions of the Montreal Convention 1999 are identical or very similar to the Montreal Protocol No 4, and to Warsaw and Warsaw/Hague. Three differences between the Montreal Protocol No 4 and the Montreal Convention 1999 are:

Article 18(3) of the Protocol No 4 stated that the carrier is not liable if the loss or damage resulted "solely" from one of the four listed exclusions. The term "solely" is no longer included in the Montreal Convention 1999, which helps the carrier (see 5.3.9).

The Montreal Convention 1999 states in Article 18(4), third sentence that replacement of air carriage by another mode without the consent of the consignor is to be considered within the period of air carriage (see 5.3.4).

The Montreal Convention 1999 integrates the contents of Guadalajara.

5.1.6 Because of the similarities with earlier conventions, mentioned above, a lot of case law on the older conventions remains relevant.

5.1.7 Please bear in mind that each of the conventions mentioned above only applies if it is in force in both the country of departure and destination of the air carriage. If no international air carriage conventions are in force in a country (for example: in Thailand), no such conventions can apply to carriage to or from that country.

5.1.8 However, domestic law of a country where an international air carriage convention is in force may apply the convention (in its own jurisdiction) to carriage to a non-convention country.

5.1.9 When deciding which of the five conventions applies to a particular carriage, you may want to make a list of the instruments which are in force both in the country of departure and country of destination.

5.1.10 It is necessary to go through the list of air carriage instruments in reverse chronological order (Montreal Convention 1999 - Montreal Protocol No 4 – Warsaw/ Hague Rules – Warsaw Convention 1929) to find the "highest common entry" that appears on the lists of both countries. Please also note that, the Guadalajara Convention 1961 will apply in addition to the other three if it is in force in both countries.

The following three examples may help to illustrate this process:

(Country A below is the country of departure and Country B the country of destination – or vice versa.)

Example 1:

	Country A	Country B
Air carriage instruments in force	Warsaw Convention 1929 Warsaw/Hague Rules 1955 [Guadalajara Convention 1961] Montreal Protocol No 4 Montreal Convention 1999	None

In Example 1, no international air carriage instruments apply, because none are in force in Country B - unless domestic law of Country A applies a convention to carriages to Country B as stated above.

Example 2:

	Country A	Country B
Air carriage instruments in force	Warsaw Convention 1929 Warsaw/Hague Rules 1955 [Guadalajara Convention 1961]	Warsaw/Hague Rules 1955 [Guadalajara Convention 1961] Montreal Protocol No 4

In Example 2, the Warsaw/Hague Rules are the "highest common entry", which will apply. They will be supplemented by the Guadalajara Convention 1961.

Example 3:

	Country A	Country B
Air carriage instruments in force	Warsaw Convention 1929 Warsaw/Hague Rules 1955 [Guadalajara Convention 1961] Montreal Convention 1999	Warsaw Convention 1929 Montreal Protocol No 4

In Example 3, the Warsaw Convention 1929 is the "highest common entry", which will apply. Guadalajara will not apply (not in force in Country B).

Air waybill condition

5.1.11 Air waybills issued by airlines are based on a format produced by IATA (International Air Transport Association). FIATA (International Federation of Freight Forwarders Associations) has closely followed the IATA format in its own recommended air waybill. An amended IATA air waybill entered into force in December 2019. This is based on amended IATA Resolution 600b, originally applied in 2010. The purpose of Resolution 600b continues to be the harmonisation of conditions of carriage and certainty and clarity to assessment of liability and claims handling. The 2019 waybill is distinguished by the following:

- Montreal Convention or Warsaw Convention (including the variants addressed at 5.1.2-4) are incorporated as required by law (effectively a "clause paramount"), but effectively applies Montreal Conditions by default where there is no incorporation by law, for example: in the case of domestic carriages.
- Carriage under the waybill other than by air is subject to the waybill conditions, subject to express agreement to the contrary.
- Where Montreal or Warsaw do not apply, the carrier's trading conditions will apply. The waybill includes advice on how these can be inspected. This provision is widely drawn, contemplating not only carriage but also "other related services", is particularly relevant to freight forwarders who may supply ancillary services and carriages outside the scope of the waybill.

Electronic air carriage documentation

5.1.12 IATA introduced the electronic Air Waybill (eAWB) in 2010. From January 2019 it is the default contract on "enabled trade lanes". (An "enabled trade lane" is defined as a carriage where both the country of origin and the country of destination have ratified the same convention according to the analysis at 5.1.7-10.) The intention is that paper documentation should now be the exception and generally should apply only when indicated by international treaty or national law, or by agreement between the parties. Figures suggest that eAWB penetration, where it is possible, has reached around 75% by 2021.

5.2 Warsaw/Hague Rules 1955[9]

Who normally trades under Warsaw/Hague?

5.2.1 The Warsaw/Hague Rules 1955 apply to air carriers, including airlines and Transport and Logistics Operators, who contract as carriers or actually perform the carriage.

How does Warsaw/Hague apply?

5.2.2 Warsaw/Hague applies to carriage of goods by air (Article 1.1).

5.2.3 The period of carriage does not extend to any carriage by land, sea or inland waterway performed outside the airport (Article 18(3) first sentence; Article 31). However, damage occurring during such carriage by another mode for the purposes of loading, delivery or transhipment is presumed (subject to proof to the contrary) to have taken place during air carriage (Article 18(3) second sentence).

5.2.4 Warsaw/Hague applies to contracts to carry goods by air between:

(i) airports in two different countries which are both Warsaw/Hague Member States

(ii) airports within the same country if that country is a Warsaw/Hague Member State and there is an agreed stopping place within the territory of another country (Article 1(2))

(iii) airports within the same country in states where domestic law has been amended to this effect.

Warsaw/Hague does not apply if you contract as a mere agent, and do not assume liability as a carrier.

How does Warsaw/Hague affect agreements between carrier and customer and how can the carrier improve its legal position under it?

5.2.5 Warsaw/Hague overrides any contractual provisions that you might have agreed with your customer (for instance standard trading conditions) to the extent that these provisions tend to relieve you of liability or attempt to lower your liability limit below 17 SDR per kilogramme (Article 23(1)).

---

9. https://dgtr.de/wp-content/uploads/WA-HagueProtocol1955.pdf

5.2.6 Warsaw/Hague allows you to improve your customer's position, for instance by increasing the liability limit above 17 SDR per kilogramme or even undertaking unlimited liability. However, if you intend to improve your customer's position in this manner, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

5.2.7 As Warsaw/Hague is silent on this point, the applicable domestic law will identify the parties which are entitled to sue. This normally includes the shipper and consignee named in the air waybill, either for themselves if they own the goods or otherwise on behalf of the "true" owner of the goods. Under some legal systems there is precedent which suggests that the "real" consignee or the "true" owner of the goods has an independent right to sue - for instance if it acted as undisclosed principal. The "notify party" is not entitled to sue.

What defences are there?

5.2.8 If loss or damage to cargo, or delay, occurs during air carriage, Warsaw/Hague presumes that the carrier is liable (Articles 18(1) and 19). But this presumption can be defeated by showing that the loss occurred:

(i) other than during the flight or within the perimeters or vicinity of the airport (Article 18(2))

(ii) in spite of the carrier having taken all necessary measures to avoid the damage or by showing that such measures were impossible (Article 20(1))

(iii) because of the contributory negligence of the shipper or the consignee (Article 21).

When and how must the claimant notify a loss?

5.2.9 Receipt by the person entitled to delivery of examined cargo without complaint is prima facie evidence that the cargo has been delivered in good condition (Article 26(1)).

5.2.10 *Total loss:*
No notice by the claimant is required.

5.2.11 *Partial loss/Cargo damage:*
The party entitled to delivery must complain to the carrier within 14 days from the date on which it receives the cargo (Article 26(2) first sentence). Arguably, no complaint is required in case of partial loss if the air waybill indicates that some of several packets were lost.

5.2.12 *Delay:*
Within 21 days from the date on which the cargo was put at the disposal of the party entitled to delivery (Article 26(2) second sentence).

5.2.13 The claimant must complain in writing (Article 26(3)). If no complaint is made in the time periods specified in Articles 26(1) and (2), except in case of fraud, the claimant is barred from suing (Article 26(4)). This harsh legal consequence contrasts with notification rules other conventions, such as Hague/Hague-Visby (see 1.2.18 and 1.3.15), which are less strict in their application.

When must the claimant send a formal written letter of claim?

5.2.14 Warsaw/Hague does not require a written letter of claim in addition to notification pursuant to Article 26.

When does the claimant lose its right to sue?

5.2.15 Provided the claimant notified its claim pursuant to Article 26, it has two years in which to sue, starting from the date (Article 29):

(i) of arrival at destination

(ii) on which the aircraft should have arrived

(iii) on which the carriage stopped

whichever is the latest.

5.2.16 The two year period is calculated according to applicable domestic law. In many jurisdictions, the period is absolute and cannot be suspended or extended. If the claimant agrees to extend the period, legal principles of good faith or equity are likely to bar the claimant from later relying on the absolute nature of the period.

What limitation is available?

5.2.17 *Cargo loss & damage/No declared value:*
If no declared value has been entered in the air waybill, liability to the claimant under Warsaw/Hague is either "250 francs" per kilogramme (Article 22(2)(a)) or the value of the lost or damaged cargo, whichever is the lower. The "franc" referred to at Article 22(2)(a) is the Poincaré Franc (its gold content is defined in Art 22(5)). Member states have used different methods to convert the Poincaré Franc into their currency. Under English law "250 francs" is 17 SDR.

5.2.18 *Cargo loss & damage/Declared value on delivery:*
If the air waybill contains a declared value (also called "special declaration") for the cargo, the carrier is liable to the extent of that specified amount, unless it is proved that the declared value is greater than the claimant's actual interest in delivery at destination (Article 22(2)(a)). If only a portion of the cargo is affected, liability is calculated proportionally. You will typically only agree to a declared value if you are paid increased freight. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

5.2.19 *Delay:*
To prove a delay has occurred, the claimant must prove that the cargo was delivered after an agreed date or, in the absence of an agreed date, after a "reasonable" period. If the claimant can show that a delay has occurred and that it has suffered a financially quantifiable loss, you must compensate this loss if the claimant also proves that:

(i) the loss was a natural result of the delay or
(ii) the claimant had put the carrier on notice that the loss would occur if the goods were delayed.

Can the right to limit be lost?

5.2.20 You will lose your right to limit your liability under Warsaw/Hague if the claimant proves that:

(i) the loss resulted from your (or your servant's or agent's) act or omission, done with the intent to cause damage or recklessly with knowledge that damage would probably result (Article 25) or
(ii) you failed to issue an air waybill in triplicate and deliver it to the relevant parties (Article 6 and Article 9); or
(iii) the delivered air waybill failed to state that the carriage was subject to the "Warsaw Convention" (Article 8I and Article 9).

Where can a claimant sue?

5.2.21 A claimant can sue in any one of the following jurisdictions, as long as it is also a Warsaw/Hague Member State (Article 28)

(i) where the defendant is domiciled
(ii) where the defendant has its principal place of business
(iii) where the defendant has a place of business through which the carriage contract has been made
(iv) where the agreed destination of the air carriage is situated.

5.3 Montreal Convention 1999[10]

Who normally trades under Montreal 1999?

5.3.1 Montreal 1999 applies to air carriers, including airlines as well as Transport and Logistics Operators who contract as carriers or actually perform the carriage (Article 39).

How does Montreal 1999 apply?

5.3.2 Montreal 1999 applies to carriage of goods by air (Article 1.1).

5.3.3 The period of carriage does not extend to any carriage by land, sea or inland waterway performed outside the airport (Article 18(4) first sentence; Article 31). However, damage occurring during such carriage by another mode for the purposes of loading, delivery or transhipment is presumed (subject to proof of the contrary) to have taken place during air carriage (Article 18(4) second sentence).

5.3.4 If you replace air carriage by another mode without your customer's agreement, the carriage by the other mode is deemed to be within the period of air carriage (Article 18(4) third sentence). If you propose to do this, you should notify the Club, because there may be cover implications, if the effect is to "voluntarily" increase your liability.

5.3.5 Montreal 1999 applies to contracts to carry goods by air between:

(i) airports in two different countries which are both Montreal 1999 Member States

(ii) airports within the same country if that country is a Montreal 1999 Member State and there is an agreed stopping place within the territory of another country (Article 1(2))

(iii) airports within the same country in states where domestic law has been amended to this effect.

5.3.6 Montreal 1999 does not apply if you contracted as a mere agent and do not assume liability as a carrier.

---

[10] https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf

How does Montreal 1999 affect agreements between carrier and customer and how can the carrier improve its legal position under it?

5.3.7 Montreal 1999 overrides any contractual provisions that you might have agreed with your customer (for instance standard trading conditions) to the extent that these provisions tend to relieve you of liability or attempt to lower your liability limit below 22 SDR per kilogramme (Article 26).

Montreal 1999 allows you to improve your customer's position, for instance by increasing the liability limit above 22 SDR per kilogramme or even undertaking unlimited liability (Articles 25 and 27). However, if you intend to improve your customer's position in this manner, please make your intention known to the Club. We will advise on any implications for your cover.

Who can claim?

5.3.8 As Montreal 1999 is silent on this point, the applicable domestic law will identify the parties which are entitled to sue. This normally includes the shipper and consignee named in the air waybill, either for themselves if they own the goods or otherwise on behalf of the "true" owner of the goods. Under some legal systems there is precedent which suggests that the "real" consignee or the "true" owner of the goods has an independent right to sue - for instance if it acted as undisclosed principal. The "notify party" is not entitled to sue.

What defences are there?

5.3.9 If loss or damage to cargo, or delay, occurs during air carriage, Montreal 1999 presumes that the carrier is liable (Articles 18(1) and (2)). But this presumption can be defeated by showing that the loss occurred as a result of:

(i) inherent defect, quality or vice of the cargo

(ii) defective packing of the cargo not performed by you or your servants or agents

(iii) an act of war or armed conflict; or

(iv) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

Montreal 1999 also presumes that the carrier is liable for damage due to delay - but this liability can be avoided by proving that the carrier and its servants and agents took all measures that could reasonably be required to avoid the damage or that such measures were impossible (Article 21).

When and how must the claimant notify a loss?

5.3.10 Receipt by the person entitled to delivery of examined cargo without complaint is prima facie evidence that the cargo has been delivered in good condition (Article 31(1)).

5.3.11 *Total loss:*
No notice by the claimant is required.

5.3.12 *Partial loss/Cargo damage:*
The party entitled to delivery must complain to the carrier within 14 days from the date on which it receives the cargo (Article 31(2) first sentence). Arguably, no complaint is required in case of partial loss if the air waybill indicates that some of several packets were lost.

5.3.13 *Delay:*
Within 21 days from the date on which the cargo was put at the disposal of the party entitled to delivery (Article 31(2) second sentence).

5.3.14 The claimant must complain in writing (Article 31(3)). If no complaint is made in the time periods of Articles 31(1) and (2), except in case of fraud, the claimant is barred from suing (Article 31(4)). This harsh legal consequence contrasts with notification rules in other conventions, such as Hague/ Hague-Visby (see 1.2.18 and 1.3.15), which are less strict in their application.

When must the claimant send a formal written letter of claim?

5.3.15 Montreal 1999 does not require a written letter of claim in addition to notification pursuant to Article 31.

When does the claimant lose its right to sue?

5.3.16 Provided the claimant notified its claim (Article 35):

(i) of arrival at destination

(ii) on which the aircraft should have arrived

(iii) on which the carriage stopped

whichever is the latest.

5.3.17 The two year period is calculated according to applicable domestic law. In many jurisdictions, the period is absolute, meaning that it cannot be suspended or extended. If the claimant agrees to extend the period, legal principles of good faith and equity are likely to bar the claimant from later relying on the absolute nature of the period.

What limitation is available?

5.3.18 *Cargo loss & damage/No declared value:*
If no declared value has been entered in the air waybill, liability to the claimant under Montreal 1999 is 26 SDR per kilogramme (Article 23) (from 28 December 2024[11]) or the value of the lost or damaged cargo, whichever is the lower. This SDR limit is unbreakable - even, for example, in the case of reckless or intentional conduct.

5.3.19 *Cargo loss & damage/Declared value on delivery:*
If the air waybill contains a declared value (also called "special declaration") for the cargo, the carrier is liable to the extent of that specified amount, unless it is proved that the declared value is greater than the claimant's actual interest in delivery at destination (Article 22(3)). If only a portion of the cargo is affected, liability is calculated proportionally. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

5.3.20 *Delay:*
In the case of loss or damage to cargo caused by delay, the unbreakable limit of 26 SDR per kilogramme applies (Article 22(3)).

Can the right to limit be lost?

5.3.21 No (Article 22(5)). ("Limits for passenger and baggage liabilities can be broken, but not the 26 SDR per kilogramme cargo limit.")

Where can a claimant sue?

5.3.22 A claimant can sue in any one of the following jurisdictions, as long as it is also a Montreal 1999 Member State (Article 33):

(i) where the defendant is domiciled

(ii) where the defendant has its principal place of business

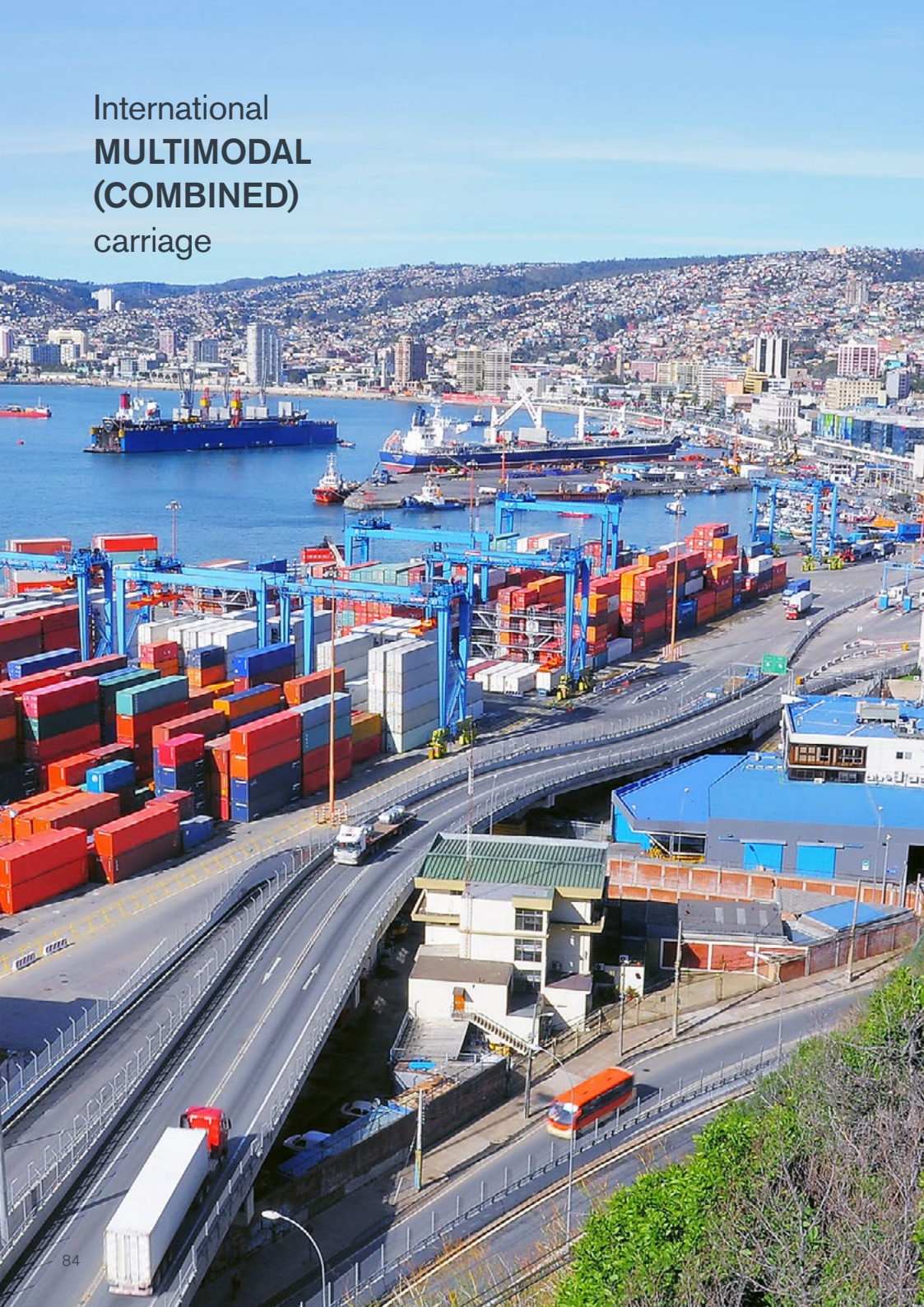
(iii) where the defendant has a place of business through which the carriage contract has been made

(iv) where the agreed destination of the air carriage is situated.

---

[11] The limit was originally set at 17 SDR. From 28 December 2019 it was 22 SDR, increasing again at 28 December 2024 to 26 SDR per kilogramme.

International **MULTIMODAL (COMBINED)** carriage



6. International MULTIMODAL (COMBINED) carriage

6.1 Rotterdam Rules[12]

6.1.1 No international convention dedicated to multimodal (combined) carriage has come into force yet. Although the proposed Convention on Contracts for the Carriage of Goods Wholly or Partly by Sea" ("Rotterdam Rules") aims to replace the current sea carriage regime, which some deem too fragmented. On 3 July 2008 the United Nations Commission approved the final version of the convention. Following submission to its Legal Committee, the United Nations General Assembly on 11 December 2008 passed a resolution adopting the convention. Rotterdam was *signed* in around 2010 by a number of states, including the United States and Netherland (but not the United Kingdom). However it requires 21 full *ratifications* to enter into force, and so far has only three: Spain, Congo and Togo. Netherlands and, crucially, the United States, on whose decision many states are waiting, appear still to be actively considering ratification. Nevertheless, it is questionable whether Rotterdam will ever receive the required ratifications.

6.1.2 Rotterdam applies to multimodal transport, as long as this includes a sea portion (it will also apply to unimodal sea carriage, see 1.1.5). It will not prevail over an existing international carriage convention such as CMR or the Montreal Convention 1999 if these apply by mandatory force of law.

6.1.3 Application does not depend on a bill of lading or similar document of title (the use of "electronic transport records" is catered for). On the other hand, the convention does not apply to a "Volume contract", which is defined as 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 quantity can include a minimum, maximum or certain range). Some feel that this definition gives the parties too easily the opportunity to contract out of the convention

[12] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf

6.1.4 The Carrier has a duty to properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods. He is bound before, at the beginning of, and during sea voyage to exercise due diligence to make and keep the ship seaworthy and cargo worthy. The convention lists the carrier's defences akin to Hague and Hague-Visby, but the carrier's fault "in the navigation or the management of the ship" is not included.

6.1.5 Subject to an excess value declaration by the shipper, the Carrier's liability Rotterdam is limited to 875 SDR per package or other shipping unit, or to 3 SDR per kilogramme of the gross weight of the goods, whichever is higher. Liability for delay is limited to 2.5 times the freight payable on the goods delayed. Any term in the carriage contract which directly or indirectly excludes or limits the obligations of the Carrier or a "Maritime performing party" (see 6.1.7) is void. Claims under the convention are time-barred after two years. For actions against the carrier, the convention provides a wide range of possible jurisdictions. It also addresses arbitration agreements.

6.1.6 Rotterdam includes a number of new concepts, such as the "Maritime performing party" which includes stevedoring companies and cargo terminal at sea ports. If certain conditions are met, a "Maritime performing party" has the obligations and liabilities which the convention imposes on the Carrier.

6.2 Application of other Conventions to Combined Carriage

6.2.1 Some unimodal carriage conventions apply to combined carriage in certain circumstances. Examples of provisions in unimodal carriage conventions providing combined carriage are: Article 2(2) Budapest Convention (CMNI) 2001, Article 2 CMR, Articles 1(3) and 1(4) CIM 1999 and (debatably) Article 18(4) last sentence Montreal Convention 1999. English courts (and apparently courts in some other countries) apply CMR also to the international road portion of a multimodal carriage contract, see *Quantum v Plane Trucking (2002)* and *Datec v UPS (2007)*.

6.2.2 Additionally, multimodal transport - be it domestic or international - is expressly dealt with in the domestic law of a number of countries. Examples are: China (if the carriage includes a sea portion), India (if the carriage is outwards from India), Thailand, Germany and the Netherlands.

6.2.3 In practice, issues concerning multimodal (combined) carriage are routinely addressed in the carriage documentation, in particular in multimodal (combined) bills of lading. For this reason, this Handbook examines in sections 6.2 and 6.3 two well-established bills of lading, namely the TT Club Series 100 bill of lading (in its current MMII "2002" version) and FIATA Multimodal Transport bill of lading (1992).

6.3 TT Club Series 100 bill of lading

Current MMII "2002" version:

Who normally uses the Series 100?

6.3.1 Transport and Logistics Operators who are current TT Club Members are authorised to use the TT Series 100 bill of lading.

How does the Series 100 apply?

6.2.2 The TT Series 100 bill of lading is designed for port to port shipments and for combined carriage of goods by sea, inland waterway, road or rail, or where actual performance is by any one of these modes of carriage.

6.3.3 The Series 100 applies to the carriage contract between you and your customer. You issue the Series 100 bill of lading in your own name and assume liability for the carriage, in particular by identifying yourself on the front as "carrier" and inserting your company name into the definition of "Carrier" on the back.

6.3.4 Clearly the bill's terms are not compulsory rules, but apply by mutual agreement between you and your customer. Thus:

(i) the terms will not apply to the extent that they conflict with an international carriage convention or with other mandatory law. For instance, if the claimant proves that loss occurred during an international road leg to which CMR is applicable, CMR takes precedence over the Series 100 terms. This is stated in a Clause Paramount (see 1.3).

(ii) you and your customer are free to agree to any other terms, which may improve either your position or that of your customer - as long as they do not conflict with an international carriage convention or with other mandatory law (see 6.3.5).

6.3.5 If the Series 100 terms apply between you and your customer, but you have also agreed to other terms (for instance in a framework contract or in correspondence), the order of precedence between any conflicting terms will be determined by contract interpretation. It is better to state in any "competing" contract which terms have precedence, and probably better still to avoid mismatches of this type. Please contact the TT Club for advice if you propose to do this.

Who can claim under the Series 100?

6.3.6 The Series 100 is a document of title to goods (clause 4.1). Therefore the lawful holder of the bill with title to sue - usually the shipper, consignee or endorsee - is entitled to bring legal proceedings under it.

What defences are there under the Series 100?

6.3.7 If you issued a clean bill of lading (indicating the good order of the goods) to the shipper and the claimant can show loss or damage (or delay) to the goods at the port of discharge, your liability is presumed. However, to defeat this presumption, you have the defences specified at 6.3.8 and 6.3.9 available.

6.3.8 *Port to Port Shipments*

You are prima facile liable between the time of loading and the time of discharge. If an international sea carriage convention such as the Hague Rules 1924 (see section 1.2), the Hague-Visby Rules 1968 (see section 1.3) or the Hamburg Rules 1978 (see section 1.4) applies by mandatory force of law, you can rely on the defences in this convention. If no international sea carriage convention or other mandatory law applies, you can rely on the defences of the Hague Rules 1924 which are incorporated into the bill (clause 6(1)(A)).

6.3.9 *Combined Transport*

Mandatory law on multimodal carriage (either any provisions on multimodal carriage in unimodal carriage conventions or any mandatory domestic rules on multimodal carriage) takes precedence (clauses 6(2)(B)(1) and 6(3)(B)(1)). Subject to this:

(i) If the cargo claimant cannot prove during which mode of carriage the loss or damage (or delay) occurred (clause 6(2)(A)), you are relieved from liability if the loss or damage was caused by (clause 6(2)(A)(1):

- (a) cargo interests (negligent) action or failure to act
- (b) compliance with instructions of a person entitled to give them
- (c) insufficient or defective packaging or marks or numbers
- (d) cargo interests (negligent) handling, loading, stowage or unloading
- (e) inherent vice of the goods
- (f) strike, lockout, stoppage or restraint of labour

(g) fire, unless caused by your or the shipowner's personal negligence

(h) nuclear incident

(i) any other cause or event which you, the ship owner or your agents/servants could not prevent by the exercise of reasonable diligence.

(ii) If the cargo claimant can prove during which mode of carriage the loss or damage (or delay) occurred (clause 6(2)(B):

(a) Loss or damage (or delay) during sea portion: you can rely on the defences available in clause 6(1) for *port to port shipments*, see above;

(b) Loss or damage (or delay) during non-sea portion: you can rely on the defences available in clause 6(2)(A)(1) for situations were the claimant cannot prove during which mode of carriage the loss or damage (or delay) occurred, see (i) above.

When and how must the claimant notify a loss under the Series 100?

6.3.10 *Apparent losses:*
Notice in writing must be given to you/your agent before or at the time when the goods enter the custody of the person entitled to delivery.

6.3.11 *Non-apparent losses:*
Notice in writing must be given to you/your agent within three days after the goods enter the custody of the person entitled to delivery.

6.3.12 Failure to notify within the relevant period creates a presumption in your favour that the goods were delivered as described in the bill of lading (clause 6(3)(E)). The claimant can rebut this presumption if it has evidence of the loss, but this becomes increasingly difficult with the passage of time.

When must the claimant send a formal written letter of claim?

6.3.13 The terms of the TT Series 100 bill of lading do not themselves require a claimant to send you a formal written letter of claim. However if the claimant proves that the loss, damage or delay occurred during a road or rail leg of the multimodal movement (or if road or rail carriage was the only mode of transport used) CMR or CIM 1999 may apply, and

with it the relevant rules in respect of notification. In such a case, if the cargo claimant sends you a written letter of claim, the CMR or CIM 1999 time bar will be suspended until the date when you reject the claim in writing and return any supporting documents to it (Article 32(2) CMR, Article 48(3) CIM 1999).

When does the claimant lose its right to sue under the Series 100?

6.3.14 You will not be liable if a cargo claimant does not sue you, or you do not receive written notice of the suit:

(i) Port to port shipment: within twelve months;

(ii) Combined transport: within nine months.

6.3.15 Both these periods start when the goods are or should be delivered. They do not apply if an applicable international carriage convention or other mandatory law provides a longer limitation period (clause 6(3)(F)).

What limitation and defences are available?

6.3.16 Subject to 6.3.17-19 below, you must compensate the claimant with the reduction in the value of the goods calculated by reference to the FOB/FCA invoice value plus freight and insurance (if paid); if there is no FOB/FCA invoice value, the value of the goods is determined according to the value of the goods at the place and time of delivery (clause 6(3)(A)).

6.3.17 *Port to Port Shipment*

If compulsory law applies, as at 6.3.8, limitation and defences will be specified in the law. In order to meet the requirements of the US court, this is stated as USD 500 per package or unit where US COGSA applies. Otherwise, Articles I-VIII (without Article III rule 8) of the Hague Rules 1924 will apply. This means GBP 100 per package or unit, excluding any reference to gold value (clause 6(1)(A)).

6.3.18 *Combined Transport: Where the stage of carriage at which the loss or damage occurred* ***cannot*** *be proved*

Defences as at Clause 6(2)(A)(1) are available - in brief: merchant's fault or instructions, bad packing, inherent ice, strikes, fire, nuclear event and losses which you could not avoid by reasonable diligence. Limitation is USD 2 per kilo gross weight of cargo lost or damaged (Clause 6(3)(B)(1)(iv)).

6.3.19 *Combined Transport: Where the stage of carriage at which the loss or damage occurred **can** be proved*

If compulsory law applies, as at 6.3.8, limitation and defences will be specified in the law. Otherwise the conditions at 6.3.17 will apply if the loss or damage happened at sea and the conditions at 6.3.18 will apply if it did not.

6.3.20 *Cargo loss & damage/declared value:*
The maximum sum of compensation is raised beyond the liability limits of clause 6, so that your liability to the claimant amounts to either the declared value or the value of the goods pursuant to the liability limits of clauses 6, whichever is the lower, if (clause 6(3)(c)):

(i) your customer declares in writing the value of the goods not later than at delivery for shipment and

(ii) the higher value of the goods is inserted on the front of your bill of lading in the "Excess Value Declaration" box and

(iii) your customer paid you extra freight (if you required this).

If only a portion of the goods is affected, your liability is calculated proportionally. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

6.3.21 *Consequential loss:*
The Series 100, at Clause 6(3)(D), effectively excludes liability for consequential loss, unless resulting from delay (see 6.3.22).

6.3.22 *Delay:*
If the claimant can show that its goods were delivered after the agreed date (or, in the absence of an agreed date, after a "reasonable" period of time) and that it suffered a financially quantifiable loss, you must compensate the claimant with that amount or with the amount of the freight you charged it for the relevant portion of the carriage, whichever is the lower (clause 6(3)(D)).

Can the right to limit be lost?

6.3.23 The Series 100 does not provide that you can lose your right to limit your liability. However, if an international carriage convention or other (mandatory) law overrides the terms of the bill, you may be unable to limit your liability if you caused damaged intentionally or recklessly.

Where can a claimant sue?

6.3.24 Subject to jurisdiction provisions in the international carriage conventions or in other mandatory law, the Series 100 provides "generally" for English law and London jurisdiction, but "exceptionally" for US law and New York jurisdiction, if US COGSA (the US Carriage of Goods by Sea Act) applies, for instance because carriage is to or from the United States (clause 20).

6.4 FIATA Multimodal Transport bill of lading 1992[13]

Who normally uses the FIATA Bill?

6.4.1 The FIATA (International Federation of Freight Forwarder Associations) bill of lading can be used by Freight Forwarders (Multimodal Transport Operators) who are either individual FIATA Members or who are members of (national) FIATA member organisations. In the latter case the FIATA bill of lading will display the emblem of that National Association.

How does the FIATA bill of lading apply?

6.4.2 The FIATA bill of lading is suitable for multimodal carriage of goods by sea, inland waterway, road or rail. The conditions of the FIATA bill of lading also apply if only one of these modes of transport is used (clause 1).

6.4.3 The FIATA bill of lading applies to the carriage contract between you and your customer, if you issue the FIATA bill of lading in your own name and assume liability for the performance of the multimodal carriage (before clause 1, Definition of "Freight Forwarder"), in particular by expressly naming yourself on the front as "carrier".

6.4.4 Clearly the terms of the FIATA bill of lading are not compulsory rules, but apply by mutual agreement between you and your customer. Thus:

(i) the terms will not apply to the extent that they conflict with an international carriage convention or with other mandatory law. For instance, if the claimant proves that loss occurred during an international road leg to which CMR is applicable, CMR takes precedence over the FIATA bill of lading terms. This is achieved by a Clause Paramount (see 1.3).

(ii) you and your customer are free to agree any other terms, which may improve either your position or that of your customer - as long as they do not conflict with an international carriage convention or with other mandatory law (see 6.4.5).

[13] https://fiata.cdn.prismic.io/fiata/e4eef4c9-9c36-4166-b702-3002fcc36adc_FIATA_Documents_and_Forms_Update.pdf

6.4.5 If the FIATA bill of lading terms apply between you and your customer, but you have also agreed other terms (for instance in a framework contract or in correspondence), the order of precedence between any conflicting terms will be determined by contract interpretation. It is better to state in any "competing" contract which terms have precedence, and probably better still to avoid mismatches of this type. Please contact the TT Club for advice if you propose to do this.

Who can claim under the FIATA bill of lading?

6.4.6 The FIATA bill of lading is a document of title to goods (clause 3.1). Therefore the lawful holder of the bill of lading with title to sue - usually the shipper, consignee or endorsee - is entitled to bring legal proceedings under it.

What defences are there under the FIATA bill of lading?

6.4.7 If the claimant proves that it has suffered a loss, damage or delay while the goods were in your charge, your legal liability is presumed, unless you can prove that no fault or "neglect" of yours (or of the persons you are responsible for) caused or contributed to the loss, damage or delay (clause 6.2).

6.4.8 You can defeat this presumption if you can establish that the loss or damage could be attributed to one or more of the following causes (clause 6(5)):

(a) cargo interests (negligent) action or failure to act

(b) insufficient or defective packaging or marks or numbers

(c) cargo interests (negligent) handling, loading, stowage or unloading

(d) inherent vice of the goods

(e) strike, lockout, stoppage or restraint of labour.

6.4.9 If the loss, damage or delay occurred during the sea or inland waterway portion of the carriage, you are not liable if it was caused by (clause 6(6)):

(a) error of navigation or error in the management of the ship or

(b) fire during the voyage, unless the fire was caused by your or the shipowner's personal negligence or

(c) unseaworthiness of the vessel, as long as you can prove that due diligence has been exercised to make the ship seaworthy at the start of the voyage.

6.4.10 If the claimant proves that an international carriage convention or other mandatory law applies to the claim, the defences of clause 6(5) and clause 6(6) will not be available to you, but you can instead rely on the specific defences available under such applicable mandatory rules.

When and how must the claimant notify a loss under the FIATA bill of lading?

6.4.11 *Apparent losses:*
Notice in writing must be given to you/your agent when the goods are "delivered" (clause 16.1).

6.4.12 *Non-apparent losses:*
Notice in writing must be given to you/your agent within six days after the goods were "delivered" (clause 16.2).

6.4.13 The goods are deemed "delivered" in the sense of clause 16 (clause 12):

(i) when they have been handed over or placed at the disposal of the consignee or his agent as required by the FIATA bill of lading or

(ii) when they have been handed over to any authority or other party to whom, pursuant to the law or regulation at the place of delivery, they must be handed over or

(iii) when they are at such other place at which you are entitled to call upon cargo interests to take delivery.

6.4.14 Failure to notify in writing within the relevant period creates a presumption in your favour that the goods were delivered as described in your FIATA bill of lading. The cargo claimant can rebut this presumption if it has evidence of the loss, but this becomes increasingly difficult with the passage of time.

When must the claimant send a formal written letter of claim?

6.4.15 The terms of the FIATA bill of lading do not themselves require a claimant to send you a formal written letter of claim. However if the claimant proves that the loss, damage or delay occurred during a road or rail leg of the multimodal movement (or if road or rail carriage was the only mode of transport used) CMR or CIM 1999 may apply, and with it the relevant rules in respect of notification. In such a case, if the cargo claimant sends you a written letter of claim, the CMR or CIM 1999 time bar will be suspended until the date when you reject the claim in writing and return any supporting documents to it (Article 42(2) CMR, Article 48(3) CIM 1999).

When does the claimant lose its right to sue under the FIATA bill of lading?

6.4.16 You will be discharged of all liability under the FIATA bill of lading conditions if the claimant does not sue after the passing of nine months:

(i) from the date on which the goods were "delivered" or should have been "delivered" (clause 17) - for the definition of "delivered" in this context, please see the reference to clause 12 under 6.4.13 above).

(ii) from the date on which the cargo claimant can treat the goods as lost. This is 90 days after (clauses 6.3, 6.4 and 17):

- the date which you expressly agreed with your customer for this purpose or
- (if no date was expressly agreed) the date by which a diligent freight forwarder would have made delivery

6.4.17 This nine month period does not apply if you and your customer expressly agree on a different limitation period (clause 17) or if an applicable international carriage convention or other mandatory law stipulates a different limitation period.

What limitation is available?

6.4.18 Provided no limitations in an international carriage convention or other mandatory law take precedence, the following limits will apply:

6.4.19 *Cargo loss & damage/No declared value:*
If the FIATA bill of lading does not contain a "declared value", you must compensate the claimant with the difference between the actual value of the goods on delivery (if any) and the "sound arrived value" of the goods on delivery (usually the local market wholesale value). Your liability is limited:

(i) if the multimodal transport includes sea or inland waterway carriage: to 666.67 SDR per package or unit or to 2 SDR per kilogramme of the cargo affected (clause 8.3); or

(ii) if the multimodal transport does not include sea or inland waterway carriage: to 8.33 SDR per kilogramme of the cargo affected (clause 8.5).

6.4.20 *Cargo loss & damage/declared value*
If your customer declares the nature and value of the goods and these data are expressly included in your FIATA bill of lading and your customer pays the increased "ad valorem" freight rate, this declared value "shall be the limit" (clause 8.3), which means that the maximum sum of compensation is raised beyond the liability limits in clauses 8.3 and 8.5, so that your liability to the claimant amounts to either the declared value or the value of the goods pursuant to clauses 8.3 and 8.5, whichever is the lower. If only a portion of the goods is affected, your liability is calculated proportionally. Before agreeing a declared value, please make your intention known to the Club. We will advise on any implications for your cover. Failure to inform the Club of the declared value may prejudice your insurance cover.

6.4.21 *Consequential losses (including loss of profit):*
Your liability for consequential losses (including loss of profit) is limited to twice the amount of the freight payable to you under the carriage contract (clause 8.7). Your total liability cannot be greater than the limits of liability for total loss of the goods (clause 8.8).

6.4.22 *Delay:*
You are only liable for loss following from delay in delivery (other than loss or damage to the goods) if the party named as "consignor" under the FIATA bill of lading has made a "declaration of interest in timely delivery" which you have accepted and included in the bill (clause 6.2). In this case, your liability for delay in delivery can in no case exceed twice the amount of the freight payable to you under the carriage contract (clause 8.7) and your total liability can in no case be greater than the limits of liability for total loss of the goods (clause 8.8). Before accepting such a declaration, please make your intention known to the Club who will inform you to what extent you are covered. Failure to inform the Club may prejudice your insurance cover.

Can the right to limit be lost?

6.4.23 Yes, you lose your right to limit its liability if the cargo claimant can prove all three following points (clause 8.9) that:

(i) the loss resulted from your own personal act or omission

(ii) this act or omission was intentional or committed recklessly and with knowledge that such loss, damage or delay would probably result

(iii) this act or omission was attributable to you as a company, and attributable to the "directing mind and will" of the company. If such acts are committed by your employees, agents, subcontractors etc., you will not lose your right to limit.

6.4.24 However, if you caused damage intentionally or recklessly and if an international carriage convention or other mandatory law applies, other provisions may apply which will mean that you could lose your right to limit liability more easily. For instance if CMR applies, the wilful misconduct by your employees, agents or subcontractors etc will also cause you to lose your right to limit (see 3.2.27).

Where can a claimant sue?

6.4.25 Subject to jurisdiction provisions in the international carriage conventions or in other mandatory law, there is exclusive jurisdiction for disputes under the FIATA bill of lading at the place where your company has its place of business as stated in the bill (clause 19).

Part III

International Carriage Conventions by Country

International Carriage Conventions by Country

Introduction

2.1 The following list by country of conventions only pertains to carriage of goods which is international (though a number of countries which are Member States to an international carriage convention apply the convention also to their purely domestic transport or to circumstances of international transport where the convention does not apply by mandatory force of law).

2.2 Carriage conventions are listed for a country only if these conventions have actually entered into force in that country (mere signatory states are not listed).

2.3 Although a convention is in force in a country (and therefore appears on the following list), this country may have declared reservations concerning that convention, and parts or provisions of the convention may not apply in that country, (see in particular the position in Germany, stated at Part II, 1.3.13).

2.4 A number of countries incorporated an international carriage convention (in full or in part) into their domestic law without ever becoming a Contracting State. This practice concerns mostly sea carriage conventions, in particular the Hague-Visby Rules 1968, and is indicated by an asterisk in the chart below. The fact that these countries are not Contracting States is illustrated by *MSC v Trafigura Beheer BV (2007)*, where the English Court of Appeal (applying English law) held that the Hague-Visby Rules 1968 were not compulsorily applicable to a carriage from South Africa to China because South Africa was not a Contracting State to Hague-Visby, but had merely incorporated the Rules into its domestic law.

2.5 Regarding rail and air carriage, all international conventions in force in a country are listed per country. The reason for this is that any one of these rail or air carriage conventions only applies if it is in force both in the country of departure and country of destination. For more detailed explanations of this principle and practical examples, see Part II 5.1.10.

2.6 The following list of conventions by country was correct in July 2024.

Chart of carriage conventions by country

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Afghanistan								✓						✓	✓			
Albania						✓		✓	✓		✓	✓	✓					✓
Algeria			✓								✓	✓		✓	✓			
Andorra																		✓
Angola			✓											✓	✓			
Antigua			✓															
Argentina				✓*										✓	✓		✓	✓
Armenia								✓	✓			✓		✓				✓
Australia					✓*									✓	✓	✓	✓	✓
Austria						✓	✓	✓	✓	✓		✓		✓	✓	✓		✓
Azerbaijan								✓		✓			✓	✓	✓	✓	✓	✓
Bahamas			✓											✓	✓	✓		
Bahrain		✓												✓	✓	✓	✓	✓
Bangladesh			✓*											✓	✓			
Barbados						✓								✓				✓
Belarus								✓	✓	✓			✓	✓	✓	✓		✓
Belgium					✓		✓	✓	✓		✓	✓		✓	✓	✓	✓	✓
Belize			✓															✓
Benin														✓	✓			✓
Bhutan																		

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Bolivia			✓											✓				✓
Bosnia & Herzegovina								✓	✓		✓	✓		✓	✓	✓	✓	✓
Botswana						✓								✓				✓
Brazil	✓													✓	✓	✓	✓	✓
Brunei Darussalam	✓													✓				✓
Bulgaria			✓*				✓	✓		✓	✓	✓	✓	✓	✓			✓
Burkina Faso						✓								✓		✓		✓
Burundi						✓												
Cabo Verde			✓											✓	✓	✓		✓
Cambodia														✓	✓			
Cameroon			✓			✓								✓	✓			✓
Canada					✓*									✓	✓	✓	✓	✓
Central African Republic																		
Chad																✓		✓
Chile						✓								✓	✓		✓	✓
China (PRC)			✓[9]	✓*	✓[5]								✓	✓	✓	✓[5]	✓[5]	✓
China (Republic)					✓[5]													
Colombia	✓													✓	✓	✓	✓	✓
Comoros														✓				
Congo (DRC)						✓								✓				✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Congo (Republic)														✓	✓			✓
Cook Islands																		✓
Costa Rica	✓													✓	✓			✓
Côte d'Ivoire			✓											✓	✓			✓
Croatia					✓		✓	✓	✓		✓	✓		✓	✓	✓	✓	✓
Cuba			✓											✓	✓			✓
Cyprus			✓					✓	✓					✓	✓	✓	✓	✓
Czech Republic						✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Denmark					✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓[1]
Djibouti																		
Dominica			✓											✓	✓			
Dominican Republic						✓												✓
Ecuador				✓										✓	✓		✓	✓
Egypt						✓								✓	✓	✓	✓	✓
El Salvador	✓														✓	✓		✓
Equatorial Guinea														✓				✓
Eritrea																		
Estonia			✓*					✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Eswatini																		
Ethiopia			✓*											✓			✓	✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Fiji			✓											✓	✓	✓		✓
Finland					✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
France					✓		✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Gabon `																✓		✓
Gambia						✓												✓
Georgia						✓		✓	✓			✓	✓					✓
Germany				✓*			✓	✓	✓		✓	✓		✓	✓	✓		✓
Ghana			✓													✓	✓	✓
Greece					✓			✓	✓		✓	✓		✓	✓	✓	✓	✓
Grenada			✓												✓	✓		
Guatemala	✓													✓	✓	✓	✓	✓
Guinea						✓								✓	✓	✓	✓	
Guinea- Bissau			✓															
Guyana			✓															✓
Haiti																		
Honduras	✓													✓			✓	✓
Hungary						✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓
Iceland					✓*									✓	✓	✓	✓	✓
India					✓*									✓	✓			✓
Indonesia				✓*										✓				✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Iran				✓*				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Iraq						✓*					✓	✓		✓	✓	✓		
Ireland					✓*			✓	✓		✓	✓		✓		✓	✓	✓
Israel					✓*											✓	✓	✓
Italy					✓			✓	✓	✓	✓	✓				✓	✓	✓
Jamaica			✓													✓		✓
Japan					✓									✓	✓		✓	✓
Jordan	✓					✓		✓	✓					✓	✓		✓	✓
Kazakhstan						✓		✓					✓		✓			✓
Kenya						✓								✓	✓		✓	✓
Kiribati			✓															
Korea (North)													✓	✓	✓			
Korea (South)					✓*										✓			✓
Kuwait			✓											✓	✓	✓	✓	✓
Kyrgyzstan								✓	✓	✓			✓	✓	✓			
Laos														✓	✓			
Latvia					✓			✓	✓	✓	✓	✓	✓	✓	✓			✓
Lebanon						✓			✓		✓	✓		✓	✓	✓	✓	✓
Lesotho						✓								✓	✓	✓		
Liberia						✓								✓				

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Libya														✓	✓	✓		
Liechtenstein											✓	✓		✓	✓			✓
Lithuania					✓			✓	✓	✓	✓	✓	✓		✓	✓		✓
Luxembourg					✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Madagascar			✓											✓	✓			✓
Malawi						✓								✓	✓	✓		
Malaysia			✓											✓	✓	✓	✓	✓
Maldives														✓	✓			✓
Mali		✓												✓	✓	✓		✓
Malta		✓						✓	✓					✓				✓
Marshall Islands																		
Mauritania														✓		✓		
Mauritius			✓											✓	✓	✓	✓	✓
Mexico					✓									✓	✓	✓		✓
Micronesia																		
Moldova							✓	✓	✓	✓			✓	✓	✓	✓		✓
Monaco			✓								✓	✓			✓			✓
Mongolia								✓					✓	✓				✓
Montenegro								✓			✓	✓		✓	✓		✓	✓
Morocco						✓		✓			✓			✓	✓	✓	✓	✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Mozambique			✓								✓							✓
Myanmar														✓				
Namibia																		✓
Nauru			✓											✓	✓		✓	
Nepal														✓	✓			✓
Netherlands					✓		✓	✓	✓[2]	✓	✓	✓		✓	✓	✓	✓	✓[2]
New Zealand					✓									✓	✓	✓	✓	✓[3]
Nicaragua	✓																	✓
Niger														✓	✓	✓	✓	✓
Nigeria						✓								✓	✓	✓		✓
North Macedonia								✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Norway					✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Oman		j		✓*				✓		✓				✓	✓		✓	✓
Pakistan			✓*					✓	✓					✓	✓	✓		✓
Palau																		
Panama	✓		✓*											✓	✓			✓
Papua New Guinea			✓											✓	✓	✓		
Paraguay						✓								✓	✓	✓		✓
Peru						✓								✓	✓	✓	✓	✓
Philippines			✓*											✓	✓	✓		✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Poland					✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Portugal				✓*			✓	✓	✓	✓	✓	✓		✓	✓		✓	✓
Qatar		✓												✓	✓			✓
Romania						✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Russia					✓		✓	✓	✓	✓			✓	✓	✓	✓		✓
Rwanda														✓	✓	✓		✓
Sant Kitts & Nevis			✓															
Saint Lucia			✓															
Saint Vincent & Grenadines						✓								✓	✓			✓
Samoa														✓	✓			
San Marino																		
Sao Tome & Principe			✓															
Saudi Arabia	✓													✓	✓	✓		✓
Senegal						✓								✓	✓			✓
Serbia							✓	✓				✓		✓	✓	✓	✓	✓
Seychelles			✓											✓	✓	✓	✓	✓
Sierra Leone						✓								✓				✓
Singapore				✓										✓	✓		✓	✓
Slovakia							✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Slovenia			✓					✓	✓	✓	✓	✓		✓	✓	✓	✓	✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Solomon Islands			✓											✓	✓	✓		
Somalia			✓															
South Africa					✓*									✓	✓	✓		✓
South Sudan																		
Spain					✓			✓	✓	✓	✓	✓[b]		✓	✓		✓	✓
Sri Lanka				✓										✓	✓			✓
Sudan														✓	✓			✓
Suriname														✓	✓			
Swaziland															✓	✓		✓
Sweden					✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Switzerland					✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Syria						✓		✓			✓	✓						✓
Tajikistan								✓		✓			✓					
Tanzania						✓								✓				✓
Thailand				✓*														✓
Timor-Leste			✓															
Togo														✓	✓	✓	✓	✓
Tonga				✓										✓	✓			✓
Trinidad & Tobago			✓											✓	✓			
Tunisia						✓		✓	✓		✓	✓		✓	✓	✓		✓

✓* = *Convention re-written into domestic law*

	SEA						IW	ROAD			RAIL			AIR				
	No statutory Limitation	Distinct local Code/COGSA	Hague Rules 1924	Hague-Visby Rules 1968	Hague-Visby SDR Protocol 1979	Hamburg Rules 1978	**INLAND WATERWAYS** Budapest Convention CMNI 2001	CMR 1956	CMR SDR Protocol 1978	eCMR 2011	COTIF (CIM) 1980	COTIF (CIM) 1999	SMGS	Warsaw Convention 1929	Warsaw/Hague Rules 1955	Guadalajara Convention 1961	Montreal Protocol 4	Montreal Convention 1999
Turkey			✓					✓	✓	✓	✓	✓		✓	✓		✓	✓
Turkmenistan								✓	✓	✓			✓	✓				
Tuvalu			✓															
Uganda						✓								✓				✓
Ukraine					✓*		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
United Arab Emirates		✓												✓	✓	✓	✓	✓
United Kingdom					✓			✓	✓[6]	✓	✓	✓		✓	✓	✓	✓	✓[4]
United States			✓											✓	✓	✓	✓	✓
Uruguay	✓													✓				✓
Uzbekistan								✓	✓	✓			✓	✓	✓	✓	✓	
Vanuatu														✓	✓			✓
Vatican City																		
Venezuela	✓													✓	✓			
Viet Nam				✓*									✓	✓	✓			✓
Yemen				✓*										✓	✓			
Zambia						✓								✓	✓	✓		
Zimbabwe														✓	✓	✓		

✓* = *Convention re-written into domestic law*

1: *Not Faroes*

2: *Includes Dutch Caribbean islands*

3: *Includes Tokelau*

4: *Mainland only*

5: *Hong Kong only*

6: *Includes Guernsey IOM Gibraltar St Helena Ascension BVI British Antarctica, Bermuda, Caymans, Caicos & Turks, Falklands, Monserrat*

7: *Includes Channel Islands IOM Gibraltar St Helena Ascension BVI British Antarctica, Bermuda, Caymans, Caicos & Turks, Falklands, Monserrat*

8: *European territory only*

9: *Macao only*

TT Club

TT Club is the established market-leading independent provider of mutual insurance and related risk management services to the international transport and logistics industry. TT Club's primary objective is to help make the industry safer and more secure. Founded in 1968, the Club has more than 1100 Members, spanning container owners and operators, ports and terminals, and logistics companies, working across maritime, road, rail, and air. TT Club is renowned for its high-quality service, in- depth industry knowledge and enduring Member loyalty. It retains more than 93% of its Members with a third of its entire membership having chosen to insure with the Club for 20 years or more.