MALTA

ATT Nru. XI ta' l-2006

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex jinkorpora l-Konvenzjoni dwar il-Kuntratt għall-Ġarr Stradali Internazzjonali ta' Merkanzija.

ACT No. XI of 2006

AN ACT enacted by the Parliament of Malta.

AN ACT to incorporate the Convention on the Contract for the International Carriage of Goods by Road.

Nagħti l-kunsens tiegħi.

(L.S.) EDWARD FENECH ADAMI
President

25 ta' Lulju, 2006

ATT Nru. XI ta' l-2006

ATT biex jinkorpora l-Konvenzjoni dwar il-Kuntratt għall-Ġarr Stradali Internazzjonali ta' Merkanzija

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, ħareġ b'liġi dan li ġej:-

1. It-titolu ta' dan l-Att hu Att ta' l-2006 dwar il-Ġarr Stradali Internazzjonali ta' Merkanzija. Titolu fil-qosor.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra:- Tifsir.

"l-Awtorità" tfisser l-Awtorità dwar it-Trasport ta' Malta kif imwaqqfa taħt l-Att dwar l-Awtorità dwar it-Trasport ta' Malta; Kap. 332.

"jordna" tfisser jordna permezz ta' ordni jew b'regolamenti skond dan l-Att;

"Konvenzjoni CMR" tfisser il-Konvenzjoni dwar il-Kuntratt għall-Ġarr Stradali Internazzjonali ta' Merkanzija (CMR) iffirmata f'Ġinevra fid-19 ta' Mejju, 1956 kif emendata bil-Protokoll CMR ta' Ġinevra iffirmat fil-5 ta' Lulju, 1978.

"il-Ministru" tfisser il-Ministru responsabbli għat-trasport stradali.

Ratifika tal-Konvenzjoni CMR.

3. Il-Gvern ta' Malta hu b'dan awtorizzat jirratifika l-Konvenzjoni CMR.

Stati Kontraenti.

4. (1) Bla preġudizzju għall-applikabbiltà tal-Konvenzjoni CMR bejn Malta u l-Pajjiżi Kontraenti l-oħrajn kollha, il-Ministru jista', b'ordni fil-Gazzetta, minn żmien għal żmien jispeċifika liema jkunu l-Istati Kontraenti, minbarra Malta, għall-finijiet tal-Konvenzjoni CMR.

(2) Ordni bħal dak għandu jkun jispeċifika d-data tad-dħul fis-seħħ tal-Konvenzjoni CMR bejn Malta u Stat li jkun speċifikat fl-ordni.

Il-Konvenzjoni CMR ikollha forza ta' liġi.

5. (1) Id-disposizzjonijiet tal-Konvenzjoni CMR għandu jkollhom, minkejja dak kollu li jista' jkun hemm kuntrarju f'kull liġi oħra iżda bla ħsara għad-disposizzjonijiet ta' dan l-Att, forza ta' ligi ma' Malta kollha għar-rigward tal-ġarr stradali internazzjonali ta' merkanzija minn dik id-data u skond dawk il-kundizzjonijiet li l-Ministru jista' jordna.

(2) Il-Konvenzjoni CMR tinsab fl-Iskeda li tinsab ma' dan l-Att u l-imsemmija skeda tista' tiġi emendata minn żmien għal żmien skond ma jista' jiġi ordnat għall-fini li tinżamm aġġornata mat-test uffiċjali tal-Konvenzjoni CMR.

(3) Il-Konvenzjoni CMR li tinsab fl-Iskeda li tinsab ma' dan l-Att qiegħda tiġi riprodotta fl-ilsien Ingliż biss.

Poter tal-Ministru li jagħmel regolamenti.

6. (1) Il-Ministru jista' wara konsultazzjoni ma' l-Awtorità, jagħmel regolamenti biex jordna kull ħaġa li tkun meħtiega jew spedjenti għall-iskop li jiġu ratifikati jew imwettqa l-obbligazzjonijiet ta' Malta taħt il-Konvenzjoni CMR u b'mod ġenerali għat-twettiq tad-disposizzjonijiet ta' dan l-Att u, bla preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, jista' jagħmel regolamenti:

(a) dwar il-ġarr stradali ta' merkanzija, salvi d-disposizzjonijiet ta' kull liġi li tirregola t-trasport jew il-ġarr stradali ta' merkanzija; u

(b) biex jemenda l-Iskeda li tinsab ma' dan l-Att kollha kemm hi jew f'parti minnha.

(2) Il-Ministru jista' wkoll jipprovdi li kull regolament jew ordni taħt dan l-Att inklużi r-riservi li jkunu magħmulin minn Malta għall-Konvenzjoni CRM jew kull dikjarazzjoni li tkun magħmula minn Malta waqt l-iffirmar jew ir-ratifika tal-Konvenzjoni CMR, għandhom jidħlu bħala skedi ma' dan l-Att.

SKEDA

(Artikolu 5)

Flok il-kliem "Contracting Party" għandhom jidħlu jew il-kelma "Malta" jew il-kliem"Contracting State" skond il-każ.

CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR) DONE AT GENEVA ON THE 19TH OF MAY, 1956, AS AMENDED BY THE CMR PROTOCOL DONE AT GENEVA ON THE 5TH OF JULY, 1978

Chapter 1 - Scope of Application

Chapter II - Persons for whom the Carrier is Responsible

Chapter III - Conclusion and Performance of the Contract of Carriage

Chapter IV - Liability of the Carrier

Chapter V - Claims and Actions

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Chapter VII - Nullity of Stipulation to the Convention

Chapter VIII - Final Provisions

PREAMBLE

The Contracting Parties,

Having recognized the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability,

Have agreed as follows:

Chapter 1 - Scope of Application

Article 1

1. This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different

countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

2. For the purpose of this Convention, "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.

3. This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.

4. This Convention shall not apply:

(a) to carriage performed under the terms of any international postal convention;

(b) to funeral consignments;

(c) to furniture removal.

5. The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Article 2

1. Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

2. If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions paragraph 1 of this article, but as if, in his capacities as carrier by road and carrier by the other means of transport, he were two separate persons.

Chapter II - Persons for whom the Carrier is Responsible

Article 3

For the purposes of this Convention the carrier shall be responsible for the acts of omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Chapter III - Conclusion and Performance of the Contract of Carriage

Article 4

The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Article 5

1. The consignment note shall be made out in three original copies signed by the sender and by the carrier. These signatures may be printed or replaced by the stamps of the sender and the carrier if the law of the country in which the consignment note has been made out so permits. The first copy shall be handed to the sender, the second shall accompany the goods and the third shall be retained by the carrier.

2. When the goods which are to be carried have to be loaded in different vehicles, or are of different kinds or are divided into different lots, the sender or the carrier shall have the right to require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Article 6

1. The consignment note shall contain the following particulars:

(a) the date of the consignment note and the place at which it is made out;

(b) the name and address of the sender;

(c) the name and address of the carrier;

(d) the place and the date of taking over of the goods and the place designated for delivery;

(e) the name and address of the consignee;

(f) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;

(g) the number of packages and their special marks and numbers;

(h) the gross weight of the goods or their quantity otherwise expressed;

(i) charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);

(j) the requisite instructions for Customs and other formalities;

(k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention.

2. Where applicable, the consignment note shall also contain the following particulars:

(a) a statement that transhipment is not allowed;

(b) the charges which the sender undertakes to pay;

(c) the amount of "cash on delivery" charges;

(d) a declaration of the value of the goods and the amount representing special interest in delivery;

(e) the sender's instructions to the carrier regarding insurance of the goods;

(f) the agreed time limit within which the carriage is to be carried out;

(g) a list of the documents handed to the carrier.

3. The parties may enter in the consignment note any other particulars which they may deem useful.

Article 7

1. The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of:

(a) The particulars specified in article 6, paragraph 1, (b), (d), (e), (f), (g), (h) and (j);

(b) The particulars specified in article 6, paragraph 2;

(c) Any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.

2. If, at the request of the sender, the carrier enters in the consignment note the particulars referred to in paragraph 1 of this article, he shall be deemed, unless the contrary is proved, to have done so on behalf of the sender.

3. If the consignment note does not contain the statement specified in article 6, paragraph 1 (k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.

Article 8

1. On taking over the goods, the carrier shall check:

(a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and

(b) The apparent condition of the goods and their packaging.

2. Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.

3. The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

Article 9

1. The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

2. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Article 10

The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

Article 11

1. For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.

2. The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.

3. The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Article 12

1. The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.

2. This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

3. The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.

4. If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.

5. The exercise of the right of disposal shall be subject to the following conditions:

(a) That the sender or, in the case referred to in paragraph 3 of this article, the consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;

(b) That the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carriers' undertaking or prejudice the senders or consignees of other consignments;

(c) That the instructions do not result in a division of the consignment.

6. When, by reason of the provisions of paragraph 5 (b) of this article, the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.

7. A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

Article 13

1. After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods. If the loss of the goods is established or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.

2. The consignee who avails himself of the rights granted to him under paragraph 1 of this article shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

Article 14

1. If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12.

2. Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time the person entitled to

dispose of the goods in accordance with the provisions of article 12, he shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

Article 15

1. Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note.

2. Even if he has refused the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary from the sender.

3. When circumstances preventing delivery of the goods arise after the consignee, in exercise of his rights under article 12, paragraph 3, has given an order for the goods to be delivered to another person, paragraphs 1 and 2 of this article shall apply as if the consignee were the sender and that other person were the consignee.

Article 16

1. The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.

2. In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

3. The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.

4. If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

5. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

Chapter IV - Liability of the Carrier

Article 17

1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.

4. Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:

(a) Use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;

(b) The lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;

(c) Handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;

(d) The nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;

(e) Insufficiency or inadequacy of marks or numbers on the packages;

(f) The carriage of livestock.

5. Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable the extent

that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Article 18

1. The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.

2. When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.

3. This presumption shall not apply in the circumstances set out in article 17, paragraph 4 (a), if there has been an abnormal shortage, or a loss of any package.

4. If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.

5. The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Article 19

Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Article 20

1. The fact that goods have not been delivered within thirty days following the expiry of the agreed time-limit, or, if there is no agreed time-limit, within sixty days from the time when the carrier took over the goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.

2. The person so entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered

in the course of the year following the payment of compensation. He shall be given a written acknowledgement of such request.

3. Within the thirty days following receipt of such notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and also against refund of the compensation he received less any charges included therein but without prejudice to any claims to compensation for delay in delivery under article 23 and where applicable, article 26.

4. In the absence of the request mentioned in paragraph 2 or of any instructions given within the period of thirty days specified in paragraph 3, or if the goods are not recovered until more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the law of the place where the goods are situated.

Article 21

Should the goods have been delivered to the consignee without collection of the "cash on delivery" charge which should have been collected by the carrier under the terms of the contract of carriage, the carrier shall be liable to the sender for compensation not exceeding the amount of such charge without prejudice to his right of action against the consignee.

Article 22

1. When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate if necessary, precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.

2. Goods of a dangerous nature which, in the circumstance referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

Article 23

1. When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

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

3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.

4. In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damage shall be payable.

5. In the case of delay if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

6. Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.

7. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State.

8. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 7 of this article may, at the time of ratification of or accession to the Protocol to the CMR or at any time thereafter, declare that the limit of liability provided for in paragraph 3 of this article to be applied in its territory shall be 25 monetary units. The monetary unit referred to in this paragraph corresponds to the 10/31 gram of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.

9. The calculation mentioned in the last sentence of paragraph 7 of this article and the conversion mentioned in paragraph 8 of this article shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amount in paragraph 3 of this article as is expressed there in units of account. States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant to paragraph 7 of this article or the result of the

conversion in paragraph 8 of this article as the case may be, when depositing an instrument referred to in Article 3 of the Protocol to the CMR and whenever there is a change in either.

Article 24

The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.

Article 25

1. In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.

2. The compensation may not, however, exceed:

(a) if the whole consignment has been damaged, the amount payable in the case of total loss;

(b) if part only of the consignment has been damaged, the amount payable in the case of loss of the part affected.

Article 26

1. The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note

2. If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in articles 23, 24 and 25.

Article 27

1. The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

2. When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion

shall be at the rate of exchange applicable on the day and at the place of payment of compensation.

Article 28

1. In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due.

2. In cases where the extra-contractual liability for loss, damage or delay of one of the persons for whom the carrier is responsible under the terms of article 3 is in issue, such person may also avail himself of the provisions of this Convention which exclude the liability of the carrier or which fix or limit the compensation due.

Article 29

1. The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.

2. The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.

Chapter V - Claims and Actions

Article 30

1. If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie, evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.

2. When the condition of the goods has been duly checked by the consignee and the carrier, evidence contradicting the result of this checking shall only be admissible

in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted, from the date of checking.

3. No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.

4. In calculating the time-limits provided for in this article the date of delivery, or the date of checking, or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included.

5. The carrier and the consignee shall give each other every reasonable facility for making the requisite investigations and checks.

Article 31

1. In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

(a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or

(b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgement entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

5. Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.

Article 32

1. The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

(a) in the case of partial loss, damage or delay in delivery, from the date of delivery;

(b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier;

(c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage.

The day on which the period of limitation begins to run shall not be included in the period.

2. A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object.

3. Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seized of the case. That law shall also govern the fresh accrual of rights of action.

4. A right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.

Article 33

The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Article 34

If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.

Article 35

1. A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.

2. The provisions of article 9 shall apply to the relations between successive carriers.

Article 36

Except in the case of a counterclaim or a setoff raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; an action may be brought at the same time against several of these carriers.

Article 37

A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:

(a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

(b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;

(c) if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in (b) above.

Article 38

If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Article 39

1. No carrier against whom a claim is made under articles 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.

2. A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same action.

3. The provisions of article 31, paragraphs 3 and 4, shall apply to judgements entered in the proceedings referred to in articles 37 and 38.

4. The provisions of article 32 shall apply to claims between carriers. The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention, or, if there is no such judicial decision, from the actual date of payment.

Article 40

Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.

Chapter VII - Nullity of Stipulation to the Convention

Article 41

1. Subject to the provisions of article 40, any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

2. In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

Chapter VIII - Final Provisions

Article 42

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

3. The Convention shall be open for signature until 31 August 1956 inclusive. Thereafter, it shall be open for accession.

4. This Convention shall be ratified.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 43

1. This Convention shall come into force on the ninetieth day after five of the countries referred to in article 42, paragraph 1, have deposited their instruments of ratification or accession.

2. For any country ratifying or acceding to it after five countries have deposited their instruments of ratification of accession, this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

Article 44

1. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations.

2. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

Article 45

If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date in which the last of such denunciations takes effect.

Article 46

1. Any country may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Convention has not yet entered into force, at the time of its entry into force.

2. Any country which has made a declaration under the preceding paragraph extending this Convention to any territory for whose international relations it is responsible may denounce the Convention separately in respect of that territory in accordance with the provisions of article 44.

Article 47

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 48

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to, this Convention, declare that it does not consider itself as bound by article 47 of the Convention. Other Contracting Parties shall not be bound by article 47 in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting Party having entered a reservation as provided for in paragraph 1 may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

3. No other reservation to this Convention shall be permitted.

Article 49

1. After this Convention has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention. The Secretary-

General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary General, not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.

2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the conference together with the texts of such proposals at least three months before the date on which the conference is to meet.

3. The Secretary-General shall invite to any conference convened in accordance with this article all countries referred to in article 42, paragraph 1, and countries which have become Contracting Parties under article 42, paragraph 2.

Article 50

In addition to the notifications provided for in article 49, the Secretary-General of the United Nations shall notify the countries referred to in article 42, paragraph 1, and the countries which have become Contracting Parties under article 42, paragraph 2, of:

(a) ratification and accessions under article 42;

(b) the dates of entry into force of this Convention in accordance with article 43;

(c) denunciations under article 44;

(d) the termination of this Convention in accordance with article 45;

(e) notifications received in accordance with article 46;

(f) declarations and notifications received in accordance with article 48, paragraphs 1 and 2.

Article 51

After 31 August 1956, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in article 42, paragraphs 1 and 2.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 421 tad-19 ta' Lulju, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati