Liability for Damages in International Road Transport.

Paragraph 1. The mandate given to the Tripartite Commission by the Study Group for Juridical Questions of the "Sub-Committee for Road Transport"of the "Commission for Inland Transport" represents a very important step on the road to wider development for international road transport. The uniform transportcontract is one of the chief conditions for the successful development of international goodtransport by road. The States may provide the very best roads in the world, remove obstacles of every description, promote the safety and unobstructed progress of international traffic as much as possible; industry may raise means of transport to the highest degree of perfection; all this will only satisfy the requirements if the States succeed in creating foundations that are reliable from an organizing and a juridical point of view for international transport.
These foundations include: uniform international legislation for goods transport by rail and the embodiment of such legislation in a concrete form: that of an uniform international transport contract in the shape of a uniform international transport document. This has also been understood by other branches of the transport industry.—In co-operation with the States they have in the course of their development arrived at the drawing up of uniform international transport regulations:
for maritime transport : The Hague Rules of 1924,
for rail transport : the Rome Agreement of 1933, and
for air transport : The Warsaw Agreement of 1929.
So each of the three classes of transport technique mentioned has its own international systems of regulation fixing the rights and obligations resulting from the transport contract, together with resulting liabilities. Presuming that these regulations are adequate in practice, the question may be raised whether road transport really needs a system of regulations all to itself. An indication that this is really the case is presented by the fact that each of the three international branches of transport, viz. maritime, railways and aviation, have their own system of regulation. It is not in any way to be doubted that the specific characteristics of each of them have also led to these separate systems of regulation. Road transport too has in comparison with the other three such individual characteristics that this type of transport also calls for a separate system of regulation.

Paragraph 2. Which are these individual characteristics?
1. When we compare the functioning of road transport with that of maritime transport, rail transport and air transport, it is striking that road traffic makes use of a transport unit in which the motor (inflammable) part and the transport part (tonnage) form an unbreakable whole. This is not the case with rail transport. The risks in connection with fire breaking out and damaging the load, will consequently be different from those in rail transport.
2. Road transport takes the goods via the transport unit along the public road to the place of destination. Between departure and arrival the truck or lorry is practically all the time accessible to the public, especially at intermediate stops. Rail transport uses its transport units on a reserved track, while the stations are not unconditionnally accessible to the public either. The same thing applies to sea transport and air transport (ports). It follows that the risks in regard to theft are naturally different too.
3. According to experts other kinds of shocks occur during road transport than during rail, sea and air transport. These shocks may naturally result in risk of damage, but this risk too is of quite a different type from that occurring in rail, sea or air transport.
4. The driver in road transport cannot simply be compared with the pilot in air transport, the engine-driver in rail transport or the captain in sea transport; for the driver is a man who not only drives his vehicle, but who also has to check loading and unloading in regard to losses,

purpose will have to do this work, causing risks in regard to the goods dispatched.

This far from complete enumeration of the differences between road transport on the one hand and the other three branches of transport on the other hand, especially in view of the risks run in this connection, are as many arguments in favour of the thesis that the international goods transport by road calls for a system of regulation.

Paragraph 3. In all transport legislation - both national and international - liability for damage occurring during transport is the centre around which the essential problems group themselves.
Almost all the difficulties which present themselves when transport legislation is regulated by convention, law or contract, or which arise during the execution of such measures, may be reduces to questions of liability. Most of the lawsuits in this field are the object of questions regarding liability. Here the conflicting interests of the transporter and the shipper clash; here we are face to face with the difficulties of arriving at a mutual arrangement that may please everybody concerned. Both parties exert themselves to burden each other with as great a part as possible of the liability involved; they see each provision in transport legislation in the light of the question: "What liability does it involve for me?"
So it is quite certain that if it were possible to find a satisfactory solution for both parties in regard to the question of the regulation of liability, this would eliminate the principal obstacle in the way of agreement.
All this is to a smaller extent applicable to road transport. A solution of the liability problem would enable the carrier, without any fear of heavy liabilities for himself, to adapt the technique and organization of road transport even more than at present to the shipper's needs. As soon as the liability problem would be solved, this would eliminate the chief obstacle of fundamental significance in the way of attaining a uniform international road transport legislation.

Paragraph 4 . So the solution of the liability problem is of vital importance to international road transport. But not only in the interest of industrial life, but likewise in that of the various Governments. Goods transport is - together with passenger transport and exchange of thought - a condition of life in modern social existence. In the second world war, and on account of it, we have learned to appreciate the true value of motorized long-distance road transport, and so it may be expected that the authorities will increasingly endeavour to promote this kind of transport as much as possible.
Without any doubt this includes the bringing about of good international road transport legislation which, as was explained in paragraph 3, is not possible without a satisfactory regulation of the liability problem.

Paragraph 5. Damage liability in transport legislation - in regard to transport by water, by rail and by air - is governed by the juridical notions of causality, fauly and force majeure.
If one wonders whether these notions are serviceable in determining liability in international road transport, then the reply to this question must be negative in view to the characteristics of this transport as enumerated in paragraph 2.
The following arguments also lead to this negative opinion:
When damage is caused on the road, it will in most cases prove to be impossible to examine with any certainty the causal connection in which the damage occurred, and to decide whether anybody was to blame for it, and if so, who, or whether there was force majeure. The necessary reliable information in the form of evidence given by eye-witnesses will generally be lacking. The notion of force majeure has gradually its original meaning and has become a collective name for all those circumstances that cannot be ranked among the notions of

fault or intention.
For that reason the importance of the intervention of the Courts in the determination of liability has grown considerably. It is then for the judge to accomplish the task of determining liability as equitably as possible on the grounds of an often obscure complex of circumstances. It need not cause any surprise that this juridical intervention leads to varying decisions even in comparable cases, even when such decision are pronounced by the same court of justice. We would like to make thi clearer by means of two examples. We may presume that before starting on a long journey a carrier has his vehicle examined and put in order by a garage of good repute. During transportation, when a few hundred of kilometres have been covered, a steering connecting rod breaks. Now does the notion of culpa imply that since the carrier holds the certificate of the order given and it is concluded that he has taken a precautions to be expected of him, he is free of liability (if any) as a result of the breaking of the rod? We know from experience that one Court of Justice will accept this certificate, whereas another Court will not. Here is another case:
A carrier runs a motor vehicle through a German province. The vehicle loaded with cocoa-butter and coffee; the vehicle has wooden sides and whole is covered with a cloth of canvas and sealed in accordance with customs regulations. The driver knows that in Germany the population receives a very small fat ration and next to no real coffee. So he kn too that the inclination towards theft as compared with that in other countries where rations are more generous, will be much greater. Now if during the journey on the public road the vehicle is attacked a group of inhabitants of a village (perhaps with the help of barrica on the road) and this vehicle is looted, then is the carrier to be hel responsible for this loss or not? He might have foreseen this risk (just as the shipper might have foreseen it), but perhaps he had no m at his disposal to prevent this cause of loss (hold-up).
Experience has shown that one Court of Justice in such case will pronounce the verdict of guilty, whereas another Court will exonerate the carrier from blame. These two examples which in practice occur eve day, will probably show sufficiently to what differences of opinion th handling of the notion of culpa can and will give rise. In this conne ion we may even now come to the conclusion that, if another basis for liability could be found, it would certainly be accepted because, as be explained below, there are other motives which cause difference of opinion as to the interpretation of such cardinal notions to be in- asmissible, i.e. those stated under 3.

2. In view of the specific risks presenting themselves in road traffi and more particularly in view of the extent to which the driver occup a central position in the entire process of transport (see paragrap this notion of culpability is always difficult to deal with.
What damages will have to be charged to the carrier in case of transp ation covering hundreds of kilometres, while sometimes even various means of transport have to be used?
The carrier as well as the shipper are only slightly involved in this transport, while the driver unites in himself so many functions that is not likely to be pronounced guilty.

3. A specific characteristic of road transport that has not been disc ed yet is that in road transport hundreds of concerns or companies ar operating and that these concerns or companies as a rule are only represented in the country of origin.
While the limited scope of international road transport requires the liability regulations to be exceedingly simple, as the driver and the employer are not highly educated, the fact that international road transport is hardly ever represented in the country of destination, results in some difference of opinion in regard to the form of liabi having to be thrashed out direct between two countries.

...vigation, aviation and rail transport, which all have representatives ...s the country of destination, can in case of damage or short delivery ...et their national representatives in the country of destination to ...settle the matter with the consignee.
In international road transport this will not be possible, because after delivery the transport vehicle leaves the country of destination again, and in case of action the two countries will have to be at law with each other.
It scarcely goes without saying that this would mean exceedingly complicated legal proceedings which are moreover very expensive. All this leads to the conclusion that the notions of causality fault and force majeure form a very uncertain basis for the determination of liability in case of loss or damage in international road transport. This creates a situation which is unsatisfactory to both the carrier and the shipper, because both are always uncertain as regards the extent of their liability. No one can with sufficient certainty foresee the issue of a lawsuit of this kind. This situation not only entails serious difficulties for the carrier and shipper, but no less so for the insurer with whom these two might wish to insure themselves against liability and risks.
It is no exaggeration to say that the unserviceability of the notions of causality, fault and force majeure in regard to the determination of liability is one of the main reasons why the insurance of international road goods transport along the road is lacking in a sufficiently firm foundation, so that it is therefore checked in its development.

Paragraph 6. If we wish to try to find a solid basis for the determination of liability in case of damage in international road transport, then it is in the first place necessary to abandon the track followed so far, and consequently to refrain from reconstructing the historical circumstances which have led to one definite case of damage done, and from determining the degree of fault of the parties involved in the course of the concrete case.
How will it be possible to find another method to replace the present one with its often unforeseen results, and so obtain for the carrier and the shipper, as well as for the insurer, a clear and predeterminable idea of the risk incurred?
The only fact that can be stated with certainty in cases where damage is proved to have been done, is the nature of the damage done and the form in which it appears. The distinguishable forms in which damage appears are:
a. damage by fire
b. breakage
c. perishing
d. putrefaction
e. affection of goods by other liquids or other goods (smell, odour)
f. short delivery
g. fouling

The above mentioned list of forms is naturally not complete but will be sufficient to give readers an idea of what is to be understood by forms in which damage appears. When we restrict ourselves to one of these, to breakage for instance, we know of course that it may have been the result of many causes, such as rough handling by the carrier or his men; insufficient packing; nature of the goods; rough handling by the shipper; accidents to the vehicle and other trouble from outside. But if we restrict ourselves, as suggested here, to the form in which damage appears, the influences or causes which lead to this form cease to have any interest for us. It is the quintessence of the liability system which we should like to submit to consideration, in order to ignore the causal conditions which lead to damage, and that in accordance with this system we should

restrict ourselves exclusively to the determination of the type of damage done, i.e. the form in which the damage appears.
In this connection we may add the notion of " the form in which damage appears" also occurs in other systems of regulation of the liabilities of transport concerns.
Not only in the Berne Convention, but also in the Warsaw Convention and the Hague Rules, we find a list of forms of appearance of damage, the object of which is to exempt the carrier wholly or partially, or in specific cases, from liability for damage.
The proposal now made aims exclusively at making this form of appearance of the damage done, which apparently was also indispensable in the existing regulations, the basis of the whole system of regulation.
It will in the long run be possible with the help of the experience of these forms of appearance to give a full enumeration. On account of the list thus obtained it will be necessary to determine for each form of appearance, with the help of percentages, what part of the damage is chargeable to each of the parties.

Supposing that breakage is certified, then according to the method now recommended the damages will perhaps be divided in the proportion of 40 - 60 between the shipper and the carrier. There is no longer any question of causal conditions or of inquiries as to fault. The fact is established, and on account of this it at once becomes clear what percentage of the damages is chargeable to each of the parties.
So the risks in respect of the various forms of appearance of the damage done are divided between carrier and shipper according to standards of justice and expediency.
To this end consultations between three parties: carrier, shipper and insurer are necessary. These consultations will have to lead to a division of liabilities for each of the forms of appearance of the damage done, which will hold good in the future, subject to amendments resulting from further experience obtained.
In regard to this division considerations of a pedagogical nature may and must play a part.
Moreover, two things will have to be kept in view:
1. that the measure of liability imposed on the carrier must not be so heavy as to endanger the opportunity of competition of road transport in regard to other branches of transport;
2. that no liability should be imposed on the carrier against which he cannot insure.

Paragraph 7. The question might be asked whether it would not be simplest to make the liability for all forms of damage entirely chargeable to the carrier, who would be able to have them covered by insurance and include the cost in the freight to be paid. This would be very inexpedient, if not impossible, as is shown by the following considerations:
1. The carrier's working expenses would be greatly increased as the carrier, when fixing the amount required to cover his expenses, cannot go by the exact value of the goods, because he does not know them unlike the shippers who do know them.
For this reason he would have to fix the highest maximum imaginable, as a result of which the determination of risks (which takes place both direct via the insurance, and indirect via the cost price) would not be on an economic basis.
It is not right to think that in dividing the risks between shippers and carriers there would only be a shifting of costs. The fact that it is impossible to indicate a definite maximum for liabilities makes the calculation of risks impossible.
It is certainly for these reasons that in nearly all liability regulations we not only find a division of risks between the interested parties, but also a maximum amount of liability per kilogramme of the goods transported.
2. Putting the total risks on the carrier would result in his cost price rising beyond bounds in proportion to and in comparison with

other branches of transport whilst performances would no longer be comparable.
Thus not only would any proposal for co-ordination be doomed to failure but in addition the economic profit of road traffic which is earnestly desired by the shipper, would be seriously undermined. We must not forget that road transport, representing the most modern transport technique, is made use of by industry because it offers some advantages which are not offered by other forms of technique, but on the other hand there may be disadvantages, which do not attach to other forms of transport.
This structural relationship would entail that any great risk in connection with road transport would be accepted by shippers on condition that the advantages offered are in keeping therewith. So risk regulations too will have to make allowance for the specific aspects of road transport.
3. It is undeniable that in regard to the distribution of risks there is a difference between shippers and carriers. This is clearly expressed in the insurance opportunities offered at present to these two parties. The shipper can make use of the so-called "goods insurance" by which he insures his goods against all risks to which they will be exposed during transport. This "goods insurance" includes also the risks through force majeure, for which not a single carrier is held responsible. In most cases the carrier, however, insures only his liability resulting from the transport contract if offered the opportunity of doing so. It is remarkable - just to show this difference by means of an example - that in a few countries of Europe the Insurance Companies are willing to insure the shippers via the goods policy against theft and breakage, but that they sometimes dare not insure carriers against their possible liability in regard to these two kinds of risks. This proves that the insurers for road transport do not consider the shipper's risk too great for insurance in cases of breakage and theft, whereas this risk is evidently much greater for the carriers.
This is also clear when we examine to what extent it is possible to speak of assignment of risks on the side of the shipper.
We shall come to the conclusion that the assignment of risk is greater on the side of the shippers than on the side of the carriers. It would take us too far to go into further details concerning this principle, but we think that the example given speaks for itself.
4. Whatever liability carriers may have, shippers will always have to insure themselves against the risks which their goods may run during any kind of transport. In any kind of transport there must be an assignment of risks to the shipper, because he has to insure either the connecting transport or the carrier's eventual solvency.
5. It is likewise undeniable that when the forms of appearance of the risks occur, an influence is exercised by both parties on the occurrence of risks.
The example of breakage has already proved that a number of factors may have presented themselves showing that in the one case the shipper, in the other case the carrier, and in the third case neither of the two parties but a third party, had a great influence on this form of appearance.
This makes it desirable, especially from a pedagogical point of view, that certain forms of appearance of risks should be either wholly or partially chargeable to one of the parties concerned, either to the carrier or to the shipper.
The degree of influence which may be exercised by each of the parties on the occurrence of the forms of appearance, will finally not only necessitate distribution of liabilities over shippers and carriers, but it will in addition have to be a basis for the extent to which each of the two parties participates in the risks.

Paragraph 8. If we also accept that the liability regulations will have to be to the effect that the risks must be divided between shipper and carrier, and if in addition these risks are going to be regulated on a basis of the appearance forms of the loss suffered the total liability regulations will be formulated in such a way that in the final contract (convention) a list of appearance forms of the loss suffered will be included, followed by the extent to which both parties will have to participate in the damage to be paid.

When applying the rules once fixed we should be conscious of the fact that there may be incidental cases in which their issues are not quite just, for instance in regard to carriers. We should then realize that there may also be cases in which there is injustice in regard to shippers. In regard to carrier and shipper this is of no consequence, however, seeing that for them everything is expressed in an insurance premium in which all the injustice is equalized.

Paragraph 9. When in this way the distribution of average liabilities in international goods transport by road is brought about in consultation between carriers and shippers and with the collaboration of insurers, this will provide a solid basis for insurance against the risks resulting from such distribution.
It goes without saying that if shippers consent to this division of risks, thus making it a part of the transport contract, they will on the other hand have the certainty that there will always be the possibility of redress against the carriers for the portion of the liability accepted by them; in other words the carriers will be obliged an obligation imposed on them by the authorities - to insure their risk.

It may be considered in how far it would be desirable from a psychological point of view to grant this to them for only 90 % for instance.

Paragraph 10. It is now a question of examining the practicability of the proposal that has been developed in this report. Not only the parties concerned but also the governments for whom the settlement of the question of liability constitutes a cardinal point in the establishment of international goods transport legislation, have a large interest in this investigation. This research will have to be conducted by those who are thorough experts in the matters dealt with in this report. It is for this reason that we now submit the following proposal:
a. The Commission formed by the I.R.U., the I.C.C. and the Institute in Rome should be requested to undertake this research and to present a Report on its results to the Study Group;
b. An expert representative among transport insurers to be chosen by the Commission should be included as a fourth element in the Commission.
