PART IV

FREEDOM OF CONTRACT VERSUS REGULATION
UNCITRAL (DRAFT) CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA: MANDATORY RULES AND FREEDOM OF CONTRACT*

Regina Asariotis**

I. Introduction
1. What is the Rationale for Mandatory Regulation of Liability in the Field of Carriage of Goods by Sea?

II. To Which Extent is the Draft UNCITRAL Convention Mandatory?
1. Scope of Application
2. Liability of the Carrier
3. Liability of the Shipper
4. Mandatory Nature of Liability

III. Volume Contracts: What is Being Proposed?
1. What is a Volume Contract?
2. Special Rules for Volume Contracts: Under Which Conditions are Contractual Derogations Permitted?
3. Limits on the Right to Derogate
4. When are Third Parties Bound?

IV. Potential Implications of the Proposed Special Rules on Volume Contracts
1. Volume Contracts between Parties of Equal Bargaining Power
2. Volume Contracts between Parties of Unequal Bargaining Power: Potential for Abuse?

V. Final Remarks

I. Introduction

After years of deliberation, work on the text of a Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea has recently been completed by an UNCITRAL Working Group, which had been working on a draft legal instrument since 2002.¹ A final draft text was adopted,