

Article 15

With the current world moves to simplification of shipping documents IUMI feels that there are too many mandatory particulars proposed in this article. Only those items which are commercially necessary should be specified in the bill of lading.

Article 17

IUMI suggests that paragraphs 2, 3 and 4 of this

article dealing with letters of guarantees be deleted. This does not mean that IUMI favours the use of letters of guarantee. On the contrary, IUMI has on many occasions taken a firm attitude against the fraudulent use of letters of guarantee. Considering, however, the very complicated issues in this connexion, IUMI fears that the present wording of the paragraphs in question could lead to difficult litigations. It would therefore be better not to deal with this question in the convention.

2. Note by the Secretary-General: comments by Governments and international organizations on the draft Convention on the Carriage of Goods by Sea (addendum): additional comments by international organizations (A/CN.9/109/Add.1)*

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CENTRAL OFFICE FOR INTERNATIONAL RAILWAY
TRANSPORT

[Original: French]

We acknowledge receipt of document A/CN.9/109** of 29 January 1976 entitled "Comments by Governments and international organizations on the draft convention on the carriage of goods by sea", for which we thank you warmly.

It is clear from this document that several States and some international organizations are critical of article 5 of the draft convention, which no longer provides for "nautical fault", one of the traditional defences under the law relating to maritime transport. In our view, it would be unfortunate if the calls for the reinstatement of that defence were heeded. In the first place, the omission of that defence, as advocated by the majority of States concerned, would make it easier to take account of the necessary legal considerations concerning the carrier's responsibility; secondly, it would contribute to the harmonization of laws relating to transport at the international level.

INTERNATIONAL CHAMBER OF SHIPPING

[Original: English]

The International Chamber of Shipping¹ has read with interest the report of the UNCTAD Working Group on International Shipping Legislation² dealing with the draft convention on the carriage of goods by sea prepared by the UNCITRAL Working Group on International Legislation on Shipping.

ICS has already sent its comments on the draft convention and its views are unchanged.

When commenting on the draft convention, ICS did not comment on article 8 because it was broadly ac-

ceptable. The UNCTAD Working Group report recommends that consideration be given to the extent to which the concept of the carrier might be broadened to include servants or agents, in the light of the limit of liability to be inserted in article 6, paragraph 1. It is submitted that any such consideration should produce the same result as that arrived at in the UNCITRAL Working Group and reflected in the draft convention as the effect of weakening in any way the carriers right to limit can only have a most serious lowering effect on the amounts which could be inserted in draft article 6, paragraph 1. Further it would constitute a shift which could only be considered as radical, not merely in its effect on the relative insurance burdens borne by cargo insurers and carriers liability insurers, but in its effect on insurance costs. The formula developed through international compromise in the 1961 Carriage of Passengers Convention,³ the 1969 Luggage Convention⁴ and the 1974 Athens Convention on the Carriage of Passengers and their Luggage⁵ and incorporated in the draft Convention on the Limitation of Liability in respect of Maritime Claims cannot be swept aside in relation to cargo claims without affecting the position with regard to those conventions.

For these reasons it is strongly urged that article 8 be not amended.

The ICS view on article 5 remains as stated in the comments already tabled. Those opposed to reinstatement of the defence of error in navigation at the UNCTAD Working Group meeting mainly based their arguments on one of three premises:

³ International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961.

⁴ International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, Brussels, 27 May 1967.

⁵ Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, Athens, 13 December 1974.

* 30 March 1976.

** Reproduced in this volume, part two, IV, 1, *supra*.

¹ Hereinafter abbreviated as ICS.

² TD/B/C.4/ISL/21.

(1) The effect of the shift of the insurance burden resulting from the draft convention would not affect existing insurance arrangements to an extent which would be considered as "radical" by the UNCTAD Committee on Invisibles, Trade and Finance. This is at the very least debatable.

(2) There is a substantial shift, and, if this were not so, there would be little point in having a new convention.

(3) If there is a radical shift it will not have an adverse effect on smaller insurance markets as new sources of liability insurance will appear. In this connexion it is interesting to note that the UNCTAD secretariat report on liability and cargo insurance cover under international multimodal transport operations (TD/B/AC.15/14, dated 14 January 1976, at para. 76) states categorically that "the possibility that the insurance markets of less developed countries will soon become suppliers of extensive liability cover to carriers

(especially to ocean carriers) and to MTOs is extremely remote".

None of these, at times conflicting, views outweighs the arguments in favour of retention of the defence. There will clearly be a shift away from cargo insurance to liability insurance which can only be to the detriment of cargo insurance markets which are unable to benefit from any increase in liability insurance. The cumulative effect of abolition of the existing defences, specific imposition of liability for delay and change in burden of proof will certainly bring about an increase in carriers' costs which will be reflected in higher freight rates. No significant benefit for anyone has been established. ICS therefore strongly recommends:

(a) That the defence of error in navigation be reinstated.

(b) That article 8 be retained as drafted by the UNCITRAL Working Group.

3. Note by the Secretary-General: comments by Governments and international organizations on the draft Convention on the Carriage of Goods by Sea (addendum) (A/CN.9/109/Add.2)*

LIBYAN ARAB REPUBLIC

Before making our comments on the text of the draft Convention article by article, we would like to point out that the Libyan Arab Republic has not acceded to the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels on 25 August 1924, as amended by the Brussels Protocol of 1968. However, the Libyan Arab Republic has incorporated the provisions of this Convention into its own maritime law issued in 1953.

Article 1

A. Paragraph 1 does not indicate that the carrier should own or rent a vessel in order that he may implement the contract of carriage. This contradicts article 1, paragraph 1, of the Brussels Convention of 1924.

B. Paragraph 2 made reference to the "actual carrier", and it defined "actual carrier" as any person to whom the contracting carrier has entrusted the performance of all or part of the carriage of goods. We believe that the provisions on "carrier", "contracting carrier", and "actual carrier" will raise many ambiguities in determining liability. We are of the opinion that it would be a better solution to use the term "carrier" contained in the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

C. The definition of consignee in paragraph 3 is ambiguous and calls for additional details. The definition fails to clearly indicate according to which regulations or point of reference a person is entitled to take delivery of the goods.

"Consignee" could be defined in the same manner as in the French Act of 31 December 1966 concerning contracts of leasing of vessels and of maritime carriage. In this Act, "consignee" is defined as follows: "Con-

signee means a person who is entitled to receive goods according to the contract of carriage; he is the person whose name is registered in the bill of lading when it is nominal, or who presents the bill of lading upon arrival when the bill has been issued to bearer, or the last endorser when the bill is promissory."

D. Paragraph 4 extends the definition of "goods" to include live animals and goods carried on deck, contradicting article 1, paragraph C of the 1924 Brussels Convention.

We believe that the definition of goods should clearly include luggage not accompanied by passengers.

E. Paragraph 5 defines "contract of carriage". It is possible to omit the last phrase of this paragraph, which reads "where the goods are to be delivered", for it serves no purpose.

It seems necessary to add "consignee" to the definition of contract of carriage; only the shipper and the carrier are mentioned in the definition. The consignee should be enabled to invoke the contract of carriage to which he is not a party. If a bill of lading, which is a document that evidences the goods, did not exist, the consignee would not be able to exercise the rights of the shipper unless he was enabled to utilize them under the provisions of national legislations recognizing such right. In most, if not all countries, there are no such provisions in national legislations; there is no provision enabling a consignee to exercise the shipper's rights.

To avoid recourse to national legislations, it is desirable that the International Convention should include a definition of contract of carriage that establishes the rights of shippers and carriers and indicates the consignee's rights. It is necessary to determine the consignee's rights in case there is no bill of lading.

In addition to the foregoing, it should be explicitly provided that the carrier acquires, under the contract

* 5 October 1976. The comments reproduced in the present document were received after the ninth session of UNCITRAL.