

REVISED INTERNATIONAL RULES FOR THE CARRIAGE OF GOODS BY SEA.

The Hague Rules 1921, revised by the Diplomatic International Conference at Brussels in 1922 and by the Conference Committee at Brussels in 1923, have been approved by the latter Conference and the protocol of ratification is now open for signature.

Judge Veeder has prepared a report on the subject, which is hereto annexed, together with the text of the Rules.

In order to bring the matter before the Association, a motion will be made at the next regular meeting to adopt the views of Judge Veeder as the sense of the Association.

PROPOSED INTERNATIONAL CODE OF AFFREIGHTMENT.

The Gothenburg Conference of the Comité Maritime International, in August, 1923, discussed a proposed International Code of Affreightment.

Judge Veeder has prepared a report on the subject, which is hereto annexed.

In order to bring the matter before the Association, a motion will be made at the next regular meeting to adopt the views of Judge Veeder as the sense of the Association.

HAROLD S. DEMING,
Secretary.

**REPORT ON THE REVISED INTERNATIONAL RULES
FOR THE CARRIAGE OF GOODS BY SEA AND
THE PROPOSED INTERNATIONAL
CODE OF AFFREIGHTMENT**

HON. CHARLES M. HOUGH,
President Maritime Law Association
of the United States.

In accordance with your request, I submit a report on the revised international rules for the carriage of goods by sea.

The Hague Rules, 1921, relating to the carriage of goods by sea, as framed by the Maritime Law Committee of the International Law Association, were revised by the Diplomatic International Conference at Brussels, October, 1922, and by the Conference Committee at Brussels, October, 1923. The Rules for the Carriage of Goods by Sea, as amended, were approved by the delegates from twenty-four nations participating in that Conference. The time within which the high contracting parties may ratify the Convention expires on August 25, 1925.

This Association formally expressed its approval of the original Hague Rules, and the purpose of this report is to present the amended rules to the members of the Association for consideration and action. For convenient reference a reprint of the revised Rules accompanies this report, showing the changes made in the text, and indicating in footnotes the departures from the text in subsequent legislative action by Great Britain and the United States.

The Rules as amended have since been enacted in statutory form by Great Britain without material change in the Carriage of Goods by Sea Act, 1924. They were incorporated in a bill (H. R. 5080) introduced in the House of Representatives in 1924, and formed the basis of another bill (H. R. 12339) introduced in the House of Representatives on February 18, 1925. The House Committee on the Merchant Marine and Fisheries, after prolonged hearings, reported on February 27, 1925, a bill Relating to the Carriage of Goods by Sea (68th Congress, Second Session, Union Calendar No. 662, H. R. 12339, Report No. 1620), which adopted the Rules as amended with one material change.

This impressive unanimity in approval of the amended Rules is most persuasive and obviates the necessity of any detailed consideration of the amendments. The shipper, the carrier, the underwriter and the banker have interests which they desire to protect, but in any adjustment of their conflicting interests no one of them can expect to have his own way altogether. At the hearing before the House Committee on the Merchant Marine and Fisheries all interests in carriage by sea were fully represented, and they were unanimous in their general support of the amended Rules. Difference of opinion with respect to details and phraseology is of course inevitable so long as the text is open to discussion. But the fundamental aim of this effort being international uniformity, a period must be set to discussion if the object is to be attained. The compromise embodied in these Rules is based upon long and painful experience, and the Rules as revised represent, in my judgment, a fair and practical solution of this difficult problem.

In one respect the bill reported by the House Committee on the Merchant Marine and Fisheries (H. R. 12339) marks a fundamental departure from the purpose of the Rules. Inasmuch as the object is international uniformity, Article X of the Convention specifies that its provisions shall apply to all bills of lading issued in any of the contracting states. Accordingly the British Act of 1924 provides that the Rules shall have effect in connection with the carriage of goods by sea in ships carrying goods from any port in Great Britain or to any other port whether in or outside Great Britain. And the original House Bill (H. R. 5080), as introduced in 1924, provided that the act shall apply to all contracts of carriage of goods by sea between ports of the United States and its possessions and ports of foreign countries. But the bill (H. R. 12339) reported by the House Committee on the Merchant Marine and Fisheries, February 27, 1925, provides merely that every bill of lading or similar contract for the carriage of goods by sea to or from ports of the United States or its possessions may contain a statement that it is to have effect subject to the provisions of the Act. This change, made by the Committee on its own initiative, is stated in the report to have been based on doubt whether the British Act of 1924 is in all respects mandatory. There is no

ground for such apprehension. It appeared at the hearing that by the terms of the British Act the date on which it became effective was fixed by Order in Council. Once the Order issued fixing the date, however, no power remained in the Council to suspend or alter any provisions of the act. No doubt can reasonably be entertained that the Act, effective by Order in Council, is mandatory in accordance with its provisions.

You request, also, a report on the proposed International Code of Affreightment.

At the Conference of the International Maritime Committee, held at Gothenburg, August, 1923, it was decided to prepare an International Code of Affreightment, and the committee appointed for that purpose has issued a questionnaire in aid of the project which discloses its scope. It includes the carrier's obligation in regard to seaworthiness, the responsibility of the shipowner towards bill of lading holders or sub-charterers, letters of guarantee, through bills of lading, distance freight, liens on goods and their priorities, and the solution of conflict of law in relation to contracts of carriage.

In my opinion a general code of such scope, if desirable, is wholly impracticable at this time. It seems to me that international uniformity of law can be attained only by directing attention from time to time to particular subjects which admit of separate treatment. The Rules for the Carriage of Goods by Sea afford a practical illustration. When those Rules have become internationally effective it may be worth while to proceed further.

April 8, 1925.

VAN VECHTEN VEEDER.

THE HAGUE RULES 1921

AS AMENDED BY THE DIPLOMATIC INTERNATIONAL CONFERENCE,
HELD AT BRUSSELS, OCTOBER, 1922, AND BY THE COM-
MITTEE OF THE CONFERENCE, AT BRUSSELS,
OCTOBER, 1923, AND ENTITLED

RULES FOR THE CARRIAGE OF GOODS BY SEA¹

ARTICLE I.—DEFINITIONS.

In [these Rules] *this Convention the following words are employed with the meanings set out below:*

(a) "Carrier" includes the owner or the charterer, who enters into a contract of carriage with a shipper.

(b) "Contract of Carriage" [means] *applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.*

(c) "Goods" includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo *which by the contract of carriage is stated as being carried on deck and is so carried.*

(d) "Ship" [includes] *means any vessel used for the carriage of goods by sea.*

¹ Parts of the 1921 Rules omitted by the 1922 and 1923 Conferences are enclosed in square brackets [].

New matter added to the 1921 Rules by the 1922 and 1923 Conferences is printed in italics.

The footnotes show the changes made in the British Carriage of Goods by Sea Act, 1924, and in the Bill (H. R. 12339) reported by the House Committee on the Merchant Marine and Fisheries, Feb. 27, 1925.

(e) "Carriage of goods" covers the period from the time when the goods are [received on the ship's tackle] *loaded on* to the time [when] they are [unloaded from the ship's tackle] *discharged from the ship*.

ARTICLE II.—RISKS.

Subject to the provisions of Article [V] *VI*, under every contract of carriage of goods by sea the carrier, in [regard] *relation* to the [handling] loading, handling [loading], stowage, carriage, custody, care and [unloading] *discharge* of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, hereinafter set forth.

ARTICLE III.—RESPONSIBILITIES AND LIABILITIES.

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

- (a) Make the ship seaworthy;
- (b) Properly man, equip, and supply the ship;
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. *Subject to the provisions of Article IV* the carrier shall [be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care and unloading of the goods carried] *properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried*.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue *to the shipper* a bill of lading showing amongst other things—

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as [will] *should ordinarily* remain legible until the end of the voyage;

(b) *either* the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) the apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to [issue] *state or show in the* [a] bill of lading [showing] *any* [description] marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, *or which he has had no reasonable means of checking.*

4. Such a bill of lading [issued in respect of goods other than goods carried in bulk or whole cargoes of timber] shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with [section] *Rule 3* (a), (b) and (c).

[Upon any claim against the carrier in the case of goods carried in bulk or whole cargoes of timber the claimant shall be bound notwithstanding the bill of lading to prove the number, quantity or weight actually delivered to the carrier.]

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy *at the time of shipment* of the [description] marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. *The right of the carrier to such indemnity shall in no*

way limit his responsibility and liability under the contract of carriage to any person other than the shipper.¹

6. Unless [written] notice of [a claim for] loss or damage and the general nature of such [claim] *loss or damage* be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days,² such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. *The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.*³ [and] In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within [12 months] *1 year* after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall,⁴ if the shipper so demands, be a "shipped" bill-of-lading, provided that [no "received for shipment" bill of lading or other document of title shall have been previously issued in respect of the goods. In exchange for and upon surrender of a "received for shipment" bill of lading the shipper shall be entitled when the goods have been loaded, to receive a "shipped" bill of lading. A "received for

¹ Both H. R. 12339 and the British Act incorporate an additional provision in this connection: "Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading * * *, the bill of lading shall not be deemed * * * to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper."

² H. R. 12339 reads "within thirty days thereafter."

³ H. R. 12339 adds "and their condition agreed upon."

⁴ "May" in H. R. 12339.

shipment" bill of lading which has subsequently been noted] *if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill-of-lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3,*¹ shall for the purpose of [these Rules] *this Article*, be deemed to constitute a "shipped" bill of lading.

8.² Any clause, covenant or agreement in a contract of carriage, relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in [these Rules] *this Convention*, shall be null and void and of no effect. *A benefit of insurance in favor of the carrier*³ *or similar clause shall be deemed to be a clause relieving the carrier from liability.*

ARTICLE IV.—RIGHTS AND IMMUNITIES.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied *and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1, of Article 3.* *Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.*

¹ Both the British Act and H. R. 12339 omit the clause "if it shows the particulars mentioned in paragraph 3 of article 3."

² H. R. 12339 omits this section.

³ The British Act omits "in favor of the carrier."

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(b) Fire, *unless caused by the actual fault or privity of the carrier.*

(c) Perils, dangers and accidents of the sea or other navigable waters.

(d) Act of God.

(e) Act of war.

(f) Act of public enemies.

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

(h) Quarantine restrictions.

(i) Act or omission of the shipper or owner of the goods, his agent or representative.

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general.

(k) Riots and civil commotions.

(l) Saving or attempting to save life or property at sea.

(m) *Wastage in bulk or weight or inherent defect, quality or vice of the goods.*

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, or servants [or employees] of the carrier, *but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.*

3. *The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.*

[3] 4. Any deviation in saving or attempting to save life or property at sea, or any *reasonable* deviation¹ [authorized by the contract of carriage] shall not be deemed to be an infringement or breach of [these Rules] *this Convention* or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.²

[4] 5. Neither the carrier nor the ship shall [be responsible] in any event *be or become liable* for any loss or damage to or in connection with goods in an amount [beyond] *exceeding* £100³ per package or unit,⁴ or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before [the goods are shipped] *shipment* and [have been] inserted in the bill of lading. [The] *This* declaration by the shipper *if embodied in the bill of lading*⁵ [as to the nature and value of any goods declared] shall be prima facie evidence, but shall not be binding⁶ or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

[5] Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with,⁷ goods if the nature or value thereof *as shown in the bill of lading*⁸ has been [wilfully] *knowingly* misstated⁹ by the shipper *in the bill of lading*.¹⁰

¹ H. R. 12339 adds "for purposes other than securing or delivering cargo or passengers."

² H. R. 12339 adds: "*Provided* that nothing herein contained shall be construed to prohibit the carrier from entering into a contract specifically allowing the ship to call at any number of named ports in any reasonable order, to load or discharge cargo for the pending or return voyage."

³ "\$500" in H. R. 12339.

⁴ H. R. 12339 substitutes for "unit": "in case of goods not shipped in packages, per customary freight unit."

⁵ H. R. 12339 omits the words "by the shipper if embodied in the bill of lading." The British Act omits the words "by the shipper."

⁶ H. R. 12339 omits "binding or."

⁷ H. R. 12339 adds "the carriage of the."

⁸ The British Act omits "as shown in the bill of lading."

⁹ H. R. 12339 substitutes "misrepresented" for "misstated."

¹⁰ H. R. 12339 adds "and such misrepresentation is prejudicial to the carrier."

[7] 6. Goods of an inflammable, [or] explosive [nature] or [of a] dangerous nature, [unless the nature and character thereof have been declared in writing by the shipper to the carrier before shipment, and the carrier, master or agent of the carrier has consented to their shipment] *to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character* may at any time before [delivery] *discharge* be landed at any place or destroyed or rendered innocuous by the carrier without compensation to the shipper,¹ and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such *knowledge and consent* shall become a danger to the ship or cargo, they may in like manner be *landed at any place* or destroyed or rendered innocuous by the carrier without liability on the part of the carrier *except to general average, if any.*

[7] ARTICLE V.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations² under [these Rules] *this Convention*, provided such surrender shall be embodied in the bill of lading issued to the shipper. *The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall³ comply with the terms of this Convention. Nothing in [these Rules] this Convention shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.*

ARTICLE [V] VI.—SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any

¹ The British Act omits the words "to the shipper."

² Both the British Act and H. R. 12339 substitute "liabilities" for "obligations."

³ H. R. 12339 substitutes "may" for "shall."

agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, *so far as this stipulation is not contrary to public policy*, or the care or diligence of his servants or agents in regard to the [receipt] *loading*, handling, [loading] *stowage*, carriage, custody, care, and [unloading] *discharge* of the goods carried by sea, provided that in this case no bill of lading *has been or shall be issued* and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE [VI] VII.—LIMITATIONS ON THE APPLICATION OF
[THE] *these RULES.*¹

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the [unloading] *discharge* from, the ship on which the goods are carried by sea.

¹ H. R. 12339 substitutes for this article: "Nothing in this act shall be construed as superseding any part of the act entitled 'An act relating to navigation of vessels, bills of lading, and to certain obligations, duties and rights in connection with the carriage of property,' approved February 13, 1893, or of any other law which would be applicable in the absence of this act, in so far as that act or such other law relate to the duties, responsibilities and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship."

ARTICLE [VI] VIII.—LIMITATION OF LIABILITY.¹

The provisions of [these Rules] *this Convention* shall not affect the rights and obligations of the carrier under [the convention] *any Statute for the time being in force* relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in this Convention are to be taken to be gold value. * * *²

ARTICLE X.—APPLICATION OF THE CONVENTION.

*The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.*³

¹ Both the English Act and H. R. 12339 refer specifically to the statute in force.

² The remainder of this article, as well as articles XI-XVI, relate to diplomatic procedure. The high contracting parties are permitted to give effect to the convention either by giving it the force of law or by including the rules in their national legislation.

³ The British Act provides:

"1. Subject to the provisions of this act, the rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland."

"3. Every bill of lading or similar document of title issued in Great Britain or Northern Ireland which contains or is evidence of any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as applied by this act."

The corresponding provision of the original House Bill (H. R. 5080), introduced in 1924, reads:

"Sec. 11. This act shall apply to all contracts of carriage of goods by sea between ports of the United States and its possessions and ports of foreign countries. Nothing in this act shall be held to apply to contracts of carriage of goods by sea between any port of the United States or its possessions and any other port of the United States and its possessions."

But the Bill (H. R. 12339) reported by the House Committee on the Merchant Marine and Fisheries, February 27, 1925, departs altogether from the foregoing provisions in providing:

"Title 1. Every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States or its possessions in foreign trade may contain a statement that it is to have effect subject to the provisions of this Act, and in that event all the provisions of this title, as applied by this Act, shall, subject to the provisions of Title II hereof, establish and control the rights, liabilities and immunities of the parties thereto or claiming thereunder, and any provisions in any such contract in conflict with the provisions of this Act shall, in that event, be null and void."