

DOCUMENT No. 389

May 11, 1955

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE COMMITTEE

ON

BILLS OF LADING

On October 30, 1953, President Keating appointed the Chairman of this Committee as the delegate of the Maritime Law Association of the United States to serve on a Sub-Committee of the Comité Maritime International created to deal with the question of Marginal Clauses in Bills of Lading. That Sub-Committee was appointed at the request of the British Maritime Law Association to look into the problems created by the issuance of clean bills of lading for goods not in apparent good order and condition, letters of indemnity being given by the shippers to the carriers in consideration of the issuance of such clean bills of lading.

The reporters of the Sub-Committee prepared a questionnaire consisting of 18 questions, many of which were sub-divided, inquiring as to the law of the country of each association which is a member of the Comité. A copy of that questionnaire is attached hereto. When the questionnaire was received, the Chairman asked for the appointment of a committee to prepare the United States answers to the questionnaire and your committee was accordingly appointed for that purpose.

The questionnaire was considered at length and your committee prepared answers dated September 13, 1954, a copy of which is attached hereto. We suggested that the matter could be dealt with by means of an International Convention in terms similar to Section 41 of the United States Bill of Lading Act, 46 U. S. C. 121.

The matter was discussed at the interim meeting of the Comité at Brighton, England on September 22, 1954 and our suggestion was accepted in principle. The Sub-Committee requested our Association to prepare and forward a First Draft of an International Agreement in accordance with our suggestion, for distribution to the

National Associations preparatory to discussion at the plenary session of the Comité to be held at Madrid in September, 1955.

We have drafted a convention, a copy of which is attached hereto. As it was not possible to convene the entire committee to discuss the matter and as the members of the committee feel that further consideration should be given to the matter, we are not able to make a definite recommendation to the Association. We earnestly request the views of the membership of the Maritime Law Association of the United States with respect to the proposed convention. Comments of the members should be submitted to the Chairman in writing not later than May 31, 1955.

Respectfully submitted,

HARRY L. HAEHL, JR.
HERBERT M. LORD
HENRY J. READ
GREGORY S. RIVKINS
MICHAEL F. WHALEN
JOHN W. R. ZISGEN
JOHN C. MOORE, *Chairman*

May 5, 1955.

Note: With the exception of the Committee's suggestion summarized in the third paragraph of the foregoing report, the questionnaire and answers referred to in the second and third paragraphs of the report deal mainly with questions of law and banking practice. Those documents were submitted to complete the Association's files. As they are not particularly helpful to a consideration of the proposed Convention and would be somewhat expensive to print, they are not reproduced here.

PRELIMINARY DRAFT CONVENTION

The High Contracting Parties,

Having recognized that the unimpaired credit of the recitations in negotiable bills of lading as to the number of packages or pieces, the quantity or weight, and the apparent order and condition of the goods is essential to international commerce and that it is necessary to protect this interest against any abuse in practice by the issuance of bills of lading containing false statements in any of those respects, have decided to conclude a convention for this purpose, and thereto have agreed as follows:

ARTICLE I

Any person who, knowingly or with intent to defraud, makes or issues or aids in making or issuing or procures or aids in procuring the making or issuing of, or negotiates or transfers for value any negotiable bill of lading for the transportation of goods by sea from a port or place in a country which has ratified this convention to a port or place in another country, which bill of lading contains a false statement as to the number of packages or pieces, the quantity or weight or the apparent condition of the goods, shall be guilty of a penal offense.

ARTICLE II

Any person who, knowingly or with intent to defraud, requests a carrier or a carrier's representative to make or issue a negotiable bill of lading containing a false statement as to the number of packages or pieces, the quantity or weight or the apparent condition of the goods and any person who procures or causes another to make such a request shall, whether or not the request is complied with, likewise be guilty of a penal offense.

ARTICLE III

If the apparent condition of the goods is such that there is doubt whether or not the goods are in fact in good order and condition and if the shipper of such goods shall have given to the maker or issuer of the bill of lading therefor a written undertaking (1) that

the goods are in actual good order and condition and (2) that their appearance is normal for such goods at the place of shipment in question, no person making or issuing or aiding in making or issuing such bill of lading shall be deemed guilty of a violation of Article I hereof for having acknowledged receipt of the goods in apparent good order and condition, *provided however*: (1) that a copy of the shipper's undertaking shall be attached to each negotiable counterpart of such bill of lading and mentioned on the face of the bill of lading itself or (2) that the said undertaking be endorsed on each negotiable counterpart of such bill of lading.

ARTICLE IV

The High Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of any of the penal offenses defined in the present Convention.