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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPECIAL REPORT OF THE BILL OF LADING COMMITTEE

Report on the Stockholm Conference of the Comite Maritime International with respect to Amendments of the Hague Rules

INTRODUCTION

In your Committee's Special Report of March 20, 1963, Document No. 463, your Committee reviewed the history of the Hague Rules and the developments which had impelled the Comité Maritime International (CMI) to restudy the Rules with a view to making amendments necessary to bring them up to date. Under cover of Document No. 459 of October 15, 1962, there had been distributed to each of our members a copy of the comprehensive report of the Sub-Committee of the CMI which, over a period of three years, had made a comprehensive and thorough study of the subject.

Your Committee's Special Report of March 20, 1963, contained recommendations as to the position to be taken by the Association with respect to each of the subjects thought likely to require action at the Conference of the CMI to be held in Stockholm from June 9 to 16, 1963.

At the Annual Meeting of the Association on May 3, 1963, your Committee's recommendations were approved in all respects except regarding Both-to-Blame, as to which the vote was inconclusive.

The Association's Delegation at the Stockholm Conference included the following members of your Committee:

J. Edwin Carey
James J. Donovan, Jr.
Harry L. Haehl, Jr.
John W. R. Zisgen
John C. Moore, Chairman.

As regards the report of the Stockholm Conference contained herein, this Special Report is submitted on the responsibility of the members listed above.

A copy of the official text of the Hague Rules amendments, agreed upon at the Stockholm Conference, to be called the "Visby Rules", is attached as an appendix hereto. For convenience of reference, the subjects affirmatively acted upon at Stockholm and also those discussed in your Committee's Special Report of March 20, 1963, but not affirmatively acted upon, will be discussed in the order of the Article and Section numbers of the Hague Rules to which they relate, which is also the order in which they appear in the Stockholm draft.

1. DUE DILIGENCE TO MAKE SHIP SEAWORTHY. (Art. III (1) and Art. IV (1)).

Your Committee reported regarding this subject in its Special Report of March 20, 1963, Document No. 463, item 11 at pages 4962-4963. At that time, as was reported, the meaning of "due diligence" under the jurisprudence of the Hague Rules countries was under study by Dean van Ryn of the University of Brussels, a member of the above-mentioned Sub-Committee, under the chairmanship of Hon. Kaj Pineus. Your Committee's recommendation was as follows:

> "Your Committee recommends that our Association's delegation to the Stockholm Conference be instructed to seek international uniformity on this point, preferably on the basis of amendment of the Hague Rules to assure that the jurisprudence of all countries will be brought into accord with the jurisprudence of the United States and England."

This recommendation was approved by the Association at the Annual Meeting last May.

Dean van Ryn's study showed that there was no substantial disagreement among the Hague Rules countries on this point. The discussion of the House of Lords in *Riverstone Meat Co. Pty. Ltd.* v. *Lancashire Shipping Co. Ltd.* (*The Muncaster Castle*), [1961] A. C. 807, inspired the British Maritime Law Association to propose a revision of the Hague Rules to lessen the obligation of due diligence as it presently exists under the law of the United States and at least

some other countries, including Great Britain. That proposal was put forward as Document Conn. C. 3 (amended) dated 30th April 1963, which was not distributed until the delegates arrived at the Stockholm Conference. The text of the amendment proposed by the British Maritime Law Association is found in the appendix hereto as the proposed amendment to be added to Art. III (1) of the Hague Rules, having been approved after debate at the Stockholm Conference by a vote of 11 in favor, 5 opposed, and 5 abstentions.

In view of the fact that the British amendment had not been placed before our Association, with the consequence that the Association had not passed on it, our delegation abstained from voting on this amendment.

2. Carrier's Liability for Negligent Loading, Stowage or Discharge of the Goods by the Shipper or Consignee. (Art. III (2)).

The Pineus Sub-Committee proposed that Art. III (2) be amended to read as follows (see Doc. No. 463 at p. 4952):

> "(2) In so far as these operations are not performed by the shipper or consignee the carrier shall, subject to the provisions of Article IV properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried."

This proposal was rejected at the Stockholm Conference without a roll call vote.

3. Statements in Bills of Lading. (Art. III (4) and (5)).

The effect of the description of the goods contained in the bill of lading was considered by the Pineus Sub-Committee, which decided not to recommend any action on the point (Pineus Sub-Committee Report, Point 13). Since no action was recommended, your Committee did not comment on the point.

The law in some countries was considered to be unsatisfactory, and, led by the Italian delegation, delegates from those countries revived the subject at Stockholm. The Conference voted, without a roll call vote, to add to Art. III (4) a provision that proof to the contrary of the description contained in the bill of lading should not be admissible when the bill of lading has been transferred to a third party acting in good faith.

The intent of this amendment is not, in the opinion of your Committee, to change the law as it exists in the United States, but rather to codify the rule of the majority of countries as international law. However, your Committee considers that that intent would be more accurately expressed if the new Section 4 of Article 3 were to read:

> "However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred for value to a third party relying in good faith on its description of the goods under the foregoing Section 3 (a), (b) and (c) hereof."

4. NOTICE OF CLAIM. (Art. III (6), first paragraph).

The majority of the Pineus Sub-Committee recommended an amendment, the effect of which would have been to change the law in Germany and perhaps some other countries to accord with the law of the United States. See Doc. No. 463, p. 4953. This proposed amendment was lost at the Stockholm Conference without a roll call vote.

5. TIME LIMIT IN RESPECT OF CLAIMS FOR WRONG DELIVERY. (Art. III (6), fourth paragraph).

The Pineus Sub-Committee proposed an amendment to limit the time to sue, in the event of delivery of the goods to a person not entitled to them, to a period of two years from the date of the bill of lading. Your Committee, in Document No. 463 at pages 4954-4955, opposed this amendment but recommended a simple amendment to include wrong delivery in the one-year limitation of time to sue. The amendment recommended by your Committee was accepted without change by the Stockholm Conference, without a roll call vote.

6. EXTENSION OF TIME TO SUE. (Art. III (6), new fifth paragraph).

This point had been discussed by the Pineus Sub-Committee as item 16, and no recommendation made for amendment, and thus was not commented upon by your Committee. However, some of the delegates at Stockholm reported that they had serious problems because under the jurisprudence of their countries it was impossible

by agreement to extend the one-year limitation of time to sue, the expiration of the year extinguishing the right rather than merely barring the remedy. An amendment to Art. III (6), paragraph 4, was agreed upon, without roll call, to permit such extensions.

7. TIME LIMIT FOR RECOURSE ACTIONS (Art. III (6), new last paragraph).

This point was discussed in the Pineus Sub-Committee report under Number 14, but in view of the fact that no action was recommended your Committee did not mention it in Doc. No. 463.

The problem here is that in some countries, particularly France, a recourse action by a through-carrier against a part-way carrier is treated as a suit under the Hague Rules, and, therefore, the through-carrier must bring his suit within one year from the time when the goods are delivered or should have been delivered. If a suit is brought against the through-carrier on the last day of the year after delivery of the goods to the through-carrier's consignee, it may not be possible for the through-carrier to sue the on-carrier within the year. The problem is obviously worse in the case of a through-carrier who entrusts the first or an intermediate stage of the transportation to another carrier and makes the ultimate delivery itself. In such cases, the through-carrier may be sued after the time to sue the part-way carrier has expired.

This problem had existed previously in the Netherlands but was dealt with by an amendment to the Netherlands Code, and it was the opinion of the Pineus Sub-Committee that no amendment of the Hague Rules was needed, leaving the solution under the law of each country to be dealt with by the respective countries where the trouble existed.

However, at Stockholm the French revived the question and pressed hard for a solution, proposing a period for a recourse action of one month after the date upon which the person bringing the recourse action had himself been sued. Such an amendment would very probably have had the effect of drastically reducing the time for recourse actions under the laws of many other countries, including our own, and our Association's delegation took the lead in negotiating with the French and others a revised limitation for recourse actions, which appears as Art. 2, § 3, of the attached Protocol.

The new limitation is so phrased as to make it clear that it does not in any event reduce the time within which suit may be brought but solves the problem exemplified by French law by giving an extension of at least three months. This amendment was adopted by a vote of 9 for, 3 against, and 9 abstaining.

8. GOLD CLAUSE. RATE OF EXCHANGE, UNIT LIMITATION. (Art. IV (5) and IX).

The increase of the limitation amount and its restandardization at 10,000 Poincaré francs, equal at present to about U. S. $662, was discussed at length in Doc. No. 463, at pages 4955-4957. The text as set forth in that report and approved by the Association was accepted without change by the Stockholm Conference, and appears as Art. 3, § 1 and § 2 of the Protocol attached hereto.

9. LIABILITY IN TORT, THE HIMALAYA PROBLEM. (new Art. 4bis).

This subject was discussed at length in Doc. No. 463 at pages 4957-4959, and your Committee's recommendation that the amendment set forth therein should be approved with the exception of subparagraph 4 was approved by the Association. At Stockholm, subparagraph 4, which had been opposed by your Committee, was deleted but the protection to be afforded by subparagraphs 2 and 3 was restricted to servants and agents of the carrier, specifically excluding independent contractors. It is the view of your Committee that the exclusion of independent contractors limits the practical effect of this amendment to the protection of only the individual direct employees of the shipowner ashore and afloat. The main problem, exemplified by the decisions of the United States Supreme Court in *Robert C. Herd & Co., Inc.* v. *Krawill Machinery Corp.*, 359 U. S. 297 (1959), and of the House of Lords in *Scruttons Ltd.* v. *Midland Silicones Ltd.*, [1962] A. C. 446, is the by-passing of the Hague Rules through suits against stevedores.

10. NUCLEAR DAMAGE. (new Art. IX).

In your Committee's Report, Doc. No. 463, at page 4959, your Committee recommended approval of a proposed precautionary

amendment regarding nuclear damage. This proposal was unanimously approved at Stockholm and appears in Art. 5 of the attached draft Protocol.

11. Scope of the Hague Rules. (Art. X).

As your Committee reiterated in Doc. No. 463, at pages 4949-4950, the Rijeka Conference of September 1959, approved an amendment to the Hague Rules by the replacement of Art. X with a new article broadening the scope of the Rules. This new article is incorporated in the attached draft Protocol as Art. 6 of the Protocol.

12. Both-to-Blame.

The vote on this question at the Association's Annual Meeting last May was inconclusive. The Pineus Sub-Committee had not recommended any specific amendment but had rather declared (English text, pp. 35 and 37) that it

> "would regard it as great progress towards the unification of Maritime Law if the United States would accept and adopt the same rules about collisions as the rest of the maritime world * * *."

Our Association's delegation at Stockholm, pointing out that this subject was under study by the United States Congress, persuaded the CMI not to recommend any Hague Rules changes in this connection.

13. Rules of the Hague and Visby.

At the close of the Plenary Session, Dean van Ryn proposed, in view of the fact that the delegates were about to go to the medieval Swedish city of Visby, that the documents be solemnly signed there so that the amendment would have the name, "Visby Rules", establishing a connection with the "Rules of Visby" of the Middle Ages, and making it possible for the CMI conventions regarding carriage of goods by sea to be known collectively by the name, "Rules of The Hague and Visby".

Dean van Ryn's proposal was approved by acclamation and accepted by Mr. Pineus as President of the Swedish Maritime Law Association.

October 8, 1963.

Respectfully submitted,

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PROTOCOL OR INTERNATIONAL CONVENTION TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING SIGNED IN BRUSSELS ON THE 25TH AUGUST, 1924.

ARTICLE 1

§ 1. In Article 3, § 1 of the 1924 Convention shall be added:

"Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the Carrier has taken care to appoint one of repute as regards competence, the Carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent sub-contractor and his servants or agents) in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this proviso shall absolve the Carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid."

§ 2. In Article 3, § 4 shall be added:

"However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith."

§ 3. In Article 3, § 6, paragraph 4 is deleted and replaced by:

"In any event the carrier and the ship shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Such a period may, however, be extended should the parties concerned so agree."

§ 4. In Article 3, after paragraph 6 shall be added the following paragraph 6bis:

"Recourse actions may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has settled the claim or has been served with process in the action against himself."

ARTICLE 2

§ 1. In Article 4 of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following:

"Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading."

§ 2. In Article 4, paragraph 5, shall be added the following:

"The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case."

§ 3. Article 9 of the Convention is deleted.

ARTICLE 3

Between Articles 4 and 5 of the Convention shall be inserted the following Article 4bis:

"1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract

of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention."

ARTICLE 4

Article 9 of the Convention shall be deleted and replaced by the following:

"This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage."

ARTICLE 5

Article 10 of the Convention is deleted and replaced by the following:

"The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, of discharge or one of the optional ports of discharge, is situated in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person."

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