

DOCUMENT No. 504
MAY 1966

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE BILL OF LADING COMMITTEE

Since the 1965 Fall Meeting, there have been no developments in connection with either Letters of Indemnity or Revision of the Hague Rules, the two subjects which have been within the jurisdiction of your Committee for many years.

The Comité Maritime International has, beginning just after its September, 1965, meeting, undertaken the study of container traffic with a view to elaborating an International Convention to deal with the private law aspects of this traffic. An International Sub-Committee has been formed under the leadership of Hon. Kaj Pineus, President of the Swedish M.L.A., who was Chairman of the Sub-Committee which did the ground work on revision of the Hague Rules. Mr. Pineus prepared an informative background report and questionnaire, which our President, Mr. Nicholas J. Healy, referred to your Committee for attention.

The Pineus Report and Questionnaire have been studied by all the members of your Committee, who collaborated in the preparation of a reply. The reply consists of preliminary comments expressed personally in the name of the Chairman of your Committee so as not to bind the Association or even your Committee. As Mr. Pineus had asked that the replies from the various countries be in his hands by April 15, 1966, it was not possible to report the matter to the Association before sending in the reply.

Copies of the Pineus Report and Questionnaire and of the reply sent in the name of the Chairman of your Committee are filed herewith. These can be reproduced by the photo-offset process at a total cost of about \$300 for 2000 copies of each and your Committee raises the question whether, in view of the timeliness of this subject, the Association wishes to have these documents reproduced and mailed to all its members.

In any event, your Committee would very much appreciate receiving comments from the members of the Association related in

any way to this new subject. All comments should be sent to the Chairman of the Committee at 80 Broad Street, New York, N. Y. 10004.

Respectfully submitted,

J. EDWIN CAREY
ALBERT F. CRYSTAL
JAMES J. DONOVAN
DAVID I. GILCHRIST
HARRY L. HAEHL, JR.
WILLIAM L. HAMM
WALTER P. HICKEY

JOHN P. KIPP
HERBERT M. LORD
CYRIL F. POWERS
HENRY J. READ
LAWEY R. VILLAREAL, JR.
JOHN W. R. ZISGEN
JOHN C. MOORE, Chairman

Hon. Kaj Pineus
Skeppsbrohuset
Gothenburg C, Sweden

Containers

Dear Mr. Pineus:

Your report of December 15, 1965, document CR-1 of the Comité Maritime International, has been studied with great interest by the members of the Bill of Lading Committee of the Maritime Law Association of the United States. I understand that, in accordance with the practice of the C.M.I. in previous matters, the questions posed under Item 20 of your report are to be answered by the individuals appointed by their National Associations to be members of the Subcommittee on Containers and that the positions of the National Associations are not called for at the present time. Accordingly, my remarks regarding your report are made on my own responsibility and are not put forward as representing the views of our Association, or, indeed, the views of our Association's Bill of Lading Committee. I should add that this is a very new subject which has not been discussed in any meeting of our Association and there is, therefore, no real basis on which to guess what our Association's views would be.

With the foregoing warning, my answers to the questions which you pose are as follows:

(A) Combined transports with containers exist in the United States. A great deal of goods move in containers within our country and containers are also used to an increasing extent for shipments abroad. The containers are sometimes packed at the shippers' places of business in the interior and sometimes at consolidating stations which exist both in the interior of the country and at sea ports. For transportation within the country, either bills of lading or waybills may be used. Waybills are relatively simple documents, referring to clauses contained in tariffs. For ocean transportation bills of lading are used. Through carriers sometimes issue through bills of lading covering combined transport performed by any imaginable combination of land (truck or railroad, for instance), water (e.g. river or ocean) or air means.

In this connection, I should mention that neither my Committee nor I understand the second paragraph at page 9 of CR-1. Through bills of lading are issued covering transportation from the interior of the United States to the interior of other countries (A to D in the terminology of your report). It may be that you have in mind shipments involving rail transport in C.I.M. countries in which the through bill of lading could not validly be issued, even at A, to include transportation from C to D, since the through carrier could not legally cover in his through bill of lading rail transportation from C to D. There are no United States statutes or regulations covering "C to D" for shipments from the United States.

(B) I agree that the recent changes in international transport brought about by the use of containers call for the study of an International Convention to solve the problems involved.

(C) (1) and (2) In my opinion such a Convention should cover the transport of the container from the place where the through carrier (whether he be a rail, truck, air or ocean carrier or even a freight consolidator or forwarder not performing any actual carriage himself) undertakes responsibility to the place where the through carrier's responsibility terminates. In other words, coverage of the Convention should begin at the shipper's door or at the inland terminal or at the ocean carrier's place of loading and should end at the ocean carrier's place of discharge, at an inland terminal or at the receiver's door as the case may be.

(C) (3) The Convention should regulate the carrier's liability toward the receiver, including the question of limitation of liability.

(C) (4) It seems to me unnecessary that such a Convention should govern recourse actions by the carriers of containers and that it would be best to leave such matters to be governed by the laws of the countries in which the partway transportations are carried out. Through bills of lading have been successful without international regulation of recourse actions and I know of nothing which would make a different rule necessary or desirable for containers.

(C) (5) I see no reason to legislate with regard to the documents to be used for the combined transport of containers except perhaps to require, similar to the provisions of the Hague Rules, Article 2 of the Brussels Convention of August 25, 1924, that the container rules shall apply to every contract for the carriage of goods by container, that the through carrier shall on demand of the shipper issue a bill of lading and that the ocean carrier shall on demand of the shipper clause the bill of lading with respect to containers actually loaded on board as in Article 3 (3), (4) and (7) of the Brussels Convention of August 25, 1924.

(D) In my view the rules covering the carriage of goods by container should provide for strict liability as in the C.M.R., C.I.M. and general United States law for international transportation except where the loss or damage occurred within the scope of the Hague Rules, in which case the Hague Rules should apply.

(E) See the answer to "B".

(F) I do not think that a convention for the carriage of goods by container should concern itself with regulations such as those of Article 2:4 of the C.I.M. The C.I.M. no doubt works well in Europe but to attempt to extend it to the whole world would in my opinion make it too cumbersome. I would prefer to let the C.I.M. apply to arrangements for transportation by railroad in C.I.M. countries, let the C.M.R. apply to transportation by road in C.M.R. countries and leave other countries to work out their own solutions in their own ways.

It will be very useful and helpful if international uniformity of other aspects of the through transportation of containers, particularly with regard to government regulation of tariffs and customs procedures can be negotiated.

Although the Questionnaire does not call for comment on the definition of "container" as in Item 4 of your report at page 4, it

seems apparent that any convention ultimately to be drafted will have to contain a definition of "container." Of course, the type of container which readily comes to mind is the large box presently being standardized with a dimension of 8 feet by 8 feet by various lengths. However, in our country many other special forms of container have been developed (and we must expect that these are only a beginning). Extreme examples of special containers are a large plastic bag known as a "bin bag" which is a formless bag like a great balloon used for storing and carrying either solid or liquid material in bulk form, being large enough to hold several tons. Another special container is a framework for carrying a number of unboxed automobiles. Another type of special container is a rectangular open-top box used for the transportation of pipe.

With the foregoing thoughts in mind and trying to leave room for the future the following definition is suggested as a basis for discussion:

"For the purpose of this Convention, a container is a large, partially or completely enclosed receptacle of any shape, designed for repeated use by two or more carriers in the transportation of goods in bulk or in multiple units."

New York, N. Y., April 6, 1966.

JOHN C. MOORE

cc: Messers. Henry Voet-Génicot
17, Borzestraat
Antwerp, Belgium

