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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**BRUSSELS DIPLOMATIC CONFERENCE 1967
VISBY AMENDMENTS TO HAGUE RULES**

Attached hereto is a copy of document "CONN 33", the final document of the Brussels Diplomatic Conference of last May with regard to revision of the Hague Rules. As appears from the attached document, agreement was reached by the Diplomatic Conference on all points except the new limitation amount and the scope of applicability of the Convention.

The discussions with regard to the two questions left open were as follows:

The most important subject in connection with the Visby Amendments was the question of revision of the limitation of liability.

A. Limitation of Liability per Package, etc.

The various proposals with regard to revision of the limitation amount were as follows:

1. MAINTAIN THE "PACKAGE OR UNIT" BASIS

(a) at the Stockholm figure of 10,000 Poincaré Francs (\$663) per package or unit, or

(b) at an increased figure of limitation.

Proposals were made to increase the limitation figure to Fr. P. 15,000 (\$995) or even Fr. P. 20,000 (\$1,326) per package or unit.

2. ACCEPT A CHANGE FROM THE "PACKAGE OR UNIT" BASIS TO A "WEIGHT" BASIS (IN KILOS)

USA Amendment—Under this the limit of liability would be based solely upon the weight of the cargo lost at 25 Germinal Francs (\$8.15) per kilo. This is the same limitation as under the European Road Convention applicable to trucks.

3. ACCEPT THE COMBINATION OF THE "PACKAGE OR UNIT" BASIS WITH THE "WEIGHT" BASIS AS PROPOSED BY THE NORWEGIAN DELEGATION, OR ONE OF THE TWO VARIATIONS OF THIS SYSTEM PROPOSED BY THE UNITED STATES DELEGATION.

The results of these proposals would be as follows:

(a) *Norwegian Amendment*

Fr. P. 10,000 (\$663) per package or unit or Fr. P. 30 (\$1.98) per kilogram (about \$.90 per pound) if the weight is inserted in the Bill of Lading, whichever produces the higher limitation.

(b) *United States Amendment*

Fr. P. 15,000 (\$995) per package or unit or Fr. P. 60 (\$3.96) per kg. (about \$1.80 per pound) whichever be the higher.

(c) *United States Alternative Amendment*

Fr. P. 10,000 (\$663) per package or unit or Fr. P. 125 (\$8.27) per kg. (about \$3.75 per pound) whichever be the higher.

It was recognized that (b) and (c) had the merit of avoiding the necessity of inserting the weight in the Bill of Lading, which in the case of a Bill of Lading covering, for example, a number of separately packed component parts of machinery, might be administratively unacceptable to Shippers or their Forwarding Agents.

4. ACCEPT THE COMBINATION AS IN NO. 3 BUT WITH A "CEILING" LIMIT ON THE AMOUNT PAYABLE ON ANY ONE PACKAGED OR UNIT ON THE "WEIGHT" BASIS.

The British Delegation urged that there was need for further consultation upon this issue with all branches of the Shipping Industry, and they were supported by a number of other Delegations. Accordingly, the Conference agreed that the issue of the basis and level of limitation under the Hague Rules should be adjourned to a further Session of the Diplomatic Conference to be held at a date not later than the 29th February, 1968.

The timetable for the adjourned session agreed upon, was as follows:

(i) The Belgian Government should be invited to convene the adjourned session not later than 29th February, 1968.

(ii) Amendments already submitted should stand unless withdrawn. Any further amendments should be transmitted to the Belgian Government not later than 14th October, 1967. The Belgian Government should be requested to circulate such amendments not later than 1st November, 1967.

(iii) Any further proposed amendments should be submitted to the Belgian Government not later than 30th November, 1967.

(iv) The Belgian Government should be requested to circulate any such further amendments not later than 14th December, 1967.

B. Scope of Application

The Brussels Convention of 1924 applies only outward from Hague Rules countries. The United States Carriage of Goods by Sea Act, and the Belgian and Japanese enactments of the Hague Rules also make the Hague Rules applicable to shipments from non-contracting states to the United States, Belgium and Japan, respectively.

There was very substantial sentiment in support of the Rijeka Proposal, incorporated in the Stockholm draft, which would make the Hague Rules applicable both outward and inward and even to shipments from non-contracting states where one of the optional ports of discharge is not a contracting state.

At the Conference some delegations, lead by the Dutch, pressed to have the scope of application broadened to include even shipments between non-contracting states carried on vessels of the flags of contracting states. This proposal was decisively defeated.

However, the British delegation and some others had reservations as to the desirability of making the Hague Rules applicable to transportation from a non-contracting state to a contracting state. The objection was on the basis that it might be thought to be a presumptuous interference into the affairs of the non-contracting state where the contract of transportation is made. The British stated that they absolutely could not at that time agree to the Stockholm proposal as it stood. In view of the fact that agreement had already

been made to defer the limitation amount to an adjourned session it was agreed to defer the question of the scope of application also.

The United States delegation consisted of:

CARL C. DAVIS, General Counsel,
United States Maritime Administration,
Chief Delegate,

ALLAN MENDELSSOHN, Legal Advisor,
Office of Maritime Affairs of The United States
Department of State and

EDWARD C. SCHMELTZER, Managing Director,
Federal Maritime Commission.

The Delegation was accompanied by:

ARTHUR M. BOAL,
J. EDWIN CAREY,
JOHN J. FOLEY,
PEIDER KÖNZ,
JOHN C. MOORE and
BENJAMIN W. YANCEY,
Advisors.

**FINAL DRAFT OF THE PROTOCOL
TO AMEND THE
INTERNATIONAL CONVENTION
FOR THE UNIFICATION OF
CERTAIN RULES OF LAW
RELATING TO BILLS OF LADING.
SIGNED AT BRUSSELS, ON 25th AUGUST 1924**

Article 1

Paragraph 1. In Article 3, paragraph 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”.

Paragraph 2. In Article 3, paragraph 6, paragraph 4 shall be deleted and replaced by:

“Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.”

Paragraph 3. In Article 3 after paragraph 6 shall be added the following paragraph 6bis:

“An indemnity against a third person 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 not be less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself”.

Article 2

(Paragraph 1. Discussion of this paragraph has been postponed.)

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

“The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case”.

Paragraph 3. In Article 4, paragraph 5, shall be added the following:

“Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result”.

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”.

“4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this

Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result”.

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 governing liability for nuclear damage”.

Article 5

Article 10 of the Convention shall be deleted and replaced by the following:

(Discussion of this Article has been postponed.)

FINAL CLAUSES

(Discussion of these clauses has been postponed.)

