

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**SPECIAL REPORT OF THE BILL
OF LADING COMMITTEE**

Submitted with this Special Report is a copy of the Report of the Sub-Committee on Containers of the Comité Maritime International, Document CR-32 of July, 1968, attached to which is a copy of a proposed multilateral convention covering combined transport prepared by the Sub-Committee.

Although the preparation of such a convention was made desirable by the recent growth in the use of containers, it will be noted that the proposed convention is not limited to container transportation so that it may be availed of for transportation by conventional means and any other means, including palletized and pre-slung loads, lighters aboard ships and any means which may be devised in the future.

It will be noted that the proposed convention is not compulsorily applicable, since merely by avoiding the use of the heading "Combined Transport Bill of Lading" (Art. 1 (a) (iii)) the Convention would be made inapplicable. Thus conventional through bill of lading arrangements may continue to be used and other contractual methods can freely be devised. However, if the requirements for applicability of the convention are complied with, all its terms are compulsorily applicable. The intention is to create a standard system of contract protected and strengthened by law.

It will be noted that the Sub-Committee report asks for the comments of the National Association not later than November 1, 1968 so that they can be digested and distributed in preparation for the Plenary Conference of the CMI to be held at Tokyo next March/April. The Chairman of the Sub-Committee is aware that the views of our Association cannot be given until after our Fall Meeting on November 1, 1968.

It is the intention of your Committee to prepare and submit to the membership as far as possible in advance of the Fall meeting draft views of the Association, with your Committee's recommenda-

tions with respect thereto. For the assistance of your Committee in doing so, the comments of all the members are earnestly solicited. These should be submitted in writing to the chairman of your Committee at 80 Broad Street, New York, N. Y. 10004, *to reach him not later than September 15, 1968.*

Respectfully submitted,

For The Bill of Lading Committee,

JOHN C. MOORE

Chairman.

July 29, 1968

COMITE MARITIME INTERNATIONAL

International Subcommittee "Containers"

Draft Convention on Combined Transports

The International Subcommittee met in Brussels on June 10th and 11th 1968 and agreed on a Draft Convention embodying the principles of the Network Draft System.

The applicability of the Draft as agreed upon appears from Article 1, the minimum requirements for the documents to be issued from Article 5. The Network System is embodied in Article 11 and the liability of the CTO in other cases in Articles 7 to 10.

As the Draft in its present shape is intended not to come into conflict with any other Convention the Subcommittee decided to strike out the superseding Article appearing in the previous Drafts. Whether in the jurisdiction Article (nr 12), paragraphs 2 to 5 may come into conflict with other Conventions the Subcommittee had not the time to investigate fully. It might perhaps be possible to dispense with these paragraphs in Article 12. This the National Associations will no doubt consider in their replies.

The drafting of the text according to the principles accepted had in some cases to be done after the International Subcommittee had closed its session. To implement the decisions taken a renumbering of some Articles has proved necessary.

The International Subcommittee decided to ask the National Associations to submit their views on the Draft not later than November 1st 1968.

The answers should be sent to the Administration Secretariat of the CMI: Henry Voet Genicot, 17, Borzestraat, 17, Antwerpen.

In order to allow a synopsis of the comments to be prepared I should much appreciate to have a copy of them sent to my address: Skeppsbrohuset, 411 18 Gothenburg, Sweden.

For the International Subcommittee
KAJ PINEUS
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Chairman

Appendix 1 to
Document No. 529

**Draft Convention on
International Combined Transports**

(Draft No. 9)

ARTICLE 1

In this Convention the following words are employed with the meaning set out below:

- (a) "Combined Transport Operator" (CTO) means a person concluding a contract of International Combined Transport with a consignor.
- (b) "Contract of International Combined Transport" means a contract for the carriage of goods between two countries by at least two modes of transport of which one is by sea and at least one is not and in respect of which contract the CTO:
 - (i) undertakes to perform or to procure the performance of the entire transport;
 - (ii) assumes liability for the whole transport as prescribed in this Convention;

(iii) and issues a document called Combined Transport Bill of Lading (CT Bill of Lading).

Short range moving of the goods of an auxiliary nature does not for the purpose of this Convention constitute a separate mode of transport.

- (c) "Person" includes any corporation, company or legal entity.
- (d) "Franc" means a unit consisting of 65.5 mgs of gold of millesimal fineness 900.

ARTICLE 2

(1) The provisions of this Convention shall apply to every CT Bill of Lading relating the carriage of goods between places in two different States if:

- (a) the CT Bill of Lading is issued in a contracting State, or
- (b) the carriage is from a place in a contracting State, or
- (c) the contract contained in or evidenced by the CT Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the means of transports, the CTO, the consignor, the consignee or any other interested person.

Each contracting State shall apply the provisions of this Convention to the CT Bill of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to CT Bills of Lading not included in the preceding paragraphs.

(2) This Convention shall, however, not apply to carriage performed under the terms of any International Postal Convention, to furniture removal and to transport of livestock or of nuclear substances.

ARTICLE 3

For the purpose of this Convention and subject to the provisions in Article 7 and 8, the CTO shall be responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the Contract of International Combined Transport, when such agents, servants or other persons are acting within the scope of their employment.

ARTICLE 4

(1) The defences and limits of liability provided for in this Convention shall apply in any action against the CTO for loss of or damage to the goods covered by a contract of International Combined Transport whether the action be founded in contract or in tort.

(2) If such an action is brought against a person referred to in Article 3, such person shall be entitled to avail himself of the defences and limits of liability which the CTO is entitled to invoke under this Convention.

However, if it is proved that the loss or damage resulted from an act or omission of such person done with the intent to cause damage or recklessly and with knowledge that damage would probably result, such person shall not be entitled to the benefit of limitation of liability provided for in this Convention.

ARTICLE 5

(1) When the goods have been received into the charge of the CTO or any other person mentioned in Article 3, the CTO issues to the consignor a CT Bill of Lading, which shall among other things contain the following data:

- (a) the heading "Combined Transport Bill of Lading";
- (b) the name and address of the CTO;
- (c) the date and place of issue;
- (d) the place at which the goods are taken in charge and the place designated for delivery by the CTO;
- (e) the leading marks necessary for identification of the goods or the containers as the same are furnished in writing by the consignor before such goods or containers are taken in charge, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the containers, cases or coverings in which such goods are packed, in such a manner as should ordinarily remain legible until the end of the transport;
- (f) either the number of containers, packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the consignor;
- (g) the apparent order and condition of the goods if uncovered, or of the containers, cases or coverings in which such goods are packed;

- (h) a statement that the contract as evidenced in the CT Bill of Lading is subject, notwithstanding any clauses or stipulations to the contrary, to the provisions of this Convention.

Provided that the CTO shall not be bound to state or show in the CT Bill of Lading any 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.

(2) The consignor shall be deemed to have guaranteed to the CTO the accuracy, at the time of receipt of the goods, of the marks, number, quantity and weight, as furnished by him, and the consignor shall indemnify the CTO against all loss, damage and expenses arising or resulting from inaccuracies in such particulars. The right of the CTO to such indemnity shall in no way limit his responsibility and liability under the Contract of International Combined Transport to any person other than the consignor.

ARTICLE 6

(1) The CT Bill of Lading shall be prima facie evidence of the receipt by the CTO of the goods as therein described in accordance with Article 5. However, proof to the contrary shall not be admissible when the CT Bill of Lading has been transferred to a third party acting in good faith.

(2) Except as provided for in this Convention, the CT Bill of Lading shall be governed by the rules of the applicable national law relating to negotiable maritime Bills of Lading.

ARTICLE 7

(1) The CTO shall be liable for loss of or damage to the goods occurring between the time when he receives the goods into his charge and the time when he delivers the goods at the place designated for delivery by the CTO.

The CTO shall, however, be relieved of liability for any loss or damage if it can be proved that such loss or damage:

- (a) arose or resulted from any cause or event which the CTO could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence; or

- (b) occurred during carriage by sea or inland waterways and arose or resulted from either fire (unless caused by actual fault or privity of the carrier by sea or inland waterways) or act, neglect or default of the master, mariner, pilot or the servants of the carrier by sea or inland waterways in the navigation or in the management of the ship.
- (2) (a) When the CTO is liable for compensation in respect of loss of or damage to the goods, such compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the consignee in accordance with the contract or should have been so delivered;
- (b) the value of the goods shall be fixed according to the commodity exchange price or, if there be no such price, according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality;
 - (c) compensation shall not, however, exceed . . . francs per kilo of gross weight of the goods lost or damaged;
 - (d) the CTO shall not be entitled to the benefit of the limitation of liability provided for in (c) of this Article if it is proved that the loss or damage resulted from an act or omission of the CTO done with intent to cause damage or recklessly and with knowledge that damage would probably result;
 - (e) higher compensation may only be claimed when the consignor has, against payment of a surcharge to be agreed upon, declared in the CT Bill of Lading a value for the goods exceeding the limit laid down in the provision in (c) of this Article. In that case the amount of the declared value shall be substituted for that limit.

ARTICLE 8

Unless notice of loss of or damage to the goods and the general nature of it be given in writing to the CTO or the persons referred to in Article 3 at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the CT Bill of Lading or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the CTO of the goods as described in the CT Bill of Lading.

ARTICLE 9

The CTO shall be discharged of all liability whatsoever unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

This period may, however, be extended if the parties so agree after the cause of action has arisen.

ARTICLE 10

Recourse actions by the CTO against such person may be brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall not be less than one year commencing from the day after the expiration of the one year period set out in Article 9.

ARTICLE 11

Notwithstanding anything provided for in Articles 7-10, if it can be proved where the loss or damage occurred the CTO and the claimant shall, as to the nature and the extent of the liability of the CTO, be entitled to invoke such laws and regulations of a mandatory nature, which would have applied had the claimant made a separate and direct contract with the CTO in respect of the particular stage of the transport, where the loss or damage occurred.

ARTICLE 12

(1) In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any Court or Tribunal of a contracting state designated by agreement between the parties and, in addition, in the Courts or Tribunals of a state within whose territory:

- (a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or
- (b) the place where the goods were taken over by the CTO or the place designated for delivery is situated.

Actions under this Convention may not be brought in any other Courts or Tribunals.

(2) Where in respect of a claim referred to in paragraph 1) of this Article an action is pending before a Court or Tribunal com-

petent under that paragraph, or wherein respect of such a claim a judgment has been entered by such a Court or Tribunal no new action shall be started between the same parties on the same grounds unless the judgment of the Court or Tribunal before which the first action was brought is not enforceable in the state in which the fresh proceedings are brought.

(3) When a judgment entered by a Court or Tribunal of a contracting state in any such action as is referred to in paragraph 1) of this Article has become enforceable in that state, it shall also become enforceable in each of the other contracting states, as soon as the formalities required in the state concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

(4) The provisions of paragraph 3) of this Article shall apply to judgments after trial, judgments by default and settlements confirmed by an order of the Court, but shall not apply to interim judgments or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

(5) Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting states resident or having their place of business in one of those states.

ARTICLE 13

(1) Stipulations which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The CTO shall, however, be at liberty to increase his responsibilities and obligations under this Convention.

(2) Nothing in this Convention shall affect the rights and liabilities of vessel and cargo in General Average.

FINAL CLAUSES