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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES
SPECIAL REPORT OF THE COMMITTEE
ON BILLS OF LADING

The "Tokyo Rules", or Draft Convention on Combined Transports, agreed upon at the XXVIII Conference of the Comité Maritime International in Tokyo on March 30 to April 5, 1969 has been the subject of careful discussion between representatives of the CMI and Unidroit. The result of these discussions is a new draft convention on this subject, named the "TCM Convention" (the name is made from the initials of its French language title, "Transport Combiné Marchandise"). Its authors have submitted it to the Belgian Government, requesting that it be made the subject of a Diplomatic Conference, probably in 1971.

A copy of the draft is attached hereto.

This draft will be studied by your Committee, which will report with regard to it at the 1970 Annual Meeting of the Association in May. Your Committee will welcome the comments of the members, which should preferably be given to the Chairman in writing before the end of March.

March, 1970

For the Committee

John C. Moore,
Chairman

[5816]

Draft Convention on Combined Transport

Rome version January 1970

Prepared at the Round Table meeting
arranged by the Unidroit.

Article 1

1. The provisions of this Convention shall apply to every Contract of Combined Transport evidenced by a Combined Transport Document as defined in sub-paragraph 2 of this Article.

2. In this Convention "Combined Transport Document" ("CT Document") means a document bearing the heading "Combined Transport Document governed by the TCM Convention" and evidencing a contract for the carriage of goods by at least two different modes of transport where the place at which the goods are taken in charge and the place designated for delivery are situated in two States.

3. This Convention shall apply to every CT Document and to the contract evidenced thereby whatever may be the place of issue, the place at which the goods are taken in charge, the place designated for delivery, or the nationality of the combined transport operator, the consignor, the consignee or any other interested person, or the nationality of the means of transport or its place of registration.

4. In this Convention:

- (a) The "TCM Convention" means this Convention.
- (b) "Combined Transport Operator" (CTO) means a person issuing a CT Document.
- (c) "Person" includes any corporation, company or legal entity.
- (d) "Franc" means a unit consisting of 10/31 of a gram of gold millesimal fineness 900.

Article 2

1. By the issuance of a CT Document the CTO

- (a) undertakes to perform or to procure the performance of the entire transport from the place at which the goods are taken in charge to the place designated for delivery in the CT Document, and
- (b) assumes liability as prescribed in this Convention for such transport.

2. For the purposes and subject to the provisions of this Convention, the CTO shall be responsible for the acts and omissions of any person of whose services he makes use for the performance of the contract of carriage evidenced by the CT Document.

Article 3

1. The CT Document shall contain the following particulars:
 - (a) the words "Negotiable" or "Non-negotiable" ("Not-negotiable");
 - (b) The name and address of the CTO and the name of the consignor;
 - (c) the date and place of issue;
 - (d) the place at which the goods are taken in charge and the place designated for delivery;
 - (e) the description in common use of the nature of the goods and the leading marks necessary for the identification of the goods as both are furnished in writing by the consignor, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the coverings in which such goods are packed, or on unit loads, in such a manner as should ordinarily remain legible until the end of the transport;
 - (f) either the number of packages or pieces, or the quantity or the gross 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 coverings in which such goods are packed, or of the unit load;
 - (h) any declaration of value made in pursuance to paragraph 4 of Article 10
 - (i) an indication showing whether freight has been prepaid or is to be paid;
 - (j) any clause providing for jurisdiction of a court or tribunal or for arbitration agreed upon under the conditions of Articles 14 and 15;

(k) the total number of original CT Documents issued.

2. The CTO shall not be bound to include in the CT Document any description, 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. 7

3. Failure to include any or all of the particulars set out in sub-paragraph (1) above shall not affect the nature of the document as a CT Document or the validity of the contract evidenced thereby, provided that the document can be identified as a document referred to in article 1 sub-paragraph 2 of this Convention.

4. The CT Document may also contain:

- (a) the name and address of the consignee;
- (b) the mode of transport for each stage;
- (c) any other particulars which the parties may deem useful.

Article 4

The consignor shall be deemed to have guaranteed to the CTO the accuracy, at the time the goods were taken in charge by the CTO, of the description of the goods, 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 or inadequacy of such particulars. The right of the CTO to such indemnity shall in no way limit his responsibility and liability under the CT Document to any person other than the consignor.

Article 5

1. The CT Document shall be prima facie evidence of the receipt by the CTO of the goods as therein described in respect to the particulars provided for in Article 3.

2. However, proof to the contrary shall not be admissible when the CT Document is negotiable and has been transferred to a third party acting in good faith.

Article 6

1. The character and effect of the negotiability of a CT Document bearing the word "negotiable" shall be governed by the rules of the applicable national law relating to maritime Bills of Ladings, or, failing this, of the applicable national law relating to any other similar document representing title to goods.

2. If the CT Document does not bear wither the word "negotiable" or the word "non-negotiable" ("not-negotiable") it shall be deemed to be a nonnegotiable document.

Article 7

1. When the consignor hands goods of a dangerous nature to the CTO, he shall inform the CTO of the exact nature of the danger and indicate, if necessary, the precautions to be taken.

2. Goods of a dangerous nature which the CTO did not know were dangerous, may, at any time or place, be unloaded, destroyed, or rendered harmless, without compensation; further, the consignor shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

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 paragraph 2 of Article 2, 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 Document, or if the loss or damage be not apparent, within six consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the CTO of the goods as described in the CT Document,

Article 9

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 of delivery.

2. The CTO shall, however, be relieved of liability for any loss or damage if such loss or damage arose or resulted from:

- (a) The wrongful act or neglect of the consignor or the consignee.
- (b) Compliance with the instructions of the person entitled to give them.
- (c) The lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed.
- (d) Handling, loading, stowage or unloading of the goods by the consignor, the consignee or any person acting on behalf of the consignor or the consignee.
- (e) Inherent vice of the goods.
- (f) Insufficiency or inadequacy of marks or numbers on the goods, coverings, or unit loads.
- (g) Strikes or lockouts or stoppage or restraints of labour from whatever cause whether partial or general.
- (h) Any cause or event which the CTO could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.

3. Where under paragraph 2 the CTO is not under any liability in respect of some of the factors causing the loss or damage, he shall only be liable to the extent that those factors for which he is liable under this Article have contributed to the ~~loss~~ or damage.

4. The burden of proving that the loss or damage was due to one or more of the causes, or events, specified in (a), (b) and (h) of paragraph 2 shall rest upon the CTO.

When the CTO establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, or events, specified in (c) to (g) of paragraph 2, it shall be presumed that it was so caused. The claimant shall, however, be

entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

Article 10

1. 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.

2. 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.

3. Compensation shall not, however, exceed ----- francs per kilo of gross weight of the goods lost or damages.

4. Higher compensation may be claimed only when, with the consent of the CTO, the value for the goods declared by the consignor which exceeds the limits laid down in this Article has been stated in the CT Document. In that case the amount of the declared value shall be substituted for that limit.

Article 11

Notwithstanding anything provided for in the other Articles of this Convention, if it can be proved where the loss or damage occurred the CTO and the claimant shall, as to the liability of the CTO, be entitled to require such liability to be determined

- (a) by the provisions contained in any international convention or national law, which provisions
 - (i) cannot be departed from by private contract, to the detriment of the claimant, and
 - (ii) would have applied if the claimant had made a separate and direct contract with the CTO in respect of

the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply;
or

- (b) by the provisions contained in any international convention relating to the carriage of goods by the mode of transport used to carry the goods at the time when the loss or damage occurred, provided that
 - (i) no other international convention or national law would apply by virtue of the provisions contained in sub-paragraph (a) of this Article, and that
 - (ii) it is expressly stated in the CT Document that all the provisions contained in such convention shall govern the carriage of goods by such mode of transport and, where such mode of transport is by sea, such provisions shall apply to all goods whether carried on deck or under deck.
- (c) by the provisions contained in any contract of carriage entered into between the CTO and any sub-contractor, provided that
 - (i) no international convention or national law is applicable under sub-paragraph (a), or is applicable, or could have been made applicable, by express provision in accordance with sub-paragraph (b), and that
 - (ii) it is expressly stated in the CT Document that such contract provisions shall apply.]

Article 12

1. The defences and limits of liability provided for in this Convention shall apply in any action against the CTO for loss or damage to the goods whether the action be founded in contract or in tort.

2. The CTO shall not be entitled to the benefit of the limitation of liability provided for in paragraph 3 of Article 10 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.

Article 13

1. If an action for loss or damage to the goods is brought against a person referred to in paragraph 2 of Article 2, 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.

2. However, if it is proved that the loss or damage resulted from an act or omission of this person, done with 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 Article 10 paragraph 3.

3. Subject to the provisions of paragraph 4 of Article 10, of paragraph 2 of Article 12 and of paragraph 2 of this Article, the aggregate of the amounts recoverable from the CTO and the persons referred to in paragraph 2 of Article 2 shall in no case exceed the limits provided for in this Convention.

Article 14

1. In respect of all disputes arising out of the CT Document the claimant may bring proceedings, at his choice, in any court or tribunal of a contracting State designated by agreement between the parties as indicated in the CT Document or of the contract evidenced thereby or in the courts or tribunals of a State within whose territory is situated:

(a) the place where the defendant has his habitual residence or his principal place of business or the place of business through which the contract of combined transport was made, or

(b) the place where the goods were taken in charge by the CTO or the place designated for delivery.

No proceedings may be brought before other courts of tribunals.

2. Where, in respect of a dispute referred to in paragraph 1, proceedings are pending before a court or tribunal competent under that paragraph, or where in respect of such a dispute judgment has been given by such a court or tribunal, no new proceedings may be brought between the same parties on the same grounds unless the judgment of the court or tribunal before which the first proceedings were brought is not enforceable in the State in which the fresh proceedings are brought.

3. Where, in the case of dispute as referred to in paragraph 1, judgment given by a court or tribunal of a contracting State has become enforceable in that State, it shall also become enforceable in each of other contracting States, as soon as the formalities required in the State concerned have been complied with. These formalities shall not include any reexamination of the merits of the case.]

4. The provisions of paragraph 3 shall apply to judgments after trial, judgments by default and settlements confirmed by an order of the court, but shall not apply to interim decisions on preliminary points or to awards of damage, in addition to costs awarded against a claimant by reason of the total or partial rejection in his claim.]

5. Security for costs shall not be required from nationals of contracting States who have their domicile or a place of business in one of those States, in order to guarantee payment of costs arising from legal proceedings falling within the application of paragraph 1.]

Article 15

The CT Document may contain a clause conferring jurisdiction on an arbitration tribunal subject to such clause providing that the tribunal shall apply this Convention.

Article 16

1. The CTO shall be discharged of all liability under the rules of this Convention unless suit is brought within nine months after delivery of the goods. In the case of total loss of the goods, the period shall begin to run two months after the goods have been taken in charge by the CTO.

2. The period provided for in paragraph 1 may be extended if the parties so agree after the cause of action has arisen.

3. Provided the provisions of an international Convention are not contrary thereto, proceedings for recovery against third parties may be made even after the expiry of the periods prescribed for in the rules governing such proceedings, if they are brought within three months after the date in which the claimants for such recovery were themselves proceeded against.

Article 17

1. Stipulations which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such stipulations shall not involve the nullity of the other provisions of the contract of which they form part.

2. In particular, any clause assigning benefit of insurance of the goods in favour of the CTO shall be null and void.

3. Notwithstanding the provisions of paragraph 1, the CTO shall be at liberty to increase his responsibilities and obligations under this Convention.