

INTERNATIONAL MARITIME COMMITTEE

International Subcommittee

on

BILL OF LADING CLAUSES

3

COMMENTS ON REPORT OF INTERNATIONAL SUBCOMMITTEE

Dated on 30th March 1962

UNITED KINGDOM	Conn. C. 3 (amended)
GREECE	Conn. C. 17
SPAIN	Conn. C. 18
BELGIUM	Conn. C. 19

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BRITISH MARITIME LAW ASSOCIATION

BILL OF LADING CLAUSES

COMMENTS ON THE REPORT
OF THE INTERNATIONAL SUBCOMMITTEE

INTRODUCTION

It is thought appropriate to commence our comments on this Report by conveying to those responsible for drafting it our appreciation of its comprehensive and clear nature. We believe that the studies of the International Subcommittee have been most useful and that the conclusions set out in the Report will serve as a really satisfactory basis for the future work of the Comité Maritime International. In commenting on the Report we have thought it desirable to go into some detail as to the reasons for the views expressed on the various points. This has necessitated reference to some decisions by the Courts in the United Kingdom which, we hope, will not unduly weary members of other Associations.

The paragraph numbers appearing against our comments refer to those contained in the Report. As will be noted, we have also followed the pattern of the Report by dividing our comments under three headings namely, (a) Positive recommendations, (b) Other subjects examined and (c) Future action.

We should add that, although the content of the Report has received detailed study by this Association and the comments have been carefully considered, the Association reserves the right to amend these comments either before the Stockholm Conference or at the Conference itself.

(*) amendments are printed this way.

POSITIVE RECOMMENDATIONS

1) Carrier's liability for negligent loading, stowing or discharge of goods by shipper or consignee. (Article 3 (2)).

It is suggested in the Report that there is uncertainty about the extent of the carrier's liability in this paragraph. Is the carrier obliged to perform the whole operation properly and carefully or is the carrier bound to do this only to the extent that he has himself undertaken to do so.

This question was considered in *Pyrene Co. Ltd. v. Scindia Navigation Co. Ltd.* 1954 2 *Queen's Bench Division*, when it was decided that the carrier is only responsible for that part of the operations which he has undertaken to carry out. The reasoning upon which this decision was based was clearly expressed by the Judge (Devlin J., as he then was) in the following words :

« The object (of the Rules) is to define not the scope of the contract service but the terms on which that service is to be performed. The extent to which the carrier has to undertake the loading of the vessel may depend not only upon the different systems of law, but upon the custom and practice of the port and the nature of the cargo. It is difficult to believe that the Rules were intended to impose a universal rigidity in this respect, or to deny freedom of contract to the carrier. The carrier is practically bound to play some part in the loading and discharging so that both operations are naturally included in those covered by the contract of carriage. But I see no reason why the Rules should not leave the parties free to determine by their own contract the part which each has to play. On this view, the whole contract of carriage is subject to the Rules, but the extent to which loading and discharging are brought within the carrier's obligations is left to the parties themselves to determine ».

This interpretation of the Act was subsequently approved in a decision of the House of Lords given in 1956 (*G. H. Renton & Co. Ltd. v. Palmyra Trading Corporation*), and it may, therefore, be accepted that under English law, the carrier is not *obliged* to perform the operation of loading and discharging, but that, if he does undertake so to do, his liability is regulated by the Act.

In view of the fact that English law is clear on this point, the Association does not feel very strongly about the amendment which is proposed by the International Subcommittee. Nevertheless, it appreciates that, as there is uncertainty in some countries about the meaning of the paragraph as at present appearing in the Hague Rules, it is desirable in the interests of international uniformity, to attempt to clarify the matter by suitable amendment.

2) Notice of Claim (Article 3 (6), first paragraph).

As is indicated in the Report, the three-day period for notice of claim is of varying importance in different countries.

In England, whether notice is given or not, the onus of proving loss or damage always lies upon the claimant. But in some countries it appears that, provided notice of claim is lodged within three days, the carrier is presumed to have been at fault, i.e. the burden of disproving loss or damage is on the carrier.

In these circumstances it will be appreciated that the point is of somewhat academic interest in this country. Nevertheless, the Association takes no objection to the words recommended as an amendment to this sub-paragraph.

3) Time limit in respect of claims for wrong delivery. (Article 3 (6) third paragraph).

The question raised in the Report is whether the expression « loss or damage » in this paragraph covers liability for wrong delivery and thus entitles the carrier to limit liability under the Rules. As far as the law of the United Kingdom is concerned, a distinction is drawn between the negligent performance of a contract and a fundamental breach which goes to the root of the contract. In the former case the carrier is liable, even though the goods have suffered no physical loss or damage (see *Anglo-Saxon Petroleum Co. Ltd. v. Adamastos Shipping Co. Ltd.* 1957 1 L.L.R.) but such liability is limited under the Rules and the claim against him is time barred after one year. In the latter case the carrier might well lose the protection of all the exceptions under the Rules, including the time limit and he remains liable in full within the 6 year period of our Statute of Limitations (*Spurling v. Bradshawe* 1956 1 W.L.R. 461).

The Association supports the view expressed in the Report that the Convention should contain a rule laying down that a time limit should operate in respect of claims based upon wrong delivery. This would allow consignees, who have received goods with out producing bills of lading, to obtain Bank guarantees for a fixed (and probably shorter) period. It is not, however, considered desirable that varying time limits should be introduced, i.e. one year in the case of loss or damage and two years in the case of wrong delivery. It is also considered important that any amendment should be without prejudice to the provisions of the Gold Clause Agreement. In these circumstances the Association wishes to suggest a text different to that appearing on page 19 of the Report and which is as follows :

Article III (6).

(a) Unless notice of loss of or damage to or non-delivery of goods and the general nature of such loss, damage or non-delivery be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss, damage or non-delivery be not apparent, within three days, such removal shall be prima facie evidence of delivery by the Carrier of the goods as described in the Bill of Lading.

Notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

(b) The Carrier and the ship shall, subject to the provisions of sub-paragraph (c) of this paragraph, be discharged from all liability resulting from loss of or damage to or non-delivery of goods unless suit is brought within one year of the date on which the goods were delivered or should have been delivered.

In the case of any actual or apprehended loss, damage or non-delivery the Carrier and the receiver shall give reasonable facilities to each other for inspecting and tallying the goods.

(c) The time for bringing suit will be extended by the Carrier for a further year beyond the period of one year laid down in sub-paragraph (b) above upon the request of any party representing the Cargo (whether made before or after the expiry of the said one year period) unless :

(i) notice of claim with the best particulars available has not been given within the period of one year,

or (ii) there has been undue delay on the part of Consignees, Receivers or Underwriters in obtaining the relevant information and formulating the claim.

4) Gold Clause (Article IV (5) and IX).

The effect of the proposed amendment is to clarify this question by adopting the Poincare franc as the basis for the limitation figure, as was done in the Passenger and Nuclear Conventions. The sterling equivalent is about £ 235. The Association supports the recommendation which will avoid past uncertainty in this sphere.

5) Liability in Tort.

In the recent case of *Midland Silicones Ltd. v. Scruttons Ltd.* (1961) 2 Lloyd's List Law Reports, certain stevedores, who by their admitted negligence had damaged a valuable package of goods during discharge in the Port of London, sought to limit their liability to the

sum of \$ 500, upon the ground that the Bill of Lading was subject to the U.S. Carriage of Goods by Sea Act 1936 (the Act incorporating the Brussels Convention 1924). It was held that the stevedores could not rely upon this provision, because English law knows nothing of a « jus quaesitum tertio » arising by way of contract, and consequently one who is not a party to a contract can derive no benefit from it. The Court of Appeal had earlier arrived at a similar decision in the case of *Adler v. Dickson and Another* 1954 2 Lloyd's List Law Reports, in which it was decided that the Master and Boatswain of a ship who had injured a passenger by their negligence were not entitled to rely upon a clause in a passenger ticket which exempted the Ship-owners from liability for negligence.

The Association fully supports the principle behind this recommendation. It must, however, be stressed that merely to amend the Hague Rules in the manner suggested would not, so far as the law in the United Kingdom is concerned achieve the object of the amendment, namely to give that protection to servants, agents and independent contractors as is at present afforded to carriers under Article 4 of the Rules. As has already been mentioned (see the Midland Silicones case quoted above) a person who is not a party to a contract cannot derive any benefit under such contract. Consequently whatever provision may be inserted in the Rules to protect servants etc. this in itself will be of no avail without a supplementary provision (possibly by way of a specific Section in an Act of Parliament) which lays down that servants, agents and independent contractors may, notwithstanding that they are not parties to the Contract of Carriage, benefit from the defences and limits of liability set out in such contract. Apart from this consideration, *the Association has come to the conclusion that it cannot support the proposal that independent contractors should also be brought within the sphere of protection afforded in the Hague Rules. It, therefore, wishes to be associated with the minority view expressed in paragraph 3 of page 33 of the Report.*

6) Nuclear damage.

The Association supports this recommendation.

7) Both to Blame.

The Association supports this recommendation.

OUTWARD BILLS OF LADING — ARTICLE X

Apart from the recommendations made in paragraphs 1 to 7 of the Report, note has been taken of the Resolution adopted at Rijeka in 1959 regarding the amendment of Article X of the Rules, as mentioned in the Report on pages 5 and 6.

As at present drafted the provisions of the Convention apply only to Bills of Lading issued in any of the Contracting States i.e. to « outward » Bills of Lading.

Under the United Kingdom Carriage of Goods by Sea Act, therefore, the provisions apply only to Bills of Lading relating to the carriage of goods from any port in the United Kingdom. The Act does not apply to the carriage of goods from any port outside the U.K. to any other port whether in or outside the U.K.

This has given rise to a conflict of judicial opinion as to the position when goods are shipped from a port outside the U.K., in a country which is a Contracting State to the Hague Rules, to a port within the U.K., but the Bill of Lading, contrary to the law of the country of origin of the contract of affreightment does not contain an express provision that it is subject to the rules of the Convention.

In the « *TORNI* » 1932 p. 78, Bills of Lading issued in Palestine for carriage of goods to England did not incorporate the Hague Rules, though Palestinian law required that they should. They did, however, contain a provision that they were to be construed according to English law. The Court of Appeal held that the Bill of Lading should be interpreted as if Palestinian law had been complied with. In *Vita Food Products v. Unus Shipping Co.* 1939 page 277 Appeal Cases, the Privy Council came to an opposite decision in a similar case. This conflict cannot be resolved until a similar case comes before the House of Lords or unless the Carriage of Goods by Sea Act is amended to apply to both inward and outward Bills of Lading in the manner recommended by the amendment to Article X.

In these circumstances, the Association confirms that, in its view, the Article should be amended as proposed.

OTHER SUBJECTS EXAMINED

8) Unseaworthiness and deck cargo (Article 1 (c) and Article III (1)).

It was strenuously urged by the cargo interests represented in the Association that carriers should assume a limited measure of liability for loss of or damage to cargo carried on deck. This proposition was accepted and, in the result, the Association desires to propose that consideration be given to the adoption of an amendment on the following lines :

« In respect of cargo which by the contract of carriage is stated as being carried on deck and is so carried, all risks of loss or damage arising or resulting from perils inherent in or incident to such carriage shall be borne by the Shipper and/or Consignee but in other respects the custody and carriage of such cargo shall be governed by the terms of this Convention ».

NOTE

The above amendment would be inserted as a new paragraph 7 to Article IV.

Article I (c) would be amended by deleting all words after the words « except live animals » appearing in the existing text.

9) Liability before loading and after discharge (Article 1 (e) and Article VII).

Whilst appreciating the difficulties of clarifying the point raised under subparagraph (b) of the Report, it is thought by some members that *whilst it would not be appropriate to discuss the matter at the Stockholm Conference, further consideration should be given to evolving a clear definition of the period of the carrier's liability.*

11) Due diligence to make ship seaworthy (Article III(1) and IV (1)).

The Association is of the view that since the decision in the « Muncaster Castle », the burden of liability resting upon Shipowners is unreasonably heavy. In these circumstances it is thought that further serious efforts should be made to reach agreement on an amendment which, while lessening the Shipowners' present liability, would constitute a fair compromise with cargo owners. With this in mind the Association tentatively suggests that Article III (1) should be amended somewhat as follows :

« 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 provision 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 ».

Note

The Association is of the view that the position of this paragraph in the Rules is a matter of drafting. Most members think that it would be most appropriate for it to appear directly after sub-paragraph (c) of Article III (1).

12) Received for Shipment Bills of Lading (Article III (3) and (7)).

The Association is inclined to accept the decision reached in this matter. Nevertheless it would ask for further time to consider the point.

17) Invoice Value Clause (Article III (8)).

There exists support within the Association that this subject should be further considered. Furthermore, it should be mentioned that certain members are of the view that the market value of the goods should be the basis for calculating liability and that no choice should be given to carriers as under the « alternative » type of clause set out in subparagraph (b) of the Report. *It is felt that this question should not be raised at the Stockholm Conference but that it should be the subject of discussion thereafter.*

FUTURE ACTION

In view of the comments which have been made above, it will be understood that the Association believes that there are a number of points upon which the Hague Rules could usefully be amended and which would give justice to both cargo and Shipowners. In these circumstances the Association supports the general principle that steps should be taken to implement such amendments.

But we feel strongly that the manner in which this is done should be somewhat as follows :

1) When the amendments have been settled within the C.M.I. a Diplomatic Conference should be called and which should be restricted to delegates from those countries which have signed and ratified the Hague Rules or which have taken positive steps so to do.

2) The amendments should be incorporated into a Protocol to the Hague Rules, thus avoiding the amendment of the Rules as a whole.

30th April 1963

ASSOCIATION HELLENIQUE DE DROIT MARITIME

CLAUSES DE CONNAISSEMENT

L'Association Hellénique a examiné, à plusieurs reprises, le projet de revision des clauses de connaissance, rédigé par le Comité sous la présidence de M. K. Pineus.

Notre Association désire, avant tout, rendre hommage à l'excellent travail que la Sous-Commission Pineus a pu effectuer sur ce sujet si important, malgré les grandes difficultés qu'elle avait à surmonter.

Avant d'exprimer les thèses de notre Association sur les « Recommandations positives » de la Commission Pineus, nous voudrions dire, une fois de plus, que l'avis unanime de notre Association est de procéder à la révision des clauses sur le connaissance, de façon à ne pas mettre en péril l'uniformité acquise sur ce sujet après tant d'efforts et de grandes difficultés, c'est-à-dire, à ne pas adopter de nouvelles clauses qui risqueraient de ne pas être admises par les Etats qui ont, jusqu'à présent, inséré dans leur Droit National les règles de La Haye.

Remarques sur les « Recommandations Positives » :

1. Notre Association est entièrement d'accord avec les propositions de la Commission relativement à la responsabilité du transporteur pour le chargement, etc..., effectué par le chargeur ou le destinataire.

2. En ce qui concerne l'amendement proposé de l'Article III (6) § 1^{er}, notre Association croit que le libellé n'est pas assez clair. La sanction — en cas de réclamation tardive — doit être clairement énoncée, c'est-à-dire, il faut, à notre avis, appliquer les deux solutions possibles, à savoir :

Spécifier exactement en quoi consiste cette sanction, et surtout préciser la différence à la charge des preuves en cas d'une réclamation tardive et celle faite en temps dû.

Si cela n'est pas fait comme exposé ci-haut, la sanction ne sera pas effective.

3. En ce qui concerne la prescription en cas de livraison à des personnes erronées, Article III (6) § 3, nous vous prions de noter que notre Association estime que l'extension du temps de la prescription à deux ans, à partir de la date du connaissance, ne pourrait être

acceptée que dans le cas seulement où la livraison de la totalité de la marchandise serait effectuée à une personne erronée.

4. *Clause or :*

Notre Association n'a aucune objection à accepter le franc Poincaré comme unité, mais vous prie de bien vouloir noter qu'elle désire voir limitée la responsabilité à 5.000 francs par colis ou unité.

5. Notre Association est d'accord avec les propositions mentionnées dans les Articles 5, 6 et 7.

Nous estimons que le Comité Maritime International doit poursuivre ses Travaux sur les points qui sont marqués dans le rapport de la Sous-Commission Pineus, et qui n'ont pas fait l'objet d'une « recommandation positive », et parmi lesquels il y a quelques-uns qui sont d'une importance primordiale.

Avril, 1963

SPANISH MARITIME LAW ASSOCIATION

REVISION
OF THE 1924 BRUSSELS CONVENTION
ON BILLS OF LADING

1. Carrier's liability for negligent loading, stowing or discharge of goods by shipper or consignee. (Article 3 (2)).

Taking into account that the present wording of this rule, in relation with the rest of the articles of the Convention, is sufficiently concrete as to entail the carrier with the responsibilities arising from the transportation which terminate on delivery of the goods to the consignee, with regard to the operations that this rule indicates, to the fact that these operations are not carried out by shippers or receivers, the addition proposed is not considered advisable since it would give rise not only to the carrier completely ignoring his responsibility for these operations, in those cases where they take place before delivery to the consignee, but for the bona fide holder of the bill of lading would create one conflict more for the adequate efficiency of his possible claims.

In view of the above, this Association supports the minority of the Subcommittee which prefers to maintain the « statu quo » on this point.

2. Notice of Claim (Article 3 (6), first paragraph).

This Association considers that the present text of the Convention on this matter is sufficiently clear and self-explanatory. But however, there is no objection to accepting the proposed amendment because in conclusion it does not change the present efficiency of the Convention text.

It is desirable in every case that national legislations in general should adapt themselves better to the Convention, something which lies outside of this class of amendments.

3. Time limit in respect of claims for wrong delivery. (Article 3 (6) third paragraph).

This Association considers it advisable to support the minority of the Subcommittee which has not deemed it advantageous to introduce into the Convention the extension of the proposed time limit in the case of wrong delivery.

4. Gold Clause, Type of Exchange, Limitation Unit (Article 4, (5) and 9).

This Association considers it pertinent to support the majority of the Subcommittee, with respect to the recommended amendment on this matter, that is :

1. Complete suppression of Article 9.

2. Modification of ordinance 5 of Article 4, with the resultant wording as follows :

« Neither the carrier nor the ship will, in any case, be responsible for losses or damages caused to the goods or affecting them for an amount *above the equivalent of 10,000 Poincaré francs per package of usual freight unit, each franc being made up of 65.5 milligrams of gold of millesimal fineness 900*, unless the character and value of these goods have been declared by the shipper before their loading and that this declaration has been included in the bill of lading. »

3. Complete maintenance of the second, third and fourth paragraphs of the same ordinance, thus excluding the final addition proposed by the Subcommittee to the last paragraph, relative to the date of conversion into national money, which it hands back to the ruling money, which it hand back to the ruling of the Tribunal viewing the case.

As can be appreciated, this Association considers it more advisable to use, before the word « unit », the expression « usual freight », which would permit greater facility in the solution of each concrete case.

5. Liability in Tort. The « Himalaya » problem.

Subject to maintaining an open position at the moment of amply discussing this question in the Stockholm Conference, this Association considers that in principle it is not advisable to introduce the reform which the Subcommittee has proposed on this much-mentioned matter, since the Convention being expressly directed to regulating the contractual relations arising from the transportation contract under bill of lading, the presence of regulations relative to extra-contractual responsibilities does not seem to fit therein.

6. Nuclear damage.

This Association supports the proposal of the Subcommittee on this point.

7. Both to Blame.

This Association considers it should support the proposal of the Subcommittee on this matter.

April, 1963

ASSOCIATION BELGE DE DROIT MARITIME

**OBSERVATIONS AU SUJET DU RAPPORT
DE LA COMMISSION INTERNATIONALE
DES CLAUSES DE CONNAISSEMENT**

L'Association Belge tient à exprimer tout d'abord sa reconnaissance et son admiration à la Commission Internationale ainsi qu'à son président, M. Pineus, pour l'excellent travail dont le Rapport de la Commission traduit les substantielles conclusions.

Avant d'aborder l'examen des recommandations positives de la Commission Internationale, l'Association Belge croit devoir signaler, en ce qui concerne la proposition de révision de l'article 10, qu'elle adopte pour sa part la suggestion très judicieuse faite par l'Association Finlandaise dans ses observations.

D'autre part, la rédaction française du nouvel article 10 devrait être soigneusement revue car dans son texte actuel, les mots introduits par l'expression « sous l'empire duquel » paraissent se rapporter à l'Etat dont il est question immédiatement auparavant.

Examen des recommandations positives.

1. L'Association Belge ne croit pas pouvoir appuyer cette recommandation. L'allègement du transporteur que cette recommandation tend à réaliser paraît difficilement justifiable. Elle est de nature à diminuer notablement la valeur du connaissement aux mains des tiers-porteurs et risque de provoquer une rupture grave de l'équilibre établi en 1924.

La disposition proposée ne pourrait se comprendre que si elle permettait au charguer et à lui seul de faire figurer dans le connaissement une clause ayant la portée indiquée dans le texte.

A titre subsidiaire, l'Association Belge estime que la rédaction actuelle du texte proposé, est manifestement défectueuse puisque le membre de phrase ajouté paraît concerner toutes les obligations du transporteur et non pas seulement le chargement et le déchargement.

2. L'Association Belge considère, comme la Commission Internationale, que la situation actuelle n'est pas satisfaisante mais elle

ne croit pas pouvoir se rallier à la modification proposée. Il lui paraît préférable de décider, comme semble le faire la jurisprudence dominante en Belgique et en France, que le réceptionnaire négligent, qui n'a pas notifié en temps utile un avis écrit au sujet des pertes et dommages, sera obligé de prouver non seulement que les marchandises délivrées n'étaient pas conformes, mais aussi la faute du transporteur, il semble raisonnable, en effet, de ne pas maintenir au profit du réceptionnaire négligent la présomption de responsabilité qui pèse sur le transporteur jusqu'à la réception des marchandises. Il en est d'autant plus ainsi que cette négligence du destinataire est de nature à rendre beaucoup plus malaisée pour le transporteur la preuve contraire par laquelle il devrait renverser la présomption qui pèse sur lui.

3. Une erreur paraît s'être glissée dans l'intitulé de cette recommandation, qui concerne en réalité l'article 3 (VI) 4 (et non 3).

L'Association Belge est d'accord au sujet du principe de cette recommandation. Il lui paraît également judicieux d'ajouter, comme l'a proposé la minorité de la Commission, à la deuxième ligne du paragraphe dont il s'agit, les mots « ou non délivrance ».

L'Association Belge propose toutefois de rédiger comme suit le texte à insérer « Ce délai est porté à 2 ans, à compter de la date du connaissance lorsque la délivrance a été faite à une personne qui n'y avait pas droit ».

4. L'Association Belge est d'accord sur cette recommandation sous réserve de la proposition qui concerne la date à laquelle se fera la conversion en monnaie nationale. Il lui paraît souhaitable que cette date soit fixée par la Convention elle-même et que la date choisie soit celle du paiement effectif.

D'autre part, l'Association Belge constate néanmoins avec regret que le maintien du statu quo en ce qui concerne les mots « colis ou unité » risque de laisser sans solution les difficultés auxquelles cette expression a donné lieu notamment dans le cas de marchandises volumineuses et de grande valeur, qui ne constituent, grammaticalement parlant, qu'un seul colis ou une seule unité. Aussi est-elle disposée à s'associer à toute nouvelle tentative pour remédier à cette situation.

5. L'Association Belge est d'accord en principe sur les quatre alinéas du nouvel article proposé par la Commission Internationale, sous réserve d'en amender quelque peu la rédaction.

Toutefois, elle se réserve de se prononcer ultérieurement sur le problème des personnes appelées à bénéficier des paragraphes 2 et 3 du nouvel article.

L'Association Belge est également d'accord au sujet de l'insertion à l'article 4 d'une nouvelle disposition, qui porte le n° 7, et qui concerne le cas du dol ou de la faute lourde du transporteur lui-même. La rédaction de cet article, comme celle d'ailleurs du 4 du nouvel article

mentionné ci-dessus, devrait être mise en rapport avec les termes employés à propos des mêmes questions par la Convention de Varsovie.

L'Association Belge n'est pas disposée à appuyer les réserves exprimées par certains membres et qui sont relatées sous les numéros 1 et 2, à la page 30 du rapport.

L'Association Belge n'a aucune observation à faire au sujet de ces deux recommandations.

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Autres sujets examinés par la Commission Internationale.

N° 8, N° 9, N° 10. L'Association Belge est d'accord au sujet des conclusions du rapport sur ces trois points.

N° 11. L'Association Belge ayant pris connaissance du compte rendu de l'enquête à laquelle a procédé M. Jean Van Ryn constate que l'opinion consacrée aux Etats-Unis et à laquelle vient se rallier également la Chambre des Lords, est aussi celle qui domine en France, en Italie, au Canada, au Danemark, aux Pays-Bas et en Belgique. Il lui semble donc qu'une règle interprétative pourrait être aisément mise au point afin de rallier l'unanimité sur cette question.

N° 12. L'Association Belge n'a pas d'observation à formuler.

N° 13. L'Association Belge appuie la proposition d'amendement présentée par la minorité de la Commission et ce pour les raisons indiquées dans le rapport lui-même.

N° 14 et N° 15. L'Association Belge se rallie aux conclusions de la Commission Internationale.

N° 16. L'Association Belge considère que dès l'instant où une divergence sensible d'interprétation est relevée par la jurisprudence des tribunaux de différents pays, sur une question importante, il appartient au Comité Maritime International de veiller à l'établissement de l'uniformité du Droit. Le fait que, comme la Convention sur les connaissements existe depuis trente ans les personnes qui s'occupent de réclamations basées sur des connaissements sont actuellement familiarisées avec les démarches qu'il faut faire dans un Etat contractant particulier, afin d'éviter prescription, ne paraît pas, à l'Association Belge, de nature à dissuader le Comité Maritime International de remplir la mission qui est la sienne. Ce motif, étendu à d'autres cas, conduirait en effet le Comité Maritime International à renoncer purement et simplement à son rôle. Rien ne s'opposerait, semble-t-il, à ce qu'une règle interprétative soit proposée pour consacrer la solution qui, après examen, apparaîtrait la meilleure ou la plus conforme à l'opinion dominante.

N° 17. L'Association Belge n'est pas opposée en principe que soit éventuellement reconnue expressément la validité de la clause indiquée sous la lettre A (« stricte »).

N° 18 et N° 19. L'Association Belge n'a pas d'observation à formuler à ce sujet.

N° 20. L'Association Belge se rallie à l'opinion exprimée par la majorité de la Commission. La modification qui avait été proposée sur ce point lui semble en effet inutile et peut-être même dangereuse.

N° 21, N° 22, N° 23, N° 24. L'Association Belge se rallie aux propositions de la Commission Internationale sur ces quatre points.

L'Association Belge croit que la proposition d'insérer les amendements qui seront éventuellement adoptés par la Conférence à Stockholm dans un protocole additionnel est celle qui présente le plus d'avantages et le moins d'inconvénients.

OBSERVATION COMPLEMENTAIRE

Les dispositions de l'article 3 relatives aux mentions qui peuvent ou doivent être insérées dans le connaissement ont donné lieu à certaines difficultés d'interprétation en Belgique.

Pour rendre la situation plus claire et mettre fin à certaines contestations, l'Association Belge souhaiterait que soient prises en considération les règles interprétatives ci-après.

1. « Le motif pour lequel le transporteur refuse de tenir pour » exacte l'une de ces mentions doit être indiqué par une clause marginale sur le connaissement lui-même ».

(à insérer à la fin du § 3 de l'art. 3)

2. « Si le connaissement mentionne à la fois le nombre ou la » quantité, d'une part, et le poids d'autre part, le transporteur peut, » par une mention spéciale, préciser celle des deux indications à laquelle il ne reconnaît pas de force probante ».

(à insérer à la fin du § 3 de l'art. 3 après l'ajoute ci-dessus, sub 1°).

Mai, 1963

Bill of Lading Clauses

Clauses de Connaissance

already printed

déjà publié

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