

*International Subcommittee*

*on*

**CARRIAGE OF PASSENGERS  
LUGGAGE BY SEA**

**I.**

**Convention on carriage of passengers 1961**

**Convention sur le transport de passagers 1961**

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**MARCH 1963**

CONVENTION INTERNATIONALE POUR L'UNIFICATION  
DE CERTAINES REGLES EN MATIERE DE  
TRANSPORT DE PASSAGERS PAR MER

*Signé à Bruxelles le 20 mai 1961*

Les Hautes Parties Contractantes,  
*Ayant reconnu* l'utilité de fixer d'un commun accord certaines  
règles uniformes concernant le transport par mer de passagers,  
*Ont décidé* de conclure une Convention à cet effet, et, en consé-  
quence, sont convenues de ce qui suit :

Article 1

Dans la présente Convention les termes suivants sont employés  
dans le sens indiqué ci-dessous :

a) « transporteur » comprend l'une quelconque des personnes sui-  
vantes, partie à un contrat de transport : le propriétaire du navire ou  
l'affréteur ou l'armateur;

b) « contrat de transport » signifie un contrat conclu par un  
transporteur ou pour son compte, pour le transport de passagers, à l'ex-  
ception d'un contrat d'affrètement;

c) « passager » signifie uniquement une personne transportée sur  
un navire en vertu d'un contrat de transport;

d) « navire » signifie uniquement un bâtiment de mer;

e) « transport » comprend la période pendant laquelle le passager  
est à bord du navire, ainsi que les opérations d'embarquement et de  
débarquement de ce passager, mais ne comprend pas la période pendant  
laquelle le passager se trouve dans une gare maritime, ou sur un quai  
ou autre installation portuaire. En outre, le transport comprend le  
transport par eau, du quai au navire ou vice-versa, si le prix de ce  
transport est compris dans celui du billet, ou si le bâtiment utilisé  
pour ce transport accessoire a été mis à la disposition du passager par  
le transporteur;

f) « transport international » signifie tout transport dont, selon  
le contrat de transport, le lieu de départ et le lieu de destination sont

INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO

THE CARRIAGE OF PASSENGERS BY SEA

*Signed at Brussels on the 20th May 1961*

The High Contracting Parties,

*Having recognised* the desirability of determining by agreement certain uniform rules relating to the carriage of passengers by sea.

*Have resolved* to conclude a Convention for this purpose, and to this have agreed as follows :

Article 1

In this Convention, the following terms shall have the meanings hereby assigned to them :

a) « carrier » includes any of the following persons who enters into a contract of carriage : the shipowner, the charterer or the operator of the ship;

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers, but does not include a charter party;

c) « passenger » means only a person carried in a ship under a contract of carriage;

d) « ship » means only seagoing ship;

e) « carriage » covers the period while a passenger is on board the ship, and in the course of embarking or disembarking; but does not include any period while the passenger is in a marine station or on a quay or other port installation. In addition, « carriage » includes transport by water from land to ship or vice-versa, if the cost is included in the fare, or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier;

f) « international carriage » means any carriage in which according to the contract of carriage the place of departure and the place of

situés soit dans un seul Etat, s'il y a un port d'escale intermédiaire dans un autre Etat, soit dans deux Etats différents;

g) « Etat Contractant » signifie un Etat dont la ratification ou l'adhésion à la Convention a pris effet et dont la dénonciation n'a pas pris effet.

## Article 2

Les dispositions de la présente Convention s'appliquent à tous les transports internationaux soit effectués par un navire battant le pavillon d'un Etat Contractant, soit lorsque, d'après le contrat de transport, le lieu de départ ou le lieu de destination se trouve dans un Etat Contractant.

## Article 3

(1) Lorsqu'un transporteur est propriétaire du navire, il exercera une diligence raisonnable et répondra de ce que ses préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable pour mettre et conserver le navire en état de navigabilité et convenablement armé, équipé et approvisionné au début du transport et à tout moment durant le transport, et pour assurer la sécurité des passagers à tous autres égards.

(2) Lorsque le transporteur n'est pas propriétaire du navire, il répondra de ce que le propriétaire du navire ou l'armateur, selon le cas, et leurs préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable aux fins énumérées au paragraphe (1) du présent article.

## Article 4

(1) Le transporteur sera responsable du préjudice résultant du décès ou de lésions corporelles d'un passager, si le fait générateur du préjudice ainsi subi a lieu au cours du transport et est imputable à la faute ou négligence du transport, ou de ses préposés agissant dans l'exercice de leurs fonctions.

(2) La faute ou la négligence du transporteur ou de ses préposés sera présumée, sauf preuve contraire, si la mort ou les lésions corporelles ont été causées par un naufrage, abordage, échouement, explosion ou incendie ou sont en relation avec l'un de ces événements.

destination are situated either in a single State if there is an intermediate port of call in another State, or in two different States;

g) « Contracting State » means a State whose ratification or adherence to this Convention has become effective and whose denunciation thereof has not become effective.

## Article 2

This Convention shall apply to any international carriage if either the ship flies the flag of a Contracting State or if, according to the contract of carriage, either the place of departure or the place of destination is in a Contracting State.

## Article 3

(1) Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure the safety of the passengers.

(2) Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment exercise due diligence in the respects set out in paragraph (1) of this Article.

## Article 4

(1) The carrier shall be liable for damage suffered as a result of the death of, or personal injury to a passenger if the incident which causes the damage so suffered occurs in the course of carriage and is due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

(2) The fault or neglect of the carrier, his servants and agents be presumed, unless the contrary is proved if the death or personal injury arises from or in connection with shipwreck, collision, stranding, explosion or fire.

(3) Sauf dans le cas prévu au paragraphe (2) du présent article, la preuve de la faute ou de la négligence du transporteur ou de ses préposés incombe au demandeur.

#### Article 5

Si le transporteur établit que la faute ou la négligence du passager a causé sa mort ou ses lésions corporelles, ou y a contribué, le tribunal peut, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

#### Article 6

(1) La responsabilité du transporteur, en cas de mort d'un passager ou de lésions corporelles, est limitée, dans tous les cas, à un montant de 250.000 francs, unité consistant en 65,5 milligrammes d'or au titre de 900 millièmes de fin. La somme allouée peut être convertie dans chaque monnaie nationale en chiffres ronds. La conversion de ces sommes en monnaies nationales autres que la monnaie-or, s'effectuera, en cas d'instance judiciaire, suivant la valeur-or de ces monnaies à la date du paiement.

(2) Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite.

(3) Toutefois, la législation nationale de chacune des Hautes Parties Contractantes pourra fixer, en ce qui concerne les transporteurs qui sont ses ressortissants, une limite de responsabilité *per capita* plus élevée.

(4) De même, par un contrat spécial avec le transporteur, le passager pourra fixer une limite de responsabilité *per capita* plus élevée.

(5) Les frais de justice alloués et taxés par un tribunal dans les instances en dommages-intérêts, ne seront pas inclus dans les limites de responsabilité prévues ci-dessus au présent article.

(6) Les limitations de responsabilité prévues par le présent article s'appliquent à l'ensemble des actions nées d'un même événement et intentées par un passager ou en son nom ou par ses ayants-droit ou les personnes à sa charge.

(3) Except as provided in paragraph (2) of this Article the burden of proving the fault or neglect of the carrier his servants or agents shall be on the claimant.

#### Article 5

If the carrier proves that the death of, or personal injury to the passenger was caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

#### Article 6

(1) The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 250.000 francs, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment.

(2) Where in accordance with the law of the Court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of these payments shall not exceed the said limit.

(3) Nevertheless the national legislation of any High Contracting Party may fix as far as the carriers who are subjects of such State are concerned a higher *per capita* limit of liability.

(4) The carrier and the passenger may also agree by special contract to a higher *per capita* limit of liability.

(5) Any legal costs awarded and taxes by a Court in an action for damages shall not be included in the limits of liability prescribed in this Article.

(6) The limits of liability prescribed in this Article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representatives, heirs or dependants on any distinct occasion.



## Article 7

Le transporteur sera déchu du bénéfice de la limitation de responsabilité prévue par l'article 6, s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur faits, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résulterait probablement.

## Article 8

Les dispositions de la présente Convention ne modifient en rien les droits et obligations du transporteur, tels qu'ils résultent des dispositions des conventions internationales sur la limitation de la responsabilité des propriétaires de navires de mer ou de toute loi interne régissant cette limitation.

## Article 9

Toute stipulation contractuelle, conclue avant le fait générateur du dommage, tendant à exonérer le transporteur de sa responsabilité envers le passager ou ses ayants-droit ou à établir une limite inférieure à celle fixée dans la présente Convention, ou à renverser le fardeau de la preuve qui incombe au transporteur, ou qui prévoirait que les litiges doivent être soumis à l'arbitrage ou à un tribunal déterminé, est nulle et non avenue; mais la nullité de ces stipulations n'entraîne pas la nullité du contrat de transport, lequel demeure soumis aux dispositions de la présente Convention.

## Article 10

(1) Toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

(2) En cas de lésions corporelles, subies par le passager, l'action en responsabilité ne peut être intentée que par le passager lui-même ou pour son compte.

(3) En cas de mort du passager, l'action en paiement de dommages et intérêts ne peut être intentée que par les ayants-droit de la personne décédée ou par les personnes à sa charge et seulement si ces ayants-droit ou ces personnes ont le droit d'intenter l'action suivant la loi du tribunal saisi.

## Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 6, 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 8

The provisions of this Convention shall not modify the rights or duties of the carrier, provided for in international Conventions relating to the limitation of liability of owners of sea going ships or in any national law relating to such limitation.

## Article 9

Any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or his personal representatives, heirs or dependants or to prescribe a lower limit than that fixed in this Convention, as well as any such provision purporting to shift the burden of proof which rests on the carrier, or to require disputes to be submitted to any particular jurisdiction or to arbitration, shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.

## Article 10

(1) Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

(2) Any claim for damages for personal injury suffered by a passenger may only be made by or on behalf of the passenger.

(3) In case of the death of the passenger a claim for damages may be made only by the personal representatives, heirs or dependants of the deceased, and only if such persons are permitted to bring an action in accordance with the law of the Court seized of the case.

## Article 11

(1) En cas de lésions corporelles du passager, celui-ci doit adresser des protestations écrites au transporteur au plus tard quinze jours après la date du débarquement. Faute de se conformer à cette prescription, le passager sera présumé, sauf preuve contraire, avoir été débarqué sain et sauf.

(2) Les actions en réparation du préjudice résultant de la mort d'un passager ou de lésions corporelles, se prescrivent par deux ans.

(3) En cas de lésions corporelles, ce délai de prescription court à compter du jour du débarquement.

(4) En case de décès survenu en cours de transport, le délai de prescription court à partir de la date à laquelle le passager aurait dû être débarqué.

(5) En cas de lésions corporelles se produisant au cours du transport et entraînant le décès postérieurement au débarquement, le délai court à partir de la date du décès, sans qu'il puisse dépasser trois ans à compter du jour du débarquement.

(6) La loi du tribunal saisi régira les causes de suspension et d'interruption des délais de prescription prévus au présent article; mais, en aucun cas, une instance régie par la présente Convention ne pourra être introduite après l'expiration d'un délai de trois ans à compter du jour du débarquement.

## Article 12

(1) Si une action est intentée contre le préposé du transporteur en raison de dommages visés par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des exonérations et des limites de responsabilité que peut invoquer le transporteur en vertu de la présente Convention.

(2) Le montant total de la réparation qui, dans ce cas, peut être obtenu du transporteur et de ses préposés, ne pourra dépasser les dites limites.

(3) Toutefois, le préposé ne pourra se prévaloir des dispositions des paragraphes (1) et (2) du présent article, s'il est prouvé que le

## Article 11

(1) In case of personal injury suffered by a passenger, he shall give written notice of such injury to the carrier within fifteen days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, to have disembarked safe and sound.

(2) Actions for damages arising out of the death or personal injury of a passenger shall be time barred after a period of two years.

(3) In case of personal injury, the limitation period shall be calculated from the date of the disembarkation of the passenger.

(4) In the event of death occurring during carriage the limitation period shall be calculated from the date on which the passenger should have disembarked.

(5) In the event of personal injury which occurs in the course of carriage and results in death after disembarkation the limitation period shall be calculated from the date of death, provided that this period shall not exceed three years from the date of disembarkation.

(6) The law of the Court seized of the case shall govern rights of suspension and interruption of the limitation periods in this Article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## Article 12

(1) If an action is brought against a servant or agent of a carrier arising out of damages to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier himself is entitled to invoke under this Convention.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2)

dommage résulte d'un acte ou d'une omission de ce préposé fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résulterait probablement.

#### Article 13

La Convention s'applique aux transports à titre commercial effectués par l'Etat ou les autres personnes morales de droit public dans les conditions prévues à l'article 1<sup>er</sup>.

#### Article 14

La présente Convention ne porte pas atteinte aux dispositions des conventions internationales ou des lois nationales régissant la responsabilité pour dommages nucléaires.

#### Article 15

La présente Convention sera ouverte à la signature des Etats représentés à la onzième session de la Conférence diplomatique de Droit Maritime.

#### Article 16

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Gouvernement belge.

#### Article 17

(1) La présente Convention entrera en vigueur entre les deux premiers Etats qui l'auront ratifiée, trois mois après la date du dépôt de son instrument de ratification.

(2) Pour chaque Etat signataire ratifiant la Convention après le deuxième dépôt, elle entrera en vigueur trois mois après la date du dépôt de son instrument de ratification.

#### Article 18

Tout Etat non représenté à la onzième session de la Conférence diplomatique de Droit Maritime pourra adhérer à la présente Convention.

Les instruments d'adhésion seront déposés auprès du Gouvernement belge.

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 13

This Convention shall be applied to commercial carriage within the meaning of Article 1 undertaken by States or Public Authorities.

#### Article 14

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

#### Article 15

This Convention shall be open for signature by the States represented at the eleventh session of the Diplomatic Conference on Maritime Law.

#### Article 16

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

#### Article 17

(1) This Convention shall come into force between the two States which first ratify it, three months after the date of the deposit of the second instrument of ratification.

(2) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification, three months after the date of the deposit of the instrument of ratification of that State.

#### Article 18

Any State not represented at the eleventh session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government.

La Convention entrera en vigueur pour l'Etat adhérent trois mois après la date du dépôt de son instrument d'adhésion, mais pas avant la date d'entrée en vigueur de la Convention telle qu'elle est fixée par l'article 17, paragraphe (1).

#### Article 19

Chacune des Hautes Parties Contractantes aura le droit de dénoncer la présente Convention à tout moment après son entrée en vigueur à son égard. Toutefois, cette dénonciation ne prendra effet qu'un an après la date de réception de la notification de dénonciation par le Gouvernement belge.

#### Article 20

(1) Toute Haute Partie Contractante peut, au moment de la ratification, de l'adhésion, ou à tout autre moment ultérieur, notifier par écrit au Gouvernement belge que la présente Convention s'applique à tels pays qui n'ont pas encore accédé à la souveraineté et dont elle assure les relations internationales.

La Convention sera applicable auxdits pays trois mois après la date de réception de cette notification par le Gouvernement belge.

L'Organisation des Nations Unies peut se prévaloir de cette disposition lorsqu'elle est responsable de l'administration d'un pays ou lorsqu'elle en assure les relations internationales.

(2) L'Organisation des Nations Unies ou toute Haute Partie Contractante qui a souscrit une déclaration au titre du paragraphe (1) du présent article, pourra à tout moment aviser le Gouvernement belge que la Convention cesse de s'appliquer aux pays en question.

Cette dénonciation prendra effet un an après la date de réception par le Gouvernement belge de la notification de dénonciation.

#### Article 21

Le Gouvernement belge notifiera aux Etats représentés à la onzième session de la Conférence diplomatique de Droit Maritime ainsi qu'aux Etats qui adhèrent à la présente Convention :

(1) Les signatures, ratifications et adhésions reçues en application des articles 15, 16 et 18.

The Convention shall come into force in respect of the acceding State three months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 17, paragraph (1).

#### Article 19

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### Article 20

(1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provision of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.

(2) The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### Article 21

The Belgian Government shall notify the States represented at the eleventh session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following :

- (1) The signatures, ratifications and accessions received in accordance with Articles 15, 16 and 18.



- (2) La date à laquelle la présente Convention entrera en vigueur, en application de l'article 17.
- (3) Les notifications au sujet de l'application territoriale de la Convention en exécution de l'article 20.
- (4) Les dénonciations reçues en application de l'article 19.

## Article 22

Toute Haute Partie Contractante pourra à l'expiration du délai de trois ans qui suivra l'entrée en vigueur à son égard de la présente Convention, demander la réunion d'une Conférence chargée de statuer sur toutes les propositions tendant à la révision de la présente Convention.

Toute Haute Partie Contractante qui désirerait faire usage de cette faculté avisera le Gouvernement belge qui, pourvu qu'un tiers des Hautes Parties Contractantes soit d'accord se chargera de convoquer la Conférence dans les six mois.

EN FOI DE QUOI les Plénipotentiaires soussignés dont les pouvoirs ont été reconnus en bonne et due forme ont signé la présente Convention.

FAIT à Bruxelles le 29 avril 1961 en langues française et anglaise, les deux textes faisant également foi, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement belge lequel en délivrera des copies certifiées conformes.

## PROTOCOLE

Toute Haute Partie Contractante pourra, lors de la signature, de la ratification ou de l'adhésion à la présente Convention, formuler les réserves suivantes :

- (1) de ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux;
- (2) de ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante;
- (3) de donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous forme appropriée à cette législation.

- (2) The date on which the present Convention will come into force in accordance with Article 17.
- (3) The notifications with regard the territorial application of the Convention in accordance with Article 20.
- (4) The denunciations received in accordance with Article 19.

## Article 22

Any High Contracting Party may three years after the coming into force of this Convention, in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose credentials have been duly accepted, have signed this Convention.

DONE at Brussels, this 29th day of April, 1961, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

## PROTOCOL

Any High Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations :

- (1) not to give effect to the Convention in relation to carriage which according to its national law is not considered to be international carriage;
- (2) not to give effect to the Convention when the passenger and the carrier are both subjects of the said Contracting Party;
- (3) to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation.

# LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

## QUESTIONNAIRE

### I.

A. Does the national codified law of your country contain compulsory provisions on the question of shipowners' liability to passenger luggage ?

If so, what are these provisions ?

B. Does the non-codified public order of your country lead to any similar compulsory restrictions ?

If so, what are these restrictions ?

C. Does the national law of your country contain non-compulsory (non-obligatory) provisions covering such liability ?

If so, what are these provisions ?

D. Does the national law of your country allow complete contractual freedom ?

If not, how far does such freedom go ?

### II.

A. Do you wish an international unification of maritime law on this subject ?

B. If so, by international convention ?

If you wish an international convention, what are your views on the following questions :

### III.

A. *What items should be considered as luggage* and therefore covered by the convention ?

(1) Clothes, watches, jewellery and other articles which the passenger carries on his (her) own person ?

(2) Trunks, suitcases etc. and other articles (cameras, binoculars etc.) which the passenger takes with him (her) in the cabin ?

(3) Trunks, suitcases etc. which are given into the custody of the vessel for storage in the vessels' luggage compartments or holds (registered luggage) ?

(4) Monies, bonds and valuables which are delivered to the vessel for keeping in the vessel's safe deposit box ?

(5) Cars, caravans and motorcycles etc. stowed either on deck or in the hold of the vessel ?

B. *What period of time* should the convention cover ?

(1) The period between the passing over the vessel's rail both ways, regardless of type of article ?

(2) Alternatively :

(a) From the time of the embarkation to the time of the disembarkation in connection with articles under A (1) and (2) above ?

(Embarkation and disembarkation will have to be closely defined, so that similar doubt as those connected with the Hague Rules can be eliminated.)

(b) From the time of the delivery to the representative of the carrier (on the shore or on board) and until the time of the redelivery, of all articles under A(3), (4) and (5) above ?

C. *What should be the basis of liability* ?

Which alternative(s) of the following would you prefer :

(1) Liability for fault, leaving the burden of proof for the non-existence of fault in all cases to the carrier ?

Any exception for nautical disasters ?

(2) Liability for fault, leaving the burden of proving the existence of such fault to the passenger ?

Any exception under this alternative for nautical disasters ?

(3) Hague Rules basis for liability with the corresponding burdens of proof ?

(4) Further freedom from liability ?

(5) A mixture of the above systems, i.e. a different basis according to what category of luggage is involved ?

The following points seem to indicate that a mixture would be the most reasonable :

To a large extent the passenger carries on himself or in his cabin a great number of items over which none except the passenger himself has any control or even knowledge, and a natural solution with regard to such articles would seem to be to put the burden of proof in every respect on the passenger.

On the other hand, some types of luggage are treated in practically the same way as ordinary cargo, and the system of the Hague Rules seems to be acceptable with regard to such luggage.

- Do you think that f.i. the following basis would be reasonable ? (1)
- (a) Liability according to III C (2) for all luggage under III A and (2) ?
- Possible exception for nautical disasters ?
- (b) Liability according to III C (3) for all luggage under III A (3) and (5) ?
- (c) Liability according to III C (1) for luggage under III A (4) ? Possible exception for nautical disasters ?
- (d) No liabilities for monies, bonds and valuables not delivered to the vessel unless the passenger proves intent or gross negligence on the part of the carrier himself ?

*D. What should be the monetary limitation of liability ?*

(1) Do you agree in principle to a monetary limitation of liability supplementing the « global » limitation of the 1957 convention ?

If so, should such limit apply

- (a) per passenger ?
- (b) per package or unit ?
- (c) Or should a combination of the two systems apply ? If you agree to the latter solution, the following could be considered :

(i) One limit for the total of all items under III A (1) and (2) put together, regardless of number of such items ?

(ii) One separate limit for the total of all items under III A (3) ?

(iii) One separate limit for the total of all items under III A (4) ?

(iv) One separate limit for each unit of articles under III A (5) ?

(2) Do you agree that the monetary limit should be described in Poincaré francs ?

If not in what other currency or value ?

(3) What should the amounts be ?

(Give the indication in f.i. US\$).

(4) Under what circumstances should the carrier lose his right to limit ?

(a) Would you agree to the same rule as in the 1957 limitation convention ?

(b) If not, indicate what other solution you would prefer ?

*E. Should all regulations in the convention be compulsory ?*

Or should the carrier be allowed to contract out of liability in some special instances ?

Or to a certain degree ?

It would not seem unreasonable having regard to the practical advantages to let the carrier be able to contract out of any liability for f.i. small scratches and other trifling damage to cars, caravans and motorcycles.

Alternatively, the convention could give the carrier the right to contract for a certain franchise per vehicle ?

F. Should the convention contain rules *on jurisdiction* ?

If so, one single jurisdiction or several alternatives ?

G. Should the convention contain rules on maximum *time within which to sue* ?

If so, what time limit ?

## LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

### REPORT

Prepared by Mr. Sjur Braekhus and Mr. Annar Poulsson.

During the preliminary work on the Convention concerning Shipowners' Liability to Passengers it was considered desirable that the Convention should contain also some provisions governing the carriers' liability towards passengers for damage to and loss of luggage.

The Madrid draft of the 24th September 1955 did contain such provisions in Art. 4 and Art. 7 (2) and (3).

This draft was, as far as the basical liability goes, closely tied in with the principles set out in the Hague Rules. Between 1955 and the Brussels Diplomatic Conference 1957 the opinion on the basical liability, however, changed rather substantially.

The consequence was that during the 1957 deliberations the shipowners' liability to passengers was basically disrupted from the Hague Rules principles, and if the liability to luggage should have followed the new principles, one would have ended up with a situation where the shipowners' liability to luggage was, in some respects, stricter than their liability to ordinary cargo.

The deliberations in Brussels 1957 on this point very soon indicated wide differences in opinion, and in the circumstances it was unanimously agreed to leave out of the draft convention all questions of luggage.

Accordingly, the draft convention which was put before the Diplomatic Conference in Brussels this year did not contain any provisions whatsoever concerning luggage.

During the Brussels meetings in April this year the question of luggage was again brought up, but was rejected as not being within the scope of the work entrusted to the Conference. The Convention was therefore finalized without any references to luggage.

As the question, however, apparently by a number of delegates was regarded as one of great interest, it was proposed that the C.M.I. should be asked to look into the possibility of forming a separate convention concerning luggage.

At the meeting of the Bureau Permanent immediately after the Conference, the Norwegian member of the Bureau was entrusted with the task of getting the work on such an additional convention started.

Accordingly, we have formulated the enclosed *questionnaire*, which should be submitted to all branches of the CMI with a request that replies should come forward before *November 1st this year*.

It should be mentioned that the questionnaire which was sent out in 1953 concerning the Passenger Convention did in fact also contain a couple of questions concerning luggage.

These questions were :

(20) Is a distinction to be made between luggage and other property of commercial value ?

(21) Should a distinction be made between various classes of luggage in regard to the manner of their custody ?

Both questions received practically unanimous confirmative replies.

Oslo, 19th Juli 1961.

Den Norske Sjøretts - Forening

Hon. Secretary.



# LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

## PRELIMINARY REPORT

Reporters are Mr. Sjur Breakhus and Mr. Annar Poulsson, Oslo.

Reference is made to the « Report » dated 19.7.1961 and to the questionnaire attached thereto.

Replies to that questionnaire have been submitted to us from the Maritime Law Associations of Denmark, Finland, Italy and Sweden.

Although the replies do differ somewhat with regard to the need of a separate Convention concerning passengers' luggage, it seems to be an unanimous opinion of those who have replied that a reasonably worded Convention would certainly be useful. The national systems do at the moment represent a rather mixed up picture, and unification by way of an international Convention would seem to be desirable.

With regard to the details of the questionnaire, the replies are practically unanimous on the main questions, i.e. A) items of luggage to be covered by the Convention, B) period of time which the Convention should encompass, C) the general basis of the liability, D) the applicability of the monetary unit and E) the principle that the Convention should be compulsory and give little room for contractual freedom.

On one point the replies do give practically no indications of opinion, i.e. the actual amount to be fixed for the maximum liability.

The undersigned have therefore had to put up figures which in their view seem to be acceptable, bearing in mind those figures which were previously discussed at the meetings of the CMI.

The limit of time to sue has been suggested in the draft to 1 year. This is the time indicated in the majority of the replies. One reply sets the time at 6 months.

As will be understood, the project of a separate convention for luggage has not been received with any great enthusiasm. In spite hereof we do believe that there are sufficient basis to continue the work and to see whether a convention is after all desirable.

Many states will at any rate have to alter their national legislation so as to enable them to ratify the 1961 Convention with a luggage

Convention so that national legislators may evaluate both projects more or less simultaneously.

Both on land and in the air there are already existing rules on an international Convention level with regard to luggage. We may only mention the Warsaw Convention on air transport of 1929 and the Rome Convention on transport of passengers by rail of 1933.

We do think that the evaluation of all questions of liability are never at a standstill but on an everlasting change greatly influenced by the steadily growing ethical conscience. From a shipowners' point of view it will, we believe, be easier therefore to obtain acceptance of limitations if they are based upon an international formula.

As for the passengers, it will obviously be of great advantage to know that they are at least protected according to certain minimum requirements.

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We have indicated above that there are close connections between the 1961 passenger Convention and the present question. We do think that it is most important that the discussions with regard to luggage should if possible be handled quickly if it shall be taken up at all.

We have therefore already at this stage taken upon ourselves to formulate a full draft Convention for the consideration of the CMI at the Athens meeting in April this year. In doing so we have as much as possible drawn up the draft in identical Articles to those of the passenger Convention. We enclose herewith the draft which we hope can be circularized to the national branches of the CMI as quickly as possible, together with these comments.

The discussions could in our opinion be restricted to those main points which have to be new as compared with the 1961 Convention.

To facilitate the reading we have underlined all paragraphs or sentences which are new, and therefore need special attention.

If agreement is reached on the points of principle, all the non-underlined provisions may possibly be accepted without of with very little discussion, they have been so thoroughly thrashed out less than a year ago.

We shall make a few comments on the main points :

*Article 1 (c)* : We have felt that the convention should deal with all articles carried onboard a ship for a passenger except those carried under a B/L. We do think that there should be no « loopholes » in the applicability either of the B/L rules or of this luggage convention.

*Article 1 (f)* : We have found it necessary to describe the period of carriage differently with regard to the different ways in which luggage is handled :

With regard to all articles carried on the passengers' person or in the cabin we propose to follow exactly the definition in the passenger

Convention, whilst for the (usually) more heavy articles which are carried elsewhere aboard the ship the period of carriage necessarily will have to be described differently.

*Article 4* : The basis of liability should in our opinion be : fault or neglect.

However, in a number of instances, luggage is stowed in a ship's hold side by side with cargo carried under a B/L, and it would seem very peculiar if those commodities should not be subject to somewhat the same liability rules. On the other hand there is obviously not the same social need for compulsory regulations regarding luggage as there is concerning personal injury and death.

In view hereof we have let the Hague rules influence our conclusions in the present draft convention, and have accordingly exonerated the carrier for his servants' nautical faults or neglects.

The rule so suggested will be simpler than the detailed specifications contained in the Hague-rules, but will in most cases lead to the same result.

Under article 3 there is no guarantee for seaworthiness but a slightly extended due diligence-rule, close to the Hague-rules and identical with rules in the Passenger Convention.

With regard to burden of proof (Article 4 (3) and (4)), we have tried to lay down rules which correspond closely to the possibilities of each party of proving the necessary circumstances.

It is f.i. obviously apparent that the carrier will have no possibility to prove what has not been going on in a passenger cabin, where people walk in and out more or less continuously during the day. Consequently it seems to us that passengers must have the full burden of proof with regard to everything happening in the cabin or with articles carried on the passenger's person.

The corresponding arguments lead to the conclusion that the carrier should have the full burden of proof so far as all other luggage is concerned.

*Article 6* : The question of fixing the limitation of liability has caused some trouble. Should it be limited to so much per kilo, per package or per passenger or to some other basis ? We have found the per kilo basis of the Warshaw Convention unpractical, both because the weight of passenger luggage onboard a ship may run to a very high figure and often is not ascertainable. Even the per package limit is in our opinion not practicable in its pure form, for the same reason. We do, however, believe that our suggested mixed basis is workable.

So far as the actual amount is concerned we have had little or no leading advice in the answers to our questionnaire.

The figures mentioned in the Madrid draft of the Passenger Convention seem somewhat out of date, particularly in regard to the actual

value of motorcars carried so often now on or in connection with a passenger ticket.

On the other hand, all experience of liability underwriters do show that a fixed maximum amount of liability, though intended to represent an upper limit only, tend to become a minimum figure as well. Particularly in cases of luggage, where there are no invoices or other vouchers or documents showing the number or value of missing or damaged articles, the amount should not be allowed to be inflated too much.

So far as registered luggage is concerned there is a certain check already in the luggage receipt. Finally the value of a motorcar or other vehicle is fairly easily ascertainable. Accordingly we have suggested higher amounts for these categories of luggage. We do believe that they represent a reasonable compromise of the conflicting interests of the two parties.

It will be realised that the amount suggested as the limit for a motorvehicle is rather compared with the present practice in maritime transport. However, the figure of 20.000 frs. seems to correspond reasonably well with the value of an average motorcar today. (The usual traffic insurance on motorcars can easily handle any excess values).

When the average passenger is allowed a claim so close to the full value of his motorcar, provisions must on the other hand be made for some way of eliminating all the trifling claims for scratches and stains to the finishing of the car. There are two reasons for this : firstly passenger cars are practically always used cars. It would be absolutely impossible for the carriers' people before loading to inspect such cars sufficiently so as to ascertain even hairline scratches. secondly the finish of a modern motorcar is so « tender » that in many cases it is literally impossible to load, stow and discharge such a car without inflicting some minor scratches of chafings on its body.

These views have led us to the conclusion that the carrier should be allowed to contract for a certain deductible, applicable to claims for damage to motor vehicles. When it is a question of total loss, these arguments do not carry any weight, so we have suggested the application of a deductible to be restricted to partial damages. We do believe the figure of 5 % to be reasonable.

We may add that there are very strong views in Scandinavia that some sort of deductible must be a condition for including motor vehicles in the present draft convention.

*Article 9 :* The question of jurisdiction has caused special considerations. As will be remembered, this question was the subject of rather heated argumentations during the diplomatic conference in Brussels last year on the Passenger Convention.

We cannot but state that the solution which was finally adopted in that Convention is, in the opinion of the legal experts in the four

Scandinavian countries, not a happy one. It was and still is a strong feeling in these countries that prohibition should have its basis in a framework of jurisdictional alternatives, and then, and only then would it be sound to prohibit clauses which tried to widen the jurisdictional alternatives basically agreed upon.

However, we do not want to take up this discussion again, because we feel that it will be reasonable that a passenger who has claims both for personal injury and for damage to luggage should be able to sue the carrier for both categories of claims, in one and the same court.

The carrier will at any rate have to put up with these wide facilities of the passenger with regard to the personal injury claims, and the added inconveniences which the application of the same rule also to luggage claims bring, would seem to us not of very great importance.

Accordingly we have adopted the wording of the 1961 Passenger Convention on this point.

*Article 10* : We have not found Article 10 (2) or (3) of the Passenger Convention applicable to the present draft. Accordingly we suggest only 10 (1) maintained, and in its unaltered form.

*Article 11* : We have to a great extent maintained the same rules as in the Passenger Convention with regard to time limits, but have found it unnecessary to increase the well known 1 year limit in the Hague rules to the two year limit in the Passenger Convention. The same arguments which do influence the decision when it comes to personal injury do not have any weight so far as luggage is concerned, and we therefore do think that the 1 year limit is workable.

INTERNATIONAL CONVENTION FOR THE  
UNIFICATION OF CERTAIN RULES RELATING  
TO CARRIAGE OF PASSENGERS' LUGGAGE  
BY SEA

FIRST PRELIMINARY DRAFT

(March 1962)

**Article 1**

In this Convention the following expressions have the meaning hereby assigned to them :

(a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

(b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers *and their luggage*, but does not include a charterparty.

(c) « passenger » means only a person, carried in a ship under a contract of carriage.

(d) « ship » means only a sea-going ship.

(e) « luggage » means any articles which a passenger carries on his (her) person or takes with him (her) in the cabin, and any other articles carried for the passenger *except* articles carried under a B/L.

(f) « carriage » covers the following periods :

1) *With regard to any articles which the passenger carries on his (her) own person or takes with him (her) in the cabin*, the period while a passenger is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the passengers are in a marine station or on a quay or other port installation. In addition « carriages » includes transport by water from land to a ship or vice-versa, if the cost is included in the fare, or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.

2) *With regard to all other articles the period from the time of delivery to the representative of the carrier on shore or on board and until the time of redelivery.*

(g) « international carriage » means by carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single State, if there is an intermediate port of call in another State, or in two different States.

(h) « contracting state » means a State whose ratification or adherence to this Convention has become effective and whose denunciation thereof has not become effective.

## Article 2

This Convention shall apply to any international carriage if either the ship flies the flag of a contracting State or if, according to the contract, either the place of departure or the place of destination is in a contracting State.

## Article 3

1) Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure *the safe transportation of the luggage*.

2) Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## Article 4

1) The carrier shall be liable for *loss of or damage to the luggage* if the incident which causes *the loss or damage* occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2) *However, the carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship.*

3) *The burden of proving the fault or neglect of the carrier or of the carrier's servants or agents lies with the passenger with regard to all articles carried on the passenger's person or in his (her) cabin.*

4) *The burden of proving the non-existence of fault or neglect of the carrier or of the carrier's servants or agents lies with the carrier so far as all other luggage is concerned,*

## Article 5

If the carrier proves that the *loss of or damage to the luggage* was caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

## Article 6

1) *The liability for the loss of or damage to the articles carried on the passenger's person or in the cabin shall in no case exceed 6.000 frs. per passenger.*

2) *The liability for loss of or damage to motorcar, caravan, motorcycle or other motorvehicle including all articles carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.*

3) *The liability for the loss of or damage to all other articles than those mentioned under (1) or (2) shall in no case exceed Frs. 10.000 per passenger.*

4) *Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900.*

The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment.

5) The carrier and the passenger may agree by special contract to a higher limit of liability.

*They may also agree that in case of damage to a motorcar caravan, motorcycle or other motorvehicle, the liability shall be subject to a deductible not exceeding 5 % of the round value of the damaged vehicle.*

6) Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

7) The limits of liability prescribed in this article shall apply to the aggregate of the claims put-forward by or on behalf of any one passenger, his personal representatives, heirs or dependents on any distinct occasion.

## Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause damage or recklessly and with knowledge that damage would probably result.



## Article 8

The provisions of this Convention shall not modify the rights or duties of the carrier, provided for in international Conventions relating to the limitation of liability of Owners of seagoing ships or in any national law relating to such limitation.

## Article 9

*Except as provided for in article 6 (5), any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit than that fixed in this Convention, as well as any provision purporting to shift the burden of proof, which rests on the carrier, or to require disputes to be submitted to any particular jurisdiction or to arbitration shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.*

## Article 10

Any claims for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

## Article 11

1) *In case of loss of or damage to luggage the passenger shall give written notice of such loss or damage to the carrier within 15 days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed in the absence of proof to the contrary, to have received his luggage undamaged.*

2) *Actions for damages arising out of loss of or damage to luggage shall be time-barred after a period of one year from the date of disembarkation or if the ship has become a total loss, from the date when the disembarkation should have taken place.*

3) *The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this articles; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.*

## Article 12

(1) *If an action is brought against a servant or agents of the carrier arising out of damages to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits*

of liability which the carrier himself is entitled to invoke under this Convention.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article if it is proved that the damages 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 13**

This Convention shall be supplied to commercial carriage within the meaning of article 1 undertaken by States or Public Authorities.

### **Article 14**

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

### **Article 15**

This Convention shall be open for signature by the States represented at the (. . . . .) session of the Diplomatic Conference on Maritime Law.

### **Article 16**

This Convention shall be ratified and the instruments of ratification shall be deposited.

### **Article 17**

(1) This Convention shall come into force between the two States which first ratify it, three months after the date of the deposit of the second instrument of ratification.

(2) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification, three months after the date of the deposit of the instrument of ratification of that State.

### **Article 18**

Any State not represented at the (. . . . .) session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government.

The Convention shall come into force in respect of the acceding State three months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 17, paragraph (1).

#### Article 19

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### Article 20

(1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provision of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.

(2) The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### Article 21

The Belgian Government shall notify the States represented at the (. . . . .) session of the Diplomatic Conference on Marine Law, and the acceding States to this Convention of the following :

(1) The signatures ratifications and accessions received in accordance with Articles 15, 16 and 18.

(2) The date on which the present Convention will come into force in accordance with Article 17.

(3) The notifications with regard the territorial application of the Convention in accordance with Article 20.

(4) The denunciations received in accordance with Article 19.

## Article 22

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.



# RESOLUTIONS

BAG  
A-14

## CARRIAGE OF LUGGAGE

The International Sub-committee, appointed by the Conference to study a draft Convention for the unification of certain rules relating to the carriage of passengers' baggage by sea, has, within the time available to it, carried out its designated task, and reports accordingly.

- 1) A considerable degree of support exists for the view that such a Convention is necessary and desirable, and progress has been made by the Sub-committee in examining and amending the draft before it. However, owing to the complexity of the matter, it has not been possible to present to the Conference a draft Convention agreed in all points by the sub-committee.
- 2) The Sub-Committee, therefore, requests the Conference to allow it to continue its study of the draft Convention between the end of this Conference and the holding of the XXXVIII Conference in Stockholm, and thereto report further.

BAG  
A-13

## TRANSPORT DE BAGAGES

Le Sous-Comité International constitué par la Conférence pour étudier un projet de Convention pour l'unification de certaines règles relatives au transport des bagages des passagers par mer a autant que possible fait honneur à la mission lui ainsi confiée et présente à la Conférence le rapport suivant :

- 1) Il existe à un degré considérable l'opinion générale qu'une telle convention soit nécessaire et souhaitable, et des progrès ont été achevés par le Sous-Comité en examinant et amendant le projet de Convention lui présenté. Cependant, vu la complexité de la matière, il n'a pas été possible de présenter à la Conférence un avant-projet apte sur tous les points par le Sous-Comité.
- 2) Ceci étant, le Sous-Comité exprime donc à la Conférence les vœux de lui permettre de continuer ses travaux consistant en l'étude de l'avant-projet existant dans le temps écoulant jusqu'à la réunion de la XXXVIIème Conférence à Stockholm et de présenter à cette Conférence un rapport ultérieur.



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## LIABILITY OF CARRIAGE BY SEA OF PASSENGERS' LUGGAGE

### SUMMARY OF THE ATHENS DISCUSSIONS

*by Mr. Sjur Brækhus and Mr. Annar Poulsson*

At the Athens meetings of the Comité Maritime International in April 1962 a sub-committee was formed under the chairmanship of Mr. Sjur Brækhus, of Oslo.

In the Sub-Committee 15 states participated, namely Belgium, Canada, Denmark, France, Germany, Greece, Israel, Italy, Netherlands, Norway, Poland, Sweden, United Kingdom, United States of America, Yugoslavia.

The work started on Monday 16th April at 11.20 a.m. and continued (except for Thursday 19th April) until Friday 20th April at noon, when a first preliminary report was given by Mr. Brækhus to the plenary session. A stenographic report of the discussions of the Committee is included in the duplicated « Compte Rendu » of the Athens Conference.

The deliberations of the Sub-Committee were arranged as a preliminary discussion on the questionnaire which had been issued and distributed in the early autumn of 1961 (BAG 1 and 2) and on the preliminary draft convention drawn up by the Norwegian Association in March 1962 (BAG 9 and 10), see the printed report of the Athens Conference, pp. 287-304. Nine national Associations had given their written reply to the questionnaire (Denmark, Finland, France, Germany, Italy, Netherlands, Sweden, United Kingdom and Yugoslavia (doc. BAG N<sup>os</sup> 3-8 and 11-15). Reply from the Belgian Association was received in Athens (see doc. BAG A-3).

The questionnaire was discussed according to its numbered questions, and the first item which was set under debate was :

#### II. *Desirability of an international convention on sea transport of passengers' luggage.*

Of the nine written replies which had been given previously, three, i.e. France, Italy and Yugoslavia, were in favour of the idea of making

a convention. Of course, the Norwegian Association, having been empowered with the preliminary work, was positively inclined. Five national associations were rather doubtful, but would not vote against a convention. Only one single association (i.e. the United Kingdom) were absolutely adverse to the idea.

On the opening of the discussion it turned out, however, that the U.K. delegation would participate in the work of the Committee, although they did not feel the need of a Convention. In addition to the positive replies already given, Poland, Spain and Greece followed suit, so that of the 15 delegations present 7 were for the Convention, and the USA would, like the U.K. participate in the work, although with some reluctance. The rest of the delegations approved continued discussions.

### III A. What items should be considered als luggage, *and* therefore covered by the Convention ?

The discussion immediately centered on the question of whether cars, valuables, antiques and collections of models should be covered by the Convention.

It became apparent that the majority of the delegations felt that cars should be included. Antiques, collections and similar articles should not. A general provision was felt necessary that only articles for personal use should be covered.

As for valuables, there were differences of opinion.

### III B. What period of time *should the Convention cover* ?

Several delegations considered that the wording of the 1961 Convention (on personal injury liability to passengers) should be adopted as the basis, but it was felt that that wording would not be suitable for registered luggage, wherefore a special rule would have to be formed covering such registered luggage.

However, a couple of delegations felt that the period of time as described in the Hague Rules, should be adopted because luggage seems to have more likeness to cargo, and the rules should not be too bound by the wording of the 1961 Convention.

A further discussion took place with regard to the period of time for cars and for valuables.

The conclusion of the discussion indicated rather that the wording of the preliminary draft should be accepted. However, in such a way that the period of time should be dependent upon the time when the luggage is on board, irrespective of whether or not the passenger be on board (the draft, article I f 1, lines 3 and 5). However, according

to the views of some delegations the period of time for cars should be according to the Hague Rules, and the period of time for valuables should be from the delivery to the ship's purser and until the redelivery from him.

### III C. *What should be the basis of liability ?*

It became evident from the outset that all delegations agreed to the liability of the shipowner being based on fault.

The first question on which opinions differed was the question of exception for nautical faults. The delegations split up in two main fractions; one lead by the French delegation considered that basically the principle adopted by the 1961 Convention should be copied, whilst the other fraction rather strongly argued for a basic principle similar to the Hague Rules.

One delegation (the U.K.) argued for complete contractual freedom.

### III D. *What should be the monetary limitation of liability ?*

All delegations agreed to a limit per passenger for all the luggage in the cabin, including articles carried on the passenger. There could be no possibility of having a limit per package for such items.

Likewise it was apparent that a great majority would have a special limit for vehicles.

With regard to registered luggage, the opinions differed. Most delegations were inclined to adopt a per package limit, but others preferred per passenger or per kilo limits.

The conclusion seemed to indicate a preference for a per package limit with a supplement of an over-all limit for each passenger's total luggage.

With regard to the actual amount, there were also different views, and amounts suggested were partly higher than those of the draft and partly lower, with a possible inclination towards the lower amounts. However, the figures put up in the draft were considered as sufficiently close to every one's wish as to form a proper basis for further discussions.

### III E. *Should all regulations in the Convention be compulsory ?*

The discussion lead to the conclusion that whatever rules were formulated, they should be basically compulsory. However, several delegations would give the shipowner a right to contract a moderate deductible or franchise.

It was discussed whether such freedom of contract should be for a deductible or for a proper franchise only, and whether it should be admissible for all kinds of luggage or for vehicles only, as set out in the draft.

It was also discussed whether the franchise/deductible should be a fixed maximum amount or a fixed maximum percentage.

However, no conclusion was arrived at on these questions at this stage.

### III F. *Should the Convention contain rules on jurisdiction ?*

The discussion on this point immediately led to the question of whether the wording of the 1961 Convention should be adopted without alteration or not. It was argued by several delegations that the 1961 rules were not good ones, and that if the shipowner were denied any right to contract for special jurisdictions, the Convention should necessarily draw up a certain number of alternative jurisdictions.

However, the majority of the delegations seemed to put more weight on the conformity between the 1961 Convention and the proposed Luggage Convention and therefore found that it would be necessary to more or less copy the 1961 wording. However, arguments ended without any conclusion being reached.

### III G. *Should the Convention contain rules on maximum time within which to sue ?*

A number of delegations would adopt the time limit of the 1961 Convention (i.e. two years), but arguments were also put forward for a shorter time limit than the one year limit suggested in the draft.

The one year limit of the draft, however, seemed to be over-all favourably received.

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The *draft* was now put under discussion article by article, all amendments being put forward in writing. As time was running short and it became apparent that there would be no possibility of putting a revised draft before the plenary meeting at the end of the conference, the further discussions were restricted to those articles in the draft on which amendments were put forward.

#### *Art. 1 (e) (the definition of « luggage »)*

On this article a Dutch amendment (BAG A-10) was put forward. It read :

« Luggage means any articles carried under a passenger contract of carriage. »

The main objection made to this amendment by some of the delegations was that the shipowner under such a wording would have a possibility of circumventing the Convention by not agreeing to carry certain articles under a passenger contract of carriage. Particularly, this possibility would concern vehicles and therefore would be a risk of the Convention not covering all those articles which the majority of the delegations wanted to cover. However, in spite of this uncertainty, the Dutch amendment was, when put to a vote, adopted with eight against seven votes. On this conclusion some other amendments, by which jewellery, antiques etc. would be excluded, were withdrawn.

*Art. 1(f) (definition of « carriage »)*

To this article four amendments had been worked out, one French (BAG A-6), one Swedish (BAG A-7), one Dutch (BAG A-10) and one Greek (which was not numbered).

The Dutch amendment which suggested adoption of the Hague Rules period, was put under debate and to a vote, the amendment being the one most different from the draft. This Dutch amendment was rejected with seven against six votes and two abstentions.

The Swedish amendment which contained firstly a small alteration of the draft in its point (f) 1, lines 3 and 5 : The words « passenger » and « passengers » respectively was suggested to be replaced by the word « luggage ». This small alteration was adopted without formal votes being taken, as the Chairman agreed that the wording was really a drafting error.

The second part of the Swedish amendment which suggested a special rule for vehicles, read as follows :

« With regard to passenger motorcars, caravans, motorcycles or other motor vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship. »

This amendment was accepted with ten votes against one and four abstentions.

The French amendment was rather close to the wording of the draft, but the dividing line between the two alternative periods of carriage would according to the French amendment be drawn by the registration or non-registration of the luggage instead of, as in the draft, by the mere fact of the articles being carried in the cabin or not.

However, the French amendment was withdrawn after a vote had been taken on the Swedish amendment.

After the result of the vote on the Swedish amendment the Greek amendment was withdrawn.

The next article put under discussion was

*Art. 4*, to which there were forwarded three amendments, one Norwegian (BAG A-5), one French (BAG A-6) and one Swedish (BAG A-11).

The *Norwegian* amendment which contained a supplement only in the form of adding a new par. 5 to the article, read :

« The burden of proving the extent of the loss or damage lies with the passenger. »

This amendment was adopted without practically any debate, as it was regarded as useful, although by several delegations as not necessary.

Thereafter the *French* amendment was taken up for discussion. That amendment contained three paragraphs, but the first one was so similar to that of the draft that the French delegation withdrew it. The next two parts of the French amendment would have brought the liability of the shipowner (with regard to luggage) more in line with the rules in the 1961 Convention.

However, the amendment was put to a vote and rejected with seven against five votes.

A further discussion took place on the question of maintaining par. 2 of art. 4 of the draft. Two delegations argued rather extensively against the maintenance of the paragraph. But on taking the votes, the draft was maintained with ten votes against four.

The *Swedish* amendment to art. 4 was to insert, between par. 2 and 3 of the draft, a new par. 3, reading as follows :

« Nothing contained in this Convention shall make the carrier liable for loss of or damage to monies, bonds and other valuables, such as gold and silverware, watches, jewellery, ornaments, jewellery boxes, cameras, marine glasses etc. »

After some comments by the French delegation, the Swedish delegation stated that they proposed, as an alternative, to add the following sentence :

« unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box against declaration of value. »

The delegates commented favourably on this addition. However, a prolonged discussion took place regarding the question of limit of liability in case of delivery into the safe deposit box. This question of limit was, however, referred to art. 6.

The first Swedish amendment was put to a vote, after the last words : « cameras, marine glasses etc. » had been deleted (with the agreement of the Swedish delegation) and exclusive of the words : « unless... value » quoted above.

The amendment was rejected with eight against five votes.

Then the second Swedish amendment (which consisted of their first proposal *including* the words : « unless... value » quoted above) was put to a vote, alternatively to an *Italian* amendment, proposing that the carrier should only be liable for valuables if these had been declared on the embarkation.

The Swedish alternative was accepted with nine votes whilst the Italian proposal received five votes.

With regard to art. 4, par. 3, the *Dutch* delegation proposed a change concerning the burden of proof, so that this burden should in all cases be on the passenger, regardless of whether the luggage was registered or not. After rather strong opposition from several delegates, the Dutch amendment was, however, withdrawn.

*Art. 6.* There were put forward four amendments to this article : a French (BAG A-6), a Swedish (BAG A-7), a Dutch (BAG A-10) and an unnumbered Greek amendment.

As it was clear that the work on the article could not be completed, it was agreed to restrict the discussions to the question of principle. Time would not allow any discussions on actual monetary figures.

The questions put under discussion were :

- a) Should there be a separate limit for cabin luggage, including whatever articles carried on the passenger's person ?
- b) Should there be a separate limit for cars ?
- c) Should the limit for registered luggage be per unit or per passenger ?
- d) Should there be an overall limit ?
- e) Should there be a separate limit for deposited goods ?
- f) Should there be a deductible ?

After some discussion the question under (a) was put to a vote and accepted in the affirmative with ten votes against three.

With regard to the question under (b) it was agreed without any formal vote being taken (but without much discussion) that there would be a separate limit for passenger cars.

The question under (c) was discussed, but no formal proposal to fix a limit per unit was put forward, and the « per passenger » limit was unanimously agreed.

Concerning (d) it was stated that as it had now been agreed the principle of three separate limits : one for the cabin luggage, one for the registered luggage and one for cars, there would be no need for an overall limit, and the question under (d) was accordingly dropped.

The question under (e) is tied in with the question of whether the carrier is free to accept goods in deposit or can reject them.

There seemed to be agreement on two points : First, that there shall be no liability whatsoever if there is neither made any deposit nor given any declaration. Secondly, that if the articles are declared and accepted, then there should be liability up to the amount accepted (or possibly subject to a rather high limit).

The difference of opinion seemed to concentrate on the situation when valuables are declared but not accepted.

The Swedish delegation would have no liability in such a case, whilst the French proposed liability in such a case, but subject to the ordinary limitation. These two alternatives were put to a vote, and the French proposal was adopted with eight votes against six.

Then the discussion went on to solve a situation where valuables are deposited but no declaration of value is made. The French proposal was that in such a case the liability should be unlimited. The Yugoslav delegation proposed a separate limit in this case.

These two alternatives were put to a vote. The Yugoslav proposal was carried by six votes against five.

As for question (f) there seemed to be some uncertainty as to the meaning of the words « franchise » and « deductible ». The franchise only applies to claims within the amount agreed upon, and is fully disregarded whenever the claim exceeds such amount. The deductible, on the other hand, applies to every claim regardless of size, as a subtraction from the amount otherwise payable.

There was a Dutch amendment (BAG A-10) which suggested a deductible of 1000 francs for any kind of luggage, as against the draft, which applied the deductible only to vehicles.

The question of deductible was divided in two : Should there be a deductible for cars, and secondly, if so, another deductible for other luggage ?

The Committee agreed unanimously to a deductible for cars, without a formal vote being taken.

With regard to a deductible or franchise for other luggage, the comments showed that there would probably have to be a franchise and not a deductible. Also the amount had to be small, otherwise a number of delegations would not vote for any franchise on such ordinary luggage. The question was put to a vote, giving eight votes for a small franchise on ordinary luggage with three votes against.

The time given to the Committee did not, however, allow further discussion on this point, or on any of the other unsolved questions.

A short report to the plenary session was drawn up and accepted (BAG A-13 and 14).



However, the U.K. delegation wanted to state officially that according to their views further work and studies seemed uncalled for, and that they did not want to participate in such work before the Stockholm meeting.

At the last meeting of the plenary session Mr. Brækhus gave a short summary of the work of the Committee; see the printed report of the Athens Conference, pages 266-69.

*Oslo, February 1963.*

*Sjur Brækhus*

*Annar Poulsson*

## REVISED PRELIMINARY DRAFT

INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO CARRIAGE OF

## PASSENGER LUGGAGE BY SEA

*(February 1963)*

## Article 1

In this Convention the following expressions have the meaning hereby assigned to them :

a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers *and their luggage*, but does not include a charter party.

c) « passenger » means only a person carried in a ship under a contract of carriage.

d) « ship » means only a sea-going ship.

e) « *luggage means any articles carried under a passenger contract of carriage.*

f) « carriage » covers *the following periods :*

1. *With regards to any articles which the passenger carries on his (her) own person or takes with him (her) in the cabin, the period while the luggage is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the luggage is in a marine station or on a quay or other port installation. In addition « carriage » includes transport by water from land to a ship or vice-versa, if the cost is included in the fare, or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.*

Note. — With a view to make the reading easier, the points of interest have been printed as follows :

**changes from the 1962 draft**

*other changes from the 1961 Passenger Convention.*

the rest of the draft is identical to the last mentioned Convention.

2. With regard to passengers' motorcars, caravans, motor cycles or other vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship.

3. *With regard to all other articles, the period from the time of delivery to the representative of the carrier on shore or on board and until the time of redelivery.*

g) « international carriage » means any carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single state, if there is an intermediate port of call in another state, or in two different states.

h) « contracting state » means a state whose ratification or adherence to this Convention has become effective and whose denunciation thereof has not become effective.

## Article 2

This Convention shall apply to any international carriage if either the ship flies the flag of a contracting state, or if, according to the contract of carriage, either the place of departure or the place of destination is in a contracting state.

## Article 3

1. Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure *the safe transportation of the luggage.*

2. Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## Article 4

1. The carrier shall be liable for *loss of or damage to the luggage* if the incident which causes *the loss or damage* occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2. *However, the carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship.*

3. Nothing contained in this Conventoin shall make the carrier liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments, jewellery boxes ect., unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box against declaration of value.

4. *The burden of proving the fault or neglect of the carrier or of the carrier's servants or agents lies with the passenger with regard to all articles carried on the passenger's person or in his (her) cabin.*

5. *The burden of proving the non-existence of fault or neglect of the carrier or of the carrier's servants or agents lies with the carrier so far as all other luggage is concerned.*

6. The burden of proving the extent of the loss or damage lies with the passenger.

#### Article 5

If the carrier proves that the loss of or damage to the luggage was caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

#### Article 6

1. *The liability for the loss of or damage to the articles carried on the passenger's person or in the cabin shall in no case exceed 6.000 frs. per passenger.*

2. *The liability for loss of or damage to motorcar, caravan, motorcycle or other motorvehicle including all articles carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.*

3. The liability for loss of or damage to monies and valuables, as specified in Art. 4, subsect. 3, shall in no case exceed the value declared when the articles were received for keeping in the vessels safe-box. If no value be declared, the liability for the articles deposited shall in no case exceed frs. ....

4. *The liability for the loss of or damage to all other articles than those mentioned under (1), (2) or (3) shall in no case exceed 10.000 frs. per passenger.*

5. The carrier has no liability in cases where the loss or damage suffered by the passenger does not exceed frs. 100,—.

6. Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold

shall be made according to the gold value of such currencies at the date of payment.

7. The carrier and the passenger may agree by special contract to a higher limit of liability. *They may also agree that in case of damage to a motorcar, caravan, motorcycle or other motorvehicle, the liability shall be subject to a deductible not exceeding 5 % of the sound value of the damaged vehicle.*

8. Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

9. The limits of liability prescribed in this article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representative, heirs or dependents on any distinct occasion.

#### Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause damage or recklessly and with knowledge that damage would probably result.

#### Article 8

The provisions of this Convention shall not modify the rights or duties of the carrier, provided for in international Conventions relating to the limitation of liability of owners of sea-going ships or in any national law relating to such limitation.

#### Article 9

*Except as provided for in article 6 (7),* any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit than that fixed in this Convention, as well as any provision purporting to shift the burden of proof, which rests on the carrier, or to require disputes to be submitted to any particular jurisdiction or to arbitration shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.

#### Article 10

Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

## Article 11

1. In case of *loss of or damage to luggage the passenger shall* give written notice of such loss or damage to the carrier within 15 days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, *to have received his luggage undamaged.*

2. Actions for damages arising out of *loss of or damage to luggage* shall be time-barred after a period of *one year from the date of disembarkation, or if the ship has become a total loss, from the date when the disembarkation should have taken place.*

3. The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## Article 12

1. If an action is brought against a servant or agent of the carrier arising out of damages to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier himself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

3. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) 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.

Articles 13 - 22  
as in the 1961 Convention