THE TRAVAUX PRÉPARATOIRES

OF

THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING OF 25 AUGUST 1924

THE HAGUE RULES

AND OF

THE PROTOCOLS OF 23 FEBRUARY 1968 AND 21 DECEMBER 1979

THE HAGUE-VISBY RULES
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**Hague-Visby Rules as amended by the SDR Protocol - Composite text**
In 1997 the Comité Maritime International celebrates its centenary. One of the ways in which this anniversary will be marked is the publication of two volumes of *Travaux Préparatoires*, respectively of the 1910 Collision Convention and the 1952 Arrest Convention and of the Hague and Hague-Visby Rules. The three conventions are not the only, but certainly some of the most important among the contributions by the CMI to the unification of maritime law during the first century of its existence. The publication of their *Travaux Préparatoires* will bear witness to the unique contribution by the CMI to the unification of maritime law, which is its principal object.

The publication of these two volumes is only possible thanks to the great amount of work put into this undertaking by CMI’s past president, professor Francesco Berlingieri. He conceived the idea and executed it in every detail, and it is thanks to him that maritime lawyers will possess this excellent tool for their future work.

Allan Philip
The purpose of this work is twofold. First, to make available to courts, lawyers and academics all the Travaux Préparatoires of the Hague-Visby Rules. Secondly, to enable all those who are interested in consulting the Travaux Préparatoires, to easily find what they are looking for. In fact the discussion on each provision of the Rules has taken place at different times, by several bodies and, therefore, in order to locate the statements made in respect of a given provision, it may be necessary to read a great many pages of several books wherein the Travaux Préparatoires have been collected.

I have thought that the best manner to make the access to the relevant parts of the Travaux Préparatoires easy was to assemble all the statements that have been made in connection with each individual provision.

The book is divided in three parts.

Part I contains the history of the Hague and Hague-Visby Rules. Since the purpose of the book is to make documents easily accessible, I have not given my own version of such history, but I have tried to collect the relevant parts of the documents that provide information on how the Hague and Hague-Visby Rules have come into existence. My personal contribution is, therefore, limited to short paragraphs, whose purpose is only to link the various documents together. Such paragraphs may be easily identified, because they are printed in italics.

Part II contains the Travaux Préparatoires relating to each article and, under each article consisting in a number of paragraphs, under each paragraph or even (for Article 4) under each sub-paragraph.

Part III contains the relevant documents. They include, in addition to the texts of the 1924 Convention and of the two Protocols of 1968 and 1979, most of the drafts that have been prepared by the various entities that have taken part in the process of formation of the Rules.

In order to enable separately to consider the Travaux Préparatoires of the 1924 Convention and of the 1968 and 1979 Protocols the articles or paragraphs that have been amended by the two Protocols are first reproduced in the original text adopted by the Diplomatic Conference in 1924 with the Travaux Préparatoires that have lead to their adoption and then in the text as amended by each of the two Protocols, with the Travaux Préparatoires that have lead to such amendments.

In Part II the provision under discussion is sometimes printed in capital letters. This was so also in the original text and was done in order to indicate the changes as respects the previous draft of a given provision. The same criterion was adopted when the Hague Rules were first published and it has been deemed convenient to use it also
with respect to the subsequent drafts in order to facilitate the identification of the changes that had been made.

The original languages in which the Travaux Préparatoires have been published are English and French.

The reports of the CMI Conferences are partly in English and partly in French.

Those of the Diplomatic Conferences of 1922 and 1923 are only in French whilst those of the 1967 and 1968 Diplomatic Conferences are partly in English and partly in French.

Prof. Michael Sturley, the Editor of the Legislative History of the Carriage of Goods by Sea and the Travaux Préparatoires of the Hague Rules (Littleton, Colorado, 1990), has been so kind as to authorize me to use the English translation of the records of the 1922 and 1923 Diplomatic Conferences. Moreover, he has also made available to me the translation of the records of the 1963 CMI Stockholm Conference (except for the Reports on the Commission on Bills of Lading) and of the 1967/68 Diplomatic Conference.

It has thus been possible to publish a bilingual text - French and English - of the records of all Diplomatic Conferences and of part of the records of the 1963 CMI Stockholm Conference and for this I am greatly indebted to Prof. Sturley and to Ms. Carolyne Boyle.

The records of the 1921 ILA Hague Conference and of all CMI Conferences, except for part of the records of the 1963 Stockholm Conference, are instead published in the language (English or French) in which they have been originally published by the ILA and by the CMI respectively.

The history, the Travaux Préparatoires and the documents of the 1924 Brussels Convention and of its 1968 and 1979 Protocols are based on and reproduced from the following texts.


5. Comité Maritime International - Conférence de Rijeka, September 1959 - Rapports Prélminaires; Procès-Verbaux; Résolutions et Projet de Convention (cited as “CMI 1959 Rijeka Conference”).


8. Conférence Diplomatique de Droit Maritime - Douzième Session (1er Phase) Bruxelles 1967 - Procès-Verbaux; Documents Prélminaires; Documents de Travail; Textes et projets des Conventions (cited as “Diplomatic Conference May 1967”).

9. Conférence Diplomatique de Droit Maritime - Douzième Session (2me Phase) Bruxelles 1968 - Procès-Verbaux; Documents Prélminaires; Documents de Travail; Textes et projets de la Convention (cited as “Diplomatic Conference February 1968”).


FRANCESCO BERLINGIERI
PART I

THE HISTORY OF
THE HAGUE AND HAGUE-VISBY RULES
I. FROM THE ORIGIN TO THE HAGUE RULES, 1921

1. From a paper of W. R. Bisschop, one of the Hon. General Secretaries of the Maritime Law Committee of the International Law Association, published in Lloyd's List in April 1921, it would appear that the first attempts to draft a uniform bill of lading were made by the ILA's Affreightment and International Bill of Lading Committee in 1882.

The relevant part of that paper is reproduced below from the ILA's Report on the 1921 Hague Conference(1).

I. - Progress of International Co-operation

Bills of lading.

The Affreightment and International Bill of Lading Committee set most energetically to work and produced at the Liverpool Conference of 1882 a draft uniform bill of lading, which was, with some slight amendment, adopted and recommended for general use under the title of “The Common Form of Bill of Lading”.

As stated by the late Richard Lowndes, then President of the Liverpool Chamber of Commerce, the principle of the common form of bill of lading should be this - that the shipowner, whether by steam or sailing ship, should be liable for the faults of his servants in all matters relating to the ordinary course of the voyage, such as the stowage, the right delivery of the cargo, and other matters of this kind; but on the other hand that the shipowner should be exempt from liability for everything which comes under the head of “accidents of navigation” even though the loss from these might be indirectly attributable to some fault or neglect of the crew.

At the next Conference of the Association, held in 1885 at Hamburg, the question was reopened, and the bill of lading which had been formulated at Liverpool was varied by the adoption of the following clause:

The shipowner shall be responsible that his vessel is properly equipped, manned, provisioned, and fitted out, and in all respects seaworthy and capable of performing her intended voyage, and for the stowage and right delivery of the goods. He shall also be responsible for the barratry, faults and negligence, but not for errors in judgment, of the master, officers and crew.

Two years later, at the London Conference of 1887, on the motion of Sir John (then Mr.) Gray Hill, the decision of the Hamburg Conference was rescinded, and the principle of the common form of bill of lading as originally enunciated at Liverpool was reaffirmed.

The common form of bill of lading did not realise the hopes of its compilers. It never came into general use. This want of success was doubtless owing in some measure to the fact that the conditions and requirements of different trades are too various to

(1) ILA 1921 Hague Conference, p. xi-xiv.
be covered by one form of words. If the Conference of 1882, instead of formulating a complete bill of lading, had laid down certain fundamental rules of affreightment which might have been imported into any bill of lading by agreement, its labours would probably have been more productive. At the same time, while the Liverpool bill of lading was not accepted in its entirety, it was generally recognised as supplying a type or model of what such a document ought to be, and many of its clauses were inserted in bills of lading which were afterwards formulated by agreement between merchants and shipowners. Among these may be mentioned the “New York Produce Bill of Lading”; the “General Produce, Mediterranean, Black Sea, and Baltic Steamer Bill of Lading 1885”; the bill of lading adopted by the Liverpool Shipowners, Underwriters, and Corn Trade Associations for use at San Francisco; the general rules for steamship bills of lading adopted by the chambers of commerce of Hamburg and Bremen; and the “1891 American Cotton Conference Bill of Lading”. In particular, the negligence clause, as formulated at Liverpool, was extensively adopted, and at that time generally recognised as effecting an equitable division of the risks incidental to negligence on the part of the shipowner’s servants.

The desire for uniformity in bills of lading continued to occupy the minds of legislators, business men and jurists. It led to the Harter Act in U.S.A., to jurisdiction in the French Courts based upon the principles of this Act, to agreements between shipowners, exporters and underwriters at Hamburg for the export trade, and to agreements between the members of the Baltic and White Sea Conference, as well as to legislation in Australia, New Zealand, and Canada. The subject was again fully discussed at the Paris and Madrid Conferences of the Association in 1912 and 1914 and referred to a committee for consideration and report. A renewed attempt of codification has not been made. The latest recommendations on this subject, viz., those of the Imperial Shipping Committee, will no doubt come up some time for consideration by the members of the Association.

II - Its varied work

The attempts to evolve a satisfactory common form of bill of lading not having met with success, it was decided, after much discussion, at the Conference of the International Law Association, held at Genoa in 1891, to refer the whole matter of affreightment to a fairly representative committee, for them “to endeavour to formulate certain rules, on the basis of the resolutions passed by this Association in 1882 and re-affirmed at the Conference of 1887, and report to the next meeting of the Association”.

The Executive Council circulated the proposal among a great number of representative bodies here and abroad. A largely attended meeting of delegates under the chairmanship of Mr. McArthur met in the Guildhall in London on May 11, 1893, and, as an outcome of their strenuous efforts at the October meeting in London in the same year, the “London Conference Rules of Affreightment, 1893”, were presented, and, after a long discussion, adopted as the rules laid down by the Association. These rules were five in number.

It was decided to follow the same course as was so successfully pursued with the York-Antwerp Rules, and to authorise the Executive Council to do what was necessary and best to make them known.

The result was not favourable. It could hardly be expected that the decisions of the Conference on a subject with regard to which the interests and opinions of different sections of the mercantile community were so widely divergent should at once commend themselves to all parties; but it was anticipated that the work of the Conference
would, at least, prove the basis of a final settlement of several very difficult questions. This anticipation was not realised, and the matter lay more or less dormant until the subject was, in 1910, taken in hand by the Comité Maritime International, who discussed a proposed set of rules at their Congress at Copenhagen in 1913. The Comité did not finish their work before the war intervened.

It will form again the main subject of discussion for the Maritime Law Committee of the Association at their meeting, which, as mentioned in the previous article, is to be held in London at Whitsuntide this year.

2. The CMI in turn commenced its work on the unification of the law on carriage of goods by sea in 1905, when, perhaps too ambitiously, it considered the preparation of a uniform law on the contract of affreightment. A concise summary of the work performed from 1905 to 1921 has been made by Antoine Franck in his Preface to the CMI Bulletin No. 47 on the 1921 Antwerp Conference, the first held after the war, the relevant part of which (pages viii-x) is reproduced below.

V. - Code international de l’affrètement. 
Clauses d’exonération dans les connaissements.

Le Comité Maritime International a mis à l’étude depuis 1905, l’unification du droit maritime en matière d’affrètement. Les Conférences de Venise (1907), Brême (1909), Paris (1911) et Copenhague (1913) s’en sont successivement occupés avec beaucoup de soin. Une vaste documentation a été réunie. En dernier lieu un projet de code avait été préparé par M. Denisse, membre de l’Association française du Droit Maritime, et une Commission spéciale avait été réunie une première fois à Londres en 1911; enfin, une Commission spéciale réunie à Londres en 1913 et composée de M.M. Lord Justice Kennedy, président, Sir Reginald Acland, Harry Rish Miller, Robert Temperley, Dr. Gütschow, René Verneau, Léon Denisse, Louis Franck, J. Koch, Fr. Berlingieri, B.C.J. Loder, A. Sieveking, Léon Hennebicq et Frédéric Sohr, a rédigé un avant-projet dont le texte a été soumis à la Conférence d’Anvers.

Notre alliée et amie l’International Law Association a, de son côté, étudié la question et, s’aidant de nos travaux, a soumis le projet de code de M. Denisse à une étude approfondie.

3. On 25 February 1921 a Report entitled “Report of the Imperial Shipping Committee on the Limitation of Shipowners’ Liability by Clauses in Bills of Lading and on Certain Other Matters Relating to Bills of Lading” was issued by the Imperial Shipping Committee(2).

The Imperial Shipping Committee expressed the view that the uniformity in the shipping laws of the several countries which form the British Commonwealth of Nations would have manifest advantages and made the following conclusions and recommendations.
31. Conclusion and Recommendations. As the result of the considerations outlined above under the three heads we have come unanimously to the following conclusion:

That there should be uniform legislation throughout the Empire on the lines of the existing Acts dealing with shipowners' liability, but based more precisely on the Canadian Water Carriage of Goods Act, 1910, subject to certain further provisions with regard to:

(i) exceptional cases in which good should be allowed to be carried by shipowners at owner's risk;
(ii) the precise definition of the physical limits to the shipowner's liability;
(iii) the fixing of maximum values for packages up to which shipowners should be liable to pay.

32. We make the Canadian Water Carriage of Goods Act, and not the Harter Act which it closely resembles, the basis of our recommendation because it embodies the latest experience. It was passed in 1910 whereas the Australian Sea Carriage of Goods Act was passed in 1904 and the New Zealand Shipping and Seamen Act, certain sections of which deal with shipowners’ liability, was passed in 1903. The Harter Act was passed in 1893.

The considerations of the Imperial Shipping Committee on each of the three questions are reproduced hereafter.

33. Provision for Exceptional Risks. We attach great importance to the provisions (i), (ii) and (iii) of our recommendations above. In the first place we would make provision for exceptions in the case of special kinds of goods or methods of carriage. All the Dominion Acts except live animals from their operation and the Canadian Act excepts lumber and other “wood goods”.

34. It is clearly requisite to provide for the exceptional treatment of new kinds of goods and methods of carriage so that traders and others wishing to initiate new developments may not be met by the impasse that the shipowner is unwilling to take the unknown risks and cannot get rid of his liability in respect of them. It is thought that voyages to certain ports or places might also be, or become, subject to such extraordinary risks that they might properly be excluded from the operation of the proposed legislation.

35. We believe that such exceptional cases are likely to be very few, but we think it important the new legislation should contain provisions for defining what articles, voyages, or methods of carriage ought to be excepted from its operation on the ground that the risks attached to the carriage or voyage are so new or uncertain that it is inexpedient that the Act should apply; and further that, inasmuch as such risks will in most cases be likely to become ordinary risks as the trade in question develops, there should be power to remove such exceptions.

36. Extent of Physical Limits within which Liability should obtain. The governing terms of the existing Dominions legislation on this subject are to the effect that the owner, manager, agent, master, or charterer of any ship must not be relieved from liability for loss or damage arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or delivery of goods received by him to be carried in or by the ship, nor must the obligations of the master, officers, agents, or servants of any ship
to handle and stow goods carefully, and to care for, preserve and properly deliver them be lessened, weakened, or avoided.

37. Difficulty arises as to the determination of the point at which any damage or loss may have occurred, but we feel that so long as all reasonable precautions are taken to check the soundness and quantity of the goods when they are transferred from one responsible carrier to another this difficulty is not insuperable. For our present purpose it is only requisite to consider what protection the shipowner should be given in order that he may not have to accept liability for that which is not within his control as a shipowner. In this connection it should be kept clearly in mind that the form of the proposed legislation is not to create any liability, but to prohibit the practice of contracting out of an existing common law liability, and so far as we are aware the decisions at Common Law are not regarded as having been unfair to the shipowner.

38. In accordance with the modern methods of commerce, there are frequent cases where the shipowner, especially the liner-owner, performs services as forwarding agent or warehouser before “loading” or after “delivery from the ship”. We think that the new legislation should not affect such services which we understand are not covered by any of the existing Dominion Acts.

39. The bill of lading purports to be a receipt for the goods to be carried, as well as the contract for their carriage. Since the normal bill of lading opens with the word “shipped”, the liability begins with the “loading” and no question arises. In the case, however, of a “received for shipment” bill of lading or other equivalent document, the proposed uniform legislation should not affect services prior to “loading”.

40. Similarly, in regard to the close of the voyage, services by the shipowner when acting as warehouser or forwarding agent subsequent to “delivery from the ship” should also not be affected.

41. There are, no doubt, cases in which the master and officers are unable effectually to control actual discharge from the ship, but it would appear important in the general interests of commerce that any such undesirable conditions in foreign ports or elsewhere should be the subject of representation and other pressure upon the Governments or Authorities responsible. Only in very exceptional instances do we think that a justifiable case will arise in which permission should be granted to shipowners to curtail their liability and to limit the operation of the legislation so as to exclude delivery while not exempting the voyage itself.

42. The new legislation should, however, provide for the granting of the necessary permission in such exceptional cases.

43. Maximum Monetary Limits to Liability. Section 8 of the Canadian Water Carriage of Goods Act, 1910, states:

“The ship, the owner, charterer, master or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than one hundred dollars per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master or agent”.

44. It is noticeable that the limit of 100 dollars imposed by the Act is low compared with the limit voluntarily imposed by the shipowners in other trades. The Act, apparently, leaves it open to the shipowner to charge a higher freight for packages of which the declared value is over 100 dollars.
45. Neither of the other similar Dominion Acts nor the Harter Act contains any provision of this kind, and although the Harter Act purports to render it illegal for shipowners to contract out of their liability for loss of, or damage to, goods, nevertheless, the United States Courts have held that it was competent for a carrier of goods to agree with the shipper upon the valuation of the property carried, so that the carrier assumes liability only to the extent of the agreed valuation. The view has been expressed to us that, in effect, shipowners could evade their liability under any of the existing legislation except, perhaps, the Canadian Act, by “agreeing” an extremely low value for goods with the shipper.

46. It appears to us that it will be necessary in the new legislation

(1) To provide for the settlement of a reasonable maximum “value” as the limit of liability, or, probably, several such limits for the various trades, and to provide in some way for changes to be made to accord with any altered conditions in freights and values.

(2) To prevent evasion of the general liability by any system of low or nominal agreed values.

47. As regards (1), it would appear that in pre-war times the maximum limits inserted in the bill of lading bore a rough relation to the average value of the goods carried in the trades concerned, and small complaint was made. Recent sudden changes in prices have rendered these customary limits inappropriate, and in some trades readjustments have been made. On the whole, we feel that probably the best way to deal with the matter would be to leave the shipowners to insert their own reasonable maxima in agreement with the shippers in each trade, but with permission for an appeal by any interested party to some independent authority in the event of the maximum not being thought reasonable. In the case of exceptionally valuable articles such as gold and precious stones, we think that a duty should be incumbent on the shipper of declaring the contents and value of the package at the time of shipment.

4. After the Report of the Imperial Shipping Committee had been circulated, a Conference of the Maritime Law Committee of the International Law Association was held in London from 17 to 20 May 1921 under the chairmanship of the Rt. Hon. Sir Henry Duke.

Amongst the subjects on the agenda of the conference there was that of the “Code of affreightment”. A report, entitled “Report on Bills of Lading” was approved by the Conference. The relevant part of such report is reproduced hereafter(3)

Report on Bills of Lading

Conference of the Maritime Law Committee of the International Law Association, held on May 17th to 20th, 1921, in Gray’s Inn Hall, under the Presidency of the Rt. Hon. Sir Henry Duke, President of the Probate, Divorce and Admiralty Division of the High Court of Justice.

.................................................................

These were general propositions which did not involve any considerable amount of labour for the members of the Committee. There were, however, topics relating to the contract of affreightment which were more controversial, and on which it was desired that opinions should be focused at this series of meetings, so that some practical progress might be made towards the settlement of outstanding differences.

He had ventured to formulate upon the subject a questionnaire which might be of some use for the purpose of bringing the discussion to set points, in order that as much profit as possible might be got from these meetings. The first was-

Whether freedom of contract on the part of the shipowner with regard to carriage of goods by sea should be absolute or should be limited by legislation.

That seemed to underlie the fundamental differences between the parties concerned. Until the Committee arrived at a view on that subject no progress could be made. The second point was-

Whether legislative control should be exercised to secure for the shipper an express acknowledgment of receipt of goods shipped; or to secure the statement of the contract of affreightment in uniform terms as to all or part of the subject matter, or in plain terms which define simply and explicitly the risks accepted by the shipowner and shipper respectively.

The last alternative, he knew, ran very much more upon the lines of English thought and action than any stereotyped process in relation to contracts of affreightment. In some branches of law great progress had been made by defining the risks of the carrier and the goods owner. Another question was-

Whether the shipowner should be at liberty to exclude by the contract of affreightment liability on his part for loss or damage generally or to a limited extent.

A further point was-

If some risks should be excluded, whether they should include (a) perils of the sea and unforeseen accidents or acts of third parties; (b) risks from unseaworthiness, insufficient manning or defective equipment of the ship; (c) negligence, fault or failure in the loading, stowage, custody or delivery of the goods; and (d) any other risks.

The Chairman concluded by expressing the satisfaction it gave him as a member of the Bench of Gray’s Inn to welcome the members to that House.

4. - Code of Affreightment

Discussion was then opened upon the proposed Code of Affreightment as mentioned in the circular of the Honorary Secretaries, and which had been forwarded to all the members of the Committee.

After full discussion the matter was referred to a small sub-committee to draw up a report. The following report was prepared by the sub-committee, and after further discussion and amendments adopted by the Conference.

5. The report prepared by the sub-committee, reference to which was made in paragraph 4 of the “Report on Bills of Lading” and which was entitled “Report of the Maritime Law Committee on Bills of Lading”, is reproduced in full hereafter (5).

Report of the Maritime Law Committee on Bills of Lading.

The law relating to carriage of goods by sea falls naturally under two heads, that relating to carriage under charter parties and that relating to carriage under bills of lading. The attention of goods owners generally has been directed in the main to the rights and immunities evidenced by bills of lading, and upon this subject there is evidence of widespread concern, but no long consideration is required in order to recognise that legislation with regard to bills of lading implies a review of the law of charter party. The charterer may issue bills of lading, and the obligation arising therefrom may, and perhaps must, affect the owner’s property in the ship. It would seem, then, to be essential that in any legislation with regard to bills of lading provision should be made in plain words to safeguard rights arising between shipowner and/or charterer and goods owner in respect of carriage under bills of lading issued in respect of cargo carried on a chartered ship.

The Committee devoted two sessions to the discussion of the law governing the relations of shipowners and cargo owners with regard to carriage by sea under bills of lading, and had before it the Report of the Imperial Shipping Committee on the Limitation of Shipowners’ Liability by Clauses in Bills of Lading, the London Conference Rules of Affreightment, 1892, the Draft Code of Affreightment as passed in first reading by the Comité International Maritime in 1913, and the Avant Projet de Code International de l’Affrètement of M. Léon Dénisse, with the introductory memorandum thereto issued by the Secretaries of this Committee, as well as the report of the Netherlands Branch of the Maritime Law Committee and correspondence from the United States, Great Britain, Holland, Scandinavia and Switzerland.

The Report of the Imperial Shipping Committee, it should be observed, was published after the Memorandum containing the Draft Rules of Affreightment and the Draft Code of M. Dénisse had already been circulated by the Maritime Law Committee among shipowners, underwriters and cargo owners. That Report deals only with carriage by sea under bills of lading in cases when the chartering of a vessel is not involved. The appointment of the Imperial Committee was the result of a movement among the commercial community of the Empire in response principally to the demands of representatives of cargo owners, and the Report is likely to receive early consideration. At the same time legislation on the basis of the American Harter Act and the statutes already in operation in Canada, Australia and New Zealand has been considered in France, in the Netherlands and in the Union of South Africa. From correspondence received from Norway it appears also that the drafting of rules is already entrusted to Committees in that country, Sweden, Denmark, Finland and Iceland, with a view to uniform legislation in those communities in respect of carriage of goods by sea. In Holland a Bill has been introduced in the Second Chamber of the States General for the revision of the Dutch Commercial Code, which embodies provisions

such as those of the Harter Act for the introduction of obligatory conditions in bills of lading.

It was under the circumstances above stated that the Committee deemed it desirable to give their attention in the first place to the conditions under which goods are carried by sea under bills of lading, bearing in mind, however, that a lawfully issued bill of lading binds a ship whether issued on behalf of the owner or of the charterer.

For the purpose of eliciting opinion upon the salient points of principle, the discussion was conducted with reference to a questionnaire submitted by the Chairman. The questions so raised were dealt with in the order in which we proceed to set them forth.

**Question 1.** - Whether the freedom of contract on the part of the shipowner with regard to carriage of goods by sea should be absolute or should be limited by legislation?

Sir Norman Hill, while declaring his personal conviction that the permanent interests of both parties to the contract and of the whole community are best served by maintenance of the mutual right to make their bargains without legislative interference, stated his belief that shipowners as a class are desirous of rendering all the services which owners of cargo in fact require, and invited a plain statement of the matters, if any, in respect of which compulsory regulations are called for. Sir Alan Anderson and Mr. Temperley made further exposition of the views of various classes of shipowners.

Mr. McConechy informed the Committee that the Manchester Chamber of Commerce and the Manchester Association of Importers and Exporters were in general agreement with the proposals set forth in the Report of the Imperial Shipping Committee. He advocated the adoption of international regulations whereby shipowners should be answerable in all cases for loss and damage due to unseaworthiness of the ship, inclusive of any harmful or improper condition of the ship's hold, and for default in lading, custody and care, and unloading of goods; and should be exempt from liability in respect of perils of the sea and of navigation (including perils due to negligent navigation, act of God, and the King's enemies), insufficient packing and seizure under legal process. Mr. McConechy stated as his opinion that bills of lading drawn in conformity with the Water Carriage of Goods Act, 1910, of the Dominion of Canada, would provide all necessary safeguards to cargo owners.

Dr. Rombach gave particulars of a draft of proposed legislation in Holland, whereby the liabilities of shipowners would, he thought, probably be defined with the concurrence of shipowners and cargo owners, and advocated the adoption of international statutory rules which would render shipowners liable in all events for losses caused by want of reasonable care and diligence, with a maximum in pecuniary amount of statutory liability fixed at per parcel shipped.

Dr. van Slooten supported, in the interests of uniformity, the adoption of a code founded on the Harter Act and the Canadian statute, and with Dr. Rombach took the view that Dutch shipowners would be prepared to accept an international settlement on these lines.

The views of the majority of the Committee were expressed in favour of a uniform system of law among maritime States whereby liability for losses caused by defect of ship or default in the handling and custody of goods should be obligatory upon the shipowner, provided that - in the words of Section 6 of the Canadian statute - “if the owner... exercises due diligence to make the ship in all respects seaworthy and prop-
erly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship or from latent defect”.

**Question 2.** - Whether legislative control should be exercised

(a) to secure for the shipper an express acknowledgment of receipts of goods shipped;
(b) to secure the statement of the contract of affreightment in uniform terms as to all or part of the subject-matter;
(c) or in plain terms which define simply and explicitly the risks accepted by the shipowner and shipper respectively?

Sir Norman Hill and other members pointed out the difficulties involved in a compulsory system of “shipped” bills of lading without due recognition of the claims of the great volume of trade which is carried on upon “received for shipment” bills of lading.

Members from Holland agreed in the view that growing difficulty may be expected from the substitution of bills of goods received for shipment in place of bills of lading upon shipment, and advocated legislative action whereby the issue of a bill of lading in respect of goods shipped for carriage by sea should be made compulsory for shipowners. They agreed, however, that a condition precedent to the right of the cargo owner to require the issue of a bill of lading upon shipment should be the delivery up by him of any bill or acknowledgment of goods “received for shipment” which may previously have been issued in respect of the same goods. On behalf of shipowners the view was expressed that, subject to such a condition, no objection in principle stands in the way of the compulsory requirement of a plain bill of lading evidencing the fact of the shipment of goods specified therein.

Assuming the adoption of the principle of compulsory liability of shipowners - with optional immunity - upon lines such as are before indicated, the Committee thought it of some importance to consider in what way expression would best be given to this principle in the terms of bills of lading such as would comply with the requirements of the suggested international code.

The mode which was adopted by the United States of America in the Harter Act has been followed in the main by the Dominions in their respective statutes. It would be simple to incorporate in a common form bill of lading by words of reference the terms of an international code in the same way as the terms of individual statutes or of agreed rules are at present being incorporated.

Once there were agreement upon rules of international operation, the need for express statement in bills of lading would, no doubt, be found to have ceased. In the meantime it would probably be thought proper to incorporate by reference the terms of such statutes as are in fact incorporated, whether by statutory regulations or by agreement.

The terms of bills of lading outside the area of statutory definition of liabilities would remain matter for agreement and statement according to the bargain of the parties concerned.

**Question 3.** - Whether the shipowner should be at liberty to exclude by the contract of affreightment liability on his part for loss or damage (a) generally, or (b) to a limited extent?

It must be borne in mind that the Harter Act and the Dominion statutes proceed
upon the basis of a pre-existing code of liability such as in England and countries which recognise the Common Law is founded upon the provisions of the Common Law.

The international code, however, would not assume the pre-existence of Common Law liabilities, and would be based upon enacted liabilities and enacted immunities.

In order to be in a situation to deal with this matter at the Hague Conference, the Committee decided to take steps to obtain the embodiment in a draft code of regulations of such provisions as would in their view give international effect to the main intentions of the statutes in question.

Subject to this, it may be said that outside the statutory area of absolute liability and immunity of the shipowner, his liability would remain unaffected, and that the statutory liabilities and exemptions of shipowners could well be declared in terms consistent with the provisions of the Canadian statute.

With regard to limitation of liability in respect of pecuniary amounts, the Committee discussed the proposals of the Imperial Shipping Committee. It was pointed out that if the international uniformity desired by many interested parties is to be obtained, the fixing of maxima for trades or industries, or otherwise sectionally by a Committee of the kind suggested in that Report, is not likely to be practicable. The object to be obtained was thought to be that of securing increased diligence and vigilance, and members were of the opinion that a standard compulsory maximum of liability per package, with liberty to cargo owners to stipulate for larger security if they so desired, would probably secure this object as well as a more elaborate process.

The Committee had under particular consideration the subject of Exceptional Risks. Notwithstanding the departure from theoretical uniformity, the Report of the Imperial Shipping Committee recognises an apparent necessity of excluding exceptional risks from the restrictions of any rules which may be introduced for the purpose of establishing compulsory liability under bills of lading. In the Canadian statute also live stock and timber are withdrawn from the operation of the compulsory clauses. Members speaking with large practical experience stated it as their opinion that a rigidly uniform system of bills of lading conformed to the main enactment of the more stringent of the Acts now in operation would have gravely interfered with, and perhaps prevented, the establishment of some overseas trades - especially in perishable foodstuffs - which are now of great public value. Perishable commodities, and goods shipped with damage, as, for example, goods salved or transhipped after a marine casualty, were mentioned as instances of varieties of cargo as to which shipowners might be free from compulsory liability. The Committee were agreed in the view that notwithstanding the departure from theoretical uniformity, exceptional cases might be withdrawn from the general operation of any international rules of compulsory liability. The best mode of defining exceptional classes of freight was discussed, and members suggested alternatively ships’ receipts embodying whatever bargain might be made between the shipowner and the cargo owner, which should not be deemed negotiable documents, and bills of lading at owner’s risk. No member raised any objection to the treatment of the subject in either of these modes.

It was not thought practicable to adopt, for international purposes, the suggestion of the Imperial Shipping Committee that a special tribunal should be constituted to determine what are to be regarded as exceptional classes of freight. In the opinion of the Committee the point must be left to be determined by the parties directly concerned in the particular shipments.

The general observance of the rules would be safeguarded by conferring on the
cargo owner, in the absence of express agreement on his part to the contrary, the absolute right to insist on the issue of a bill of lading in conformity with the rules, and on the shipowner the absolute right to refuse to carry cargo on such terms.

So far as underwriters are concerned, the fact of shipment with “exceptional risk” conditions would, no doubt, be under English law a fact necessary to be declared by the shipper, and it would be practicable to secure under international regulations protection of insurers by a like requirement.

Question 4. - If some risks may be excluded, whether they should include
(a) perils of the sea and from unforeseen accidents or acts of third parties;
(b) risks from unseaworthiness, insufficient manning, or defective equipment of the ship; or
(c) negligence, fault or failure in the loading, stowage, custody or unloading of the goods; or
(d) any other risks?

Question 4 would be answered by the adoption of uniform regulations as to the obligations to be compulsorily borne by the shipowner, and as to the exemptions to which, apart from voluntary acceptance of liability, he would be entitled.

In the main it was the view of the Committee that a basis of agreement upon a uniform system for the statutory determination or rights and liabilities in respect of goods carried at sea would probably be most readily arrived at upon the lines of the Canadian statute and the Report of the Imperial Shipping Committee.

The Committee had the advantage during its sittings of the presence not only of representatives of shipowners and cargo owners, but of a representative of the underwriting interests in the person of Mr. Edward F. Nicholls, of the London Assurance Corporation, the effect of whose evidence before the Imperial Shipping Committee is familiar among those concerned in the questions now under consideration.

The view expressed on the part of the underwriters was, in brief, that they desired chiefly that there should be certainty and mutual understanding in the contracts under which insurance are to be made.

Mr. Nicholls also expressed a clear opinion of the absolute necessity in the interests of overseas commerce of the ability on the part of shipowners to limit in clear terms the liabilities incurred by them by means of the contract of affreightment.

The preceding passages of this report relate in the main to the relations of shipowners and cargo owners in respect of carriage by sea under bills of lading.

As has been pointed out, liabilities arising under charter parties may cover some part of the area of obligation already dealt with. The contract of affreightment as a whole, however, is under discussion in several of the maritime States, and the Committee were agreed in the view that it is desirable to arrive, if possible, at agreed conclusions in respect of the contract of affreightment by charter party if such conclusions are arrived at in respect of carriage under bill of lading.

The Report of the Netherlands Branch of the Maritime Law Committee has already received a considerable amount of attention in this country, but this Committee are of the opinion that the subject of charter parties would be better dealt with after fuller investigation than has at present been made, and this subject was therefore postponed to a future meeting.

Proceeding upon the views above expressed, the Maritime Law Committee refers to the Conference of the International Law Association to be held at The Hague in the Autumn of 1921 the consideration of the questions (1) Whether it is desirable in the
interests of seaborne trade that the rights and liabilities of the cargo owner and shipowner under all contract for the carriage of goods by sea should be controlled by State action? (2) and if so, to what extent?

Without prejudging the questions referred to the Hague Conference, the Committee remits to the drafting committee with power to add to their number the preparation of the draft of such a code of regulations as would give effect to the views expressed by the major part of the Committee at the series of meetings.

A vote of thanks was tendered to the Treasurer and the Benchers of Gray's Inn for the hospitality received at their hands in the beautiful hall of Gray's Inn. A vote of thanks was also accorded to the President for his conduct in the Chair.

HENRY E. DUKE,
Chairman.

HUGH H. L. BELLOT,
W. R. BISSCHOP,
Hon. Secretaries

6. In a report submitted to the CMI 1921 Antwerp Conference by Frederic Sohr, Secretary General of the CMI, entitled “Note sur les Travaux du Comité Maritime International” (CMI Bulletin No. 47, cit., p. 15-17), the following statements are made(6):

Another question, which is connected with that of Affreightment, namely Exonerating Clauses, has aroused public opinion in all countries. The Report of the Imperial Shipping Committee of February 25th, 1921, has given it special interest.

This very question has now been formally laid before the International Maritime Committee by two resolutions passed respectively by the International Chamber of Commerce (London, June 1921) and by the Bill of Lading Committee of that Association.

Resolution of the International Chamber of Commerce:
“The Chamber believes it to be highly important to unify, as far as reasonable and feasible, diverse commercial practices of different nations when such practices are detrimental to commerce, and to that end,

1) The International Chamber of Commerce is unanimously in favour of obtaining a uniform international ocean bill of lading with appropriate clauses for use in special trades and at particular ports.

2) A permanent committee shall be appointed by the Directors which shall co-operate with the International Law Association and the Comité Maritime International in their efforts to obtain uniform legislation respecting ocean bills of lading.

3) Pending the passage of such uniform legislation and following the precedent established in the adoption of the York-Antwerp Rules, the said Committee [17] shall investigate and report to the Directors as to the possibility of ob-

(6) Translation from the original French text reproduced from Sturley, The Legislative History, supra note 2, Vol. II, at p. 149.
I. From the Origin to the Hague Rules, 1921

4) Upon the receipt of the report of said Committee, the Directors are authorized to take such actions as they consider wise in the premises.”

Resolution of the Bill of Lading Committee (2nd July 1921):
“Resolved, that this Committee is in favour of the adoption of an international Code which will define rights and liabilities of sea carriers under bills of lading.

In furtherance of this object, the Committee have had submitted to them the draft of such a Code, which they, in principle, have approved and distributed amongst their members for submission to their co-nationals. Subject to approval by the latter, the Committee will be prepared, in co-operation with the International Law Association and the Comité Maritime International, to recommend the adoption of this Code by all parties interested.”

7. After the Antwerp Conference the President of the CMI, Antoine Franck, so stated in the Preface to the CMI Bulletin No. 47 in which the proceedings of the Conference were published(7):

Se rattachant à cette difficile matière, la question des clauses d’exonération dans les connaissances a été reprise dans différents pays. Des associations commerciales importantes ont émis le vœu de voir la législation intervenir. La Chambre de Commerce Internationale a fait appel au Comité Maritime International. Un rapport dû à la British Imperial Shipping Commission forme une importante contribution pour l’étude et la solution de la question. L’International Law Association va s’en occuper à son congrès prochain à la Haye, tandis que les armateurs anglais, sous les auspices de la Chamber of Shipping, en délibéreront prochainement.

Dans ces circonstances, le Conférence d’Anvers ne pouvait songer à arriver dès à présent à des conclusions détaillées et positives, susceptibles d’être recommandées aux gouvernements. Mais elle a entendu avec un grand intérêt les vues exposées par les différentes délégations nationales représentées dans son sein, et en attendant que les travaux ci-dessus signalés aient pu être terminés et coordonnés et une décision prise sur le principe, elle a été unanimne à constater que si une solution utile acceptable pour tous les intéressés et efficace est de nature à intervenir, c’est seulement par la voie d’une entente internationale, poursuivie selon la méthode éprouvée et par l’intervention de la Conférence diplomatique.

Elle a en conséquence voté la motion suivante:
“La Conférence a pris connaissance avec grand intérêt tant de l’avant-projet de traité sur la loi de l’affrètement préparé par la Commission de Londres, que des observations présentées au cours des débats qui ont eu lieu à Anvers. Elle charge le Bureau Permanent de recueillir l’avis motivé des Associations et groupes nationaux sur l’avant-projet, en tenant compte des résultats auxquels arriveront les travaux entamés par l’International Law Association, quant au même objet;

Elle prie spécialement les Associations et groupes nationaux de rechercher s’il y a lieu de poursuivre une codification complète de la matière ou s’il y a lieu de se borner

(7) At p. ix and x.
à régler les questions importantes sur la solution desquelles les législations se divisent;

La Conférence a suivi également avec une particulière attention les vues qui ont été exposées au sujet d’une législation sur les clauses d’exonération dans les connaissances; elle estime que seule une entente internationale peut utilement solutionner la question et les graves conflits de loi en ces matières;

Elle charge le Bureau Permanent de suivre les travaux de la prochaine Conférence de la Haye et de prendre les mesures nécessaires pour une étude approfondie de la question et pour une intervention éventuelle en vue d’une action internationale”.

8. The draft prepared by the drafting committee referred to at the end of the Report of the ILA’s Maritime Law Committee on Bills of Lading was submitted to the Conference of the International Law Association held at The Hague from 30 August to 3 September 1921. The draft rules were considered by the Maritime Law Committee of ILA and after a thorough revision were adopted unanimously by the Committee on 2 September 1921 under the name of the “Hague Rules, 1921”.

The Chairman of the Maritime Law Committee, Sir Henry E. Duke, delivered the Report of the Committee to the plenary session of the Conference on 3 September 1921. The records of the proceedings are reproduced below(8).

The Chairman: I will now ask Sir Henry Duke to deliver the Report of the Maritime Law Committee.

The Rt. Hon. Sir Henry E. Duke (who was received with applause): Mr. President. I am happy to be able to inform the Association that the Maritime Law Committee yesterday at its closing session agreed unanimously upon Rules, with regard to the carriage of goods by sea under bills of lading, which it now presents to the Association for its approval. (Applause).

At the meetings of the Committee we had the advantage of the presence and cooperation of representatives of the owners of shipping, of the shippers and consignees of goods, of the bankers and underwriters; and, although at the outset there was the inevitable diversity of view and of interest which has made the question we had under our consideration, for the whole period of a generation, one of controversy, the negotiations and debates of the representatives of those various great interests were animated by such good temper and such businesslike forbearance and conciliation that, in the event, the draft, which had been settled by the Drafting Committee of the Maritime Law Committee, was, as I have said, approved with one voice. (Hear, hear).

Now, to those whose interests are vitally concerned in the draft Rules which the Committee recommends for your approval, those Rules are known, I may say, line by line and word for word. To those who regard the matter from the broader view of the desirability of concord in matters of international concern, I do not doubt that what has been agreed upon by the interests concerned will be accepted as a wise settlement. (Hear, hear).

Under those circumstances I ask you to take the Rules, which have been debated and read, and read again, which are in print, and of which Dr. Bisschop will give you copies, as read. (Agreed).

(8) Fifth Day’s Proceedings, 3 September 1921, Dr. B.C.J. Loder in the Chair, ILA 1921 Hague Conference, p. 245.
The Committee has not only settled its Rules, but it presents a series of Resolutions by means of which it is hoped to bring the Rules into effectual operation at the end of January of the coming year, in order that the long-standing differences between these great business interests may come finally to an end. Those Resolutions it is desirable that I should read to the Association, and, if I have your leave, I will read the short Report with the Resolutions. These Resolutions also have been put into print, and Dr. Bisschop will provide copies to those who ask for them:

“The Maritime Law Committee recommend for the consideration of the International Law Association the following Resolutions:

1. That in the opinion of this Association international overseas trade and commerce will be promoted and disputes avoided, or the settlement thereof facilitated, if the rights and liabilities of cargo owners and shipowners respectively are defined at an early date by Rules of a fair and equitable character with regard to bills of lading which shall be of general application.

2. That the Association approves, under the name of ‘The Hague Rules, 1921’, the Rules as to carriage by sea framed by its Maritime Law Committee which have been settled during this Conference after consultation with representatives of the interests concerned from numerous maritime States, and recommends the same for international adoption. For the purpose of securing prompt and effective action the Association relies upon the continuance of the co-operation among shipowners, shippers, consignees” - (there is a slip in the hastily printed copy) - “bankers and underwriters present and represented at the Conference which appears to render this proposal at the present time a practical means of progress.

3. That in the opinion of the International Law Association these Rules should apply to ships owned or chartered by any Government, other than ships exclusively employed in naval or military service.

4. That these Rules be published in English and French, the official languages of this Conference.

5. That in the opinion of this Association the use of the shipping documents known as ‘received for shipment’ bills of lading and like documents has become in many cases a necessity of commerce. This Association is therefore of the opinion that the interests concerned should co-operate to remove difficulties which at present attend the use of such documents in the cases in which the necessity for their use is generally recognised.

6. Whereas special legislation on the subject dealt with by these Rules exists in various States and is proposed in other States, and whereas it will only be possible in such States to bring these Rules into operation if they be in accord with national legislation, it is in the opinion of this Association desirable in order to secure uniformity that such legislation or proposed legislation shall be brought into harmony with these Rules.

7. That the Executive of the Maritime Law Committee be and is hereby authorised and requested to continue its action, in conjunction with the representative bodies and interests concerned”, - (not “in the interests”) - “in order to secure the adoption of the said Rules so as to make the same effective in relation to all transactions originating after January 31st, 1922”.

Mr. President, Ladies and Gentlemen. The Maritime Law Committee derives great satisfaction from the co-operation which was shown in its proceedings by the business interests concerned; it regards it as of high public and international importance that these Rules should come into operation by the common assent of the commercial word
(Hear, hear), and in order to promote those objects I can do no more now than to present the Rules to the Association and to move that the Report and Resolutions of the Maritime Committee be now adopted. (Loud applause).

The Chairman: I thank Sir Henry Duke for his most valuable communications, and I put to the Conference the adoption of the Report and the Resolutions. (Adopted unanimously).

II. FROM THE HAGUE RULES, 1921 TO THE BRUSSELS CONVENTION, 1924

9. Less than three months after the Hague Conference of the ILA an International Shipping Conference was held in London from 23 to 25 November 1921. The Conference was attended by representatives of the shipowning industry of fourteen maritime countries and its main purpose was to consider the adoption of the Hague Rules. The Chairman of the Conference, Sir Owen Philipps, called upon Sir Norman Hill to deal with this subject and present a resolution thereon. The speech of Sir Norman Hill is reproduced hereafter:

Sir Norman Hill: Mr. President, the resolution that I submit opens with affirming the principle that freedom of contract lies at the root of all successful trade and commerce.

I take it that that is the principle upon which we all as shipowners are prepared to act, and it is the only principle upon which we wish those who deal with us also to act.

I think one might go further than that, and say that it is the principle upon which every trader in international trade wishes to act, although possibly there are traders who have doubts as to whether it is quite the right principle to be applied to traders with whom they deal and still less whether it is the right principle to be applied to the shipowners they employ. They believe thoroughly in freedom for themselves, but they are a little doubtful as to whether freedom can wisely be given to those with whom they trade. I suppose those are the traders who always are hoping to derive benefits from having their own particular business protected by tariffs or declared to be key industries, or by having conditions and obligations imposed upon the people with whom they do business. By curtailing the freedom of the citizen to buy or sell where and how he pleases or his right to market the commodities with which he deals as he pleases, the State has, beyond question, the power to confer benefits on individual traders, but I doubt if any State has discovered the means by which that kind of benefit can be used to promote the general international trade of that nation.

The belief that the State can confer benefits without imposing obligations to at least an equal amount is surely the maddest of all economic heresies. It is founded on the belief of inexhaustible wealth at the disposal of the State which can be granted away here, there and everywhere, nobody having to find it.

As shipowner, we all believe in the freedom of the seas, and we know that, as in the

navigation of our ships, the danger always comes from the land. I have heard you say, Sir, that there is only one sea. True, and if that sea is to be used for the benefit of international commerce it is essential that it should be free, and that its ports should be free. The sea itself is always free. If you go bathing the risk of losing your clothes comes from the land, not from the sea. In peace time the sea is always free, and its ports we want to be free.

Now surely the only possible basis of freedom in international commerce is freedom to the individual to make such contracts as he thinks will best help him in the conduct of his trade.

Having declared myself a whole-hearted believer in individual freedom of contract, how comes it that I am venturing to ask you to adopt the Hague Rules of 1921, even up to the point of advocating their incorporation in an international Convention?

To explain my position, I would ask your indulgence while I refer very briefly to the agitation which has finally produced the Rules. It started somewhere about forty years ago, and it has been directed in the main against the liner bills of lading. It is not necessary for me to trouble you with a rehearsal of the circumstances in which the liner bills of lading came into existence. Speaking quite broadly, I take it that as the liners extended their shore organisations and undertook many duties beyond those of carrying by sea, they found it absolutely necessary to limit the responsibilities they assumed as against the freights they charged. Now that is a method of business understood and followed in every market of the world in dealing with the commodities or the services that those markets provide, but, unfortunately, right from the very beginning that method was suspect by the Law Courts of all countries when it was applied to the carriage of goods by sea. In this country our Courts have always held the parties to a bill of lading incorporating owners’ risk terms bound by that bargain, but they have exercised extraordinary ingenuity in finding reasons why the words used in that bargain do not mean what they say.

In other countries, the Law Courts have dealt with bills of lading on bolder lines; they have pronounced this clause and that clause as void as contrary to public policy. I venture to suggest that both those methods are a form of State control exercised by Judges who for the most part are singularly ill-fitted to deal with business matters. Just take an example. Assume that the average loss is somewhere about one-half of one per cent. I think that is about the pre-war figure. It was surely for the traders to decide whether they would pay higher freights on two hundred cargoes and recover from the shipowner the two-hundredth cargo when it was lost, or pay lower freights on the two hundred cargoes and have to cover their own loss on the two-hundredth when it occurred. That was surely a simple matter of ordinary business, and the attempt of the law to find in public policy that haven in which every incompetent trader hopes to find salvation failed of necessity. It always does fail. But the decisions have placed highly artificial meanings on the words that were put into the bills of lading, and it became more and more elaborate and complex.

There was another factor also operating in the same direction, and that was the extension of the organisation of the lines to which I have referred, not only in the ports, but in the ports of call, and the voyages they made. To keep faith with all their customers the lines had to impose conditions on all their customers. You cannot run the organised liner services and make your sailing dates unless you have very substantial control over the cargoes that you are handling. Personally, I think it was a great mistake even to have put those general traffic regulations into the bill of lading. I know no
other market in the world in which you find all the market conditions incorporated in your own particular contract note. You can buy wheat, or cotton, or ore, or stocks and shares, or anything you please, and you always buy subject to the conditions of the market, but those conditions are incorporated in the by-laws or the rules and regulations of that market and they are not set out at length in your particular contract note. Why that course was not adopted in dealing with the sale of carrying space of the lines I do not know. I think it was a misfortune that those clauses were ever inserted in the bill of lading.

Those two points - the interference of the Law Courts, and the incorporation of general traffic conditions - have produced a bill of lading of extraordinary length and of apparent complexity. It has become a document which lends itself not only to criticism but, what is far more deadly, to ridicule. It has played right into the hands of the agitators.

I think I have indicated the causes which have brought about the agitation. It has been very difficult to meet because right up to the present time we have never got the agitators to say definitely what exactly it was that they all wanted. Each man would agree as to what he wanted, and he wanted it whatever inconvenience it might subject his fellow cargo owners to. They never would count the cost as a whole, and they would never take into account what must be the effect of increasing the cost on over-sea commerce as a whole.

You, Sir, referred to the point that the agitators represent the great volume of the cargo interests. We know they do not. We know that in spite of this agitation the over-sea commerce carried on these bills of lading has gone on increasing year by year right down to the war in a way that must have been satisfactory to the traders. We know that these documents, which are abused as dishonest, discreditable documents, were the foundation upon which all that great movement of commerce was financed.

The agitation has taken different phases. When I first had to deal with it - and it is more than thirty years ago, I am sorry to say - the attack was mainly directed against the negligence clause. That point we debated with the cargo interests, at meetings of the Chambers of Commerce, before Committees appointed by our Government, Commissions, and frequently before the International Law Association. We told our friends the cargo interests that if they made us assume that responsibility they would increase very substantially the cost of carriage, and that if we were to act both as underwriters and as shipowners the freights must provide the funds out of which both services were met. We told them that even if we eliminated the clause and did assume the responsibility of underwriters their bankers would go on insisting upon other policies being taken out and paid for, and deposited with them. It is manifest that, although the class of the ship may be full warranty as to its capacity to carry your cargo, it is absolutely no warranty as to the financial position of the owner of that ship to meet cargo claims which may amount to many times the value of the ship.

The point to which I am referring was under discussion when the Harter Act was introduced in 1893. As that bill came before Congress it contained no negligence clause. It made the shipowner into an underwriter so far as negligent navigation was concerned. The Senate readily inserted Section 3, which is a very fair and reasonable negligence clause, but it is, I venture to think, expressed in a very unfortunate manner. Now our British Dominions have followed on the lines of the Harter Act, and they have all inserted negligence navigation clauses, and now when meeting this new agitation we find that the cargo interests have practically all come round to our view and they are all now maintaining that they can effect their insurances against negligent
navigation far more cheaply with the underwriters than if that responsibility is put upon shipowners. They have come round to our view on that point.

I do not propose to trouble you with my views of the economic effect of the Harter Act and the Dominion Acts, if they have had any effect, but the existence of those Acts is a fact of which we must all take note. For years now the shipowners have carried a very substantial part of the trade of the world under those Acts.

In this country so far we have not legislated, but the whole question was brought recently before the Imperial Shipping Committee. Upon that Committee the British Shipowners were in a hopeless minority, but they were represented with conspicuous ability by Sir Kenneth Anderson, Sir Alfred Booth, and, at a later date, by Sir William Noble.

You are all familiar with the Report of that Committee. We may or may not be in agreement with the conclusions at which it arrived, but it is, I think, noteworthy as the first attempt to state and deal with the agitation on ordinary business lines. It reviews in detail the complex nature of the services rendered by the lines, and it endeavours to apportion on a commercial basis the risks incident to those services.

With that Report before us, what was to be the action of British shipowners? We knew that it would be brought before the Conference of Prime Ministers that was to be held last summer in London, and we realised that the chances were that it would be adopted by that Conference and that legislation for the British Empire would follow as a matter of course. We knew that legislation was in contemplation in other European countries, and we knew that the attack upon the negligence clause was being renewed in the United States of America. With those facts before us we suggested to the Maritime Law Committee of the International Law Association that it should once again call the interests together with a view of getting this never-ending dispute settled by agreement between the shipowners and the exporters, the importers, the bankers and the underwriters. We took that step for two reasons. First, we were afraid to leave to the politicians and the officials of the State the conversion of the Report of the Imperial Shipping Committee into an Act of Parliament. We knew that there would be risk, really grave risk, of the commercial meanings of that Report being misunderstood, even if they were not sacrificed to political expediency. And secondly, it appeared to us of the greatest importance that if freedom of contract in the over-sea carrying trade was to be restricted, it should be on international and not on national lines.

If we had taken no action, then with certainty we should have had, in the near future, an Act on the lines of the Harter Act applied throughout the British Empire. The result would have been that the trade of the British Empire and of the United States, representing, I suppose, nearly one-half of the trade of the world, would be carried under the terms of Codes which are quite incomprehensible to other nations, and that there was every chance of those other nations bringing into existence their own laws settled in accordance with their own ideas.

If a Code is to be of any value, it will not be because it confers this or that benefit on this or that particular person, but because it facilitates commerce as a whole.

As we know, all over-sea commerce is carried on credit, and in the procuring of that credit the bill of lading plays an all-important part. Clearly it is to our interests as shipowners to maintain to the full the credit of the bill of lading. We have to realise that the bill of lading itself has now become a commodity which is dealt with in the markets of the world - the financial markets and the underwriting markets as well as the produce markets - quite apart from the goods that it represents. We know that commerce, finance and underwriting are all international markets, and there are obvi-
ous advantages to be gained by us as shipowners by having our bills of lading in such a form as to make them not only known but acceptable in those markets.

We believe, and we always have believed, in freedom of contract, but for the reasons I have put before you we became convinced that if restrictions were to be imposed on the shipowners it would be in the interests of all that those restrictions should be the same in all ports and in all trades.

The Maritime Law Committee acted on our suggestion, and at a meeting held in London last May, steps were taken to draft a Code which would satisfy the demands of the cargo interests, we reserving for the shipowners of all nations the right to criticise that draft when it was brought up at the Hague at the end of last August.

By this time the movement, with which the International Chamber of Commerce was very closely identified, for securing uniformity of practice with regard to bills of lading was making itself felt and I think very fortunately the steps we had taken commended themselves to the International Chamber of Commerce, and they have supported right through the action of the International Law Association.

At the Hague the draft Rules brought forward by the cargo interests were discussed in detail, and, as amended, were ultimately recommended unanimously for international adoption.

Now, it is necessary I should make the point that the Rules as they left the Hague embodied a bargain arrived at at that meeting. Here today we can dispose of that bargain. We can say that the shipowners of all countries who attended that meeting made a bad bargain, an improvident bargain, and we will not adopt it. That is clearly within our rights today. But I think we must realise that we cannot today better that bargain, or vary that bargain. We have no one here today to bargain with. It seems to me that we shall either have to approve the Rules as they stand, or we shall have to reject them. If we reject them we can reject them entirely and take our chances of legislation, or we can hope that some other opportunity may arise at which we can secure a better bargain. But that, I take it, is the position today.

Before I come to some few details of the Rules, it is important that we should appreciate the general position of the cargo interests. In this country there has been a great deal of discussion since the meeting at the Hague. Some of the cargo interests have shown a clear determination to throw over the people they sent to the Hague as their spokesmen. But it is equally clear that the great majority of the organisations that can speak not only for the exporters but for the importers, and also all the bankers and all the underwriters in this country, are heartily in favour of the adoption of the Rules.

We have received today a letter - if I may read it to you - from the Chairman of the Bill of Lading Committee of the International Chamber of Commerce, Mr. Charles S. Haight. The letter runs as follows: “The Bill of Lading Committee of the International Chamber of Commerce has followed with the keenest interest the work done at the Hague, and thereafter for the purpose of securing the voluntary acceptance by shipowners of standard rules defining the risks to be assumed by sea-carriers under their bills of lading. The Committee has made a painstaking study of the subject from the standpoint of all parties interested and has reached the conclusion that the Hague Rules 1921, represent an honest effort to reach a fair and equitable settlement of the difficulties which have hitherto arisen between shipowners and merchants in regard to the carriage of goods. We are also convinced that from every point of view the adoption of the Rules should be accomplished by voluntary co-operation rather than by legislation, since co-operation not only means a prompt adjustment of the outstanding differences but also keeps the Rules within the control of the parties them-
II. From the Hague Rules, 1921 to the Brussels Convention, 1924

selves. By virtue of the authority conferred upon our Committee by resolution passed at the International Chamber of Commerce on July 1st, 1921, we ask that the carriers adopt the Rules with such promptness as to make them effective by February 1st, 1922. The Committee wishes to express its deep appreciation of the opportunity of real co-operation which has been shown by the shipowners in the framing of these Rules”. That letter is signed on behalf of the Committee by their Chairman, Mr. Haight.

I have dealt with the circumstances under which the Hague Rules came into existence, and I would like to summarise briefly what I think are the essential points of the Rules.

For the first time we have before us a self-contained Code. That in itself is a great advance on all previous National legislation. The Harter Act and the Acts of the British Dominions are all super-imposed on the English Common Law. They do not declare rights and liabilities, but start with the assumption that rights and liabilities exist.

That is, I venture to think, the worst possible method to adopt when legislating in matters concerning international commerce, and I doubt if the possibility of legislation in that form would have ever occurred to any one who was not an Anglo-Saxon.

Something might have been said for it, if the English Common Law were embodied in a Code. But it is not. Its pride is that it is a living and growing system expressing the common sense of the Anglo-Saxons, but that common sense appears to be influenced by climate, for an English lawyer is quite unable to understand, far less to anticipate, the manner in which the Judges in the United States will apply the principles of Common Law.

I realise that other nations will find in the Hague Rules many matters dealt with in far greater detail than [46] is customary in their Codes. But is that a disadvantage if the points are fully and wisely provided for? In the Codes to which they are accustomed, principles are only stated, and their interpretations left to the Judges. In the Anglo-Saxon countries we also leave our Judges to interpret the principles, but we limit and prescribe their powers by previous decisions of other Judges; and when we do codify any branch of the law we define not only principles, but we lay down with great precision the lines upon which they are to be applied.

There are clearly merits in both systems, but when we come to business contracts do we not all follow the same method? We do not content ourselves with defining the broad principles upon which the transaction is to be carried out; we put down in black and white what each party to the contract is to do.

Now the aim and purpose of the Hague Rules is to embody in business terms the conditions that are to be applicable to the sea carriage of goods. I do not think words have been wasted in doing that, and I do submit that the Rules as they stand can be understood in every market in the world.

The next point, and it is one to which the British shipowner attaches the greatest importance, is that the Rules control only the actual sea carriage. They are applicable only from the time the goods reach the ship’s tackle. The shipowner is left as free as, but no freer than, every other trader, to make his own terms in regard to all other services he renders as collecting, receiving, distributing, and as forwarding agent, or in any other capacity. Those points are made quite clear in Articles 1 and 6.

The next point is that the warranty of seaworthiness is placed on a sound and reasonable footing. The shipowner is only to be held responsible if there has been want of due diligence on his part. The point is made clear in Articles 3 and 4. It was conceded in the Harter and Dominion Acts, but to those who are familiar with English
Common Law, the Hague Rules are a [47] real reform of very great value to all shipowners engaged in trade with the British Empire.

Then the Code contains a reasonable negligence clause covering both the navigation and the management of the ship. This is a point for which the shipowners have contended for the last 35 years. It was conceded by the Harter and Dominion Acts, but in an eminently unsatisfactory form, as it was granted only subject to the seaworthiness of the ship at the start of the voyage. We have all had experience of the lengths, I would say the ridiculous lengths, to which the Law Courts have carried the doctrine of seaworthiness, and in the result a shipowner may be held responsible for loss caused at the end of a voyage, by the negligence of a pilot he was compelled by law to employ, because at the start of that voyage one of the holds smelt of apples and was therefore unfit to carry tea. All that kind of nonsense is swept away by the Rules.

The Rules also contain reasonable exceptions covering war, quarantine, strikes and other similar risks.

And the Rules maintain in Article 5 complete freedom of contract, so long as the bargain is carried through without the issue of a negotiable bill of lading.

We all realise that the prohibition against the issue of negotiable bills of lading embodying terms other than those contained in the Rules will limit greatly the use of the article, but in the face of the demands of the cargo interests that could not be avoided. It was impossible to bring into existence a document which would both create unalterable rights, and at the same time maintain full freedom of contract. The most that was possible was to maintain the right of business men to make whatever bargains they pleased, so long as there was no chance of third parties being prejudiced without their knowledge by the terms of those special bargains.

So far I have laid stress on the advantages the shipowners gain under the Rules. On the other hand, the shipowner assumes, under Article 3, the definite obligation to provide for the proper and careful handling, loading, stowage, carriage, custody, care and unloading [48] of the goods throughout the period covered by the Rules - that is, from loading to discharge - tackle to tackle. This liability is only qualified by the terms of Article 4, which exempts the shipowner from liability for the perils there defined, including negligence in the navigation or in the management of the ship. The Rule will place on the shipowners full responsibility for damage resulting within the period in question from bad stowage or from theft and the like. It is a substantial extension of the shipowners’ liability, but it does not go, except on one point with which I will deal, beyond the obligations imposed by the Harter and Dominion Acts.

The Rules further place on the shipowner the responsibility for embodying in the bill of lading certain detailed information in regard to the cargo shipped. Upon this point the Rules follow the Harter and Dominion Acts, but with this important qualification: the information must have been furnished in writing by the shipper before the loading starts, and the shipper must not only guarantee the accuracy of the information so furnished, but also indemnify the shipowner against all loss, damage and expenses arising or resulting from inaccuracies. I know that in some trades, and with some shippers, the guarantee will be difficult to enforce, but speaking generally, it should provide a most wholesome safeguard.

It will be noted that the rules do not place an absolute responsibility on the shipowner to deliver the goods as described; they merely provide that the bill of lading shall be prima facie evidence of the nature of the goods; thereby placing on the shipowner the onus of proving that he did, in fact, deliver the goods entrusted to his care. If he proves that, the question of liability will not arise.
It will be further noted that the Rules provide that unless notice of a claim for loss or damage, and the general nature of such claim is given in writing to the shipowner at the port of discharge before removal of the goods, such removal will be evidence of the delivery by the shipowner of the goods as described in the bill of lading. There is no such provision in either the Harter or the Dominion Acts.

The Rules further oblige the shipowner to issue on demand a shipped bill of lading, but only after the goods are actually on board.

A great deal of nonsense has been talked in this country in regard to received for shipment bills of lading. The use of such documents is in no way dealt with in the Rules. All that is provided is that if a received for shipment bill of lading has been in fact issued the cargo owner must surrender that bill of lading before he can exercise his right to demand a shipped bill of lading; and that the shipowner can satisfy that demand by endorsing on the previously issued received for shipment bill of lading the name of the ship, and the date on which the goods were actually put on board.

These provisions are absolutely necessary to obviate the risk of concurrent bills of lading being in circulation covering the same cargo, and it is impossible to understand the nonsense that has been talked on the subject in this country.

There is nothing in the Rules which prevent the continued use of received for shipment bills of lading, if that is the document which best meets the needs of a particular trade.

The Rules restrict the power of the shipowner to limit his liability per package or per unit below £100, or the equivalent of that sum in other currencies. Here the Rules go beyond the Harter and Dominion Acts, and I think it is the only point upon which the responsibilities placed on the shipowners exceed those created under those Acts.

The point is one which was pressed with the greatest persistence by the cargo interests. At the Hague we challenged the reasonableness of the amount. We sought to base it on the freight and offered to agree to a limit fixed at even twenty times the freight. But all our offers were refused. Finally, we accepted the figure rather than make impossible, agreement on the points we had secured.

That, Sir, is I believe a fair summary of the effect of the Rules.

So far as I am personally concerned - and I speak having had my life made miserable for the last thirty or thirty-five years with these discussions - I am satisfied that they are a substantial improvement on the Harter and Dominion Acts. I am satisfied that they are an improvement on any Act of Parliament that would have been prepared to carry into effect the Report of the Imperial Shipping Committee. I am satisfied on these points, not merely in the interests of the shipowners themselves, but in the interests of international commerce as a whole.

I am still a firm believer in freedom of contract, but for the reasons I have put before you, I ask for your support to the resolution I have moved.

Before you decide, may I refer in a very few words to what I think the adoption of the resolution involves. If you do adopt the Hague Rules, it must be on the footing of your not only taking, but giving the full benefit of each and all of those Rules. Charge as you are able for the services you render, but in return for the freights you receive, give to the very utmost the services that the Rules impose upon you.
And then - and this is really my last point - make it manifest in your revised form of bills of lading that you accept the Rules in both their letter and spirit. Simplify your clauses as far as is possible. Get rid of type which is so small as to be almost unreadable. Do not be content with stamping “clauses paramount” on your existing documents. Believe me, you cannot over-estimate the damage that has been done and will be done to your case by using forms of bills of lading that can not only be criticised as unreasonable and unfair, but can also be made easily the subject of ridicule.

I am convinced that it is only by action on these lines that in the Hague Rules is to be found the settlement of a controversy that has lasted, like my speech, far too long.

After a discussion on the provisions of the Hague Rules by the participants the following resolution was adopted by the Conference:

“That this Conference, representative of the shipping industry in every part of the world, which has had before it the ‘Hague Rules 1921’ recently adopted by the International Law Association for submission to the various interests concerned in bills of lading, is of the opinion that the interests of trade and commerce are best served by full freedom of contract, unfettered by State Control, but that in view of the almost unanimous desire manifested by merchants, bankers and underwriters for the adoption of the Hague Rules this Conference is prepared to recommend them for voluntary international application, and if and so far as may be necessary for adoption by International Convention between the maritime countries.”

10. The recommendations of the Imperial Shipping Committee had meanwhile been considered by the British Government, who had undertaken to carry them into effect. After their adoption by the International Law Association, the Hague Rules had also been considered on the background of the Report of the Imperial Shipping Committee at a meeting held on 10 May 1922 by representatives of the Liverpool Steam Ship Owners’ Association and of the British Federation of Traders’ Associations.

As a result of that meeting the circular reproduced below(10) was issued by the Chamber of Shipping. An amended text of the Hague Rules was annexed to the circular.

Les Règles De La Haye modifiées en vue de servir de base a une législation uniforme dans l’Empire Britannique.

Une Circulaire de la “Chamber of Shipping of the United Kingdom”

It will be remembered that the Imperial Shipping Committee reported last year in favour of uniform legislation throughout the British Empire governing the carriage of goods by sea.

Early in the present month Mr. Hipwood, the Assistant Secretary, Marine Department, Board of Trade, invited Sir Norman Hill, the Secretary of the Liverpool Steam

(10) The circular and its annex were published in the CMI Bulletin No. 57 and they are reproduced from the aforesaid Bulletin, p. 336 and 337.
Ship Owners’ Association, and Mr. Andrew Marvel Jackson, the legal adviser of the British Federation of Traders’ Associations, to meet him in informal conference to discuss the form of a bill to be introduced by the Government to give effect to the Report of that Committee.

The invitation was considered at a meeting between representatives of the Shipowners & of the Federation, when it was agreed that both sides should co-operate with the Board of Trade.

At the Conference which was held on the 10th May, Mr. Hipwood explained that the position was as follows:

1. The Government were under pledge to the Dominions, to pass a bill to carry into effect the recommendations of the Imperial Shipping Committee.

2. Such a bill had been drafted.

3. That to secure the passing of the bill this Session it must be introduced within the next few days.

4. That as drafted, the bill was framed on the lines of the Canadian Act.

5. That the Board of Trade realised the advantages offered by a self-contained code, and especially of a code in a form likely to prove acceptable to all nations.

6. That if all the British Interests were agreed on a code the Board of Trade would adopt it in their bill, but if there were not such agreement they would proceed with their bill as drafted.

The Hague Rules which were objected to by the Federation were then discussed in detail. Mr. Hipwood expressed no views as to the matters in difference, but intimated that, if agreement were not possible on particular points, the terms of the Report of the Imperial Shipping Committee and of the Canadian Act would have to be followed in the bill.

As a result of this discussion a Code of Rules for the carriage of goods by sea was agreed as between the parties and submitted to the Board of Trade in order that they may be embodied in the Government’s Bill.

In these Rules, which follow, the black print reproduces the Hague Rules, whilst the red show the points submitted to the Board of Trade which differ from the Hague Rules.

The Board of Trade has not yet indicated whether it is prepared to embody the annexed Rules in the Government Bill.

A bill has been introduced in the United States House of Representatives which, if passed into law, will sanction the use of the Hague Rules under the Harter Act, subject to conditions similar to those that have been inserted in the annexed Rules in Article 4 (1) - Article 4 (2) and Article 5 now 6.

The Rules as submitted to the Board of Trade(11) were considered, and after full discussion, were accepted by the Council of the Chamber of Shipping at their Meeting on the 26th ultimo. The decision to accept this measure must not be taken as an attempt to alter the Hague Rules, which of course could only be done in International Conference. The present action has simply been taken in view of the decision of the Government to legislate in this matter in order to secure by agreement as between the

parties that such legislation may be in a form acceptable to all whom it is to affect rather than that the form of the bill should be left to be determined by a Government draftsman.

Admittedly the Rules may be open to criticism by some shipowners, but as they now stand they represent the best arrangement which in the circumstances could be secured.

P. Maurice Hill,
1 June 1922 Acting General Manager.

11. Further information on the reasons that led to the preparation of an amended text of the Hague Rules, 1921 may be found in the speeches of the Chairman of the CMI 1922 London Conference, Sir Henry Duke, and of Sir Norman Hill, the relevant part of which is reproduced below (12).

Sitting of Tuesday 10 October 1922

[313]

Sir Henry Duke in the Chair.

The Chairman: Gentlemen. We have postponed the commencement of business this morning because the Sub-Committee which we appointed yesterday afternoon was still engaged upon its labours, and it seemed to me better that we should not distract their attention from the important new matter with which they are engaged in order to attempt to make progress punctiliously as well as punctually upon another matter; for that reason I took the liberty of postponing calling the Conference to order till this moment.

The subject to which you resolved to direct your attention this morning was that of bills of lading, and in particular what are called the Hague Rules 1921 with the modifications or additions which have been agreed upon between certain shipowners and certain shippers and other interests, and which have come to be called Rules for the Carriage of Goods by Sea. I said modifications or additions which have been agreed to by certain representatives of those interests. As you know the modifications were agreed to by certain British interests, and as yet I do not know that they have been submitted to international consideration, but it is not material whether I am quite accurate about that or not.

The basis of the matter is the Hague Rules 1921, adopted unanimously by the International Law Association last September at The Hague. Those Rules as everybody knows have secured a large measure of international assent, and it is international assent at which of course men engaged in international business and overseas business must aim.

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(12) CMI 1922 London Conference.
The Executive has in substance presented the Hague Rules for the consideration of this Conference. (Hear, hear). It is quite true that in the draft which you have before you it has embodied certain supplementary terms agreed upon by British shipowners and by British shippers. I will say only with regard to those terms that they are entirely, as I understand, in favour of shippers, in favour of merchants (hear, hear); that they are concessions by the shipowners. The shipowners in making those concessions sacrificed no pledge. What they had agreed to do was to insist upon no better terms than those of the Hague Rules, 1921. What, for the purpose of a wider concord, they agreed to do was to make some further sacrifice in order to meet classes of merchants who did not think that they could satisfactorily do business under the proposed new Rules. That is the second step.

Sir Norman Hill: Mr. Chairman and Gentlemen. You, Sir, very early in your remarks referred to the pledge that all the men who served at the Hague gave to do our best to carry into effect the Rules as we then agreed to them at the Hague. I was one of the parties who was there and I was one of the parties who gave that pledge, and from that day to this I have done my very best to honour that pledge. (The Chairman: Hear! hear!).

Now, Sir, what happened when we came back to this country? We were told - I am speaking now for the British shipowners - by the accredited representatives of very big cargo interests that they were neither at the Hague nor were they represented at the Hague. They were quite clear and positive in that statement. We were told that they were not satisfied with the bargain that was made at the Hague. To all of that we could only give one answer that we had been at the Hague and we were bound by the bargain made at the Hague. That was the only answer we could give and it was the only answer we did give until something else happened. That has been summarised by Dr. Bisschop in his Memorandum that you have all had before you. What happened was this. We were confronted by a position in which there would have been legislation in this country on entirely different lines from those we had discussed and worked out together at the Hague. It would not have been merely legislation dealing with the exports from this country; it would have been legislation dealing with the whole of the imports and exports of the British Empire; it would have covered all bills of lading; it would have covered all charter parties. I want Mr. Möller to bear that in mind. It might have been good legislation or it might have been bad legislation, but it was coming.

Now how were we who had promised to do our best to give effect to the principles that we had embodied in the Rules of the Hague to deal with that position. I advised and I hope you will believe that I was an honourable man when I have that advice, (hear, hear) that the right way was to get into immediate and direct conference with the cargo interests, the very big cargo interests, in this country who were dissatisfied with the work we did at the Hague. That is what I did. I had full authority from the British shipowners in doing it. I was not merely an amiable crank trying to do the work on my own account and trying to show the world how to do everything according to my wishes. I was speaking with their full authority.

Sir, when you opened your statement you referred to these revisions as not in any
way affecting the principles of the work we did at the Hague. I believe you were absolutely right. Then, Sir, you went on to describe the alterations as of a trifling character. There, I think Mr. Möller must have convinced you you were absolutely wrong. They were substantial alterations; they were meant to be substantial because it was what the cargo interests here were pressing for; but you are right, Sir, when you say that they are all in favour of the cargo interests. That does not prove that they are right; it is very probable that it proves that they are wrong, (Laughter) but they were all in favour of the cargo interests. Those are alterations that were made and immediately we did make them we circulated them as widely as ever we possibly could and we did it in a form which drew everybody's attention to what had been done, and we did it for the purpose of directing and guiding the threatened legislation in this country so as to bring it as far as we possibly could into accord with the work we had done at the Hague and so that it might not be on lines which would have rendered all that work absolutely useless throughout the British Empire. I do claim that in doing that work I was honouring the pledge I gave to work to give effect to the principles of the Hague Rules.

12. After the Conference of the Maritime Law Committee of the ILA of May 1921, the CMI had been requested not to take any action on such Rules, for it was hoped that they would be adopted voluntarily by the industry.

The reaction of the industry was however of a mixed nature and at the end of the Spring of 1922 it appeared that the idea of the voluntary adoption of the Rules had to be abandoned. The CMI was informed accordingly and in preparation of the Conference to be held in October 1922 in London, the Bureau Permanent of the CMI circulated the following Questionnaire(13):

1° Y a-t-il dans votre pays des mesures prises entre groupements d’armateurs et groupements de chargeurs pour l’application volontaire des Règles de La Haye par insertion dans les connaissements? 
2° Quelles seraient les dispositions légales de votre loi nationale qu’il faudrait modifier pour qu’elle se trouve en harmonie avec les Règles de La Haye? 
3° Pareille réforme ayant pour but de mettre une loi en concordance avec un document privé a-t-elle des chances d’aboutir dans votre pays?

The draft taken as a basis of its work by the CMI Conference held in London from 9th to 11th October 1922 was that annexed to the Circular of the Chamber of Shipping of the United Kingdom, the French translation of which was entitled “Projet de convention pour l’unification de certaines règles en matière de transport de marchandises par mer”. The following footnote appears in the first page of the Rules for the Carriage of Goods by Sea(14):

(1) On trouvera plus loin, III, p. 349, une traduction française non authentique du texte ci-dessus dans le “Projet de convention pour l’unification de certaines règles en matière de transport de marchandises par mer” soumis à la Conférence de Londres (1922).
At the end of the Conference, after the approval of a revised text of the Hague Rules, three resolutions were passed by the Conference. The relevant part of the proceedings is reproduced below:

[487]

Mr. Louis Franck. - Well, my Lords and Gentlemen, I think that the time has now arrived to pass resolutions embodying the views which you have been expressing. I think the first resolution ought to be:

“This Conference agrees in substance with the principles which constitute the basis of the Hague Rules and the Rules for the Carriage of Goods by Sea, and regards these Rules as affording a solution alike practical and fair of the problem of clauses in bills of lading excepting or limiting the liabilities of the Shipowner”.

It seems to me that that is the general opinion of the meeting. (Cries of "Agreed").

[493]

The Chairman. - The second resolution is in these terms:

“This Conference is of opinion that an International Convention is the most desirable means of reaching a general solution of the problem and of the serious conflicts of law which it raises”.

Is the Conference agreed? (Agreed).

The Chairman. - Then comes a third resolution in these terms:

“The Conference expresses the wish that through the Permanent Bureau a Special Commission may be appointed which shall in cooperation with the Bureau prepare the draft of such Convention on these lines and on this footing, and that all necessary steps may be taken to ensure that the subject may be brought to the notice of the Diplomatic Conference meeting at Brussels on October 17th Next.”

[496]

The Chairman. - Then the question is: Is the Conference agreed upon the third resolution? (Agreed).

13. The CMI Conference was followed after only ten days by the Diplomatic Conference convened by the Belgian Government and the draft approved by the CMI was considered by a Commission appointed by the Conference. After the examination of the draft the Chairman of the Commission, Judge Hough, proposed the statement which is reproduced below, together with the comments made thereon by various Delegates.

Diplomatic Conference - October 1922
Meetings of the Sous-Commission
Third Session - 21 October 1922
The Commission having finished its examination of the various draft articles, the Chairman proposed the following concluding statement: “That the commission fully recognized that the draft submitted to it has grown out of the Hague Rules of 1921; that the subject of international regulation of sea carriage of goods has received much consideration in maritime countries during the last few years; further that the present form of the draft is a compromise among the representatives of many shipping and shipowning interests acting through their several trade organizations. It seems obvious that rules of such origin, framed largely by men personally engaged in the matters to be regulated, are entitled to respectful and careful consideration, and it is in this spirit that the commission has investigated their details”.

Mr. Le Jeune, Belgian delegate, felt that all the delegates were of the opinion that these rules represented an instrument of great value and that it was highly desirable for a further step to be taken. Doubtless, delegates did not have the authority to sign, but they could, however, decide here upon a text for submission to their various governments.

Sir Leslie Scott, British delegate, said that he had the power to sign.

Mr. Le Jeune, Belgian delegate, believed he knew of the existence of a movement in the United States in favor of this sort of agreement. He even thought that it was with this intention that the American delegates had come from across the ocean. It was highly desirable that the great maritime nations should take a step further and agree to all the principles that had been adopted on these issues, leaving up to governments the responsibility of giving meaning to their adoption.

The Chairman simply wanted to show, in the form of a preface, the substance of the convention’s discussions in order to submit to the plenary meeting the results of their work, leaving it the task of solving the matters on which agreement had not been possible. His intention was to re-read the notes he had made in the course of their debates, to ask each of the members to express their definitive opinions, and to submit each point to a vote, as Mr. Le Jeune had requested.

Sir Leslie Scott, British delegate, proposed two further additions: First, the insertion in the preliminary remarks of a sentence indicating that these rules were not a code but merely a series of rules whose purpose was to increase the value of the bill of lading as a negotiable document.

And secondly, as there were in the commission jurists who were habitually very precise in drafting, it would be right to express clearly in the report that the commission refrained from excessive legal comment and kept to the terms and expressions preferred by practical people. If Sir Leslie Scott made this proposal, it was with the aim that when the convention was submitted to the various parliaments, it would prevent the text from being denatured by alterations from over-punctilious jurists.

In his report to the Fifth Plenary Session of the Conference, Judge Hough stated as follows:

Fifth Plenary Session - 23 October 1922
In my report I have drawn attention to the various votes taken. In the main, we have kept to the text of the rules, but we do recognize that the question is one of extreme difficulty and I feel I can say, on behalf of all my colleagues in the commission, that if we have left certain matters up to the decision of the full assembly we have loyally done all that we could to reach agreement. In this respect we should not forget that we have in front of us a document worked out by businessmen, the application of which seems to be workable in a practical sense. We are aware that, as jurists from different countries moulded from our early youth by different legal systems to which, since we have grown accustomed to them, we are by now particularly attached, we do sometimes have difficulty comprehending properly the point of view and objections of those who are used to different legal systems. So, the task in hand is no longer merely a compromise between businessmen but is an agreement to be reached between jurists. The possibility of uniform regulation of this matter, which is so eminently one of international proportion, depends upon the possibility of just such a compromise between divergent legal systems. All that we ask of this conference, therefore, is that it examine with sympathetic attention the work we have done, however imperfect it may be from a purely legal perspective.

At the subsequent Plenary Session the Chairman of the Conference, Louis Franck, so stated:

Sixth Plenary Session - 24 October 1922

The Chairman:

For the present, I propose we examine the report of the commission that has deliberated the rules governing the carriage of goods under a bill of lading. I believe you have all familiarized yourselves with the report and will have found that on a great many points where amendments had been proposed the commission has been able to come to complete agreement. On other points the commission was not able to reach such unanimity and has adhered to those decisions taken at the London Conference. I should like to open with a general discussion. If anyone would like to speak on any general matters relating to the rules governing bills of lading, I shall be glad to yield. The conference is not unaware of how the issue lies. There is no intention of establishing an all-embracing code covering the affreightment or carriage of goods by sea. What is wanted is the formulation of a limited number of rules relevant to bills of lading. And, in so far as concerns bills of lading, we have a particular, special interest in the bill of lading as a negotiable document, bearing the clause “to order”, that is capable of being given from one person to another. We depart from this concept of fairness only when the contracting parties are the sole parties involved and we must suppose they can look out for their own interests. What is then of particular interest is the position of the holder of the bill of lading who took no part in its drafting but into whose hands the document has come. Moreover, this is the type of bill of lading that we wish to submit to international rules.

The measures we claim to apply to them are basically limitations on the right of the
shipowner to exonerate himself from liability. These measures are therefore made primarily in the interest of the holder of the bill of lading and, consequently, in favor of those whose interest is in the cargo. If it is important to regulate these matters through an international convention, there are today already many countries that have legislated on them. The United States took the lead and several British dominions followed suit. If others do likewise, the result will be that legislation that restricts the freedom to contract and deals specifically with bills of lading will find itself with widespread application and it will be a matter of supreme irritation that this legislation is not the same everywhere. All these measures ultimately mean a more onerous burden for shipowning interests and certain advantages for cargo interests.

I have myself concluded that such legislation is justified. In reality it comes back, pure and simple, to what has always been the law concerning liability the world over since Roman law. The person who undertakes the carriage of goods is a debtor to a certain body; he must provide proof that he has paid his debt and, consequently, delivered the goods on the same terms as he received them. If he delivers them in bad condition, he is assumed to be liable since he has not properly discharged his duty, but it behooves him to prove that there were genuine reasons beyond his control for this. The draft convention [124] does no more than reestablish this rule, but if it makes it an issue of public policy, it does so only within a reasonable limit; in so far as it deals with nautical faults, it retains exoneration. It even makes the exoneration from liability a rule of general law. But in so far as it deals with the handling, receipt, custody, stowage, and delivery of the goods, it makes a uniform law obligatory in relations between the shipowner and the holder of the bill of lading.

14. The manner in which the text of the convention was drafted and the fact that it originated from a form of bill of lading intended for voluntary adoption by the industry was again the subject of discussion during the sessions of the Sous-Commission held in Brussels from 6 to 9 October 1923. The debate that took place in that occasion is reproduced below(15).

Meeting of the Sous-Commission
First Plenary Session - 6 October 1923

[36]

Mr. Ripert revealed that the welcome given in France to the draft convention drawn up in Brussels in October 1922 had shown that there was complete agreement on the fundamentals underlying its clauses. However, a national law would be necessary to incorporate them into French legislation because it was not conceived that different rules should be applied in France depending on whether it was a matter of Frenchmen or foreigners. In order to produce this uniformity, it would be desirable for the national law to be as close as possible to the text of the international convention. It seemed impossible that so long a document containing principally rules where application was discretionary should be introduced into internal legislation. In France
the convention was considered as flawed because it originated from a prototype bill of lading drawn up at The Hague with the aim of producing a compromise between shipowners and shippers and of regulating completely the liability of one and the rights of the other. But the transformation of the prototype bill of lading into an international convention comprising clauses such as those in article 4, which have no binding force since in article 5 the carrier is free to abandon all or some of the rights and immunities provided for by the convention, would certainly come up against difficulties. Mr. Ripert would like the commission to limit itself to conceding a few principles and to grouping them into five or six articles that would form an international convention binding in all its parts. This convention would determine the types of carriage to which the rules would apply and their obligatory character. Each State would be free, moreover, to reproduce in its internal law the precise text of the Hague Rules. He judged that the convention, as presently drafted, would meet with considerable opposition in the French legislature if a law had to be made of it.

Mr. van Slooten declared that he had taken soundings on the matter in the Dutch Ministry of Justice and had reached the same conclusion as Mr. Ripert. In Holland they were busy preparing a new maritime law and the embodiment of such a document as this in internal legislation seemed impossible although it would be very easy to embody some articles establishing general and binding principles. Mr. van Slooten, expressing the feelings of the jurists at work on the revision of the Dutch maritime law, supported Mr. Ripert’s suggestion.

Sir Leslie Scott regretted that Messrs. Ripert and van Slooten were defending this point of view. The draft convention was the result of long debate and arduous negotiation.

In 1922 the conference had agreed to adopt these rules as the basis for an agreement. It was true that the word “basis” was used, but it was expected, nevertheless, that the convention would be signed soon afterwards in the format created by the conference as a result of the report of the commission under Judge Hough. The British Parliament and the United States Congress had voted on a first reading of a draft law that sanctioned the precise text adopted in Brussels. In addition, his government’s instructions did not allow Sir Leslie Scott to consent to a change in the text recommended by the conference. The only option open to him if this text were not taken as the basis for discussion was to withdraw. Like Mr. Ripert, he felt that this draft was not very judicial and he might well have preferred to see the draft conceived from the start in another form. The language used was one of practicality but it could be said that this mishmash of French and English would, nonetheless, be perfectly understood by shipowners and shippers who grasped the meaning of the text precisely. In these circumstances, Sir Leslie Scott allowed himself to appeal to Mr. Ripert to support the draft in its present form. The legislatures in those countries where the Code Napoléon was in force, faced with having to introduce this convention as law, would undoubtedly find it necessary to use more or less different language. But in England as in the United States there was nothing against the text as it was.

Mr. Struckmann indicated that the German legislature would, with difficulty, be able to make a legal text of the convention, but he hoped that the commission would improve the rules which he agreed to take as the basis for discussion.
Mr. Bagge believed that it would be equally difficult to incorporate the text of the convention into a Swedish law, but he thought that it would not be necessary to adopt it to the letter. It would be sufficient to translate faithfully the sense of the Hague Rules. For example, the long enumeration in article 4 to which the English attached such importance ought not to be reproduced in national law. It would be enough if the idea on which the agreement was founded were expressed in a form that suited each country.

The Chairman believed that a misunderstanding lay heavy upon these deliberations. The States were to commit themselves to submit the disputes provided for in the final article of the convention to these rules. But it was for the States to determine the way in which they would carry out the commitment they had made. It was certain that if a presently existing piece of legislation already conformed to these rules, except for one or two points, it would be sufficient simply to make a few requisite alterations. Such was the case in the United States with the Harter Act. In addition, shipowners from every country in the world - in France, in Belgium, and in Germany as everywhere else - would find the text perfectly clear. In France, notably, Mr. de Rousiers, who had played a considerable role in the drawing up of these rules, found the text satisfactory from this point of view. The Belgian shipowners have no objection to this. The majority of bills of lading were, in any event, drafted in English and this was the terminology reproduced in the convention. It would be inadvisable to wind up the work undertaken, having produced a basic agreement, solely because the language was not elegant enough from a legal point of view.

Mr. Ripert indicated that the conventions on collision and salvage had been obligatory for the courts since their conclusion, but that if, as a result, internal laws had been altered, it was by the free choice of the legislator. In contrast, it was certain that once the convention on the Hague Rules was signed and ratified by the French legislature, it would become binding on the French courts even when dealing with French nationals. In effect, article 9 said that the convention would apply to all bills of lading drawn up in one of the contracting States. As a result, it had been asserted that the language should be clear for all shipowners, but it had been forgotten that it should be clear, above all, for the courts who were going to apply the Hague Rules. Mr. Ripert pointed out that in this convention there were clauses that were not binding on anyone but were merely pointers given to shipowners and shippers. This was notably so in article 4.

The Chairman also found that the text would have been more elegant had it been written by jurists. As to the second part of Mr. Ripert’s comment, it was a matter for consideration whether the convention had quite the scope attributed to it. But article 5 did not in any way allow the carrier to modify the rights, obligations, and immunities that featured in the preceding clauses. It simply allowed the carrier to accept heavier responsibilities than those established in these articles. He could therefore accept responsibility for unforeseen events but he could never release himself from other responsibilities. Consequently, article 4 was completely binding on the shipper. The economy of the convention was that article 3(8) proclaimed that the rules that preceded it were matters of public policy, any contrary clause, treaty, or agreement being null and void. It was necessary, therefore, to have another article restricting this general rule, and in which it would be provided that certain immunity clauses were per-
mitted. This was the purpose of article 4, notably paragraph (2), where a whole series of cases were listed that in general law were within these rules.

Mr. Ripert wondered about the utility of creating a convention in order to say that such and such a responsibility would not exist but that it could be assumed. In fact, the whole Hague Convention was summarized in article 3. What had been wanted was to prohibit certain immunity clauses. It was necessary to extend the principles of the Hague Rules in order to make them the subject of an international convention. What problem was there in the fact that the English legislation reproduced these rules textually while the international convention took only the substratum, the obligatory part?

Mr. Asser had been following closely what had been said on the freedom of the different States to administer the convention rules in different forms.

He indicated that in the convention on bills of exchange it had been agreed that certain clauses would be obligatory, but that for other clauses the States would be free to apply them or not. He believed that the idea of taking from the Hague Rules a few obligatory provisions, while leaving the text in the form it was drafted, was practical. There could be a general vote, but as far as the non-obligatory clauses were concerned it could be said that each State remained free not to introduce them into its national legislation.

The Chairman pointed out that such was not the intention of the commission. The rules should be taken as a basis, each signatory State committing itself to introducing the rules into its national legislation. It must apply the convention fully but the modus operandi, that is to say, the way of achieving this result, was a point upon which one could rely upon the good faith of each State. Everyone was aware that it was preferable to take the text of the convention fully because that simplified matters. But if certain pre-existing legislative clauses conformed to the convention, it would be enough to proceed by altering a certain number of the provisions of the national law. Nothing stood in the way of this.

The Chairman declared that Mr. Ripert could withdraw his objection to article 4, if, having viewed the text, he considered that one could dispense with the insertion of this paragraph, but he would perhaps appreciate that the convention’s economy was that, on one hand, the shipowner accepted liability for a group of obligations and renounced his contractual freedom. That was his sacrifice. On the other hand, he obtained the incontestable and uncontested right to exonerate himself in a number of cases in which he was otherwise responsible under law.

The obligations of the shipowner are listed in article 3, his rights are set out in article 4, and all that article 5 says is that the shipowner is considered to be the stronger party and that it is against him that this legislation is designed. If he wanted to accept a position worse than that accorded to him by the convention, he could not be prevented from this. However, the shipowner still had an interest in having the guarantee that if he were liable for the mistakes of his agents, then this liability was not applicable to nautical faults.
III. FROM THE 1924 CONVENTION TO THE 1968 PROTOCOL - THE HAGUE VISBY RULES

15. After the war the Bureau Permanent of the Comité Maritime International had considered two problems in connection with the 1924 Convention: the scope of application as set out in Article 10 and the limit of liability, which was fixed in gold pounds by Article 9. An International Sub-Committee was appointed by the Bureau Permanent with the instructions to study in particular the first of such problems and, also, to report in general on the need for the revision of any other provision of the Convention.

The International Sub-Committee prepared a report, which was then considered by the CMI Conference held at Rijeka in September 1959. The following statements are made in the Report with respect to the scope of application of the Convention(16).

Introduction

Jadis, à l’époque de l’établissement des Règles de La Haye, il s’agissait de mettre fin à une situation juridique qui permettait aux transporteurs signataires d’un connaissement de livrer les marchandises embarquées au titulaire du connaissement, suivant l’expression employée à l’époque, n’importe où, n’importe quand et n’importe comment.

Cette lacune dans le droit maritime international fut comblée, certes, mais si, actuellement, les importateurs et les exportateurs ne se plaignent plus de la portée des clauses d’exonération de responsabilité, ils se heurtent néanmoins à une différence de traitement selon qu’il s’agit de transports en provenance de pays contractants ou de pays non-contractants et même selon qu’il s’agit de l’un ou de l’autre pays contractant.

Situation actuelle

Ainsi, il est certain que les possibilités d’obtenir une intervention de la part des transporteurs diffèrent sensiblement selon qu’il s’agit d’une cargaison en provenance du Chili, pays non-contractant, ou de l’Australie, pays contractant, ou des États-Unis, pays contractant, qui a étendu la portée des dispositions de la Convention. L’instauration de la responsabilité impérative a donc donné le jour à une difficulté d’un tout autre ordre, à savoir la différence dans la portée de cette responsabilité impérative suivant les ports d’embarquement ou de déchargement.

Cette même différence de traitement peut toucher les armateurs. En effet, il est certain qu’en matière de transports non soumis à la Convention, les armateurs établis dans des pays contractants se voient souvent opposer les règles de la Convention du seul fait qu’ils battent le pavillon d’un État contractant, alors que les nationaux des États non-contractants ne courent pas ce risque devant leurs propres tribunaux.

Ainsi, une question d’égalité de traitement s’est greffée sur le problème de la responsabilité impérative.

En fait il faut faire la distinction entre trois catégories de différenciations, à savoir: 1° entre les transports en provenance de pays contractants et ceux en provenance de pays non-contractants; 2° entre les transports entre les différents pays contractants; 3° entre les différends surgis entre les nationaux d’un seul pays contractant et les différends surgis entre des nationaux de différents pays contractants.

(16) CMI 1959 Rijeka Conference.
Origines des difficultés actuelles

Reprenons les 3 catégories reprises au paragraphe précédent.

1° Le seul moyen d’obtenir une uniformité entre le régime appliqué par les États contractants et celui en vigueur dans les États non-contractants est d’augmenter le nombre d’adhésions et de ratifications.

2° L’origine des différences de régime entre les États contractants doit être trouvée dans l’usage que les États ont fait de la possibilité offerte par le protocole de signature, qui permet de mettre la Convention en vigueur sous une forme appropriée aux particularités du système juridique de chaque pays signataire. Or, la rédaction de cette forme appropriée a entraîné l’introduction de divergences de fond dont le régime de la preuve en matière d’avaries relevées au port de déchargement est le cas le plus fréquent et le plus flagrant. Dans ce cadre de textes adaptés aux besoins des législations nationales il faut citer également l’article 9 § 2 qui permet aux États contractants de convertir la limite (exprimée en Livres Sterling) en chiffres ronds, d’après leur système monétaire. C’est ainsi qu’une divergence fâcheuse s’est fait jour entre les montants appliqués actuellement.

3° Le fait que certains États contractants appliquent leur loi nationale aux différends qui surgissent, en matière de transports internationaux, entre leurs nationaux alors que d’autres États contractants appliquent aux mêmes cas la Convention, résulte de la circonstance que la Convention en général, et l’article X in particulier, ne définissent pas avec précision le champ d’application de la Convention.

Les problèmes

Il ressort de cet exposé succinct que l’unification internationale n’a même pas été réalisée entre les États qui ont signé et ratifié la Convention; a fortiori la situation est encore moins brillante en ce qui concerne les États qui n’y ont pas encore adhéré.

Ainsi, le premier objectif à atteindre en matière d’unification internationale est de faire adopter la Convention par toutes les nations maritimes. Toutefois, cette mission dépasse les attributions du C.M.I.

Le second objectif est de mettre fin à l’imprécision ou à l’inefficacité des textes précédents. C’est à cette tâche que la commission s’est attelée.

Méthode de travail

En cette matière il y a lieu de faire une distinction très nette entre les problèmes qui trouvent leur origine dans le protocole et ceux qui sont issus d’autres textes.

1° La commission est arrivée à la conclusion que l’on ne peut envisager une modification du texte du protocole.

Certains membres ont été très formels sur ce point et la commission a été unanime à souscrire à cette prise de position. En outre, la commission a écarté le procédé qui consiste à conserver l’article 10 mais à ajouter au protocole un paragraphe précisant la portée de l’article 10 actuel étant donné que toute modification du texte actuel de la Convention nécessite la convocation d’une Conférence diplomatique et que, dans ce cas, il vaut mieux changer une règle par la modification du texte qui l’établit.

2° La même attitude - inévitablement négative - n’a pas été adoptée en ce qui concerne l’article 10.
In addition to the revision of Art. 10, the International Sub-Committee considered the need for further amendments and for new provisions. The relevant part of the Report is quoted below:\(^{(17)}\):

Problèmes additionnels

A l’occasion des études entreprises la Commission a dû se rendre à l’évidence - et ceci à de très nombreuses occasions - que la réforme des règles contenues dans l’article 10 ne constitue qu’une solution très partielle des problèmes soulevés actuellement par l’application de la Convention sur les connaissances dans les différents Etats.

a) Ainsi, il est certain que les auteurs de la Convention ont eu l’intention de réaliser une uniformité en matière de limite de responsabilité à appliquer dans les Etats contractants. Actuellement on applique suivant l’Etat où le différend est tranché les limites que voici. (Extrait de “On Ocean Bills of Lading” de A. Knauth):

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</tbody>
</table>

Les auteurs de la Convention de Varsovie ont réussi à éviter cette difficulté. Le moment est donc venu de faire profiter la Convention sur les connaissances de cette expérience, comme l’a fait d’ailleurs la Convention sur la limitation de 1957.

En conséquence, la commission se propose de s’atteler à l’étude du problème de la révision éventuelle de l’article 9(2).

b) La Convention de 1924 a été appliquée dans certains Etats pendant plus de 30 ans et cette application a prouvé qu’elle a largement donné satisfaction. Toutefois, plusieurs Associations et plusieurs membres ont émis l’opinion que le temps pourrait être venu de faire un pas en avant dans le domaine de l’unification internationale du transport maritime. Ainsi, la Commission croit qu’il serait utile d’examiner la possibilité d’établir des projets de règles internationales uniformes relatives à des problèmes qui n’ont pas été tranchés par la Convention de 1924. La commission pense plus particulièrement aux problèmes que voici:

1° “pro rata and invoice value clause”;

2° limitation et prescription en matière de dommages indirects (délais, livraison à une personne qui n’y avait pas le droit);

\(^{(17)}\) CMI 1959 Rijeka Conference, p. 137.
3° responsabilité pour fautes commises par un transporteur précédent en matière de connaissance direct;
4° validité de la "both to blame clause";
5° innavigabilité et marchandises chargées en pontée;
6° responsabilité avant embarquement et après débarquement.

c) La commission s’est rendue compte, au cours de ses travaux, que les solutions apportées par la Convention de 1924 n’ont pas été interprétées de la même façon par tous ceux qui les ont appliquées. Toutefois, la majorité de ses membres a estimé qu’il n’était pas opportun de procéder à une révision de ces solutions.

Les membres qui sont en faveur de la révision ont fait valoir principalement que certaines règles ont été interprétées par une majorité d’États dans un sens bien défini alors que quelques rares États s’en sont écartés. Ainsi, une précision des textes actuels pourrait assurer plus d’uniformité internationale. Les partisans du maintien du texte actuel ont fait valoir que la Convention de 1924 est un compromis basé sur d’innombrables concessions et que la moindre modification risque de mettre en danger toute l’œuvre de conciliation. Ces mêmes partisans ont insisté sur le danger pour l’uniformité qui peut résulter de la présence de deux conventions - une originale et une modifiée - régressant les mêmes matières. En effet, il n’est pas certain que tous les États contractants actuels adopteront immédiatement - certains ne les adopteront peut-être jamais - les modifications projetées.

d) La commission s’est demandée si elle devrait s’efforcer de trouver une solution à tous les conflits de lois qui peuvent surgir entre les différentes lois qui ont mis en application les règles contenues dans la Convention de 1924. Une réponse affirmative à cette question équivaudrait à une acceptation par le C.M.I. des divergences actuelles entre les lois précitées. Or, le C.M.I. a accepté la mission de promouvoir l’uniformité internationale en matière de droit maritime. Toutefois, si le C.M.I. devait se pencher sur les solutions à donner à des conflits de lois - même si ceux-ci résultent d’une imperfection d’un système qu’il a préconisé - il devrait s’occuper d’une matière entièrement nouvelle qui présente d’énormes difficultés. Par ailleurs, ces problèmes de conflits de lois ne concernent pas uniquement les contrats de transport mais également les contrats de vente et les contrats d’assurance qui vont toujours de pair. Ainsi, une règle préconisée par le C.M.I. ne porteraient remède qu’aux difficultés éprouvées par un des trois contrats précités. C’est pourquoi la commission estime qu’il est préférable que le C.M.I. ne se penche pas sur ces problèmes. Toutefois, la commission est toute prête à s’atteler à l’étude de ces problèmes si le C.M.I. qui l’a nommée, estime qu’il y a lieu de porter remède à cette absence d’uniformité par des règles de conflits de lois.

Conclusions

Compte tenu de ce qui a été précisé ci-dessous la Commission se permet de demander à la Conférence plénière du C.M.I. de se prononcer sur les points que voici:
1° le C.M.I. doit-il inviter la Conférence diplomatique de droit maritime à remplacer l’ancien texte de l’article 10 par le suivant:

2° la conférence plénière est-elle d’accord sur l’opportunité de faire élaborer par sa commission:

a) une modification de l’article 9(2) de la convention sur les connaissances;

b) un avant-projet de Convention relative à des matières de transports maritimes.
internationaux effectués sous couvert de connaissements, qui n’ont pas été tranchées par la Convention de 1924;
c) aucune modification de la Convention de 1924 autre que celle des articles 10 et 9(2);
d) aucun projet de règle de conflit de lois ayant pour objet d’assurer plus d’uniformité en matière de transports maritimes effectués sous couvert de connaissements.

Gothembourg, mai 1959.

Secrétaire,
LEO VAN VARENBERGH

Vice-Président,
KAJ PINEUS

16. The Chairman of the International Sub-Committee then reported further on the studies of the Sub-Committee at the Plenary Session of the 1959 Rijeka Conference.

Plenary Session - 25 September 1959

[374]

Beaucoup de personnes intelligentes ayant beaucoup d’expérience du droit maritime et du côté pratique des affaires, prennent part aux travaux du C.M.I. Pendant les travaux de votre Commission concernant le présent problème il a été dit dans les réponses données par les Associations Nationales et aussi par certains membres de la Commission que le monde progresse et qu’il est parfaitement possible que le moment est venu d’examiner si d’autres aspects du droit des transports maritimes sont mûrs pour une réglementation sur un niveau international. Plusieurs personnes ont mentionné:

1) “Pro rata and invoice value clauses”.
2) Limitation et prescription en matière de dommages et intérêts, (délai, livraison à une personne qui n’y avait pas droit).
3) Responsabilités pour fautes commises par un transporteur précédent en matière de connaissements directs.
4) Validité de la “both-to-blame clause”.
5) Innavigabilité et marchandises chargées en pontée.
6) Responsabilité avant embarquement et après débarquement.

Ces questions ont surgi lors de l’exécution du travail dont le C.M.I. avait chargé cette Commission et comme vous le voyez actuellement votre Commission vous invite à émettre votre point de vue sur la question de savoir si le C.M.I. doit préparer un projet de Convention relatif à ces questions qui concernent les connaissements et qui sont mûres maintenant pour une réglementation internationale.

Dans cet ordre d’idées, je désire attirer votre attention sur deux facteurs. Toute modification de la Convention de 1924 - même l’ajoute proposé à l’Article 10 et l’éventuelle révision de la clause or de l’Article 9(2) - implique la convocation d’une Conférence Diplomatique de droit maritime, mais même en tenant compte de l’hospitalité bien connue du Gouvernement belge, il est peu probable que le mécanisme compliqué de pareille Conférence soit mis en marche uniquement pour un ou deux articles de la Convention de 1924. En outre, en plus de cette considération quelque peu technique, je suis d’avis, et je pense que cet avis est partagé par la majorité de la Commission, que l’équilibre délicat et le compromis réalisés par la rédaction de la Convention
[375] de 1924 ne peuvent pas être dérangés. Les problèmes nouveaux sur lesquels nous pourrions nous mettre d'accord pour nous y atteler sur un niveau international devraient être présentés sous forme d'une Convention supplémentaire qui peut être adoptée comme un ajout à la Convention de 1924.

Au stade présent, je ferais peut-être mieux d'essayer de répondre à une objection possible à ce que je viens de dire. S'il est exact qu'on doit prendre soin de ne pas troubler le compromis exprimé par la Convention de 1924, comment pareille attitude - défendable en soi - peut-elle être maintenue avec la propre proposition de la Commission, puisque cette proposition contient entre autres une révision de l’Article 10 de la Convention de 1924. Pareille objection est évidemment compréhensible et certainement logique. Je pense que je peux néanmoins justifier l'amendement proposé.

Vous aurez remarqué que notre rapport se terminait par un questionnaire. Nous y avons essayé de faire l'inventaire des problèmes que nous avons rencontrés. Nous avons été forcés d'adopter cette méthode quelque peu non-orthodoxe suite au fait qu'il n'était pas possible de terminer notre tâche par l'élaboration d'un projet de Convention de la manière ordinairement appliquée par vos Commissions.

La première question traite du nouvel Article 10 qui est proposé et qui devrait remplacer l’Article 10 actuel de la Convention.

Je vous y ai indiqué brièvement, et le rapport le fait d'une manière plus détaillée, les raisons pour lesquelles nous espérons que le texte proposé conduira à une application de la Convention de 1924 plus large qu'à présent.

Acceptez-vous ce texte? C'est la première question.

Dans la deuxième partie du questionnaire votre Commission demande des directives pour son travail ultérieur. Je vous ai déjà dit que nous avons rencontré différents problèmes lors de notre travail préparatoire. Nous avons eu le sentiment que nous ne pouvons pas très bien essayer de résoudre ces problèmes complètement avec nos propres moyens.

C'est la raison pour laquelle le rapport poursuit en posant la question suivante:

Considérant l'expérience acquise depuis 1924 et tenant compte du succès de la Convention de Varsovie et des espoirs attachés à la Convention de 1957 sur la limitation, pensez-vous que le moment soit venu de s'atteler une fois de plus à la clause ou relative aux connaissances? Votre Commission estime qu'il en est ainsi, mais elle désire savoir d'abord si vous êtes d'accord avant de s'atteler à cette tâche.

La Convention de 1924 a dû faire face à deux objections. La première est que la Convention est incomplète et la deuxième que certaines règles ne nous donnent plus satisfaction. La Commission est d'avis, comme vous l'aurez compris, que vous ne pouvez pas et que vous ne devez pas changer le compromis de 1924, mais qu'il est possible, et nous pensons qu'il est désirable, d'élaborer un projet de Convention additionnelle traitant de questions telles que celles qui n'ont pas été couvertes par la Convention de 1924 mais qui sont mûres pour une réglementation internationale. Êtes-vous d'accord? C'est là notre question posée aux paragraphes "b" et "c".

Et maintenant j'arrive à la dernière question, celle du paragraphe "d" traitant des conflits de lois. Et vous direz certainement: enfin. Vous avez devant vous le Président en fonction de la Commission des conflits de lois désigné par le C.M.I. abusant du précieux temps de la Conférence pour introduire le rapport de sa Commission et il n'a
toujours pas dit un mot sur la manière dont les conflits de lois devraient être résolus. Qu’est-ce qui se passe?

Je vous rappelle qu’il est du devoir du C.M.I. de réaliser l’uniformité internationale en matière de droit maritime. Le C.M.I. a fourni une grande contribution dans cette voie. Toutefois, il serait bien néfaste, le jour où le C.M.I. serait amené à chercher des méthodes pour résoudre des conflits de lois relatifs à ses propres Conventions - et peut-être à une de ses plus importantes - lorsque pareils conflits surgissent entre des États qui ont adopté la Convention. Cela équivaudrait à accepter une situation déplorable, à se résigner aux difficultés et à contribuer à la prolongation d’une situation malheureuse pour l’uniformité internationale. À mon avis, tant les traditions du C.M.I. que le bien-être de l’entièreté du monde maritime seraient directement lésés si votre Commission avançait une proposition concrète pour la résolution des conflits de lois et introduisait au C.M.I. une discipline nouvelle et dure dont elle n’a pas d’expérience précédente à savoir des conflits internationaux des lois privées.

Vous comprendrez peut-être mieux maintenant la question finale posée par la Commission à la Conférence. Permettez-moi de la poser d’une autre manière.

La Conférence, ayant à l’esprit tout ce qui a été dit et écrit, désire-t-elle réellement que la Commission rédige des règles concernant des conflits de lois en matière de transports basés sur des connaissances?

Ne devrions-nous pas concentrer nos efforts sur la création de règles positives, qui pourraient s’avérer acceptables par toutes les Nations maritimes?

17. The problems raised by the International Sub-Committee were then debated during the Plenary Session of the Conference.

M. John C. Moore, États-Unis (traduction): Nous apprécions hautement l’examen sérieux qui a été réservé à ce sujet par la Commission internationale des conflits de lois. Toutefois, nous devons respectueusement faire part de notre désaccord et recommander au Comité de ne pas s’attarder aux différentes questions qui ont été soulevées par la Commission.

Puisqu’il s’agit d’une question de conflits de lois, il semble que la seule question pouvant soulever un conflit est la question de la limitation du montant pour lequel le propriétaire peut être responsable par colis ou par unité de fret, limite qui s’élevait initialement à £ 100 et qui a abouti à certaines divergences parmi les différents pays contractants. C’est une question théorique intéressante et pour autant que nous ayons été à même de le déterminer, elle n’a pas soulevé de difficultés commerciales.

M. A. Loeff, Pays-Bas (traduction) .........................................................

En ce qui concerne les autres suggestions de la Commission internationale, nous pensons qu’actuellement il vaut mieux laisser de côté la question de l’Article 9 (2).

Nous pensons que les autres points soulevés posent des questions tellement difficiles qu’elles entraîneront une perte de temps si nous les approfondissons. Certaines
parmi elles ont été résolues d’une certaine manière; par exemple, la question des connaissances directes est tellement difficile qu’il vaut mieux les laisser de côté.

C’est la raison pour laquelle la délégation néerlandaise propose d’apporter des amendements mineurs à l’Article 10 de la Convention de 1924, mais de ne pas aller plus loin. Bien entendu le Comité Maritime International ne peut rien faire pour amener plus d’États à accepter la Convention. Nous devons laisser cela à la Conférence Diplomatique.

M. S. Braekhus, Norvège (traduction): M. Pineus, Président de la Commission internationale, était d’avis, pour autant que j’aie compris, qu’il serait contradictoire d’introduire des règles de conflits de lois dans la Convention de 1924 sur les connaissances. La Convention elle-même devrait assurer l’unité internationale et rendre un choix entre les différentes lois sans objection. Toutefois, c’est un fait que, à présent, il n’y a pas d’uniformité internationale absolue. Il suffit de donner un exemple clair, la limite de responsabilité par unité, de l’Article 4(5). Je pense que l’accord anglais des £200 ne donne pas, à notre avis tout au moins, une solution satisfaisante du problème. Ce qui, à mon avis, est toujours beaucoup plus important c’est qu’il n’y aura jamais une telle uniformité même si la Convention était amendée. Les Règles de La Haye, comme vous le savez, doivent être interprétées dans le cadre de la loi nationale, par exemple, la responsabilité du transporteur relative à la description inexacte des marchandises dans le connaissement. L’article 3(4) se réfère à ce qu’on appelle le Prima Facie Rule; le connaissagement constitue uniquement une preuve juris tantum, mais cette règle est, semble-t-il, complétée par des dispositions de la loi nationale. Dans les pays de common law, nous adoptons ce principe et dans les pays continentaux ou, tout au moins, dans certains parmi eux, les connaissances constituent une garantie de l’exactitude de la description de la marchandise.

C’est la raison pour laquelle, tout au moins en ce qui concerne les Règles de La Haye, le problème du choix de la législation est un problème très pratique. Il devrait y avoir un bon nombre de connaissances qui, en même temps, laissent un choix concernant la loi à appliquer.

La délégation norvégienne est d’avis que ce problème du choix de la loi devrait être résolu d’une manière internationale et éminemment pratique par la Convention elle-même. A notre avis, dans n’importe quel cas, même si on ne soulève pas la question de la loi, il devrait y avoir une révision générale de la Convention. Nous pensons que les principes généraux de la Convention sont très simples et qu’on ne devrait pas y toucher. Ce que nous désirons, c’est une révision technique. J’ai fait allusion à une règle de droit, celle relative à la limite de responsabilité et je vous donnerai encore un autre exemple, à savoir la règle de l’Article 3(6) qui concerne l’obligation du réceptionnaire des marchandises concernant les marchandises endommagées. Cette règle nous cause actuellement toute une série de soucis et pour être tout à fait honnête nous ne la comprenons pas. Sur ce point, nous sommes en très bonne compagnie; un des derniers livres de doctrine anglais sur ce point donne le commentaire suivant sur cet article: “The first paragraph of this rule appears to have little, if any, meaning”.

C’est la raison pour laquelle la délégation norvégienne propose de charger la Com
M. A. Suc, Yougoslavie (traduction): Au nom de la délégation yougoslave je désire déclarer que nous sommes tout à fait d'accord que la situation actuelle relative à la Convention sur les connaissances n’est pas satisfaisante.

Il nous semble qu’il y a deux moyens principaux permettant de sortir des difficultés actuelles. L’un est d’établir des règles substantielles adéquates ou de préciser les règles existantes de manière à exclure toute possibilité d’interprétations divergentes. L’autre moyen est d’établir des règles de conflits de lois. La deuxième solution est beaucoup plus facile mais elle ne conduit pas à une unification; elle conduit à l’acceptation des différentes lois nationales ce qui est contraire à la politique du Comité Maritime International.

L’Association yougoslave est d’avis que nous devons obtenir des règles uniformes substantielles. C’est la raison pour laquelle nous patronnons la première des deux méthodes envisagées, à savoir que nous devrions essayer de trouver des solutions sans recourir à des règles de conflits de lois.

Il nous semble que, si nous désirons suivre cette voie, nous devons faire face au fait qu’il y a certains problèmes qui font obstacle à cette uniformité et qui devront être et peuvent être réglés le plus rapidement possible.

M. J. Van Ryn, Belgique: En ce qui concerne les autres points qui ont été exposés devant la Conférence, par M. Pineus, il nous paraît certain que l’expérience qui, maintenant, s’étend sur une période d’environ 25 ans - depuis que la Convention tendant à l’unification de certaines règles en matière de connaissance a été élaborée - a révélé d’indiscutables lacunes. Le contraire eut été étonnant. L’expérience a montré aussi, que dans les différents pays où ces règles ont été appliquées, elles ont souvent été interprétées dans des sens très différents, parfois même tout à fait opposés.

Par conséquent, l’unification du droit maritime qui est le but essentiel que nous poursuivons, au cours de nos travaux, n’a pas été complètement réalisée dans ce domaine et il nous semble que le Comité Maritime International ne peut pas, purement et simplement, ignorer une telle situation; il ne peut pas refuser de la prendre en considération.

Sans doute conviendrait-il d’être prudent, de ne pas remettre en question, en discutant un projet de Convention complémentaire, ou en remettant, de quelque manière que ce soit, sur le métier certaines questions qui ont été débattues en 1924, l’équilibre qui avait été si judicieusement réalisé à cette époque.

Néanmoins, il ne faut pas, malgré les inconvénients qu’il peut y avoir à reprendre cette tâche, déjà faite une première fois, affirmer que la tâche est terminée, alors que, certainement, la réalité le démontre qu’elle ne l’est pas.

Le Président: Nous avons maintenant à nous prononcer sur une seconde question relative à la même Convention, celle de savoir si en dehors de la modification de l’Article 10 nous donnons mandat à notre commission spéciale d’examiner les autres
amendements qui pourraient être apportés à d’autres dispositions de la Convention
sur les Connaissances, ou si, au contraire, nous bornons notre action à l’Article 10.
Je mets donc aux voix la proposition de donner à la Commission mandat d’étudier
les autres modifications ou adaptations aux dispositions de la Convention.
La proposition, mise aux voix, est adopté par 16 voix contre 5.
Ont voté pour: Danemark, Espagne, Finlande, Suède, Norvège, Italie, Turquie,
Suisse, France, Israël, Pologne, Belgique, Pays-Bas, Yougoslavie, Portugal, Allemagne.
Ont voté contre: Canada, Grande-Bretagne, Japon, États-Unis, Grèce.

The following resolution was adopted by the Plenary Session of the Conference on
September 25th(18):

“The Plenary Conference instructs its International Subcommittee to study other
amendments and adaptations to the provisions of the International Convention for the
unification of certain rules relating to bills of lading”.

18. At the subsequent CMI Conference, held in Stockholm in June 1963, several Delega-
tions stated they did not favour substantial modifications to the Hague Rules.
Here follows some statements made during the Plenary Session of 10 June 1963(19):

Mr. J Moore (United States): Il y a seize autres points qui ont été examinés par la
Commission et que celle-ci a renvoyés au bac à papier, pour reprendre l’expression qui
a été employée, car ils ne présentaient pas suffisamment d’importance. En fait, certains
de ces points n’étaient que des questions théoriques ne résultant pas du tout de diffi-
cultés pratiques mais la Commission a pensé qu’elles n’étaient pas suffisamment im-
portantes pour nécessiter une action.

J’estime que si nous envisageons de faire quelque chose en ce qui concerne les
Règles de La Haye, que ce soit à la présente Conférence ou à la suivante, nous devons
montrer modérés et ne pouvons pas insister pour obtenir des révisions dépassant
ce qui s’est avéré réellement nécessaire dans la pratique.

Mr. A. Loeff (Netherlands): .............................................................

Monsieur le Président, Mesdames et Messieurs, je désire vous faire part du point
de vue de la Délégation Nèerlandaise - qui a déjà été précisé dans le rapport - en ce qui
concerne les amendements qu’on se propose d’apporter aux Règles de La Haye.
Nous sommes d’avis qu’il faut toucher le moins possible aux Règles de La Haye;
elles existent maintenant depuis 40 ans et d’une manière générale elles ont donné sa-

(18) CMI 1959 Rijeka Conference, p. 430.
(19) CMI 1963 Stockholm Conference.
tisfaction. Elles constituent une unification très étendue et l’unification se poursuit en-
core maintenant. Par ailleurs si les États qui envisagent à l’heure actuelle d’adhérer aux
Règles de La Haye ne sauront pas pendant un certain temps ce que les Règles de La
Haye sont exactement l’œuvre d’unification risque d’être ralentie.

A ce propos je désire préciser que je pense que tout le monde est d’accord pour di-
re que les idées de base des Règles de La Haye sont toutes très bonnes mais que la ré-
daction présente certaines faiblesses. Il serait hasardeux pour moi de me prononcer
sur le texte officiel français des Règles de La Haye ce d’autant plus que nous utilisons
la plupart du temps la traduction anglaise mais je pense, en regardant le texte anglais,
qu’il est permis de dire que la rédaction n’est pas très excellente. Je désire mentionner
un point. Les Règles de La Haye ont été rédigées à l’origine comme une série de clauses
devant être incorporées dans les connaissements mais néanmoins elles contiennent dif-
férentes dispositions qui ne traitent pas du contenu du connaissement mais du contrat
qui existe avant l’émission du connaissement. Cela est peut-être une erreur de rédac-
tion. Dès que vous vous rendez compte de cela vous comprendrez qu’il n’y a pas de
grosses difficultés.

M. C. Miller, Grande-Bretagne (traduction): Monsieur le Président, Mesdames et
Messieurs, vous avez devant vous le Rapport qui est un des plus lucides et des mieux
prêtés dont la Conférence Plénière du C.M.I. ait jamais disposé; il traite de 24 points
ou projets. Je ne désire pas entreprendre la tâche ingrate de les classer par ordre d’im-
portance mais, en prenant la parole au nom de la délégation de l’Association Britan-
nique de Droit Maritime, nous sommes d’accord avec M. Moore, qui dans son dis-
cours d’ouverture à la Séance Plénière, nous a mis en garde contre le risque de se
perdre dans un labyrinthe de petits points dont il ne sortira jamais rien.

19. A summary of the work of the Committee and of the Recommendations of the Inter-
national Sub-Committee accepted or rejected at the Conference was made by Mr. J. Van
Ryn, the Chairman of the Committee, at the Plenary Session of 14 June 1963. The report
of M. Van Ryn is reproduced below.

Le Président: Mesdames, Messieurs, nous allons aborder, au cours de cette séance
plénière, l’examen des conclusions de la Commission que vous avez constituée et qui
s’est réunie ces jours-ci à Stockholm.

Je prie le Président de la Commission, M. Van Ryn qui a accepté d’en faire en mê-
me temps le rapport, de prendre la parole.

M. Van Ryn (Belgique): Monsieur le Président, Messieurs, le projet qui a été distribué
et qui porte le no 5, vous fait connaître les dispositions que la Commis-
sion propose d’insérer dans le Protocole de Convention additionnel modifiant la
Convention internationale de 1924.

Le titre donné à ce projet a été rédigé d’après ce qui a été fait pour la Convention
de Varsovie, lorsqu’un protocole additionnel à cette Convention a été adopté.

Je vais m’efforcer de commenter aussi brièvement que possible les diverses dispo-
sitions de ce projet.
Il est préférable, pour plus de clarté, que je suive point par point le rapport de la Commission internationale, que vous connaissez tous, de manière à pouvoir vous indiquer quel a été le résultat obtenu sur chacun de ces points des délibérations de la Commission.

Tout d’abord, en ce qui concerne l’article 10, il n’y a eu aucun changement de rédaction, sauf une modification minuscule dans le texte français, pour le rendre plus clair.

Le texte qui vous est proposé, sauf l’adjonction du mot “et” est celui qui avait été adopté à Rijeka. On a simplement ajouté après les mots “s’appliqueront à tout connaissément relatif à un transport de marchandises d’un Etat à un autre...” le mot “et”. C’est une modification de pure forme, pour rendre le texte français plus clair.

Cette disposition nouvelle destinée à remplacer l’article 10 de la Convention de 1924, figure dans le projet que vous avez sous les yeux, sous l’article 5.

Nous avons ensuite examiné les diverses recommandations positives de la Commission internationale.

La première et la deuxième de ces recommandations, après discussion, ont été repoussées.

La Commission vous propose donc, sur ces deux points, de ne pas modifier la Convention de 1924.

Dans le premier point, il s’agissait de la responsabilité du transporteur, pour chargement, arrimage ou déchargement négligent effectué par le chargeur ou le destinataire.

Le second point est celui qui est intitulé dans le rapport de la Commission internationale “Avis de réclamation”.

En ce qui concerne la troisième recommandation positive de la Commission internationale, la Commission vous propose une modification du texte actuel de la Convention, plus précisément du texte actuel de l’article 3, paragraphe 6, relatif au délai d’un an, pour l’introduction des réclamations.

Cette modification a pour but de donner au texte une portée aussi générale que possible, de manière à englober dans le domaine d’application du délai d’un an, même les réclamations fondées sur la délivrance de marchandises à une personne sans qualité, c’est-à-dire même dans le cas de ce qu’on appelle le wrong delivery.

La disposition nouvelle que nous vous proposons figure dans le projet que vous avez sous les yeux, à l’article premier, paragraphe 2. C’est la première phrase de ce paragraphe 2 que je vise pour le moment. Je parlerai de la seconde phrase du même paragraphe, tout à l’heure, à propos d’une autre question.

Voilà donc pour la troisième recommandation positive de la Commission internationale.

La quatrième recommandation positive est celle qui concerne la clause or, le taux de conversion et l’expression “colis ou unité”.

La Commission vous propose d’adopter la recommandation de la Commission internationale et le texte qui vous est proposé sur ce point est celui qui figure à l’article 2 du projet que vous avez sous les yeux.

La cinquième recommandation de la Commission internationale est celle qui se rapporte à la responsabilité quasi-délituelle, c’est le problème de l’Himalaya.

La Commission, après une longue discussion vous propose d’adopter les trois pre-
Premiers paragraphes de la recommandation de la Commission internationale tels qu’ils figurent à la page 28 du rapport de la Commission internationale, sous deux réserves cependant.

Première réserve, la Commission propose de supprimer dans le texte, toute mention des sous-traitants indépendants, en anglais “independent contractors”.

La Commission estime qu’il n’y a pas lieu d’accorder aux sous-traitants indépendants, le bénéfice des dispositions nouvelles qui vous sont proposées.

La deuxième réserve est moins importante, car elle ne concerne que la rédaction et plus particulièrement du texte français, elle se rapporte à la traduction française des mots “servants and agents”.

La Commission vous propose de faire la même chose que ce qui a été fait à l’occasion de la modification de la Convention de Varsovie, c’est-à-dire de traduire ces deux expressions anglaises par un seul mot français qui, en réalité, englobe tous les deux, le mot “préposé”.

C’est un langage qui correspond à celui qui a déjà été employé dans d’autres conventions internationales et il semble donc recommandable de ne pas s’en écarter.

La Commission vous propose d’autre part, de ne pas accepter le 4e paragraphe de la recommandation de la Commission internationale, c’est celui qui figure à la page 30, dans le haut de cette page, du rapport de la Commission internationale.

Il s’agit de la disposition qui privait les préposés du bénéfice des exonérations et des restrictions de la Convention, en cas d’acte intentionnel ou de faute lourde.

La Commission a estimé également qu’il n’y avait pas lieu de retenir le nouveau paragraphe 7 que la Commission internationale proposait d’insérer à l’article 4 et dont l’objet était de priver le transporteur lui-même du bénéfice d’une exonération et limitation, en cas de fait intentionnel ou de faute lourde.

La sixième recommandation de la Commission internationale n’a donné lieu à aucune discussion et la Commission vous propose de l’adopter.

Vous la trouverez dans le projet que vous avez sous les yeux, à l’article 4.

Nous vous proposons d’insérer cette disposition nouvelle à l’article 9 de la Convention de 1924, pour la raison suivante. L’adoption des recommandations de la Commission internationale, en ce qui concerne la clause or, a pour conséquence l’abrogation du texte actuel de l’article 9. Il y a donc un article vide de contenu, désormais, dans la Convention de 1924.

Il paraît souhaitable, pour ne pas devoir changer la numération des derniers articles de la Convention de 1924, d’introduire à l’article 9, la disposition nouvelle, en ce qui concerne les dommages nucléaires, disposition que la Commission internationale vous avait proposée.

La septième recommandation de la Commission internationale concerne la “Both to Blame clause”. Elle n’a pas pour objet d’introduire un texte nouveau dans la Convention de 1924; elle a simplement décidé d’insérer dans son rapport un extrait du procès-verbal d’une de ses réunions, ceci, à la demande de l’Association Américaine.

L’Association Américaine a fait savoir à votre Commission qu’elle ne souhaitait pas que la Commission prit une décision supplémentaire quelconque sur cette question, ni que la Conférence de Stockholm soit appelée à délibérer sur ce point.
Nous avons fait droit à cette demande et nous n’avons aucune proposition à vous faire à ce sujet.

La Commission a ensuite examiné quelques-uns des autres points étudiés par la Commission internationale, à propos desquels cette Commission n’avait pas jugé utile de faire des recommandations quelconques.

Je vais examiner rapidement ceux dont votre Commission a repris l’examen, ceci en suivant l’ordre du rapport de la Commission internationale.

Tout d’abord, le n° 8, la question de la cargaison en pontée.

La Commission a examiné une proposition qui avait été faite sur ce point par l’Association Britannique, dans son rapport amendé, proposition qui tendait à introduire dans la Convention, une disposition nouvelle sur ce point.

Après examen, la Commission a estimé cependant qu’il n’y avait pas lieu d’adopter cette proposition qui a donc été rejetée.

La question n° 11 est relative au Muncaster Castle ou plus précisément à l'interprétation de la diligence raisonnable imposée au transporteur, interprétation qui a fait l’objet de l’arrêt de la Chambre des Lords, en cause du Muncaster Castle.

La Commission a examiné la proposition qui a été faite par l’Association Britannique, dans son rapport amendé qui porte la date du 30 avril 1963 et dans lequel figure une proposition précise, à la page 9 de la brochure no 3 tendant à compléter l’article 3, paragraphe 1er par une disposition, suivant laquelle, “lorsque le transporteur se trouve dans des circonstances telles qu’il peut normalement recourir à un contractant indépendant, y compris une société de classification et tout autant que le transporteur ait pris soin de désigner un contractant indépendant de bonne réputation et compétent, le transporteur sera considéré comme n’ayant pas manqué à l’exercice de la diligence raisonnable, par le seul fait d’un acte ou d’une omission imputable à ce contractant indépendant ou à ses préposés, en ce qui concerne la construction, la réparation ou le maintien en bon état du navire ou de toute partie du navire ou de son équipement”. Rien dans cette disposition ne dispensera le transporteur de prendre telle précaution qu’il faut, par le moyen d’une inspection ou d’une surveillance du travail effectué par le contractant indépendant.

La Commission n’a pas dissimulé l’intérêt de cette proposition, mais dans le rapport on a déploré qu’il n’ait pas été possible de l’examiner de façon plus détaillée, étant donné qu’elle a été formulée seulement quelques semaines avant l’ouverture de cette Conférence. Des opinions très diverses se sont exprimées au cours des réunions de la Commission au sujet de cette proposition et finalement l’Association Britannique a déclaré qu’elle n’insistait pas pour que la Commission se prononce sur ce point, par un vote, se reserverant de soumettre éventuellement sa proposition à la réunion plénière de la Conférence.

Nous n’avons donc pas de proposition à vous faire, sur ce point, puisque déférant au désir exprimé par l’Association Britannique, la Commission s’est abstenu de se prononcer par un vote, à cet égard.

Au n° 13, il s’agit d’un autre point examiné par la Commission internationale. La Commission a fait droit au désir exprimé par la minorité de la Commission internationale, il s’agit de la question de la valeur probante des déclarations figurant dans les connaissements.

Selon l’opinion de la minorité de la Commission, et qui figure à la page 46 du rapport de la Commission internationale, il ne s’agit pas d’apporter, à proprement parler, une modification sur ce point, aux dispositions de la Convention de 1924, il s’agit simplement de confirmer une interprétation qui est admise dans un grand nombre de
pays, ainsi que cela a été dit et confirmé au cours des travaux de la Commission internationale.

Il se fait que dans d'autres pays, cette interprétation qui est admise presque partout et qui est considérée comme bonne et souhaitable, ne peut pas être consacrée par les tribunaux, en présence du texte actuel de la Convention de 1924, il faudrait un texte exprès pour que cette interprétation put prévaloir.

C'est pour faire droit à la demande des pays dans lesquels cette interprétation ne peut pas être admise, dans l'état actuel du texte, que la Commission a décidé de vous proposer d'adopter une courte adjonction à l'article 3, paragraphe 4 de la Convention de 1924, celle qui figure dans le projet de Convention que vous avez sous les yeux, à l'article 1er, paragraphe 1er.

A l'article 3, paragraphe 4, il y a lieu d'ajouter: "Toutefois la preuve contraire n'est pas admise, lorsque le connaissement a été transféré à un tiers porteur de bonne foi".

En numéro 3 la Commission a retenu l'examen d'une proposition qui avait été faite par l'Association Française et l'a adoptée après en avoir légèrement remanié la rédaction. Vous en trouverez le texte dans le projet que vous avez sous les yeux à l'article 1er, par. 3. Il s'agit des actions récursoires. Les actions récursoires pourront être exercées même après l'expiration du délai prévu au paragraphe précédent si elles sont intentées dans le délai d'un mois à partir du jour où les personnes qui les exercent ont été elle-mêmes assignées.

Mais j'ai appris ce matin que la Conférence sera saisie d'un projet d'amendement qui sera présenté conjointement par l'Association Française et l'Association Américaine, projet d'amendement qui n'est pas destiné à apporter une modification substantielle à la proposition mais à tenir compte de certaines particularités en ce qui concerne la prescription dans certains pays. Il s'agit d'une amélioration de rédaction plutôt qu'un changement quant au fond.

Le n° 16 est le dernier point que la Commission a examiné. C'est le point intitulé: prescription.

Ici également il s'agit d'une question qui n'intéresse qu'un petit nombre de pays. Dans certains pays de l'Europe continentale le délai d'un an est considéré comme un délai de déchéance, ce qui signifie qu'il n'est pas possible de prolonger ce délai même par l'accord des parties ce qui amène cette situation évidemment regrettable que, par exemple, en cas d'avarie ou de perte, et si le transporteur ne conteste pas sa responsabilité, même alors il faudra assigner, en tout cas, avant que le délai d'un an ne soit expiré, faute de quoi la déchéance sera acquise contre le porteur du connaissement. Cette solution qui n'est admise que dans certains pays est évidemment regrettable. Le problème, heureusement, ne se pose pas dans d'autres pays. C'est le plus grand nombre mais la Commission a jugé qu'il était possible, sans inconvénient, de faire droit à la proposition qui avait été faite par l'Association Allemande dans ses commentaires sur le rapport de la Commission internationale, proposition, tendant à ajouter un texte fort bref à l'article 3, par. 6, et prévoyant que le délai d'un an peut toutefois être prolongé moyennant l'accord des parties intéressées.

Dans la plupart des pays cela va de soi et il est donc inutile de le dire mais, dans certain pays, il est au contraire indispensable que ce soit dit.

La Commission a pensé que, dans ces conditions, il n'y avait pas d'inconvénient à vous proposer cette adjonction que vous trouverez dans le projet que vous avez sous les yeux à l'article 1er, paragraphe 2. Il s'agit de la deuxième phrase.

Ici, j'ouvre une parenthèse. Je m'aperçois que dans la version anglaise cette seconde phrase a été mise dans un nouvel alinéa. Il faut évidemment éviter des discordances...
de ce genre qui peuvent être une source de confusion. Il n’y a, en réalité, aucune raison de ne pas mettre cette phrase à la suite du texte de l’alinéa tel qu’il est rédigé actuellement.

Voilà, Monsieur le Président, Mesdames, Messieurs, le commentaire que je croyais devoir vous faire au sujet des travaux de la Commission que j’ai eu l’honneur de présider.

Je voudrais maintenant, si M. le Président veut bien me le permettre, ajouter quelques réflexions personnelles au sujet du résultat de nos travaux en commission.

J’ai été frappé du fait que, parmi les autres sujets examinés par la Commission internationale, et écartés par elle, il en est plusieurs auxquels les associations nationales, ou tout au moins certaines associations nationales, persistent à attacher de l’importance. C’est ce qui ressort des commentaires qui ont été fait à la suite du rapport de la Commission internationale.

On lit, en effet, à propos de plusieurs de ces questions, des déclarations, parfois quatre, parfois trois, parfois une seule qui demandent expressément que l’étude de telle ou telle question soit poursuivie; dans certains cas même, et c’est ce qui se présente pour l’Association Britannique, l’association annonce qu’elle poursuit elle-même l’étude de telle ou telle question. Il en est ainsi, tout d’abord, pour la question de la responsabilité avant le chargement et après le déchargement. Les Associations Britannique, Française et Italienne manifestent l’intérêt qu’elles persistent à attacher à une solution positive de ce problème et je relève, notamment, dans les commentaires de l’Association Britannique, cette phrase “s’il ne serait pas opportun de discuter la question à la Conférence de Stockholm, il faudrait néanmoins rechercher une définition claire de la période pendant laquelle le transporteur est responsable”.

Même chose en ce qui concerne l’interprétation de la diligence raisonnable. A la suite de l’arrêt du Muncaster Castle, dans son rapport du 30 avril 1963, l’Association Britannique déclarait insister pour que, de nouveau, un sérieux effort soit fait en vue de trouver un compromis sur ce point.

J’en ai parlé tout à l’heure, nous avons été saisis, mais vraiment “in extremis” d’une proposition contraire qui méritait certainement un examen approfondi. C’est le premier effort que nous sommes invités à faire après le rapport de la Commission internationale dans le sens souhaité par l’Association Britannique qui nous exhorte à poursuivre dans cette direction.

Même chose encore pour la question moins importante assurément de la validité de l’invoice value clause. Je lis également dans le rapport de l’Association Britannique sur ce point qu’il est considéré qu’elle ne devrait pas être soulevée à la Conférence de Stockholm mais qu’il faudrait qu’elle fasse l’objet de discussions après.

Ce que je viens de dire pour ces quelques questions est peut-être vrai pour d’autres propositions au sujet desquelles la Commission internationale n’a pas toujours exprimé son avis quant à leur mérite. Certaines de ces propositions ont été écartées, comme le rapport de la Commission internationale le montre, comme étant peu importantes ou comme étant simplement jugées peu opportunes.

Je ne veux pas m’étendre en détail sur ce point mais je voudrais simplement citer les no 12, 19, 20, 22 et 24.

Voilà la constatation que j’ai faite en revoyant le résultat de nos travaux et, dès lors, il est à présumer qu’à la suite des études qui vont ainsi se poursuivre dans les différentes associations nationales, lorsque la Conférence diplomatique se réunira, elle sera saisie de propositions sur différents points.
Alors se pose, Mesdames, Messieurs, une question que, personnellement, je crois importante pour nous. Ne serait-il pas désirable que ces propositions sur ces questions qui ont été provisoirement écartées mais que l'on continue à étudier dans les associations nationales soient aussi examinées au préalable par le Comité Maritime International? N'est-ce pas là son rôle normal? Ne serait-il pas fâcheux que, sur une série de points, la Conférence diplomatique soit saisie de propositions qui n'auraient pas passé par le Comité Maritime International? Personnellement je crois que ce serait regrettable. Dans la mesure où nous le pouvons, nous devons l'éviter.

Si tel est également l'avis de la Conférence c'est évidemment au Président du Comité Maritime International qu'il appartiendra d'examiner si ce résultat est possible. Il consultera peut-être la Conférence sur les moyens les plus appropriés à cette fin, bien entendu sans qu'il soit possible de revenir sur les résultats positifs qui sont acquis, qui figurent dans le projet de convention que vous avez sous les yeux et qui constatent l'état des travaux du Comité Maritime International en ce qui concerne la Convention de 1924.

En résumé, Mesdames, Messieurs, je crois pouvoir dire, en toute modestie, que le projet tel qu'il est sorti des délibérations de la Commission, s'il est le reflet de l'état actuel de nos travaux, n'est peut-être pas absolument complet sans qu'on puisse en faire un reproche à qui que ce soit, mais, compte tenu des études qui se poursuivent et qui vont se poursuivre encore, ce projet doit être complété avant qu'il ne soit soumis à la Conférence Diplomatique, car il faut que le projet que nous soumettons à cette Conférence contienne des propositions précises sur tous les points à propos desquels une modification aura été jugée à la fois désirables et possible.

Je crois donc qu'il faudrait que nous réservions la possibilité d'ajouter encore au projet que vous avez sous les yeux telle ou telle disposition sur des points qui ne sont pas envisagées dans ce projet.

Bien entendu, il n'est pas possible de renvoyer ce travail complémentaire à deux ans, jusqu'à ce que nous ayons le plaisir de nous rencontrer à New York lors de la Conférence du Comité Maritime International. Il y a peut-être d'autres procédures; il y a peut-être des précédents. Nous ne pouvons - je pense - que nous en remettre sur ce point à la sagesse et à l'ingéniosité de notre président. J'ai simplement voulu, quant à moi, attirer l'attention de la Conférence sur un point qui me paraît important. (Vifs applaudissements).

20. As it appears from the report of Mr. Van Ryn, the International Sub-Committee appointed by the Bureau Permanent had, in addition to the revision of Article 10, submitted 16 Recommendations relating to an equal number of modifications of or additions to the Hague Rules. Of such 16 Recommendations only 8 were adopted. It was then indicated by the Chairman of the Committee, Mr. Van Ryn, that there were other points that would have been worthy of consideration and it was suggested that further studies should be carried out.

The President of the CMI so stated in this respect at the Plenary Session of 14 June 1963(20).

(20) CMI 1963 Stockholm Conference.
Je crois qu’un dernier point doit être soumis à votre délibération. Le Président de la Commission de cette Assemblée a, à titre personnel, indiqué que dans son esprit, il y avait un certain nombre de points qui n’avaient pas été traités et qui ont mérité de l’être, de telle sorte que votre Assemblée devait éventuellement, si elle souhaitait soumettre ces points à un travail complémentaire en commun, soit décider du mode d’examen, soit s’en remettre aux organes de gestion du Comité Maritime International, pour organiser l’étude de ces questions qui font l’objet de travaux dans les Commissions Internationales. L’Assemblée désire-t-elle se prononcer à cet égard en Assemblée Plénière, ou veut-elle laisser à son Bureau Permanent le soin d’examiner la suggestion du Président de la Commission, éventuellement avisé des mesures adéquates à prendre.

21. The proposal to name the provisions adopted at the Stockholm Conference “Visby Rules” and the Hague Rules as amended at Stockholm “Hague-Visby Rules” was made by the Chairman of the Committee, Mr. Van Ryn, at the Plenary Session of 14 June 1963.

M. Van Ryn, Belgique: M. le Président, Mesdames, Messieurs, puisque nous avons adopté un certain nombre de dispositions qui peuvent faire l’objet d’un Protocole additionnel à la Convention de 1924, je vous demande de bien vouloir prendre en considération le vœu qui se trouve exprimé par la Commission Internationale à la fin de son rapport et plus particulièrement à la page 70. Ce vœu exprime que les recommandations positives étant adoptées par le C.M.I. fassent l’objet d’une signature solennelle, si je puis m’exprimer ainsi, dans ce lieu historique de la belle et vieille ville suédoise de Visby, ce qui permettrait de donner une qualification particulièrement nette et frappante à notre recommandation qui serait connue, comme le suggérait la Commission Internationale dans son rapport, sous le nom de “Règles de Visby”, établissant ainsi un lien avec la “Règle de Visby” du Moyen Âge et l’ensemble des règles concernant le connaissement élaborées par le C.M.I., qui pourraient alors être désignées sous le nom de “Règles de La Haye et de Visby”. Je vous remercie.

M. Pineus, Suède (traduction): Monsieur le Président, Mesdames et Messieurs, permettez-moi reprendre la parole par rapport à la dernière suggestion, faite par notre grand ami M. Van Ryn. Dans cette partie du monde nous sommes bien entendu très honorés par la suggestion; cela pourrait d’une certaine manière nous aider également à faire adopter les nouvelles règles puisque nous avons donné un nom qui leur permet d’aller de pair avec les Règles de La Haye, et ainsi elles pourront avoir le succès que d’autres ne pourraient pas atteindre si facilement. Je suis en faveur de la proposition faite par la Délégation Belge.

Merci, Monsieur le Président.

22. The Draft approved by the CMI at Stockholm was submitted to the 12th Session of the Conference Diplomatique de Droit Maritime convened at Brussels by the Belgian Government from 16 to 27 May 1967. Whilst the majority of the amendments to the Hague Rules did not meet with any opposition, it proved impossible to reach a wide consensus on the two more important amendments discussed at Stockholm: that relating to
the limitation of the carrier’s liability and that relating to the scope of application of the Convention.

In fact the amendment to the rule on limitation (Article 4 paragraph 5), consisting merely in the replacement of the 100 pounds limit with a 10,000 Poincaré francs limit, was strongly criticised by the Scandinavian Delegations. The Norwegian Delegate Mr. Rein so stated:

[526]

The second proposal is in regard to the so-called unit limitation. This is a point where international unity has never been achieved. The unit limitation rule has been interpreted differently in the different contracting States, not only by the judiciaries of those States but even by the legislators. Therefore, the unity aimed at has not been achieved and there is no harm in looking for a better solution. We believe that a better solution is to be found because [527] the unit limitation in itself, apart from the fact that international unity has not been achieved, is not a good one. Since the unit limitation was introduced as a novelty in the Hague Rules, we now have other conventions on the transport of goods by rail, road and air. In all these conventions the simple kilogram limitation has been adopted. We believe that the time has come when maritime transport should join the other industries. There is no longer any reason for this maritime peculiarity. It is not even a good one - that is, it is not universal. It would be a pity if we now proceeded to a revision of the Hague Rules, a task which is undertaken only at intervals of 20 or 30 years, but did not correct these two flaws in the present Rules.

As regards the scope of application, there continued to be a disagreement between the Delegations, as to whether the Hague-Visby Rules should apply only in respect of bills of lading issued in a Contracting State or also to bills of lading wherein the port of destination is located in a Contracting State.

This continuing disagreement brought about a proposal for adjournment of the Conference, for the discussion of the two issues previously referred to. The proposal of adjournment was made at the Plenary Session by Lord Justice Diplock, on behalf of the United Kingdom Delegation. He so stated:

[121]

At the Commission this morning I explained, I am afraid at almost too great a length, the reasons why we think that it is desirable that the discussion upon article 2 § 1 should be adjourned for a brief period to enable us to consult the interests concerned and to work out what are the consequences of any fundamental change in the basis of limitation.

Since I think that nearly all countries were represented at the Commission, I do not propose to repeat what I said this morning. The purpose of the adjournment is two-fold-first, to try to avoid the disaster of having half the maritime countries of the world subscribing to the old Hague Rules, with that particular method of limitation, and the other half of them subscribing to the Visby Rules with a different method of limitation.
We are not, as I said then, unsympathetic to the proposals which have been put forward for altering the basis of limitation. We say that we did not come to this Conference prepared to deal with a fundamental alteration of the basis of limitation. We have come with our calculations prepared to support the changes in the existing basis and it would be quite impossible for us in the United Kingdom Delegation - this, I think, is true of many other Delegations - to come to a conclusion on this fundamental change without an opportunity of consulting the interests and seeing what the best method of change is.

It is for that reason, and to ensure that there is not any lengthy delay, that we are proposing that there should be a short adjournment on this matter alone. The period of adjournment can be worked out in detail later, but I would propose that it should be to a date to be decided by our kind hosts, the Belgian Government, not later than 29th February next year. I gather that it would probably be more convenient technically for the Belgian Government to make it that date rather than the 6-9 months which I suggested earlier.

The proposal was unanimously carried and the Second Phase of the Conference was convened by the Belgian Government from 19 to 23 February 1968.

With respect to the provisions on the carrier's limitation of liability the question which gave rise to a heated debate was that of the limits applicable in case of containerized goods. Finally a text was proposed by the Commission appointed by the Conference, under the chairmanship of Lord Justice Diplock who in his report so stated, inter alia:

The figure of 10,000 franc is an appropriate figure for the ordinary kind of package. The average weight of a traditional package of crate or bale is about 100 kilograms. But that sum of money is quite inappropriate for containers already in use, which may contain up to 30 or 40 metric tons of goods.

Obviously if a package, of that size, the container, is going to be considered as a package or unit for liability, a figure of 10,000 francs is inappropriate. It was because of the problem of the big container, which is itself a package, that it became necessary, it was thought at our conference in May, that some provision should be made to deal with the big package, the package which today may run to 30 or 40 tons, and within a few years may be much larger than that. The problem was how to deal with that kind of big package.

The view that was expressed was that one should deal with that by putting a maximum liability on it, depending upon the weight of the cargo which it contained. That is putting upon it a figure which would represent a reasonable average value per kilo of weight. This is the same principle by which the Commission arrived at a figure for the reasonable ordinary value of the tradition sized package. The figure of francs 30 per kilogram was the figure arrived at in the Commission as a result of a general consensus that this would meet the requirements of the cargo of ordinary value packed in the large container.

Those are the two matters which are dealt with in paragraph (i). That means that
for any package, and for this purpose (I will come to the container clause in a moment) the container may be a package, there will be a maximum liability, if the weight does not exceed 333 kilos, of francs 10,000. Above that weight, which is what francs 10,000 represents at francs 30 per kilo, you will get a rising maximum according to the weight of the package. That in itself is very simple, the figures were based on the average sort of cargo, so as to exclude the exceptionally valuable cargo.

As with the package limitation so with the weight limitation. If the shipper wants to make the ship owner liable for a greater sum than the maximum provided by paragraph (i), all he has to do is to declare the value and pay the appropriate higher rate of freight. So far the matter is very simple.

Next we had to consider the special problem of containers because it is mainly the problem of containers which has made it essential to turn over from a simple package basis to include a weight basis as well.

Now there are many intractable problems about containers but so far as this clause is concerned, there was only one quite simple problem. A container is a package which may contain other packages. It may contain for exemple 100 crates of various kinds of merchandise. The problem is where you have a container which contains inside it other traditional packages or units, is the liability going to be calculated upon the container as the package which would almost certainly involve the weight basis, or is it to be calculated on the individual packages within the container as if they were stowed in the traditional way in the hold?

Now the answer to that is a very simple answer. It is for the shipper and the carrier to decide whether they want the particular container to be treated as the package for the purpose of limitation of weight, or whether they want the smaller packages or units in it to be so treated; and no doubt when the latter alternative is taken, that is to say the individual packages are to be treated as separate units, a higher rate of freight will be payable than when the container is to be the unit - a higher rate of freight because the maximum liability, may itself be higher.

With respect to the provision on the scope of application, the view prevailed that the port of destination should not be relevant for that purpose, so that the Convention would not apply, unless the parties so expressly provide, in case of goods loaded or bills of lading issued in a non-Contracting State the destination of which was in a Contracting State.

IV. The 1979 Protocol

23. At a meeting held by the CMI Executive Council during the 1977 Rio de Janeiro Conference the question of the difficulty of converting the limits of liability expressed in gold into currency of payment was raised in respect of both the Hague-Visby Rules and the 1957 Limitation Convention. An International Sub-Committee was appointed by the Executive Council, under the chairmanship of Prof. Jan Schultsz, with instructions to elaborate draft protocols to the two Conventions wherein reference should be made to the IMF Special Drawing Right.

The question whether Protocols should be prepared both to the 1924 Convention and to the 1968 Protocol was submitted by the International Sub-Committee to the Assembly of the CMI held in Hamburg on 7 and 8 March 1978 and the following statement was included in the minutes of the Assembly (CMI News Letter of April 1978):
IV. The 1979 Protocol

The conversion of gold limitation units into SDRs.

Professor J. C. Schultsz (Netherlands) has prepared draft Protocols to the 1924 and the 1924/1968 Brussels Conventions on Bills of Lading and to the 1924 and the 1957 Conventions on the limitation of shipowners’ liability and contact has been made with the depositary of these Conventions - the Belgian Government - for convening a diplomatic conference. The Belgian Government has suggested that a similar draft Protocol be prepared for the 1962 Convention on Nuclear Ships (Convention on the liability of operators of nuclear ships and additional Protocol, Brussels May 25th, 1962).

A particular problem existed with respect to the 1924 Conventions, since one might take the view that the 1968 Protocol and the 1957 Limitation Convention with the new limits contained therein superseded the old 1924 Conventions and that, consequently, Protocols should only be added to the 1968 Protocol and the 1957 Limitation Convention. Further, when converting the old pound sterling to SDRs, an arbitrary decision would have to be made which was different from the simple conversion of 15 francs Poincaré to 1 SDR.

The Assembly decided to set up an International Sub-Committee and appointed Professor Schultsz as Chairman.

The International Sub-Committee appointed by the Assembly reported to the May 1979 Assembly and the following statement was included in the minutes (CMI News Letter of May 1979):

3. Protocols to the International Conventions on bills of lading and on limitation of shipowners liability.

The Assembly decided not to submit Protocols to the Belgian Government relating to the 1924 Conventions on bills of lading and limitation of shipowners’ liability and the 1962 Convention on the liability of operators of nuclear ships. Thus, only Protocols to the 1957 Convention on the limitation of shipowners’ liability and the 1968 Protocol to amend the 1924 bill of lading Convention should be submitted. The Assembly decided (the Association for Maritime Law of the German Democratic Republic abstaining) to submit to the Belgian Government the texts elaborated by the International Sub-Committee under the chairmanship of Professor Jan Schultsz requesting him after some smaller corrections had been made to send the texts in their final form to the members of the Executive Council for approval.

The draft protocols were finalized by the International Sub-Committee and were submitted by the President of the CMI to the Belgian Government at the end of May 1979 together with the accompanying report reproduced below (CMI News Letter, July 1979):

Report accompanying two draft protocols for the amending of Maritime Conventions.

1. The Comité Maritime International, recognizing that a number of international conventions -other than those which constitute the subject matter of this report - had been amended so as to replace definitions of the maximum liability of a person (having such connection with international transportation as was indicated in each of the conventions in question) in terms of gold value by some other unit of account, felt that a few conventions dealing with maritime transportation were, similarly, in need of amendment. In view of the role played by the CMI in preparing those conventions, the
CMI thought that it might be the appropriate body to initiate steps leading to such amending, and it now presents a draft of two Protocols for the amending of, respectively, the International Convention relating to the limitation of the liability of owners of sea-going ships of 1957 and the International Convention for the unification of certain rules of law relating to bills of lading of 1924 as amended by the Protocol of February 23, 1968.

2. With respect to the necessity of the amendment the following observations may be made.

In order to obtain international uniformity, any amount of maximum liability has to be expressed in an universally accepted parameter not being the national currency of any State. Gold used to be such parameter. This was particularly true at the time when a substantial number of countries operated within a system where gold had a stabilized price expressed in the currency of one country (viz. 1 oz. gold = US$ 35). This period, however, ended in March 1968 and since that time no more is a uniformly applied fixed parity - to the contrary, gold is quoted on “free markets” as well as in officially determined parities. Action was taken by the International Monetary Fund to the extent that, in 1971, it created Special Drawing Rights, a unit of account then with a value fixed in terms of gold. In 1976 it was decided to go a step further and to determine the value of S.D.R.’s on the basis of the weighted currencies of sixteen Member-States. As from April 1, 1978 Member-States of the I.M.F. are not any more allowed to express the value of a currency in terms of gold. Therefore the amending of the conventions became an urgent matter.

3. Following the example of the protocols to the international conventions referred to in the very beginning of this report the drafts make use of the Special Drawing Rights as determined by the International Monetary Fund in order to express and define the maximum of the liability in question. In conformity to international practice, 15 “francs” as defined in the original Conventions (currently referred to as “Francs Poincaré”) are equated to 1 Special Drawing Right.

Furthermore provision is made for those Member-States who are not Members of the International Monetary Fund. In the same way as is the case in the other protocols just mentioned, they shall be entitled to make use of “monetary units” which are identical to the “Francs Poincaré”.

4. No suggestions will be found in the two drafts with respect to the number of ratifications that will be required so that the Protocol will enter into force. On the one hand, it may be argued that this number should be identical to the number required for the entry into force of the original convention which it is designed to amend. However, in view of the obligations imposed by the I.M.F., such number may well be too high. Under these conditions it was thought preferable to leave the matter open.

5. Finally an explanation should be given for the fact that drafts are presented for two Brussels Conventions only whereas, in actual fact, three further Conventions might, conceivably, have been given the same attention.

With respect to one of these Conventions, viz. the Convention on the liability of operators of nuclear ships, it was thought inappropriate to amend it in view of the fact that the Convention itself has not yet come into force by lack of a sufficient number of ratifications. Should an additional number of States feel the desire to ratify the Convention then, no doubt, all interested States will enter into negotiations with a view to amend the Convention.
IV. The 1979 Protocol

With respect to two other Conventions, viz. the Convention for the unification of certain rules relating to the limitation of the liability of owners of sea-going vessels and the International Convention for the unification of certain rules of law relating to bills of lading, both signed at Brussels on August 25th, 1924, it should be pointed out that the first mentioned Convention has been largely superseded by the 1957 Limitation Convention, whereas the second has been amended by the 1968 Protocol, one of the essential objects of that Protocol being to provide a solution for the problems that had arisen as a consequence of the 1924 Convention using as a monetary unit the pound sterling “to be taken to be gold value”. Under these conditions it was feared that, to present a draft for the amending of the 1924 Conventions would not contribute to international uniformity. Therefore no proposal to that effect is presented.

A Diplomatic Conference was then convened by the Belgian Government from 19 to 21 December 1979, when the Protocol to amend the 1968 Protocol and the Protocol to the 1957 Limitation Convention were approved, without any amendment.
PART II

THE TRAVAUX PRÉPARATOIRES
OF THE INTERNATIONAL CONVENTION
FOR THE UNIFICATION OF CERTAIN RULES OF LAW
RELATING TO BILLS OF LADING
AS AMENDED BY THE PROTOCOLS
OF 23 FEBRUARY 1968 AND 21 DECEMBER 1979
INTRODUCTION

The alternative between a model bill of lading and uniform legislation.

ILA 1921 Hague Conference
First day's proceedings - 30 August 1921

Mr. J. S. McConechy: Mr. Chairman and Gentlemen. I have great pleasure in proposing the following resolutions. They are four, and I shall read them all. The Chairman, Sir Henry Duke, will then afterwards submit them to you one by one for consideration. We submit:
“(1) That it is desirable in the interests of trade and commerce that the rights and liabilities of cargo owners and shipowners under all contracts for the carriage of goods by sea be defined in the manner laid down in the draft international rules now submitted to this Conference, with such amendments and modifications (if any) as may be agreed.
“(2) That effect be given to resolution No. 1 either by agreement binding on all cargo owners and shipowners in the several countries represented in this Conference, or, if and so far as it may be impracticable to secure such agreement, by uniform legislation in the respective countries.
“(3) That wherever special legislation on this subject already exists or is proposed, it is desirable for the sake of uniformity that such legislation be brought into harmony with the draft international rules mentioned in resolution No. 1.
“(4) That the Executive of this Association be and is hereby requested and authorised to take all such steps as may be necessary and desirable to give effect to the foregoing resolutions.”

Therefore, we have come to the conclusion that the time has now come when this question should be settled, either by legislation or by an international agreement, and I hope it will be possible to do that here, where the shipowner can state his case, and the cargo owner can state his case, and we can have our differences thoroughly argued out, and come to some definite arrangement. In the two Associations that I represent, we should like to have a general unanimous agreement between the cargo owners and the shipowners, somewhat on the lines of the York-Antwerp Rules.

Second day’s proceedings - 31 August 1921

Mr. A. Le Jeune: .................................................................

Well, Gentlemen, I have heard with very great attention all that has been said here, and allow me to say that if I have come here at a very painful moment for myself, it is
because I felt duty bound to do so, as I have been requested to follow the labours of this Conference and to report to the Comité Maritime International, who held their session in Antwerp at the end of July last.

Now, Gentlemen, this question of Government intervention, or I should rather say of settlement by legislation, has already been examined roughly at the Antwerp Conference; in the first place, Dr. Loder, in the name of Holland, and various other gentlemen on behalf of France, Italy, the Scandinavian countries and of other States have expressed their views on the subject. I even may add that Dr. Bisschop also was present there and expressed his views. As far as I can remember - and I think I am right as I have not now the report of the Antwerp Conference before me - the general view of that Conference was that the matter should be settled by a voluntary convention; all the speakers there expressed the wish, which seems common to all of us here, that an understanding should be arrived at by a voluntary arrangement, for the present at least, and not by legislation. (Hear, hear).

Why not by legislation, Sir? I think that for the present moment, if everybody is agreed that an understanding is desirable on these matters, it would be quite out of the question to hope that one could arrive at a settlement by legislation within any space of time sufficiently short to be practical for our present purpose. It is quite obvious that these Rules (I will not call them a Code, as Mr. Dor did) which would be called the “Hague Rules” as has been suggested, are based upon the results of what has been the preliminary work done by the British Imperial Committee. I do not think that there would be much chance prima facie to get the legislators of the various countries of the world to take as a basis of an international agreement a document which, as a matter of fact, is not an international document, but on the contrary one which must appear to everybody as a sort of draft that was intended more especially for the British Empire.

Mr. H. J. Knottenbelt (Rotterdam): Mr. Chairman. It was not my intention to take part in the fight fought out in this room. I think the gentlemen who have already defended my standpoint have done it in such a form that their arguments do not need to be further developed. But I understand, Mr. Chairman, that you want to hear the standpoint of different nations on this matter. Therefore, as a representative of the Dutch Shipowners’ Association, I think it will be well to state what is our view in this matter. I can say that the general feeling of our shipowners is that it is desirable to arrive at a uniform international regulation of the question. But we should like to come to such a regulation in a free way, that is to say, that the rights and liabilities of both parties should be regulated by rules accepted by both parties of their own free will (Hear, hear), and not under pressure of legislation. That is also the standpoint of the International Chamber of Commerce, which held its conference in July last in London. There the general opinion expressed was that we must try to get to a uniform regulation, not along the way of settlement by law, but on the lines of free understanding between the parties interested. I think that the latter is the best way, because we know that it is very difficult to change laws, especially in this country; we have a law dating back to 1838; we have been always trying to get it amended, but until this day we have not succeeded. I am very strongly under the impression that we must not seek for help from the Governments, but that we should try to come to an arrangement. Especially the International Chamber of Commerce is trying this, and it will have the assistance of the Netherlands’ shipowners.
Mr. Laurent Toutain: .........................................................

To our great satisfaction, the “Comité Central des Armateurs de France” has come round to these views, on the essential condition that, instead of being left optional, they should become compulsory, at least amongst the seafaring nations which actually count in the shipping competition. Failing an international convention, binding these nations to uniformity, they fear lest there should be evasion from the rules, not only by shipowners, chiefly by the tramp owners, but also by the shippers and the bankers, whenever, as has been generally the case up to now, under the spur of competition, cheapness counts for more than security. Such an action Mr. de Rousiers aptly remarked would not necessarily mean a breach of good faith, for such voluntary agreements as the proposed Rules, even when they are entered into by the leading members of a Syndicate, do not carry with them the pledge of all the members of a profession.

I, for one, fully concur in this opinion. New facts have cropped up since then. The most important and significant of them is, if I understood rightly what has fallen from the Right Honourable President, the pledge given by the Executive Power of Great Britain to the Dominions to pass at an early date a National law if possible on the lines of the amended Hague Rules, called Rules for the [325] carriage of goods by sea. Thus, the method of voluntary agreement has fallen through. There remains only one way open to clear out of the danger of national legislation on the matter in hand, that is a strong and speedy action towards the adoption of the Hague Rules, more or less amended, by means of an international convention to be carried out by Diplomatic methods and to be followed by the passing of uniform national laws. These methods have been successfully started in the case of the two Codes drafted by the “Comité Maritime International” relating to collisions at sea and salvage.

In recommending this course of action I feel confident that I shall gain the full approval of the French businessmen at large, in Havre and all over the country. (Applause).

Mr. Otto Liebe (Denmark): ..........................................................

Well, to make a long story short, as you say here in England, we, the Danish delegates, approve the idea, we are in sympathy with the idea, of embodying these Rules in an International Convention; but at the same time we would suggest that for the time being you should not say too much about the tramp vessels with bulk cargoes, and, secondly, that it is allowed to the signatory powers to take some reservation when they sign, to say that they are not prevented by this Convention from deeming a carrier liable also to the bona fide purchaser of the [330] bills of lading for the accuracy of the description of the goods in the bill of lading. In this way we should have no need to change our law on fundamental principles; and on the other hand we believe that we shall get hold of the most eminent provisions of the Hague Rules. (Applause).
Afternoon sitting of Tuesday 10 October 1922

Sir Stephen Demetriadi: I should like first of all, Mr. Chairman, to thank you for the invitation which you have extended to my Federation to be present here today. As one of the strongest opponents - I put it in that way - in this country to the Hague Rules I do not pretend to be a persona grata in Hague Rules circles but I know that I can count upon your indulgence for the very short space of time that I shall take up in explaining to you the position of my Federation. I should like to take this early opportunity, Mr. Chairman, of saying that my Federation realises and recognises the hard work, the good work, that was done at the Hague (Hear, hear.).

I will not speak to you in my capacity as President of the British Federation of Traders’ Associations. It might be well for this meeting to know at this stage exactly what trades I represent. I think it would be best if I were to give you the names of some of these trades so that this meeting should be able to measure the weight of my Federation. We have amongst our Members amongst other the East Indian Grain and Oilseed Shippers Association of London. We have the Incorporated Oil Seed Association. That, Gentlemen, I need hardly tell you, is one of the biggest trades in this country. We have the Indian Tea Association. We have the Liverpool Cotton Association. That represents the raw cotton trade of this country. Our friends here from America will realise and know exactly what that trade means. We have amongst our Members the London Jute Association. We have the London Oil and Tallow Trades Association. We have the London Shellac Trade Association and - now I am going to give you one of the most important trades - we have the National Federation of Corn Trade Associations. That, Gentlemen, is the grain trade of this country. It is a Federation in itself and it comprises all the grain Trade Associations of this country. We have also the National Seed Crushers’ Association and we have another important trade known as the United Trades’ Association of Liverpool. Well, Gentlemen, I think I will leave it at that. You will be able to measure exactly the weight of my Federation.

Gentlemen, when the Hague Rules came into existence my Federation took the strongest objection to them on two points principally. Firstly, because of their voluntary nature. We were in this country pledged to the Dominions to uniform legislation throughout the British Empire. My Federation were in favour of that, and therefore we did not feel that we could be parties to an agreement that was by way of a voluntary arrangement. But I will not dwell at any length upon that point because that I hope is almost past history, and we are now talking about legislation.

M. René Verneaux: Messieurs, je désire présenter quelques observations qui s’inspirent des vues du Comité Central des Armateurs de France et de l’Association Française du Droit Maritime.

Le Comité Central des Armateurs de France a affirmé à maintes reprises son désir de régler la question des clauses d’exonération dans les connaissements, avant tout d’une manière internationale. C’est ce qu’il a acté au lendemain même de l’adoption des Règles de la Haye; il a déclaré notamment que selon lui il fallait une convention internationale suivie de lois nationales conformes pour parvenir à l’uniformité. Effectivement, l’expérience lui a donné raison, puisque depuis l’adoption des Règles de la Haye, il a été constaté qu’il était impossible d’arriver à cette uniformité par voie de référence à ces Règles dans les connaissements. C’est encore ce qu’a dû constater
[388] l’International Law Association à la Conférence de Buenos-Aires. De divers autres côtés, le même sentiment a été exprimé. Il faut donc une convention internationale. Notre désir est d’aboutir le plus rapidement possible. Comment y arriver? J’estime quant à moi que l’on ne peut accepter tel quel le projet qui nous a été distribué. Je considère qu’il faut renvoyer ce projet à une commission notamment avec les indications suivantes: En premier lieu, cette Commission devrait avoir pour mission de revoir la forme même du projet, qui selon moi a besoin de ce remaniement afin de pouvoir être présenté avec le plus de chances de succès à une conférence diplomatique.

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Mr. Leopold Dor (France): Mr. President and Gentlemen. May I be allowed to express a regret, although it proceeds from a feeling which is not quite in agreement with the general feeling. I understand that everyone now seems agreed about the necessity of an international convention. Well, I may express the regret that things have come to such a position that we should have the necessity of an international convention, and I want to draw your attention to the fact that it is greatly to be regretted that the Hague Rules could not come into practice in the spirit in which they were drafted and agreed to, namely, as a voluntary agreement. (Hear, hear). We had there a most difficult problem: on the one hand a party, the shippers, the owners of cargo, wanted to restrict the shipowners’ right to stipulate all kinds of exceptions. On the other hand the shipowners through Sir Norman Hill very eloquently pleaded the theory of freedom of contract, and we were rather proud to have achieved a solution which gave satisfaction to both, because the merchants got what they wanted, and we had at the same time preserved the freedom of contract. When you have two parties discussing between themselves through their representatives what will be the terms of a standard Bill of Lading, and when then those terms are freely and voluntarily incorporated by the shipowners in their Bills of Lading, you have freedom of contract in a more advanced stage than you had before. (Hear, hear). Because the Bill of Lading as it was before the Hague Rules was not really freedom of contract, the shipper not being at liberty to discuss the terms of the contract with the shipowner. The position at The Hague was: If you want real freedom of contract, you must have those two parties discussing once and for all the terms under which the goods will be carried; and then those terms will be applied in all Bills of Lading. It is rather disappointing therefore to find that, not only on the Continent are people clamouring for an International Convention, but that even in this country, where you have always stood for non-interference of the Legislature, you have shown us the way to State interference. I remember my learned friend Sir Norman Hill saying at The Hague: “If you ask us to have State interference, our answer will be an emphatic ‘No’”. I know very well that, if Sir Norman Hill has had to change his point of view, it is not because he thought that at The Hague we were wrong in the methods which we devised; it is merely that, as he explained this morning, he was driven to it by the force of circumstances and had to accept the best bargain he could get in fear of something worse being imposed upon the shipowners whom he represented. But at the same time, although you may consider it as a waste of time, and you may say: Well, why should we waste our time in regrets? I think it is worth while to place on record that, if the methods of the Hague Rules could have been achieved in the same way as the methods of the York-Antwerp Rules were achieved, it would perhaps have been a more satisfactory thing. (Hear, hear).

Now, faced as we are with that International Convention, I want to draw your
attention to the position in which we find ourselves. I see details of the Hague Rules being discussed; I see this or that other point being objected to; but surely you realise that, if you are going to interfere with the Hague Rules, if you are going to amend this point and that other point, if you are going to interfere with the Limitation clause or any other clauses, it is quite out of question that a new text with a new draft should be ready before the end of this Conference. (Hear, hear).

But in any case the Sub-Committee may improve on that document, and I shall go further and say that, if you want an International Convention, the drafting will have to be interfered with. When you had the Hague Rules simply as Rules to be included in Bills of Lading, they could very well stay as they were. Such has been the fate of the York-Antwerp Rules which were also drafted upon the English methods and which have gone into all the Bills of Lading whether of the Continent or of England. But if you ask the various countries to sign a Diplomatic Convention surely they will say: Well, that is not worded in the way in which we are accustomed to frame and word Conventions which are signed by all the States of Europe or the world; and you will have therefore to come to a compromise between the English drafting of the Hague Rules as they stand, even after being amended, and what I should call broadly the French way of drafting Codes or such Rules as these.

Well, at The Hague we did come to something, and I entreat you not to postpone further the practical application of a solution which after all gives satisfaction to the principal interests concerned. Therefore, as far as I am personally concerned, and I make it quite clear that I speak here on behalf of nobody, I speak simply as one who took a small share in the drafting of the Hague Rules, I think that the only proper course would be to refer the Hague Rules, as they are after their amendment which every one accepts, to the Brussels Conference recommending that the Brussels Conference should take them as the basis for an International Convention. (Applause).

A mon avis on ne peut toucher à la rédaction existante, qui est le résultat de longs travaux et d’une transaction conclue entre des intérêts divergents, car dans ce cas, ces règles s’effondreraient complètement. Parlant en mon nom personnel, je pense que le seul moyen pratique serait de déférer les Règles ainsi élaborées à la Conférence de Bruxells en lui recommandant de les prendre comme base d’une convention internationale.

M. Fr. Berlingieri (Gênes): J’ajouterai volontiers quelques mots à ce qui vient d’être dit, parce que je ne voudrais pas que l’Association italienne de Droit Maritime eût l’air de s’abstenir sur une question aussi importante que celle dont il s’agit ici.
Les Règles de la Haye telles qu’elles ont été élaborées et approuvées à la Conférence de 1921 de l’International Law Association, peuvent certainement servir de base pour une entente. Mais je crois - et c’est là aussi l’avis de l’Association Italienne de Droit Maritime, dont j’ai l’honneur d’être ici le représentant - qu’il ne suffit pas seulement d’un accord privé entre les armateurs et les chargeurs. En effet, pour résoudre les difficultés d’une façon satisfaisante, il faudrait un accord absolument général entre tous les armateurs et tous les chargeurs. Or, je crois que c’est là une chose impossible. Les armateurs qui resteraient en dehors de l’accord, se trouveraient donc dans une situation privilégiées vis-à-vis des armateurs qui auraient accepté les Règles par voie d’entente volontaire. Ils pourraient notamment, au moyen de rabais sur les taux de fret, exercer une concurrence déloyale au préjudice des armateurs qui s’engagent à observer les Règles. C’est donc bien une Convention internationale, obligant au même titre tous les armateurs, qu’il faut souhaiter, et je crois que la question pourrait être soumise déjà à la prochaine session de la Conférence diplomatique de Bruxelles. Je ne partage pas l’avis de mon ami M. Verneaux lorsqu’il demande que la présente Conférence nomme une sous-commission chargée d’examiner les Règles proposées et de le présenter sous la forme d’un avant-projet. Je crois que ce travail pourra être accompli tout aussi bien par la Conférence diplomatique. Il suffirait que notre Conférence ici émette le vœu que la question soit soumise et prise en considération par la Conférence de Bruxelles, et que celle-ci prenne comme base de ses études et de ses travaux les Règles de la Haye.
T I T L E

CONVENTION INTERNATIONALE
POUR L'UNIFICATION DE CERTAINES REGLES
EN MATIERE DE CONNAISSEMENT
et
PROTOCOLE DE SIGNATURE
(“REGLES DE LA HAYE”)

(Bruxelles, 25 août 1924)

(Translation)

INTERNATIONAL CONVENTION
FOR THE UNIFICATION OF CERTAIN RULES OF LAW
RELATING TO BILLS OF LADING
and
PROTOCOLE OF SIGNATURE
(“HAGUE RULES”)

(Brussels, August 25th, 1924)

The Chairman (Judge Hough): Mr. de Rousiers proposed wording the title of the convention as follows: “Draft convention for the unification of certain rules for the carriage of goods by sea under bills of lading”. (Adopted).
ARTICLE 1

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

a) “Transporteur” comprend le propriétaire du navire ou l’affréteur, partie à un contrat de transport avec un chargeur.

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

a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.

ILA 1921 Hague Conference
Text submitted to the Conference

In this Code
(a) “Carrier” includes the owner and the charterer, who enters into a contract of carriage with the shipper.

First day’s proceedings - 30 August 1921

The Chairman: May I say to the Committee that I overlooked a little error in Article I (a). The word “owner and the charterer” should have been “or”. May I amend that as a literal error, with the Committee’s consent? (Agreed).

Text adopted by the Conference

In these Rules
(a) “Carrier” includes the owner OR the charterer who enters into a contract of carriage with the shipper.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

In these Rules
(a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.
Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

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Article I - Definitions.

In these Rules

(a) “Carrier” means the owner or the charterer, who enters into contract of carriage with a shipper.
**ARTICLE 1**

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

b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

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**ILA 1921 Hague Conference**

*Text submitted to the Conference*

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**In this Code:**

(b) “Contract of carriage” means a bill of lading or any similar document of title relating to the carriage of goods by sea.

**First day’s proceedings - 30 August 1921**

Mr. J. S. McConchy:

[29]

We have come to the view that as overseas bills of lading exist at present there you get an open bill of lading, and you are in the open market, and, if you cannot get what you want of one, you can go to another, and there is freedom of contract there. But when you have to deal with the conference liners, they, of course, quite in a business way, all combine to have certain bills of lading worded in a certain way, so that they may work in conference, and they cannot get out of it, and, with such clauses in the bills of lading as there are now, no cargo owner can make any bargain with the shipowner. He has simply to ship his goods in accordance with the bills of lading which exist in the conference lines, or otherwise to have his cargo shut out or refused. He
cannot go to another company and say: Give me a bill of lading upon lines upon which you and I can agree.

[65]

Mr. H. J. Knottenbelt: We are, in principle, ready to vote in favour of the first resolution, but, Mr. Chairman, I think that resolution ought to be amended if we want to have a clear vote to-morrow, that is to say, in two respects. The first resolution relates to all contracts for the carriage of goods by sea, and now I wish to point out that the Code to which the same draft resolution refers only refers to bills of lading, that is to say, to carriage of goods under a bill of lading, and that is not by mere accident, but it is purposely done in that way. Originally, the authors of the Code had the intention to provide rules for all carriages by sea, but they intentionally altered that, and left the carriage of goods under charter-parties free, and only wanted to regulate the carriage of goods under a bill of lading. Now, I say that however much we are in favour of rules regulating the bills of lading, we cannot vote favourably to that resolution because in our opinion it goes too far.

Second day's proceedings - 31 August 1921

The Chairman: ..............................................................

[75]

Then “Article I. Definitions. In this Code (a) ‘Carrier’ includes the owner or the charterer, who enters into a contract of carriage with a shipper. (b) ‘Contract of carriage’ means a bill of lading or any similar document of title relating to the carriage of goods by sea”.

Mr. W. W. Paine: There is one slight amendment there, Sir, merely as a matter of words. We have to remember that there are such things as through bills of lading, and we want these Rules to govern that part of through bills of lading which relates to contracts of carriage by sea. I suggest, therefore, the insertion after the word “relating” of the words “wholly or in part”, so as to cover the question of through bills of lading.

Sir Alan Anderson: It is intended, Sir, to exclude carriage on rivers? The point raised by Mr. Paine is one of the two points I was proposing to raise, where the voyage is partly by train and partly by sea. There is also a good deal of carriage on lakes and rivers, to which I imagine the same rules should apply. That is one point. Then I have one other point. In these definitions “(a) ‘carrier’ includes the owner and the charterer”. Are we [76] dealing with full cargoes or are we dealing with parcels bills of lading?

The Chairman: The answer to (a), I know from my acquaintance with the work of the Executive, is that the terms under (a) are intended to include all goods, both full cargoes and parcels. With regard to carriage upon navigable waters, not being the high seas, the question arises, which I would suggest to Sir Alan is best to be raised after the present amendment has been disposed of. It arises upon later words, and is matter of definition. No doubt navigable fresh water would not be included in the term here - at least, that is my present view. Mr. Paine has proposed that the words “wholly or in part” be introduced after the word “relating” in the second line. Does any member offer any observation upon that proposal?

Sir Norman Hill: Sir Henry, I do not think we could quite adopt those words. It is the definition of contract of carriage, and the rules apply to the whole contract of carriage, it if comes within the definition. Mr. Paine’s suggestion is that that part of the through bill of lading which applies to the ocean transport is a contract of carriage, but
you will have to use some very careful words to make that clear. It will not be sufficient to use words which will make a through bill of lading a contract of carriage, or you will find your rules applicable to the railway portion of the bill of lading.

The Chairman: Mr. Paine, no doubt, has considered the difficulty which Sir Norman Hill has raised. Does any other member desire to offer any observation upon the proposed amendment? May I say to Mr. Paine and to the Committee that it became necessary for me at one stage to reflect upon the generality of this paragraph, and it did appear to me that the definition in the terms provided here would probably give to underwriters and bankers the degree of certainty they required; but it may be that this is a matter which ought to be further considered when the Executive Committee, which deals with the approved draft, is in session. Does Mr. Paine press the amendment at the present time?

Mr. Paine: No; I am quite willing to leave it in that way: but I do want it to be quite clear, and I think we are all in agreement (I think it is only a question of drafting) that where a banker, or anybody else, is dealing with a through bill of lading, he does get the benefit of these rules in so far as that bill of lading relates to carriage of goods by sea. That is the only point.

Sir. Norman Hill: Sir. I think the amendment should be in Article 2, and not in the definition of contract of carriage. I am afraid we shall get into difficulties if we try to put this point in the definition. It should be in the operative Article, Article 2.

Mr. Paine: I am absolutely at your service in putting it anywhere.

The Chairman: If Mr. Paine is content with the further consideration of it as a matter of drafting, I think the Committee then will be satisfied to pass on.

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Mr. J. M. Cleminson: Mr. Chairman. Arising out of what you have said in regard to the interpretation clause, and what Sir Alan Anderson has said about parcel cargoes, I think it necessary to say this, that as we understand the draft it excludes charter-parties, but will include bills of lading when they are given under charter-parties. The general cargo trade of the country - I am speaking now of the United Kingdom - has been trying very hard to bring itself entirely within the scope of this code. It is very anxious to co-operate to give effect to any extension of trade, and I think there is every reason to hope that the general cargo trade may be able to acquiesce in that view. But as the result of the discussion here, it is quite obvious that it might be impossible to get the shipowners to agree unanimously that this code should apply, as drafted to-day, entirely to bills of lading given under charter-parties; and the particular point which concerns them very much is that relating to the rights and conditions of the general cargoes shipped by what you might call the tramp ships. And I think it is quite clear, from the discussion we have had during the last two or three days, that, if it is desired to put the code through, special attention will have to be directed by this Drafting Committee to meet the wishes of the shipowners and the merchants, and, I should like to emphasise that point, it is the real wish of the merchants, as well as the shipowners, that that shall be left in its present position. The whole agitation for restrictive legislation of this kind arises quite naturally out of the modern conditions of liner carriage, where you have the lines established regularly running from one port to another, carrying all kinds and conditions of cargo, where there is no preliminary agreement between the particular shipowner and the particular shipper as to the conditions applicable to the particular cargo. In regard to tramp ships the position is utterly different. There you do have first of all a charter-party, which is invariably negotiated as the common form between the shipowner’s representative and the cargo owner’s representative, and an
agreement is invariably reached in regard to the general form, and then the particular contract is made between the particular shipowner and the particular shipper on the basis of that form.

The Chairman: Mr. Cleminson, might I call your attention to the fact that upon Article II, which subjects contracts generally to the operation of the rules, the observations you are making would directly arise? I am not sure that they arise upon the definition in Article 1.

Mr. Cleminson: You suggest that they arise on Article 2?

The Chairman: Yes, Article 2. “Subject to the provisions of Article V, under every contract of carriage of goods by sea”. It seems to me that, if there is to be a limitation on the generality of the provision, it arises for consideration there - that is, for effectual consideration - upon Article 2, upon the word “every”.

Mr. Cleminson: It may be there, Sir.

The Chairman: And that a qualifying phrase which should refer the contracts you are mentioning to the Drafting Committee, or Executive Committee, would probably be a more effectual mode of dealing with the question you properly want to raise, than by discussing it upon the definition of “Contract of carriage”.

Mr. Cleminson: Yes, I think that is quite so.

The Chairman: Then perhaps we may postpone this until we come to Article 2.

Now, returning to 1 (b). The amendment which Mr. Paine has proposed is referred to a Committee which is to consider drafting.

Sir Norman Hill: It is very difficult to suggest a solution, but one does appreciate that “The number of packages or pieces, the quantity or weight” are not very appropriate when you are dealing with a full cargo carried under a charter-party. I do not think it is possible to give full effect to what I personally understand to be the wishes of the cargo interests, to distinguish between a tramp bill of lading and a liner bill of lading. I think a bill of lading is a bill of lading. If it is a fully negotiable document I do not think in law it is possible to distinguish between the one that is issued by the liner and the one issued by the tramp. I do not think it would be satisfactory to anybody. I do not think it would be satisfactory to the tramp if he was putting on to the market, for the purpose of assisting the credit of the merchants and the bankers, anything in the nature of an inferior bill of lading. I do not think that would be fair or right. It would be oppressive to the tramp, and it seems to me, so long as it is a negotiable bill of lading it will have to come under to the code. If it comes under the code, is it possible to think of any words, to be put into what will be now paragraph (b), qualifying the responsibility in regard to - I would prefer it if it were possible - the bulk cargoes? I do not think it would be a very happy way of putting it to qualify it by saying that these are bills of lading issued in respect of a cargo carried on a ship which has been chartered.

Text adopted by the Conference

In these Rules

(b) “Contract of carriage” means a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by sea.
CMI 1922 London Conference  
Text submitted to the Conference  
(CMI Bulletin No. 65 - Gothenborg Conference)

[362]

In these Rules
(b) “Contract of carriage” means a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by sea.

Morning sitting of Tuesday 10 October 1922

[325]

Mr. Otto Liebe (Denmark): When the Hague Rules were adopted a year ago the commercial world of Denmark - I thereby mean the merchants, the bankers, the underwriters - hailed them with the utmost satisfaction. Above all they were very glad to see the conditions about the abolition of the negligence clause. A question that had been I think on the order of the day for a long series of years, and which had given rise to many disputes and much litigation was thereby settled in a just and equitable way. The commercial world I say appreciated in the highest degree the admirable way in which this question has been brought forward, and we feel grateful to the shipowners of Great Britain and of the United States who voluntarily complied with the desires of merchants. Since the Hague Rules were adopted the whole situation is however changed in some way, and in a fundamental way I should say. I do not speak about the modifications that have taken place, though I know that shipowners over in Denmark are not quite sure that the alterations are improvements. But there is another thing that seems to us to be of paramount importance. The Hague Rules were originally destined only to be the basis of a voluntary agreement between shipowners and merchants. Now it is proposed to embody them in an International Convention, that is to make them into legal rules binding upon all shipowners, with or without their consent. I could say we are entirely in sympathy with the proposal, but of course that makes a great difference; and now by all means we must see that we do not go too far, that we do not get Rules binding for the shipowners which are not absolutely needed in order to protect the just interests of the merchants. The shipowners of Denmark (I am only a lawyer; I am not an expert at all, therefore I only have to repeat what the experts say; but there is present here a shipowner who will perhaps explain it to you) say: “Well, that is all right for the liners, but some of the provisions could not be applied to tramps with bulk cargoes”. They use very strong expressions; they say that some of the provisions are almost disastrous to tramp vessels with bulk cargoes. On the other hand the other parties in Denmark, the merchants, the bankers, the underwriters, say: “Well, we do not care so much for having made the Rules applicable to tramp ships with bulk cargoes. There we shall always have a special charter party, and there we will be quite able to protect our interests; we do not ask for [327] any help from you; but what is interesting to us is to have these rules made applicable in the first instance to liners, to have the negligence clauses abolished by liners with general cargo”.

Under these circumstances we Danish delegates would perhaps suggest that it would be better now, at least for the time being, in the first term, if I may use the expression, to leave the whole question of tramp vessels with bulk cargoes out of the Convention, or perhaps to make a sharp distinction between the rules which can be applied to all vessels, and the Rules which can only be applied to liners with general cargoes. That is the first thing I should take the liberty of saying.
Mr. Otto Liebe (Denmark): .......................................................... 

Well, to make a long story short, as you say here in England, we, the Danish dele-
gates, approve the idea, we are in sympathy with the idea, of embodying these Rules in
an International Convention; but at the same time we would suggest that for the time
being you should not say too much about the tramp vessels with bulk cargoes, and, sec-
ondly, that it is allowed to the signatory powers to take some reservation when they
sign, to say that they are not prevented by this Convention from deeming a carrier li-
able also to the _bona fide_ purchaser of the [330] bills of lading for the accuracy of the
description of the goods in the bill of lading. In this way we should have no need to
change our law on fundamental principles; and on the other hand we believe that we
shall get hold of the most eminent provisions of the Hague Rules. (Applause).

Mr. A. P. Möller (Denmark): Mr. Chairman and Gentlemen. My compatriot said
he was only a lawyer. I feel it incumbent upon me speaking in a gathering like this to
say that I am only a shipowner. Further I am a tramp shipowner, and although I am
here as a delegate for the entire shipping of Denmark my feelings are naturally
coloured by my calling, and I would also ask your pardon if in the following remarks
I should make some criticisms, and I would ask them to be attributed to the natural
feeling of impatience of the man who is receiving medicine when there is nothing
wrong with him. (Laughter).

[331]

I have always had the feeling that if there had been a somewhat more liberal sprin-
kling of tramp shipowners at the Meeting at the Hague, these Rules might have either
been made applicable to liners only or some simple amendment might have been made
which would have made them to our view more applicable to both liners and tramps.
However that was not so. The Hague Rules 1921 were put before shipowners at large
at the International Shipping Conference in London in November last year, and they
were put before them by British gentlemen. The British owners and their legal advis-
ers impressed strongly on us the advisability and desirability of our passing these
Rules. That was done in order to try to forestall the British legislation on the subject.
The liner owners came somewhat more prepared to accept the Rules than the tramp
owners and I consider naturally so. The tramp owners had very great qualms, but we
were told by eminent British lawyers to whom we naturally as laymen applied that
these Rules as they then stood were not nearly so dangerous for us as they looked.
When I look at the Rules for the Carriage of Goods by Sea some of the safeguards that
we were referred to at that meeting in London [332] are not in the Rules, and natu-ally therefore our anxiety about accepting the Rules for tramp shipping generally has
become greater than our anxiety about accepting the Hague Rules of 1921 as they
stood. I should say that impressed by all that had been put before us, we accepted the
Rules to the extent that we undertook to recommend them to our Authorities at home
for voluntary acceptance by shipowners, after that they have been thoroughly dis-
cussed both by shipowners as man to man and in open shipowners Conferences, and
we have come to the conclusion that the Rules could and probably should be intro-
duced voluntarily by liner owners. No doubt there would be some features which
would be objectionable to them but they could and should probably be introduced
with a view to gain practical experience and in the hope that practical experience
would come to bear on these Rules so as to cause them to be amended as time proved
that it was necessary. We came to the conclusion that they would not do for tramp ship-
ping and that moreover they were not really called for tramp shipping. It must be remembered that the call for reform and the reason that these Rules have been brought into being at all, as far as I understand it, has been owing to the position as regards liner bills of lading. Everyone knows the liner bill of lading is full of clauses in small print that few people have the good eyes to read and no one has time to read. Merchants could justly say that there was no freedom of contract in liner bills of lading, and so far as I understand it the whole agitation for reform arose through that circumstance. Now as regards tramp shipping the position has always been and is to day quite different. Tramp shipping is done on a basis of free contract. The bill of lading is not the primary document; the primary document is the charter party, and the charter party is gone through by both parties and signed by both parties. It is generally signed by the merchants and signed over by a representative of the shipowner, at any rate he acts for the owner and the owner must abide by what he does. Therefore the cargo interests are as regards tramp shipping in a much better position to protect their interests, and as there are so many trades in the world it is natural that there will be different charter parties, and it is possible for both parties, and convenient for both parties to be able to do so, to put such special conditions into any given charter party that any given special trade may demand. Therefore I do not really see any need, and as far as my knowledge goes, I never heard of any call, for reform of the present condition of things as regards tramp shipping. I would suggest that a clause should be introduced into these Rules somewhat like this: “Where the carriage is governed by a charter party signed by both parties or by representatives of both parties the relations between carrier, shipper and receivers may be regulated by such charter party and the present Rules shall not apply to such instances”. It seems to me that it would be a practical thing to introduce a Rule like that, and then in time you could gain experience, and if it turned out in a few years that a modification of that kind was not possible and did not meet with the reasonable desires of the parties concerned it could be amended, but it seems to me that it is always very dangerous to go beyond what is necessary and to go the whole hog at once, and it is much better to leave well enough alone.

Mr. Möller: I have already occupied your time rather long and I have some further objections, but I do not think that I should enter into them now. I would simply say to finish up, that tramp owners are not inimical to the Rules; they are not inimical to the adoption of a uniform standard which shall govern these things, but the tramp shipping is of a more varied description than liner shipping, and new trades constantly crop up, and an owner wants to be careful not to draw lines too close, because there may always be new trades that require special circumstances, and we also desire such simple alterations in the Rules as are important for tramp owners, and which to our view cannot be objectionable to the interests of merchants. (Applause).

Sir Norman Hill: There is one great big point and that is: should or should not tramps come under the Code. That is a great big point and as you answer that you settle a great many questions. May I point out that there is nothing in the Rules which affects in any shape or form the operation of a ship under a charter party. Any cargo owner can charter any ship on any terms that he can agree with the shipowner. He is absolutely a free man from first to last and all the time. But, if, under that charter party, bills of lading are issued, then the bills of lading come under the Code, not the charter party. Is that right.
or is that wrong? If we are going to satisfy the cargo interests what we have to aim at doing, is to put the bills of lading on the same footing as a bill of exchange. It must connote in every market of the world, whether you are buying or selling grain or sugar or whether you are arranging your finance or whether you are arranging your insurance, the minimum responsibility on the shipowner as defined by the Code. If you are not going to do that you have not taken the one step which as I understand the cargo owners want. (Hear, hear). The merchants, the bankers, the underwriters have come to us shipowners and have said “Give us a document with which we can deal with the same confidence and the same certainty as we deal with a bill of exchange”. We cannot do that if we draw a distinction between bills of lading issued under charter-parties and liner bills of lading. If we could think of any terms of doing it what would be the result? If the cargo interests are right, that this negotiable bill of lading, this standard bill of lading, is of great advantage to cargo, would not the liners at once get an extra preference. They would say to the cargo owners: “We are the only people who carry according to the standard bill of lading: the others are still outsiders; you have not an idea what your security is; you do not know if you have any security”.

Now believe me, I know, and it is quite true (I have been bred up amongst the liners and I am regarded as a liner man), if we had started this on that other tack that we were going to make a liner bill of lading which would satisfy the cargo interests we should have had all our friends the tramp coming to us saying that we were trying to steal their business. That is what would have happened. If this is going to be good work, if what we are going to produce is going to be a good article, the man who produces that good article will command the market or get a better freight, when it comes to sailing. All the points that are raised with regard to these charters were known, and it is the fact that there has been enormous labour spent in adjusting charters as between trade and shipowners; it has been a free bargain; one knows all that; and in some of these charters Mr. Möller has told us it is expressly declared “weight unknown” or “number unknown”. Is there anything to stop businessmen who adjust those charters from putting those words on the bills of lading which are issued under the charters. They could give the numbers or they need not give the numbers. You must remember that all these number and weight clauses only start to operate at the instance of the shipper of the goods. If he says nothing the shipowner needs to put nothing on the bill of lading. If the charterer is content to take his goods without a negotiable bill of lading that is his affair, and it is only he and the shipowner who are interested in the transaction, and there is no bona fide holder for value who could ever become interested without full notice of what is in the charter party. If he chooses to take over the charter party I suppose he will read it. But remember that the whole case made against us is: “In the flow of business, in the rapidity with which it has to be handled, the multitude of people through whose hands it has to pass, there is not time to go into detail; we must have a document which we can work on and we must all know without examination that that document carries a minimum of responsibility on the shipowner”.

That is what we are after to day. It may be all non-sense. I troubled you at the Hague with my belief that all this codification, getting away from absolute freedom of contract was a mistake, and I still hold that view, and, having worked for months trying to find out exactly what it is that all the cargo interests want, and having tried to find out exactly what all the shipowners would agree to, I have come to the conclusion that if you left them to make their own bargain it would be infinitely better than trying to do the work you have been trying to do. But there is hardly anybody else who agrees with me. Everybody has this idea that we must have this negotiable document put on a firm basis. Well, if they are right and I am wrong, and that does increase the interchange of commodities all over the world, then we shipowners have done a good job and we have helped for a useful purpose. If it does not, well sooner or later we shall
drift back to freedom, that I am perfectly clear about, until we find the right way of promoting the interchange of commodities all over the world.

I hope I have not wearied you with my true views as to principles. (No! No!).

[350]

Sir Norman Hill:

I have dealt with the point that was raised by Denmark as to whether the tramps are to be included or not, and I believe, Sir, that is a matter of very gravest importance to the tramp owners. Suppose we recommend that we are to exclude tramps from these Rules, that we are not to give the cargo owners who chose to ship by tramps the benefit of these Rules upon which their hearts are set, it will end up in a pink bill of lading, or a blue bill of lading or something like that which the tramp owners will have to use, and which will be an inferior bill of lading on the markets of the world. I do not believe even if we did that we should ever accomplish what the cargo interests want. If you buy and sell wheat in the world, when you come to tender it on the wheat market you satisfy your contract with the bill of lading. Are all the wheat markets in the world to provide either for a liner bill of lading or a tramp bill of lading? Is it to be the same with regard to cotton, timber and such things? They will be inferior bills of lading in the markets of the world if there is any value in this standard uniform negotiable bill of lading.

Afternoon sitting of Tuesday 10 October 1922

[368]

Sir Stephen Demetriadi:

I do not want to deal with the technical side of it for the moment; I do not think that is your desire, but I did hear this morning a question of charter parties being discussed. I have heard it said in some quarters that a bill of lading issued after a charter party has been signed will not follow these Rules. I am here as representing trade and in all my business career I have yet to learn that a charter party has ever been entered into without following in its wake a bill of lading, and our view is that, if there is a bill of lading, that bill of lading under the charter party will follow the lines of these Rules. I want to make that clear.

The Chairman: I understood Sir Norman Hill to say that was his view, Sir Stephen.

Sir Stephen Demetriadi: Sir Norman I think agrees with me on that point, but I want to make it quite clear that, if there is a charter party, there follows a bill of lading in due course. Very likely in the time charters it may not always be the same; they may not always have [369] the same effect because the charterer then takes upon himself the responsibilities of a shipowner, and therefore the Rules have a different governance, but as a general rule a charter party has a bill of lading following in its wake, and I think the intention is - that is certainly what we understand - that that bill of lading will follow the lines of these Rules.

I do not think I have anything else to say, Sir. I think I have explained as briefly as possible and in as few words as possible the cardinal points which have guided us in our deliberations. (Hear, hear). I would like to thank you once more, Sir, for giving me an opportunity of speaking before this Meeting.

The Chairman: On the technical question which has just been referred to I think Sir Leslie Scott would say a word which will be useful.

Sir Leslie Scott: Mr. President, if Sir Stephen Demetriadi would be good enough to interrupt me and ask any further questions if I do not deal with the point as fully as
he intended or I do not satisfy his criticism that he made just now, I should be grateful. Of course in the great majority of cases where charters are issued the charter itself contains a clause that masters will sign bills of lading as required in one form or another, but a certain number of charter parties do not contain that clause. I have come across quite a considerable number in the course of my experience, which I suppose is fairly wide. Even where the charter party does provide for the issue of bills of lading and a bill of lading is issued, there are an appreciable number of transactions in commerce where the charterer retains that bill of lading in his own hands, particularly those cases where the charterer is shipping raw material from across the water to works of his own on this side. For instance take an illustration which may be familiar to our friends from Holland. A considerable amount of phosphate rock comes from the other side of the Atlantic to super-phosphate works in Holland. In those cases, if I am right in my recollection, charters for part cargoes, weight cargoes, are issued, (the ship filling up with measurement afterwards) in which there is no provision for the issue of bills of lading. No doubt there would be a mate's receipt to acknowledge the quantity received by the ship. But even if there be a bill of lading according to English law, and I suspect that it is so in Continental law also, the charter remains of a contract and although the bill of lading is expressed in the form of a contract its terms do not supersede the terms of the charter party; in other words as our Courts put it, it remains a mere receipt for the goods. That being so, you have to make up your mind what is intended by the Hague Rules as a matter of substance in regard to shipments of that type under charter party. Where a bill of lading is issued and retained in the hands of the charterer, are the terms of the Hague Rules to govern that shipment or are they not? One decision or the other may be taken according as the business men present think the one is better than the other. I do think it is essential to be clear as to what is intended on that point.

Dr. Eric Jackson: The view of the Federation which I represent is that, if there is a bill of lading, whether it is issued under a charter party or not, the Hague Rules will be ipso facto incorporated in that bill of lading.

Sir Leslie Scott: That is obvious.

Dr. Eric Jackson: It seems to me that on this point the American representatives could give us useful information because as I understand their Harter Act it applies to all bills of lading whether issued under a charter party or not, and they must, I should have thought, have had experience during the past 20 years as to what is the effect of a bill of lading under a charter party. But certainly, as far as the Federation are concerned, our views is that, if a bill of lading is once issued then under any statute law that was passed in this country, the clauses of the amended Rules would be deemed to be incorporated in that bill of lading, whether the bill of lading came into existence because of a prior charter party or not. I think if the other view is taken we should do away with uniformity brought about by legislation (hear, hear), because I do not know what the definition of a charter party is, but I see no reason why any contract note of affreightment, even though is may be only for carrying two bags of wheat from America to this country, is not in effect a charter party. Therefore, if the other view were taken, it seems to me that the shipowner would escape any legislative sanction upon him to incorporating the amended Rules by simply giving a freight note beforehand and saying: “I agree to carry your two bags on my vessel” so and so, which as far as I know would be legally a charter party though not the ordinary charter party which is known to commerce.
Mr. W. W. Paine: Mr. Chairman and Gentlemen. I must apologise for the absence of my colleague, Sir James Hope Simpson, who, jointly with myself, represented the Bankers at the Hague Conference. I regret to say that Sir James Hope Simpson has been ill. He is at present absent in Canada. I wish he were here to represent the Bankers to-day.

I had not the privilege of hearing the discussion this morning, and I do not know that I can add anything usefully to what little of the results of that discussion I have heard since I came into this room. But I think it may perhaps be convenient to the Conference if I state very shortly and in purely general terms the general attitude of the Bankers towards the questions involved in these Rules. That attitude is shortly this. The Bankers were represented, as I have told you, at the Hague Conference, and they are very anxious to see that the good preliminary work which was done at that Conference is not thrown away. They thought that by aiding those discussions at that Conference they were helping towards a certain measure of uniformity in regard to bills of lading to be issued in all maritime countries which would be so helpful to the commerce of the world; and therefore they are extremely anxious to see effect given to the Hague Rules in the form in which they have now been modified. That must mean, if anything like uniformity is to be secured throughout the world, a Convention between the different maritime states which will recognise the validity of those Rules. (Hear, hear). And it must also mean, as we now know, legislation in Great Britain and her Dominions; and I hope concurrent legislation on similar lines in the United States of America, and I imagine that that would perhaps be followed by domestic legislation in the various States which became parties to the Convention.

The real object and desideratum from the Bankers' point of view (and of course I speak from that point of view; there are many of you here who are much more competent to speak of the general view of commerce than I am) is to obtain a document which, as you all know, is the very foundation of commerce in some respects, at all events in essential respects, of a uniform character; so that the Bankers who have to handle those documents by the thousand every week, shall know, without too close an examination, that those bills of lading conform to a particular standard. It does seem to me that, if those regulations, whatever they are called, Hague Rules, or anything else, are embodied in a Convention which is adopted by the maritime states, and are embodied in legislation such as I have described, we shall have made very great progress towards that uniformity which has been the object of all people interested in commerce for many years past.

I do not know that I am competent to touch at all upon this question which has been raised in regard to charter parties. I am open to correction, but I would like just to state what my personal view in that regard is. From the Bankers' point of view the essential thing is that the document which passes from hand to hand as representing the title to goods should be of a uniform character. We are not concerned as Bankers with the terms of charter parties which are entered into between individuals who, so far as we are concerned, can make their own bargain. But we become at once concerned and considerably interested as soon as a bill of lading, which may be negotiable with us, or may pass from hand to hand, is issued. Therefore very strongly I say that, if and so far as bills of lading are issued under Charter parties, they must conform to the Hague Rules. Beyond that I do not care to go, because I must leave it to others to say whether there is any necessity in the case of a charter party, which merely represents a bargain between two individuals, the shipper and the shipowner, for us to attempt to deal with that by these Rules or by legislation in which they may be embodied. From the banking point of view I do not think it is necessary. I can conceive cases, such as Sir Leslie Scott has put, where there is no necessity for any negotiation of
any document at all, and where [379] the parties may wish to make their own bargain quite untrammelled by legislation such as is embodied in these Rules, and personally I do not at the moment see any objection to leaving that outside the Rules so long as, and always so long only as, there is not a document of title which comes into circulation. In that case I think that document must conform to whatever legislation there is. I do not think, Sir, there is anything else that I can usefully add. (Applause).

Sir Ernest Glover: I do not want to make a speech, I just want to ask a question, Sir, in reference to what Sir Leslie Scott was telling us just now. In the first place I do not think there is any general custom anywhere of not signing bills of lading under a charter party.

Sir Leslie Scott: No, I quite agree.

Sir Ernest Glover: There is always a bill of lading signed; but there are many cases where the Bill of Lading is not negotiated; where the shipper and the receiver are practically the same person, and the bill of lading is simply forwarded by the shipper to the receiver. The question I wanted to ask therefore is this: If the shipper and the receiver are the same person, and the bill of lading is signed on different terms from the Charter party, will the Charter party supersede the bill of lading or vice versa, on the assumption that the bill of lading is not negotiated? It is a question that you touched on, Sir, but will you make it clear to us?

Sir Leslie Scott: By your leave, Sir, I will answer the question put by Sir Ernest Glover. As a matter of [380] fact I have just written this down, and I will ask Lord Sterndale and the President of the Admiralty Division, and Sir Maurice Hill to listen to what I have written, and tell the Conference whether they agree; and if they do not agree we will have a Court of Appeal of merchants. It is this: “As in English law a bill of Lading which remains in the hands of the charterer is not a contract, but a mere receipt, any Convention and any legislation to carry it out must say whether that Rule is to continue or to be replaced by a statutory provision that such a bill of lading is to be deemed a contract, and to regulate the terms of the carriage by sea of those goods”. In answer to Sir Ernest Glover in the case which he referred to, where the shipper or charterer and receiver is the same person, which is the case that I had in mind mainly, the bill of lading in English law does not become the contract and does not supersede the charter party. The charter party remains the contract and regulates all the relations between the parties. Even if the bill of lading which is issued contains terms different from the charter party, the general rule of the Courts is that that bill of lading is a mere receipt, that you disregard those terms and look only to the charter party. I think there might be cases conceivably where the operation was such as to show an intention between the charterer and the shipowner to supersede the charter party and make a new contract by the bill of lading. That is a possibility, and there are one or two recorded cases in the books, as I expect our American friends will agree; but the ordinary position is what I have said, that the charter party remains the contract, and is not superseded by the bill [381] of lading. As the Code of Rules is drawn, that would be reversed, and the bill of lading would supersede the charter party. If the Conference is of opinion, as I imagine it is, that in what you may call characteristic charter party shipments, it is desirable to leave to the parties freedom of contract, then you must in the Rules say, and it can be done with two or three words, that, were the parties make a charter party, the bill of lading as between the charterer and the shipowner shall be a mere receipt, and it is only when it is negotiated, as Mr. Paine said, and gets into the hands of a third party that it will represent the conditions of carriage and constitute the contract between theendorsee, the holder of the bill of lading, and the shipowner, enforceable against the ship, either by the receiver or by the bank as the case may be, in the name of the receiver. It is only that I want to have that point clear, as it is a matter of great commercial importance, because it is essential to decide whether in
charter party shipments proper, the ordinary type of charter party shipments, you want to control the terms of the carriage by these new Rules, or whether you want to leave the parties free. I have always understood up to now that the intention, at The Hague and subsequently, always has been in those cases to leave freedom of contract unaffected.

Sir Norman Hill: Might I ask the Solicitor General this: The only difficulty that arises is because under these charter parties you are using a document in the form of a bill of lading, which you call a bill of lading, but which our Courts say is merely a receipt.

Sir Leslie Scott: Quite so.

Sir Norman Hill: Is not the short cut, Sir, that if you want to go on doing that, you use a receipt, and you do not use a bill of lading? That is what we did at The Hague. Our Code was quite complete. All these transactions would have come under Article 5, and there would be no bill of lading issued. Now we are sure to get into trouble; there are sure to be difficulties, if we allow two forms of bills of lading to come on the market. There should only be one form of bill of lading, and everything which is called a bill of lading, which is in the shape of a bill of lading, should come under the Code, if we really want to put it on an equality with a bill of exchange. We can pay our debts in all kinds of form without the use of a bill of exchange. There is nothing to stop it. If we have a charter party and we want to maintain charter party conditions, and nothing else, then there must not be created a document in the form of a bill of lading; some other document that that will meet the case.

Sir Leslie Scott: I agree it might be possible, apart from Customs Regulations to do that, but there are many charter party shipments where at the outset the charterer may like to keep a free hand as to whether he shall be the receiver himself, or whether he will negotiate his document.

Sir Norman Hill: Under the Code?

Sir Leslie Scott: Under the Code, and the point I wanted to get clear was: where he decides to keep the bill of lading in his own hands and not negotiate it, in that case are the relations between him and the ship to be regulated by the contract contained in the charter party, or are those relations to be superseded by the bill of lading? Perhaps Lord Sterndale would just say a word as to whether he agrees with my statement of the legal position?

Lord Sterndale: Mr. President, I am very sorry that I cannot comply with my learned friend’s request to say whether he is right in his law, and I will tell you why. The question whether he is right or not may come before Mr. Justice Hill, or Sir Henry Duke, and it may [384] come before me on appeal from them, and I do not think I ought standing here, and not sitting judicially, to give any deliverance upon the state of the law. I do not quarrel with what the Solicitor General said, but I do not think it would be right for me here, occupying the position I do of President of the Court of Appeal, to state off hand and generally any proportion that I think as to the English law. But I do wish to say this: I entirely agree with the Solicitor General that this matter should be made clear. It should be made quite clear what is intended in the case of a charter party shipment as he calls it in the ordinary course. If this rule as it stands is put into the form of legislation, there is a statutory obligation upon every shipowner who is carrying goods, whether under charter or not, to give a bill of lading on demand, and if he gives a bill of lading, it seems to me, looking at the definition clause of
“contract of carriage” and Article 2 that, under this Rule, if it were so made into a statute, that would be the governing document as to the rights and obligations of the shipowner and the charterer respectively. I do not know whether that is intended or not, but if this is carried into legislation as it is now, it seems to me that that would be very likely at any rate the effect; and I quite agree with the Solicitor General that it should be made quite clear whether that is intended, or whether it is not.

Mr. E. B. Tredwen: 

With regard to some of the objections that have been raised as to bills of lading issued against charters, I take it that, as we no doubt shall have legislation making either the Hague Rules or something like them compulsory upon all bills of lading, then whenever a charter party is going to be signed, which will contain the clause that the captain shall sign bills of lading as required, because even under a charter party the shipper must usually have a bill of lading, the shipowner, knowing that whatever bill of lading he issues must be a statutable bill of lading, because then there will be a statutable bill of lading when the legislation has taken place, knows exactly what responsibility he is undertaking when he signs that charter, the responsibility [391] to issue bills of lading in conformity with the Hague Rules. I do not think that shipowners generally object to accepting the heavier liabilities which they do under the Hague Rules, because they know exactly what their liabilities are; they know what they have to insure; and similarly the merchant who receives statutable bills of lading of this kind knows exactly what are his privileges and what are the liabilities that he has to insure against. I think that if these Rules are generally adopted voluntarily in the meantime, but subsequently by the law in this country, and I hope throughout the maritime nations, it will be an immense step forward, because then we shall know that a bill of lading, issued in whatever country, gives the same rights to the receiver as any other bill of lading, that there is no variation in the responsibilities of the shipowner. (Applause).

The Chairman: A question was raised which was not discussed just now in the observations Sir Leslie Scott made. I think Sir Stephen Demetriadi is now in a position to tell the Conference what his view is as to the rather thorny topic of the necessity of including the transaction between two individuals under what one may call an old-fashioned charter party, for want of a better term, in the restrictions of the proposed Code.

Sir Stephen Demetriadi: Perhaps Dr. Eric Jackson can answer for me.

The Chairman: Certainly, if Dr. Eric Jackson finds it more convenient to reply, or you think so.

Dr. Eric Jackson: I am afraid that we feel on this side that we are in rather a difficulty at the moment in quite appreciating what we are asked to give away, or, it may not be to give away, what we are asked to agree with regard to these charter parties or the various bills of lading that may come into existence thereunder. For myself I have not yet appreciated what is the requirement that is made against us, to exclude any bill of lading whatever, whether they come under a charter party or not?

The Chairman: I do not think it has been suggested that you should exclude any bill of lading. The question was, and I understood from a communication which had reached me, that Sir Stephen and his friends were in a position to say, whether they wanted to include charter parties in the definition of bills of lading. That is really what it comes to.

Dr. Eric Jackson: I hope I made it clear that we did think the Rules were so drafted
that they included every bill of lading whether issued under charter parties or not.

**The Chairman:** I understood that was so. If there is not an understanding about it, I am not going to take up the time of the Conference in trying to elicit one.

**Dr. Eric Jackson:** At the moment there is none.

*Text adopted by the Conference*  
(CMI Bulletin No. 65 - Gothenborg Conference)

[375]

No change.

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**Conférence Diplomatique - Octobre 1922**  
**Première Séance - 19 Octobre 1922**

[15]

**M. de Rousiers**, Délégué de la France, propose de modifier la rédaction de la définition du contrat de transport à l’article 1 (b), en remplaçant le mot “signifie” par l’expression “s’applique uniquement au contrat de transport constaté par un connaissement”.

**M. Langton**, Délégué de la Grande-Bretagne, propose de spécifier, en outre, que cette expression comprend tout connaissement ou tout document similaire émis en vertu ou à la suite d’une charte-partie à partir du moment où pareil connaissement est négocié.

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**Troisième Séance - 21 Octobre 1922**

[197]

A l’article 1 (b), **M. Langton** a proposé d’ajouter “...y compris tout connaissement ou tout document similaire, comme dit ci-dessous, émis en vertu ou à la suite d’une charte-partie du moment où pareil connaissement est négocié”. *(Adopté).*

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**Sixième Séance Plénière - 24 Octobre 1922**

[123]

Le Président (M. Louis Franck) . . .

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**Diplomatic Conference - October 1922**  
**Meetings of the Commission**  
**First Session - 19 October 1922**

[185]

**Mr. de Rousiers**, French delegate, proposed changing the wording of the definition of contract of carriage in article 1(b) by replacing the word “means” with the expression “applies only to contracts of carriage covered by a bill of lading”.

**Mr. Langton**, delegate from Great Britain, proposed specifying further that this expression included all bills of lading and all similar documents issued under or pursuant to a charter party from the moment at which such bill of lading is negotiated.

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**Third Session - 21 October 1922**

[197]

**Mr. Langton** had proposed adding to article 1(b), “...including any bill of lading or similar document, as above mentioned, issued by means of or pursuant to a charter party from the moment such bill of lading is negotiated”. *(Adopted).*

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**Sixth Plenary Session - 24 October 1922**

[123]

The Chairman (M. Louis Franck) . . .
La première observation de la Commission est relative à l’article 1 (b), qui contient un certain nombre de définitions. Il s’agit, dans l’amendement de la Commission, de la définition du contrat de transport. Ici, la Commission propose deux modifications. D’après un amendement du Délégué français, elle a admis que l’article devrait être libellé comme suit:

“Contrat de transport s’applique uniquement aux contrats de transport constatés par un connaissement ou par tout document similaire faisant titre, pour autant que ce document se rapporte au transport de marchandises par mer”.


M. Henriksen. - Il est de pratique courante de mettre dans la charte-partie la clause suivante: “Le capitaine devra signer les connaissements tels qu’ils lui sont présentés, sans préjudice des clauses de la charte-partie”. Est-ce que sous l’empire de cette définition, la portée de cette clause, qui est relative au recours éventuel de l’armateur contre l’affréteur, est restreinte? Et si oui, l’armateur peut-il se faire garantir par l’affréteur contre les conséquences pouvant résulter pour lui de pareille restriction?

Sir Leslie Scott. - Je suggérerais que cette question fût posée à M. le Juge Hough; mais, provisoirement et au point de vue du droit anglais seulement, ma réponse est la suivante: Beaucoup de chartes-parties, mais pas toutes, contiennent cette clause; mais, dans tous les cas, d’après le droit anglais, les droits et obligations des contractants sont réglés par la charte-partie aussi longtemps qu’aucun connaissement n’a été négocié et ne

The commission’s first comment concerned article 1(b), which contains a certain number of definitions. The commission’s amendment dealt with the definition of the contract of carriage. Here the commission proposed two changes. After an amendment from the French delegate, it accepted that the article should be drawn up as follows:

“Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea.

Le second amendment, proposed by Great Britain and accepted unanimously, consists of the addition to this definition of the contract of carriage: “including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading is negotiated”. Is there any opposition? (No). Then these amendments are adopted in principle, with a reservation concerning drafting.

Mr. Henriksen. - Is it common practice to include in the charter party the following clause: “The captain must sign bills of lading as they are presented to him, without prejudice to the clauses of the charter party”. Under this definition, will the scope of this clause, which is relevant to the eventual redress of the shipowner against the charterer, be restricted? And if so, can the shipowner indemnify himself, through the charterer, against the consequences that might result for him from such a restriction?

Sir Leslie Scott. - I would suggest that this matter be put to Judge Hough; but provisionally and strictly from an English point of view, my response would be as follows: Many charter parties, but not all, contain this clause. But in all cases, under English law, the rights and obligations of the contracting parties are regulated by the charter party as long as no bill of lading has been negotiated and is not found in the hands of a third party. As far as the charterer and
se trouve pas entre les mains d’un tiers. En ce qui concerne l’affréteur et l’armateur, c’est la charte-partie qui règle leurs droits contractuels.

Le droit de recours de l’armateur contre l’affréteur, dont parle M. Henriksen, ne peut donc surgir que lorsque le capitaine a signé un connaissement qui comporte pour l’armateur de plus grandes obligations que celles stipulées dans la charte-partie. Dans ce cas, d’après le droit anglais, l’armateur a le droit de demander garantie par l’affréteur pour la différence existant entre les clauses du connaissement et celles stipulées dans la charte-partie.

M. Henriksen désire savoir quelle sera la situation, dans un pareil cas, lorsque la convention actuellement en discussion sera devenue la loi. Si l’armateur, en vertu de la charte-partie, a moins d’obligations que celles que lui impose la convention, il peut ne pas émettre de connaissement et dans ce cas, il peut se contenter d’un fret inférieur; mais si l’affréteur désire insérer dans son contrat que le capitaine devra signer les connaissements tels qu’ils sont présentés, l’armateur peut dire à l’affréteur: C’est très bien, votre fret sera d’autant plus élevé si vous demandez l’insertion de cette clause et le sera d’autant moins si vous ne la demandez pas. Je voudrais savoir ce que M. le Juge Hough en pense.

M. le Juge Hough. - J’inviterais M. Henriksen à se rapporter à l’article 5, tel qu’il a été amendé par la Commission. Il verra que la seconde phrase du texte, tel qu’il a été écrit à la Conférence de Londres, a été amendée d’après la proposition française, en ce sens: “Aucune disposition de la présente convention ne s’applique aux chartes-parties; mais si des connaissements sont émis dans le cas d’un navire sous l’empire d’une charte-partie, ils sont soumis aux termes de la présente convention”.

Il me semble que c’est là la réponse à la question de M. Henriksen. Mon avis personnel est que l’armateur peut se faire donner cette garantie dans la charte-partie, par référence, à l’article 5.

shipowner are concerned, it is the charter party that regulates their contractual rights.

The right of redress for the shipowner against the charterer, of which Mr. Henriksen spoke, cannot therefore arise except when the captain has signed a bill of lading entailing for the shipowner greater obligations than those stipulated in the charter party. In this instance, under English law, the shipowner has the right to ask for an indemnity from the charterer for the difference between the clauses in the bill of lading and those set out in the charter party.

Mr. Henriksen wants to know what the position would be in a similar case when the convention presently under discussion had become law. If the shipowner, by means of the charter party, had fewer obligations than those that the convention imposes upon him, he may not in that case issue a bill of lading. He can content himself with an inferior freight. But if the charterer wishes to include in the contract that the captain must sign the bills of lading as they are presented, the shipowner can say to the charterer: “that’s fine, your freight charge will be all the higher if you ask for the insertion of that clause and will be all the lower if you do not”. I would like to hear Judge Hough’s opinion on this.

Judge Hough. - I would invite Mr. Henriksen to look at article 5, as it was amended by the commission. He will see that the second sentence of the text as it was written at the London Conference has been amended, following the French proposal, in the following way: [125] “The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention”.

It seems that that is the response to Mr. Henriksen’s question. My personal opinion is that the shipowner can obtain his indemnity through the charter party, with reference to article 5.
Sir Leslie Scott. - J’ai dit que c’était l’affaire de l’armateur d’exiger un taux de fret plus élevé pour cette garantie.

M. Beecher. - Depuis le temps, très court, que nous avons reçu le rapport de la Commission, je n’ai pas encore pu me rendre exactement compte de la portée de cette définition, dont nous nous occupons en ce moment, mise en rapport avec l’article 5, tel qu’il est amendé. La difficulté, pour moi, est la suivante: Sera-t-il possible d’émeter, en vertu d’une charte-partie, un connaissement qui ne sera pas soumis à ces règles? Si j’examine la définition dont il s’agit en ce moment, il me semble que l’intention est de permettre l’émission de pareils connaissements, pourvu qu’ils ne soient pas négociés. D’autre part, l’article 5 stipule qu’aucun connaissement émis en vertu d’une charte-partie ne pourra violer les règles. Il me paraît qu’il y a opposition entre ces deux propositions et il serait important de savoir exactement si l’on peut émettre un connaissement contenant une clause exonérant le transporteur de toute responsabilité?

M. le Président. - Je comprends votre proposition, mais c’est là une question à discuter quand nous serons arrivés à l’article 5.

M. de Rousiers. - Je crois que l’observation de M. Beecher provient d’un léger malentendu dans la traduction hâtive qui a été faite hier. Je croyais être d’accord avec les auteurs anglais de la proposition en disant que l’intention véritable est celle-ci: En principe, tout connaissement ou document similaire émis en vertu d’une charte-partie tombe sous l’empire de ces règles du moment que ce connaissement est négociable. Il est entendu qu’au moment où le connaissement est émis, on ne sait pas s’il sera négocié. Je comprends l’observation de M. Beecher, mais je crois qu’il peut avoir tous ses apaisements puisque l’article 5 est clair à ce sujet et qu’il y est bien dit: “connaissement, etc., à condition qu’il sera négociable”.

Sir Leslie Scott. - Je crois qu’il n’y a pas de différence au fond entre l’opinion de Sir Leslie Scott. - I said that it was the shipowner’s business to demand a higher freight charge for this indemnity.

Mr. Beecher. - In the very short time since we received the commission’s report, I have not yet been able to grasp precisely the scope of this definition that we are now looking at, related to article 5, as amended. The difficulty for me is as follows: Will it be possible to issue, by means of a charter party, a bill of lading that will not be subject to these rules? If I look at the definition in question, it seems to me that the intention is to allow just such bills of lading to be issued, providing that they are not negotiable. On the other hand, article 5 states that any bill of lading issued under a charter party will not be able to violate the rules. It appears that these two proposals are in opposition and so it is important to know precisely whether one can issue a bill of lading containing a clause exoneraing the carrier from all liability?

The Chairman. - I understand your proposal, but it is a question for discussion when we reach article 5.

Mr. de Rousiers. - I believe Mr. Beecher’s comment arises from a slight misunderstanding in the hasty translation made yesterday. I thought I was in agreement with the English authors of the proposal in saying that the true intention was that, in principle, any bill of lading or similar document issued under a charter party falls under the jurisdiction of these rules from the moment when the bill of lading is negotiable. It is understood that at the moment when the bill of lading is issued it is not known whether it will be negotiated. I understand Mr. Beecher’s comment, but I believe he can be quite relieved because article 5 is clear on the matter and it is well stated there that: “bill of lading, etc., on condition that it is negotiable”.

Sir Leslie Scott. - I believe there to be no basic difference between Mr. de
Article 1(b) - The definition of “Contract of carriage”

Rousiers’s opinion and that of the English delegates, but at the very moment when the bill of lading is signed it becomes, in a certain sense, negotiable because, from that time, the charterer has the right, as is the law, to trade the bill of lading.

But, until the time when the bill of lading is actually negotiated, the freight remains under the charter party. It is only in the case where the bill of lading is a negotiable instrument that we agree to the application of these rules. In effect, if you wish to undertake the regulation of the matter of contracts by charter party, I am afraid we shall encounter a good deal of opposition. That is why we must stop at the time when the bill of lading becomes negotiable and, from that time, the bill of lading will be subject to all the rules of the convention. When the charterer receives the bill of lading he knows that he has the right to negotiate it and, once the document is negotiated, the person to whom it is endorsed will enjoy all the rights that the convention confers.

The Chairman. - It is not the same thing. According to what Mr. de Rousiers said, if the bill of lading contains the clause “to order” or “to bearer” it must be in conformity with the convention. According to Sir Leslie Scott, as long as the charterer has the bill of lading in his wallet, it can include the clauses “to order” or “to bearer”, or any others, without being subject to the convention.

Sir Leslie Scott. - I am not saying that, because it is not possible to change the clauses of the bill of lading after its issue.

The Chairman. - Exactly! It would be more precise to say, therefore, that if the bill of lading issued by means of a charter party contains the clauses “to order” or “to bearer” it must be in conformity with the convention.

Mr. de Rousiers. - That is what we understand by “connaissances négociable” (negotiable bill of lading) or “connaissances à personne dénommée” (bill of lading for a designated person). In fact, negotiable bills of lading are the vast majority.
Mr. Beecher. - Pour autant que je comprends Sir Leslie Scott, il semble croire que ces règles, telles qu’elles sont définies, ne s’appliquent qu’aux connaissements qui sont négociés ou négociables. Or, l’avis de la conférence de Londres était (et, d’après moi, cela est essentiel) que ces Règles s’appliquent à tous les connaissements, qu’ils soient négociables ou non. On me dit qu’un connaissement qui n’est pas considéré négociable en Angleterre l’est sur le continent.

M. le Président. - Non pas négociable, mais simplement transmissible, selon les règles relatives au transfert d’obligations civiles, d’après le droit commun.

Mr. Beecher. - Mais Sir Leslie Scott semble se méprendre sur ce que nous comprenons comme étant l’objet de ces règles. C’est pourquoi je désire me rendre compte du point de savoir si les règles s’appliquent à tous connaissements indistinctement qu’ils soient négociables ou non.

M. le Président. - Que dit le Harter Act à ce sujet?

Mr. Beecher. - Il s’applique à tous les connaissements indistinctement.

Sir Leslie Scott. - C’est la même chose ici. Les règles s’appliquent à tous les connaissements, mais il n’y a rien dans cette convention qui dise que lorsqu’un affréteur, en vertu de sa charte-party, reçoit de l’armateur un connaissement, ce dernier constitue un nouveau contrat entre lui et l’armateur.

Mr. Beecher. - Moi je dis oui. Lorsque ce connaissement est émis, il constitue un contrat nouveau et la charte-party ne vaut plus.

Sir Leslie Scott. - Je persiste à croire qu’au fond il n’y a là qu’une différence de termes et non une différence de principe.

M. le Président. - Voulez-vous dans tous les cas y réfléchir et discuter entre vous? Je ne crois pas que ce soit là une question qui doive faire l’objet d’une discussion générale.

M. Alten. - J’attire l’attention de la Conférence sur la définition qui est donnée du mot “marchandise”. On fait une
exception for live animals and cargoes transported on deck. The exception was based on the consideration that the carriage of live animals and goods on deck carries risks that it is not fair to put upon the carrier. This exception, I believe, bears on article 4, but it results from the general form of the exception in the drafting, which also bears on liability for the description on the bill of lading, and on this count I believe the exception to be unfounded. I have no difficulty with the wording: of the number, quality, or weight in the excepted cases. In brief, it is necessary, I believe, to distinguish more clearly than these rules do between the two sorts of liability: the liability for the description on the bill of lading and the liability for the carriage and delivery of the goods themselves.

The Chairman. - So what is your proposal?

Mr. Alten. - I have no proposal. I simply had to comment.

Seventh Plenary Session - 25 October 1922

Let us now return to article 1(b), which we had left to one side. With all possible respect to the authors of this proposal, I do not find it very clear. Do you intend to exclude those bills of lading called “connaissements à personne dénommée” (bills of lading for a designated person).

Sir Leslie Scott. - I believe the French delegation considers the drafting adequate. This drafting has: “covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading governs the
le transporteur et un porteur du connaissément.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Première Séance Plénière - 6 Octobre 1923

M. Alten, en se référant aux observations de son Gouvernement, explique que les armateurs norvégiens voudraient voir cette convention limitée au transport effectué par les navires marchands des lignes et aux autres transports de marchandises par mer dans lesquels le contrat est conclu suivant des conditions générales fixées par le transporteur sous forme d’annonces ou d’invitations au public. C’est à la suite des plaintes des assureurs concernant les clauses d’exonération insérées dans leur connaisséments par les grandes lignes de navigation, que les Règles de La Haye ont été établies. Mais dans le cas des trampsteamers, la situation est toute différente car les conditions de transport sont librement discutées entre parties, et pour les différentes sortes de cargaisons il a été établi de commun accord entre armateurs et transporteurs des connaissements types. Les armateurs scandinaves sont d’avis que sous ce rapport, l’expérience n’a pas révélé des abus justifiant l’intervention d’une législation d’ordre public et que par conséquent il faut laisser aux parties intéressées leur pleine liberté de contracter.

M. le Président suggère que la délégation scandinave établisse un texte précisant sa proposition. Il n’est pas facile de définir la distinction aisé en pratique entre des vapeurs de ligne et les trampsteamers. Mais cette question devrait être laissée provisoirement en attendant que l’on aborde l’examen de l’article 7.

M. Bagge se demande si, a coté du connaissément l’armateur pourrait par une convention spéciale avec le chargeur stipuler que ce dernier aura à rembourser à l’armateur toute indemnité que ce dernier aura à payer au porteur du connaissément parce que la “negligence relations between the carrier and the holder of the bill of lading”.

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
First Plenary Session - 6 October 1923

Mr. Alten, referring to the comments of his government, explained that the Norwegian shipowners would like to see the convention limited to carriage by merchant ships and to other carriage of goods by sea in which the contract is concluded according to general conditions fixed by the carrier in the form of notices or invitations to the public. The Hague Rules were established as a result of complaints from insurers regarding the exoneration clauses inserted by the large shipping lines in their bills of lading. But in the case of tramp steamers the position was quite different because the conditions of carriage were a matter of free discussion between the parties, and for different types of cargo common agreement had been established between shippers and carriers on types of bills of lading. Scandinavian shipowners were of the opinion that, under this arrangement, experience had not revealed abuses that justified the intervention of public policy legislation and consequently the interested parties should be left with complete freedom of contract.

The Chairman suggested that the Scandinavian delegation should draw up a text detailing its proposal. It was not easy to define the distinction in practice between liners and tramp steamers. However the question should be left temporarily until discussion of article 7.

Mr. Bagge wondered whether, apart from the bill of lading, the shipowner might by special agreement with the shipper stipulate that the latter would have to reimburse the shipowner for the whole indemnity that the shipowner would have to pay the holder of the bill of lading be-
clause” ne pourra plus être insérée dans le connaissement.

M. le Président estime que pareil accord ne serait pas valable parce qu’il aboutirait en réalité à éviter la convention.

M. Bagge craint que rien n’interdise pareilles conventions entre armateurs et chargeurs.

En effet, l’article 3 § 3 déclare nulle toute clause d’exonération insérée dans un contrat de transport. Or, à l’article 1 B il est dit que par “contrat de transport” on entend uniquement le contrat de transport constaté par un connaissement ou par tout document similaire formant titre. Un accord préalable entre l’armateur et le chargeur n’est donc pas un contrat de transport au sens de l’article 1 B, et par conséquent l’article 3 § 3 n’y est pas applicable. Pour empêcher un pareil accord, il faudrait l’interdire par un texte plus clair. Au surplus à l’article 5 il est dit qu’aucune disposition de la présente convention ne s’applique aux chartes-parties. Rien n’empêchera l’armateur de faire aussi pour de très petits lots de marchandises des chartes-parties, où il pourra mettre des clauses d’exonération, qui régiront les rapports du transporteur et du chargeur. Aussi M. Bagge propose-t-il de substituer dans l’article 1 (b) les mots “contrats de transport s’applique uniquement au contrat de transport constaté par un connaissement ou par tout document similaire formant titre pour le transport des marchandises par mer” par les mots “contrat de transport s’applique à tous documents concernant le transport de marchandises par mer” par les mots “contrat de transport s’applique à tous documents concernant le transport de marchandises par mer à l’exception des contrats, qui selon l’usage suivi jusqu’ici, sont exprimés par des chartes-parties”.

M. le Président propose de reporter l’examen de cette question à l’article 6 qui prévoit la conclusion de contrats spéciaux moyennant certaines conditions, s’il le faut des précisions pourront empêcher qu’on l’appelle charte-partie ce qui serait en réalité un reçu de bord délivré aux chargeurs. Mais, même si la rédaction adoptée n’est pas parfaite il importe de ne pas modifier le cadre de ces Règles qui ont donné lieu à de longues discus-
sions et auxquelles il semble préférable d’apporter le moins de modifications possible.

[37] M. Berlingieri, d’accord avec le professeur Ripert, trouve que le texte ne s’accorde pas avec les idées et les principes des codes italiens et français. Par exemple: l’expression “document formant titre pour le transport de marchandises” est la traduction de “document of title”. Mais quelle différence y a-t-il entre la charte-partie et le document formant titre pour le transport de marchandises par mer? L’expression française ne le dit pas. Ce ne sont pas simplement des questions de rédaction, mais bien des questions qui affectent le fond car les lois nationales devront traduire les principes adoptés dans un langage juridique et il est certain qu’une modification de la forme a fatalement pour effet de changer en une certaine mesure le fond, et cependant si une convention est conclue, c’est afin qu’elle soit exécutée intégralement dans chaque pays.

[40] M. Sindballe demande si les mots “contrat de transport” de l’article 1 s’appliquent également en cas de connaissement direct.

[41] M. Alten fait remarquer que “documents of title” est à l’article 1 (b) traduit d’une autre façon qu’à l’article 3 parag. 7 où il est dit “document donnant droit à ces marchandises”. Il propose aussi d’ajouter les mots “à son bord” après les mots “transports des marchandises par mer”.

M. le Président fait observer qu’il est stipulé également que la Convention s’applique depuis le moment du chargement des marchandises à bord jusqu’au moment de leur déchargement et qu’il faut interpréter les clauses les unes par les autres tout est donc fort clair.

[37] Mr. Berlingieri, in agreement with Professor Ripert, found that the text did not agree with the concepts and principles of the Italian and French codes. For example, the expression: “document formant titre pour le transport de marchandises” (document giving title for the carriage of goods) and its translation as “document of title”. But what difference was there between the charter party and the document formant titre for the carriage of goods by sea? The French expression does not say. These were not simply questions of drafting but questions that went to the heart of the matter because national laws will have to translate the principles adopted into a judicial language and clearly a change in format had the inevitable effect of changing to some extent the fundamentals. However, the purpose of concluding a convention was to have it enacted in full in each country.

[40] Mr. Sindballe asked whether the words “contract of carriage” in article 1 applied equally in the case of a through bill of lading.

[41] Mr. Alten pointed out that “document of title” in article 1(b) was translated differently than in article 3(7), where it said “document donnant droit à ces marchandises” (document giving title to these goods). He also proposed adding the words “on board” after the words “carriage of goods by sea”.

The Chairman commented that it was also stipulated that the convention applied from the time of loading of goods on board until their unloading, and since it was necessary to interpret these clauses in relation to one another, everything was therefore crystal clear. On the other hand,
D’autre part, les mots “formant titre pour le transport des marchandises” indiquent nettement la portée de ces Règles. Quant aux documents qui seraient substitués au connaissement (par exemple une lettre de voiture concernant le transport par mer, qui constitue un document similaire mais n’est pas signé), ils sont soumis aux même clauses.

M. Berlingieri se demande quelle différence il y a entre une “charte partie” et un “document formant titre”.

M. le Président lui répond qu’une “charte-partie” ne constitue pas un titre à des marchandises déterminées.

M. Sohr estime qu’il y a une erreur dans la traduction française. Il y est dit “document similaire formant titre pour le transport” alors que le texte anglais portait “any similar document of title in so far as it relates to carriage of goods”.

M. Berlingieri estime également que le texte anglais est précis mais que le texte français ne l’est pas.

M. Sohr trouve que le mot “formant titre” n’ont aucun sens en français et qu’il serait suffisant de dire “document similaire”.

Sir Leslie Scott ne le croit pas; à son avis il est important de limiter les “documents similaires” au seuls “Documents of Title”.

M. Berlingieri signale que cette idée est exprimée dans les observations de la délégation allemande où il est dit “document donnant au porteur légitime droit aux marchandises transportées”.

Sir Leslie Scott ajoute que c’est le document qui peut être négocié chez le banquier.

M. Ripert demande si l’on applique ces règles à un connaissement nominatif?

M. le Président répond que oui sauf quand il s’agit d’un connaissement non négociable. Dans ce dernier cas l’article 6 s’applique.

M. Ripert constate que les règles ne s’appliquent pas à un connaissement qui n’est pas négociable et il estime qu’il faudrait le faire remarquer à l’article 1.

the words “formant titre pour le transport des marchandises” (giving title for the carriage of goods) indicated clearly the range of these rules. As to the documents that would be substituted for the bill of lading (for example, a “lettre de voiture” [bill of carriage] concerning the carriage by sea, which constituted a similar document but was not signed), they were subject to the same clauses.

Mr. Berlingieri wondered what difference there was between a “charter party” and a “document of title”.

The Chairman replied that a “charter party” did not grant title to specified goods.

Mr. Sohr judged there to be an error in the French translation in which it said “document similaire formant titre pour le transport” while the English text had “any similar document of title, insofar as such document relates to the carriage of goods”.

Mr. Berlingieri also felt that the English text was precise while the French was not.

Mr. Sohr found that the words “formant titre” had no meaning in French and that it would be sufficient to say “similar document”.

Sir Leslie Scott did not think so. In his opinion it was important to limit the “similar documents” to “documents of title” alone.

Mr. Berlingieri indicated that this idea was expressed in the comments of the German delegation, where it said “document giving to the legitimate holder the right to the goods carried”.

Sir Leslie Scott added that it was a document that could be negotiated with a banker.

Mr. Ripert asked if one might apply these rules to a nominal bill of lading?

The Chairman replied that one could, except when it was a matter of a non-negotiable bill of lading. In such a case article 6 could apply.

Mr. Ripert verified that the rules did not apply to a bill of lading that was non-negotiable and felt that this should be pointed out in article 1.
Sir Leslie Scott observe que cela résulte de l'article 6.

M. le Président estime qu’il y a une distinction à faire. Autre chose est de dire que la convention ne s’applique pas à un document non négociable et autre chose de prévoir que quand il n’est pas négocié, on peut convenir de ne pas appliquer la Convention. Tous les connassements sauf stipulation contraire tombent sous l’empire de la Convention. Mais en ce qui concerne le connassement à personne dénommée, il appartient aux parties de régler leurs affaires comme elles l’entendent, d’autant plus que ce document reste toujours transférable. On pourrait essayer de chercher une formule donnant satisfaction à l’observation de M. Berlingieri.

M. Struckmann rapproche la traduction qui se trouve dans l’article 3 par. 7 “Document donnant droit à ces marchandises” de celle de l’article 1 (b) où il est dit “formant titre pour le transport des marchandises par mer”. Il faudrait employer la même formule.

M. le Président fait remarquer que c’est une simple question de rédaction, mais que tous les délégués sont d’accord; qu’il s’agit du connassement ou d’un document similaire à l’exclusion des chartes-parties.

M. Ripert demande quel peut être ce document similaire.

Sir Leslie Scott répond que cela pourrait par exemple être le “Mate’s receipt”. On veut éviter que les parties puissent échapper à la Convention en adoptant un document similaire qui n’est pas dénommé connassement.

M. le Président ajoute qu’en effet il peut y avoir un connassement non signé comme on en emploie dans le petit cabotage et que quelquefois des transports se font sur simple relevé de marchandises. Il ne faut pas permettre d’éuler la convention par ces moyens.

M. Richter demande si “Mate’s receipt” est un document similaire.

M. le Président estime que oui, s’il
Article 1(b) - The definition of “Contract of carriage”

Mr. Ripert came back to the amendment to paragraph (b) made at the last meeting of the conference. It encompassed equally the bill of lading or similar document issued by virtue of the charter party from the time when the bill of lading regulated the relations between the carrier and the holder of the bill of lading.

Sir Leslie Scott said that when there was a charter party it regulated the rights and responsibilities of the shipper and the shipowner. That if at the same time the shipowner gave a bill of lading to the shipper who had contracted with him, then this bill of lading did not regulate their relationship. However, if the shipper negotiated the bill of lading it was the holder of this document who became the other contracting party with the shipowner. From that moment the bill of lading regulated the relationship between the shipowner and the claimant of the goods.

Mr. Ripert agreed with Sir Leslie Scott but felt it necessary to observe that in the latter case there was a contract of carriage regulated by a bill of lading and that the second sub-paragraph was then redundant.

Sir Leslie Scott remarked that if the shipowner gave the shipper a bill of lading it did not abolish the charter party. It was only at the moment when the bill of lading was remitted to a third party that it regulated only the relations between the carrier and the claimant of the goods.

Mr. Sohr added that it was for this reason that Sir Leslie Scott had first proposed the text: “From the moment the bill of lading is negotiated”.

Mr. Ripert found that the expression “bill of lading issued pursuant to a charter party”, was subject to doubt. In the case of affreightment on a ship under “time charter”, for example, [43] did a bill of lading issued pursuant to the charter party fall
M. le Président estime que oui, si il est négocié.

M. Ripert propose le texte suivant “connaissances émis en vertu d’une charte-partie à partir du moment où il est remis à un tiers”.

Sir Leslie Scott objecte que le tiers pourrait être un agent du chargeur.

M. le Président se contenterait d’une mention au procès-verbal indiquant qu’on a eu en vue les cas où le titre est négocié.

M. Struckmann dit qu’il faut distinguer ou bien un armateur conclut une charte-partie avec un affréteur général et en même temps donne un connaissance à cet affréteur. Dans ce cas le connaissance ne sera pas soumis aux Règles de La Haye, mais il le sera du moment où ce connaissance est négocié. Ou bien un affréteur général donne un connaissance à un chargeur qui est une tierce personne, dans ce cas le connaissance est soumis aux Règles de La Haye même lorsqu’il est entre les mains du premier porteur du connaissance. M. Struckmann croit qu’on peut régler ces deux cas en ajoutant les mots “Porteur du connaissance qui n’est pas partie à la charte-partie” ou “qui n’est pas intéressé à la charte-partie”. Peut-être suffirait-il simplement de dire “porteur du connaissance” en expliquant le sens de ces mots au procès-verbal.

M. le Président propose les mots “du tiers porteur du connaissance”.

M. Ripert estime que ce qui reste obscur c’est le sens de “en vertu d’une charte-partie”. Si celui qui a un navire d’après une charte-partie émet un connaissance en vertu de cette charte-partie, les Règles de La Haye sont immédiatement applicables à ce connaissance parce qu’il y a un tiers porteur. Il serait préférable de dire “délivré à l’affréteur en vertu d’une charte-partie”.

M. le Président croit inutile de modifier l’alinéa 6 à ce sujet puisque les législations nationales pourront adopter tout texte qui en exprimera le sens sur lequel tout le monde est d’accord.

M. Richter demande si par charte-
Mr. Richter asked whether one should understand by “charter party” a contract covering an entire ship or only a part of a ship.

The Chairman admitted that it was an old fashioned expression. At present, “charter party” encompassed all modes of affreightment.

Mr. Richter observed that it was more than a contract of carriage and wanted to see mentioned in the proceedings that a charter party was the contract that had as its subject a specific ship or a part of this ship (agreement).

Mr. Bagge dreaded the use of any obligatory provision à propos the word “charter party” that had a different meaning depending on the country. In Sweden, the charter party was understood as any written contract that dealt with a whole ship, part of a ship, or even a small load of goods. That was always a charter party. That is why Mr. Bagge said of article 1(b): “…governing the carriage of goods by sea, except for contracts that, according to the practice followed heretofore, are expressed in charter parties”.

The Chairman pointed out that it would be up to the courts to decide in each case if there were a bill of lading, that is to say, a document representing the goods on board a specific ship giving title to delivery.

Mr. Bagge objected that the shipowner might henceforth create charter parties for small lots where he might include exoneration clauses forbidden by the convention for bills of lading, but which would all the same govern the relations between carrier and shipper.

The Chairman proposed returning to this question in article 6. He affirmed that article 1(b) described concisely the scope of the convention and established a very clear distinction.

Sir Leslie Scott wanted to see in article 1(b) the elimination of the words “holder for value”, which had just been added, because there were cases where the shipper by means of a charter party
The Travaux Préparatoires of the Hague and Hague-Visby Rules

M. Ripert constate que Sir Leslie Scott désire que les Règles de La Haye s’appliquent même dans les relations entre le transporteur et le chargeur du moment où c’est le connaissement qui régit les relations entre eux.

Dans ce cas, il faut modifier la rédaction admise et mettre: “Du moment où un connaissement est émis” au lieu de “au porteur”.

M. Sohr signale le cas suivant: Des usines achètent des matières premières qu’elles expédient à leur propre destination. En ce cas le connaissement est un simple reçu pour les marchandises à bord. Mais puisqu’il n’y a aucun tiers intéressé, ce connaissement n’est pas régé par la Convention, même si l’usine envoie ce document à son agent à l’étranger.

M. le Président propose de laisser cette question pour une deuxième lecture du texte. Il semblait que les mots “tiers porteur” équivalaient à “holder of Bill of Lading”.

M. Sindballe rappelle qu’il avait été précédemment proposé que le transporteur serait tenu pour toute la période s’écoulant à partir du moment où il reçoit la marchandise jusqu’à la délivrance. Il ne veut pas reprendre cette proposition parce qu’il ne voit pas de chance de la faire adopter, mais il y a certains cas pour lesquels il serait de la plus haute importance pour certains intérêts commerciaux de voir modifier la définition acceptée, notamment au cas où il est émis un connaissement “reçu pour embarquement” instrument négociable du plus grand intérêt pour le commerce, à partir de la délivrance de ce document le capitaine devrait être responsable.

M. le Président fait remarquer que ce document avait été soustrait intentionnellement aux Règles de la Convention; on a fini par admettre qu’à un document constant la réception de la marchandise “pour embarquement” soit substitué received a bill of lading which, as a result of an arrangement with the shipowner, regulated the relations between the shipowner and himself. It was not a frequent occurrence, but it could happen. It was better to say “regulates the relations between the carrier and the holder”.

Mr. Ripert stated that Sir Leslie Scott wanted the Hague Rules to apply even in relations between carrier and shipper from the moment when the bill of lading regulated their relationship.

In this case, it was necessary to change the present draft and put “From the moment when a bill of lading is issued” instead of “to the holder”.

Mr. Sohr indicated the following case: Some factories buy raw materials that they send to their own address. In this case, the bill of lading is a single receipt for the goods aboard. But since there is no third-party interest, this bill of lading is not governed by the convention, even if the factory sends this document to its agent abroad.

The Chairman proposed leaving this question for a second reading of the text. It appeared the words “tiers porteur” were the equivalent of “holder of a bill of lading”.

Mr. Sindballe recalled that he had earlier proposed that the carrier would be held responsible for the whole period following receipt of the goods until delivery. He did not wish to repeat this proposal because he saw no chance of having it adopted, but there were certain instances in which it would be of the highest importance for certain commercial interests to see the accepted definition modified, notably where a bill of lading was issued “received for shipment”, a negotiable instrument of the greatest interest for trade. As soon as this document was issued, the captain ought to be responsible.

The Chairman pointed out that this document had been removed intentionally from the rules of the convention. It had been finally agreed that a real bill of lading should be substituted for a document confirming the receipt of goods. It
un véritable connaissement; mais il ne semble pas que puisse être reconnue l’existence de ce document qui n’est pas considéré comme un connaissement régulier dans le droit belge.

M. Berlingieri déclare qu’en Italie le B/L “received for shipment” n’est pas un connaissement dans le sens strict de la loi.

M. Bagge demande si le Président estime qu’en cas de connaissement “reçu pour embarquement” la Convention ne s’applique pas du tout.

M. le Président répond qu’à son avis rien dans cette convention ne doit sanctionner la pratique des connaissements “reçus pour embarquement”. Elle ne doit contenir aucune clause qui puisse être considérée comme admettant leur régularité ou leur validité. Mais si après la délivraison d’un connaissement “reçu pour embarquement”, la marchandise est effectivement embarquée ce connaissement tombera sous le coup de la Convention; parce que le transport de la marchandise s’entend depuis le chargement à bord jusqu’au déchargement.

M. Bagge fait observer que d’après ce que Sir Norman Hill a déclaré à la Commission du Parlement anglais, c’est parce qu’il y a eu des difficultés à introduire les mots “received for shipment B/L” dans les Règles de La Haye, que l’on s’est servi des mots neutres “document of title”. Les Règles de La Haye s’appliqueraient donc à un connaissement “reçu pour embarquement” parce que c’est un “document of title”. Il conviendrait de dire clairement à l’article 3 (3) si c’est le cas ou non.

M. le Président n’est pas du tout d’accord avec l’interprétation de M. Bagge. D’après lui, les essais tentés en vue de faire accepter la pratique du connaissement pour embarquement ont rencontré la plus vive opposition lors de l’établissement des Règles.

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[45] Mr. Bagge asked if, in the case of goods transported by canal and then by sea, it was necessary to admit that car-
transport par canal ne tombe pas sous l’empire des Règles.

M. le Président répond que les Règles s’appliquent au transport par tout navire de mer, c’est à la loi nationale qu’il appartient de définir ce qu’il faut entendre par navire de mer. Le Président estime quant à lui qu’un navire de mer est celui qui est capable d’aller en mer et qui y va habituellement. Certaines législations considèrent comme navire de mer les navires qui font le trafic dans les eaux maritimes des fleuves. En Hollande, on considère comme navires de mer ceux qui trafiquent par les canaux avec les pays limitrophes.

M. Bagge demande si un navire à vapeur circulant sur un canal ne serait pas un navire de mer parce qu’ordinairement il ne va pas en mer.

M. le Président répond que la législation nationale aura à trancher cette question. En droit belge, il ne serait pas un navire de mer mais serait considéré comme un bateau d’intérieur.

M. Bagge regrette ce manque d’uniformité.

M. Richter observe que dans le texte français il est dit que c’est un navire qui transporte des marchandises par mer mais il n’y est pas dit qu’il doit les transporter habituellement par mer. Donc dans ce cas spécial le navire mentionné par M. Bagge tomberait sous la Convention.

M. le Président distingue deux cas, tout d’abord le navire est en mer ou va en mer pour transporter des marchandises. Il n’y a aucune discussion possible même si c’était un [46] bateau d’intérieur, au contraire le navire de mer entre dans les fleuves ou dans les canaux navigables, il y est encore soumis aux règles de la Convention. Mais quant à savoir quand un navire est un navire de mer, c’est ce que chaque pays sera libre de décider.

M. Richter demande ce qui constitue la période indiquée s’écoulant entre le chargement et le déchargement. Veut-on dire le chargement et le déchargement complet ou s’agit-il du commencement du chargement?

M. le Président répond que c’est depuis le moment où le chargement com-

riage by canal did not fall under the authority of the rules.

The Chairman replied that the rules applied to the carriage by every sea-going vessel. It was for national law to define what was understood by a sea-going vessel. The Chairman felt that in his opinion a sea-going vessel was one that was capable of putting to sea and that usually did so. Certain legislation deemed a sea-going vessel to be one that traded in the ocean waters or rivers. In Holland, sea-going vessels were considered to include those that trafficked in the canals with neighboring countries.

Mr. Bagge asked whether a steamship travelling on a canal was a sea-going vessel if it ordinarily did not put to sea.

The Chairman replied that national legislation would have to tackle this question. Under Belgian law, it would not be a sea-going vessel but would be considered an inland boat.

Mr. Bagge regretted this lack of uniformity.

Mr. Richter observed that in the French text it was said to be a ship that carried goods by sea but it did not state that it had to carry them habitually by sea. Therefore, in this special case, the ship mentioned by Mr. Bagge would fall under the convention.

The Chairman distinguished two cases: first, the ship was at sea or going to sea to carry goods. There was no possible debate here, even if it were an [46] inland boat. On the other hand, the sea-going vessel entered the rivers or navigable waters but was still subject to the rules of the convention. As far as knowing when a ship was a sea-going vessel, that was what each country would be free to decide.

Mr. Richter asked what constituted the period indicated between loading and unloading. Did one mean the complete loading and unloading or was it the beginning of the loading?

The Chairman replied that it was from the moment when the loading began to when the unloading was finished.
A note to this effect would be included in the proceedings.

**Third Plenary Session - 7 October 1923**

Mr. Bagge believed that it was now time to re-examine the question he had raised in article 3 concerning letters of guarantee. Article 5 stipulated that no provision in the convention would apply to specific documents like charter parties and article 1(b) provided that the contract of carriage applied solely to a contract confirmed by a bill of lading or similar document. Thus one might have an agreement that is neither a charter party nor a bill of lading or similar document - for example, an agreement by which the carrier asked the shipper to indemnify the carrier for damages paid to the holder of the bill of lading. So as to have only one definition concerning the application of the convention, one should, as had been proposed, transfer the second sentence of article 5 to article 1(b). Without this, one would not know how to interpret the convention when dealing with such agreements concluded outside the bill of lading.

The Chairman believed that the scope of the convention did not depend on this amendment. He had examined articles 5 and 6 from the point of view of the fears expressed by Mr. Bagge, who was afraid that when the convention entered into force the shipowners would say “we are going to be bound to the holders, but we are going to protect ourselves by making a charter party and by telling the shippers to protect themselves against our negligence”. The Chairman felt that that would not be valid and that article 6 prevented it, because it expressly said that one should not make derogatory contracts, except on the condition that no bill of lading be issued and that the agreement reached be embodied in an acknowledgment, which would be
inséré dans un récépissé qui sera non négoçiable; cette disposition spéciale ne peut être appliquée pour les cargaisons ordinaires.

M. Bagge objecte qu’à l’article 3(8) on parle de “toutes clauses, conventions ou accords dans un contrat de transport”, c’est-à-dire dans un connaissement. Or, l’accord dont il vient de parler n’est pas un contrat de transport; par conséquent, la disposition de l’article 3(8) n’est pas applicable à pareil accord.

M. le Président dit que l’article 1(b) parle de documents similaires formant titre pour le transport de marchandises.

M. Bagge répond qu’un accord comme celui auquel il fait allusion n’est ni un connaissement, ni un document similaire formant titre ni une charte-partie: Pour des envois de petits lots on émet un connaissement mais on fait en même temps un accord spécial par lequel le chargeur s’engage à rembourser à l’armateur ce que celui-ci aurait à payer au porteur du connaissement et cela parce que l’armateur n’a pu insérer une “négligence clause” dans le connaissement.

M. Sindballe ajoute qu’un accord qui a été fait avant l’embarquement des marchandises ne peut pas être un document formant titre.

Sir Leslie Scott répond qu’il n’y a que deux hypothèses possibles: ou bien il y a un document représentant les marchandises, ou il n’y en a pas. Dans le premier cas pareil accord se rapportera aussi au contrat de transport et en pareil cas c’est un document similaire. Si au contraire il n’y a pas de documents représentant les marchandises, la convention ne s’applique pas du tout.

M. Bagge dit que l’article 3(8) ne s’appliquerait pas puisqu’il n’y aurait pas un document similaire formant titre.

M. le Président répond que si l’accord des parties résulte de plusieurs documents différents qui se complètent, cela ne constitue cependant qu’un accord unique et le juge annulera une convention de ce genre parce qu’elle n’a été faite qu’en vue du transport.

M. Ripert objecte que cet accord non-negotiable. This special provision could not be applied for ordinary cargoes.

Mr. Bagge objected that in article 3(8) one spoke of “any clause, covenant, or agreement in a contract of carriage” that is, in a bill of lading. The agreement that had just been spoken of was not a contract of carriage. As a result, the provision in article 3(8) was not applicable to such an agreement.

The Chairman said that article 1(b) spoke of similar documents of title for the carriage of goods.

Mr. Bagge replied that an agreement like the one to which he alluded was not a bill of lading or a similar document of title, and not a charter party. For sending small lots, the practice was to issue a bill of lading while at the same time making a special agreement by which the shipper undertook to reimburse the shipowner for what he had to pay to the holder of the bill of lading. That was done because the shipowner had not been able to insert a “negligence clause” in the bill of lading.

Mr. Sindballe added that an agreement that had been made before the shipment of the goods could not be a document of title.

Sir Leslie Scott replied that only two hypotheses were possible: either there was a document representing the goods, or there was not. In the first case, such an agreement would be relevant to the contract of carriage as well and, in such a case, it was a similar document. If, on the other hand, there were no documents representing the goods, the convention would not apply at all.

Mr. Bagge said that article 3(8) would not apply because there would be no similar document of title.

The Chairman replied that if the agreement of the parties was the result of several different documents that were complimentary, that that still only constituted one agreement and the judge would annul such an agreement because it had only been made for the purpose of carriage.

Mr. Ripert objected that this agree-
could have a series of voyages as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject. He asked for the deletion as its subject.
ports du transporteur et du tiers porteur. Or, on dit maintenant que les connaissements émis en vertu d’une charte-partie sont soumis dès le commencement aux termes de cette convention.

M. le Président répond que la convention devient applicable à partir du moment où ces connaissements sont négociables et entre les mains d’un tiers porteur; la rédaction anglaise est conforme au texte français sur ce point. Le procès-verbal constatera cette interprétation. Lorsqu’on dit que ces connaissements sont soumis à toutes les dispositions de la présente convention, on se réfère naturellement à la définition de l’article 1(b).

M. Beecher demande si l’article 5 signifie que le connaissement émis en vertu d’une charte-partie n’est pas soumis à la convention s’il n’est jamais négocié. Dans ce cas il paraît y avoir contradiction entre l’article 5 et l’article 1(b) puisque l’article 5 parle simplement de connaissement émis dans le cas d’un navire sous l’empire d’une charte-partie mais la disposition ne dit pas que si ce connaissement est négocié dans la suite, il sera soumis aux termes de la convention.

M. le Président répond qu’il est clair, qu’en mettant les deux dispositions en concordance l’on veut dire la même chose.

M. Beecher conclut que lorsqu’un connaissement est émis en vertu d’une charte-partie il peut s’écarter des Règles de La Haye; mais que si ce connaissement est négocié dans la suite il tombe sous la convention. Cependant un connaissement émis conformément à la charte-partie est un document parfaitement légal.

M. le Président répond que oui mais que pareil document n’a pas d’utilité.

M. Beecher dit que le chargeur peut dans la suite le négocier; or ce document deviendrait alors absolument nul bien qu’au moment de son émission il fût un document parfaitement légal et régulier.

M. Langton dit qu’il y a un malentendu car l’article 1(b) définissant le contrat de transport s’applique aux connaissements of the carrier and the holder. One was now saying that the bills of lading issued under a charter party were subject from the beginning to the terms of this convention.

The Chairman replied that the convention became applicable from the moment when these bills of lading became negotiable and were in the hands of a third-party holder. The English drafting conformed to the French text on this point. The proceedings would confirm this interpretation. When one said that these bills of lading were subject to all the provisions of the present convention, naturally one was referring to the definition of article 1(b).

Mr. Beecher asked if article 5 meant that the bill of lading issued under a charter party was not subject to the convention if it had never been negotiated. In this case there seemed to be a contradiction between article 5 and article 1(b) because article 5 spoke simply of a bill of lading issued in the case of a ship under a charter party, but the provision did not say that if this bill of lading was subsequently negotiated, it would be subject to the terms of the convention.

The Chairman replied that it was clear that by making the two provisions agree, one meant the same thing.

Mr. Beecher concluded that when a bill of lading was issued under a charter party, it could deviate from the Hague Rules - but that if this bill of lading were later negotiated it would fall under the convention. However, a bill of lading issued in conformity with the charter party was a perfectly legal document.

The Chairman replied affirmatively, but said that such a document had no utility.

Mr. Beecher said that the shipper could later negotiate it. This document would then become absolutely null and void, although at the time of its issue it had been a perfectly legal and normal document.

Mr. Langton said that there was a misunderstanding because article 1(b), defining the contract of carriage, applied
ou à tout autre document du moment où il règle les rapports entre le transporteur et le porteur du connaissement. Prenant maintenant l’exemple de M. Beecher, le connaissement émis en vertu d’une charte-party aussi long-temps qu’il ne règle pas les rapports entre le transporteur et le porteur du connaissement, n’est pas intéressant pour la convention puisqu’elle ne s’y applique pas. Ce que M. Beecher a en vue, c’est le connaissement qui règle les rapports entre armateur et chargé, mais qui n’est pas encore négocié. Pareil document doit être conforme aux stipulations de la convention dès qu’il devient le contrat de transport réglant les rapports entre les deux parties. Mais c’est là un cas qui ne se présentera jamais car lorsqu’on demande un connaissement ce n’est évidemment pas pour le garder dans son coffre-fort, mais bien pour le négocier selon la pratique du commerce.

Quatrième Séance Plénière-8 Octobre 1923

L’examen de la convention étant terminé, M. le Président rappelle qu’une question importante a été réservée et doit encore être discutée: celle de savoir si cette convention doit s’appliquer aux tramp-steamers ou s’il faut la restreindre aux lignes régulières de navigation. A cet objet se rattache une réserve qui figure dans le Bill anglais, mais qui ne touche pas à la base de la convention.

M. Alten rappelle qu’il a antérieurement déjà expliqué les raisons pour lesquelles les armateurs scandinaves désirent laisser les tramp-steamers en dehors de la convention. Il désire connaître l’attitude des différentes délégations à l’égard de cette question.

M. le Président résume la question comme suit: cette convention réclamée depuis longtemps par le commerce international et sur laquelle un accord s’est à un bill of lading or any other document from the time when it regulated relations between the carrier and the holder of the bill of lading. Taking Mr. Beecher’s example, the bill of lading issued under a charter party, so long as it did not regulate relations between the carrier and the holder of the bill of lading, held no interest for the convention because the convention did not apply to it. What Mr. Beecher had in mind was the bill of lading that regulated relations between shipowner and shipper but that had not yet been negotiated. Such a document should conform to the stipulations of the convention when it became the contract of carriage regulating the relations between the two parties. But that was a case that would never arise because when one demanded a bill of lading it was evidently not for keeping it in one’s safe, but rather for negotiating it according to commercial practice.

Fourth Plenary Session - 8 October 1923

The examination of the convention being finished, the Chairman recalled that an important question had been set aside and still had to be discussed, namely whether this convention should apply to tramp steamers or whether to restrict it to regular lines of navigation. A reservation featured in the English bill referred to this subject but did not affect the basis of the convention.

Mr. Alten recalled that he had previously explained the reasons why the Scandinavian shipowners wished to exclude the tramp steamers from the convention. He wanted to know the opinions of the different delegations on this question.

The Chairman summarized the question as follows: This convention, which had been called for by international trade for such a long time, and on which
fait entre les représentants des divers intérêts devra-t-elle être limitée aux lignes régulières de navigation? Les armateurs scandinaves se sont depuis longtemps mis d'accord avec les intérêts cargaison, sur des types uniformes notamment de la charte-partie des bois dite "Scanfin", et sur des formules de connaissements s'y rapportant. Puisque ce système marche bien, disent-ils, et ne donne pas lieu à réclamations, pourquoi nous imposer une convention que personne de notre côté ne demande? Voilà l'argument essentiel. On ajoute que la situation des armateurs de vapeurs ordinaires est bien différente de celle des armateurs de lignes régulières; les propriétaires des tramp-steamers n'ont pas les moyens d'imposer une véritable contrainte aux chargeurs. Ce sont au contraire eux qui doivent se ranger aux exigences des chargeurs.

Les arguments qu'on invoque contre cette thèse sont de fait et de droit. En droit, on dit que si dans la pratique commerciale on sait ce que c'est qu'un tramp-steamer et un vapeur de ligne régulière, il serait cependant impossible de traduire cette différence en une formule légale; que l'idée de la distinction selon que l'on fait un appel public à des offres de fret ou non, serait une base trop vague à la réglementation réclamée; pareille distinction permettrait beaucoup d'abus puisqu'il suffirait de se donner l'apparence d'un tramp-steamer pour échapper à la convention. On ajoute que si c'est facile de distinguer entre les grandes compagnies de navigation comme la Cunard Line et les Messageries Maritimes et des armateurs norvégiens ou belges qui n'ont que quelques vapeurs, il y a tout une catégorie de gens qui font tantôt du trafic régulier et tantôt pas. Certains armateurs ont des lignes régulières en hiver et un service irrégulier en été. Ensuite il arrive constamment que des agents maritimes organisent pendant un, deux ou trois ans un service régulier au moyen de navires affrétés.

Enfin on a fait observer que si des principes sont justes, il faut les appliquer à tout le monde et qu'on ne voit pas agreement had been reached by the representatives of various interests - should it be limited to the regular lines of navigation? The Scandinavian shipowners had long ago agreed with the cargo interests on common forms, notably, of timber charter parties called “Scanfin”, and on formulae for related bills of lading. Since this system worked well, they said, and did not give rise to claims, why impose upon us a convention that no one on our side has asked for? That is the argument in a nutshell. We should add that the position of the owners of ordinary steamships is quite different from that of the owners of the regular lines. The owners of the tramp steamers do not have the means to impose any real constraint on shippers. It is they, on the contrary, who must fall in with the demands of the shippers.

The arguments invoked against this thesis are both factual and legal. The law says that commercial practice knows the difference between a tramp steamer and a regular liner. However, it would be impossible to translate this difference into a legal formula. The distinction according to which one makes a public appeal for offers of freight or not would be too vague a basis for the desired regulation. Such a distinction would allow considerable abuse because it would be sufficient to give oneself the appearance of a tramp steamer to evade the convention. One could add that if it was easy to distinguish between the large shipping companies like the Cunard Line and the Messageries Maritimes and the Norwegian or Belgian shipowners who have only a few steamers, there is a whole category of people who sometimes have regular traffic and sometimes do not. Certain shipowners have regular routes in winter and an irregular service in summer. Therefore maritime agents commonly organize a regular service by means of chartered vessels for one, two, or three years.

Finally, it should be pointed out that if these principles are fair, they should be applied to everyone and that there is no
pourquoi les armateurs de tramps se plaindraient, puisque d’après la convention rien ne gênerait leur commerce. S’ils n’emploient pas de clauses de négligence excessives, ils auront tout le bénéfice de la convention. Que notamment au point de vue de la “navigabilité”, la convention constitue un progrès certain. Que les armateurs de tramps anglais ont été consultés et qu’ils sont d’accord aussi bien que les “Liners”. Il y a eu à Gothenbourg un échange de vues à ce sujet avec les armateurs scandinaves et il leur a été rappelé qu’après le Harter Act, sont venus l’Act Australien, puis l’Act de la Nouvelle-Zélande, après cela la loi Canadienne. Les armateurs n’empêcheront pas ce mouvement de s’étendre. Or, quand on consulte ces diverses législations on constate qu’elles sont plus dures pour l’armement que la convention proposée. Il existe maintenant un moyen d’avoir une convention internationale qui va mettre tous les armateurs sur le même pied et réglera toutes ces questions une fois pour toutes, car on ne pourra toucher à cette convention que de l’assentiment de tous; ainsi les armateurs jouiront d’une protection certaine et ils auront l’avantage que les armateurs du monde entier seront traités sur le même pied.

M. Loder croit qu’il n’y a aucune raison d’admettre l’exception proposée. Il faut une règle générale qu’on applique à tout le monde. Il n’existe d’ailleurs aucune raison décisive pour faire une exception.

M. Beecher estime aussi qu’il n’a pas été donné de raisons suffisantes de la part des armateurs de tramp-steamers qui rendraient nécessaire une modification de la convention à leur profit. Aux Etats-Unis, le Harter Act s’applique aux Liners comme aux tramps.

Sir Leslie Scott est d’avis qu’il est tout à fait impossible de faire une distinction entre les armateurs de lignes régulières et ceux de tramp-steamers.

M. Berlingieri ne peut accepter cette exception en faveur des tramps. Il y a des armateurs qui ont un service régulier à départs tous les deux ou trois mois. Est-ce raison pour le tramp steamer owners to complain, since under the convention nothing will hinder their trade. If they use no excessive negligence clauses, they will enjoy the full benefit of the convention. From the point of view of “seaworthiness”, in particular, the convention represents a certain amount of progress. The English tramp steamer owners have been consulted and are in agreement as much as the “liners”. There has been an exchange of views at Gothenborg on this matter with the Scandinavian shipowners, and they have been reminded that after the Harter Act came the Australian Act, the New Zealand Act, and finally the Canadian statute. The shipowners cannot prevent this movement from spreading. If the various statutes were examined, it would be seen that they are more harsh on shipowning interests than the proposed convention. There now exists a means of creating an international convention that will put all shipowners on the same footing and regulate all questions once and for all, because one cannot alter this convention without the agreement of all. In this way the shipowners will enjoy certain protection and have the advantage that shipowners the world over will receive equal treatment.

Mr. Loder believed that there was no reason to allow the proposed exception. What was needed was one general rule applying to all. Moreover, there was no compelling reason to make an exception.

Mr. Beecher also felt that insufficient reasons had been advanced by the tramp steamer owners to make an amendment to the convention in their favor necessary. In the United States, the Harter Act applied to liners and tramp steamers alike.

Sir Leslie Scott was of the opinion that it was quite impossible to make a distinction between owners of regular lines and those of tramp steamers.

Mr. Berlingieri could not accept this exception in favor of the tramp steamers. There were shipowners who had a regular service with departures every two or three months. Was this a regular line or
ce là une ligne régulière ou sont-ce des tramps? La solution de pareille question entraînerait des difficultés insurmontables.

[83]

M. Ripert a reçu des instructions formelles de ne pas accepter cette distinction qui ne se justifie ni en droit ni en fait.

M. Matsumani n’a pas d’opinion spéciale à ce sujet.

M. Struckmann dit que pareille distinction serait très difficile à établir.

M. Straznicky n’accepte pas l’exception en faveur des “tramp-steamers”.

M. Sindballe regrette de devoir prendre encore une fois la parole. Plusieurs des membres présents se souviendront que lors de la conférence du Comité Maritime International à Gothenbourg, il y a eu une réunion des armateurs scandinaves avec des membres du Comité Maritime International. A cette occasion, M. le Président, était d’avis qu’il n’était pas possible d’excepter les tramp-steamers de la convention, mais qu’il pourrait être possible de permettre aux divers pays d’insérer une réserve en vertu de laquelle certains commerces, notamment le commerce des bois, ne seraient pas soumis à l’application de ces règles.

M. le Président demande l’avis de la commission à ce sujet.

M. Loder trouve que cela serait très dangereux et voudrait qu’on lui fasse connaître les motifs de pareille exception.

M. le Président fait observer que les “tramp-owners” ne pourraient échapper en aucun cas à certaines dispositions des Règles de La Haye et par conséquent ne pourraient avoir pleine liberté, par exemple pour ce qui concerne la navigabilité, les soins à prendre de la marchandise, le bon arrimage, etc.

M. Sindballe dans ces conditions renonce à sa proposition.

M. le Président remercie les délégués des pays scandinaves pour leur intervention. Il fait appel à eux pour qu’ils fassent ratifier la convention par leur pays. Il
rappelle que ceux-ci ont toujours été à l'avant-garde du progrès en matière maritime, et ont donné l'exemple puisqu'ils ont été les premiers à élaborer entre eux un code maritime uniforme. L'intérêt de l'uniformité est si grand qu'ils seront d'accord avec la Commission cette fois encore; au fond, il n'y a pas d'intérêt pratique à faire des exceptions.

**M. Berlingieri** signale que les navires vagabonds qui vont aux États-Unis sont assujettis actuellement aux lois américaines bien plus dures, tandis que dans la convention il y a pour eux de grands avantages.

**Sir Leslie Scott** considère comme très important l'appui des pays scandinaves à l'œuvre de l'unification du droit maritime et se joint au Président pour faire appel à ses collègues scandinaves pour qu'ils veuillent bien considérer dans cette question et exprimer aussi à leur gouvernement le vœu unanime de tous les autres pays représentés, d'aboutir à la solution préconisée. Il exprime ensuite le désir d'attirer encore l'attention de la commission sur l'article 1. Ayant appris que le mot “tiers” a été ajouté dans la dernière ligne du paragraphe 3, il voudrait que l'on discute cette question en se souvenant que la délégation anglaise a demandé de supprimer ce mot.

**Mr. Ripert** croit que ce mot n’est plus exact depuis les explications qui ont été données et que même un connaissement nominatif est soumis à la convention.

**M. le Président** propose de supprimer le mot “tiers” en disant simplement “les rapports du transporteur et du porteur de ce connaissement, ou de ce document” (Assentiment).

**M. Bagge**, au sujet de l'interprétation de l'article 1, résume ce qui a été dit quant aux mots “contrat de transport”. Dans le terme “contrat de transport” mentionné à l'article 1, paragraphe (b), est compris tout accord entre transporteur et chargeur rapporte à un connaissement ou à un document similaire formant titre. C'est bien là le résultat auquel on est arrivé lorsqu'on a discuté la question des lettres de garantie.
M. le Président confirme cette déclaration. Il n’y a que la charte-partie qui soit exceptée.

[84]

M. le Président. - “Qu’on le fasse en un document ou en plusieurs documents c’est toujours à cela que réfère l’article 1, à l’exception cependant de la charte-partie”.

M. Bagge croit qu’il aurait été utile de stipuler ce qu’on entend par une charte-partie, mais il n’insiste pas.

M. le Président dit que c’est une question de bonne foi; on ne peut entendre par là une charte-partie qui serait simplement un connaissement. On oppose par ces termes le transport de marchandises à la location du navire et on conserve toute latitude de préciser le sens dans la législation nationale ou lors de la mise en vigueur de la convention puisque ce n’est pas réglé par cette dernière.

M. Richter voudrait qu’à l’article 1, où il est dit: “...ou tout document similaire formant titre pour le transport des marchandises par mer” il soit mis: “...ou tout document similaire donnant droit aux marchandises y mentionnées”.

M. le Président rappelle que ce texte n’a pas été accepté. Il s’agit d’un document qui contient les clauses de la convention et se rapporte à des marchandises effectivement transportées, donnant le droit d’en réclamer la délivrance.

The Chairman confirmed this statement. Only the charter party would be excepted.

The Chairman. - Whether one did it in one document or several documents, that was what article 1 referred to, with the exception, however, of the charter party.

Mr. Bagge believed that it would have been useful to stipulate what was meant by a charter party, but did not insist on this point.

The Chairman said that it was a question of good faith. One could not understand by it a charter party that would be simply a bill of lading. In these terms one contrasted the transport of goods with the hiring of the ship, and one preserved complete latitude in defining the meaning in national legislation at the time of the entry into force of the convention because it was not regulated there.

Mr. Richter wanted it to say in article 1, where it presently said “…or any similar document of title, insofar as it relates to the carriage of goods by sea”, “…or any similar document entitling one to the goods concerned”.

The Chairman recalled that this text had not been accepted. What was intended was a document that contained the clauses of the convention, and referred to the goods actually carried, entitling one to claim delivery of them.
ARTICLE 1

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

c) “Goods” includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

ILA 1921 Hague Conference
Text submitted to the Conference

[cxvi]

In this Code

(c) “Goods” includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo carried on deck.

Second day’s proceedings - 31 August 1921

[79]

Mr. De Rousiers: The paragraph mentions “live animals and cargo carried on deck”. I feel that it would be advisable to mention also perishable goods. We know there is a danger in the transportation of perishable goods, and I think it would be wise to provide for shipowners to have liberty to make special conditions for the transportation of those special goods.

Mr. Rudolf: I think, Mr. Chairman, that the point raised by Mr. De Rousiers would be covered by the provisions in Article 5.

Mr. Dor: If we exclude everything except bricks and iron bars there is not much use in having such rules. If we exclude all the goods which may be damaged, then the rules are not of much good.

Mr. De Rousiers: I think “perishable goods” has a meaning which can be defined. It would be the duty of the Committee to make a definition of “perishable goods”. I think that some perishable goods can be carried under the same conditions.

Sir Norman Hill: Is not the answer the one that Mr. Rudolf has given: that we must deal with those classes of cargo under Article 5?

Text adopted by the Conference

[255]

No change.
M. Bagge, Swedish delegate, asked why the word “goods” did not apply in this convention (article 3(3)) to live animals or to cargo carried on deck.

The Chairman pointed out to him that this trade was subject to such uncertainties that it did not seem possible to take account of them in a convention covering the carriage of goods in general.

Mr. Bagge proposed deleting the exception to paragraph (c) regarding live animals and adding the following sub-

(c) “Goods” means goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
PART II - HAGUE RULES

Article 1(c) - The definition of “Goods”

paragraph to article 3(8): “These clauses will not prevent the carrier from stipulating a reserve exonerating himself from all liability as to the loading, handling, stowage, carriage, custody, care, and unloading of live animals or of cargo which by the contract of carriage is declared to be deck cargo and is, in fact, carried on deck”.

The convention regulated the care that the shipowner must give to the goods. It also stipulated the leading marks that must be found in the bill of lading. In the case of the carriage of live animals or of deck cargo, special conditions as to what care must be given could be justified. But there was no reason to make an exception as to the leading marks that must be found in bills of lading.

The Chairman remarked that that question was outside the convention’s scope but that it might be regulated by national law. Generally, goods on deck were left out of the convention. Under certain legislation, it was considered, moreover, that he who left goods on deck did so at his own risk and peril.

M. le Président fait observer que cette question restera en dehors de la convention mais qu’elle peut être réglée par les lois nationales; de façon générale, les marchandises en pontée sont laissées en dehors de la convention. Dans certaines législations, on considère d’ailleurs que celui qui charge sur le pont le fait à ses risques et périls.

[45]

M. Ripert voulait la suppression de l’article 1(c) qui définit le mot “marchandises”, l’exception concernant les “animaux vivants” et la “cargaison chargée en pontée” soit supprimée. L’atténuation des responsabilités du transporteur en ce qui concerne ces catégories de biens se comprend, mais en les excluant de l’acception générale “marchandises” on aboutit à les soustraire complètement à l’application des Règles de La Haye notamment à celles concernant les fins de non recevoir à l’arrivée qui pourraient cependant parfaitement s’appliquer aux animaux vivants et à la pontée.

M. Berlingieri appuie l’observation de M. Ripert; rien n’empêche d’appliquer à ces marchandises par exemple l’obligation de les compter.

M. Ripert voudrait donc que l’excep-

[45]

Mr. Ripert wanted the deletion in article 1(c), which defined the word “goods”, of the exception regarding “live animals” and “cargo carried on deck”. The attenuation of the liabilities of the carrier in so far as regards these categories of goods is understandable, but by excluding them from the general meaning “goods”, we remove them completely from the application of the Hague Rules, including from those rules concerning estoppel on arrival, which could, however, apply perfectly well to live animals and deck cargo.

Mr. Berlingieri supported Mr. Ripert’s observation, Nothing prevented the application to the goods of the duty to count them.

Mr. Ripert therefore wished for the exception concerning them to be re-
tion les concernant soit reportée à l’article qui délimite la responsabilité du transporteur et que les Règles leur soient applicables dans toutes leurs autres dispositions.

**Sir Leslie Scott** trouve l’observation de M. Ripert parfaitement logique. Il déclare impossible de modifier la portée de l’exception introduite à l’article 1er parce que c’est seulement moyennant cette stipulation que l’accord des intéressés a pu être obtenu. Ils ne veulent absolument pas que l’on change un mot aux termes de cette transaction qui a été obtenue à la suite de longues discussions.

M. Ripert observe que cette situation peut entraîner les plus graves inconvénients au point de vue de la délivrance des marchandises et des fins de non recevoir, en ce qui concerne le nombre des animaux transportés par exemple.

M. le Président estime que c’est aux lois nationales qu’il appartient de régler ce point.

M. Berlingieri objecte que ce serait aller à l’encontre de la Convention.

M. le Président affirme que non, car pour tout ce qui n’est pas réglé par la convention liberté est réservée à la législation nationale.

Il est décidé de mentionner au procès-verbal qu’il est entendu que les législations nationales restent parfaitement libres de stipuler en ce qui concerne les animaux vivants et pour les pontées comme elles l’entendront.

Sir Leslie Scott found that Mr. Ripert’s observation was perfectly logical. He declared it impossible to modify the scope of the exception introduced in article 1 because it was only by means of this stipulation that the agreement of the interested parties could be obtained. They wanted absolutely no change to the terms of this compromise, which had been obtained after long debate.

Mr. Ripert remarked that this situation could bring with it the gravest obstacles from the point of view of the delivery of the goods and estoppel, for example, in so far as the number of animals carried was concerned.

The Chairman felt that it was for national law to regulate this point.

Mr. Berlingieri objected that this would be going against the convention.

The Chairman stated this was not so because as regards all that is not regulated by the convention, freedom is reserved for national legislation.

It was decided to mention in the proceedings that it was understood that national legislation remained absolutely free to stipulate in so far as concerned live animals and deck cargo as they understood them.
**PART II - HAGUE RULES**

**ARTICLE 1**

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

- d) “Navire” signifie tout bâtiment employé pour le transport des marchandises en mer.

**ARTICLE 1**

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

- d) “Ship” means any vessel used for the carriage of goods by sea.

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**ILA 1921 Hague Conference**

*Text submitted to the Conference*

[xlvi]

In this Code:

- (d) “Ship” includes any vessel used for the carriage of goods by sea.

**Second day’s proceedings - 31 August 1921**

[80]

The Chairman: Is that agreed? (Agreed).

*Text adopted by the Conference*

[255]

No change.

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**CMI 1922 London Conference**

*Text submitted to the Conference*

*(CMI Bulletin No. 65 - Gothenborg Conference)*

[363]

In these Rules:

- (d) “Ship” includes any vessel used for the carriage of goods by sea.

*Text adopted by the Conference*

*(CMI Bulletin No. 65 - Gothenborg Conference)*

[375]

In these Rules:

- (d) “Ship” MEANS any vessel used for the carriage of goods by sea.
ARTICLE 1

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

e) “Transport de marchandises” couvre le temps écoulé depuis le chargement des marchandises à bord du navire jusqu’à leur déchargement du navire.

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

e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvi]

In this Code:
(e) “Carriage of goods” includes the period from the time when the goods are received on the ship’s tackle to the time of unloading from the ship’s tackle.

Second day’s proceedings - 31 August 1921

[80]

The Chairman: Is that agreed?
Mr. Howard Robinson: Mr. Chairman and Gentlemen. I beg to propose that the words “when they are unloaded” should be substituted for the words “of unloading” in definition (e). That will then read: “‘Carriage of goods’ includes the period from the time when the goods are received on the ship’s tackle to the time when they are unloaded from the ship’s tackle”.

The Chairman: Our drafting friends, no doubt, will consider it, but I am inclined myself to think that is right.

Mr. Paine: I think so.

The Chairman: Because the time of unloading is a period of time which may be expansive, but the time when they are unloaded is the point of time when unloading is complete. It is agreed to accept that amendment? (Agreed).

The question is that Article I as amended stand part of the draft. Are we agreed upon that? (Agreed).

Text adopted by the Conference

[255]

In THESE RULES:
(e) “Carriage of goods” COVERS the period from the time when the goods are received on the ship’s tackle to the time WHEN THEY ARE UNLOADED from the ship’s tackle.
**PART II - HAGUE RULES**

*Article 1(c) - The definition of “Carriage of Goods”*

**CMI 1922 London Conference**  
**Text submitted to the Conference**  
(CMI Bulletin No. 65 - Gothenborg Conference)

In these Rules:
(e) “Carriage of goods” covers the period from the time when the goods are LOADED ON TO THE TIME THEY ARE DELIVERED FROM THE SHIP.

**Morning sitting of 10 October 1922**

[334]

**Mr. A. P. Möller (Denmark):** .................................................................

Now, Gentlemen, I will make some remarks on some special clauses in the Rules as they stand, and as they differ from the Hague Rules. There is Article 1 Clause (e). The wording of the Hague Rules was “Carriage of Goods covers the period from the time when the goods are received on the ship’s tackle to the time when they are unloaded from the ship’s tackle”. That is altered in the Rules for the Carriage of Goods by Sea to “Carriage of Goods covers the period from the time when the goods are loaded on to the time when they are delivered from the ship”. Shipowners should be cautious about accepting this; and as I believe that the best interests of trade generally are best served by a reasonable freedom from restrictions, I say that merchants should also be careful about accepting it. It is an open question subject to varying decisions in the Courts of the various countries as to what is meant by “loaded on” and what is meant by “delivered”. For instance I spent five years in St. Petersburg. There the cargo was handed to the Port Authorities and it was not looked upon legally as delivered until it was actually applied for by the merchant, and that frequently took very many months. I know of a good few ports where a similar condition of affairs prevails, where the cargo is actually discharged through some Public Authority of one kind or another and remains in the custody of that Public Authority frequently for months until it is finally applied for by the owner of the Bill of Lading. Naturally it is much clearer (and it must be remembered always that we must attempt to get clearness not only in the British language and with a view to British circumstances but translated into any language and under the circumstances of any country) as to what is to be understood by the English wording or any translation of “received on the ship’s tackle”, and I cannot see that there can be any doubt about “unloaded from the ship’s tackle”, whilst the new phraseology “delivered” undoubtedly is open to various interpretations, and I say it would lead to considerable variance of practice in the various countries which is just in the opposite direction to what is desired.

In Article II similar alterations in the wording have been made and the same thing applies there.

[350]

**Sir Norman Hill:** .................................................................

There are minor points which I think it would be quite impossible to discuss at a meeting like this. We hit for example at the Hague on the expression “from the time when the goods are received on the ship’s tackle to the time when they are unloaded from the ship’s tackle”. When I talked it over with the cargo interests here I was told: “We will assume a full cargo of bulk petroleum; it is pumped on board; it is pumped out; when does the ship’s tackle begin and when does the ship’s tackle end?” I was told: “You will have wheat; the wheat is pumped on board by shore elevators and pumped out by floating elevators; what is the precise time that you cease to use the ship’s tackle; the same considerations apply to coal under the tips. You, you cannot
really now use that as a general term”. I agree and I think that what the Rule means is
that it is from loading to unloading. I agree I think we got into “delivered” a little hasti-
ly, but I think even as it stands it is quite clear that it is delivered from the ship and de-
livered from the ship is the same as unloaded from the ship. Personally I think it would
be very much improved if we had “unloaded from the ship”. (Hear, hear).

Afternoon sitting of 11 October 1922

[448]

Sir Norman Hill (Rapporteur of the Sub-Committee):

Now there is first a preliminary point I want to clear up. The Sub-Committee in
their review assumed that the Conference is agreed that the period covered by the
Rules, which are to be international, begins with the loading on the ship, and ends with
the unloading from the ship; further that the Conference is agreed that the rights and
obligations that are to attach to the period before the loading on and after the dis-
charge from the ship must be subject to the control of the nation within whose juris-
diction the operations are performed. That is a fundamental point, and in the work we
have been doing for you this morning, we have assumed that we are all absolutely
agreed on that point, and it would help here if the Conference would indicate whether
we were right in that assumption.

The Chairman: Would you like that done now?

Sir Norman Hill: I would, because it goes right to the root of what I have to say.

The Chairman: Very well. The question is as between

the transit upon the

sea, which is the universal highway, and handling upon the land, which is the domain
of the several communities occupying the land. The Committee has proceeded upon
the footing that its function is to deal with the transactions upon the universal high-
way, and not with the incidental transactions which lead to the bringing of goods to
the ship, and which follow from the unloading of goods from the ship. The Commit-
tee has interpreted its duty as being to deal with transit upon the sea, and to limit its
recommendations to that. Is the Conference agreed with the Committee in that view?
(Agreed).

[461]

The Chairman: I think Mr. Jackson was the first delegate to rise in the course of Sir
Norman’s statement, if Mr. Jackson has either a query or a representation.

Dr. Eric Jackson: There are certainly some points which I think the Conference as
a whole ought to have before them. The first point placed before you by Sir Norman
Hill, was the question of the period of time within which the rules should govern bills
of lading.

On what is intended by the Report I think a difficulty arises on Article 1 e) the time
from loading on, to the time when they are delivered from the ship as it stands at pre-
sent. As I understood at the Committee meeting this morning, the American re-
[462]presentatives had great difficulty in accepting the words “delivered from” be-
cause “delivered from” may have some technical meaning under their statutes. The
Federation for whom I act have placed great reliance upon the words “delivered from”
which they had adopted from the Imperial Shipping Committee’s Report. To meet this
difficulty I suggested that if my Federation could agree we should have the word “dis-
charged” used instead of the word “delivered from”, and I understood that members
of the Committee agreed to that, and I am pleased to say that I have now consulted my
Chairman and although he thinks we are making a great concession, because we are
departing from the words given to us by the Imperial Shipping Committee, still we would accept the word “discharged”.

**The Chairman:** Just one moment, because we must take care to be able to do our business if we can. Sir Norman, is there any difficulty in your view in Article 1 e) in making the termination of the period of “Carriage of goods” the time when the goods are discharged from the ship?

**Sir Norman Hill:** No, Sir, I hope, I have made it clear. If it is quite clear what the Conference wants, that the rules are to cover the period from the loading on to the discharging from, then there are drafting amendments required in a good many rules, but they are purely verbal expressions.

**The Chairman:** I do not understand that Mr. Jackson at all challenges that. He want to be clear that in [463] the definition clause, the document we have before us, goes on that the time of discharging from is the terminus ad quem.

**Sir Norman Hill:** I think that would necessarily follow. If the Conference accepts the view that I have put forward, then it will be the appropriate word. I cannot think of a more appropriate word.

**The Chairman:** You are at one upon that.

**Dr. Eric Jackson:** I understood the Committee were at one upon that and accepted the word “discharged”. I just wanted to make that clear because Sir Norman in his remarks used the word “unloaded” and I wanted to say that we agreed to “discharged”.

**The Chairman:** Do not let us get into a debate about it. I take it that the Conference will accept, as the limitations of the period of Carriage of Goods, these limitations beginning at the time when the goods are loaded on the ship and terminating at the time when they are discharged from the ship. Is the Conference agreed upon that? (Agreed).

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**Text adopted by the Conference**

(CMI Bulletin No. 65 - Gothenborg Conference)

[376]

**In these Rules:**

(e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are DISCHARGED from the ship.

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**Conférence Diplomatique - Octobre 1922**  
Séances de la Sous-Commission  
Première Séance - 19 Octobre 1922

**Diplomatic Conference - October 1922**  
Meetings of the Sous-Commission  
First Session - 19 October 1922

[185]  

**M. Molengraaff**, Délégué des Pays-Bas, signale, à propos de l’article 1 (e), que, d’après la loi hollandaise, “transport des marchandises” s’entend des opérations qui s’étendent du moment de leur livraison au capitaine au moment de leur remise au consignataire. D’après le projet, les porteurs de connaissements ne

**Mr. Molengraaff**, delegate from the Netherlands, indicated, with regard to article 1(e), that under the Dutch legislation “carriage of goods” included activities extending from the time of delivery to the captain up to the time of delivery to the consignee. According to the proposed draft, holders of bills of lading
se trouveraient donc pas à l’abri des risques pendant toute la durée du transport tel que l’entend la loi hollandaise. La responsabilité du capitaine vis-à-vis de ces porteurs varierait suivant la loi applicable. La constatation des dommages et la détermination de l’auteur responsable en seraient rendues difficiles pour le récepteur.

M. le Président répond à cette remarque qu’à son avis il faut s’en rapporter à ce sujet aux lois et règles en vigueur dans les divers pays. D’après ces lois, la durée du risque varie beaucoup, [186] notamment en ce qui concerne les risques encourus depuis le déchargement jusqu’à la livraison. Mais on n’a pas voulu, dans cette Convention internationale, viser autre chose que la durée du séjour de la marchandise dans le navire. A ce propos, il convient de remarquer que l’article 7 laisse pleine latitude aux contractants en ce qui concerne la responsabilité du transporteur après le débarquement.

Un membre demande quelle doit être la portée de cet alinéa en corrélation avec le 4° de l’article III.

M. le Président fait observer que, comme le déchargement précède la livraison et que le 4° de l’article III ne vise que le voyage à bord du navire, jusqu’au moment du déchargement, toute réclamation pour les dommages ultérieurs devra s’exercer suivant le droit commun, les lois nationales ou les conventions particulières, l’avant-projet de convention demeurant étranger à des cas de l’espèce. Il reste toutefois entendu qu’il y a dans tous les autres cas, présomption sauf preuve contraire que le dommage est survenu pendant le transport en vertu du connaissement.

Sir Leslie Scott estime que non, car dans l’alinéa (e) il est dit que le transport would therefore not be covered against risks associated with the entire duration of carriage as under Dutch legislation. The responsibility of the captain vis-à-vis the holder would vary according to the law that applied. The calculation of damages and the determination of the responsible party would be made difficult for the consignee.

The Chairman replied to this comment that, in his opinion, it was necessary to refer on this point to the laws and rules in force in the various countries. According to these laws, the duration of the risk varied greatly, [186] especially as far as concerned the risks incurred from unloading to delivery. But it had not been intended in this international convention to consider anything other than the time the goods were on board the ship. In this regard, it is worthwhile noting that article 7 left full latitude to the parties concerning the carrier’s responsibility after discharge.

One member asked what the scope of this paragraph should be in relation to article 3(4).

The Chairman observed that, as discharge precedes delivery and as article 3(4) dealt only with the voyage on board the ship, up to the time of discharge, any claim for later damages would have to be made under general law, national legislation or special conventions, the draft convention having nothing to do with these cases. It remained perfectly understood that in all other cases, there was the presumption, in the absence of proof to the contrary, that the damage occurred during the carriage under the bill of lading.
Article 1(c) - The definition of "Carriage of Goods"

M. Sohr signale que l’article 7 aussi dit qu’aucune disposition de la convention ne défend à un transporteur ou un chargeur d’insérer des stipulations, restrictions ou exonérations concernant la garde, le soin et la manutention des marchandises antérieurement au chargement ou postérieurement au déchargement du navire.

M. Sindballe fait remarquer qu’il existe des connaissements ordinaires portant la clause “avec transbordement”, c’est-là une forme de connaissement tenant le milieu entre le connaissement ordinaire et le connaissement direct, tombent-ils également sous l’application de la convention? A son avis le connaissement direct devrait être régis par la convention, mais le monde des affaires ne l’accepterait point. Sans doute une partie du voyage ne se fait pas par navire, mais si les différentes parties d’un voyage sous l’empire d’un connaissement direct ne sont pas régis par la Convention, la conséquence en est que celui qui émet un connaissement direct peut s’exonérer de sa responsabilité pour l’une quelconque des parties du voyage, soit celle qu’il effectue lui-même, soit celle accomplie par une autre ligne.

Sir Leslie Scott déclare que c’est le transport par mer uniquement qui sera régis par la convention, mais non le transport par terre avant ou après le transport par mer. Peu importe qu’il y ait un connaissement ordinaire ou un “through bill of lading”, qu’il y ait un ou deux navires en cause, le trajet par mer tombera toujours sous l’application de la convention.

M. Sindballe trouve cette interprétation satisfaisante et il désirerait que mention en soit faite au procès-verbal.

Sir Leslie Scott ajoute que sous ce rapport le texte anglais est beaucoup plus clair que le texte français.

Sir Leslie Scott added that in this respect the English text was much clearer than the French text.
ARTICLE 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvi]

Article 2. - Risks.

Subject to the provisions of Article 5, under every contract of carriage of goods by sea the carrier, in regard to the handling, loading, stowage, carriage, custody, care, and unloading of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, hereinafter set forth”.

Second day’s proceedings - 31 August 1921

[80]

The Chairman: The question is that Article 2 stand part of the draft. Does Mr. Cleminson offer any observations? I interposed in Mr. Cleminson’s remarks.

[81]

Mr. Cleminson: I think the general cargo trade will be quite content to raise their point later on Article 3(3), sub-sections (b), (c) and (d). They have the great advantage that they are limited to that particular point.

The Chairman: Then the question is that Article 2 stand part of the draft. (Agreed).

Mr. McConnechy: Just one word about “Risks”. Would you call it “Condition”? In Article 2 “Risks”, I should have thought the word “Risks” should be “Conditions”.

The Chairman: The draughtsmen thought that “Risks” was the best general description, because the Article deals with the distribution of rights and liabilities arising in respect of risks.

Text adopted by the Conference

[256]

No change.
PART II - HAGUE RULES

CMI 1922 London Conference
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(CMI Bulletin No. 65 - Gothenborg Conference)

Article 2 - Risks.
Subject to the provisions of Article 6, under every contract of carriage of goods by sea, the carrier, in regard to the receipt, handling, loading, stowage, carriage, custody, care, and unloading and delivery of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

Diplomatic Conference - October 1922
Meetings of the Sous-Commission
First Session - 19 October 1922

Mr. van Slooten, delegate from the Netherlands, considered that the enumeration in the article was redundant.

The Chairman and Mr. Langton, delegate from Great Britain, indicated that without this enumeration, the interpretation and application of the principles set forth in this article would become extremely difficult in their countries.

After this explanation, the article was adopted without further comment.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Deuxième Séance Plénière - 6 Octobre 1923

M. le Président reprend l’examen de l’article 2. Il propose de remplacer dans le texte français les mots “sous réserves des stipulations” de l’article 6 par “sous réserves des dispositions de l’article 6” et de dire plus loin: “quant au chargement, à la manutention, à l’arrimage, au trans-
port, à la garde, aux soins et au déchargement”.

and further on saying: “in relation to the loading, handling, stowage, carriage, custody, care and discharge”.
The commission supported these proposals.

Septième Séance Plénière - 9 Octobre 1923

M. le Président (Louis Franck) . . . .
A l’article 2, on n’a apporté à la rédaction que quelques modifications de détail dans le texte français, pour mieux rendre le sens des expressions anglaises arrêtées précédemment.

Seventh Plenary Session - 9 October 1923

Mr. Louis Franck (Chairman) . . . .
In article 2, there had been but a few drafting changes in the French text so as to make clearer the meaning of the English expressions previously drafted.
ARTICLE 3

1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:
   a) Mettre le navire en état de navigabilité.

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
   a) Make the ship seaworthy.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvii]

Article 3 - Responsibilities and Liabilities.
1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to-
   (a) Make the ship seaworthy.

Second day’s proceedings - 31 August 1921

[81]

The Chairman: It is the will of the Committee that Article 3(1) stand part of the draft?

Mr. Algot Bagge: May I ask a question in regard to the relation existing between 1 and 2? In 1, it is provided that the carrier is bound to make the ship seaworthy. In the Canadian Act, it is stated “to make and keep the ship seaworthy”. Now, I suppose there are two ways of taking care of the goods: the one is the direct way, and the other is the indirect way. The indirect way is to make and keep the ship in seaworthy condition, so that the goods are not damaged whilst they are carried. The direct way is, I suppose, to take due care of the goods whilst handling, loading and stowing them. I should like to know whether No. 2 does cover the indirect way of taking care of the goods, or whether it merely refers to the direct way, when handling the goods? If it does not, I suppose it would be better to put in the words “keep the ship seaworthy”; otherwise, in the event of the voyage having begun, if the shipowner does not keep the ship seaworthy, it would not be covered by 1 or 2.

[82]

The Chairman: I should like to hear what Sir Norman Hill has to say, because my impression is that the intention here is that the shipowner shall be obliged to have the ship during the voyage in a seaworthy state; that is, not only to send it forth in a seaworthy state, but to maintain it during the voyage, and that the word was used with that intent, but Sir Norman Hill will tell the Committee.

Sir Norman Hill: Mr. Chairman. The words in the Canadian Act are “to make and keep”. Those are not the words in the Harter Act. As I understood it, and I think that is as the cargo interests generally understood it, the obligation in regard to seaworthiness is up to the time of starting on the voyage. To begin with, before you start loading your cargo you must have a seaworthy ship, a ship worthy to take that cargo, and when she leaves on the voyage she must still be seaworthy. If you go further than that,
and you say that there is an absolute obligation on the part of the shipowner to keep the ship seaworthy throughout the voyage, then, of course, you render quite valueless most of your exceptions. For instance, if, through the negligent navigation of the pilot, the ship is run on the rocks and holed, she ceases to be seaworthy. There cannot be an overriding obligation on the shipowner to keep the ship seaworthy throughout the voyage: he is excused, and we all agree, as I understand, that he should be excused, because the damage has been done through negligence in the navigation. When this was drafted, I think all of the interests clearly agreed that the obligation, and the only obligation, they wanted to put on the shipowner was that the ship shall be seaworthy when she starts loading, that she shall be seaworthy when she starts on the voyage. If he has done that, he has done his duty, and then the voyage is made under the conditions set out in No. 2, and with the exemptions set out in Article 4.

The Chairman: The observation I made at the outset was too wide, and I see that Article III 1. provides for responsibility at the beginning of the voyage.

Sir Norman Hill: That is right.

The Chairman: That is evidently the intent of the draft; and the cargo interests, by whom the draft of Article 3 was considered, had before them the Harter Act and the Canadian Act, and various other statutes and recommendations, and they came to the conclusion that the right point of time at which to begin to relieve the shipowner from responsibility for negligence during the voyage was satisfied by framing Article 3(1) in the way in which it stands.

The Chairman: Now the Committee has heard what has been said about the question. I put the question. The question is that Article 3(1) (a) stand part of the draft (Agreed).

Text adopted by the Conference

No change.
M. van Slooten, Délégué des Pays-Bas, propose de remplacer le mot “mettre” à l’article 3(1) (a), par “maintenir” le navire en état de navigabilité.

Après discussion, il est admis que cette modification détruirait le sens et la portée de l’alinéa, qu’on ne peut raisonnablement imposer au propriétaire de navire l’obligation de maintenir en état de navigabilité un navire qui se trouve en haute mer. Tout ce qu’on peut exiger, c’est qu’il prenne toutes les mesures nécessaires afin que son navire soit en bon état de navigabilité lorsqu’il se trouve sous son contrôle dans le port.

A l’article 3(1)(a), M. van Slooten a proposé de préciser le sens de “seaworthy” ou “état de navigabilité”, en remplaçant cette expression par les mots “mettre le navire raisonnablement en état d’accomplir le service auquel il est destiné”.

Etant donné les longues discussions qui ont lieu à ce sujet, M. le Président met la proposition aux voix.


En conséquence, l’amendement de M. van Slooten n’est pas adopté.

M. le Président. Nous pouvons approuver la décision de la Commission maintenant la rédaction de cet article. (Adhésion).
Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Septième Séance Plénière - 9 Octobre 1923

[119]

M. le Président (Louis Franck) . . . . . . .

Quant à l’article 3, il fixe dans son paragraphe 1er des règles nouvelles sur la navigabilité - réforme importante qui est en faveur des armateurs en somme et qui adopte d’une façon internationale des principes sur cette question de navigabilité qui étaient jusqu’ici contradictoires en pratique. L’armateur est tenu de prendre les soins énumérés pour que le navire soit en état de tenir la mer et de transporter sa cargaison; mais s’il a fait diligence au début du voyage, on ne peut lui demander qu’il garantisse qu’en cours de voyage les conditions requises soient maintenues.

Conférence de Stockholm du CMI - 1963
Rapport de la Commission sur les clauses des connaissements

[89]

11. Diligence raisonnable pour mettre le navire en état de navigabilité (Art. 3 (1) et 4 (1)).

L’Article 3 (1) dispose:
“Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour (a) mettre le navire en état de navigabilité; ...”

L’Article 4 (1) dispose: “Ni le transporteur ni le navire ne sont responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité...”.

En février 1961 la Chambre des Lords a rendu un jugement selon lequel un propriétaire de navire n’a pas exercé une diligence raisonnable de la manière requise en remettant son navire entre les mains d’un réparateur compétent qui aurait dû accomplir sa tâche particulière

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Seventh Plenary Session - 9 October 1923

[119]

Mr. Louis Franck (Chairman) . . . . . . .

In article 3, new rules on seaworthiness were accepted - an important reform that, in general, benefited the shipowners and adopted internationally the principles on the matter of seaworthiness that had been, until the present, inconsistent in practice. The shipowner was responsible for taking those measures outlined to make sure the ship was in a fit state to put to sea and carry its cargo. But if he had fulfilled his duties at the beginning of the voyage, it was not possible to ask him to guarantee that during the course of the voyage the requisite conditions should be maintained.

CMI 1963 Stockholm Conference
Report of the Committee on Bills of Lading Clauses

[89]

11. Due diligence to make ship seaworthy (Art. 3 (1) and 4 (1)).

Article 3 (1) provides that:
“The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to (a) Make the ship seaworthy; ...”.

Article 4 (1) provides that “Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence by the carrier to make the ship seaworthy...”.

In a decision given in February 1961 The House of Lords held that a shipowner had not exercised due diligence in the required manner by putting his ship in the hands of competent repairers who should have done a particular job [90] competently but who failed to do so with the result that cargo damage occurred because the particular job had not been properly done (The
Article 3 (1)(a) - Seaworthiness

avec compétence mais qui ne l’a pas fait, de sorte qu’un dommage pour la cargaison en est résulté, la tâche particulière n’ayant pas été exécutée de manière appropriée (le “Muncaster Castle”, [1961] 1 Lloyd’s Report, pages 57/91).

L’attention de la Commission a été attirée sur ce cas, pour qu’elle prenne en considération l’opportunité d’amender l’Article 4 (1) à la suite de la situation créée par ce jugement.

La Commission a dû constater que la situation était compliquée. Il est apparu, qu’en vertu de la Convention sur les connaissements, le transporteur a selon la terminologie juridique française une “obligation de moyen” alors que la décision de la Chambre des Lords établit une “obligation de résultat”.

La Commission estime que l’interprétation donnée par les tribunaux du Royaume-Uni et des États-Unis aux Règles de La Haye place un fardeau bien plus lourd sur le transporteur que ce n’est le cas dans d’autres pays.

L’existence de cette différence en dépit de l’application des Règles de La Haye, pourrait peut-être s’expliquer dans une certaine mesure par la différence des termes employés dans l’édition anglaise et française de la Convention sur les connaissements. Dans le texte anglais figurent les mots: “due diligence” alors que le texte français porte “diligence raisonnable”.

La Commission est arrivée à la conclusion que les efforts en vue d’arriver à une règle interprétative uniforme sur ce point se heurteront à une différence d’opinion fondamentale esquissée ci-dessous, à savoir:

La Convention dans l’édition originale française d’une part et l’attitude de la loi Anglo-Saxonne de l’autre.

Decision:
La discussion de la Commission a démontré qu’il ne sera pas possible d’arriver à une solution acceptable partout et c’est la raison pour laquelle la Commission recommande le maintien du statu quo.


This case was brought to the attention of the Sub-Committee in order that it might consider whether the position created by the judgment had made an amendment of Article 4(1) desirable.

The Sub-Committee found the position rather complicated. It would appear that under the Bill of Lading Convention the carrier has what in French legal terminology is called an “obligation de moyen” whereas the decision of the House of Lords implies an “obligation de résultat”.

The Sub-Committee believes that the interpretation of the Hague Rules by the courts in the United Kingdom and the United States places a very much heavier burden on the carrier than is the case in other countries.

Why this is so even in a case where the Hague Rules apply may perhaps to a certain extent be explained by the different wording used in the English and French version of the Bill of Lading Convention. In the English version appears the words “due diligence” whereas in the French the terms is “exercer une diligence raisonnable”.

The Sub-Committee reached the conclusion that efforts made to create a uniform rule of interpretation on this point would come up against the fundamental difference of opinion briefly set out above, that is to say the Convention in its original French version and compared with the attitude of Anglo-Saxon law.

Decision:
The discussion held within the Sub-Committee showed that it would not be possible to reach a solution which would be acceptable everywhere and for this reason the Sub-Committee recommends the retention of the status quo.

Nevertheless the Sub-Committee feels that an investigation of the actual position in the various countries on this particular point would be practical and useful. One of the members of the Sub-Committee, M. Le Doyen van Ryn vol-
qu’une enquête sur la situation actuelle dans les différents pays sur ce point particulier aura une utilité pratique. Un des membres de la Commission, Monsieur van Ryn, s’est porté volontaire pour entamer une telle enquête et certains membres de la Commission se sont engagés à fournir à Monsieur van Ryn la documentation nécessaire sur la situation dans leur pays. Le résultat de cette enquête sera publié à part.

Summary of Replies received up to April 17, 1963

[181]

11. Due diligence to make ship seaworthy (Art. 3(1) and 4(1)).

**Britain:** The Association tentatively suggests that Article 3(1) should be amended somewhat as follows:

“Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the carrier has taken reasonable care to appoint one of repute as regards competence and has taken all other reasonable precautions, the carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent subcontractor and his servants or agents).”

**Denmark:** If the C.M.I. really intends to alter the Convention (vide attitude on this point under “Future Action”) the C.M.I. should adopt an article which establishes a clear protection for the shipowner who has employed competent repairers.

**Sweden:** Should welcome that renewed efforts be made to try to find a solution to the difficulties caused by the “Muncaster Castle” decision.

**U.S.A.:** The U.S. Association seeks international uniformity on this point, preferably on the basis of amendment of the Hague Rules to assure that the jurisprudence of all countries will be brought into accord with the jurisprudence of the U.S. and England.

Monsieur le Doyen J. van Ryn, Member of the Subcommittee, who accepted the task to investigate the actual position in the various Countries in respect of “due diligence” has kindly submitted the following report, dated Brussels the 31st March, 1963.

“La Commission internationale m’a chargé de recueillir des renseignements au sujet de l’interprétation donnée dans les principaux États contractants à la disposition de l’article 3(1) de la Convention de 1924.

Le but de cette enquête est notamment de rechercher si la décision en 1961 par la Chambre des Lords (The “Muncaster Castle” [1961], Lloyd’s Rep. pp. 57/91) est en concordance ou non avec la jurisprudence des autres pays. En cas de divergence, il pourrait être utile de tenter d’élaborer une règle interprétative permettant d’assurer l’uniformité du droit maritime sur ce point.

Le cas tranché par l’arrêt précité peut être résumé comme suit: le propriétaire d’un navire, pour mettre celui-ci en état de navigabilité, le confie à un chantier de réparations navales de premier ordre; en fait, les réparations n’ont cependant pas été exécutées dans toutes les règles de l’art, et ces réparations défectueuses entraînent l’avarie de certaines marchandises transportées. Le propriétaire peut-il être considéré comme ayant exécuté son obligation d’exercer une diligence raisonnable pour mettre le navi-
Article 3 (1)(a) - Seaworthiness

re en état de navigabilité? L’arrêt de la Chambre des Lords donne à cette question une réponse négative. Le propriétaire répond donc, non seulement de ses défaillances personnelles, mais aussi de celles du réparateur auquel il s’est adressé.

Je résumerai ci-après les renseignements recueillis au sujet de la solution donnée à cette question ou à des questions analogues dans les différents pays dont les Associations ont bien voulu me documenter.

1. - Suède.
   Bien que la question n’ait pas été expressément tranchée par les cours et tribunaux (le seul cas où elle aurait pu se poser ayant donné lieu à un règlement amiable), on admet que le transporteur n’échappe pas à sa responsabilité, relativement à la navigabilité, par le seul fait que le navire est régulièrement inspecté et vérifié par une société de classification, ni par le seul fait de demander à un tiers (un chantier naval, un ingénieur naval indépendant, etc.) d’examiner (look after) le navire. L’agrément du navire par une société de classification ou par une autorité officielle fera néanmoins considérer, en principe, que le transporteur n’a pas manqué à son obligation d’exercer une diligence raisonnable. D’autre part, en cas de négligence ou de faute dans l’exécution des réparations par le chantier naval, il faudrait appliquer la règle générale du droit suédois selon laquelle un contractant n’est pas responsable de la négligence commise par un sous-traitant indépendant.

   L’absence de toute décision judiciaire laisse planer, semble-t-il, une incertitude assez grande sur l’état actuel du droit suédois en la matière.

2. - Pays-Bas.
   Avant l’introduction des Règles de La Haye (en 1956), la jurisprudence considérait que le transporteur est responsable de la mauvaise qualité des réparations ou de l’inspection, même si ces tâches ont été exécutées par un chantier ou par une société de classification de premier ordre désignés par le transporteur - à moins qu’il ne s’agisse d’un défaut pratiquement impossible à découvrir sans procéder au démontage complet des installations du navire.


3. - Italie.
   Il n’y a pas de décision judiciaire sur la question.
   Mais elle devrait, semble-t-il, être résolue par l’application du droit commun, selon lequel (art. 1228 du Code Civil), le débiteur est en principe - sauf dérogation conventionnelle - responsable des fautes commises par ceux auxquels il recourt pour exécuter ses obligations.

4. - France.
   La loi française impose expressément au transporteur une obligation de résultat (art. 4).
   Bien qu’aucune décision judiciaire relative à un cas d’application de l’article 3(1) ne nous ait été communiquée, il semble que l’application du droit commun doive conduire à la même solution qu’en Italie.
Examinant plus particulièrement la responsabilité contractuelle des substituts, les mêmes auteurs écrivent (n° 992, p. 1034): “Elle s’explique essentiellement par la volonté des parties. Le débiteur promet un certain résultat ou une certaine diligence. Il peut lui être permis de se substituer un tiers pour le tout ou partiellement. Mais c’est lui qui assumait l’obligation et qui l’assumait entièrement. Le contrat par lui-même implique donc, sauf clause contraire, que le débiteur garantisse le fait de son substitut, même s’il l’a choisi avec soin, et bien que ce substitut soit dans une large mesure un tiers, ce que n’est pas le préposé”.

5. - Etats-Unis.

In n’y a pas d’arrêt de la Court Suprême des Etats-Unis sur la question qui nous intéresse. Parmi les décisions des autres juridictions qui m’ont été communiquées, j’en ai relevé quelques-unes qui paraissent relever une orientation semblable à celle qui a été consacrée par la Chambre des Lords dans l’affaire du “Muncaster Castle”. Aucune décision en sens opposé n’a été portée à ma connaissance.


2) Le propriétaire ne peut s’exonérer de sa responsabilité en faisant valoir qu’il a fait examiner son navire, après un accident en cours de voyage, par les capitaines de deux autres navires et par un agent maritime, - en l’absence de tout inspecteur du Lloyd au port de chargement: Willow Pool, 12 F Supp. 96 (S.D.N.Y. 1935), affirmed 86 F 2d 1002 (2d Cir. 1936).

3) Dans un cas d’avarie par de l’eau de mer penetrant par un trou provoqué par la rouille, il a été jugé que le propriétaire n’avait pas exercé la “due diligence” dont il est tenu, parce que la corrosion de la coque n’aurait pas dû échapper à l’attention des surveillants et des réparateurs, si ces derniers avaient réellement recouru aux mesures de vérification (hammer testing) qu’ils affirmaient avoir appli-[185]ées: General Motors Corp. v. The Olanco, 115, F. Supp. 107 (S.D.N.Y. 1953), affirmed per curiam without opinion, 220 Fd 278 (2d Cir. 1955).

4) Le fait de se substituer un organisme officiel (Sea Service Bureau) pour l’exercice de la diligence raisonnable (delegation of the duty of due diligence to the Sea Service Bureau) ne constitue pas, en soi, un défaut de diligence de la part du propriétaire; mais ce dernier pourrait être rendu responsable d’un défaut de diligence dans le chef du Sea Service Bureau (en l’espèce, il fut constaté en fait que cet organisme n’était pas en défaut): James Griffiths, 84 F. 2d 785 (9th Cir. 1936).

6. - Danemark.

Suivant la jurisprudence de ce pays, l’étendue de l’obligation imposée au propriétaire par l’article 3(1) doit être déterminée par référence aux principes généraux, ce qui conduit à considérer que le propriétaire doit prendre toutes les mesures que l’on peut attendre d’un propriétaire prudent et conscient de ses responsabilités.

Cette obligation doit être considérée comme de droit strict, avec la conséquence que le propriétaire ne pourrait se libérer de sa responsabilité éventuelle par le seul fait qu’il aurait recouru à un sous-traitant indépendant, même s’il s’agit d’une firme de premier ordre.

7. - Canada.

La question se ramène à celle de savoir si l’obligation d’exercer la diligence raisonnable est “delegable” ou non.
La jurisprudence décide qu’elle ne l’est pas. L’obligation n’est pas considérée comme remplie par le fait que le propriétaire a été simplement diligent. Elle requiert que la diligence ait été réellement (in fact) exercée par le propriétaire ou par ceux auxquels il recourt dans ce but.

S’il s’est adressé à des spécialistes compétents, la seule conséquence en sera qu’on ne pourra lui reprocher une faute personnelle et, en conséquence, qu’il pourra limiter sa responsabilité.

8. - Belgique.

La jurisprudence n’a eu à se prononcer que sur la valeur exonératoire, pour le transporteur, de vérifications et de certificats émanant de bureaux de classification réputés. Elle ne s’est pas prononcée sur le cas de fautes commises par des chantiers de réparation.

Elle considère que ces certificats constituent une présomption que le transporteur s’est acquitté de son obligation de “due diligence” (Bruxelles 25 avril 1958, J.A. 126; voy. aussi Bruxelles 10 mars 1951, J.A. 231).

Mais cette présomption peut être renversée. Elle l’est notamment - et la responsabilité du débiteur du fait de celui qu’il s’est substitué est reconnu par la doctrine: De Page, Droit civil, II, n° 592, et ce non pas seulement dans le cas où le contrat exigait l’exécution personnelle: id. La loi n’y déroge que dans le cas du mandat: art. 1994 du Code civil, quand le propriétaire était autorisé à se substituer une autre personne: hors de ce cas, le droit commun s’applique, et le débiteur répond de ceux à qui il a confié l’exécution de ses propres obligations.

**Conclusion**

Sauf une légère réserve en ce qui concerne le droit suédois, il semble que dans tous les pays ci-dessus mentionnés, le transporteur soit considéré comme responsable des fautes ou négligences commises par les tiers (sociétés de surveillance, bureaux de classification, chantiers de réparation, etc.) auxquels il s’en remet pour la vérification de l’état du navire et pour l’exécution des réparations nécessaires.

Il ne semble donc pas que l’article 3(1), ait donné lieu à des interprétations divergentes.

**Committee on Bills of Lading Clauses - Verbatim Reports**

**No. 7 - 12 June 1963 A.M.**

**M. Le Président.** Nous en avons ainsi terminé avec la première partie de notre travail.

Nous allons aborder maintenant les autres sujets examinés par la Commission internationale et au sujet desquels elle a estimé ne pas devoir faire de propositions. Nous ne pouvons pas examiner tous ces sujets et je crois que ce n’est pas indispensable mais je vous propose d’examiner en tout premier lieu celui qui paraît avoir l’importance la plus grande et qui a tout spécialement retenu l’attention de l’Association britannique: c’est la question de la “due diligence” telle qu’elle se présente à la suite de l’arrêt du “Muncaster Castle”.

Comme vous le savez, l’Association britannique, dans ses commentaires, fait à ce sujet une proposition qui figure dans la brochure n° 3 à la page 9.
Je voudrais demander au représentant de l’Association britannique de bien vouloir justifier cette proposition.
La parole est à M. Miller.

Mr. C. Miller (Gt. Britain). Mr. President Gentlemen, you must be by now more tired of hearing me speak to you than I am of having to address you, but I am afraid that on this occasion I shall have to take up a little of your time to explain this which we of the British Maritime Association consider the most important point raised by the Sub Commission. You will recollect that at the opening session I particularly avoided going into any detail upon this or indeed any of the other points raised by the Sub-Commission because I thought and still think, that it is this Sub-Commission which is the proper body to consider these matters more profoundly. Now the interpretation of the obligation to use due diligence to make the ship seaworthy before and at the beginning of the voyage as interpreted by the English Court, and to a lesser extent, and upon this matter we are of course entirely in the hands of our colleagues in the United States, by the United States lays an unreasonable liability upon the shipowners and one which was never intended by the framers of the Convention. Now of that statement there can be no possible doubt. We in the British Maritime Association and I am quite certain that this goes for all the other associations as well have considered this matter very carefully indeed, together with all the representatives of cargo in our industry who are all represented upon our association, for many months and it is on their authority as well as with the authority of shipowners that I make that statement. Now the question is why has that arisen, and how can it be cured. It has arisen in this way, the phrase “due diligence” was first used in any statute as far as we can ascertain in the United States Harter Act of 1893. I have been unable to trace who was the actual inventor of that unhappy phrase, but it was used. Now long before the 1924 Convention the English Courts, considering that the obligation to exercise due diligence was incorporated verbatim in the bill of lading, decided that such obligation [142] was an obligation casting a duty to other people, in other words, the owner is liable, for if the ship is unseaworthy in fact owing to the lack of due diligence on the part of any person whom he employs as ship repairer there is no evidence that he was entitled to consider the ship repairers to be competent.

That indeed was the basic position in the “Muncaster Castle” case which was decided by the House of Lords in 1962. The main difficulty is this, gentlemen, that even if the English text of the 1924 Convention had more strictly translated the official French text which uses the words “diligence raisonnable” as reasonable diligence exactly the same result would have ensued in our Courts because the point is not what the meaning of due diligence is but what is the obligation cast upon the carrier by the Convention, what in law what kind of animal is it, and it has been decided that it is a duty which if not performed by the carrier himself is delegated by the carrier to some other person is a duty which the carrier cannot avoid by delegation.

Now then that being so and that being the legal position one turns to the practical consideration, the business consideration, and of course it is absolute nonsense to suggest that the carrier himself should repair a ship after a heavy collision or indeed during the classification repair. He would get a gang of men to put the ship into repair because he would not be allowed to use anybody else’s dry dock. It is absolute nonsense and of course I am expressing a personal opinion it is quite incredible. No courts should have considered that the highly intelligent people who drafted the Harter Act and later the 1924 [143] Convention could ever have thought that they were casting such an obligation upon the shipowner. However, if I may express that criticism here without getting into trouble on the subject because in my country I might get into trou-
Article 3 (1)(a) - Seaworthiness

ble of contempt of court. We’ve got to put it right and the only question is under what circumstances should the carrier be considered to have exercised due diligence.

Our President has referred to the report of the British Maritime Law Association, I think it is in the little yellow brochure 3 before you but since that time we have established and of course sent to the Secretariat the final report of April 30th 1963 and I hope you all have it.

Now the proposition that we make which starts on page 11 is a proposition which is the result of very careful consideration and the result of agreement with our cargo interests. Now may I just explain what the suggestion is, I believe the question is under what circumstances should the carrier be considered to have exercised due diligence and we suggest that there are three with two provisos. The first circumstance in which he should be considered to have exercised due diligence is the employment of classification surveyors who are experts or in the service of the shipowners. They are rather like watchdogs and somewhat like accountants in the land corporation, to see to the requirements of the Classification Society, which are even more onerous than this, most of them legal liabilities, are fulfilled.

The second circumstance is the employment of shipbuilders and ship repairers and the other is other independent contractor, but we have three provisos that we think should be conditions imposed upon [144] the shipowner if he is to enjoy this exemption limiting the burden cast upon him. At present it is that the circumstances must be such that it is appropriate to employ such contractors, by that we mean that is appropriate in the normal course of the ship’s operations to employ an independent contractor such as a ship repairer to carry out the duty of making the ship seaworthy. The second proviso is that the carrier must select a contractor of good repute. Now it is quite obvious to us that if he selects any yard in this country or in Holland it would be ipso facto of good repute, but that does not apply all over the world, and therefore the carrier is not to have this benefit unless he has honestly selected a yard of good repute that is required. The third proviso that we make is that the carrier and his servants must take such provisions as would be reasonable in the circumstances to supervise and inspect the work done. Now by that we mean this, if one of the big, famous and well-established liner companies puts in its vessel it is left for repair say under classification under the four yearly classification survey it will of course choose a yard of repute quite apart from what we are saying now but it will have a large staff of technical superintendents and marine engineers and superintendents and it would be normal and right for these experts to be in attendance from time to time having a look to see what the yard was doing. No one who has any knowledge of ship repairs would say that they should be there all the time, but in the normal course of events a shipowning company of that eminence would naturally we would say have periodical inspections by its own technical staff, but if a little owner who would not have and could not afford a highly qualified technical staff of marine and engineer superintendents puts in his ship for repair well then you cannot expect him by himself to supervise so satisfactorily as you would expect the [145] liner company so he would in certain circumstances employ marine surveyors. It is all a question for the unfortunate judge who has to deliver judgment on a case of this kind. We suggest that this should be conditional upon his exercising a proper supervision where the circumstances make it reasonable to do so.

Finally, we limit this modification to the term repair and maintenance of the ship. I must apologise gentlemen for having put in our report so late as the 30th April which may have caused some inconvenience to the secretariat but it was because of these discussions with our cargo interests which necessarily took a very long time. So far as those that are mainly concerned with shipowners’ interests only this is not so difficult for us to get what I may call the official view from the Chamber of Shipping, but for
our cargo interests not only have we to consult our cargo underwriters who are not all in London but we have also to consult independent shippers which means consultation among Chambers of Commerce. You cannot do that in a minute but it has all been done and what we are putting before you is the supported view of our Association.

Now may I refer you to the British amendment which I have got in our own report and I trust it is exactly the same in the book before you. What we are suggesting is this and I should say that our suggested amendment embodies all these principles which I have explained to you already. We think that Article (3)1 should be amended by adding a proviso directly after sub-paragraph c. I am quoting of course from the 1924 Convention as it is at present drafted and our paragraph is necessarily a little lengthy because we have to keep to these principles but we have endeavoured to make it as concise as possible.

[146-150]

Provided that if in circumstances in which it is appropriate to employ an independent contractor including a classification society the carrier has taken care to employ one of repute the carrier shall not be deemed to have failed to exercise due diligence solely by reason of act or omission on the part of the said independent contractor, his servant or his agent including any independent sub-contractor, his servant or his agent in respect of the construction repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this proviso was absolving the carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such independent contract as aforesaid. Now we think gentlemen, that that does the trick, and you will notice particularly the stress that I laid upon the word “solely” because there may be circumstances in which the carrier has appointed a ship repairer of repute but there has been negligence on the part of one of the employees of the ship repairer, but there are other factors which enable the court to hold that the carrier or his servant have themselves been negligent and if all that can be said against the carrier is that in the circumstances a reputable ship repairer has been negligent then the carrier is not to be deemed to have failed to have exercised due diligence.

I would point out that we are only working for a very limited relief, a relief which all our cargo interests consider to be fair and reasonable. I felt, as this is the most important point in our humble opinion before the Commission, that it was necessary to ensure that there was no misunderstanding as to the point of view which we are putting forward. Thank you.

[151]

M. Le Président. Messieurs, avant de poursuivre la discussion, je voudrais faire une observation personnelle. Ainsi que vous le savez, la Commission internationale, se rendant compte de l’importance du problème qui vient d’être invoqué, avait exprimé le désir qu’une enquête soit faite au sujet de la jurisprudence et de l’opinion dans les différents pays sur cette question. La Commission internationale a bien voulu me demander de recueillir des renseignements à ce sujet et de faire un rapport dont le texte est d’ailleurs inséré dans son propre rapport.

Je voudrais signaler que, par suite d’un malentendu que je regrette vivement, il n’est pas fait mention dans mon rapport de l’état de la jurisprudence en Allemagne. Je le regrette d’autant plus que, suivant les renseignements que j’ai, la situation en Allemagne est assez différente de celle des autres pays puisque, si je ne me trompe - et nos collègues allemands voudront bien rectifier si je commets une erreur - en Allemagne la jurisprudence admet une solution contraire à celle adoptée dans l’arrêt du “Muncaster Castle”. 
Elle considère que le transporteur n’est responsable que s’il a commis une faute dans la désignation de la société de classification ou du chantier de réparation auquel il s’est adressé. C’est seulement en cas de *culpa in eligendo* que le transporteur est responsable.

Je m’excuse d’avoir dû ajouter oralement ce complément à mon rapport mais, étant donné qu’il s’agit d’une jurisprudence qui est précisément en sens opposé de la plupart des jurisprudences européennes, j’ai voulu immédiatement signaler cette lacune de mon propre rapport à l’assemblée en m’excusant auprès de mes collègues allemands et auprès de la commission elle-même.

Ceci dit, je donnerai la parole à ceux qui désirent la prendre au sujet de la proposition britannique.

La parole est à M. Prodromidés.

**M. Prodromidés** (France). Monsieur le Président, Messieurs, la délégation française est très nettement d’avis de suivre la recommandation de la sous commission internationale consistant à dire de ne rien modifier à la Convention sur ce point. Cela veut dire que la délégation française va voter contre l’amendement britannique.

Elle a pour cela trois raisons qui sont les suivantes: en premier lieu, le but de notre Convention et de notre association est de faire une législation uniforme pour éviter les décisions contraires dans les différents pays. Or, il résulte du rapport de M. le Doyen Van Ryn sur la question de la due diligence qu’il y a une quasi unanimité dans les pays dans le sens de la décision de la Chambre des Lords dans l’affaire du “Muncaster Castle”. Pourquoi donc vouloir innover dans une matière dans laquelle pratiquement la solution est uniforme?

Ce n’est pas une raison pour ne pas le faire, malgré l’uniformité dans tous les pays en cette matière, si la solution est mauvaise en soi. On peut quand même la modifier; c’est concevable.

J’en arrive ainsi au deuxième de nos motifs. Voyons donc si la solution est mauvaise en soi. Nous estimons que cette solution n’est pas du tout mauvaise et qu’elle doit être maintenue.

D’après la Convention le transporteur maritime n’est pas responsable en cas de vice caché du navire et en cas d’innavigabilité du navire sous certaines conditions, en particulier en ce qui concerne l’innavigabilité à la condition qu’il ait exercé due diligence pour que le navire soit navigable au départ. Dans la mesure où on accorde au transporteur maritime une exonération de responsabilité en cas de vice caché ou d’innavigabilité du navire on fait déjà quelque chose de très exorbitant par rapport au droit commun car, enfin, la chose normale serait que le transporteur réponde des conséquences du vice de sa propre chose, de son propre navire. Cela montre que nous sommes dans une matière tout à fait exceptionnelle et que, par conséquent, cette solution nous ne devons pas l’étendre mais l’appliquer avec beaucoup de modération. C’est ainsi que l’on nous dit: vice caché du navire en tant que, matériellement, ce vice ne pouvait pas être décelé et innavigabilité du navire encore que vous aviez exercé due diligence ou qu’au départ tout au moins le navire fut en bon état de navigabilité.

En ce qui concerne la question de la due diligence, j’emploierai l’expression que j’ai trouvée, si je ne me trompe, dans les rapports de la délégation canadienne qui dit avec raison que la due diligence n’est pas déléguable. La due diligence incombe à l’armateur et c’est l’armateur qui doit exercer au départ, avant le départ du navire, la due diligence. Il ne peut pas la déléguer à une société de classification, si compétente soit-elle, ni à un chantier de réparation si compétent soit-il. Si cette société de classification
ou si ce chantier de réparation ont commis une faute qui pouvait [154] matériellement être décelée, l’armateur n’a pas exercé la due diligence exigée par la Convention et il est responsable.

Je viens, Messieurs, de vous donner les deux premières raisons pour lesquelles la délégation française est contre l’amendement britannique: la première c’est qu’il n’y a pas besoin d’innover dans une matière où il y a véritablement une uniformité dans presque tous les pays, et la deuxième c’est que la solution du “Muncaster Castle” est une bonne solution en soi, parfaitement juridique, parfaitement équitable.

Il y a maintenant une troisième raison, d’ordre pratique, celle-là. Je me permets d’attirer très particulièrement votre attention sur cette troisième raison. De quoi s’agit-il? Dans l’affaire du “Muncaster Castle” il s’agissait de navire qui était dans un état d’innavigabilité au départ parce que le chantier qui avait fait les réparation avait commis une faute et qu’il y avait une malfaçon dans le travail qu’il avait fait. Nous sommes donc, Messieurs, devant un cas dans lequel, incontestablement, il y a quelqu’un de responsable: le chantier de réparations qui a mal fait son travail. Si vous admettez la solution de l’Association britannique, voyez le résultat invraisemblable auquel vous allez aboutir. Moi, chargeur, dont la marchandise a été détériorée par suite de cette malfaçon du chantier de réparations je ne pourrai pas agir contre le transporteur maritime. Avec l’amendement britannique je ne peux rien lui réclamer mais, d’un autre côté, je ne peux rien réclamer au chantier parce que le chantier dira qu’il ne me connaît pas. Le chantier dira: “j’ai passé un contrat avec l’armateur du navire, j’ai un [156-160] contrat qui prévoit des clauses de garantie; je n’ai à payer quelque chose qu’à lui. Dans un cas comme le “Muncaster Castle” dans lequel vous avez, je le répète, quelqu’un qui est incontestablement responsable, qui est le chantier de réparation, vous dites qu’il ne paiera rien à personne.

Avec la solution du “Muncaster Castle”, solution qui est celle de presque tous les pays, je m’adresse à celui avec lequel j’ai contracté, le transporteur maritime, celui avec qui j’ai un lien de droit contractuel et il me paye. Lui, ensuite, se retourne contre le chantier avec lequel il est en rapport contractuel en vertu du contrat de réparation.

Telles sont, Messieurs, les trois raisons, raison d’opportunité, raison juridique et, enfin, raison pratique puisqu’avec l’amendement britannique vous allez absoudre un chantier de réparation qui, cependant est responsable puisqu’il n’aura rien à payer à personne, que je voulais vous exposer.

Pour ces trois raisons, Messieurs, la délégation française va voter à regret contre l’amendement britannique. (Applaudissements).

M. Le Président. La parole est à M. Loeff de la délégation néerlandaise.

Mr. J. Loeff (Netherlands): Mr. Chairman, ladies and gentlemen, Mr. Miller has said that this is one of the most important points before this conference. The Netherlands delegation agree, and we are in full sympathy with and understand clearly the position in Great Britain, but before deciding how to vote the Netherlands delegation would like to have some clarification and, if possible, an opportunity to discuss it among ourselves after having received this clarification, which Mr. Miller is so well qualified to give us, in order to discuss the position to be taken by our delegation.

I must start by saying that we understand that in Great Britain the gentlemen of the House of Lords have created great anxiety, but we are not quite sure that this anxiety is fully justified. As we see it, we have had similar cases in our courts which to our great regret are not mentioned in the report by Professor Van Ryn, but as we see it the “Muncaster Castle” case was very exceptional. With the gentlemen of the House of Lords there was certainly no overruling of former cases in the English courts, in the Court of Appeal the well-known case of Angliss and P. & O. in which case it was held
Article 3 (1)(a) - Seaworthiness

that the shipowner is not liable for negligence or faults made by the yard or when building the ship. The “Muncaster Castle” case was one in which faults and mistakes had been made and negligence had occurred in the hands of the repairers, so as far as I know, I hope Mr. Miller will correct me if I am wrong. The “Muncaster Castle” case deals only with a ship that has been in the hands of the owner and has been given to the yard by the owner for repairs, and leaves absolutely in full force the former decision I referred to, in the Angliss and P. & O. case.

The question is this, will it happen very often?

If we understand that case correctly, then if for instance, in the Court of Appeal when the claims of the cargo owners were dismissed on this ground which was reversed by the House of Lords, is it not so that the shipowners in the first instance in the Court of Appeal simply admitted that there had been negligence by the repairing yard and perhaps relied to confidently on their opinion that they would not be liable under the Hague Rules. Now if there is no such admission by the shipowner that a fault or mistake has been made by the yard then the position would have been that there was a latent defect which could not be traced to any negligence and so, I am sorry to say so, I hope I am wrong, is it not so in the “Muncaster Castle” case that the owners had themselves to blame for an admission made too readily?

Mr. Chairman, that is all I have to say on behalf of the Netherlands delegation. I think that if the British delegation can convince us that the view we take of the “Muncaster Castle” case and the effects of that case is wrong it is quite possible that we shall accept the British amendment, but on this very important point also for the Netherlands shipping community and Netherlands cargo interests we should like to have an opportunity for a short time of discussing it among ourselves.

Thank you.

Mr. A. Suc (Yugoslavia): Mr. Chairman, according to the views of the Yugoslav Maritime Law Association the question whether due diligence was exercised by the carrier to make the ship seaworthy is _quaestio facti_, in each case the judge will have to examine whether by applying due diligence, the notion and the [163-170] degree of which he will have to ascertain by professional standards which may vary from time to time, loss of or damage to the goods could have been avoided. The person whom the carrier has engaged to examine the seaworthiness of the ship, be it a surveyor or classification society or a shipyard or ship repairer, is irrelevant. Even the best expert may make mistakes. Relevant is only whether an examination of the ship made in due time, performed with the use of the necessary and possible standards and efficiency required in such a specific actual case would have discovered the unseaworthiness of the ship, and we feel therefore that no change in the bill of lading convention is advisable.

Thank you.

M. Le Président. Puis-je demander à M. Miller s’il désire répondre aux questions de M. Loeff?

La parole est à M. Miller.

Mr. C. Miller (Great Britain): Thank you, Mr. President. After the speeches we have heard I think the Commission might be assisted if I answer as shortly as possible the points put with his usual eloquence by Mr. Prodromidès, an eloquence which I wish that I had had when at the Bar arguing a thoroughly bad case, and also the points put by our friend Mr. Loeff on behalf of the Netherlands delegation.
Now the situation is this. As I understand it, Mr. Prodromidés argued, what more do you want than vice propre, latent defect, and the answer is that in practice latent defect is no help whatever to the shipowner. During the last forty years in which I have been intimately engaged in maritime litigation in our country I cannot think of more than a couple of cases in which latent defect was proved, and certainly in the second of these I think the decision was wrong, because I was appearing for the cargo owner. However that may be, it is very rarely that vice propre succeeds. I am grateful to Mr. Prodromidés for putting his position largely on that ground because it does show the incredible injustice of the “Muncaster Castle” decision.

The “Muncaster Castle” decision in the House of Lords is that it is no defence to a shipowner that the defect was concealed from him or his servants, that is really what vice propre was intended to be by the framers. It is no defence that the vice was pro-pre, as far as the shipowner or his servants were concerned, if it was a defect that was patent not latent to anyone at all the shipowner has no defence. That was the “Muncaster Castle” decision. I don’t understand how anybody can defend the equity in that.

Let us see where we are. Before 1924 the shipowner could certainly, at least in our law, it may have been different in the United States, exclude himself in the bill of lading from any liability whatsoever except the liability to take the freight when it was offered to him. That was rightly considered to be very unjust to the shipowners’ customers who became more and more vociferous about it and the result was after twenty years of sometimes very acrimonious argument this convention which we are now considering was produced. It represented a bargain after a bitter struggle between carriers by sea on the one side and underwriters, shippers and consignees on the other. That is the history, no-one can deny it. Before that bargain was struck the British shipowner and may be the shipowner in continental countries as well had complete freedom of contract. It was then suggested to give that up in return for an exemption depending upon his exercise of due diligence which is in effect the exercise of due diligence by other people, not by the shipowner but by other people. That is incredible. I have a fair knowledge of shipowners, not only in my own country but luckily for me elsewhere on the continent of Europe and in the United States, and all I can say is that they are not as dumb as that. It is a quite incredible bargain, and it is therefore useless to say you can rely on latent defect, as it is no good to you, because if even the humblest employee of the ship repairer knew of the defect it cannot be regarded as latent.

Now, gentlemen, regarding the pertinent questions raised by Mr. Loeff, who feels in reading the reports of the “Muncaster Castle” case that the shipowners too easily admitted there was a defect, may I explain that. In our procedure in cases in the commercial courts in this type of case the most important evidence is given by surveyors who are consulted by both sides, the shipowner on the one hand and the cargo interests on the other. In a case of this kind, and in the “Muncaster Castle” case, independent surveyors were employed on both sides in addition to the regular technical officers of the shipowners and underwriters such as the masters, marine engineers, naval architects and marine surveyors. All these gentlemen’s reports were available to the parties before the action, according to our procedure each party must disclose to the other party the reports of his own technical officers, and it was quite apparent from these reports that there was a defect in the ship due to the negligence of the ship repairers. It would have been idle, a waste of money and a waste of the judge’s time to
deny that. Before ever counsel got up and said “I appear for the plaintiffs” it was ob-
vious to everybody that that defect existed and therefore very reasonably the parties in
that case before Mr. Justice Blair opened on that basis.

The facts found by the judge were (1) there was a defect in the ship which arose
during repairs; (2) that defect was due to the negligence of a moderately humble em-
ployee of the ship repairers; (3) that neither the shipowners nor any of their technical
staff nor any of their seagoing staff could by any possibility have discovered that that
defect existed.

These were the facts found by the judge, and though the courts can interfere they
very rarely do so. These were the facts accepted by the Appeal Court and by the House
of Lords. But nevertheless because of the principle that you cannot delegate the duty
to exercise due diligence the shipowners felt because it is admitted that one of the em-
ployees of the independent contractor employed to carry out the obligation of making
the ship seaworthy was negligent, that is a very exceptional case. I wish he were right.
I am afraid not.

Within a few months of the “Muncaster Castle” an even more unjust decision had
been reached in our courts, one of the judges protesting at having to reach it but be-
ing bound to do so.

One of the ships of the British Petroleum Company, one of the biggest of our oil
companies and most careful shipowners had been running for twenty years, during the
course of which time not only had her engines been opened up regularly at classifica-
tion survey but they had been examined regularly annually, classification survey being
as you know a quadrennial affair, by highly skilled engineering superintendent staff of
the British Petroleum Company, and suddenly a crack manifested itself in the flywheel,
with the result that the ship was disabled at sea and the damages ensuing were ex-
tremely large and the cargo underwriters claimed. It was held that there had been no
lack of due diligence on the part of any of the technical staff of the British Petroleum
Company and certainly not on the part of the seagoing staff in the engine room, for by
no possibility could they foresee that this crack would develop, but that there was a
defect in the metal. Unfortunately the flywheel was not the one put in on building the
ship but had been replaced by the ship repairers. So it was a very proper vice propre.
But the manufacturers of the flywheel were certainly negligent in failing properly
to temper the flywheel steel. The shipowners were held liable. There is not mere-
ly an English problem, it is a problem that would affect you, because I can assure you,
gentlemen, if any of your ships had a damage case tried in England you would be sub-
jected to the English rule. I understand also from the United States delegation that
there is a possibility, I would not venture to put it more strongly than that, that the
Supreme Court of the United States may follow the decision of the “Muncaster Cas-
tle” case.

United States delegates: There is no basis for that whatsoever!

Mr. C. Miller (continues): I am glad to hear that because it would make me feel very
much happier. There is apprehension expressed in the Swedish report as regards this
decision and it may well be that other delegations are apprehensive of this vicious prin-
ciple being followed in their own jurisdiction. It would be sufficient to say this occurs
in England and England being a Contracting Party to the Hague Rules it should be put right. It can only be put right, in our submission, by a protocol agreed to by the High Contracting Parties.

I think I am entitled to say now that the United States are happy about the
“Muncaster Castle” decision. I would like that on oath.

Very well, gentlemen, we will see what happens. At any rate it is quite clear that cer-
tain other of the European delegations are not happy as regards their own jurisdictions. For these reasons I really do urge you to tackle this problem and give some relief to the modified extent proposed in our amendment.

Thank you.

[191-200]

Mr. P. Dukaris (Greece). Mr. Chairman, the Greek delegation will most certainly vote in favour of the British proposal because they consider that there is a most definite inequity in the decision in the “Muncaster Castle” case and in fact, we believe - and this is supported by what was said in their Lordships’ decisions - that the meaning applied to the words “due diligence” by their Lordships was the same applied in the provisions of the American Harter Act from which the relevant provisions of the Hague Rules were taken.

Now, we maintain that this meaning of the words “due diligence” is tantamount to imposing strict liability on the shipowner which is not a desirable state of affairs.

Furthermore, if such a meaning is applied, we are taken back, as I said, to the years of the Harter Act, if not back to the years of the Roman Law and the Senatus consultum nautarum cauponum et stabulariorum.

In any event, in the “Muncaster Castle”, there is a further element of injustice and inequity that the shipowner in that particular case proved to the satisfaction of the Court that he himself exercised and used all possible means of checking that his ship was seaworthy.

He had the registered Lloyd’s surveyor and his own surveyor report that the ship was seaworthy and also he has proved to the satisfaction of the Court that he had employed a reputable firm of ship repairers. In all these circumstances, the shipowner had done everything which was possible to make sure that his ship was seaworthy.

Therefore it was almost beyond his means to discover the existing defect.

For these reasons the Greek delegation will support the British proposal in principle.

[201]

M. Le Président. A la demande de plusieurs membres de la commission, je vous propose de suspendre la séance, 10 minutes, pour permettre à ceux qui le désirent, d’assister à la cérémonie du changement de la garde au Palais royal.
- La séance est suspendue à 11 h. 55.
- Elle est reprise à 12 h. 15.

M. Le Président. Quelqu’un demande-t-il encore la parole sur l’amendement britannique?

M. Prodromidés (France). Je serai extrêmement bref, pour répondre à deux points que j’ai notés dans le remarquable exposé de M. Miller. M. Miller a dit tout d’abord que la protection du transporteur par le cas excepté du vice caché, n’est pas suffisante, parce que les décisions admettant l’existence d’un vice caché sont assez rares. En France, elles ne sont pas rares. Nous avons pas mal de décisions où le transporteur a été mis hors de cause, parce qu’on a considéré qu’il y avait un vice caché.

Si, d’un autre côté, le vice caché devient de plus en plus rare, grâce aux procédés techniques qui permettent de découvrir le vice, c’est une raison de plus pour que l’armateur exerce véritablement la due diligence, pour le découvrir.

M. Miller a présenté une deuxième observation et c’est à celle-là que je voudrais répondre. Il a dit: avant la convention de 1924, les armateurs avaient la liberté contractuelle. Ils pouvaient stipuler toutes sortes d’exonérations de responsabilité et en particulier, ils auraient pu stipuler une clause d’après laquelle ils ne seraient pas responsables dans un cas comme celui du “Muncaster Castle”.
C’est précisément parce qu’on avait abusé de ces clauses d’exonération qu’on a fait la convention, pour protéger un peu aussi les porteurs de connaissances. Mais M. Miller a oublié d’ajouter que si, avant 1924, il y avait la liberté contractuelle et la validité des clauses d’exonération, chaque fois que la jurisprudence trouvait que dans le cas de l’espèce, l’exonération conduisait à un résultat inique, elle trouvait moyen d’écartner la clause d’exonération grâce à la notion de la faute lourde.

On disait: oui, vous avez une clause d’exonération, après laquelle vous ne répondez pas de deci et de cela et en particulier des fautes, mais comme il s’agit en l’espèce - j’estime, moi, juge que dans l’espèce, la faute qui a été commise est une faute lourde, la clause d’exonération ne joue pas, avec cette conséquence que ni la clause d’exonération ne pouvait jouer, ni la clause de limitation de responsabilité.

Par exemple, dans des cas d’abordage, dans des cas de faute in management, in the case of navigation of the vessel, si le juge estimait que la faute était grossière, lourde, le transporteur était responsable.

On a fait un compromis, car la convention de 1924 n’est pas autre chose qu’une sorte de transaction entre les intérêts contradictoires des armateurs et des chargeurs et à l’issue de cette transaction, on est arrivé à ce texte de la convention de 1924 qui, d’une part, ne vous permet plus, vous armateurs, de stipuler de clause d’exonération, mais qui, en échange, vous accorde toute une série d’avantages. Elle vous accorde l’exonération de responsabilité, de plein droit, dans des cas très nombreux qu’on appelle les cas exceptés, il y en a 16 ou 17 dans l’énumération de la convention, qui, d’autre part, limite de plein droit votre responsabilité, qui vous permet d’invoquer l’exonération et la limitation, même en cas de faute lourde et par conséquent, tout cela est le résultat de votre transaction.

Si chaque fois que par interprétation de la convention, on aboutit à une solution qui ne plait pas aux armateurs, on veut apporter un amendement à la convention, vous rompez cet équilibre, cette transaction et cela uniquement en votre faveur, vous armateurs.

Il faut tout de même penser un peu aussi au chargeur. Il faut aussi un peu s’occuper de la protection des chargeurs.

Comme je le disais tout à l’heure, et j’en aurai fini, en ce qui concerne l’affaire du “Muncaster Castle”, nous sommes dans un cas où l’avarie de la marchandise provient d’un défaut non de la marchandise, mais du navire.

L’équité aurait été que vous supportiez les conséquences d’une défectuosité de votre instrument de travail.

On vous dit que vous n’êtes pas responsables s’il y a un vice caché, si vous avez exercé une due diligence, au départ, mais tenez-vous en là, et à cet égard, j’appuie ce que disait M. Loeff.

Si dans le cas du “Muncaster Castle”, on a considéré que vous étiez responsable, c’est qu’on a dû considérer en fait, que le vice en question, n’était pas un vice caché. Car si c’était un vice caché, probablement la décision de la Chambre des Lords aurait été différente.

Telles sont, Messieurs, les raisons pour lesquelles la délégation française maintient son point de vue qui est de voter contre l’amendement.

Je me permets d’ajouter une dernière considération. Supposons qu’au moment du vote, la majorité ne se fasse pas dans le sens du rejet de l’amendement britannique, il me semblerait excessif qu’un [204-210] tel vote puisse être interprété dans le sens de l’adoption de l’amendement britannique, car on peut dire que cette question n’est pas suffisamment mûre dans les esprits, pour que, dès maintenant, nous puissions l’admettre.
Mr. K. Grönfors (Sweden). Mr. Chairman, the Swedish delegation is in favour of the British proposal although the matter might be subject to drafting later on.

The problem of the “Muncaster Castle” is not a purely British domestic one. We have not yet had the “Muncaster Castle” situation decided upon by Swedish courts, but we think that the result eventually would be in favour of the shipowner; that is just the opposite of the House of Lords’ decision.

The identification between the shipyard’s servants and those of the shipowner has, as far as we can find, no support in Swedish domestic Law principles and Swedish legal traditions. As it is so beautifully stated in the book “Winnie-the-Pooh”, “You can never know with heffalumps”. This is true also for Court decisions. So we cannot be quite sure.

Of course, there are many arguments in favour of the British proposal. The basic reason why the principle is a very sound one is that, after all, the carrier’s task is not to build and repair ships but to perform transportation.

M. V. Taborda Ferreira (Portugal). Il faut reconnaître avant tout que le texte que propose la délégation anglaise est extrêmement équilibré et bien balancé. Mais il ne faut pas oublier que vraiment l’ensemble de cette convention représente un équilibre entre les intérêts de l’armateur et les intérêts du chargeur du cargo.

C’est pour cela que même parmi les délégations nationales, il y a sur cette question, des courants divers; ceux qui représentent plutôt les intérêts des armateurs sont enclins à accepter la proposition britannique, ceux qui représentent les intérêts du cargo sont enclins à refuser la proposition britannique.

Si nous voulons nous libérer de cette position fondamentale et si nous voulons examiner la question d’un point de vue purement juridique, comme avocat, comme on le doit, objectivement, il faut reconnaître que la proposition britannique pourrait soulever des difficultés considérables d’interprétation. Elle pourrait soulever des difficultés assez sérieuses, pour établir la limite de la responsabilité de l’armateur et du constructeur du chantier de réparation ou de construction.

C’est pour cela que je considère, en examinant la question, indépendamment des intérêts et du statu quo qui a été établi en 1924 entre les intérêts de l’armateur et ceux de la cargaison, je considère que l’acceptation de la proposition britannique pourraient soulever, malgré le soin avec lequel elle a été rédigée, de graves difficultés d’ordre juridique.

Au lieu de simplifier et d’éviter des décisions peut-être pas tout à fait indiscutables, comme le “Muncaster Castle”, cela pourrait soulever des difficultés telles que nous soyons amenés à prendre des positions peut-être plus critiques.

Mr. W. Tetley (Canada). Mr. President, this is a very, very important amendment which we received in our booklets on Sunday when we arrived here, through absolutely no fault of the British delegation who were working so hard on it in their own country. However, we have only seen it since Sunday and I feel that perhaps we are being rushed too much. If this should come immediately to a vote, or even if it came to a vote later today, we certainly feel that we are being rushed too much if it comes to a vote before we can study it very carefully. Perhaps, Mr. President, if you are going to come to a vote, we might ask that the vote be held only this afternoon.

Secondly, I wonder very much if this is a question of bad law or bad judgment, in other words, is this bad law or bad judgment and I say it with all due respect, but I as-
sume from the remarks of Mr. Miller that he considers the Judges words “due diligence and undue diligence” as going too far. Germany has a judgment to the contrary. We have seen that Sweden may have a judgment to the contrary. We are not sure. I feel.

Therefore, I feel that not only are we being rushed into considering the amendment which has just come on the floor this morning and which we saw only last Sunday night but we do not know what other countries are going to do on this very important point, what other Courts may do. Thank you. (General applause).

Mr. W. H. Hecht (United States of America). The British proposal was received by us after our Association had had its Annual full meeting in May and so it has not been considered by our Association.

The United States delegation intends to abstain on any vote that may be held in this Commission.

There is, however, a difference of opinion in our delegation as to whether our final vote should be an abstention or a rejection and as we will have a full consultation of our delegation, our opinion will be known at the Plenary Session. But I wanted to explain that today, on any vote, we will abstain.

Mr. F. Berlingieri (Italy). Just one word, Mr. President, we support the Canadian proposal not to vote this morning on this question. We should very much like to have a little more time to think it over. Thank you.

Mr. W. Tetley (Canada). This is a personal suggestion, Mr. President, perhaps the Drafting Committee of the Commission could meet simultaneously with us here. There are, after all, only five members on the Drafting Committee and perhaps we could even have the Drafting Committee formed of two committees because I feel they have much too much to do with the Himalayan drafting and the drafting of this morn-
ing and so I wonder if we could not delay this vote till after lunch which might be quite early. This meeting could be held, let us say, at 2 p.m.

Therefore I would like to move, Mr. Chairman, that we adjourn until 2 o’clock.

[261-270]

M. Le Président. .................................................................

Dans ce cas, nous nous réunirions, ici, à 14 h., pour terminer définitivement nos délibérations à 15 h. au plus tard.

Le Comité de rédaction se réunirait à 15 h. et nous reprendrions notre séance à 17 h., pour examiner les propositions du Comité de rédaction.

[271-280]

Mr. J. A. L. M. Loeff (Netherlands). Mr. Chairman, Ladies and Gentlemen, I think everybody fully agrees that as far as procedure is concerned, we are in a difficult position. There are a lot of delegations really, for the moment, that do not want to vote, as they have not decided what to do. On the other hand, we ought to do full justice to the standpoint of the British delegation that has been explained very carefully and we are, all of us, quite sure that this is a point of very great importance.

The proposal of the Netherlands delegation is that we do not vote in this connection and that we leave the vote to the Plenary Session. Thank you, Mr. Chairman.

[281-290]

M. Le Président. Cela suppose que l’Association britannique n’insiste pas au sujet de son amendement.

J’ai posé la question tout à l’heure, on n’y a pas répondu, j’en ai conclu que la délégation britannique désirait que sa proposition soit examinée par la commission.

Si l’Association britannique préférait que la commission ne soit pas invitée à voter sur son amendement, nous déferions immédiatement à son désir, ce qui simplifierait notre tâche.

[291-300]

Mr. C. Miller (Great Britain). Mr. President, I am very grateful again to Mr. Loeff for his suggestion. During the short recess that we had, it was quite obvious that there were certain delegations who were undecided upon this important point, and it seems to me that, speaking in the interest of the shipping community as a whole, not only as a shipper myself, the point is of too great importance to be obstructed by consideration of the time table imposed upon us here. I am repeating, in other words, what Mr. Loeff has just said.

The British Association is perfectly willing that this matter be examined and studied; we are not withdrawing our amendment or suggestion.

The British Association is also perfectly willing that this matter should be voted upon in the Plenary Session which would give the various Associations who are still puzzled about this, plenty of time to consider it and make up their minds and I most strongly support the suggestion made by Mr. Loeff and also, if I am not misunderstanding him, by Mr. Tetley when he expressed the view that we really cannot be rushed into this just because there has to be a Plenary Session at 3 o’clock. That is far too important. (General applause).

[301-310]

M. Le Président. Je remercie M. Miller de ce qu’il vient de dire. Avec la meilleure
volonté du monde, nous ne pouvons pas poursuivre l’examen plus approfondi de la proposition britannique.

Si un vote était exprimé maintenant, il est très vraisemblable qu’il y aurait de nombreuses abstentions, puisque beaucoup de délégations n’ont pas eu le temps de réfléchir à la question. Ce serait donc un vote sans signification.

La proposition de M. Miller et de M. Loeff est extrêmement sage. La commission ne peut qu’en prendre acte, la question étant réservée pour être éventuellement portée à nouveau devant l’assemblée plénière.

S’il n’y a pas d’opposition, nous allons donc procéder ainsi et il ne sera pas nécessaire de changer l’horaire qui avait été prévu.

Donc, à 14 h. 30, le comité de rédaction se réunira et notre commission se réunira à son tour à 16 h. 30, pour examiner les propositions du comité de rédaction.

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Le Président (M. Lilar) ............

11e Recommandation

Il y a ensuite le point 11, relatif à la “diligence raisonnable, pour mettre le navire en état de navigabilité”, “due diligence to make the ship seaworthy”.

M. E. W. Reading, Grande Bretagne (traduction): Monsieur le Président, Mesdames et Messieurs, la délégation britannique n’est pas favorable au renvoi devant des commissions internationales de questions qui n’ont pas été traitées ou qui ont été traitées aujourd’hui. Elle préfère régler ici aujourd’hui tout ce qui doit être soumis à la Conférence Diplomatique.

C’est la raison pour laquelle nous ne répondons pas qu’il faut discuter de la rédaction que nous venons de vous soumettre (je crois que c’est le document n° 3 qui contient la proposition britannique de révision tendant à surmonter les difficultés créées par le cas du “Muncaster Castle”) mais nous désirons vous demander, Monsieur, d’avoir l’amabilité de provoquer un vote sur ce principe.

M. Martin Hill, Grande Bretagne (traduction): Monsieur le Président, le principe que la délégation britannique essaie d’établir est contenu dans la brochure jaune n° 3 de juin 1963. En quelques mots, il s’agit de ceci: le transporteur ne sera pas considéré comme ayant failli dans l’exercice d’une diligence raisonnable s’il a confié son navire à un chantier compé-

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The President (Mr. Lilar) ............

Eleventh Recommendation

Thereafter comes point 11 concerning the “due diligence to make the ship seaworthy” or “diligence raisonnable pour mettre le navire en état de navigabilité”.

Mr. E. W. Reading, Great Britain: Mr. President, Ladies and Gentlemen, the British Delegation would not like any of the questions that have not been dealt with, or are dealt with today, to be referred to international commissions. They would like us here today to settle on what should go forward to the Diplomatic Conference.

Therefore we do not answer that we should discuss this wording that we have put forward, I think in Document No. 3, which was the British proposal for a revision to enable us to overcome the difficulties created by the “Muncaster Castle” case, but we would like to ask you, Sir, if you would be indulgent and take a vote on the principle.

Mr. Martin Hill, Great Britain: Mr. President, the principle the British Delegation is seeking to establish is contained in the amendment that we have proposed in the yellow booklet No. 3 of June 1963. To try to put it into a few words it is that the carrier shall not be deemed to have failed in the exercise of due diligence if he has sent his ship to a
Le propriétaire qui confie son navire à
un chantier compétent ne sera pas considéré comme ayant manqué de diligence raisonnable [517] lorsque le dommage résulte uniquement de la faute du réparateur et j’insiste sur le mot uniquement.

Le Président: L’intervention de la délégation britannique demande que le problème qui est soulevé par elle, soit clairement posé.

Je lui demande toute son attention pour que nous ne nous engagions pas inutilement dans certains débats qu’elle ne vise peut-être pas.

Première question, la délégation britannique présent-t-elle ou non, un texte d’amendement sur lequel l’assemblée doit se prononcer?

J’ai compris, à la suite de l’exposé qui a été fait en premier lieu, que la délégation britannique ne demande pas que nous nous prononcions sur un texte.

Il n’y a donc pas d’amendement soumis au vote de l’assemblée.

J’ai compris que la délégation britannique désirait qu’on se prononce sur un principe, c’est-à-dire ne pas se prononcer sur un texte, mais émettre une espèce de vœu, d’indication générale.

Cette proposition est évidemment quelque peu insolite. Personnellement, je ne pourrais entrer dans cette voie que si l’Assemblée elle-même, par un vote préalable, souhaitait se prononcer sur ce principe.

Si l’assemblée décide et estime qu’il n’y a pas lieu pour elle de se prononcer sur un principe, alors nous ne nous prononçons pas.

Je ne puis pas mettre aux voix, dans cette assemblée, de simples principes ou de simples idées générales.

C’est une saine pratique des assemblées délibérantes de ne se prononcer que sur des textes. Cependant si l’assemblée souhaitait de son président que l’on...
procède à un vote, il s’inclinera.

Il y a donc, si vous voulez, une espèce de vote préalable qui serait émis, pour décider si nous souhaitons ou non nous exprimer sur un principe ou nous en tenir à la pratique d’ordre général.

**M. W. H. Hecht,** Etats-Unis (traduction): Monsieur le Président, notre délégation à sa réunion d’hier, a décidé de ne pas prendre position. Il y a une divergence d’opinion considérable concernant l’attitude à adopter. Nous sommes sans instructions sur ce point de la part de notre association, la proposition britannique ayant été faite après notre assemblée de mai et l’idée a prévalu que l’attitude convenant le mieux à l’heure actuelle, est l’abstention.

Toutefois, je me demande s’il est opportun de voter sur un principe aussi longtemps que nous n’avons pas de texte devant nous. Ceci est mon point de vue personnel.

**Le Président:** L’opinion exprimée est évidemment la règle traditionnelle de nos délibérations.

**M. J. Loeff,** Pays-Bas (traduction): Au nom de la délégation néerlandaise je précise que la dernière proposition faite par nos amis britanniques nous a mis dans une situation très difficile. Sur base d’un texte proposé par la Délégation Britannique nous avons essayé de faire quelque chose concernant la décision du “Muncaster Castle” et le texte proposé semble raisonnable. Toutefois, je dois ajouter que je ne sais pas comment nous devrons voter si le texte est retiré et si nous devrons voter sur un principe. Dans pareil cas, on ne sait jamais quel sera le texte.

Nous nous sommes déclarés d’accord de voter en faveur du texte britannique réservant la possibilité de consulter les personnes intéressées en Hollande et réservant bien entendu tout ce qui concerne la procédure devant la conférence diplomatique de Bruxelles. En outre, nous devons préciser que la décision finale doit être prise par les Gouvernements intéressés comme cela est toujours le cas. Toutefois, la délégation néerlandaise est d’avis qu’elle n’est certainement pas à même de vote, he would bow to your decision.

There is thus, if you like, a kind of a previous vote which would be issued in order to decide whether we wish or not to come to a decision as to a principle or be satisfied with the common practice.

**Mr. W. H. Hecht,** United States: Mr. Chairman, our delegation at a caucus yesterday decided that we would abstain from any position. There was a considerable divergence of opinion in our delegation as to the stand we should take. We have no instructions on this point from our Association, the British proposal coming after we had our meeting in May, and it was felt that the most appropriate action for us today would be to abstain.

I do however question the advisability of voting on principle when we do not have the text of anything before us. That is my personal view.

**The President.** The opinion expressed is of course the traditional rule of our deliberations.

**Mr. J. Loeff,** Netherlands: Speaking on behalf of the Netherlands Delegation, I must say that by the last proposal on the part of our British friends we have been placed in a very difficult position. We started with a text proposed by the British Delegation to do something about the “Muncaster Castle” decision, that is very reasonable, but I must say that I doubt very much what we have to do when the text more or less is withdrawn and we have to vote on the principle. Then you never can know what the text will be.

We should have been prepared to vote for the British text in order to open the possibility of consulting the people interested in Holland, and of course leaving it open as far as the Brussels Conference is concerned, the final decision to be with the Governments concerned, as is always understood. But now the Netherlands Delegation feels that it is certainly not in a position to vote in favour of a general principle. Thank you.

**Mr. Martin Hill,** Great Britain: Mr. President, in trying to simplify matters by referring to principles the British Del-
voter en faveur du principe général. Merci.

M. Martin Hill, Grande-Bretagne (traduction): Monsieur le Président, la tentative de la délégation Britannique, en vue de simplifier la chose par une référence au principe, a manifestement augmenté la confusion au lieu de faire autre chose. Je pense que nous n’avons qu’à retirer tout ce que nous avons dit jusqu’à présent et à nous référer au texte exact contenu dans le volume n° 3 de juin 1963 à la page 9 et nous demandons de voter sur cet amendement tel qu’il est libellé.

Le Président: Messieurs, la situation est éclaircie. (Rires). Nous ne sommes plus en présence d’une proposition de principe mais en présence d’un amendement, l’amendement présenté par la Délégation Britannique. C’est le texte qui commence par les mots “Provided that if” et se termine par les mots “as aforesaid” dans le document n° 3, page 9.

La Délégation Britannique propose donc que ce texte soit présenté sous forme d’amendement au texte de la Convention, article 3.

M. F. Berlingieri, Italie (traduction): Monsieur le Président, Messieurs, la délégation italienne a examiné avec beaucoup de soin pendant les deux derniers jours l’amendement anglais et elle est arrivée à la conclusion qu’elle ne peut pas appuyer cet amendement et que la décision du “Muncaster Castle” est très saine. La délégation italienne est d’avis que la proposition britannique, si elle était acceptée, romprait l’équilibre qui existe actuellement entre le transporteur et le propriétaire des marchandises.

Suivant notre loi il y a une règle “in tort” suivant laquelle le commettant est uniquement responsable de ses fautes personnelles et des fautes de ses préposés alors qu’il n’est pas responsable des fautes d’un sous-traitant indépendant mais ce principe ne s’applique pas aux relations contractuelles. En matière de relation contractuelle le commettant est responsable non seulement de ses fautes personnelles et de ses préposés mais également des fautes de ses sous-traitants indépendants qui ont été confiés par le commettant, et non pas par lui-même.

The President. Gentlemen, the situation has been cleared up. (Laughing). We have no more before us a suggestion on a principle, but an amendment moved by the British Delegation. It is the text which commences with the words “Provided that if” and ends in the words “as aforesaid” in document No. 3, page 9.

The British Delegation proposes therefore that this text be moved in the form of an amendment to the text of Article III of the Convention.

Mr. F. Berlingieri, Italy. Mr. Chairman, Gentlemen, the Italian Associations has very carefully considered the British amendment during the past two days and it has come to the conclusions that this amendment cannot be supported, and that the “Muncaster Castle” decision is a very sound one. It is the opinion of the Italian Delegation that the British proposal, if carried, would upset the balance at present existing between the carrier and the owner of the goods.

According to our law there is a rule in tort whereby the principal is liable only for personal faults and for the faults of his servants, whilst he is not liable for the faults of independent contractors, but this principle does not apply in contractual relationship. When there is a contractual relationship the principal is liable not only for personal faults but also for those of independent contractors [519].
La raison pour laquelle ce principe a été approuvé par notre loi est que le commettant est la personne qui prend soin d’une entreprise et qui jouit de tous les avantages que cette entreprise peut lui procurer et que, puisqu’elle bénéficie de tous ces avantages, elle doit subir les pertes et les dommages pouvant résulter de l’entreprise. C’est la raison pour laquelle elle doit être responsable même si elle a recours à un ou des sous-traitants indépendants.

Il y a bien entendu quelques exceptions à ce principe dans la Convention de Bruxelles de 1924, le plus important concernant la non-responsabilité du transporteur pour des fautes commises dans l’administration du navire mais ceci est une exception et nous ne pouvons pas étendre davantage ce principe. Nous pensons que si la proposition britannique était acceptée, le propriétaire du navire pourrait en toutes circonstances échapper à sa responsabilité en ayant recours pour accomplir ses obligations à des sous-traitants indépendants au lieu de préposés. Il pourrait, par exemple, avoir recours à des sous-traitants indépendants pour effectuer l’arrimage à bord du navire et dans pareil cas il ne serait plus responsable. Avant de commencer le voyage il pourrait demander à un expert de la société de classification d’effectuer une visite à bord du navire afin de se rendre compte de la navigabilité du navire. Si cet expert déclare que ce navire est navigable alors, conformément à la proposition britannique, le propriétaire du navire n’encourra plus aucune responsabilité et nous estimons que cela est mauvais.

Plaçon-nous maintenant au point de vue du réceptionnaire des marchandises. Si la proposition est acceptée le pauvre réceptionnaire ne pourra pas obtenir le remboursement des dommages que ces marchandises subiront, chaque fois qu’un sous-traitant indépendant est intervenu de manière appropriée, à la demande du propriétaire du navire et il sera très difficile pour lui d’intenter une action contre, par exemple, le chantier, la société d’arrimage etc. Il n’est même pas sûr que, dans

There are of course some exceptions to this principle in the Brussels Convention of 1924, the main one being that relating to non-responsibility of the carrier for faults in the management of the vessel, but this is an exception and we cannot extend this principle further. We think that if the British proposal is accepted the owner of the vessel could in all circumstances avoid his liability by employing independent contractors instead of servants in carrying our his obligations. He could, for instance, employ independent contractors for carrying out the stowage of the goods on board the ship, and in this case he would not be liable any more. Before the commencing of the voyage he could ask a surveyor of the classification society to carry out a visit to the vessel in order to ascertain whether or not the vessel was seaworthy. If this expert says that the vessel is seaworthy, according to the British proposal that shipowner won’t be liable anymore, and this we say is wrong.

Now consider the position from the point of view of the receiver of the goods. We would find if the proposal is carried this poor receiver won’t be able to recover damages he is going to suffer to his goods in all cases where an independent contractor has been properly employed by the shipowner, and it would be very difficult for him to try to act in tort against the shipyard, for instance, the stevedoring company, etc. It is very doubtful if in some legislations this action in tort would be permissible, but in any case even if this action in tort might be considered permissible it might very well happen that the shipyard has employed a sub-contractor to carry our certain repairs, so he would just reply to the consignee: “I am sorry, we haven’t carried this out personally, we have employed somebody else”, and in this case action would have to be taken against the sub-contractor, and so on.

I have to conclude we cannot support the principle, and we must vote against it.
certaines législations, pareille action soit possible mais, de toute manière, si pareille action peut être considérée comme autorisée, il pourra arriver que le chantier ait fait appel à un autre sous-traitant pour effectuer les réparations si bien que le chantier pourra se contenter de répondre au destinataire: “je regrette, nous n’avons pas fait cela personnellement, nous avons fait appel à un autre” et dans pareil cas, l’action devra être intentée contre le sous-traitant et ainsi de suite.

Je dois conclure que nous ne pouvons pas approuver le principe et que nous devrons voter contre celui-ci.

**M. J. Loeff**, Pays-Bas (traduction): Monsieur le Président, Messieurs et Mesdames, mon intervention d’il y a quelques minutes me dispense de dire davantage. Je désire uniquement ajouter après la mise au point qui vient d’être faite que la délégation néerlandaise votera en faveur de l’amendement puisque nous pensons que si quelque chose [520] doit être fait à la suite de la décision du “Muncaster Castle” ceci est la meilleure solution. Nous désirons donner notre avis et notre aide pour que cette question puisse être portée devant la Conférence Diplomatique de Bruxelles.

Je désire préciser que nous devons faire deux réserves expresses. Nous devons absolument réserver la décision du Gouvernement Néerlandais et nous désirons étudier sérieusement la question de savoir si, au cas où l’amendement britannique serait adopté, l’équilibre entre les intérêts, qui est à la base des Règles de La Haye, est rompu. C’est une question très importante et nous désirons être tout à fait libres de l’étudier. Merci.

**M. Prodromidés**, France. Monsieur le Président, Messieurs, au sein du comité de rédaction nous avons examiné cette question et, comme vous le savez, nous sommes arrivés à la conclusion qu’il était très difficile de prendre une décision sur le fond et qu’il fallait renvoyer la question à l’assemblée plénière.

Cela veut dire qu’il s’agit de se prononcer sur le fond et qu’il faut donc instaurer une discussion très importante car...
la question est d’une importance capitale.

Je pense donc que ce serait une très mauvaise méthode que de dire, après de petits échanges de vues, je vote pour ou je vote contre. Une question de cette importance a besoin d’un examen très approfondi.

D’après les premières explications qui viennent d’être données j’ai l’impression, si je ne me trompe M. le Président, que nous avons commencé cette discussion. Puis-je donc me prononcer sur le fond? (Assentiment de M. le Président).

Cela étant, Messieurs, je me permets de présenter les observations suivantes. Tout le mal vient de la décision de la Chambre des Lords sur le “Muncaster Castle”. Il est bien évident que, pour pouvoir se prononcer sur la question, il faut savoir ce que la décision du “Muncaster Castle” a dit exactement. Nous ne l’avons pas sous les yeux. Nous l’avons tous étudiée mais nous ne l’avons pas très clairement à l’esprit.

Si mes souvenirs sont exacts, la question se présentait de la façon suivante: vous savez que, d’après la Convention de Bruxelles, il y a deux cas d’exonération de responsabilité en faveur de l’armateur. 1° il n’est pas responsable en cas de vice caché du navire, un vice caché ayant échappé à sa due diligence. Dans tous les pays nous avons une jurisprudence à peu près unanime qui explique ce que l’on entend par vice caché: c’est l’article 4(2) de la Convention.

2° Puis vous avez l’article 4(1) qui dit que l’armateur n’est pas responsable en cas d’innavigabilité du navire mais à la condition qu’il ait exercé la due diligence qui est exigée par l’article 3 de la [521] Convention, pour mettre son navire en état de bonne navigabilité avant le commencement du voyage et au départ du navire.

Les deux notions sont cousines germaines mais constituent deux cas d’exonération.

Or, Messieurs - et c’est un point sur lequel je me permets d’attirer tout particulièrement votre attention - dans l’affaire du “Muncaster Castle”, les armateurs shall venture the following remarks. All the harm is the result of the decision of the House of Lords in the “Muncaster Castle”. It is well obvious that in order to come to a decision as to this question, we ought to know what the decision in the “Muncaster Castle” has exactly decided. We do not have that decision before our eyes. We have all studied the said decision but we do not keep it very clearly in mind.

To the best of my recollection, the question presented itself in the following way: you know that according to the Brussels Convention there are two cases of exemption of liability in favour of the shipowner: 1° He is not responsible in case of latent defect in the ship, a latent defect not discoverable by due diligence. In all countries, there is an almost unanimous jurisprudence which explains what is meant by latent defect. I refer to Article 4(2) of the Convention.

2° We have then Article 4(2) which provides that the shipowner shall not be liable for loss or damage resulting from unseaworthiness of the ship, but on condition that he has exercised the due diligence which is required by Article 3 of the [521] Convention, to make the ship seaworthy before and at the beginning of the voyage.

Both notions are full cousins but constitute two cases of exemption.

Now Gentlemen - and this is a point on which I venture to draw your very particular attention - in the case of the “Muncaster Castle”, the shipowners have not at all taken up the discussion on the grounds of latent defect. If they have not done so, it is because they have felt that is was not a question of latent defect, in the sense of jurisprudence. If, in the case of the “Muncaster Castle”, the defect attributable to the shipyard could have constituted a latent defect, there could not have been any “Muncaster Castle” case. The shipowner would not have been condemned. The shipowner has not opposed the latent defect but the unseaworthiness. He pretended that he was not responsible because the ship was
n’ont pas du tout placé la discussion sur le terrain du vice caché. S’ils ne l’ont pas fait c’est qu’ils ont estimé, au sens de la jurisprudence, qu’il ne s’agissait pas de vice caché. Si, dans le cas du “Muncaster Castle”, la défectuosité imputable au chantier pouvait constituer un vice caché il n’y aurait pas eu d’affaire du “Muncaster Castle”. L’armateur n’aurait pas été condamné. L’armateur n’a pas opposé le vice caché mais l’innavigabilité. Il a prétendu ne pas être responsable parce que le navire était innavigable. Il a dit avoir exercé la due diligence en s’adressant à un chantier compétent. La Chambre des Lords - je résume en deux mots sa décision - a dit: la due diligence n’est pas quelque chose de déléguable. La due diligence doit être exercée par vous-même.

Voilà, Messieurs, comment la question se présente. Par conséquent la décision du “Muncaster Castle” ne doit pas être considérée a priori comme quelque chose de catastrophique pour les armateurs. Si l’on se place sur le terrain du vice caché, l’armateur ne sera pas condamné. C’est seulement sur le terrain de l’autre cas d’exonération, l’innavigabilité du navire qu’il s’agit d’apprécier comment devra être interprétée la notion de due diligence.

Messieurs, Le Doyen van Ryn s’est livré à une étude de droit comparé, et son rapport figure dans les documents que nous avons, sur ce que décident, soit les décisions de jurisprudence, soit les auteurs dans les différents pays. Vous avez alors vu que la quasi totalité des pays ont en cette matière une jurisprudence et une doctrine presque unanimes dans le sens de la décision du “Muncaster Castle”.

Alors, nous qui sommes là à vouloir modifier ou amender notre Convention pour éviter les disparités dans les différents pays. Vous avez alors vu que la quasi totalité des pays ont en cette matière une jurisprudence et une doctrine presque unanimes dans le sens de la décision du “Muncaster Castle”.

Le deuxième argument qui a été présenté à cet égard par la délégation britannique a été le suivant. La délégation britannique dit: avant la Convention de 1924, nous avions la liberté contractuelle. Je pouvais, moi, armateur, stipuler dans le billet de bord des conditions d’exonération que je voulais. Le navire est défectueux, je ne suis pas responsable. Ce n’est pas exact. Avec la liberté contractuelle, l’armateur pouvait stipuler dans le billet de bord des conditions d’exonération que je voulais. Il pouvait stipuler des conditions d’exonération de sa responsabilité. C’est exact. Mais pour éviter les abus, le 1924 Convention a mis fin à ces abus en adoptant le principe de due diligence.

Gentlemen, this is how the problem presents itself. Consequently, the decision in the “Muncaster Castle” ought not to be considered, a priori, as something catastrophic for the shipowners. If we place ourselves on the grounds of latent defect, the shipowner will not be condemned. It is only on the grounds of the other case of exemption, the unseaworthiness of the ship, that we shall have to appreciate how the notion of due diligence will have to be construed.

Gentlemen, the Doyen van Ryn has devoted himself to a study of comparative law, and his report figures in the documents we have before us, on what decide either the decisions of jurisprudence or the authors in the different countries. You have then noticed that nearly all the countries have in this respect, a jurisprudence and a doctrine almost unanimous, in the sense of the decision in the “Muncaster Castle”.

Why should we then be here trying to modify or amend our Convention in order to avert the disparities in the various countries, when the quasi unanimity which we desire already exists in most countries?

The second argument which has been brought forward in this connection by the British Delegation, has been the following one. The British Delegation declares: before the 1924 Convention, we had the freedom of contract. As a shipowner, I was entitled to stipulate in the bill of lading as many exemption clauses as I wanted and in particular, I could have validly stipulated, in a case like the “Muncaster Castle”, that I was not responsible. This is exact. With the freedom of contract, the shipowner was entitled to do it, but that is precisely why the 1924 Convention was adopted to put an end to the abuses of the exemption clauses.
connaissance toutes les clauses d’exonération que je voulais, et, en particulier, j’aurais pu stipuler valablement, dans un cas comme le “Muncaster Castle”, que je ne suis pas responsable. C’est exact: avec la liberté contractuelle l’armateur pouvait le faire mais, précisément, la Convention de 1924 est venue pour mettre un terme aux abus des clauses d’exonération et pour créer un compromis car la Convention de 1924 n’est pas autre chose qu’une [522] transaction entre des intérêts contradictoires. On a dit, d’une part que le transporteur maritime ne pourra plus stipuler les clauses d’exonérations, mais, d’autre part qu’il va de plein droit bénéficié de toute une série de cas d’exonération et de limitation de responsabilité. Il va bénéficier de ces exonérations et de ces limitations dans tous les cas et, en particulier, en cas de faute nautique, même si ces cas sont le résultat d’une faute lourde du transporteur ou de ses préposés. Avant 1924, du temps de la liberté contractuelle, on disait bien que le transporteur pouvait valablement stipuler des clauses d’exonération ou de limitation, mais, quand les juges estimaient que c’était inique, on reprenait l’armateur par le biais de la faute lourde et l’on contestait la validité de la clause en cas de faute lourde.

Vous voyez donc, Messieurs, que c’est un compromis. Si, aujourd’hui, vous voulez modifier ce compromis vous renversez toute l’économie de ces transactions procédant de la Convention de 1924.

Mais est-ce qu’au moins la solution qui nous est proposée par la délégation britannique, tout en renversant l’économie de la Convention de 1924, est logique? Est-elle équitable? Est-elle juridique? Je ne la crois pas. Personnellement, je la trouve d’une très grande iniquité et je trouve que la décision de la Chambre des Lords est parfaitement équitable, parfaitement défendable et parfaitement juridique. Voici pourquoi.

C’est une chose en soi déjà assez considérable que de dire que le transporteur ne répond pas du vice caché puisqu’il s’agit de dommages qui arrivent aux marchandises par suite d’un vice de sa chose, clauses and to create a compromise, for the 1924 Convention is nothing else than [522] a compromise between conflicting interests. It has been said on the one hand, that the maritime carrier shall no more be entitled to stipulate the exemption clauses, but on the other hand, that he shall be legally entitled to the benefits of a full series of exemption cases and of limitation of liability. He shall be entitled to the benefit of those defences and limits of liability in all cases and in particular, in case of a nautical fault, even if those cases are the result of a gross fault (“faute lourde”) of the carrier or of his servants or agents. Before 1924, at the time of the contractual freedom, it was well said that the carrier was validly entitled to stipulate exemption or limitation clauses, but when the judges felt that it was iniquitous, the shipowner was condemned by the expedient of the gross fault (“faute lourde”) and the validity of the clause in case of gross fault (“faute lourde”) was contested.

You can therefore see, Gentlemen, that it is a compromise. If to-day, you want to modify that compromise, you overthrow the whole economy of those said arrangements proceeding from the 1924 Convention.

But at least, is the solution which is proposed by the British Delegation, although it overthrows the economy of the 1924 Convention, logical? Is it equitable? Is it legal? I do not think so. Personally, I consider it as a flagrant injustice and I feel that the decision of the House of Lords is completely equitable, completely defensible, completely legal. The reasons of this are as follows.

It is already in itself a rather considerable thing to say that the carrier is not liable for latent defect, since it is a matter of damage sustained by the goods as a consequence of a latent defect of the thing, the ship. The decision on that point exists: it is said in the Convention, we do not have to return to it. But you can already see that we are in a tremendously exorbitant matter of common law and that it is a notion which cannot be
le navire. La décision sur ce point existe: c’est dit dans la Convention, il ne s’agit pas d’y revenir. Mais vous voyez déjà que nous sommes dans une matière formidably exorbitante du droit commun et que c’est une notion qui ne peut être étendue, qui ne peut être maniée qu’avec beaucoup de modération.

Cela étant, plaçons-nous maintenant uniquement sur le terrain de l’équité. Nous sommes en présence de trois personnes dans le cas du “Muncaster Castle”: le chargeur, le transporteur et le chantier. Il s’agit du dommage arrêté à la marchandise par suite d’une défectuosité du navire qui a été mal réparé. Il n’est pas normal que le transporteur soit responsable de cela. Il est tout à fait normal que le chantier soit responsable, mais ce qui est tout à fait anormal c’est que ce soit le chargeur qui soit le responsable.

Or, dire que le chargeur ne pourra pas dans ce cas exercer d’action contre le transporteur, c’est lui faire assumer la responsabilité de cette malfaçon. Car si le chargeur ne peut pas agir contre le transporteur, pratiquement il ne pourra pas agir non plus contre le chantier qui est cependant le véritable fautif. Le chantier lui dira: je ne vous connais pas, j’ai contracté avec un armateur. Vous, chargeur, je ne vous connais pas. [523]

On nous dira: mais il pourra toujours agir contre le chantier sur le terrain quasi-délituel de la faute. Peut-être, mais ce n’est pas certain pour tous les pays et, même dans la mesure où dans un pays l’action de ce chargeur contre le chantier, avec lequel il n’a aucun lien contractuel, serait considérée comme recevable, le chantier dira si vous pouvez m’assigner quasi-délituellement, mon obligation a pour base le contrat de construction. Regardez par exemple il y a une clause qui me permet de fournir tels matériaux. Vous ne pouvez donc me reprocher d’avoir fourni ces matériaux, etc., etc.

Vous voyez que toute la discussion va avoir lieu sur la base d’un contrat que le chargeur ne connaît pas.

extended, which can only be handled with much moderation.

This being so, let us now place ourselves solely on the grounds of equity. In the case of the “Muncaster Castle”, we are in presence of three persons: the shipper, the carrier and the shipyard. It is a question of damage sustained by the goods as a consequence of a defect in the ship which has not been properly repaired. It is not normal that the carrier be held liable for that damage. It is quite obvious that the shipyard be held responsible, but what is quite abnormal is that the shipper be the one who is held responsible.

Now, to say that the shipper shall not be entitled in that case to bring an action against the carrier is to make him assume the responsibility of that defect. For if the shipper is not entitled to bring an action against the carrier, he shall not in practice be able to sue the shipyard either, which is however the real one in fault. The shipyard will tell him: I do not know you.[523] I have a contract with a shipowner. You, shipper, I do not know you. One could say: but he shall always be entitled to bring an action against the shipyard on the ground of a fault in tort. Maybe, but this is not certain for all countries, and even as far as in a country the action of this said shipper against the shipyard, with which he has no contractual bond, would be considered as admissible, the shipyard would say: if you are entitled to sue me in tort, the basis of my obligation is the building contract. Look for instance, there is a clause which allows me to supply such materials. You cannot therefore reproach me with having supplied those said materials, etc., etc.

You see that the whole debate will take place on the basis of a contract which the shipper does not know.

But Gentlemen, even if we admit that the action in tort brought by this said shipper against the shipyard could be accepted, this is only but an action in tort, i.e. an action in which the shipper will have the entire burden of proof, when he
Mais en admettant même, Messieurs, qu’on puisse reconnaître l’action quasi-délictuelle de ce chargeur contre le chantier, cela n’est jamais qu’une action quasi-délictuelle, c’est-à-dire une action dans laquelle le chargeur va avoir tout le fardeau de la preuve alors qu’il est lié avec le transporteur par un contrat en vertu duquel il n’a à faire aucune preuve. Nous renverrons donc complètement les rôles.

J’en ai terminé en vous disant ceci sur le terrain de l’équité.

Sur le terrain pratique, il est tellement normal que moi, chargeur, qui n’ai contracté qu’avec vous, transporteur, je m’adresse à vous, armateur, en vertu du lien contractuel qui nous lie. Je vous dis: le dommage de ma marchandise provient de la faute, de la défectuosité de votre objet, le navire. Payez-moi, et à votre tour, vous vous retournerez contre le chantier, avec lequel vous avez un rapport contractuel. Vous dites au chantier qu’il n’a pas bien rempli son engagement contractuel de faire une réparation convenable.

Telles sont les raisons pour lesquelles, véritablement, j’estime que la décision de la Chambre des Lords a été rendue d’une façon pratiquement juridique et équitable et qu’il n’y a pas lieu d’adopter l’amendement britannique.

M. P. Gram, Norvège (traduction): Monsieur le Président, Mesdames et Messieurs, je prends la parole au nom de la délégation norvégienne et également au nom des délégations finlandaise, danoise et suédoise. Tous, nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. Le point principal que nous désirons appuyer énergiquement la proposition britannique. 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avoir très clairement à l’esprit la raison pour laquelle ceci a été rédigé, et rédigé avec tant de [524] soins et pourquoi cela nous a été soumis si tard. Cela résulte du fait qu’il y a eu en Grande-Bretagne des négociations entre les intéressés au navire et les intéressés à la cargaison et que ces négociations ont abouti à un accord. Ceci n’est pas dénué d’importance lorsqu’on se demande s’il s’agit d’une question de modifier ou non l’équilibre. À l’heure actuelle il y a des intérêts cargaison très importants qui acceptent ceci.

C’est la raison pour laquelle nous sommes résolument en faveur de l’amendement. Merci.

**M. J. S. Perrakis, Grèce (traduction):**
La délégation hellénique a examiné consciencieusement l’amendement et est arrivée à la conclusion qu’il y a lieu de l’appuyer. Il y a lieu de l’appuyer parce que je crains que nous ne puissions souscrire à la théorie du risque exposé par le Professeur Berlingieri. Il a mentionné deux choses.

Il a mentionné d’abord les arrimeurs. Suivant le texte de l’amendement que j’ai ici, ces sous-traitants indépendants interviendront uniquement pour la construction, la réparation et l’entretien du navire. Je ne pense pas que l’arrimeur soit visé de quelque manière que ce soit.

Secondement il faut noter que la délégation britannique a insisté sur deux points, d’une part la bonne réputation de pareils sous-traitants et d’autre part le mot “uniquement” qui est la clef de voûte de la question.

Monsieur le Président, je pense qu’en dépit du caractère compromissoir des Règles de 1924, pas mal de changements sont survenus dans le domaine technique pendant les 40 années depuis que ces questions ont été discutées en 1923. Je dirai, avec votre permission, qu’il est plutôt raisonnable de s’attendre à ce que les propriétaires de navires soient rendus responsables d’erreurs techniques qui ne peuvent pas être considérées comme un vice inhérent ou un vice caché comme l’a dit M. Prodromides et étant donné que la situation peut être telle qu’une “due dili-
ed, [524] and why it came to us so late. It was because negotiations were going on in Great Britain between the shipowners’ representatives and the cargo interests, and they reached agreement. That is no little thing, when one considers whether it is a question of upsetting the balance or not. We have actually very important cargo interests who are agreeable to this.

For these reasons we very strongly support this amendment. Thank you.

**Mr. J. S. Perrakis, Greece:** The Greek Delegation has given due consideration to the amendment and reached the conclusion that it should be supported. It should be supported because I am afraid we cannot agree with the risk theory as expressed by Professor Berlingieri. He mentioned two things.

He mentioned one thing about stevedoring. I have the text of the amendment here that these independent contractors will be employed solely for the construction repair or maintenance of the ship. I don’t think stevedoring enters into it in that respect at all.

Secondly of course it should be noted there are two things which the British Delegation emphasized, one is the good repute of such an independent contractor, and the second was their insistence on the word “solely” by reason of such a thing, and that gives the clue to the matter.

Mr. President, I think that in spite of the compromise character of the 1924 Rules things in the technical field have changed a lot in the forty years since these questions were discussed in 1923. It is, if you will allow me to say so, rather unreasonable to expect that the shipowner should be held responsible for technical mistakes which cannot be considered as inherent vice or vice caché as Mr. Prodromides mentioned because these things may be such that due diligence cannot be exercised by the shipowner. It is asking too much of a shipowner, especially a small shipowner with only one or two ships, to exercise
Article 3 (1)(a) - Seaworthiness

due diligence in some respect on his own to distinguish and to discover an inherent vice in such a purely technical matter as radar or in a refrigerating machine, and so on.

Therefore we come to the conclusion wholeheartedly to support the British proposal.

Thank you, Mr. Chairman.

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**Conference Diplomatique - Mai 1967**

**Quatrième Séance Plénière - 17 Mai 1967**

M. S. Suchorzewski (Poland): . . . . . .

Cependant, l’article premier du projet est douteux: la question de cette fameuse diligence raisonnable. Tout provient de là.

A notre avis, elle a été créée dès le début par l’inexactitude qui régnait entre le texte original de cette convention, c’est-à-dire, le texte français et le texte anglais. La diligence raisonnable, et la “due diligence”, l’obligation de moyen ou bien diligence raisonnable et “due diligence”, l’obligation de moyen ou bien
The Travaux Préparatoires of the Hague and Hague-Visby Rules

The Argentine Delegation does not approve the amendment proposed with reference to "Muncaster Castle" even though it understands perfectly well the owner’s point of view. The Argentine Delegation thinks that this amendment implies a transference of the risks from one party to another and might allow the equilibrium established by the Convention to be broken.

If the builder or the surveyor makes a mistake the carrier’s exoneration must not be sanctioned, nor be transferred to the merchandise on the basis that the election is good and the task having been allotted to a just quality person or firm.

If we have ratified the Convention, in 1960, it was on the basis that the Convention would serve as a balance between different interests.

If we now want to modify an article that would be favourable to the interests of the carriers it could be said that this equilibrium has been broken and that the Convention is in danger.

After having considered all the after effects of the modification on the "Muncaster Castle" amendments, the Argentine Delegation will vote again the amendments.

The solution that can be considered as the good one is the one given by the House of Lords in the “Amsteslot” case.
Text adopted by the Stockholm Conference:

In article 3, § 1 of the 1924 Convention shall be added:

“Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the carrier has taken care to appoint one of repute as regards competence, the carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent subcontractor and his servants or agents) in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this proviso shall absolve the carrier from taking such precautions by way of supervision of inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid”.

Résumé des débats

Sir K. Diplock, au nom du Royaume-Uni, défend le texte proposé, qui a pour but d’atténuer la responsabilité pesant sur l’armateur et en rappelle les motifs immédiats: la décision rendue par la Chambre des Lords dans l’affaire “Muncaster Castle”.

Le Délégué norvégien, M. Gram appuie la prise de position précédente, ainsi que le délégué irlandais, M. Mac Govern.

Plusieurs délégations contestent l’opportunité d’une modification de la Convention de 1924 sur ce point.

M. Schmeltzer pour les U.S.A., M. Govare pour la France, M. Van Ryn pour la belgique et M. Rey pour l’Argentine rappellent que le texte proposé est résolument contraire au droit commun de la responsabilité dans leurs pays respectifs; certains précisent même que son adoption par la Conférence empêcherait toute ratification par leurs autorités nationales.

M. Govare fait ressortir que les intéressés à la cargaison perdraient pratiquement tout recours, vu notamment l’absence de lien de droit entre le chargeur et le “contractant indépendant”.

M. Van Ryn, ainsi que M. Manca pour l’Italie et M. Loeff pour les Pays-Bas, relèvent que le texte proposé, en introduisant une nouvelle exonération de responsabilité en faveur de l’armateur, romprait l’équilibre difficilement réalisé en 1924 entre les différents intérêts en présence.

Le Délégué soviétique, M. Joudro, après avoir rappelé que dans l’état actuel des choses, l’armateur de son pays remplissait son obligation de “mise en état de navigabilité du navire” en s’adressant à une société de contrôle réputée, estime que le texte proposé contient certaines contradictions et que son application se révélerait donc difficile.

Le porte-parole de la République Fédérale d’Allemagne, M. Herber, fait part enfin à la Commission des doutes de sa délégation sur l’opportunité d’adopter le texte en discussion.

Vote: pour: 7; contre: 17; abstentions: 6; Total: 29.

La Commission rejette le texte du projet.
ARTICLE 3

1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:

b) Convenablement armer, équiper et approvisionner le navire.

ILC 1921 Hague Conference
Text submitted to the Conference

[xlvii]

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(b) properly man, equip and supply the ship;

Second day’s proceedings - 31 August 1921

[83]

The Chairman: Does that stand part of the draft? (Agreed).

Text adopted by the Conference

[256]

No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[363]

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(b) properly man, equip and supply the ship;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[376]

No change.
ARTICLE 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

   (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvii]

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to-

   (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Second day’s proceedings - 31 August 1921

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(CMI Bulletin No. 65 - Gothenborg Conference)

[363]

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to-

   (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[375]

No change.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Deuxième Séance Plénière - 6 Octobre 1923

[47]


Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Second Plenary Session - 6 October 1923

[47]

The Chairman suggested including in article 3(1), at the end of sub-paragraph (c), the word “conservation” instead of “préservation” and in paragraph 2, “subject to the provisions” instead of “subject to the stipulations”. (Carried).
ARTICLE 3

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

ILA 1921 Hague Conference
Text submitted to the Conference

2. The carrier shall be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care, and unloading of the goods carried.

Second day’s proceedings - 31 August 1921

Mr. Rudolf: There is just one suggestion I should like to make, it is merely a question of verbiage, I think, and that is, I would suggest that in paragraph 2 of Article 3 in the first line the word “responsible” should be substituted for the words “bound to provide”. I am not quite sure what “bound to provide” means.

The Chairman: Would you identify the line, Mr. Rudolf, please?

Mr. Rudolf: It is the first line in paragraph 2 of Article 3. I suggest that for the words “bound to provide”, the word “responsible” should be substituted.

The Chairman: I think, Sir, you would probably substitute a weaker word for stronger words. It is for your consideration.

Mr. Rudolf: I was afraid that under the words “bound to provide” he might be discharged of his obligation to provide by saying: “I have appointed a competent crew, and I have finished my responsibility”. That is what occurred to me.

The Chairman: The question is that Article 3(2), part of the draft. (Agreed).

Text adopted by the Conference

No change.
2. **SUBJECT TO THE PROVISIONS OF ARTICLE 4** the carrier shall **PROPERLY AND CAREFULLY HANDLE, LOAD, STOW, CARRY, KEEP, CARE FOR, UNLOAD AND DELIVER** the goods carried.

**Text adopted by the Conference**  
(CMI Bulletin No. 65 - Gothenborg Conference)

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**Conférence Diplomatique - Octobre 1923**  
Séances de la Sous-Commission  
Septième Séance Plénière - 9 Octobre 1923

[119]  
M. le Président (M. Louis Franck)

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Mr. Louis Franck (Chairman) . . . .

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Le paragraphe 2 comporte une clause essentielle, mettant en lumière que le transporteur, sauf les exceptions prévues à l’art. 4 est tenu de tout ce qui est nécessaire pour que dans le chargement, la manutention, l’arrimage, le transport, la garde et le déchargement, les soins requis soient donnés à la marchandise transportée. Et l’inscription de toutes clauses qui permettraient à l’armateur de manquer, sans encourir de responsabilité, à ce devoir essentiel de veiller à la bonne conservation de la marchandise au point de vue du bon arrimage, du chargement du transport et du déchargement, sont nulles. C’est l’élément capital de la convention, car, c’est sous ce rapport que, dans le passé, l’emploi des clauses d’exonération avait donné lieu aux plus graves critiques; on était arrivé à avoir des types de connaissement qui en avaient encore la forme, mais dont la substance était complètement détruite par la force des clauses d’exonération.

**Diplomatic Conference - October 1923**  
Meetings of the Sous-Commission  
Seventh Plenary Session - 9 October 1923

[119]  
Article 3(2) contained an essential clause highlighting that the carrier, except as provided for in article 4, was responsible for seeing that everything required for loading, handling, stowage, carriage, custody, and unloading was provided for the goods to be carried. And the inclusion of every clause permitting the shipowner, without incurring responsibility, to fail in this essential duty of overseeing the preservation of the goods from the point of view of successful stowage, loading, and unloading was null and void. That was the main element of the convention because it was in this way that, in the past, the use of immunity clauses had given cause for the greatest criticism. The result had been the creation of different sorts of bills of lading that still bore the form, but whose content was completely destroyed by the force of the immunity clauses.
ARTICLE 3

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

Text adopted by the Conference

[256]

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing amongst other things:
3. After receiving the goods into his charge, the carrier or the master or agent of the carrier shall on demand issue to the shipper a bill of lading showing amongst other things-

(CMI Bulletin No. 57 - London Conference)
Morning sitting of 10 October 1922

Sir Leslie Scott: Mr. President, before Sir Norman Hill sits down, I wonder if he would extend his kindness by answering two questions. One is the question of a chartered ship. If the shipper in accordance with Article 3(3), demands a bill of lading presumably he is entitled to receive a bill of lading. That bill of lading containing the stipulations of the Hague Rules may impose a greater burden on the shipowner than the charter. Will the shipowner be entitled to say to the shipper: “If you want a bill of lading you shall have it, but you must pay me a slightly extra freight”. That is one question I should like considered; because I think the solution of the chartered ship is one of the points that has to be made clear.

Sir Norman Hill: Well, Mr. Solicitor General, the answer to the first question is this. If under the charter the shipowner is bound to issue a bill of lading then he must give one which comes under the Rules. Now what is to be put into that bill of lading? With regard to weight or numbers or quantity or contents the shipowner is only bound to put into the bill of lading such information as is furnished to him by the charterer, and the charterer warrants the accuracy of that information. If under the charter party the shipowner does not undertake to issue bills of lading the matter is finished. The cargo would be carried and delivered under the charter party.

Judge Hough: Mr. Chairman, with submission may I put a query to Sir Norman Hill.

The Chairman: Yes. Sir Norman has not yet reached the second of the questions he has in hand.

Sir Norman Hill: I think his question probably clears up this first question.

The Chairman: If it is a relevant question to this first matter perhaps you will put it now.

Judge Hough: In my experience, and I think all North Atlantic experience, the common phrase of a charter party is that the master “shall issue bills of lading not in contravention of the terms of this charter party” or words to that effect.

Sir Norman Hill: That is right.

Judge Hough: Consequently by long established custom the masters of all chartered ships have been by charter obligation bound to issue bills of lading under such a charter untouched by the Hague Rules per se, and the charter party is just as good as ever it was. If a demand is made upon the master of a chartered ship to issue bills of lading as per charter party, do such bills of lading come under and connote and imply all the obligations of these Rules irrespective of the charter party?

Sir Norman Hill: That, Judge, is I understand the effect of the Rules, and it is the
intention of the cargo interests that the rules should have that effect. Directly you get a bill of lading launched on the world, whether it is in pursuance of a charter party or whether you are loading on the berth, that bill of lading and all other bills of lading are to have the minimum of protection laid down by the Rules, and that I understand is the deliberate intention of the cargo interests.

[357]

**Sir Norman Hill:** Under the charter that the Judge instanced I have not reviewed the responsibility of issuing a bill of lading on demand; I cannot give an explanation of that, but I can concede to you one of Mr. Miller’s cases in which I have accepted a charter and I have expressly provided that the charterer shall not demand bills of lading.

**Dr. Knottenbelt:** It is not allowed.

**Sir Norman Hill:** He is clearly allowed to. There is nothing in the Rules to the contrary. I would appeal to the gentlemen who were at the Hague, is not our object, the object of all of us, to put all bills of lading on the same footing?

**Dr. Van Slooten:** Yes.

**Sir Norman Hill:** Was it not all clear at the Hague that if you could carry on your business without issuing bills of lading you would be at liberty to do so in any form you pleased?

**Dr. Knottenbelt:** But if there is a bill of lading?

**Sir Norman Hill:** If there is a bill of lading it comes under it - agreed.

**Judge Hough:** I do understand that there is nothing in these proposed Rules which so to speak prevents a charterer and a shipowner from contracting out of the bill of lading.

**Sir Norman Hill:** Certainly not.

**Sir Leslie Scott:** That answers my first question.

Might I for clearness add one point of the matter we have just been discussing. If I may have Judge Hough’s attention for a moment and want to get this point clear. The draft Rules provide in unambiguous language that the shipowner shall on demand of the shipper issue a bill of lading. Sir Norman Hill has said, what is clear from the Rules themselves, that, once issued, that bill of lading, under the regime of the Rules, will import all the obligations of the Rules. In the case of a chartered ship it is proposed to leave freedom of contract to the parties to make what terms they like by their charter. The Rules seem to detract from that proposed freedom of contract (hear, hear), and to impose upon the shipowner the obligation of issuing a bill of lading whether he likes it or not. I think it is essential to make it clear, if that be the intention, that in the case of a chartered ship it shall be open to the shipowner and the charterer by their contract to say: “We will not in this charter put in the usual clause ‘Master to sign bills of lading as required’”; so that in the event of the charterer wanting a bill of lading which he may negotiate, it shall then be open to the shipowner to say: “Right, you shall have your bill of lading, but in that case since by the bill of lading I shall assume more burdensome obligations then under the charter I shall want a little extra freight”. As at present the Rules are drafted, there is a fundamental obscurity on that point, which I think it is essential, should be cleared up.

**Sir Norman Hill:** I would remind you that as the Rules left the Hague we had Article 5, and there we could have adjusted the difficulty of the charterer of the ship who did not want bills of lading. We had complete freedom under Article 5. That freedom has been hedged round with all kinds of qualifications. The point raised is just one of the kind of points in which the Rules do want adjusting. But as I understand, and there are
many men who were at the Hague who are here, we all deliberately intended to include a bill of lading that was put in circulation whether under a charter or without a charter. The test was: is the bill of lading put in circulation? If so, it comes under the Rules, I understood that we were all agreed at the Hague that we did not want to interfere with absolute freedom of contract in regard to the chartering of ships, so long as the transaction was carried out throughout strictly under the terms of that charter, and there was no chance of any uninformed person becoming interested under any bills of lading or similar documents in the cargo. That was so carried. That is right, Sir, is it not?

**The Chairman:** Sir Norman Hill appeals to me. My recollection is entirely in accordance with what he has just said. That was what I understood to be the view of the businessmen who agreed upon what I may call the Hague compact.

*Afternoon sitting of 10 October 1922*

**[370]**

**Sir Leslie Scott:**

The Rules as they are drafted in Article 3(3), say this: “After receiving the goods into his charge [371] the carrier or master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing amongst other things” so and so. That is the original Hague Rules. The alteration made in the amended Rules is purely verbal; it says: “shall on demand issue to the shipper a bill of lading showing amongst other things” so and so. That bill of lading is either to be the contract between the parties containing all the terms of these rules or it is to remain a mere receipt as between those original parties, the charterer and the shipowner, the contract being still contained in the charter party. Which of those two solutions is the best one in business, is a matter that commercial men must discuss and decide. All I want to do is to get that clear, and I want to see whether Sir Stephen Demetriadi is following my point, because he represents some important cargo interests and it is essential that they should appreciate the point of substance that is involved. I asked a question of Sir Norman Hill when he was addressing us so clearly and lucidly as he did; would the shipowner who has entered into a charter be entitled to say to the charterer: If you want a bill of lading which *ex hypothesi* of course will be a bill of lading incorporating these Rules, because these Rules will be a matter of law, I want an extra freight? If the bill of lading is to remain a mere receipt of course the question would be meaningless. If the bill of lading is to supersede the charter as regards the terms of carriage it is a question of great moment.

**The Chairman:** He is to say that at the time of making the charter.

**Sir Leslie Scott:** He is to say that at the time of [372] making the charter or after the charter has been made. You must decide which it is to be. Anyhow even although as between the charterer and the shipowner the bill of lading may remain a mere receipt, if the charterer negotiates that bill of lading, it will become the contract of carriage as between the endorsee for value and the shipowner, and then put upon the shipowner all the obligations of the Hague Rules, which *ex hypothesi* would then have become law. Consequently that question of the relation of chartered shipments to these proposals is one upon which a decision is necessary as to what is wanted, and then only a very few words are needed to make it clear that that wish of the commercial community is successfully expressed in the Hague Rules. *(Applause).*

**The Chairman:** I do not know if Sir Stephen Demetriadi would wish to say anything upon what Sir Leslie Scott has just said?

**Sir Stephen Demetriadi:** May I ask Dr. Eric Jackson to answer on behalf of the Federation. He is our legal adviser.

**Dr. Eric Jackson:** I am really answering the Solicitor General and not the Conference I take it?
The Chairman: Yes.
Dr. Eric Jackson: The view of the Federation which I represent is that, if there is a bill of lading, whether it is issued under a charter party or not, the Hague Rules will be *ipso facto* incorporated in that bill of lading.

Sir Leslie Scott: That is obvious.

The Chairman: I do not know whether Dr. Jackson has thought of the question the Solicitor General has asked, namely, whether when a charter party is negotiated in the ordinary sense it would be practicable in his view to make that charter party upon the terms that the charterer should not require bills of lading and so should secure any benefit there was as between shipment under charter party and shipment upon bills of lading. What I understood Sir Leslie Scott to point out was that if there is not something in the charter party, using the common phrase, which excludes the right to have bill of lading the demand may be made, and apparently would be effective under the Rules for Carriage by Sea.

Sir Leslie Scott: If I may just add one word while Dr. Jackson is still there, as the Rules are drawn there is an imperative obligation placed upon the shipowner upon the demand of the shipper to issue a bill of lading. That would seem to apply to every shipowner entering into a charter party.

Dr. Eric Jackson: That is what I think.

Sir Leslie Scott: If that is so, then the shipowner who wants to make a charter party and does not want to enter into a bill of lading contract is deprived of that liberty. Is it the intention of the Conference that he should be so deprived or not? That is the real question.

The Chairman: I think that the question in effect is: is the shipper to be at liberty to renounce in concluding a charter party to the rights which he would obtain under the proposed statute?

Dr. Eric Jackson: I must say that I have never prior to this meeting considered the possibility of a charter party that did not result in a bill of lading. I know that there may be charter parties which do not in terms say that any bill of lading or any special form of bill of lading shall be issued thereunder, but in practice I think as a matter of commerce (you will correct me if I am wrong in this) that a bill of lading is always taken by the shipper for his own purposes whether it is under charter or not.

Sir Leslie Scott: It does not always become the contract.

Dr. Eric Jackson: That I follow under our English law. Whether it is the same elsewhere I am not certain.

Sir Leslie Scott: Is it intended to change that?

Dr. Eric Jackson: I think for this purpose it must be intended to change it, Sir Leslie.

The Chairman: That means to give the charterer the power to take a bill of lading under the Rules whether it may or may not have been the intention that he should demand it at the time of the charter.

Dr. Eric Jackson: I cannot conceive a charter party where it was not the intention that a bill of lading should be issued. But I think probably the view of Sir Norman Hill is correct that, even under these Rules, if a charter party were made excluding the possibility of any bill of lading being issued, then that charter party would be good, and there would be no bill of lading, and there would be nothing the Rules could affect.

The Chairman: That is just what I think Sir Leslie was asking.

Dr. Eric Jackson: That is what I think was Sir Norman Hill’s view this morning,
and I think that is so, but the possibility of such a charter party I do not appreciate.

The Chairman: You do not think that is business; you think it does not happen?

Dr. Eric Jackson: I would sooner the other commercial gentlemen present would tell you, but I cannot imagine any shipper who does not want to have something to represent his goods better than a mate’s receipt.

[382]

Sir Norman Hill: Is not the short cut, Sir, that if you want to go on doing that, you use a receipt, and you do not use a bill of lading? That is what we did at The Hague. Our Code was quite complete. All these transactions would have come under Article 5, and there would be no bill of lading issued. Now we are sure to get into trouble; there are sure to be difficulties, if we allow two forms of bills of lading to come on the market. There should only be one form of bill of lading, and everything which is called a bill of lading, which is in the shape of a bill of lading, should come under the Code, if we really want to put it on an equality with a bill of exchange. We can pay our debts in all kinds of form without the use of a bill of exchange. There is nothing to stop it. If we have a charter party and we want to maintain charter party conditions, and nothing else, then there must not be created a document in the form of a bill of lading; some other document than that will meet the case.

Sir Leslie Scott: May I add a word upon that, Sir, before I elicit from you and your brother Judges an opinion as to whether I was right or wrong in my statement of the law. I do not think anybody contemplates two forms of bills of lading, one bill of lading which incorporates these Rules because they are the law, and another bill of lading which is allowed so to speak to contract out of these Rules. I do not think any sane person could contemplate that; it would mean hopeless confusion. The point, as I understand it, is this. Sir Norman Hill suggests: In charter party shipments where there is no intention to negotiate a bill of lading, do not issue a bill of lading, but only a Mate’s receipt.

Sir Norman Hill: Certainly, something like that.

Sir Ernest Glover: We should have difficulty if we had not a bill of lading to take to our customs.

Sir Leslie Scott: I agree it might be possible, apart from Customs Regulations to do that, but there are many Charter party shipments where at the outset the charterer may like to keep a free hand as to whether he shall be the receiver himself, or whether he will negotiate his document.

Lord Sterndale: Mr. President, I am very sorry that I cannot comply with my learned friend’s request to say whether he is right in his law, and I will tell you why. The question whether he is right or not may come before Mr. Justice Hill, or Sir Henry Duke, and it may come before me on appeal from them, and I do not think I ought standing here, and not sitting judicially, to give any deliverance upon the state of the law. I do not quarrel with what the Solicitor General said, but I do not think it would be right for me here, occupying the position I do of President of the Court of Appeal, to state off hand and generally any proposition that I think as to the English law. But I do wish to say this: I entirely agree with the Solicitor General that this matter should be made clear. It should be made quite clear what is intended in the case of a charter party shipment as he calls in the ordinary course. If this rule as it stands is put into the form of legislation, there is a statutory obligation upon every shipowner who is carrying goods, whether under charter or not, to give a bill of lading on demand, and if he gives a bill of lading, it seems to me, looking at the definition clause of “contract of carriage” and Article 2 that, under this rule, if it were so made into a statute, that would be the governing document as to the rights and obligations of the shipowner and the charterer respectively. I do not know whether that is intended or not, but if
this is carried into legislation as it is now, it seems to me that that would be very likely at any rate the effect; and I quite agree with the Solicitor General that it should be made quite clear whether that is intended, or whether it is not.

**The Chairman:** Following what Lord Sterndale said, I am in the complex position of having a possibility of deciding this question myself, and the added possibility, if somebody else has decided this question, of having to sit in the Court of Appeal as an *ex officio* member of the Court, and to consider his decision.

It seems to me that the real question upon which you have come now, is whether you can discriminate between a document which is issued for the purpose of coming into commercial use and going into currency. If you can so discriminate, and merchants want us to discriminate, I am sufficiently little of a lawyer to say, if they want to do so, why should not they; if they think there is use in it, why should not they be allowed to do it.

**Sir Norman Hill:** That is our old Article 5.

**The Chairman:** Yes. If I may add this, it seems to me that if there is any class of business which is better and more economically served, in which you can dispense with a standardised form, because the public is not concerned, or general interests are not concerned, probably you are serving economy by leaving it open to people to do that; but if there is no such class of interest then there is not of course ground for variation. At The Hague the view was that there was business which was between two individuals, and with which the Bankers and Insurers and the world at large had nothing to do, where the shipper was the receiver of the goods and was intended to be, and that you need not legislate about them and need not incorporate Bills of Lading terms upon a standard pattern into their transactions. That was the view I think which the businessmen took at The Hague. I speak in the presence of many of them. If the businessmen here take the same view, and up to now I have heard nobody dissent from it, then, if there is a Diplomatic Conference, the diplomatists must consider whether they are to impose a technical legal principle upon the businessmen which the businessmen want to be free from. I think that is the real question. At The Hague - I have said it twice in the presence of many members who were there - the view was that you had better leave the two individuals outside of your restrictive terms, and impose that upon them if they intended to produce negotiable documents. If I do not hear a view to the contrary expressed here in the Conference I shall come to the conclusion that the businessmen here take the view which the businessmen at The Hague took, or that they do not differ from it so strongly that they think it fit or necessary to express their difference.

**Sir Norman Hill:** The only thing I should add is that, in the course of the negotiations to which I have referred, that view was strongly dissented from, and a proviso was added, to which I agreed, very much narrowing the chances of the two businessmen agreeing with one another and working out the contract they had agreed to. They are only to be left free as long as they are dealing with cargoes which are not ordinary commercial cargoes. That view was rammed down my throat, and I had to submit to it, and it is there now. Article 5, now 6 does not do what we left it doing when we left The Hague.

**Mr. R. A. Patterson:** You cannot have freedom of contract at the same time combined with restrictions; and the Charterer, whether he is receiver or not, or whether he negotiates the document or not, from the commercial point of view should be protected just as much as the receiver of the cargo who receives the goods on negotiable documents. Therefore, if you are going to have it at all you must restrict equally the transaction from the Charterer direct, as from the man who is dealing with the goods by negotiable documents.
Mr. W. W. Paine: Mr. Chairman. I am sorry for intruding upon the Conference again but one wants to be helpful if it is possible. The learned Solicitor General has told us that it is up to this Conference to settle one question, and that question we have not yet settled. I must remind you of hard facts, to come back to that. We have to settle whether these Rules are to apply not only to bills of lading which is their primary scope and object, but to charter parties. I think the learned Solicitor General has also explained to us that if we are going to apply them to charter parties that will involve an alteration of the law, that is to say, that the Charter party will have to be superseded by the bill of lading. Having listened very carefully to all the arguments that have been addressed to the Conference on this side, I remain, as I said in my original speech, of the opinion, and I think we are all agreed upon this, that these Rules must apply to every negotiable document in the shape of a bill of lading that is issued. We cannot have two forms of bills of lading. But I still remain of opinion that, where no bill of lading is going to be issued except possibly a thing which may call itself a bill of lading for the purpose of Customs, and things of that sort, where no bill of lading in ordinary sense of the word, no document which it is intended to negotiate, is going to be issued at all, the parties should be left free to make their own bargain under a charter party and we are not concerned with that. (Hear, hear). That is my view. That can be readily carried out by a very slight amendment of Article 6. I will read it from the beginning, putting in the words which I think would carry out the object that one has in view:

"Notwithstanding the provisions of the preceding Articles a carrier, master, or agent of the carrier and a shipper shall - now come the interpolated words - "in regard the shipments carried under a charter party and also in regard, subject as hereinafter provided, to the shipment of any particular goods be at liberty to enter into any agreement" etc. Now, bear in mind that that Article goes on to provide, and these words will govern both of the cases that I have named, that in any such case no bill of lading either can have been or shall be issued in connection with that shipment. So that you have got the absolute protection in that case; but you have to rely upon your charter party only and issue no bill of lading, otherwise the Rules prevail. I do not know whether anybody, having heard that explanation, would be prepared to recommend that amendment to the Conference, but I am rather hopeful that it may settle this question which the Solicitor General has told us we must settle if we are going to make this Conference effective either to-night or to-morrow.

The Chairman: I take it that what Mr. Paine desires to ascertain is whether in the interested quarters there is concurrence in some such modification as he has mentioned; because, so far as the mode of carrying an arrangement of that kind into effect is concerned, I rather gathered that the Conference as a whole shared the view of His Excellency that it would be better to reserve questions of language to be dealt with by a committee and to determine the principle if it could be determined. I do not know if either Sir Stephen Demetriadi or Dr. Jackson can say anything to us on this topic.

Sir Stephen Demetriadi: Mr. Chairman, we do not agree to the amendment that has been put forward by Mr. Paine. We will consider this point and see whether we can be helpful in making some suggestion if not upon that article, or some other article which will cover the same point.

The Chairman: Then perhaps to-morrow upon consideration I dare say Sir Stephen will be able to give us some information.

Mr. Norman B. Beecher (U.S.A.): May I ask one question upon one point for consideration?

The Chairman: Yes.

Mr. Norman B. Beecher: What is understood in the proposed alteration or amend-
Article 3 (3) - Obligation to issue a bill of lading

inment of the Rules to be the definition of the term “charter party”? In other words, are we referring to a charter party of the entire cargo carrying capacity of the ship, or may we have a charter party for a small shipment of goods and then by the device of having a charter party issue any bill of lading thereunder free from any of the restrictions of the Rules?

The Chairman: That, I think, is a question which ought to be considered. Devices as Mr. Beecher I think most properly described that procedure to which he referred, I am sure, are not in favour. It is plain dealing that is in favour, (Hear, hear), and I am sure that will be considered.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue to the shipper a bill of lading showing amongst other things

Conférence Diplomatique - Octobre 1923
Réunions de la Sous-Commission
Deuxième Séance Plénière - 6 Octobre 1923

Concerning article 3(3), the Chairman confirmed that the text did not cover the “received for shipment” bill of lading. It dealt solely with the declaration of the receipt of goods for the carriage itself and whether these terms might extend to certain hypothetical situations where receipt began on the quay. They never applied to the “received for shipment” bill of lading.

Mr. Richter pointed out that article 3(3) established the carrier’s obligation to issue a bill of lading, but provided no sanction for the case where this provision was not respected.

Since the international convention did not itself carry any sanction, he wondered what the obligatory force of these provisions was. In the convention on assistance, for example, it was stated that the States would make the necessary criminal provisions.

Sir Leslie Scott replied that the convention left up to each legislature the responsibility for providing sanctions in conformity with their national legisla-
sanctions civiles ou de sanctions pénales. Sous l’empire de la loi anglaise, par exemple, un armateur n’observant pas cette disposition deviendrait son propre assureur contre tous les risques du voyage; à l’exception des clauses relatives aux “actes de Dieu et des ennemis du Roi”, il ne jouirait plus d’aucune exonération.

M. Ripert voudrait voir imposer au législateur l’obligation de prendre des mesures de sanction.

Sir Leslie Scott estime que cette obligation se trouve d’une manière implicite dans la convention.

M. le Président rappelle que les dispositions relatives aux connaissements figurant déjà dans les lois continentales ne sont pas sanctionnées par un texte pénal. Elles ont cependant le même effet pratique que si elles étaient sanctionnées, car les parties ont intérêt à s’y conformer. Si le capitaine, en présence du texte précis de la loi ou de la convention, prétendait délivrer un document qui ne serait pas conforme à leurs prescriptions, il serait assigné en justice et aurait les plus grands ennuis, puisque dans beaucoup de pays sans [48] connaissement en règle il ne peut dresser son manifeste ou quitter le port. S’il quittait le port avant que le tribunal ait statué, il se trouverait au port de destination entièrement responsable des marchandises, devrait provoquer la désignation d’un séquestre et se trouverait exposé à devoir payer des frais considérables. La crainte de ces difficultés suffira pour qu’il se conforme aux dispositions d’ordre public.

La disposition paraît suffisante puisque la possibilité existe de recourir à l’action civile ordinaire. Dans le Bill introduit au Parlement britannique une sanction pénale avait été prévue primitivement; mais elle a été supprimée ensuite en présence de l’objection assez juste que les parties sont suffisamment armées pour défendre leur droits.

M. Bagge pose la question de savoir s’il est permis au chargeur et à l’armateur de s’entendre et de mettre par exemple dans la charte-partie ou dans un autre accord quelconque une clause disant que
l’armateur ne sera pas tenu de délivrer un connaissement.

M. Sohr est d’avis que la question posée par M. Bagge est très intéressante. En principe, le transporteur doit sur la demande du chargeur délivrer un connaissement; mais si le chargeur s’engage par une convention à ne pas demander de connaissement, il est libre de le faire.

M. le Président rappelle l’article 6 où il est dit que dans certains cas une convention peut déroger aux prescriptions de la convention à condition qu’il n’y ait aucun connaissement émis.

Sir Leslie Scott confirme que le chargeur peut renoncer aux droits et privilèges que donne le connaissement. Mais il fait observer que généralement le chargeur a besoin d’un connaissement et que l’absence de ce document rendrait le commerce impossible.

M. le Président constate que l’art. 3 stipule que si un connaissement est demandé il doit être donné et que ce connaissement doit porter les mentions décrites au § 3; il faut réserver la question de savoir s’il peut y avoir des dérogations comme à l’article 6 ou des exemptions plus larges encore. Ce point pourra être examiné lors de la discussion de l’art. 6.

M. Struckmann pense que le texte de l’article 6 alinéa 3 doit être interprété en ce sens qu’on peut renoncer au connaissement pour un chargement extraordinaire; mais qu’on ne peut agir ainsi quand il s’agit d’un chargement commercial ordinaire.

M. Ripert croit que la discussion provient des mots “sur demande du chargeur” qui prêtent à équivoque. Ils signifient soit que le chargeur peut s’il le désire demander un connaissement, soit qu’il est libre de souscrire d’autres clauses et alors autant dire qu’aucune règle ne doit être observée. En France la loi s’oppose à ce que des marchandises soient chargées si un connaissement n’est pas délivré. Le tout est de savoir si tout connaissement délivré doit être conforme aux Règles de La Haye, ou bien s’il est loisible au chargeur d’y renoncer et d’accepter un connaissement avec d’autres dispositions.

Mr. Sohr felt that Mr. Bagge’s question was very interesting. In principle, the carrier should, at the shipper’s request, issue a bill of lading, but if the shipper had contracted through an agreement not to ask for a bill of lading, he was free so to do.

The Chairman recalled article 6, where it stated that in certain cases an agreement could derogate the prescriptions of the convention on the condition that no bill of lading had been issued.

Sir Leslie Scott confirmed that the shipper could give up the rights and privileges of the bill of lading. But he pointed out that generally the shipper needed a bill of lading and that the absence of this document made trade impossible.

The Chairman stated that article 3 stipulated that if a bill of lading were requested, it must be given, and that this bill of lading must bear the leading marks described in paragraph 3. It was necessary to reserve the question of knowing whether there could be derogations, as in article 6, or still wider exemptions. This point could be examined with discussion of article 6.

Mr. Struckmann thought that the text of the third paragraph of article 6 should be interpreted in the sense that one might renounce the bill of lading for an exceptional shipment, but that one could not so act when it was a matter of a regular commercial shipment.

Mr. Ripert believed that the discussion sprang from the phrase “at the request of the shipper”, which lent itself to ambiguity. It meant either the shipper could, if he wished, ask for a bill of lading, or that he was free to agree to other clauses, and then you might as well say that no rule must be observed. In France, the law forbids goods to be loaded if a bill of lading is not issued. It all rested on knowing whether every bill of lading issued had to conform to the Hague Rules or whether it was legal for the shipper to renounce them and accept a bill of lading with other dispositions.

Mr. Sohr recalled that the actual idea
M. Sohr rappelle que l'idée même qui a inspiré les Règles de La Haye et l'article 3 est de protéger les droits du tiers porteur du bon de livraison et de permettre aux assureurs et aux banquiers, d'avoir un document qui, comme la lettre de change, représente un certain minimum de garanties. Mais si ces détenteurs veulent renoncer à leur privilège, en ne réclamant pas de bon de livraison, ils sont libres de le faire.

M. le Président constate que, dès qu'un bon de livraison peut être négocié et détenu par un tiers porteur, il doit être conforme aux Règles de La Haye. Le chargement a le droit de ne pas en réclamer un, mais du moment où il en demande un, ce bon de livraison doit répondre aux stipulations prévues. En pratique ces seuls principes suffisent. Personne ne transporte sans bon de livraison, sauf dans des cas tout-à-fait extraordinaires dont il est inutile de s'occuper ici; car la question posée est purement théorique. En général, le chargement a un bon de livraison, et il a besoin de ce titre pour recevoir la marchandise à destination, pour justifier ses droits vis-à-vis du capitaine, pour assurer la marchandise, pour avoir du crédit.

Ce que l'on voit peut-être plus souvent ce sont des bons de lading à partie dénommée; mais dans tous les cas il y a un bon de livraison ou un titre analogue.

M. le Président continuant l'examen de l'article 3, propose au littera a) de mettre au lieu des mots “imprimés ou apparaissant” les mots “imprimés ou apposés clairement” qui sont plus exacts. (Assentiment général).

Au sujet des litteras b) et c) il n'y a pas d'observations; mais l'alinéa suivant a donné lieu à discussion au cours de la Conférence plénière en ce qui concerne les mots “dont il a une raison sérieuse de soupçonner qu'ils ne représentent pas exactement les marchandises actuellement reçues par lui” ou qu'il n'a pas eu des moyens raisonnables de vérifier. Il a été dit que ces termes doivent être interprétés en ce sens que le capitaine doit pouvoir vérifier le poids pour l'espèce déterminée dont il s'agit, c'est-à-dire that had inspired the Hague Rules and article 3 was the protection of the rights of the holder of the bill of lading and the provision of a document that, like the bill of exchange, represented a certain minimum guarantee for insurers and bankers. But if these holders wished to renounce their privilege by not requiring a bill of lading, they were free to do so.

The Chairman stated that as soon as a bill of lading could be negotiated, and placed in the possession of a holder, it should conform to the Hague Rules. The shipper has the right not to ask for one, but from the time when he did demand one, this bill of lading must meet the established stipulations. In practice these principles alone were enough. No one carried goods without a bill of lading, except in cases that were altogether out of the ordinary, which there is no point discussing here, because the question posed is purely theoretical. In general, the shipper had a bill of lading, and he needed this document of title to receive the goods at their destination, to prove his rights toward the captain, to insure the goods, to get credit. [49] What one more often sees, perhaps, are straight bills of lading, but in every case there was a bill of lading or similar document of title. The Chairman, continuing the examination of article 3(3), proposed including in sub-paragraph (a) instead of “imprimés ou apparaissant” (stamped or shown), the words “imprimés ou apposés clairement” (stamped or clearly shown), which were more exact. (General agreement).

There were no comments on sub-paragraphs (b) and (c), but the following sub-paragraph had given rise to discussion in the course of the plenary conference in so far as concerned the words “which he has reasonable ground for suspecting not accurately to represent the goods actually received by him” or which he has had no reasonable means of checking. It was said these terms should be interpreted in the sense that the captain must be able to check the weight for the specific goods involved, that is to say, for such a category of ship and for the type of
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for such category of ship and for such type of cargoes really operated. It must be reasonably able, under the conditions which the goods were delivered to him, to check the weight. It would not be sufficient to say that there were on board the necessary instruments and organization to allow this check. If, following the normal commercial practice, one proceeded to the loading and discharge under conditions that did not allow the captain to discover the weight, nothing would prevent him from inserting a proviso to this end. The parties would also be able to determine in the charter party or in the bill of lading what we understand by “reasonable means of checking the weight”. One clause might thus provide that the weight must be considered checked by a weighing whose costs will be shared by the parties.

Mr. Ripert indicated that the French shippers, represented by the Chambers of Commerce, expressed the fear that the large lines would include in their bills of lading a clause stipulating that they could not check the quantity of goods received and that consequently they were not bound to issue a bill of lading under the conditions provided for in article 3.

Sir Leslie Scott recalled that on page 200 of the proceedings of the last session, the sub-committee had expressed an opinion on this matter through its chairman and at the request of Mr. Bagge.

Mr. Ripert asked what would happen when a captain claimed to have issued a shipper only a “weight unknown” bill of lading, in other words, what would be the sanction in the case of contravention.

Sir Leslie Scott replied that if the captain believed he had no reasonable means of verifying the weight, he would put on the bill of lading “weight unknown”. If the shipper brought a claim in this respect, the court would determine whether the captain had the right or not to insert these words.

The Chairman confirmed that armed with article 3 (3), the shipper would have the right to demand a declaration of weight. Progress over the present position would be that the captain would no
l'article 3(3), le chargeur aura le droit d'exiger la constatation du poids. Il y aura sur la situation actuelle ce progrès que le capitaine n'aura plus comme maintenant la faculté de mettre de plein droit “poids inconnu” ou “quantité inconnue”. Désormais pour pouvoir mettre cette clause il devra justifier qu’il n’a pas eu les moyens raisonnables de vérifier. Une clause générale ne suffira plus, il faudra que le capitaine justifie l’impossibilité de vérifier dans chaque cas. La sanction se trouvera dans le contrôle des tribunaux.

M. Bagge fait observer que dans les cas où l’armateur n’aura pas eu les moyens raisonnables de contrôler, il sera cependant important pour le chargeur de voir figurer au connaissement, le nombre de colis et le poids que lui-même indique. Ne peut-on pas dans ces cas stipuler le “shipper’s weight” et l’armateur n’est-il pas tenu de mettre dans le connaissement le nombre et le poids indiqués par le chargeur avec la mention “weight unknown” quand il ne peut lui-même vérifier?

M. le Président répond affirmativement à cette question.

Mr. Loder confirme ce point de vue.

Sir Leslie Scott reconnait que cette obligation ne se trouve pas dans la convention; mais d’après la pratique le capitaine est toujours tenu de mettre le “shipper’s weight”.

M. Bagge trouve que cette obligation devrait figurer dans la convention. Or, celle-ci semble dire le contraire dans la phrase “cependant aucun transporteur ne sera tenu de déclarer et de mentionner...”. Il faudrait remplacer les mots “ou qu’il n’a pas eu les moyens raisonnables de vérifier” par les mots: “dans le cas où le transporteur n’a pas les moyens raisonnables de vérifier les marques, les nombres, la quantité ou le poids, il pourra insérer au connaissement une clause portant que ces indications sont inconnues, ou une autre réserve analogue”.

M. le Président ne partage pas cet avis. La convention ne va pas entrer en vigueur dans un monde nouveau. Les principes, as at present, the facility to put without need of sanction “weight unknown” or “quantity unknown”. From now on, in order to be able to include this clause, he would have to prove that he had not had reasonable means of checking. A general clause would not be enough; it would be necessary for the captain to prove the impossibility of checking in each case. The sanction would be under the courts’ control.

Mr. Bagge pointed out that in the cases where the shipper had not had reasonable means of checking, it would be important, however, for the shipper to see included in the bill of lading the number of packages and the weight that he himself indicated. In such cases, could one not stipulate the “shipper’s weight” and wasn’t the shipowner bound to include in the bill of lading the number and weight given by the shipper with the mark “weight unknown” when he could not himself check it?

The Chairman replied affirmatively to this question.

Mr. Loder confirmed this point of view.

Sir Leslie Scott recognized that the obligation was not found in the convention, but according to custom, the captain was always obliged to include the shipper’s weight.

Mr. Bagge found that this obligation ought to be in the convention. Whereas the opposite seemed to be stated in the phrase: “provided that no carrier shall be bound to state or show...”. It was necessary to replace the words “or which he has had no reasonable means of checking” with the words: “In the case where the carrier has had no reasonable means of checking the marks, numbers, quantity, or weight, he may insert in the bill of lading a clause stating that this information was not known or some other analogous reservation”.

The Chairman did not share this view. The convention was not going to enter into force in some new world. The
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ciples généraux du droit et les usages maritimes aussi vieux que la navigation subsistent et restent en vigueur. Le texte n’y dérobe pas; il dit simplement qu’on ne doit pas mentionner une marque, un poids, ou un nombre dont on a des raisons sérieuses de mettre en doute l’exactitude. Quand on y ajoute une clause “poids inconnu” ou “shipper’s weight”, la description est conforme à la réalité. Si un poids ou un nombre précis est inséré sans réserves, on aura le droit de dire que ces chiffres n’ont pas été contestés au moment de l’émission du connaissement et qu’on n’a plus le droit de les contester plus tard.

M. Bagge constate que le transporteur n’est donc pas tenu par les Règles de la Haye d’indiquer, sous réserves éventuelles, les indications données par le chargeur.

M. le Président répète que le transporteur reste lié à cet égard par le droit commun et les usages maritimes; on n’y déroge que dans des limites précises. Si le capitaine ne peut vérifier le poids ou la quantité, il peut l’indiquer au connaissement; mais il ne pourra pas en faire une clause de style.

Sir Leslie Scott explique également que si le poids est constaté par le capitaine, celui-ci en met l’indication exacte au connaissement. Si le capitaine ne connaît pas le poids et n’a pas le moyen raisonnable de le vérifier, et que le chargeur présente un connaissement contenant tous les détails et le donne à signer au capitaine, celui-ci ne signera pas sans réserves mais ajoutera “poids inconnu”.

M. Sohr fait observer que si les usages continuent à être en vigueur, il est cependant certain que ce texte qui a été rédigé en Angleterre, a pour but d’obliger le capitaine à une vérification qu’il ne faisait jamais jusqu’ici, car si le capitaine insère dans le connaissement une clause “poids, nombre et quantité inconnus” il devra désormais le faire avec une justification; il devra prouver qu’il n’a pas eu les moyens de vérifier. On lui impose donc une obligation raisonnable et sérieuse de vérifier et de contrôler.

general principles of law and maritime customs as old as navigation would remain in force. The text did not detract from this. It simply stated that one need not show any mark, weight, or number where there were reasonable grounds for doubting its accuracy. When one added a clause, “weight unknown” or “shipper’s weight”, the description conformed to reality. If a weight or exact number were inserted without any provisos, one would have the right to say that these figures had not been contested at the time of the issue of the bill of lading and that one no longer had the right to contest them later on.

Mr. Bagge stated that the carrier was therefore not bound by the Hague Rules to show, without qualification, the information provided by the shipper.

The Chairman repeated that the carrier remained bound in this respect by common law and by maritime custom. One only derogated within precise limits. If the captain could not check the weight or the quantity, he could indicate it in the bill of lading. But he could not make it a standard clause.

Sir Leslie Scott also explained that if the weight was stated by the captain, he could include accurate information in the bill of lading. If the captain did not know the weight and had no reasonable means of checking it, and the shipper presented a bill of lading containing all the details and gave it to the captain for signature, he would not sign without reservation but would add “weight unknown”.

Mr. Sohr pointed out that if customs continued in force, it was certain that this text, which had been drafted in England, had as its object the binding of the captain to a checking procedure that he had never carried out up to the present, because if the captain inserted in the bill of lading a clause “weight, number, and quantity unknown”, he would from now on have to justify it. He would have to prove that he had not had the means of checking. A reasonable and serious obligation to check and verify was therefore being imposed upon him.
ARTICLE 3

3. Après avoir reçu et pris en charge les marchandises, le transporteur ou le capitaine ou agent du transporteur devra, sur demande du chargeur, délivrer au chargeur, un connaissement portant entre autres choses:

a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence pourvu que ces marques soient imprimées ou apposées clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquelles les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisibles jusqu’à la fin du voyage.

ILA 1921 Hague Conference
Text submitted to the Conference

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3. The carrier, master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

(a) The marks necessary for identification of the goods as the same are furnished in writing by the shipper, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

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The Chairman: .................................................................

[84]

Is there any amendment offered?

Sir Norman Hill: We suggest, Sir, that in (a) the word “marks” should be qualified by the word “leading” - “leading marks”. It is “The marks necessary for identification”, and to a certain extent the words “necessary for identification” already limit the nature of the marks which must be recorded on the bill of lading, but we put it that as a matter of business and getting the cargoes despatched and getting the ships despatched, the obligation should not go beyond “leading marks necessary for identi-
fication”. If any other marks that a manufacturer chooses to put upon his boxes have to be placed on the bills of lading, then there will have to be very stringent regulations made that all cargo is to be down alongside at least a week, or ten days, or a fortnight, before the ship sails, so that everything can be checked, and you will introduce an impossible set of conditions. So we suggest that it should be limited to “leading marks”. Then the next point is this. These statements which the shipowner is to be bound to make are all in his hands before the loading starts. You see under subsequent clauses you are making this document which you are obliging the shipowner to issue prima facie evidence against the shipowner. It is obviously the intention of the cargo interests to make the bill of lading of greater value by taking every care that it correctly states what is put on board. That, of necessity, entails on the shipowner a good deal more labour. He will have to make all proper provisions for checking such things. I submit that if that bill of lading is to be made prima facie evidence against him, then the statements that he has to put on the bill of lading must be placed in his hands before the loading starts, so that he will have every opportunity of checking everything that he has to put into the bill of lading, by which he is to be bound. The other point is just a small point. “Provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained”.

The Chairman: That is drafting only.

Sir Norman Hill: That is drafting only.

The Chairman: I think I might ascertain whether the Committee is satisfied that the proper marks to be insisted upon are the leading marks. The gentlemen know what the course of business is. The question is that Sir Norman Hill’s amendment to introduce after “The” in 3 (a) the word “leading” be adopted. (Agreed).

Then as to the point of time, in the second line of 3 (a) “before the loading starts”, that seems to follow as a matter of course. Is that agreed? (Agreed).

And the words “if uncovered” at the end of line 3 and beginning of line 4 are obviously necessary words. Is that agreed? (Agreed).

The question is that 3 (a) as amended stand part of the draft. (Agreed).

Text adopted by the Conference

[256]

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as will remain legible until the end of the voyage;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[363]

3. After receiving the goods into his charge the carrier or the master or agent
of the carrier shall on demand issue to the shipper a bill of lading showing amongst other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue to the shipper a bill of lading showing amongst other things:

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
ARTICLE 3

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

ILA 1921 Hague Conference
Text submitted to the Conference

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3. The carrier, master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

(b) The number of packages or pieces.
(c) The quantity, weight, or measurement, as the case may be, as furnished in writing by the shipper.

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The Chairman: ..............................................................

[85]

3 (b). “The number of packages or pieces”.

Sir Norman Hill: Sir. We suggest that (b) and (c) should run together, the object being to make the words “as furnished in writing by the shipper” applicable to both. So it would read “The number of packages or pieces, or the quantity or weight” - (we would suggest leaving out “or measurement”) - as the case may be, as furnished in writing by the shipper before the loading starts”. Apart from those amendments, there is this very difficult question to which Mr. Cleminson has already drawn your attention. I primarily know the views and the difficulties of the liner companies, and, [86] speaking on behalf of the liner companies, we do realise that this agitation that we are now trying to soothe and satisfy has arisen in very great part from the clauses introduced into the liner bills of lading. We believe, for the considerations I ventured to put before you yesterday, that we were fully justified in introducing these conditions; we are not ashamed of it, but at the same time, we do realise that it is those conditions which have brought about this strong agitation for a set of rules, and so far as we, the
liners, are concerned, I do not think there will be any difficulty in taking (b) and (c) together in the way I have suggested. It is very difficult to suggest a solution, but one does appreciate that “The number of packages or pieces, the quantity or weight” are not very appropriate when you are dealing with a full cargo carried under a charter-party. I do not think it is possible to give full effect to what I personally understand to be the wishes of the cargo interests, to distinguish between a tramp bill of lading and a liner bill of lading. I think a bill of lading is a bill of lading. If it is a fully negotiable document I do not think in law is possible to distinguish between the one that is issued by the liner and the one issued by the tramp. I do not think it would be satisfactory to anybody. I do not think it would be satisfactory to the tramp if he was putting on to the market, for the purpose of assisting the credit of the merchants and the bankers, anything in the nature of an inferior bill of lading. I do not think it would be fair or right. It would be oppressive on the tramp, and it seems to me, so long as it is a negotiable bill of lading it will have to come under the code. If it comes under the code, it is possible to think of any words, to be put into what will be now paragraph (b), qualifying the responsibility in regard to - I would prefer it if it were possible - the bulk cargoes? I do not think it would be a very happy way of putting it to qualify it by saying that these are bills of lading issued in respect of a cargo carried on a ship which has been chartered.

The Chairman: Sir Norman, might I suggest that you are at present speaking to what, I think, technically would be a proviso upon Article 3(3)? It seems to me to complicate a little the question of the amendments, which I think are little more than drafting amendments, which you are actually proposing in 3 (b).

Sir Norman Hill: I quite follow your point, Sir: it would be another sub-section.

The Chairman: It would be in the nature of a proviso.

Sir Norman Hill: It would be in the nature of a proviso; but I wanted to make my point now, because, if we can agree what you describe as mere drafting amendments, incorporating (b) and (c), I would not like the Committee to feel that when I came with a proviso that I had some other point that I wanted to raise, and it is a big point I want to raise in the proviso. If I have sufficiently indicated it I have finished, but in passing (b) and (c) I would like the Committee to realise that I think that in the cargo interests, and in the tramp interests, we always call them tramps; I hope it is not resented by any of the other nations.

Mr. Robert Temperley: Might I suggest to Sir Norman Hill that it would be very much more convenient if we decided first on the principle of the proviso?

Sir Norman Hill: Might I support the Chairman’s suggestion that we deal with (b) and (c) on the distinct understanding that there will be a proviso?

The Chairman: I do not think the Committee ought to be bound in advance to accept the proviso. I think the amendment must stand upon its merits. It is a little more than a drafting amendment, but it has such obvious recommendations that it does not seem to me that in itself it would interfere with business transactions. I know what it means, I think.

The Chairman: Now I think we are ready to deal with the amendments. We were upon Article 3(3) (b) and (c), and the question was whether at the end of 3 (b) we should insert the words “or the”; so that, as I understand, the shipowner should be obliged either to give a bill of lading showing the number of packages or pieces, or a bill of lading showing the quantity or weight?
Sir Norman Hill: Yes.
The Chairman: It is obvious, it seems to me, that in the case of a coal cargo (b) would be entirely inappropriate, and that it must be intended that there should be an alternative.

Sir Norman Hill: That is right.
The Chairman: Does the Committee agree in section 3 (b) to add the words “or the”? (Agreed).

Mr. McConchy: I should just like to ask, why is measurement left out? You have “measurement”. Sir Norman Hill says “measurement” ought to be left out.
The Chairman: I am just coming to (c). Paragraph (c) is a drafting amendment.

Mr. McConchy: No.
The Chairman: Section 3 (c), I think, is drafting to omit “(c) The”. The question arises upon “or” and “or measurement”. I call upon Sir Norman Hill.

Sir Norman Hill: Sir. With regard to measurement, I do not [97] know - the cargo interests know - whether they would be in a position before loading to lodge a statement showing measurement. I am told that they will not; but what they will be able to give are the number that they are going to ship, or the quantity that they are going to ship, or the weight they are going to ship. I am told that they will not be in a position to lodge a statement of the measurement of the goods they are going to ship.

Mr. McConchy: In the case of piece goods you have to give the measurement.

Sir Norman Hill: That is what I am told. This cuts both ways, and it is very important that we should get it reasonable as between the two parties. It only becomes operative on the shipper, the cargo owner, putting in his statement, and then, if that is an honest statement, the shipowner is bound to transcribe that statement on to his bill of lading. We must be perfectly clear that we are providing a means for carrying out a sound business operation.

The Chairman: Does anybody offer an observation upon Sir Norman Hill’s combined amendment to introduce “or” before “weight” and to omit “or measurement”? 

Mr. McConchy: Notwithstanding what Sir Norman Hill has said, I think that “measurement” ought to be kept in. Before the shipowner can charge his freight, the shipper has to give him the measurement of these goods. Then it rests with the shipowner if he is not satisfied with that statement to check them himself before the bill of lading can be given.

Mr. Cleminson: I should like to ask Mr. McConchy, would not “measurement” for his purpose be covered by the word “quantity”? You have the word “quantity”.

The Chairman: The same question was occurring to me, Mr. Cleminson. It seems to me that weight and measurement are modes of arriving at quantity. There might be other necessary words of definition. I do not know. It is a matter of business.

Sir Alan Anderson: It seems to me, Mr. Chairman, that what you say is perfectly correct; that the case is met by the words “weight or quantity”, and in some cases measurement would appear, and in some cases it would not, and there is the thing left open, and we can conduct our business in a reasonable way, like we do now.

Mr. McConchy: I do not press that; it was only trying to make things clear, but if the shipowners are not agreeable to that I will not press it.

The Chairman: Very good. The question is that the word “or” be inserted after the word “quantity” in 3 (c). Is that agreed? (Agreed).

And that the words “or measurement” after the word “weight” be omitted in 3 (c). Is that agreed? (Agreed).
The next amendment, in the second line of 3 (c), of which Sir Norman Hill has given notice is to introduce the words “before the loading starts”. As the shipper is to furnish the description in question in writing in order to get a bill of lading, it seems to me that “before the loading starts” is merely drafting. Does the Committee accept it? (Agreed).

**Text adopted by the Conference**

3. AFTER RECEIVING THE GOODS INTO HIS CHARGE the carrier OR THE master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

   (b) THE NUMBER OF PACKAGES OR PIECES, OR THE QUANTITY OR WEIGHT, AS THE CASE MAY BE, AS FURNISHED IN WRITING BY THE SHIPPER BEFORE THE LOADING STARTS;

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**CMI 1922 London Conference**

**Text submitted to the Conference**

*(CMI Bulletin No. 65 - Gothenborg Conference)*

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand issue to the shipper a bill of lading showing, amongst other things:

   (b) the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

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**Morning sitting of 10 October 1922**

Mr. A. P. Möller (Denmark):

Now I come to Article 3(3)(b) and I would say that this coupled with Article 3(4), and Article 3(8) to my mind form the main stumbling block against the introduction of the Hague Rules to tramp shipping, and to my mind also the stipulations contained in the amended Rules are much less acceptable and to my view much more dangerous than the wording contained in The Hague Rules 1921 as they stood or perhaps more properly as they stand. The effect of these stipulations in the Hague Rules was to make it incumbent on the shipowner to issue a bill of lading not only for the number of packages or pieces but also for quantity or weight. Clause 4 went on to say that such a bill of lading except in the case of goods carried in bulk or whole cargoes of timber should be _prima facie_ evidence of receipt by the carrier of such quantity or weight. The authors of the Rules evidently thought that by excepting from Clause 4 goods carried in bulk and whole cargoes of timber they took away the main objections that might be raised to these stipulations and made them practicable also for tramp shipping. My compatriot has already hinted that that does not apply to all countries. Even if you do not say that the bill of lading is _prima facie_ evidence, it is evidence and as a matter of fact in many countries it is conclusive evidence. We objected to that in London but we were told specially by such an excellent authority as Sir Norman Hill, to
whom we owe the greatest respect and gratitude for his labours, that we need not have such great fears and he gave us this reason that, according to the wording, the shipper had to give the quantity or measure of each item before the loading started - that was the wording of the original text - and he said, and rightly so, and I was at that time glad to find that leading gentlemen considered that that was really a safeguard: “In 9 cases out of 10 the merchant when the loading starts does not know the quantity which the ship is going to load, therefore he cannot give you that quantity in writing, and, as he has not fulfilled his part of the bargain, you need not sign a clean bill of lading for quantity or weight”, at least that is the way I understood it at that time. Well, it is to be observed that whereas it is said in the Hague Rules “as furnished in writing by the shipper before the loading starts”, the words “before the loading starts” have been eliminated in the amended Rules and to that extent they appear to us now more risky than the original Rules.

*Text adopted by the Conference*
*(CMI Bulletin No. 65 - Gothenborg Conference)*

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand OF THE SHIPPER issue to the shipper a bill of lading showing, amongst other things:

(b) EITHER the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
ARTICLE 3

3. Après avoir reçu et pris en charge les marchandises, le transporteur ou le capitaine ou agent du transporteur devra, sur demande du chargeur, délivrer au chargeur, un connaissement portant entre autres choses:

..............................................

c) L’état et le conditionnement apparent des marchandises.

ARTICLE 3

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

..............................................

c) The apparent order and condition of the goods.

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ILA 1921 Hague Conference
Text submitted to the Conference

[xlvii]

3. The carrier, master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

..............................................

(d) The apparent order and condition of the goods.

Second day’s proceedings - 31 August 1921

[98]

The Chairman: Now that (b) and (c) become one clause, that would amend (d) into (c) in the next clause. The 3 (c) as amended is: “The apparent order and condition of the goods”.

Is the Committee agreed? (Agreed).

The question now is that Article 3, paragraph 3, stand part of the draft.

Text adopted by the Conference

[256]

3. AFTER RECEIVING THE GOODS INTO HIS CHARGE the carrier OR THE master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing, amongst other things:

..............................................

(c) The apparent order and condition of the goods.
PART II - HAGUE RULES

Article 3 (3) (c) - Contents of bill of lading: order and conditions of the goods

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[363]

3. After receiving the goods into his charge the [364] carrier or the master or agent of the carrier shall on demand issue to the shipper a bill of lading showing, amongst other things:

(c) The apparent order and condition of the goods.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[376]

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue to the shipper a bill of lading showing, amongst other things:

(c) the apparent order and condition of the goods.
ARTICLE 3

3. Après avoir reçu et pris en charge les marchandises, le transporteur ou le capitaine ou agent du transporteur devra, sur demande du chargueur, délivrer au chargueur, un connaissement portant entre autres choses:

........................................

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu de déclarer ou de mentionner, dans le connaissement des marques, un nombre, une quantité ou un poids, dont il a une raison sérieuse de soupçonner qu’ils ne représentent pas exactement, les marchandises actuellement reçues par lui, ou qu’il n’a pas eu les moyens raisonnables de vérifier.

ARTICLE 3

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

........................................

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

ILA 1921 Hague Conference
Text submitted to the Conference
[None]

Second day’s proceedings - 31 August 1921

[88]

Mr. H. J. Knottenbelt (Rotterdam): Mr. Chairman and Gentlemen. The Dutch shipowners strongly advise the Committee to reconsider Article 3 (c), and Article 4. The reason is this. Until at present, in this country, the legal position of the shipowner was as follows: When the captain could not weigh himself the cargo put on board his ship, or when he was not in a position to check the weighing, he could put in his bill of lading the clause “weight and quantity unknown”. The consequence of that clause, according to the decisions of our Dutch Courts, was that the numbers and weights mentioned in the bill of lading were not binding upon the shipowner; therefore, if somebody, for instance, the receiver, thought that there was a shortage in delivery, he had to prove, in addition to what the bill of lading contained, that there was actual shortage, [89] that is to say, that more goods were taken in than delivered by the ship. I think that this practice is quite reasonable, because the buyer of the goods must know from whom he purchases goods; he must know whether he wants to trust the shipper or not. But the captain and the shipowner do not know at all the shipper. The shipowner has a contract with his charterers, who order him to get goods from this or that firm; but whether such firm is a good one, whether it is trustworthy or not, this is
PART II - HAGUE RULES

Article 3 (3) (proviso) - When description may be refused

quite beyond the shipowner’s knowledge. Therefore, it seems to me that we must not compel the captain to accept from a party he does not know the weight which is given him in writing, and if he accepts it, be responsible towards the receivers for the accuracy of the figures which he could not check. I think, therefore, that the Dutch practice is the right one. Now, I hear that in England there is another opinion prevailing; Sir Norman Hill told me that the practice there is as stated in this Article. But Mr. Van Slooten quite correctly said that here we must try to bring together the British principles and the Continental principles; therefore, I must say that the principles laid down in this draft are very unfavourable for the position of Dutch shipowners. I think it will be very difficult for us to accept this Article of the draft. The Dutch shipowners say that they are quite willing to get to an agreement and to do their utmost in order to reach that, but that it would be very difficult for them to accept Article 3(c), in combination with Article 4. My idea is this: I do not want to propose an amendment in this large gathering, but we propose that we shall ask the opinion of the gentlemen here present whether they agree that the Dutch principle, according to which the captain is not responsible for weight which he has not checked, is right or not. If it is decided that it is right, then we will have to try and find a certain modus of altering slightly the Article so as to avoid the difficulty which I have been pointing out. I think that is the best way to get to an agreement.

Mr. Léopold Dor: It may interest the Committee to know that in the Bill which has been introduced before our Parliament by the French Government, the clause “weight unknown” is not excluded by the Bill. Article 2 of that Bill provides that “Weight, quality and quantity unknown” and any other equivalent clauses have the exclusive effect of putting the onus of proof upon the shipper or consignee.

According to the decisions of our Courts, the effect of the clause “weight unknown” was twofold: the consignee had to prove that the weight was actually that stated in the bill of lading; and, further, he had to prove that the shortage was due to the negligence of the shipowner. Well, the Bill now before Parliament wants to do away with the second part; it is not justified because the captain puts the clause “weight unknown” in his bill of lading, that the consignee shall have to prove special negligence of the shipowner; but the Bill allows the first effect of the clause “weight unknown”, that is to say, putting the onus of proof as to the weight upon the consignee. I may add that the said Bill is not a Bill in favour of the shipowners; quite the reverse, and in many respects it is more drastic than the rules we are at present considering. Therefore it may perhaps be of interest to you to see the wording of that Bill, and to read the remarks which the French Government made in support of the clause I just read. Before this meeting began, I have given out some prints of that Bill, and if any one of you gentlemen should want a copy, I can supply them. You will find the clause and the comments of the Government at page 13 of the print. Amongst the reasons urged in favour of the Bill, you will find that it is stated: How can a shipowner be responsible for the weight of a cargo which he has no possibility of weighing? Take, for instance, the case of a ship loading corn at Galatz, at Braila, or at Constantza, where wheat is laden into the steamer at the rate of 1,000 tons per day. The shipper is putting into the holds 4,000 tons of wheat, and he places into the Master’s hands bills of lading for 4,000 tons. The Master signs these bills of lading; but surely he has no means of checking the weight given to him. He will go on smoking his cigarette and say: Well, I take it that 4,000 tons and not 3,950 tons of wheat have been pumped into my ship’s hold by the elevators.

Take, for example, a ship of the Compagnie Générale Transatlantique loading cases of silk, the weight of which is either 25 or 28 kilos. Everyone knows perfectly well that the Compagnie Transatlantique is not going to weigh every one of the 100 or 500 cases that are put on board. Therefore, when the ship arrives at destination and the cases, or some of the cases, are found to weigh only 25 kilos instead of 28 kilos, the
The consignee will have to show that there is actually a shortage. It will not suffice for him to say: Here I have a bill of lading which says the cases weighed 28 kilos, and now I find some cases weigh only 25; therefore you, the shipowner, are going to pay me the value of 3 kilos of silk on each case. Well, Mr. Chairman, [91] I think that if the Article we are considering at present has the effect of making the shipowner responsible for the weight which is mentioned in the bill of lading, and at the same time permits that the weight be given by the shipper to the shipowner, who has no means of checking it, or who has not checked it, this is rather too hard on the shipowners, and I do not think they could accept it. In respect of the allusions made to the Harter Act, there arose the question whether the Harter Act forbids or not the clause “weight unknown”, and our Courts have for some time held that under the Harter Act clauses “weight unknown”, were null and void. We had to discuss that question in the Marseilles Court again last year, and we got two judgments saying that the clause “weight unknown” is not at all forbidden by the Harter Act, because that Act says that it must be marked on the bill of lading whether the weight given therein is shipowner’s weight, or whether it is shipper’s weight. Well, the Court held that there were facts showing that there is a distinction to be made between shipowner’s weights which have been checked, and shipper’s weight simply written on the bill of lading and not checked, and that the aim of the clause is to protect the shipowner against the possibility of being made responsible for shipper’s weights when he has not been able to check such weights.

The Chairman: I think it might be convenient perhaps if Sir Norman Hill would tell us whether in his judgment a bill of lading under the rules might, or might not, contain the qualifying clause “weight, quality and contents unknown”.

Sir Norman Hill: I think not, Sir. I think your Drafting Committee that drafted the rules as they stand now were clearly of opinion that such a clause could not be inserted; and, following the point Mr. Dor has made, you must remember that the Harter Act was followed by another Act, that is an Act of 1916, in the United States, and that makes it perfectly clear that if the carrier has weighed or checked, or has loaded, then he must not use any words saying: “These are shipper’s weights”, or “The weight is unknown”. It is a very big point that we have now to discuss, and I think that upon the appropriate solution of this point in great measure turns the unanimity of the adoption of the rules. Would it meet our friends in Holland if we found appropriate words to exclude or control these very onerous clauses in regard to bulk cargoes? That is to say, leave the clauses as they stand with regard to parcel cargoes. That, you understand, would leave the clauses as they [92] stand with regard to all the goods carried in the liners, in the general carriers, but qualify them with regard to bulk. Now, Sir, I would suggest that we could do that if we passed the words that we have now under consideration, that is, the requirements of what were (b) and (c), meaning when we come to section 4, to make section 4 read in some such way as this: “Such a bill of lading, issued in respect of all cargoes other than bulk cargoes, shall be prima facie evidence of the receipt by the carrier of the goods as therein described, in accordance with section 3 (a), (b) and (c)”.” Then start again: “In the case of bulk cargoes the shipper shall be bound to prove the number, quantity, or weight actually delivered to the carrier, notwithstanding the terms of the bill of lading”.

Mr. Robert Temperley: Would you also modify Article 5 so as to make a bill of lading for bulk cargo.

The Chairman: Might we deal with 3, and such allusion to 4 as is necessary? My head will not carry more than two or three at time.

Sir Norman Hill: I want to make it quite clear. I think - perhaps it is no use repeating it - the whole of this is against the grain of the shipowners from their point of view, but if the liners do it at the request of the cargo interests, they want to do it hand-
somely. So far as the parcel cargoes are concerned that would leave the rules as they are proposed; if we sign a bill of lading it is to be *prima facie* evidence against us of the facts, that is, that the weight and number are as given to us by the shipper. That is as far as the liners are concerned. I do think in the cargo interests it would be very important to give some further and more careful consideration in dealing with these bulk cargoes, and that is why I have suggested the distinction.

Sir James Hope Simpson: Mr. Chairman. May I make an observation? It is highly important, from the point of view of the banker who has to finance the cargo or the parcels, that the bill of lading against which he is to make his advance shall state pretty definitely what the articles are, or what the stuff is against which the advance is being made, so that he may be able to form his own opinion as to the value of the bill of lading. I think the suggestion made by Sir Norman Hill is a wise one. When a bill of lading comes before a bank they have to know that either there are so many bales of cotton, or so many sacks of corn, or so many tons of coal, they must know pretty well what the quantity of the goods is, and that is what we would like to see in every bill of lading. Who shall be responsible for the weight is also a question which affects us. We say that there may be responsibility on the part of the consignor towards his consignee, but our claim is against the ship. If the bill of lading issued by the ship says there are so many tons, we say to the ship, you must deliver so many tons. So I think it is very important that there should be no scarcity of description in the bill of lading, and no uncertainty as to the ship being responsible for the goods named in the bill of lading.

Mr. Robert Temperley: May I say a word from the point of view of the tramp owner who ships bulk cargoes, and, in doing so, I think I may answer a point made by the last speaker. Sir Norman Hill has said that this project of ours has arisen out of an agitation which was caused by the peculiarities, I will not use any other words, of liner bills of lading. It has not arisen at all out of any difficulties that the carriers of bulk cargoes had with their shippers. Of course they have difficulties, as we lawyers know, but there is no quarrel between them generally as to the terms of the bills of lading or charter-parties. I think the Dutch gentleman who has spoken on my right will agree with me. The reason is this, Sir, you must bear it in mind in our whole discussion. We have been told that it is necessary to have some agreement, and, possibly, some legislation ultimately, because the shippers on liners are not organised, and they have no opportunity therefore of collectively making a bargain as to the forms of bills of lading, and that legislatively they cannot be organised because they are too numerous and too miscellaneous. That is not so with regard to the shippers of the great classes of bulk cargoes. I take the coal trade, with which I am most familiar, as an example. The coal exporters are organised in most countries; in England they are highly organised. They are quite capable of negotiating a charter-party or a bill of lading, and they have done so. And those bills of lading do not impose upon the ships the conditions in (b), (c) and (d) of Article 3(3). Both parties are satisfied, and I believe that those bills of lading are constantly, in hundreds, going through the hands of bankers, and I have never heard of any banker taking any objection whatever to putting a clause in a coal bill of lading, “weight and quantity”, or “weight and quality”, even “unknown”. So that there is no ground for imposing (b), (c) and (d) on that great trade, the export of coal; [94] and I think others can speak here about other trades. That being so, I think we have an unanswerable case, so far as the tramp owners are concerned, for freedom of contract in that respect, and that can be introduced quite well by adding a proviso which can be drafted by the Drafting Committee in the interval to-day, and shown to us this afternoon, excluding bulk cargoes from the operation of Article 3(3)(b), (c) and (d). If you do that you will carry the tramp owners with you. If you do not, we shall be dissatisfied, because we say: “Because of troubles which the liners have with their customers, you are interfering with our liberty of contract in a most serious manner”. I
think in that contention I have the support of the Dutch gentleman here on the left. We are quite content with forms as they are, but we shall be very glad to come into any arrangement provided it is fair to this particular and very important section of the shipping trade.

Mr. Van Ommeren: Would you allow me one or two words, because Dr. Bisschop has mentioned my name as agreeing with the code as now proposed. Gentlemen, let me say that I have never been a member of the Committee that has drafted this code. When I happened to be in London, Dr. Bisschop wished me to be present at the Committee where this code of freight was discussed. So on no account can the fact of my having been there bind the shipowners. Moreover, I may say this, that I have never thought for a moment that this code of affreightment would mean that the shipowner would not be at liberty to mention the weight and quality, because I fear, as the matter of proof, if you carry that clause, carriage oversea would become practically impossible.

Mr. M. M. Mein: Mr. Chairman. I should like to support Mr. Temperley with regard to coal cargoes. Our friend for the bankers holds the owners of the ships responsible for the quantity on the bill of lading. But with regard to the coal cargoes the weights are given full when leaving the colliery, or perhaps it may be in some cases when it leaves the staith head; but if a gale of wind is blowing the quantity which leaves the staith head does not reach the hold of the ship, and when you come to a quantity of coal shipped such as 6,000 or 8,000 tons, you can well imagine that there will be a shortage consequent upon the elements, and I think that should be taken into very serious consideration with regard to coal cargoes, and it appears to me that we should have the qualifications in our bills of lading that we have had in the past. I happen to sit on the [95] documentary Committee for the revision of charter-parties. We are sitting now upon it; we have not yet finished it; but there a charter has been considered and agreed between shippers and shipowners. We discussed it mutually, we came to a decision mutually, and it works exceedingly well. That charter-party embodies a bill of lading at the back of the charter-party, which bears the clause “Weight, quality and quantity unknown”. We are very anxious that we should be left alone as far as that is concerned.

The Chairman: Before the discussion proceeds, perhaps I might remind the Committee that the whole question here is, in case there is such a deficiency or discrepancy of cargo as raises a business difference, who shall in the first instance be called upon to account for it? Section 4 of Article 3 has the effect of dealing with what in English law we call the burden of proof, and as it would stand it merely provides that in case of deficiency or discrepancy of cargo, such as gives rise to a dispute, the one party or the other must account for it. That is the whole effect of it, as far as I can see.

Mr. Robert Temperley: With great respect, Sir, I do not think that is quite so, because Article III, clause 3, definitely lays it down that the carrier shall, on demand, issue a bill of lading containing certain terms. Then Article 5 says if he does not so, if the shipper and the carrier agree to any other form, if they agree to omit (b), (c) and (d), the shipper only gets a non-negotiable document.

The Chairman: I follow.

Mr. Robert Temperley: That is the gravamen of the thing. Hitherto, this document omitting (b), (c) and (d) has been a perfectly negotiable and satisfactory document to the bankers and the whole trade is carried on upon it; and here we come along and say that in future that document is not to be negotiable.

The Chairman: I think Mr. Temperley and I are looking at the matter from a different angle.

Mr. De Rousiers: Mr. Chairman and Gentlemen. Speaking in the name of French shipowners, I would say that I support the views of the Dutch shipowners which were just now expressed, and which were supported by Mr. Dor. I think it is very difficult
for the shipowner to take the responsibility of weight and measurement which are unknown to them. As far as the Harter Act is concerned, I do not think really that it is contrary to the provisions [96] of the Harter Act, and the proof is that in bills of lading which are just now in use in the United States and very likely in accordance with the Harter Act, you find a condition like this: “Any statement as to the quantity, weight and/or measurement of the goods made in the bill of lading shall not prejudice the carrier, unless the goods have been counted, weighed and/or measured prior to the issue of the bill of lading”. I think something like that, perhaps, would be good, and certainly it would be a great inducement towards the acceptance of the agreement by French shipowners.

Mr. Rudolf: I submit, Mr. Chairman, that, with reference to that clause which Mr. De Rousiers has just quoted as appearing in an American bill of lading, that is simply a clause that has been left in, and it has been rendered null and void by the paramount clause, which is the Harter Act, in the bill of lading.

Sir Norman Hill: I would propose here a proviso. Shall I read it, Sir?

The Chairman: Please.

Sir Norman Hill: The proviso I propose at the end of the paragraph is as follows: “Provided that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing description, marks, number, quality, or weight which he has reasonable ground for suspecting do not accurately represent the goods actually received”. I do not know, Sir, if it is necessary for me to make any statement in support of this, but, as I understand it, the whole object of the cargo interest in pressing for these rules is to make a bill of lading a really sound creditable document for the purposes of getting credit from the bankers, insurance from the underwriters, and generally making it as negotiable as possible. Now, Sir, that will be very convenient and very effective as between honest men, but it seems to us that it would place a very dangerous instrument in the hands of dishonest men, if a dishonest man could insist under the previous clauses which you have passed upon the shipowner issuing on his demand a bill of lading describing a state of cargo [99] which the shipowner knew had never been put on his ship. So we have provided that, if the shipowner has reasonable ground for suspecting that the statements made by the shipper do not accurately represent the goods, the shipowner is relieved from the responsibility of complying with the demand; that is to say, he is relieved from the responsibility of putting on to the markets of the world what he knows, or reasonably suspects, to be a dishonest document.

Mr. Robert Temperley: May I ask this? You read the word “quality”; should that be “quantity”?

Sir Norman Hill: That should be “quantity”. I am sorry.

The Chairman: “Marks, number, quantity”. It is moved by Sir Norman Hill that there be added to the clause a proviso “that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing description, marks, number, quantity or weight which he has reasonable ground for suspecting do not accurately represent the goods actually received”. Does any member offer any observation?

Sir Alan Anderson: Would not this be a place where we could meet the difficulty of the bulk cargoes? I am personally concerned with ships that carry parcels, so perhaps I may represent myself as impartial.

The Chairman: May I say that Sir Norman Hill has handed me the draft of amendments upon clause 4 of the same Article which will raise that question? Does any member desire to offer any observation upon the proviso? Then the question is that the proviso be added to the clause. Is that agreed? (Agreed).
Mr. Robert Temperley: I think I can hardly accept the suggestion that the point will be raised in clause 4. It seems to me this is the logical place to put it. We have said the bill of lading should contain certain things, and the proviso we want is a proviso providing that in the case of a bulk cargo the bill of lading need not contain the particulars mentioned in the new (b) and (c). It is simply the logical place to put it in. If you do not put it in there, you will find that throughout the whole code you will have to be constantly looking to see that you are not missing a point somewhere.

The Chairman: I do not wish to dogmatise about it. My impression is that clause 4 of Article III would be read with clause 3, and they qualify one another; but I do not vouch that to the Committee.

[100]

Mr. Robert Temperley: I am supporting the suggestion. It is a question of draughtsmanship which might be considered by the Drafting Committee.

The Chairman: I am quite sure that the Drafting Committee which the General Committee is minded to appoint will consider this with other clauses.

Mr. Robert Temperley: Would you have any objection to our coming back to this if we find it necessary?

The Chairman: There will be no difficulty in coming back. The Drafting Committee will revise the draft as we refer it to them, and the whole matter will then be open upon their recommendation.

Mr. Robert Temperley: Thanks. I only mentioned it because the feeling here is that clause 3 is the proper place.

The Chairman: I was not at all cavilling at its being mentioned; I was merely stating my view in the interests of progress. The question is that clause 3 of Article 3, as amended, stand part of the draft. Is that agreed? (Agreed).

Text adopted by the Conference

[256]

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on the demand of the shipper issue a bill of lading showing amongst other things:

Provided that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing description, marks, number, quantity, or weight which he has reasonable ground for suspecting do not accurately represent the goods actually received.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[363]

3. After receiving the goods into his charge the [364] carrier or the master or agent of the carrier shall on demand issue to the shipper a bill of lading showing amongst other things:

Provided that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing description, marks, number, quantity, or weight which he has reasonable ground for suspecting do not accurately represent the goods actually received.
Provided that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing any description, marks, number, quantity, or weight which he has reasonable ground for suspecting do not accurately represent the goods actually received.

Afternoon sitting of 11 October 1922

[449]

Sir Norman Hill (Rapporteur of the Sub-Committee)

Now, Sir, on that understanding, the Sub-Committee report that all the points raised deal with the language in which the agreements arrived at can be best expressed, except on the following points, which we conceive to be points of substance to be settled by the businessmen directly engaged in overseas traffic. They are not points that any draughtsman can settle; they are not points, with great respect to the Diplomatic Conference, that we think that Conference should settle. We think they are points upon which diplomatists should first ascertain what are the interests and wishes of commerce, and then give effect to the conclusions arrived at in the proper language.

The first point is one that has been debated a great deal, and deals with bulk cargoes. It is one that gave your Sub-Committee great concern, great anxiety, to do justice as between the parties interested. They think that the position of the ships carrying the bulk cargoes can [450] be reasonably protected and they think that the rights of the cargo owners, shipping by such ships, can be reasonably secured if we add a few words to the proviso to Article 3(3), which appears on page 3 of the print that was circulated.

Mr. W. W. Paine: Page 4.

Sir Norman Hill: If gentlemen are working by the red and black print it is on page 4: if they are working by the print circulated by the Conference it is on page 3. It deals with a proviso which follows on c), and I will recall to the Conference that the proviso, as it stands, is that “No carrier, master or agent of the carrier shall be bound to issue a bill of lading showing any description, marks, number, quantity, or weight which he has reasonable ground for suspecting to not accurately represent the goods actually received”. Now, Sir, your Sub-Committee propose to add to that “or which he has had no reasonable means of checking”.

The Chairman: Have members had a fair opportunity of writing down those words? We will not stop now, if members have had a fair opportunity of recording what Sir Norman Hill has spoken. I think that is all that is necessary now.

[458]

Sir Norman Hill: Now, Sir, may I sum up. The points upon which the Sub-Committee suggest that the Conference should come [459] to a determination are: First as to the clause we have added to meet the difficulties incident to the ascertaining of weights, numbers, measurements of bulk cargoes, we suggested words which would relieve the ship from obligation to record such facts when the ship has not had reasonable means of checking the figures that are given. That is the first point upon which we would wish the guidance of the Conference whether or not they think that is reasonable.

[470]

The Chairman: I think the Conference has received the verbal report. It will have taken note of what has passed. My difficulty is to bring to your consideration in a con-
convenient way the questions as they arise, but I think I can do that. I will take care not to exclude any topic in debate. Under Article 3(3), Sir Norman Hill informed us of the view of the Committee, that the difficulty could be met by adding to the proviso the words which he read “or which he has had no reasonable means of checking”. Is the Conference agreed to the addition of that term to the proviso?

Sir Stephen Demetriadi: No, I should like a slight alteration there. I think the Captain, as master of his ship, has reasonable means of checking, but if he has not reasonable means of checking then it is beyond his power to check, and I should like to suggest to this Meeting that the words should be changed to read “or which does not come within his power to check”.

The Chairman: Do you want to advance the matter by argument. Do you want to argue upon it, or do you merely submit it?

Sir Stephen Demetriadi: I submit it.

Mr. Louis Franck: Well, Sir, I think that the words which were indicated by Sir Norman Hill: “or which he has had no reasonable means of checking” are much better in the interests of the cargo than the words which have just been suggested by Sir Stephen. If you say that the Captain must have had the power of checking, it is much more than if he must have had reasonable means of checking, because the Captain will not have had the power of checking in any case where there will not have been weighing or tallying at the port of loading, and in most cases of bulk cargo to-day, there is no weighing or scarcely any tallying except for bags, certainly no weighing for grain, for instance, or for coal or for oil. In all those cases there is not the slightest doubt that the Captain may say: “The captain has had no power to do it” whereas under the form “which he has had no reasonable means of checking” you have a much larger power of control. By the draught of his steamer or for any other reason, or by the lighters from which the cargo has been brought on board, or whatever it may be, or a reasonable survey of what is going on on board, he may have had reasonable means of checking the cargo. I think we ought to keep to that and in any case the difference between the two is really a matter of drafting, because we are all agreed that you cannot expect to have a bill of lading for a fixed number, if there has not been reasonable means for the man who has to sign it to know what he has taken on board. As you understand, my Lords and Gentlemen, it is a very important point that we should accept this, seeing that it seems to be in the opinion of Mr. Möller a difficulty of the tramp steamers, and that is a very great difficulty. If they are satisfied with that I do not think we might be too difficult about it.

Sir Stephen Demetriadi: Mr. Chairman, I do not press it.

The Chairman: Thank you. Then is it agreed to add to the proviso the words I previously read? (Agreed).

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[376]

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand OF THE SHIPPER issue to the shipper a bill of lading showing amongst other things:

Provided that no carrier, master or agent of the carrier shall be bound to STATE OR SHOW IN THE bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received OR WHICH HE HAS HAD NO REASONABLE MEANS OF CHECKING.
ARTICLE 3

4. Un tel connaissement vaudra présomption, sauf preuve contraire, de la réception par le transporteur des marchandises telles qu’elles y sont décrites conformément au § 3, a, b et c.

ARTICLE 3

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with § 3, a, b and c.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvii]

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described.

Second day’s proceedings - 31 August 1921

[100]

The Chairman .................................................................

There has been notice of various amendments. The first of them is an amendment by Sir Norman Hill.

Mr. Robert Temperley: I am very sorry to interrupt, but I have just been asked by members who are not British to ask Sir Norman Hill if he would object to altering the word “suspecting” into “believing” or some similar word?

Lord Phillimore: We have passed that.

The Chairman: I think that must go to the Drafting Committee. There is to be a Drafting Committee. That must go to the Drafting Committee.

Mr. Robert Temperley: I am much obliged.

Sir Norman Hill: The amendment we proposed is to include at the end of section 4, “in accordance with section 3 (a), (b) and (c)”. Our object is to emphasise the point that is made in the Harter Act, and in some of the other Acts, that what is made prima facie evidence against the shipowner is the statement which he receives from the shipper. That is all. That is the first amendment. Shall I deal with the proviso?

The Chairman: No. Sir Norman, upon clause 4 you handed me the draft of an amendment which would limit the words “bill of lading” to bills of lading issued in respect of all cargoes other than bulk cargoes.

Sir Norman Hill: Yes; I am sorry. I dealt only with the amendment which we had put down in the printed form.

The Chairman: Yes; but you must take them in their order.

Sir Norman Hill: The suggestion I would venture to make to meet the point which has been raised with regard to the bulk cargoes is, after the words “bill of lading” to insert these words “issued in respect of all cargoes other than bulk cargoes”; so that it would read: “Such a bill of lading issued in respect of all cargoes other than bulk cargoes shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with section 3 (a), (b) and (c)”; then add these words: “In the
case of bulk cargoes the shipper shall be bound to prove the number, quantity or weight actually delivered to the carrier, notwithstanding the bill of lading”.

**The Chairman:** “Shall upon any claim”.

**Sir Norman Hill:** Yes - “shall upon any claim”.

**The Chairman:** These successive amendments raise a question of principle, I think, and I will put the amendment in a formal way. The question is that after the words “Such a bill of lading” there be inserted the words “issued in respect of all cargoes other than bulk cargoes”.

**Mr. Robert Temperley:** Mr. Chairman. May I ask Sir Norman Hill how he defines a bulk cargo? Is it to be a full cargo, because we have frequently cases of jute shipments, for instance, where a number of shippers are shipping what might be described as parcels, and at the same time they constitute a full cargo, or possibly they might be considered as bulk cargoes. If Sir Norman Hill will let us know what he has in mind, or how he defines a bulk cargo, I think it will be useful.

**Sir Norman Hill:** I am in a difficulty. As you know, Sir, it is not my point; it is a point that is pressed very hard by the tramp shipowners, and I feel that it is absolutely essential to get their support if we are to get through the rules, and I used the word they had used. I do not think they have clearly in mind the whole cargo which is made up of parcels: for instance, you could have a whole cargo of grain, and I think they mean that.

**Mr. Rudolf:** A single shipment.

**Sir William J. Noble:** Anything that is not shipped in pieces, or in packages that can be counted.

**Sir Norman Hill:** I had in mind a timber cargo.

**Sir William J. Noble:** A timber cargo can be counted. A coal cargo, or a cargo such as grain in bulk, cannot be counted.

**The Chairman:** I think, perhaps, if there were a slight interchange of views presently, while the discussion proceeds, Sir Norman may be able to qualify his words. In order to give an opportunity for that I will call upon Mr. Knottenbelt.

**Mr. Knottenbelt:** Dr. Van Slooten will say a few words on this point.

**The Chairman:** Very well. Then I will call upon Dr. Van Slooten to take the place of Mr. Knottenbelt.

**Dr. G. Van Slooten:** Mr. President. I might make an observation connected with the introductory remarks offered to the assembly here. It occurs to me that the whole Article now under discussion might be adopted as it stands, and that afterwards, when we are reconsidering it for universal usage, it might occur to us that a different “ré-daction” of the words would be advisable, and that we have to reconsider the wording of that Article with a view of making it fit for all of us, that is to say, to render it applicable and in conformity with the practice not only of the English Courts, but also with the continental Courts of law. We might no doubt find a way to meet the wishes of all the parties concerned.

I suggest, therefore, that the best thing would be to adopt the Article as it now stands, on condition, however, that the Drafting Committee will afterwards have to reconsider it so as to make it fit with the different opinions which are held, in England and on the Continent, by the Courts as to the burden of proof.

**Mr. Knottenbelt:** In this case we must not adopt it, but I think we must leave this Article without a formal vote. This is really Dr. Van Slooten’s proposal put in another form. The effect is the same.

**The Chairman:** Mr. Knottenbelt. The effect of the adoption now is merely to incorporate the words which are now adopted in the draft in its final form, which will
be revised for us, before we finally adopt the rules, by the Drafting Committee. It is merely a provisional adoption. It refers the words to the Drafting Committee.

[103]

Mr. Knottenbelt: Then I should like it to be noted in the Report that the Dutch shipowners do not agree with this Article.

The Chairman: The Secretary will note that.

Mr. Knottenbelt: They think the French will do the same. Mr. De Rousiers will perhaps be speaking about that for the French people, because it is against the principles of French law.

Mr. Dor: I think the words “bulk cargo” are somewhat misleading, and if there were substituted the words “full cargo” there would be no difficulty whatever. (No, no). I may point out that in the French Bill, to which I have already alluded, you will find in Article 4 that it is provided that “Charter-parties, which apply to one-half at least of the cargo, will not be submitted to the provisions of the Bill”, so that whenever there is a charter-party, applying at least to one-half of the cargo, it will be excluded from the scope of the Bill.

Mr. C. R. Dunlop, K.C.: Might I suggest as an amendment to clause 4: “Such a bill of lading issued in respect of all goods” - using the word “goods” instead of “cargoes”; the word “goods” being the word used in the preceding section - “issued in respect of all goods other than goods shipped in bulk”; and then have the definition of bulk goods, which will be an inclusive, but not an exhaustive, definition, following the definitions that we are getting in Article 1. That, I understand, would meet with the approval of the tramp shipowners.

The Chairman: I think the Committee will agree that that is a most businesslike suggestion on Mr. Dunlop’s part. What does Sir Norman Hill say about it?

Sir Norman Hill: I welcome it, Sir.

The Chairman: Very good. Then the amendment will be put in these terms: to insert after the words “bill of lading” the words “issued in respect of all goods other than goods shipped in bulk as herein defined” or “hereinafter defined”, stipulating that there should be a definition. The question is that after the words “bill of lading” the words “issued in respect of all goods other than goods shipped in bulk, as in these rules defined”, be inserted.

Mr. Rudolf: I think the only thing as regards that is, that when one makes amendments one ought to do it with one’s eyes wide open. I think we are running directly counter to the terms of the Harter Act, and I think it is a very important question, particularly in connection with grain cargoes.

Mr. Cleminson: It would have been a great advantage if we had had an American lawyer here, but I do not think we are running contrary to the spirit of the American Act. I was looking at the 1916 Act only yesterday, and they draw a big distinction between the class of case where the shipowner takes charge of the loading, and the class of case where the shipper takes charge of the loading. I think in cases of full cargoes all the shipping arrangements are in the hands of the charterer or the shipper. In the case of coal the certificates are under the control of the coal shipper, and in the case of grain the certificates are in the hands of the merchants. It is covered, I think, by the principle, and I do not think we ought to meet any difficulty on the American side.

The Chairman: Does any other member offer any observations? Then the question is that after the words “bill of lading” there be inserted these words “issued in respect of all goods other than goods shipped in bulk as in these rules defined”. Is it the pleasure of the Committee that those words be inserted? (Agreed).

Sir Norman Hill: Did you alter the other words?

The Chairman: Sir Norman Hill has a further amendment.
Sir Norman Hill: Would you suggest altering the words?

The Chairman: Mr. Paine has an amendment.

Mr. W. W. Paine: I rise with some difficulty in regard to this amendment in the presence of so many distinguished shipping lawyers, who I feel know a great deal more about this subject than I do, but there is a banking point on clause 4. I think we have always hitherto understood that a bill of lading, at all events a “shipped bill of lading”, is not only _prima facie_ evidence of the receipt by the carrier, but is also evidence of the shipment of the goods; and there is this further point, which is very important from a banking point of view: we have always understood that the date on a bill of lading was _prima facie_ evidence of the date of shipment. It is a most material point from a banking point of view, and I do not see why these bills of lading, which are particular bills under these rules, should be differentiated from the common bill of lading as it has been hitherto understood, and on the principle of _expressio unius est exclusio alterius_, if we pass this without alluding to those two questions, namely, that the bill of lading is evidence of the [105] shipment, and of the date of shipment, we might be getting into a difficulty as regards the other bills of lading.

The Chairman: I should like Sir Norman Hill and the representatives of the shipowners to consider this, whether the word “shipment” is not involved in the words “receipt by the carrier”, within the intention of the parties; whether there is any intention to depart from the _prima facie_ view that a bill of lading acknowledges shipment, and acknowledges shipment at or before the date when the bill of lading is issued.

Sir Norman Hill: Sir. The rules provide for that if we issue a shipped bill of lading, but the rules clearly contemplate, and our friends the bankers insist that they should contemplate, another form (Hear, hear), and that is a “Received for shipment” form. The “Received for shipment” form connotes no shipment. It negatives that. It is issued, and purposely issued, before shipment (Hear, hear).

Mr. Paine: May I suggest, to meet Sir Norman Hill’s point - I am quite in accordance with him, although we have a great deal to talk about in regard to “Received for shipment” bills of lading - “such a bill of lading, where it is a shipped bill of lading, shall be _prima facie_ evidence”, and then add my words.

The Chairman: Are not we really discussing a question of words? Article V, which is the proposal for bringing into existence a receipt for goods which is not a bill of lading in the business sense, is a separate proposal. What Mr. Paine desires to do, as I understand, is to qualify rules with regard to documents which are to be negotiable instruments, namely, bills of lading in the old sense.

Mr. Paine: That is it.

Sir Norman Hill: The “Received for shipment” bill of lading the bankers want, and insist upon taking as a negotiable instrument. That is not the special arrangement under Article 5. I do not think there is substance in Mr. Paine’s point. If Mr. Paine has in his head a bill of lading reading “Shipped on board” such and such a ship, and a date on that document, that is _prima facie_ evidence that it is true that the stuff was on board on that day. (Hear, hear). We want no declaration to emphasise that point; but the cargo interests do want the declaration making _prima facie_ evidence as against the shipowner a great many facts, which are not within his knowledge, which have been told to him by the shipper, and which at the request [106] of the shipper the shipowner has put on his bill of lading. That you are making _prima facie_ evidence as against the shipowner. I think it is all wrong, but that is what you are doing. But the shipowner has never for one moment doubted that, if he signs a bill of lading on the 1st January “Shipped on board” such and such a ship, every Court in every land will hold him to that.

Mr. Paine: I should not have doubted that at all, but the point is that if you state
the one, are not you possibly leaving it to be suggested that the other is not included?

**Lord Phillimore:** I think Mr. Paine need not be frightened. Sir Norman Hill is quite right. If a bill of lading says “I received on” such and such a day “for shipment”, it means that the man has received it for shipment on such and such a day. If he says “I have shipped on” such and such a day, it means that he has shipped. There is nothing on earth to enable him to get out of that, except to show that it is the fraud of his master which has led to the mistake. It is quite different with regard to such matters as the weight and quantity and description, which, as we know, are not things which necessarily the carrier does know. The carrier does know whether he has got the goods, and he does know whether he got them on the 1st or the 2nd. I think it would be a great mistake to put any words in here.

**Mr. Paine:** I am very much obliged, because I really raised this point, which was raised by the bankers, for discussion in order that I might be fully instructed with regard to it. I think I may accept that which has been said and waive the amendment.

**The Chairman:** The amendment is by leave withdrawn. Sir Norman Hill, I think you now propose an amendment to add words at the end of clause 4. Have you those? “In the case of bulk cargoes”.

**Sir Norman Hill:** Yes. It will read now: “In the case of goods shipped in bulk”.

**The Chairman:** No: you had previously some words “in accordance with section 3 (a), (b) and (c)”.

**Sir Norman Hill:** Yes, I beg your pardon. I explained the object of those words “in accordance with section 3 (a), (b) and (c)”.

**The Chairman:** The Committee assented to that in principle.

**Sir Norman Hill:** Then following on that, add: “In the case of goods shipped in bulk the shipper shall upon a claim be bound to prove the number, quantity or weight actually delivered to the carrier, notwithstanding the bill of lading”.

**Sir William J. Noble:** You do not require the word “number” in regard to bulk cargo.

**The Chairman:** No.

**Sir Norman Hill:** No, I suppose not.

**Mr. C. R. Dunlop:** You want it in regard to timber. Timber may be a bulk cargo, and therefore you want the number of pieces.

**The Chairman:** Would not that be covered by “quantity”, Mr. Dunlop?

**Mr. C. R. Dunlop:** I think it probably would.

**Mr. Cleminson:** I think we ought to keep the word here used, “number”, because we ought to use whatever words were used before in the earlier section.

**The Chairman:** Would you refer and see what the words are?

**Sir Norman Hill:** The word is “number” before. I repeated the words which were used in (b) and (c).

**The Chairman:** There cannot be any harm in that, but the members will consider. The question is that the words read by Sir Norman Hill be inserted at the end of clause 4 of Article 3. Is the Committee agreed? (Agreed).

Then the question is that clause 4, as amended, stand part of the draft. Is that agreed? (Agreed).

**Text adopted by the Conference**

4. **Such a bill of lading issued in respect of goods other than goods carried in bulk and whole cargoes of timber shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with section 3 (a), (b) and (c).**
4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with section 3 a), b) and c).

Morning sitting of 10 October 1922

Mr. Otto Liebe (Denmark) ................................................

Then there is another question that is also, at least to us lawyers from a legal point of view, of paramount importance. You say in these Rules, in Article 4(5), I believe: “The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier”. Now so far as we can conjecture there are two systems quite different from each other. There is the English, and I do not know, but I guess it is also the American, point of view. You say the bill of lading is only prima facie evidence, and therefore the carrier shall not be deemed responsible towards anyone for the description of the goods in the bill of lading, if he is able to show that the description was wrong, and that he was not personally in fault. That is one system. The other; I am not quite sure I can call the Continental system, but I at least might be allowed to call it the Scandinavian system. In Sweden, Norway, Finland and [328] Denmark we regard a bill of lading as a negotiable document, and therefore it follows from our laws on negotiable documents that the carrier who has signed a bill of lading is responsible towards the bona fide possessor of the bill of lading for the correctness of the description in the bill of lading, and he is not free from liability, even if he can show that the description was wrong. There are according to Danish law only two exceptions. The first is this: if a carrier is not able himself to check the accuracy of the description then he has the right to make a remark on the bill of lading drawing the attention of the purchaser of the bill of lading to the fact that there is something wrong, and then of course he is free from liability. And, secondly, he will probably be exonerated from any liability, even if he has not put such a remark on the bill of lading, if it is quite obvious to the purchaser of the bill of lading that it was quite impossible for him to check the accuracy of the description, and he could not know anything about it, that he could not control it for instance on account of the manner in which it was packed. Those are the only two exceptions according to Danish laws. Now this difference of systems entails some consequences. You say in Article 3(3): “Provided that no carrier, master or agent of the carrier shall be bound to issue a bill of lading showing any description mark, number, quantity or weight which he has reasonable ground for suspecting to not accurately represent the goods actually received”. I think that in Denmark we should say that if it is manifest to the carrier that the description is not all right, is false, it is not only his right, but his duty to put a remark on the [329] bill of lading in order not to deceive the purchaser of the bill. The man who is purchasing the bill of lading should trust to the description, trust to what is stated in the bill of lading, and therefore we say that it would be the duty of the carrier to make a remark about the description, when he has reasonable ground for believing, or it is quite manifest to him, that the description is not all right. Of course then on the other part the shipper is obliged not to refuse the bill of lading in any manner. I admit that from a practical point of view there might perhaps not be such a very great difference between those two systems - I allow myself to call them the British system and the Scandinavian system - but you understand that
if we should accept this *prima facie* evidence we should make fundamental changes in our maritime laws, and I venture to say that in Denmark at least nobody would think of going away from a principle which has now been tested over a long series of years, and which is considered as being fair and sound. I do not know what is the case in Norway, but I should not wonder if they do not say entirely the same.

Well, to make a long story short, as you say here in England, we, the Danish delegates, approve the idea, we are in sympathy with the idea, of embodying these Rules in an International Convention; but at the same time we would suggest that for the time being you should not say too much about the tramp vessels with bulk cargoes, and, secondly, that it is allowed to the signatory powers to take some reservation when they sign, to say that they are not prevented by this Convention from deeming a carrier liable also to the *bona fide* purchaser of the [330] bills of lading for the accuracy of the description of the goods in the bill of lading. In this way we should have no need to change our law on fundamental principles; and on the other hand we believe that we shall get hold of the most eminent provisions of the Hague Rules. (Applause).

Mr. A. P. Möller (Denmark): .......................................................... [336]

In Article 3(4) another clause which was intended to protect shipowners has gone out, namely: “Upon any claim against the carrier in the case of goods carried [337] in bulk or whole cargoes of timber the claimant shall be bound, notwithstanding the bill of lading, to prove the number, quantity, or weight actually delivered to the carrier”. It is to be observed that the burden of proof is on the claimant, in other words on the receiver. Now as far as I understand it the shipper certainly has to guarantee the correctness of the quantity, but there is a very great difference. Suppose I am sailing from Java to Holland. If the Dutch receiver is to prove to me that that quantity the shipper stated was right then it is incumbent upon him to prove that, and he must do all in the world to do that. Now that has gone out and I am to be faced with some claim by some merchant in China or Java or some other place; I have to go to a Court that I know nothing of and the shipper may at that time have failed. I cannot but feel that there is a fundamental difference in the idea of these changed Rules and I do not really see the necessity for the change, and would suggest that it be reconsidered.

I would like to say that to my mind there is not any necessity for tramp ships to sign for quantity or weight. It has not been done and it has never been requested. If you go through the various trades you will find that it is not customary anywhere. Take for instance the timber trade. When you load deals, battens and boards you sign for a number of pieces, but you do not sign for the measurement. When you load props which are more in the nature of bulk cargo you cannot check the number of pieces. It is never done and it could not be done without involving a great amount of trouble which is at [338] present avoided, and I never met any prop merchants who wanted me to sign for the number.

The same applies to the coal trade. I have carried hundreds of cargoes of coal and have never signed for the weight of the coal, and I have spoken to numerous coal exporters and coal importers and asked them whether they are really interested in having us sign for the quantity and they say no. I have heard very many British gentlemen say: “No, it is not reasonable; we do not want it”.

The same thing applies to grain. I do not think that in any part of the world grain in bulk is carried to-day under conditions that make owners liable for the weight of the cargo. In every grain bill of lading the same as in coal and timber there is “weight unknown” or words to that effect. That applies all over. The same with copra and the same with pig iron. For pig iron there is even a clause whereby the charterer is relieved from paying freight on sand that falls off that pig iron during the voyage; he takes care
that he is not to pay freight on that, but nevertheless here the shipowner is to be liable for the weight of iron with sand attached to it as if it was the iron. You all know the circumstances about charter parties. I have gone through practically every frequently used charter party and I find that every charter party contains a stipulation that bills of lading are to contain “weight unknown” and that applies not only in cases where the charter is an agreed document, but also where merchants have their own documents. For instance to refer to the Rio Tinto Company in London, who are responsible for the transport of a large quantity of ore, [339] they have their own charter parties which they dictate, and in their charter party they have “weight unknown” or “not responsible for weight”. The Norsk Hydro-Elektrisk Kvaalstofaktieselskab, Kristiania, who are responsible for large quantities of nitrate for Norway have the same thing. They have “contents, weight and measure unknown”. There also is a merchant’s charter party dictated by himself. The Hamburg nitrate charter party of 1891 has the same and the nitrate charter party of E.I. Du Pont de Nemours & Co. who are responsible for transport from Chile to U.S.A. has a stipulation “weight and quality unknown, all on board to be delivered”, and it is important to observe that in the grain transportation from Australia which is being conducted under the auspices of the Australian Government under conditions dictated by the Government (last year practically all the grain from Australia was being transported under their auspices) the bills of lading had the following words “weight, measure, contents, condition, quality unknown”.

What I want to get at is this. We say that that is a condition that has been accepted by both sides all along and without any objection. I think it would be simple and it should be possible to introduce a clause into the Rules that it shall be legal for shipowners to put into the bill of lading stipulations such as the one the Australian Government has put in itself, namely, “weight, quantity, measure, contents, condition, quality unknown”, and I would say that if that is done then one of the greatest objections to these Rules as they stand from the tramps point of view would be removed.

[340]

Mr. Louis Franck: I think nobody has contemplated rendering these clauses void. (Yes). Is it contemplated that the clause “weight unknown” or “number unknown” shall be void?

Sir Norman Hill: Yes, all gone.

[351]

Sir Norman Hill: ...........................................................

As to the clause “weight unknown” the reply is this: I quite understand that according to Continental practice the bill of lading is evidence of what it contains, but there is nothing in Continental practice to day which prohibits the shipowner from recording that weight is unknown, so the result is that the bill of lading in the hands of the holder is conclusive evidence that the shipowner did not know the weight. I can understand that a shipowner would be quite ready to accept that responsibility. One of the main objects of the Rules, and it is in force in the United States, and in force in Canada, and it will be whatever we do here in force in some way throughout the British Empire, is that we are going to be forbidden to qualify our engagements. It is going to be evidence against us in the hands of a bona fide holder that we got what we signed for. If that is so under the methods that are now employed, is it possible for the cargo owners to ask us to assume more than a presumption against us, that it should be prima facie evidence that we got it. Take the case of the petroleum. The suppliers of the petroleum report that they had pumped in so many gallons; the machinery is under their control; we cannot supervise it; we sign for that number of gallons; it is pri-
Article 3 (4) (1st paragraph) - Prima facie evidence

ma facie evidence that it is there. But we can relieve ourselves, we can discharge our duty, by saying that every gallon that we took we handed over. Take the common case of the coal under the tips. We have nothing to do with the weighing; the shipper has nothing to do with the weighing; it will all be done on the railway Company or by the tips. And how do the shipper and the receiver of the cargo deal with one another? We know that it is common form now to dispense with weighing on delivery, and they pay on the shipping weight, in fact the weight less such and such a percentage. We know that is what the cargo interests have commonly adopted. If we sign the weights that are given to us by the coal tips it is prima facie evidence that we have got it, and we shall have to discharge our obligation by proving that we delivered all that we did get. That is not too heavy a responsibility to put upon us, is it. It seems to be reasonable. But I think it would be a monstrous responsibility to put on us, if we, because we had signed under those circumstances, were answerable for every ton we had signed for. The alterations in the Continental practice from the conclusive evidence position to the prima facie evidence position is an inevitable consequence of making us put down positive statements.

Mr. Möller: Upon the same subject I would point out that there is in the Hague Rules a clause that is not in the amended Rules which would really have provided for that. It was Article 3(4). It says “Upon any claim against the carrier in the case of goods carried in bulk or whole cargoes of timber the claimant shall be bound, notwithstanding the bill of lading, to prove the number, quantity, or weight actually delivered to the carrier”. My point was that it is the man who comes along with his claim who has that obligation. Simultaneously with making his claim he has to provide proof that the quantity you got was actually there whilst now you are referred to a distant person for that. If that could be removed it would remove some of my anxiety, but not all because I am not satisfied that the owners are sufficiently protected under the stipulation that we are not responsible for shrinkage.

Sir Norman Hill: To use a common expression, what gave the show away on that point was that all the timber trade in this country produced your timber charters showing that the shipowner had made himself responsible for numbers. That was the trouble.

Mr. Möller: Not for measure.

Sir Norman Hill: Unless the man gives you measure and guarantees it you only put in number or measure; you do not put in both, and you do not put in measure unless he guarantees you.

Mr. Möller: I am very sorry to correct you but are considering the question of sawn wood now, not the question of round wood. For round wood there is no question of number. No man ever can count it; it cannot be done and you do not find yourself responsible for a number of fathoms, e.i., for measure. You do not do that.

Sir Norman Hill: I do not see why you should not under these Rules. The shipper of the goods is going to assume responsibility to you. I do not think he will do it lightly. If he is a little bit uncertain or if it is impossible he will not give you a ridiculous thing to put on the bill of lading which he has to honour. He has to uphold you. Surely that is a business adjustment.

Mr. Möller: He is frequently a very small man in Finland.
Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[377]

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with section 3 (a), (b) and (c).

Conférence Diplomatique - Octobre 1922
Réunions de la Sous-Commission
Première Séance - 19 Octobre 1922

[186]

M. de Rousiers, Délégué de la France, propose de rédiger cet article comme suit:
“Un tel connaissement sera une pré-somption, sauf preuve contraire, de la réception par le transporteur des marchandises telles qu’elles y sont décrites conformément au paragraphe 3, a, b, et c”.

Après discussion, la Commission adopte cette rédaction, qui rend mieux compte du sens.

M. Bagge, Délégué de la Suède, propose de stipuler à ce paragraphe que:
“L’expression ‘prima facie evidence’ does not prevent the contracting countries from recognizing a greater evidentiary value for the bill of lading”.

M. van Slooten, Délégué des Pays-Bas, et M. Rambke, Délégué de l’Allemagne, adhèrent à cette proposition. Les Délégués de la Belgique, de la France, de la Grande-Bretagne et des États-Unis ne s’y rallient pas; elle n’est pas adoptée.

Deuxième Séance - 20 Octobre 1922

[189]

M. Bagge, Délégué de la Suède, demande pourquoi on ne s’en est pas tenu à l’interdiction de la negligence clause. Pourquoi fallait-il étendre cette défense

Mr. Bagge, Swedish delegate, asked why the prohibition of the negligence clause had not been adhered to. Why was it necessary to extend this defense to
aux autres obligations du propriétaire de navire et au recours direct que le tiers porteur du connaissement a du chef d’erreurs de description dans le contrat de transport?

M. Van Slooten, Délégué des Pays-Bas, demande de s’en tenir à l’exclusion de la negligence clause.

M. de Rousiers, Délégué de la France, explique qu’il semble nécessaire de définir ce dont il est interdit de s’exonérer par contrat. Les termes de l’article 3 ont fait l’objet d’un accord unanime de la part des propriétaires de navires.

M. le Président répond que cette disposition a été introduite à la demande des intérêts américains. On a reconnu qu’elle n’était pas indispensable, mais on y tient aux États-Unis, où l’on préfère dire clairement ce que l’on peut et ce que l’on ne peut pas faire. Les États-Unis tiennent au maintien des règles formulées quant à l’exactitude de la description des marchandises dans le connaissement, pour éviter les pertes sérieuses dont les propriétaires de cargaisons et les banquiers ont été les victimes dans le passé.

M. Langton, Délégué de la Grande-Bretagne, appuie les vues de M. Hough. Le but est avant tout de faire du connaissement un “instrument de crédit” de valeur réelle.

M. Bagge, Délégué de la Suède, revenant sur la clause de la “prima facie evidence”, présomption sauf preuve contraire 3(4), mise en corrélation avec cette disposition 8, ne peut admettre cette présomption. En droit scandinave, le connaissement constitue une preuve concluante, tandis que le projet ne considère les mentions au connaissement que comme une présomption sauf preuve contraire.

M. le Président explique que la “prima facie evidence” signifie, en fait, que les mentions du connaissement font foi, à moins que le propriétaire de navire ne prouve qu’il y a erreur.

M. Rambke, Délégué de l’Allemagne, fait remarquer qu’en droit allemand, le connaissement constitue une preuve qui ne peut être contestée. Il ne the other obligations of the shipowner and to the direct recourse that the third party holder of the bill of lading had under the head of errors of description in the contract of carriage?

Mr. van Slooten, delegate from the Netherlands, asked to adhere to the exclusion of the negligence clause.

Mr. de Rousiers, French delegate, explained that it seemed necessary to define what it was forbidden to exclude by contract. The terms of article 3 aimed at creating a unanimous agreement on behalf of shipowners.

The Chairman replied that that provision had been introduced at the request of American interests. It was recognized that it was not indispensable but that they held to it in the United States, where they preferred a clear statement as to what one could or could not do. The United States supported the maintenance of the rules as formulated concerning the exactitude of the description of goods on the bill of lading so as to avoid the serious losses to which cargo owners and bankers had in the past been victim.

Mr. Langton, delegate from Great Britain, supported the views of Judge Hough. The aim was above all to make the bill of lading an “instrument of credit” of real value.

Mr. Bagge, Swedish delegate, returning to the clause concerning prima facie evidence “Présomption sauf preuve contraire” (article 3(4)), related it to the present paragraph 8 and could not accept this “présomption”. Under Scandinavian law, the bill of lading constituted conclusive proof while the draft only considered the marks on the bill of lading as prima facie evidence.

The Chairman explained what prima facie evidence meant, which was, in effect, that the descriptive notes in the bill of lading remained conclusive evidence unless the shipowner proved there was an error.

Mr. Rambke, German delegate, observed that under German law the bill of lading constituted incontestable proof.
pouvoirait recommander à son Gouvernement une convention qui renverserait ce principe.

**Troisième Séance - 21 Octobre 1922**

[197]
A l’article 3(4), MM. Bagge, van Slooten, Molengraaff et Rambke désiraient l’insertion d’une disposition aux termes de laquelle “l’expression présomption sauf preuve contraire n’empêcherait pas les pays contractants de reconnaître une plus grande force probante au connaissement”.

Leur sentiment était que, d’après la loi de leur pays respectif, un connaissement représente une preuve concluante et irrévocable contre le transporteur. Ils désiraient qu’en cas d’adoption de la convention, ils aient toujours le droit d’accorder dans leur loi nationale la même valeur au connaissement qu’actuellement.

M. Langton, Délégué de la Grande-Bretagne, propose de laisser de côté les mots “valeur probante”, puisque en réalité il n’y a pas de divergence quant au principe même.

M. Bagge, Délégué de la Suède, voulait en ce qui concerne la garantie de l’armateur pour l’exactitude de déclarations du nombre de colis, etc., que le connaissement vis-à-vis des tiers porteurs de bonne foi constitue un document parfait au même titre qu’une traite, par exemple.

[198]
M. van Slooten, Délégué des Pays-Bas. Beaucoup de gens pensent comme M. Bagge. Les Délégués de la Belgique, de la France, de la Grande-Bretagne et des Etats-Unis votent contre cette proposition, qui n’est pas adopté.

[200]
M. le Président à la demande de M. Bagge, a rédigé un avis au sujet de ce pa-

He would not be able to recommend to his Government a convention that would reverse this principle.

**Third Session - 21 October 1922**

[197]
Messrs. Bagge, van Slooten, Molengraaff and Rambke wanted the insertion in article 3(4) of a clause as follows: “the expression ‘prima facie evidence’ would not prevent contracting countries from acknowledging a greater evidentiary value for the bill of lading”.

Their feeling was that, according to the laws of their respective countries, a bill of lading represented conclusive and irrevocable proof against the carrier. In the event of the adoption of the convention, they wanted to maintain permanently under their national law the right to accord the same value to the bill of lading as at present.

Mr. Langton, British delegate, proposed leaving out the words “conclusive value” since, in reality, there was no difference as to the principle itself.

Mr. Bagge, Swedish delegate, in so far as the guarantee of the shipowner for the accuracy of the specifications of number of packages, etc. was concerned, wanted the bill of lading vis-à-vis bona fide third parties to constitute an absolute document with the same standing as a draft, for example.

[198]
Mr. van Slooten, delegate from the Netherlands. Many people think like Mr. Bagge. The delegates from Belgium, France, Great Britain, and the United States voted against this proposal, which was not adopted.

[200]
The Chairman, at the request of Mr. Bagge, drafted an opinion on this para-
Au sujet de l'article 3(8) de l’avis du président et de ceux qui ont pris part à la discussion de cet article et de l’article 3(8) à la réunion de Londres du Comité Maritime International, l’interprétation est la suivante: Quand un propriétaire de navire n’a pas de moyens raisonnables de contrôler la cargaison reçue par lui, il peut encore faire usage d’expressions telles que “environ” ou bien “plus ou moins” ou “poids, quantité et nombre inconnus” pour caractériser les mentions du connaissement; mais si le propriétaire de navire a, en fait, des moyens raisonnables de contrôle, il est tenu de délivrer un connaissement mentionnant la quantité, etc., sans modification.

Lorsque, par inadvertance ou par erreur, l’armateur émet un connaissement pour plus qu’il ne reçoit réellement, sans mention restrictive, il est absolument tenu pour la quantité exacte, etc., mentionnée au connaissement envers tout porteur de bonne foi acquéreur du connaissement erroné.

En pratique, lorsqu’il est fait usage de mention restrictive ou de mention indiquant que la marchandise est insuffisamment reconnue et qu’il y a “un manquant apparent”, on a ordinairement recours à des moyens d’instruction au sujet des variations usuelles de rendement dans le commerce dont il s’agit; si la freinte dépasse la normale, le propriétaire de navire est tenu de payer l’excédent.

M. le Président demande si la Commission désire que cet avis explicatif soit incorporé dans le rapport à la Conférence plénière?

Sir Leslie Scott, Délégué de la Grande-Bretagne, propose de dire dans le rapport à la Conférence que l’avis exprimé par M. le Président est partagé par les membres de la Commission, qui désirent qu’il en soit fait mention dans le compte rendu général de la Conférence (Adhésion générale).
Sixième Séance Plénière - 24 Octobre 1922

M. Langton. - Je ne sais pas exactement quelle est la signification en anglais de l’expression française “présomption sauf preuve contraire”. J’ignore si cela correspond tout à fait a “prima facie evidence”.

Le fait est qu’en anglais, nous n’aimons pas le mot “présomption”.

M. le Président. - Nous sommes parfaitement d’accord que “présomption sauf preuve contraire” et “prima facie evidence” sont exactement la même chose.

M. Struckmann. - La Délégation allemande attache beaucoup d’importance à la question traitée par le rapport sous l’article III/4; mais pour le moment, elle ne fait pas de proposition formelle.

M. le Président. - Il est donc entendu que nous acceptons simplement la formule indiquée: “Un tel connaissement sera une présomption, sauf preuve contraire, de la réception par le transporteur des marchandises telles qu’elles sont décrites conformément au paragraphe 3 a, b et c”.

M. Bagge. - A l’article 3(4), appuyé par les Délégués des Pays-Bas et de l’Allemagne, j’ai proposé de laisser aux pays contractants la faculté de reconnaître une plus grande force probante au connaissement. Lorsque nous avons discuté de cette question en Commission, j’ai compris de l’avis des Délégués anglais que le résultat serait à peu près le même, en raison de la procédure anglaise spéciale de la “stopped evidence”. Or, dans les pays scandinaves, nous n’avons pas ce type spécial de procédure: le juge ne peut pas s’opposer à ce que soit invoquée une preuve que l’armateur veut produire. Par conséquent, cela n’a pas pour nous la même signification qu’en Angleterre. Il me paraît essentiel pour les pays qui n’ont pas le même droit que l’Angleterre, de leur laisser les mains libres à cet égard.

Sixth Plenary Session - 24 October 1922

Mr. Langton. - I did not know the precise meaning in English of the French expression: “présomption sauf preuve contraire”. I am ignorant as to whether it corresponds exactly to “prima facie evidence”.

The fact is that in English we do not care for the word “présomption”.

Mr. Struckmann. - The German delegation attaches a great deal of importance to the question treated by the report under article 3(4), but for the present we have no formal proposal.

The Chairman. - It is understood then that we simply accept the formula shown: “Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c)”.

Mr. Bagge. - In article 3(4), supported by the delegates from the Netherlands and Germany, I proposed leaving up to the contracting countries the power of acknowledging a greater evidentiary value for the bill of lading. When we discussed this matter in commission, I understood that in the opinion of the English delegates the result would be more or less the same, by reason of the special English procedure of “stopped evidence”. In Scandinavian countries, however, we do not have this special type of procedure. The judge cannot stand in the way of whatever evidence the shipowner wishes to produce. Consequently it does not have the same meaning for us as in England. It seems essential to me for countries that do not have the same law as England to have their hands free in this respect.
M. Alten. - La Délégation norvégienne se joint à ce qu’a dit M. Bagge.

M. Sindballe. - Je n’attache pas grande importance à cette question. Comme M. Bagge vous l’a dit, l’article 3(4), tel qu’il est proposé ici, aura une tout autre signification au Danemark en raison de la doctrine de la “stopped evidence”, qui est absolument inconnue chez nous et il nous serait impossible de l’introduire. Je crois que c’est là une procédure tout à fait spéciale au droit anglais, qui y est implantée depuis plusieurs siècles. Or, si nous traduisions ces règles en danois, nous dirions, en fait, tout à fait autre chose que ce que les règles veulent dire. Je voudrais donc poser une question au sujet de l’étendue de cette doctrine du “stopping”. Dans l’ouvrage de Scrutton, Charter-parties and Bills of Lading, il n’est cité qu’un seul cas où l’acte de mentionner dans un connaissement que les marchandises ont été embarquées en bon ordre et conditionnement empêchait l’armateur de plaider le contraire envers un tiers de bonne foi auquel le connaissement a été endossé moyennant contre-valeur. Cependant, je crois qu’il peut se présenter d’autres cas, par exemple: le connaissement contient certains renseignements au sujet du nombre ou du poids, et le capitaine sait que ces renseignements ne sont pas corrects. Bien qu’il ait signé le connaissement, je pense que l’armateur ne serait pas empêché de prouver qu’il n’a pas reçu les marchandises telles qu’elles sont décrites dans le connaissement. Quant à moi, je l’ignore et voilà pourquoi je voudrais savoir jusqu’où s’étend cette doctrine. Je proposerais donc d’indiquer dans ces règles quand la doctrine du “stopping” s’applique. De cette façon, les Délégués scandinaves seraient en mesure d’apprécier quelle est exactement la différence entre la loi anglaise et les législations de nos pays. Actuellement, si notre gouvernement nous posait la question, nous serions fort embarrassés pour y répondre.

Ma proposition est donc la suivante: “La Commission ne pourrait-elle pas, comme un amendement à l’article 3(4),

Mr. Alten. - The Norwegian delegation is with Mr. Bagge on this point.

Mr. Sindballe. - I do not attach much importance to this question. As Mr. Bagge had told you, article 3(4), as it is proposed here, will have a quite different meaning in Denmark because of the doctrine of “stopped evidence”, absolutely unknown to us and impossible for us to introduce. I believe it to be a procedure unique to English law and implanted there for several centuries. If we were to translate these rules into Danish, we would be saying, in effect, something quite different than what the rules mean. I should therefore like to ask a question on the extent of this doctrine of “stopping”. In Scrutton’s work, Charter-parties and Bills of Lading, only one case is cited where the act of mentioning in a bill of lading that the goods were shipped in good order and condition would prevent the shipowner from pleading the contrary to a bona fide third party to whom the bill of lading was indorsed for value. However, I believe other instances can be put forward, for example: The bill of lading contains certain information as to quantity or weight, and the captain knows this information is not correct. Although he has signed the bill of lading, I think that the shipowner would not be prevented from proving that he did not receive the goods as they were described in the bill of lading. As for me, I do not know, and that is why I want to know the scope of this doctrine. I propose, therefore, indicating in these rules when the doctrine of “stopping” applies. In this way, the Scandinavian delegates will be able to appreciate the precise difference between English law and the legislation in our countries. If our governments asked us that question today, we should be highly embarrassed in our reply.

My proposal therefore is as follows: Might the commission not, as an amendment to article 3(4), indicate in what cases the doctrine of “stopping” applies.

Mr. Asser. - I believe the article can stay as it is. I believe there to be great importance for the bona fide holders of the
M. Asser. - Je crois que l'article peut rester tel qu’il est. Je crois qu’il a une grande importance pour les porteurs de connaissement de bonne foi. Nous lisons à la page 4 du rapport à propos de l’article 3(8), une explication donnée par le Président de la Commission qui couvre toutes les difficultés et qui dit: “que lorsque par inadvertance ou par erreur, l’armateur émet un connaissement pour plus qu’il ne reçoit réellement sans mention restrictive, il est absolument tenu pour la qualité exacte, etc., mentionnée au connaissement envers tout porteur de bonne foi, acquéreur du connaissement erroné”. Nous avons là une présomption juris et de jure, au profit de l’acquéreur de bonne foi. Je crois que c’est tout ce qu’il nous faut.

M. Sohr. - Je crois que la question se résume à ceci: actuellement en droit continental le connaissement fait preuve de ce qui y est mentionné, d’une façon absolue vis-à-vis des tiers porteurs de bonne foi. L’idée est de donner au connaissement une valeur négociable. On ne doit donc pas pouvoir attaquer le connaissement, pas plus qu’on n’attaque une lettre de change. Vis-à-vis de tiers de bonne foi le connaissement a une force probante absolue en droit continental, [128] mais seulement pour les mentions qui y sont contenues. Comme actuellement aucune de nos lois belges n’oblige le capitaine à mentionner certaines choses (nature de la marchandise, nombre de colis, etc.), il ne se donne pas la peine de vérifier ce qu’il reçoit et il met dans son connaissement: “nombre, qualité, poids inconnus, etc.”. Nous avons là une présomption juris et de jure, au profit de l’acquéreur de bonne foi. Je crois que c’est tout ce qu’il nous faut.

Mr. Sohr. - I think the question can be summarized thus: Under present Continental law, the bill of lading is proof of what is described therein in an absolute manner vis-à-vis the bona fide third party. The aim is to give the bill of lading a negotiable value. Therefore we must not be able to attack the bill of lading, any more than we attack a bill of exchange. Vis-à-vis the bona fide third party, the bill of lading has an absolute evidentiary value under Continental [128] law, but only for the description thereon. Since, at present, none of our Belgian laws obliges the captain to mention certain things (nature of goods, number of packages - that is to say, precisely those things listed in article 3), it is not worth checking what he receives and enters on the bill of lading “number, quality, weight unknown, etc.”, which means that the bona fide third party does not have a document of any great value in his hands. The new regime, which was inspired by the Harter Act, obliges the captain to give, from now on, certain descriptions and make certain checks. He is obliged to put down the leading marks, the number of packages, and the apparent state and condition of the goods. The number of instances where he can avoid this obligation is very limited. He cannot mention the leading marks if, for example, they are cancelled, or the number of packages if he has a serious reason for suspecting it not to be exact. All this supposes verification by the captain. Can one go further than this
obligation est très limité: il peut ne pas mentionner les marques principales si par exemple elles sont oblitérées, ou le nombre de colis s’il a une raison sérieuse de soupçonner qu’il n’est pas exact. Tout cela suppose un contrôle par le capitaine. Peut-on aller plus loin que ce texte? Vous savez que désormais le capitaine devra faire certaines mentions, il ne peut s’y refuser que s’il y a doute. Je demande donc de quoi l’on se plaindrait. On ne réserve que la preuve contraire. Il est évident qu’on ne peut aller jusqu’à donner au connaissement une valeur probante absolue entre les mains d’un tiers de bonne foi, lorsque le capitaine ou l’armement n’ont pas pu vérifier les mentions portées au connaissement. Le système théorique est donc remplacé par un système moins avantageux en théorie, mais plus efficace en pratique.

M. le Président. - Vous avez entendu, Messieurs, la proposition qui est faite et qui consiste non pas à modifier le texte, mais à dire qu’il est loisible aux législations nationales de donner une plus grande valeur probante au connaissement. Il me semble qu’il n’y a pas de raison pour ne pas l’admettre.

M. Beecher. - Je crois que les armateurs seront opposés à cette idée, notamment, dans le cas de transports de marchandises d’Amérique vers la Norvège, via l’Angleterre, pour lesquels on opposerait que le connaissement constitue une preuve probante absolue.

Sir Leslie Scott. - La Délégation anglaise désire souligner la très sérieuse objection de M. Beecher. La convention est à mi-chemin entre la proposition britannique et celle de la Suède et du Danemark. Nous ne pouvons donner à ces règles une force probante beaucoup plus grande que celle que le connaissement a chez nous.

M. Langton. - La question en discussion est réellement minime. Il s’agit surtout d’une question de preuve et tous nos amis comprennent maintenant qu’au fond rien ne nous divise. Si vous voulez vous reporter à la page 4 du rapport, sub article 3(8), vous verrez que la Commission a demandé spécialement que text? You know that henceforth the captain will have to give certain descriptions; he can only refuse to do so if there is doubt. I am asking, therefore, what complaint could one have? Only evidence to the contrary is reserved. It is clear that we cannot go so far as to give the bill of lading an absolute evidentiary value in the hands of a bona fide third party when the captain or the shipowning interests have not been able to verify the description on the bill of lading. The theoretical system is therefore replaced by a system less advantageous in theory but more effective in practice.

The Chairman. - You have heard, Gentlemen, the proposal that has been made and that consists not in amending the text but in saying that it is lawful for national legislations to give a greater evidentiary value to the bill of lading. It seems to me that there is no reason for not agreeing to this.

Mr. Beecher. - I believe that the shipowners will be opposed to this concept, notably, in the case of the carriage of goods from America to Norway via England, for which there would be opposition to the bill of lading being considered absolute proof.

Sir Leslie Scott. - The English delegation would like to underline Mr. Beecher’s strong objection. The convention is half-way between the British proposal and that made by Sweden and Denmark. We cannot give these rules an evidentiary value much greater than that we give the bill of lading at home.

Mr. Langton. - The matter under discussion is really minimal. It concerns above all a matter of evidence, and all our friends now understand that at heart nothing divides us. If you would look at page 4 of the report, article 3(8), you will see that the commission asked particularly that the opinion that had been formulated there should be reproduced in the conference’s final report. When the bill of lading is in the hands of a bona fide holder, it is a matter of knowing what the shipowner had written in the bill of lading. It little matters how we ar-
l'opinion qui y est formulée soit reproduite dans le rapport final de la Conférence. Lorsque le connaissement est entre les mains d’un porteur de bonne foi, il s’agit de savoir ce que l’armateur a inscrit au connaissement. Peu importe, comment nous arrivons à ce résultat: l’essentiel, est que nous puissions nous entendre sur une réglementation qui soit la même pour le monde entier.

M. Sindballe. - Il semble réellement qu’il n’y ait pas de différence entre la loi anglaise et la nôtre. Je ne m’en étais pas rendu compte jusqu’ici, mais M. Langton m’a dit, en conversation privée, que le connaissement constitue beaucoup plus qu’une présomption, sauf preuve contraire, au profit du détenteur de bonne foi. C’est tout ce que nous désirons et il n’y a donc plus aucune difficulté sur ce point.

M. le Président. - La proposition de la Délégation suédoise est donc retirée. Dans ces conditions, l’amendement que propose la Commission est adopté.

M. Bagge. - Faut-il comprendre que cette expression doit s’interpréter de la façon exprimée dans l’ouvrage dont a parlé M. Sindballe? Si j’ai bien compris M. Sohr, ce n’était pas son avis: il disait, en effet, que c’était la différence entre le connaissement, tel qu’il est proposé par les Règles de La Haye et celui que nous avons actuellement dans les pays continentaux.

M. Sohr. - En théorie!

M. Bagge. - Vous avez dit que lorsqu’il y a une description dans le connaissement, en droit continental l’armateur est tenu; mais que, dans le connaissement tel qu’il est proposé par les règles de La Haye, cela n’est pas le cas. La situation de l’armateur est devenue meilleure qu’auparavant, puisqu’il a le droit de dire que la prescription portée au connaissement n’est pas exacte. Or, on est d’accord, je crois, que pour ce qui concerne le droit anglais et américain, la situation n’est pas telle que M. Sohr le suppose en fait et cela en raison de la procédure spéciale qui existe dans ces pays. On avait dit qu’avec les nouvelles règles proposées, on allait se montrer plus sévère envers
l’armateur. Je ne sais pas si cela est vraiment le cas car l’armateur ne sera pas tenu de déclarer ou de mentionner dans le connaissement des marques, un nombre, une quantité ou un poids, qu’il n’a pas eu les moyens raisonnables de vérifier. J’ai voulu faire remarquer que la conception de M. Sohr des Règles de La Haye n’est pas ce que nous convenons maintenant qu’elle doit être.

M. le Président. - Il est bien entendu que nous prenons comme interprétation de cet article ce qui vient d’être dit par M. Langton et M. Sindballe. En fait, le connaissement, tel qu’il est en usage en Angleterre, s’est toujours révélé comme un instrument efficace. Nous pouvons donc être persuadés que, si cette conception est appliquée généralement, le résultat sera tout aussi satisfaisant. L’une des raisons pour lesquelles le système marchera bien sur le continent, c’est que nous n’admettrons pas, avec la même facilité que le droit anglo-saxon, la preuve contre des documents. Chez nous, on n’entend pas de témoins à l’encontre d’une preuve documentaire.

Conférence Diplomatique - Octobre 1923
Réunions de la Sous-Commission
Deuxième Séance Plénière - 6 Octobre 1923

[50]

M. le Président aborde l’examen du § 4: “tel connaissement vaudra présomption sauf preuve contraire”.

M. Van Slooten se réfère à ce sujet à la note qu’il a rédigée et qui a été distribuée à la Commission. Il propose d’admettre pour chaque État contractant la faculté de donner au connaissement une force probante plus grande lorsqu’il se trouve entre les mains d’un porteur de bonne foi.

M. le Président rappelle la portée de la controverse. Elle a été en grande partie résolue par la déclaration de la commission qui se trouve à la page 200 du rapport.

M. Van Slooten désire indiquer reasonable means of verifying. I wanted to point out that Mr. Sohr’s concept of the Hague Rules is not what we now agree it should be.

The Chairman. - It is well understood that we are taking as the interpretation of this article what has just been said by Messrs. Langton and Sindballe. In fact, the bill of lading as it is employed in England has always proved to be an effective instrument. We can be persuaded, therefore, that if this concept is applied generally, the result will be altogether satisfactory. One of the reasons why the system will work well on the Continent is that we shall not admit, with the same ease as Anglo-Saxon law, evidence against documents. With us we do not hear witnesses against documentary evidence.

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Second Plenary Session - 6 October 1923

[50]

The Chairman began examination of paragraph 4: “such a bill of lading shall be prima facie evidence”.

Mr. van Slooten here referred to the memorandum he had drafted and distributed to the commission. He proposed allowing each contracting State the facility to give the bill of lading a greater evidentiary value when in the hands of a bona fide holder.

The Chairman recalled the scope of the controversy. It had been resolved in large part by the commission’s statement (to be found on page 200 of its report).

Mr. van Slooten wanted to state that, faced with this declaration, nothing would prevent a national law from defin-
qu’en présence de cette déclaration, rien n’empêcherait une loi nationale de préciser cette question de responsabilité et de déterminer que, si un engagement pur et simple a été pris quant au poids, le connaissement fera foi entre toutes les parties.

**M. Sindballe** estime que les déclarations dans le rapport de la sous-commission laissent place à un doute; elles peuvent être interprétées différemment suivant les pays. Le connaissement émis par l’armateur fera foi d’une manière absolue à l’égard de ce dernier; mais il est douteux que tel soit le cas si le connaissement est signé par le capitaine. D’après la loi américaine de 1916, actuellement en vigueur, le connaissement vaut preuve entre les mains du “bona fide holder for value”; mais d’après la loi anglaise il n’en est pas ainsi: le connaissement émis par le capitaine constitue une preuve concluante contre celui-ci, mais non contre l’armateur. Puisque la déclaration de la commission serait interprétée de façon différente en Angleterre et aux États-Unis, il y a lieu d’éclaircir ce point et de déclarer dans la convention oui bien que le connaissement constitue une preuve concluante contre l’armateur à l’égard du tiers porteur de bonne foi, ou bien que la loi nationale pourra stipuler que le connaissement constituerait une preuve décisive contre l’armateur, même s’il est émis par le capitaine.

**Sir Leslie Scott** reconnait l’importance et la justesse de l’observation de M. Sindballe. La déclaration de la sous-commission que l’armateur est tenu d’une manière absolue envers le porteur de bonne foi n’est pas exacte d’après la loi anglaise. Il faudrait donc adopter une des deux solutions. La première qui consiste à insérer une disposition dans la convention même semble la meilleure. La délegation anglaise serait prête à accepter cette solution, elle admettrait l’usage, qui existe maintenant surtout dans le commerce des bois et qui intéresse les pays scandinaves, d’insérer une clause de “conclusive evidence” bénéficiant au chargeur autant qu’au tiers porteur.

Mr. Sindballe felt that the statements in the report of the commission left one doubt. They could be interpreted differently according to the country. The bill of lading issued by the shipowner would be absolute evidence in regard to the shipowner. But it was doubtful that this would be so if the bill of lading was signed by the captain. Under the American law of 1916, now in force, this bill of lading was as good as proof in the hands of the “bona fide holder for value”. But under the English law it was not so. The bill of lading issued by the captain constituted conclusive evidence against him, but not against the shipowner. Since the statement of the Commission would be interpreted differently in England and the United States, there was room for clarifying the matter and stating in the convention whether the bill of lading constituted conclusive evidence against the shipowner in respect of the bona fide holder, or whether the national law might stipulate that the bill of lading would constitute decisive evidence against the shipowner, even if used by the captain.

**Sir Leslie Scott** recognized the importance and accuracy of Mr. Sindballe’s observation: the Commission’s statement that the shipowner was absolutely bound toward the bona fide holder was not correct under English law. It would be necessary, therefore, to adopt one of two solutions. The first, consisting of inserting a provision in the convention itself, seemed the best. The English delegation would be ready to accept this solution. It would allow the custom, which existed at present most notably in the timber trade and which was of interest to the Scandinavian countries, to insert a “conclusive evidence” clause benefiting the shipper rather than the holder.

The Chairman proposed that Mr. Sindballe and Sir Leslie Scott should
M. le Président propose que M. Sindballe et Sir Leslie Scott soumettent à la Commission un amendement dans ce sens. Il n’y a aucun obstacle au point de vue des législations continentales à accepter que le connaissement fasse foi.

M. Berlingieri rappelle qu’en Italie existe le principe que le connaissement aux mains du tiers porteur légitime, fait preuve absolue, la preuve contraire ne peut être admise vis-à-vis du porteur de bonne foi. Il voudrait donc que les indications du connaissement constituent une preuve décisive vis-à-vis de tout le monde: c’est un titre dont on ne peut contester la valeur hormis le cas de dol.

M. Struckmann rappelle que la délégation allemande propose d’insérer dans la convention une rédaction similaire dont le texte se trouve à la page 2 des observations allemandes.

M. Asser signale que d’après la législation continentale le connaissement fait preuve contre les assureurs qui sont obligés de payer si on leur présente le connaissement. S’ils ont été subrogés aux droits de l’assuré et que le connaissement est entre leurs mains peuvent-ils être considérés comme des tiers de bonne foi?

M. Sohr dit qu’en vertu de la jurisprudence belge, le connaissement n’a pas plus de valeur vis-à-vis de l’assureur que vis-à-vis du capitaine. Par conséquent au cas où le connaissement fait preuve entre le tiers porteur et le capitaine, il est également opposable aux assureurs; mais si le connaissement porte la mention “poids inconnu” et qu’il n’y a pas eu moyen de le contrôler, les assureurs ne sont pas plus tenus en vertu de ce connaissement que le capitaine lui-même.

M. Asser demande quelle serait la solution si le connaissement ne porterait pas “poids inconnu”.

M. le Président estime que c’est une question d’assurance plutôt qu’une question de transport, mais à son avis, l’assureur subrogé aux droits de son assuré, s’il n’est pas partie à une fraude, pourra opposer le connaissement au capitaine.

submit an amendment to this end to the commission. There was no obstacle from the point of view of Continental legislation in accepting that the bill of lading was absolute evidence.

Mr. Berlingieri recalled that in Italy the principle existed that the bill of lading in the hands of a legitimate holder constituted absolute evidence; evidence to the contrary could not be admitted in relation to the bona fide holder. He would therefore like the leading marks in the bill of lading to constitute conclusive evidence in relation to the whole world: it would be a title whose value could not be contested except in the case of “dol” (fraud).

Mr. Struckmann recalled that the German delegation proposed inserting similar language in the convention, the text of which could be found on page 2.

Mr. Asser indicated that in Continental legislation the bill of lading was evidence against the insurers, who were obliged to pay if they were presented with the bill of lading. If they were subrogated to the rights of the insured and the bill of lading were in their hands, could they be deemed to be bona fide holders?

Mr. Sohr said that under Belgian jurisprudence the bill of lading had no more value in relation to the insurer than the captain. Consequently, in the case where the bill of lading was evidence against the holder and the captain, it was also adverse to the insurers. But if the bill of lading bore the mark “weight unknown” and there had been no means of checking it, the insurers were no more bound by virtue of this bill of lading than the captain himself.

Mr. Asser asked what would be the solution if the bill of lading did not state “weight unknown”.

The Chairman felt that it was a question of insurance rather than a question of carriage, but in his opinion the insurer was subrogated to the rights of his insured; if he was not party to a fraud, he might rely on the bill of lading against the captain.
M. Loder revient à la proposition de M. Van Slooten: Il la préfère à la proposition allemande: avec la réserve préconisée la loi nationale pourra régler la question.

M. Straznicky se déclare en faveur de la proposition de la délégation des Pays-Bas.

M. Berlingieri croit qu’on ne peut laisser à la loi nationale le soin de régler une question de principe aussi importante.

M. le Président suggère le texte suivant “pareil connaissement vaudra à l’égard du tiers porteur de bonne foi preuve de la réception pour le transporteur des marchandises, telles qu’elles sont décrites conformément aux § 3a, b, et c”.

M. Ripert craint qu’on n’aggrave ainsi singulièrement les Règles de La Haye contre le transporteur. Celui-ci est obligé de délivrer un connaissement indiquant le poids, le nom- [52]bre de pièces etc. Même s’il se trompe, il ne pourrait plus contester les indications contresignées en faisant la preuve contraire. Il est à prévoir que dans ces conditions le transporteur ne délivrera plus de connaissement qu’après un examen long et minutieux.

M. Van Slooten estime que l’amendement du Président va plus loin que le sien. S’il, d’un côté, on oblige le transporteur à insérer au connaissement ce qui est indiqué par le chargeur et que, d’autre part, il ne peut administrer la preuve contraire, il y a là une aggravation de responsabilité très grande pour lui.

M. Berlingieri est d’avis qu’une fois que le capitaine a signé le connaissement sans aucune réserve, on ne peut plus admettre la preuve contraire car sinon le connaissement n’a plus aucune valeur.

Sir Leslie Scott reconnaît la justesse des observations qui ont été faites et voudrait y réfléchir. Il propose donc de remettre la question de la rédaction d’un amendement définitif jusqu’à la fin des délibérations de la Commission.

M. le Président fera distribuer des copies de la formule d’amendement qu’il a proposé. Il résume la discussion en constatant qu’il y a deux solutions et que

Mr. Loder returned to Mr. van Slooten’s proposal. He preferred it to the German proposal. With the recommended reservation, national law would be able to regulate the question.

Mr. Straznicky declared himself in favor of the proposal from the Dutch delegation.

Mr. Berlingieri believed that the responsibility for the regulation of so important a question of principle should not be left up to national law.

The Chairman suggested the following text: “Such a bill of lading shall be, in relation to the bona fide holder, evidence of the receipt by the carrier of the goods as they are described in accordance with paragraph 3(a), (b) and (c)”. 

Mr. Ripert feared that they might thus worsen the position of the Hague Rules against the carrier. He was bound to issue a bill of lading showing the weight, number [52] of pieces, etc. Even if he were mistaken, he would no longer be able to contest the countersigned information using evidence to the contrary. It should be provided that under these conditions the carrier would only issue a bill of lading after a long and detailed inspection.

Mr. van Slooten felt that the Chairman’s amendment went further than his. If, on one hand, the carrier was obliged to insert in the bill of lading what was indicated by the shipper, and on the other, he could not produce evidence to the contrary, that was a considerable increase of liability for him.

Mr. Berlingieri was of the opinion that once the captain had signed the bill of lading without any proviso, evidence to the contrary could no longer be allowed because otherwise the bill of lading had no further value.

Sir Leslie Scott recognized the fairness of the comments made and wanted to reflect upon them. He therefore proposed leaving the question of the drafting of a definitive amendment until the end of the commission’s deliberations.

The Chairman would distribute copies of the formula for the amendment that he had proposed. He resumed the
PART II - HAGUE RULES

Article 3 (4) (1st paragraph) - Prima facie evidence

la difficulté sera réglée soit en acceptant
la disposition suggérée, soit en admet-
tant la réserve que les législations nationales pourront étendre la responsabilité
du transporteur s’ils le désirent. Il rappelle que d’après la conception conti-
nentale, le connaissement sans réserves forme un titre définitif; ce système
semble donner satisfaction pour cer-
taines stipulations mais pour le poids il peut être moins parfait.

Quatrième Séance Plénière -
8 Octobre 1923

M. le Président

Il reste à examiner la question impor-
tante de la force probante du
connaissement. La délégation anglaise a
des déclarations à faire à cet égard. Dans
la pratique actuelle, en Angleterre com-
me sur le Continent et aux Etats-Unis,
le connaissement fait foi de son conte-
u et par conséquent si le conditionne-
ment de la marchandise, les marques,
les nombres et le poids s’y trouvent in-
sérés sans réserves, l’armateur est lié et
ne peut faire légalement la preuve
contraire, avec cette réserve cependant
qu’en Angleterre on peut faire la preuve
contraire pour la nature et pour le poids,
mais non pour le conditionnement, au
moins à l’égard d’un tiers porteur de
bonne foi. Mais à côté de la théorie, il y a
la pratique: c’est que dans tous les
connaissements figurent des clauses
comme “poids inconnu”, “que dit être”; des réserves sur le nombre sont plus
rares, mais existent parfois et sont va-
lables. Dans la convention, on a proposé
de substituer à cela le régime suivant: le
capitaine indiquera dans le connaisse-
ment le poids, la quantité et la descrip-
tion des marchandises indiquées par le
chargeur, mais il aura un triple droit.
Tout d’abord, s’il a un motif de croire
que ce poids est faux ou s’il n’a pas un
moyen de le contrôler raisonnablement,
il a le droit de ne pas l’inscrire au
connaissement. En second lieu s’il l’in-
discussion by stating that there were two
solutions and that the difficulty would be
solved either by accepting the suggested
provision, or by allowing the proviso that
national legislations might extend the re-
ponsibility of the carrier if so desired.
He recalled that, according to the Conti-
nental concept, the bill of lading without
reservations formed a definitive docu-
ment of title. This system seemed to give
satisfaction for certain provisions, but for
the issue of weight it could be less ideal.

Fourth Plenary Session -
8 October 1923

The Chairman

There still remained for examination
the important question of the evidentiary
value of the bill of lading. The English
dlegation had statements to make in
this respect. In present practice in En-
gleland, practice as on the Continent and in
the United States, the bill of lading was
evidence of its contents and, conse-
quently, of the condition of the goods.
When the marks, numbers, and weight
were found there without modifying
phrases, the shipowner was bound and
could not legally offer contrary evidence,
with this reservation, however, that in
England one could offer contrary evi-
dence as to nature and weight, but not as
to condition, except in respect of a bona
fide third-party holder. But beside theo-
ry there was practice. In all bills of lading
there were clauses like “weight un-
known”, “said to be”. Reservations as to
number were more unusual, but some-
times existed and were valid. In the con-
vention, one had proposed substituting
the following system. The captain would
indicate in the bill of lading the weight,
quantity, and description of the goods
specified by the shipper, but he would
have a triple right. First, if there were
grounds for believing that the weight was
false or there were no reasonable means
of checking it, he had the right not to in-
sert it in the bill of lading. Secondly, if he
so indicated, the bill of lading was evi-
diique, le connaissement fait foi, mais il pourra faire la preuve contraire. Comme
 cette preuve contraire est souvent illusoi-
 re, il a une troisième garantie: c’est que le
 chargeur est garant du poids indiqué au
 connaissement. Les armateurs et les inté-
 ressés à la cargaison ont été d’accord
 pour reconnaître que ce compromis vaut
 mieux que le régime actuel au point de
 vue de la pratique. M. le Président attire
 l’attention de ses collègues continentaux
 sur ce que rien n’est modifié à la force
 probante du connaissement pour tous
 les objets sub a, b et c, c’est à dire:
 marques, nombre des colis, état et condi-
 tionnement. Pour le chargeur, le connais-
 sement fait foi.

 Ce système pratique marchera beau-
 coup mieux que le droit théorique du
 connaissement qui fait foi, mais dans le-
 quel il y a toujours des réserves. Subsi-
 diairement, on pourrait imaginer que ce
 système soit maintenu surtout pour le
 poids; mais que pour le nombre et le
 conditionnement le connaissement ait
 une portée plus grande.

 C’est le conflit entre la réalité pra-
 tique et la théorie. La convention donne-
 ra aux chargeurs et aux destinataires des
 avantages plus certains que le régime ac-
 tuel du connaissement faisant foi, mais
 que l’on peut accompagner de toutes
 sortes de réserves.

 Sir Leslie Scott rappelle avoir dit
 qu’il était prêt à considérer la question
 mais il regrette de ne plus pouvoir le fa-
 ire et devoir prier la sous-commission de
 maintenir l’article 3, paragraphe 4, com-
 me il est rédigé actuellement. M. le Pré-
 sident a bien expliqué la portée du droit
 anglais. Pour le conditionnement des
 marchandises, le connaissement entre les
 mains du tiers porteur, fait foi et lie le
 propriétaire du navire. Pour la quantité
 et le poids, il n’en est pas de même. Dans
 la pratique il n’y a pas beaucoup de dif-
férence entre notre droit et la règle conti-
 nentale. Sur le continent, quand le capi-
taine n’a pas le moyen de contrôler si le
 poids mentionné au connaissement est
 exact, il ajoute la clause “Poids inconnu”. Par conséquent ce poids ne lie pas
dence but he could offer contrary proof. As this contrary proof was often illusory, he had a third guarantee, which was that the shipper was the guarantor of the weight indicated in the bill of lading. The shipowner and those interested in the cargo had agreed to recognize that such a compromise was better than the present regime from a practical point of view. The Chairman called the attention of his Continental colleagues to the fact that nothing had altered the evidentiary value of the bill of lading for all objects under (a), (b) and (c), that is to say: marks, number of packages, state, and condition. For the shipper, the bill of lading was absolute evidence.

 This practical system would work much better than the theoretical system of the bill of lading as absolute proof, but in which there were always reservations. As a secondary issue, one could imagine that this system had been maintained, above all, in respect of weight, but that as far as the number and condition were concerned, the bill of lading had a much broader scope.

 It was a conflict between practical re-
 ality and theory. The convention would
give the shippers and receivers more cer-
tain advantages than the present regime
where the bill of lading offered absolute
proof, but could be accompanied by all
sorts of reservations.

 Sir Leslie Scott recalled having said
that he was ready to consider the ques-
tion. However, he was sorry that he was
no longer able to do so, and had to beg
the Commission to retain article 3(4) as
presently drafted. The Chairman had ex-
plained very well the scope of English
law. As to the condition of the goods, the
bill of lading in the hands of the third-
party holder was evidence and bound the
shipowner. As to quantity and weight, it
was not the same. In practice, there was
not very much difference between our
law and the Continental rule. On the
Continent, when the captain did not have
the means to check whether the weight
described on the bill of lading was cor-
rect, he added the clause “weight un-
le transporteur même vis-à-vis du tiers porteur. Puisque la transaction contenue dans ces Règles a été si longuement débattue entre les deux parties, il vaut mieux garder le texte de cet article qui est très délicat au point de vue commercial.

M. Berlingieri estime qu’il y a lieu de considérer que cet article est le résultat d’un compromis. Il se rappelle avoir assisté comme représentant du Comité des Armateurs Italiens à la “Shipping Conference” où les Règles de La Haye ont été commentées. On a fait observer que le capitaine a le devoir d’insérer le nombre des colis ou les pièces, ou la quantité, ou le poids, suivant le cas, tels qu’ils sont fournis par le chargeur. Mais il peut se servir de la clause habituelle “poids inconnu” ou bien “que dit être”, et on outre le transporteur doit seulement faire les mentions quand il a la possibilité de contrôler ces données. Aucun transporteur ne sera tenu de déclarer dans le connaissement les marques, le nombre ou le poids qu’il a des raisons sérieuses de croire inexacts; le capitaine doit du reste être en mesure de contrôler les déclarations du chargeur.

Sir Leslie Scott croit que ces commentaires ne sont pas tout-à-fait exacts, car ce n’est pas le capitaine qui a la faculté du choix mais bien le chargeur. Si le chargeur arrive avec un connaissement faisant mention d’un nombre de colis ou d’un poids, le capitaine, est obligé de signer ce connaissement pour autant de colis.

M. Berlingieri fait observer que le capitaine peut contrôler la déclaration faite par le chargeur.

M. Sindballe constate que M. le Président et Sir Leslie Scott ont dit que la théorie continentale n’a pas de portée pratique, parce que le capitaine insère toujours dans les connaissements la mention “poids inconnu”. Il est vrai qu’il est de coutume d’insérer ces mots, mais on ne peut dire que cela se fait toujours et il y a, notamment au Danemark de nombreux connaissements ne contenant pas cette clause. En pareil cas, la théorie known”. Consequenty, this weight does not bind the shipowner even vis-à-vis the third-party holder. Because the compromise contained in these rules had been so long debated by the two parties, it would be better to stick to the text of this article, which was an extremely delicate matter from a commercial point of view.

M. Berlingieri felt that there were grounds for considering that this article was the result of a compromise. He remembered having been a representative of the Committee of Italian Shipowners at the Shipping Conference where comments on the Hague Rules [85] had been made. It was observed that the captain was duty-bound to insert the number of packages and units, or the quantity, or weight, depending on the case, as they had been supplied by the shipper. But he could make use of the customary clause “weight unknown”, or “said to be”, and in addition, the carrier had only to include these descriptions when he was able to check the goods. No carrier would be obliged to state in the bill of lading the leading marks, number, or weight that he had reasonable grounds for believing to be incorrect. The captain had, moreover, to be able to check the shipper’s declarations.

Sir Leslie Scott believed that these comments were not wholly accurate, because it was not the captain who had the power of choice but rather the shipper. If the shipper turned up with a bill of lading containing a description of a number of packages or of weight, the captain was obliged to sign this bill of lading for as many packages as there were.

M. Berlingieri pointed out that the captain could verify the declaration made by the shipper.

M. Sindballe confirmed, as the Chairman and Sir Leslie Scott had said, that the Continental theory had no practical value because the captain always inserted “weight unknown” in the bills of lading. It was true that it was customary to insert these words, but one could not say that it was always done and there were, notably in Denmark, numerous bills of lading that
Le continentale a certainement une portée pratique. L’année dernière des délégués anglais ont dit que pratiquement il n’y a pas de différence entre la loi anglaise et la loi continentale à raison de la doctrine d’estoppel. Les armateurs danois pensent au contraire qu’une différence existe réellement. A présent la description dans le connaissement de l’ordre apparent et du conditionnement des marchandises vaut preuve irréfragable, mais les armateurs sont d’avis qu’il faudrait à cet égard modifier la loi anglaise. La question semble d’un grand intérêt pratique et il serait fort difficile pour les États scandinaves de signer la convention si on ne pouvait se mettre d’accord sur ce point. Il semble qu’en soit de même aux États-Unis car la loi américaine contient les mêmes dispositions.

L’objection porte surtout sur le nombre et sur le conditionnement des marchandises mais également sur d’autres points.

**M. Van Slooten** croit qu’après avoir entendu les opinions des délégués anglais et des délégués scandinaves le moment est venu de proposer une formule de conciliation, à savoir: d’ajouter une réserve à la convention prévoyant que la faculté sera réservée à chaque État contractant d’accorder au connaissement une force probante plus grande dès qu’il se trouve entre les mains d’un tiers porteur de bonne foi. Moyennant l’adoption de cette réserve, il n’y aurait rien à changer dans les lois continentales. Quant aux Anglais, ils ne seront pas forcés de faire usage de cette réserve; d’ailleurs ils ont déjà fait usage d’une réserve dans le genre de celle proposée dans le projet de loi actuellement en discussion, à propos de l’article 5, en stipulant qu’on peut se départir du système de “prima facie evidence” en tenant compte du cas des “tramps” ayant à charger des cargaisons en vrac que les capitaines n’ont pas pu vérifier.

**M. Ripert** fait observer que la réserve propose a un double inconvénient: d’abord, si on accorde une valeur absolue au connaissement, on pousse le capi-
taine à trouver des raisons sérieuses pour ne pas vérifier le poids ou la quantité. Ensuite, si la force probante du connaissement varie suivant qu’il se trouve entre les mains du tiers porteur ou du chargeur, on ouvre la porte à la fraude puis qu’il suffira au chargeur de remettre le connaissement à un tiers porteur pour donner à ce document une valeur absolue. Il y a dans les règles un compromis honorable entre la déclaration par le chargeur et la possibilité de preuve, qu’aura à fournir le transporteur.

M. Loder craint que ce ne soit une réserve qui tende à détruire la portée de la convention. Celle-ci s’applique à tout connaissement créé dans un pays contractant; mais avec cette réserve, suivant le pays où cette réserve aura été émise, soit aux Pays-Bas, en France ou en Angleterre, ce connaissement n’aura plus la même valeur. C’est détruire l’uniformité.

M. Bagge se déclare tout prêt à recommander à son gouvernement d’accepter l’opinion de la sous-commission quant aux “tramp-steamers”. Mais il ne pourra lui recommander d’accepter la règle de “prima facie evidence”. La solution conciliatrice proposée par M. Van Slooten semble la seule qui permette d’aboutir à un résultat. Il ajoute que si l’on adoptait la clause telle qu’elle est proposée dans la Convention, il n’est pas certain que cela oblige l’Angleterre à modifier sa règle de procédure de “estoppel” qui n’existe pas dans les pays scandinaves; il s’ensuivrait qu’en Angleterre, en réalité, subsisterait la “conclusive evidence” au moins à l’égard de l’état et le conditionnement de la cargaison, tandis que dans les pays continentaux qui ne possèdent pas de règles de procédure correspondantes, on aurait la “prima facie evidence”.

M. Struckmann, faute de mieux, se rallie à la proposition conciliatrice de M. Van Slooten, l’Allemagne se trouvant [86]

M. Loder feared that this was a reservation that tended to destroy the scope of the convention. The convention applied to every bill of lading created in a contracting country, but with this reservation: according to the country where this reservation was made, be it in the Netherlands, in France, or in England, the bill of lading would not have the same value. That was to destroy uniformity.

M. Bagge declared himself quite ready to recommend to his government acceptance of the opinion of the commission as it related to tramp steamers. But he would not be able to recommend acceptance of the “prima facie evidence” rule. The conciliatory solution proposed by Mr. van Slooten seemed the only one that would permit a conclusion to be reached. He added that if the clause were adopted as proposed in the convention, he was not sure that that would oblige England to change its procedural rule of estoppel, which did not exist in the Scandinavian countries. It followed that in England “conclusive evidence” would remain, at least in regard to the state and condition of the cargo, while in Continental countries, which did not possess corresponding rules of procedure, one would have “prima facie evidence”.

M. Struckmann, for lack of something better, supported Mr. van Slooten’s conciliatory proposal because Germany
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dans la même situation que les pays scandinaves.

M. Alten croit que si la délégation britannique insiste formellement sur le maintien de la règle, la meilleure solution est celle proposée par le gouvernement norvégien; de supprimer le paragraphe tout entier et de laisser la décision à la loi nationale.

M. Sohr fait observer que le texte tel qu’il est conçu oblige implicitement le capitaine à vérifier. Les tribunaux ont nécessairement un contrôle efficace, puisqu’il faut une raison sérieuse de soupçonner l’exactitude des déclarations fourni ou qu’il n’y ait pas eu de moyen raisonnable de vérifier. Or, il y aura un grand nombre de cas intermédiaires où il n’y a pas de raison sérieuse de soupçonner l’exactitude des renseignements fournis et où le capitaine va accepter les éléments fournis par le chargé. Est-il juste que dans ce grand nombre de cas, où il n’y aura pas de contrôle, le capitaine soit tenu de façon absolue? Les numéros 3 et 4 représentent une solution transactionnelle favorable au chargé, puisque le fardeau de la preuve incombe au capitaine et oblige celui-ci à prouver contre la “prima facie evidence” alors que jusqu’ici les mentions “poids, nombre et quantité inconnus” renversaient le fardeau de la preuve qui retombait sur le chargé. M. Sindballe a fait remarquer que le clause “poids inconnu” ne s’emploie pas toujours: c’est parce que la vérification est plus facile; il en est de même en Angleterre en ce qui concerne l’aspect extérieur des colis; quant au nombre, la vérification est fort aisée.

Sir Leslie Scott signale que lorsqu’il s’agit dans le commerce des bois d’un chargement composé de nombreuses petites pièces, il y a la clause de “conclusive evidence”.

M. Sindballe reconnaît que cette disposition se trouve dans la loi scandinave même si la clause n’est pas insérée dans les connaissements et elle s’applique à tous les connaissements qui contiennent l’indication du nombre. Très souvent les arma-
teurs sont condamnés à des dommages-intérêts à raison de ces indications.

M. Berlingieri est d'accord pour reconnaître que le capitaine doit être en mesure de pouvoir contrôler la déclaration des chargeurs, mais s'il l’a contrôlée, pourquoi vouloir encore que le connaissément ne vaille que jusqu’à preuve contraire? C’est bouleverser les principes à la base de la loi italienne: actuellement vis-à-vis d’un porteur de bonne foi le capitaine ne peut pas contester. Subsidiairement, il accepterait la proposition de la délégation des Pays-Bas.

M. Ripert croit qu’on semble supposer que dans l’article 3, il y aurait nécessairement une vérification par le capitaine. Or, il est infiniment probable que dans quantité d’hypothèses où le capitaine pourrait contrôler il ne le fera pas: il s’en rapportera au chargeur dans lequel il a confiance. S’il arrive qu’il peut par un autre moyen démontrer qu’il y a fraude, il y aura l’article 4 pour lui résérer cette preuve. Cette preuve d’ailleurs est tellement difficile qu’il n’y a aucun inconvénient à la lui réserver.

M. le Président reconnaît que la preuve est difficile. Ce qui le démontre, c’est que le principe existe pour le nombre en Angleterre; mais il ne semble pas qu’on ait jamais fait cette preuve.

M. Struckmann se déclare en faveur de la proposition de M. van Slooten; sinon il se range à l’avis de M. Berlingieri parce que se trouve le même principe dans la loi allemande.

[87]

M. Beecher signale que les armateurs américains ne se sont pas montrés très enthousiastes au sujet de ces Règles; tout au plus ont-ils dit qu’ils ne s’y opposeraient pas. La modification proposée ajoute un fardeau de plus pour les armateurs tandis que presque toutes les modifications ont été en faveur des chargeurs. Il semble qu’une nouvelle modification détruirait l’uniformité internationale en matière de connaissance, qui a constitué le motif principal de l’élaboration de ces Règles. Les chargeurs des États-Unis fini donc comme raison de ces descriptions.

Mr. Berlingieri agreed to recognize that the captain should be in a position to be able to verify the shipper’s declaration, but if he had verified it, why should the bill of lading need to be only prima facie evidence? That would upset the principles underlying Italian law where, at present, the captain could not challenge a bona fide holder. As a secondary point, he would accept the proposal of the Dutch delegation.

Mr. Ripert believed that one seemed to imagine that in article 3 it would necessarily be verification by the captain. It was infinitely likely that in many hypothetical situations where the captain might check, he would not do so. He would leave it to the shipper, whom he trusted. If it happened that he could, by other means, show that there was fraud, he would have article 4 to provide him with such a reservation. This proof was, moreover, so difficult that there could be no objection in reserving it for him.

The Chairman recognized that it was difficult to prove. What demonstrated this was that the principle did exist in England for number, although it seemed that this burden of proof had never been carried.

Mr. Struckmann declared himself in favor of Mr. van Slooten’s proposal. However, he was of Mr. Berlingieri’s opinion because under German law the same principle was found.

[87]

Mr. Beecher indicated that the American shipowners had not been very enthusiastic about these rules. At the most, they had said they would not oppose them. The proposed amendment placed a further burden upon the shipowners while almost all the amendments had been in the shippers’ favor. It seemed that a new amendment would destroy international uniformity in regard to the bill of lading and this had been the principal reason for the creation of these rules. Shippers in the Unit-
ont pris connaissance de ces Règles et n’ont pas demandé une modification quant à la question de la preuve. Dans ces conditions, il n’y a pas lieu d’ajouter encore le poids d’une paille à la responsabilité qui pèse déjà sur les armateurs.

**M. Bagge** fait observer qu’à l’article 3, paragraphe 3, il est dit qu’après avoir reçu et pris en charge les marchandises, le transporteur, le capitaine ou l’agent du transporteur devra délivrer un connaissement au chargé. D’après la jurisprudence anglaise, selon un jugement datant de 1851, le capitaine n’a pas d’autorité pour signer pour des marchandises qu’il n’a pas reçues et l’armateur n’est pas lié dans ce cas, par le connaissement que le capitaine a signé. Comment va-t-on en Angleterre concevoir l’autorité du capitaine pour signer des connaissements en présence de la clause 3 paragraphe 3. Est-ce que l’armateur sera désormais responsable en vertu de la règle d’”estoppel” même dans le cas où il ne le serait pas maintenant d’après la décision de 1851; est-ce que le capitaine sera tenu, même si le capitaine a signé un connaissement pour moins que ce qu’il n’a reçu parce que le juge dira que l’acheteur est de bonne foi et qu’en vertu de la règle d’”estoppel”, l’armateur ne pourra pas prouver contre le connaissement? S’il en est ainsi, l’Angleterre obtiendrait ce qu’ils voulaient les États Scandi- naves, tandis que pour ces États, la Convention amènerait une situation qu’ils trouvent tout à fait inopportune.

**Cinquième Séance Plénière - 8 Octobre 1923**

**M. le Président** reprend la discussion de la force probante du connaissement et constate que tout le monde est d’accord pour admettre que rien dans ces clauses ne doit mettre le capitaine ou le chargé à l’abri des dommages qu’ils causent en décrivant sciemment d’une façon inexacte dans le connaissement l’état, le conditionnement, le nombre ou le poids des marchandises. L’États-Unis étaient au nombre des États qui étaient au courant des règles et avaient demandé une modification quant à la question de la preuve. Sous ces circonstances, il n’y a pas de quoi ajouter encore une paille à la responsabilité qui pèse déjà sur les armateurs.

**Mr. Bagge** fait remarquer qu’à l’article 3(3) on y dit que après avoir reçu et pris en charge les marchandises, le transporteur, le capitaine ou l’agent du transporteur devra délivrer un connaissement au chargé. D’après la jurisprudence anglaise, selon un jugement de 1851, le capitaine ne possédait pas d’autorité pour signer pour des marchandises qu’il n’a pas reçues et l’armateur n’est pas lié dans ce cas, par le connaissement que le capitaine a signé. Comment va-t-on en Angleterre concevoir l’autorité du capitaine pour signer des connaissements en présence de la clause 3 paragraphe 3? Est-ce que l’armateur sera désormais responsable en vertu de la règle d’”estoppel” même dans le cas où il ne le serait pas maintenant d’après la décision de 1851; est-ce que le capitaine sera tenu, même si le capitaine a signé un connaissement pour moins que ce qu’il n’a reçu parce que le juge dira que l’acheteur est de bonne foi et qu’en vertu de la règle d’”estoppel”, l’armateur ne pourra pas prouver contre le connaissement? S’il en est ainsi, l’Angleterre obtiendrait ce que voulaient les États Scandinaves, tandis que pour ces États, la Convention amènerait une situation qu’ils trouvent tout à fait inopportune.

**Fifth Plenary Session - 8 October 1923**

**The Chairman** began further discussion of the evidentiary value of the bill of lading and confirmed that everyone agreed upon permitting nothing in the clauses that might make the captain or the shipper safe from the damages that they caused by knowingly describing in an incorrect way in the bill of lading the state, condition, number, or weight of
marchandises: un capitaine qui constate que des marchandises sont en mauvais état au moment de l'embarquement et délivre néanmoins un connaissement sans réserves, sera donc responsable de ces descriptions inexactes. Pour qu’il puisse être question de preuve contraire il faut que ce soit par suite d’une erreur que la description ne réponde pas à la réalité. Reste à choisir dans ce cas entre deux systèmes: 1°) celui existant actuellement avec la clause “poids inconnu” et autres clauses d’exonération, ou bien 2°) un système comportant les inconvénients qui résulteront de ce que la force probante ne sera pas complète et que le connaissement ne vaudra que jusqu’à preuve contraire: la preuve contraire doit être adéquate, capable de contredire un titre que le capitaine a accepté. L’accord n’ayant pu s’établir sur ce point, le Président demande aux délégations scandinaves si à leur avis la question est tellement importante dans la pratique qu’elle justifie éventuellement l’échec de la convention; d’autre part, il demande si les réserves de ces délégations ne pourraient pas être limitées dans une mesure conforme à la pratique en usage. Actuellement il y a une situation tout-à-fait différente selon qu’il s’agit de l’état, du conditionnement et du nombre d’une part, et du poids d’autre part. Si la réserve ne portait que sur l’état, le conditionnement et le nombre, ce serait moins grave pour les armateurs et on pourrait au moins allerger que cela est conforme à la pratique en usage, tandis que si la réserve avait pour effet de faire en sorte que le capitaine ayant accepté le poids du chargeur serait définitivement lié, il est à craindre que les dispositions de la convention, ne deviennent nuisibles, car dans ce cas le capitaine ne manquera pas d’exiger toujours le pesage. Or c’est précisément ce qu’on veut éviter parce que le pesage coûte beaucoup d’argent et qu’il est évident que sur l’ensemble des céréales transportées de la Plata et du Danube en Europe l’effet de la clause “poids inconnu” est moins grave que le coût de pesage de toutes ces cargaisons. the goods. A captain who confirmed that the goods were in a bad state at the time of shipment yet nevertheless issued a bill of lading without reservations would therefore be liable for the inaccurate descriptions. For this to be a question of prima facie evidence, it was necessary that it should result from an error where the description did not correspond to reality. In this case a choice remained between two systems: first, the presently existing system with the “weight unknown” and other immunity clauses; or secondly, a system including the problems that would result from the fact that the evidentiary value would not be absolute and the bill of lading would only be equivalent to prima facie evidence. Prima facie evidence should be acceptable, as it would allow the reversal of a title that the captain had accepted. Unable to reach agreement on this point, the Chairman asked the Scandinavian delegations if, in their opinion, the question was so important in practice that it justified the eventual check-mate of the convention. On the other hand, he asked whether the reservations of these delegates might not be limited to some degree in conformity with actual practice. Presently there was a quite different situation depending on whether it was a matter of the state, condition, and number on one side and of the weight on the other. If the reservation only applied to the state, condition, and number, it would be less serious for the shipowners and one might at least allege that it was in conformity with actual practice. On the other hand, if the reservation has the effect that the captain, once he had accepted the shipper’s weight, would be definitively bound, it was to be feared that the provisions of the convention would be harmful, because in this case the captain would not fail to ask for the weight every time. This is precisely what we seek to avoid because weighing costs a great deal of money and it is clear that the effect of the clause “weight unknown” on all the cereals transported from the River Plate and the Danube to Europe is less serious
Le Président reconnaît que le principe continental en vertu duquel le connaissement fait foi de toutes ses énonciations est séduisant. C’est pourquoi il insiste pour que la réserve proposée soit restreinte à ce qui est relatif au nombre et au conditionnement.

M. Sindballe a déjà renoncé à la réserve concernant les “tramp steamers” et à celle relative au commerce des bois. Il voudrait donc éviter aussi des réserves sur ce point-ci et il pense qu’il serait possible de se mettre d’accord sur une proposition dans le genre de celle énoncée par le Président, c’est-à-dire, qu’au point de vue de l’état, du conditionnement et du nombre, force absolue puisse être donnée au connaissement. Il ne sait si son gouvernement acceptera cette modification mais si ses collègues anglais peuvent l’accepter, il pense qu’il y aurait espoir d’arriver à une entente.

M. Richter signale que la délégation allemande attache aussi une grande importance à la question de la valeur probante. Il voudrait que la délégation américaine précise si le [89] connaissement dans sa législation ne constitue qu’une “prima facie evidence” entre les mains du porteur de bonne foi. Il lui semble que l’année dernière M. le juge Hough avait déclaré que lorsqu’un transporteur, par inadvertance ou par erreur, émet un connaissement pour plus qu’il ne reçoit réellement, sans mention restrictive, il est tenu pour la quantité mentionnée au connaissement, envers tout porteur de bonne foi du connaissement. D’autre part pour autant qu’il connaisse la loi américaine il croyait savoir que lorsqu’un connaissement a été émis par le transporteur ou en son nom par son agent, le transporteur est responsable de ce qui s’y trouve.

M. Beecher répond que la portée de la loi américaine est plus restreinte. D’abord, elle ne s’applique qu’au transporteur de droit commun; en second lieu, il y a dans l’Act une série de réserves; enfin l’Act consacre simplement un droit à obtenir des dommages-intérêts, mais ne donne pas une force pro-

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Ensuite la loi américaine ne contient pas de dispositions formelles au sujet du connaissement et ce qu’il doit mentionner. Elle laisse la liberté au transporteur au sujet de ce qui sera inséré au connaissement lorsque les marchandises sont mises à bord par le chargeur, et le transporteur a en outre pleine liberté de se libérer de toute responsabilité par l’insertion de clauses comme “poids, quantité et nombre inconnus”. Par conséquent la loi américaine est moins stricte que la proposition scandinave.

M. Alten signale que les instructions strictes qu’il a reçues sur ce point sont conformes aux observations présentées par son gouvernement qui tendent à ce que l’interprétation donnée à cette partie de la convention, lors de la session de 1922, d’abord par M. le juge Hough et puis par le Président, soit insérée dans la convention elle-même. Si un accord ne peut intervenir sur ce point son gouvernement propose de supprimer ce paragraphe et de laisser aux lois nationales le soin de régler la matière. A son avis, la discussion a démontré que cette question n’est pas mûre pour une solution internationale. Quant à la proposition subsidiaire de M. Sindballe, il n’a aucun pouvoir de s’y rallier et personnellement il estime d’ailleurs que la distinction faite entre le nombre et les autres énonciations au paragraphe 3 a, b, et c ne se justifie pas: la règle doit être la même pour toutes ces énonciations.

M. Loder déclare que c’est par esprit de conciliation que la délégation néerlandaise a fait une proposition nouvelle à la séance précédente dans l’espoir d’arriver à un accord avec les délégations scandinaves. Puisque tel n’est pas le cas, elle retire sa proposition et elle se rallie au texte de la convention.

M. le Président a compris que c’est là également le point de vue de l’Italie qui
accepterait la convention telle qu’elle est.

M. Berlingieri répond que l’Italie l’accepterait subsidiairement, seulement il se rallie à la proposition des Pays-Bas.

M. Richter déclare que la délégation allemande reprendra la proposition de M. Loder pour son compte.

M. le Président. Les différentes déléguations s’étant prononcées constate que les États-Unis, la France, la Grande-Bretagne, les Pays-Bas, la Belgique et le Japon sont prêts à accepter cette clause telle qu’elle; que l’Italie, les pays scandinaves, l’Allemagne et le Royaume des Serbes, Croates et Slovènes sont d’avis d’insérer dans la convention une réserve laissant à chaque pays la faculté de donner une force probante plus grande au connaissement.

Il demande si l’on ne pourrait pas ajouter: “tout au moins quant au nombre, à l’état et au conditionnement”. Il insiste en faveur d’un effort de conciliation dans ce sens, parce qu’il pense qu’en ce qui concerne le poids, la charge imposée à l’armement par la nouvelle convention est si considérable qu’il ne voit pas d’espoir d’obtenir son adhésion si la possibilité de faire la preuve contraire n’est pas réservée. Les destinataires obtenant d’avoir un document faisant foi jusqu’à preuve contraire, au lieu des clauses “poids inconnu” qui ne donnent aucune garantie sérieuse ont lieu d’être satisfaits. Il reconnaît que pour l’état et le conditionnement il y a des arguments en faveur des deux opinions et c’est pour cela qu’il propose de mettre dans les réserves: “tout au moins quant à l’état, le conditionnement et le nombre”.

M. Ripert objecte que c’est réserver à ces pays le droit de ne pas appliquer la règle de l’article 4 aux connaissements émis chez eux. Il constate que certains délégués paraissent l’entendre en ce sens que dès que les tribunaux seront saisis d’une contestation au sujet d’un connaissement, ils appliqueront la loi du juge saisi et non la loi du pays où le connaissement est créé. Ceci serait plus grave accept the convention as it was.

Mr. Berlingieri replied that Italy would also accept it, only he supported the Dutch proposal.

Mr. Richter stated that the German delegation would accept Mr. Loder’s proposal as its own.

The Chairman. The various delegations having declared their positions, confirmed that the United States, France, Great Britain, the Netherlands, Belgium, and Japan were ready to accept this clause as it was. Italy, the Scandinavian countries, Germany, and the Kingdom of Serbia, Croatia and Slovenia were for inserting in the convention a reservation leaving it to each country to give a greater evidentiary value to the bill of lading.

He asked if one might not add: “At the very least, as to the number, state, and condition”. He remained in favor of an attempt at reconciliation because he thought that, in so far as concerned the weight, the burden imposed upon shipowning interests by the new convention was so considerable that he saw no hope of obtaining their agreement if the possibility of prima facie evidence was not reserved. The receivers hoping to have a document proving prima facie evidence instead of the “weight unknown” clause, which gave no proper guarantee, had good reason to be satisfied. He appreciated that for the state and condition there were arguments in favor of both opinions and that was why he proposed putting into the reservations: “At the very least, as to the state, condition, and number”.

Mr. Ripert objected that that meant reserving these countries the right not to apply the rule in article 4 to bills of lading issued by them. He affirmed that certain delegates seemed to understand it in the sense that the courts would be presented with a dispute on the matter of a bill of lading. They would apply judge-made law and not the law of the country where the bill of lading had been drawn
encore pour l’armateur car le capitaine ne saura jamais en signant le connaissement devant quel juge un procès sera porté.

M. le Président ne le conteste pas, mais fait observer que l’argument est à double tranchant car si on entend la formule en ce sens, le connaissement d’un pays adoptant la réserve ne serait pas non plus respecté en France, en Angleterre ou aux États-Unis.

M. Ripert demande s’il en serait ainsi même si la réserve était insérée dans la convention.

M. le Président répond qu’alors il devra s’engager à respecter les connaissements émis dans les autres pays.

M. Struckmann est d’avis qu’il vaudrait mieux laisser aux lois nationales le soin de déterminer dans quelle mesure elles entendent faire usage de cette réserve. Il ne serait pas souhaitable que les limites dans lesquelles les lois nationales pourront faire des réserves soient trop étroites.

M. Sindballe aurait voulu limiter la réserve au nombre, état et conditionnement, afin d’arriver par compromis à un accord que les Anglais pourraient accepter après un nouvel examen. L’importance de l’uniformité est si grande qu’il demande à ses collègues anglais de reconsidérer à nouveau toute la question.

Sir Leslie Scott regrette beaucoup de devoir maintenir son attitude antérieure. Il ne peut accepter la réserve.

M. Loder fait remarquer que si la possibilité pour des signataires d’insérer des réserves est reconnue, certaines délégations pourraient soutenir qu’il n’y a pas de convention du tout.

Sir Leslie Scott croit aussi qu’il ne devrait pas y avoir de réserves. Il s’agit d’arriver à unifier le droit maritime, et il ne faut pas risquer de mettre cette convention en danger sur un point comme celui-ci.

M. le Président conclut qu’il y a lieu de constater simplement les opinions exprimées puisque la commission n’a pas les pouvoirs de la conférence plénière.

Sir Leslie Scott tient à relever un up. This would be all the more serious for the shipowner because the captain would never know when signing the bill of lading before which judge he would be tried.

The Chairman did not dispute this, but pointed out that the argument was double-edged because, if one understood the formula like that, a bill of lading from a country adopting the reservation would no longer be respected in France, England, or the United States.

Mr. Ripert asked whether this would be the case even if the reservation were inserted in the bill of lading.

The Chairman replied that in such a case he ought to take it upon himself to respect bills of lading issued in the other countries.

Mr. Struckmann believed that it would be better to leave it up to national law to determine to what degree they intended to make use of this reservation. It would hardly be desirable for the limits in which national laws could make reservations to be too narrow.

Mr. Sindballe would have liked to limit the reservation to number, state, and condition, in order, by such a compromise, to reach an agreement that the English might accept after fresh examination. The importance of uniformity was so great that he asked his English colleagues to consider the whole question once more.

Sir Leslie Scott was extremely sorry to have to maintain his previous attitude. He could not accept the reservation.

Mr. Loder pointed out that if they recognized the possibility of signatories inserting reservations, certain delegations would be able to sustain that there was no convention at all.

Sir Leslie Scott also believed that no reservations should be allowed. What they were doing was trying to unify maritime law, and they should not risk jeopardizing this convention on a particular point like this one.

The Chairman concluded that there were grounds for simply restating the opinions expressed because the commis-
M. Beecher demande ce que la Commission décide finalement au sujet de la force probante du connaissement.

M. le Président déclare que le procès-verbal constatera que les pays nommés précédemment se prononcent en faveur de la ratification de la Convention telle qu’elle est rédigée sur ce point mais que l'Italie, l'Allemagne, les Etats scandinaves et le royaume des Serbes, Croates et Slovènes sont d'avis d'admettre une réserve permettant aux législations nationales de donner au connaissement une plus grande valeur probante.

M. Beecher demande quelle sera la conclusion du rapport de la Commission.

M. le Président répond que ce rapport constatera simplement que sur cette question, il y a eu divergence de vues.

M. Beecher comprend que cela veut dire qu’il n’y a pas d’accord sur cette question.

Septième Séance Plénière - 9 Octobre 1923

[91]

M. Louis Franck (Président) . . . . 
Vient alors le paragraphe 3 qui déterm-
mine comment le connaissément sera rédigé en ce qui concerne les marques, le nombre de pièces, la quantité, le poids, l’état et le conditionnement apparent de la marchandise. Tandis que pour l’état et le conditionnement apparent, le capitaine doit, comme aujourd’hui, faire la vérification lui-même, il est admis, pour les autres constatations, qu’en principe il peut s’en référer aux déclarations du chargeur, mais non sans contrôle.

Il n’est pas tenu cependant d’accepter ces déclarations du chargeur s’il a une raison sérieuse de soupçonner qu’elles ne représentent pas exactement les marchandises réellement reçues par lui, ou s’il n’a pas eu des moyens raisonnables de les vérifier. La convention maintient donc cette règle essentielle que le capitaine qui établit des connaisséments, est responsable des mentions qu’il y porte. Mais parce qu’il doit désormais accepter la responsabilité de ce contenu (sauf quand il a des raisons sérieuses de douter de la sincérité de pareilles déclarations et qu’il ne peut faire la vérification lui-même) on établit deux règles qui s’écartent du droit commun. Tout d’abord, en ce qui concerne la foi due au connaissément, elle n’est plus considérée par la convention comme étant absolue: elle n’existe que jusqu’à preuve contraire. En pratique, cela ne se présentera que dans des cas extrêmement rares. [120] Quelques pays ont demandé de pouvoir faire une réserve à cet égard; il y a eu à ce sujet une discussion longue et approfondie, mais par un grand nombre de votes, la Commission a été d’avis de ne pas admettre une réserve. Les pays intéressés à cette réserve formelle, dont mention est faite au procès-verbal, ont demandé de pouvoir, dans leur législation nationale, donner une plus grande force probante au connaissément. Il a été indiqué que s’ils avaient ce droit pour ce qui concerne l’état, le conditionnement et le nombre, cela pourrait leur donner satisfaction. Il a été demandé d’en faire mention au procès-verbal. Il est à espérer qu’à la réflexion, ces États se rangeront à l’avis de la majorité.

fined how the bill of lading should be drafted insofar as concerned the leading marks, number of pieces, quantity, weight, and apparent order and condition of the goods. As to the apparent order and condition, the captain, as today, had to verify them himself. It was allowed for other statements, that, in principle, he could refer to the declarations of the shipper, but not without checking.

However, he was not bound to accept these declarations of the shipper if he had any serious reason to suspect that they did not correctly represent the goods actually received or if he had not had reasonable means of verifying them. The convention therefore kept the essential rule that the captain who created the bills of lading was responsible for the leading marks they carried. But because he had henceforth to accept responsibility for the contents (except when he had serious reason to doubt the truth of such declarations and was not in a position to check them himself), two rules were established that deviated from the general law. First, insofar as concerned the proof represented by the bill of lading, it was no longer considered as absolute by the convention; prima facie evidence was all that was accepted now. In practice, this would only matter in rare instances. [120] Some countries had asked to be able to include a reservation on the matter and, as a result, there had been long and deep discussion. But, by a large majority, the commission had decided not to allow such a reservation. The countries interested in this formal reservation (they are mentioned in the proceedings) asked to be able, in their own national laws, to give the bill of lading a greater evidentiary value. It was demonstrated that if they had this right concerning order, condition, and number, they would be satisfied. They had asked for this to be noted in the proceedings. It was to be hoped that, on reflection, these States would agree to the majority viewpoint.

Mr. Bagge interrupted to remark that, with regard to a compromise on the basis of “conclusive evidence” alone for
M. Bagge interrompt pour faire observer qu’à l’égard d’un compromis sur la base de “conclusive evidence” seulement pour ce qui concerne l’état, le conditionnement et le nombre, celui qui l’a indiqué l’a fait sous condition d’un accord général sur ce point.

M. Franck constate donc que l’observation a été faite qu’un accord aurait pu intervenir sur une force probante absolue en ce qui concerne l’état, le conditionnement et le nombre. En examinant la question, il ne faut pas perdre de vue que pour ce qui concerne l’état et le conditionnement apparent, le capitaine ne peut pas s’en remettre aux déclarations du chargeur; il doit faire les constatations lui-même. Par conséquent si l’on permet la preuve contraire à cet égard, il est évident qu’elle ne pourra réussir que dans des cas extrêmement rares; car on ne voit pas très bien comment on pourrait réussir à rapporter une preuve de ce genre. La seconde protection accordée à l’armement, c’est que le chargeur est garant vis-à-vis du transporteur, de l’exactitude des indications qu’il a fournies. Là encore, il n’est pas fait allusion à l’état ou au conditionnement apparent des marchandises, ce qui montre que les constatations doivent être faites par le capitaine; de sorte qu’en fait, la preuve contraire ne pourrait être fournie que si malgré l’état apparent des avaries étaient ultérieurement découvertes.

Mr. Franck confirmed that the comment had been made so that an agreement could be reached on an absolute evidentiary value relating to order, condition, and number. While examining the question, we should not lose sight of the fact that, as far as concerns apparent order and condition, the captain could not rely on the declarations of the shipper. He had to make the checks himself. Consequently, if contrary proof were permitted in this instance, it was clear that it could only succeed in extremely rare cases, because one could not easily see how one might succeed with such proof. The second protection afforded to shipowning interests was that the shipper was answerable vis-à-vis the carrier for the correctness of the information provided. There again no allusion was made to the apparent order or condition of the goods, showing that the checks must be made by the captain so that, in fact, proof to the contrary could only be provided if, despite the apparent order, damages were concealed which would later be revealed.
ARTICLE 3

4. . . . . . . . . . . . . . . . . . . . . . . . . . . .

Toutefois, la preuve contraire n’est pas admise lorsque le connaissaiement a été transféré à un tiers porteur de bonne foi.

ARTICLE 3

Text adopted by the 1958 Protocol

4. . . . . . . . . . . . . . . . . . . . . . . . . . . .

However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

Conférence de Stockholm du CMI - 1963
Rapport de la Commission des clauses de connaissance

[91] 13. Valeur probante des déclarations dans les connaissaisments (Art. III (4) et (5)).

Les problèmes ci-dessous ont été soulevés devant la Commission :

1. Quelle est la signification exacte de l’Article 3 (4): “un tel connaissaiement vaudra présomption, sauf preuve contraire, de la réception par le transporteur des marchandises telles quelles y sont décrites, conformément au paragraphe 3 (a), (b) et (c)”?

2. Y a-t-il une contradiction entre l’Article 3 paragraphe 4 et l’Article 3 paragraphe 5?

3. Une clause insérée en marge doit-elle, pour être valable, préciser la raison pour laquelle le transporteur ne peut pas vérifier une déclaration faite par le char- geur dans le connaissaiement concernant le nombre, la quantité ou le poids? Si une réponse affirmative était donnée à cette question, l’article devrait-il être clarifié sur ce point?

CMI 1963 Stockholm Conference
Report of the Committee on Bills of Lading Clauses

[91] 13. Statements in B/L as evidence (Art. (4) and (5)).

The following problems were raised before the Sub-Committee:

1. What is the exact meaning of Article 3 (4): “such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c)”?

2. Is there a contradiction between Article 3(4) and Article 3(5)?

3. Should a marginal clause in order to be valid state the reason why the carrier cannot verify a statement made by the shipper in the bill of lading in respect of number, quantity or weight? If this question is answered in the affirmative should the Article be clarified accordingly?
La séance est ouverte à 14 h.

M. Le Président (J. Van Ryn) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Je vous propose, comme nous l’avons dit ce matin, d’examiner maintenant la question qui fait l’objet du n° 13 dans le rapport de la Commission internationale.

Au sujet de cette question il y a un amendement qui est proposé par l’Association italienne et je voudrais demander au représentant de cette association de bien vouloir expliquer brièvement la portée de cette proposition.

La parole est à M. Berlingieri.

Mr. F. Berlingieri (Italy). Mr. Chairman, Gentlemen the purpose of this amendment is to clarify what is the value of the bill of lading as evidence. I think that most of the Delegations here have stated in their reports that this is not a problem since there is no doubt that the bill of lading has the value of conclusive evidence as regards third parties and on this assumption it has been pointed out that there is no reason to change the present wording, but unfortunately in some countries this problem has arisen and there have been many decisions stating that according to the Hague Rules the value of the bill of lading as evidence is just the value of prima facie evidence so that the carrier is allowed also vis a vis a bonafide holder of the bill of lading to prove against the wording of the bill of lading. We think that this interpretation is completely wrong and that if this interpretation be held valid the value of the bill of lading as a document of title would be completely lost and consequently we submit to your consideration the advisability of adding a new sentence in order to make clear to everybody that the bill of lading as regards a bone fide holder has the value of conclusive evidence.

We don’t want to change anything, we ask your help and your co-operation in order to seek unification. There are many delegations who I repeat don’t think this is a problem but I really ask them to help us since this problem exists in some countries, in France, in Belgium and in Italy, at least so I am told, and perhaps also in Yugoslavia. The amendment has been drafted differently by the French, Belgian and Italian delegations. We have proposed a certain wording and I am going to read it to you, namely, modify paragraph 4 of Article 3 as follows: “Such bill of lading when transferred to a third party who is acting in good faith shall be conclusive evidence of the receipt by the carrier of the goods as therein described in accordance with article 3 a, b, and c”.

This is an alternative, the French Delegation has proposed a different wording, namely they have proposed to add the following new sentence to paragraph 4 of Article 3: “Toutefois la preuve contraire n’est pas possible à l’égard de toute personne autre que le chargeur”.

We approach the same problem from a different viewpoint but we are really reaching the same result because we want to state that as regards a bone fide holder, the bill of lading has the value of conclusive evidence. The French Delegation wording means that the value of prima facie evidence is limited as regards the original shipper of the goods, whilst as regards the third party the bill of lading must have the value of conclusive evidence; I repeat, there is no specific difference, and my Delegation would be prepared to accept also the French suggestion. I submit the question of principle namely we think is advisable to add something in this paragraph with the purpose to
make it clear that at least as regards bona fide holders the bill of lading has the value of conclusive evidence.

Thank you.

[21-30]

**M. Le Président.** Quelqu’un demande-t-il la parole au sujet de cette proposition dont la portée est extrêmement réduite. Il ne s’agit pas d’apporter un changement quelconque à la Convention mais simplement de rendre uniforme et générale une interprétation qui est admise dans la plupart des pays. Le texte est nécessaire pour que cette interprétation puisse être admise partout: c’est donc plutôt presque une question de forme.

Si personne ne demande la parole je vais demander à la commission de se prononcer sur cet amendement de forme.

Que ceux qui sont en faveur de l’adoption de la proposition de l’Association italienne veuillent bien lever la main.

Epreuve contraire.

La proposition est adoptée par 8 voix contre 6 et 3 abstentions.

**No. 10 - 12 June 1963 P.M.**

**Le Président (M. J. Van Ryn):** ..........................................................

Nous en avons terminé avec les recommandations positives et il nous reste à examiner les trois autres points qui ont été envisagés.

À la question n° 13, article 3, paragraphe 4, il s’agit d’ajouter à ce paragraphe: “toutefois la preuve contraire n’est pas admise lorsque le connaissement a été transféré à un tiers porteur de bonne foi”.

Cette proposition est adoptée.

**Séance Plénière - 14 Juin 1963**

[525]

**Le Président (M. Lilar):** .................

13e Recommandation

La Commission de votre Assemblée a formulé également des propositions quant au point 13 du document de la Commission Internationale, relatif à la valeur probante des déclarations dans le connaissement. Il s’agit du texte de l’art. 1er, par. 1er, où la Commission propose d’ajouter le texte suivant: “toutefois, la preuve contraire n’est pas admise lorsque le connaissement a été transféré à un tiers porteur de bonne foi”.

Quelqu’un demande-t-il la parole sur le texte de l’art. 1er, par. 1er du document Sto-5.

Je considère que l’Assemblée suit l’avis de la Commission.

**Plenary Session - 14 June 1963**

[525]

**The Chairman (Mr. Lilar):** .........

Thirteenth Recommendation

The Subcommittee of your Assembly has also formulated recommendations as regards item 13 of the report of the International Subcommittee, concerning statements in bills of lading as evidence. I would refer to the text of Article 1, par. 1, where the Subcommittee proposes to add the following text: “However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith”.

Does anyone wish to make a statement on the text of Article I, par. 1 of document Sto-5?

I consider that the Assembly carries the recommendation of the Subcommittee.
Le texte de l’article 1er, § 2, des Règles de Visby est adopté par la Commission tel quel.

Vote: pour: 22;
contre: néant;
abstentions: 3;
Total: 25.

[697]

The text of article 1(2) of the Visby Rules was adopted by the commission as it stood.

Vote: for: 22;
against: none;
abstentions: 3;
Total: 25.
**ARTICLE 3**

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
Lord Phillimore: I notice one thing. It is not description of marks. The description is only one of the matters, “description, marks, number, quantity and weight”; so that we do not want “inaccuracies in such description”. I am afraid we either want to say “inaccuracies in such description, marks, number, quantity and weight”, or we want some general words which will cover them. “Description” is not a general word; it has become a particular word.

Mr. Paine: “In the foregoing particulars”.

Lord Phillimore: That would do - “or resulting from inaccuracies in the foregoing particulars” - some words like those we want.

The Chairman: Would it be “foregoing particulars” or “such particulars”?

Lord Phillimore: “Such particulars”.

The Chairman: “Such particulars” I think would be right. Lord Phillimore agrees. It is mere drafting. Then I will read the clause as it would stand amended. “The shipper shall be deemed to have guaranteed to the carrier the accuracy of the description, marks, number, quantity and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars”.

Is it agreed that clause 5 stand part of the draft? (Agreed).

Text adopted by the Conference

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy of the description, marks, number, quantity and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy AT THE TIME OF SHIPMENT of the description, marks, number, quantity and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. THE RIGHT OF THE CARRIER TO SUCH INDEMNITY SHALL IN NO WAY LIMIT HIS RESPONSIBILITY AND LIABILITY UNDER THE CONTRACT OF CARRIAGE TO ANY PERSON OTHER THAN THE SHIPPER.

Morning sitting of 10 October 1922

Mr. Möller: I understand Sir Norman Hill to answer in regard to another question that the Captain certainly has to sign the bill of lading for weight, but it was only the weight that the charterer gave him, and the charterer had to guarantee it. Article 3(5), does not say that the charterer guarantees that; it says that the shipper be deemed to have guaranteed it.

Sir Norman Hill: I should have said “shipper”.

Mr. Möller: That is not satisfactory because he may be in the South Sea Islands.
Sir Norman Hill: You can put in that the charterer is to guarantee.

Mr. Möller: To say “the shipper or the charterer”. If we could get that in it would be an improvement; it would lessen our anxiety, for the shipper is a distant person.

Sir Norman Hill: I agree.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the description, marks, number, quantity and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
On est arrivé ainsi à l’analyse des clauses qui imposent que les réclamations soient produites dans un certain délai. Après avoir examiné longuement ces questions, la Commission n’a pas pensé qu’il y avait lieu d’apporter une modification aux bases que le traité formule et qui correspondent aux usages de la pratique.

We have thus arrived at the analysis of the clauses that require that claims should be submitted within a certain time limit. After having examined at length this question, the Commission has not deemed it necessary to amend the terms set out in the Treaty, which correspond to the practice.
ARTICLE 3

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

If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods.

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

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.
moved. It is a very common clause. Exception has been taken to that as being too onerous on the cargo owners, and other varieties of clauses have been used: some that the claim must be made within ten days after removal [109] I have seen; I have seen twenty days after removal, and I have seen ninety days after removal. That seems a new form. Then there is another form of clause which is very commonly used, providing that the ship is relieved unless suit is started within a fixed period. I have seen three months; I have seen six months; I have seen nine months; twelve months. I think eighteen months is the longest time. Now, in the clauses that we have passed we are putting a very heavy responsibility indeed upon the shipowner. We all know in the ordinary course of business he will not verify, and he has not the opportunity of verifying, the facts that are given to him by the owners of the goods, the shippers. You may blame him for it, but it will not be done; we all know that it will not be done; and we all know, if it were done, the cost of carriage would be very substantially increased; and if the cost of carriage is substantially increased, ultimately freight will be increased, subject to the give and take of the market. You are making the acceptance of those statements _prima facie_ evidence against the shipowner. What we propose is that if the receiver of the cargo removes the goods without notifying a claim, the removal shall be _prima facie_ evidence against the receiver of the cargo that he has got the same cargo that was given to the shipowner. It does not bar a claim. It merely, as the Chairman has said, provides that the person who will have to account for the shortage, or who will have to prove the shortage if a claim arises, will be the receiver of the parcels if he clears them from the quay without notifying the claim. That, I think, is a perfectly fair and just provision as between the parties. I think it is handing out the same measure of justice to the receiver of the cargo as we have handed out to the shipowner. In fact I think you are letting off the receiver of cargo far more lightly than you are the shipowner. The receiver of cargo will have many more opportunities of ascertaining that the goods handed over to him are in accordance with the particulars which the shipper of the cargo has given him. The words we propose to insert are these: “Unless written notice of a claim for loss or damage and the general nature of such claim be given in writing to the carrier or his agent at the port of discharge before the removal of the goods, such removal shall be _prima facie_ evidence of the delivery by the carrier of the goods described in the bill of lading, and in any event the carrier and the ship shall be discharged from all liability in respect of loss [110] or damage unless suit is brought within twelve months after the delivery of the goods”.

**The Chairman:** The question is that that proposed new clause be now considered. Does the Committee agree that it be considered? (Agreed).

Mr. Paine has given notice of an amendment to that proposed new clause, which deals with matters Sir Norman Hill has been discussing.

**Mr. Paine:** I do not propose to move that amendment. I do not wish to stand in Mr. McConkey's way if he wishes to move it. I am perfectly satisfied with Sir Norman Hill's explanation.

**The Chairman:** Mr. McConechy, do you desire to move that amendment?

**Mr. McConechy:** I propose - this is going far beyond what Sir Norman Hill said - that we take out the word “before” and add in “within fifteen days after the removal”.

**Sir Norman Hill:** No.

**The Chairman:** I call upon Mr. Dor.

**Mr. Howard Robinson:** I should like to support that, Mr. Chairman and Gentlemen.

**The Chairman:** I called upon Mr. Dor, Mr. Robinson.

**Mr. Dor:** It may interest the Committee to know the provisions of the French law in that respect. According to Article 435 of the French Code, written notice must be given within twenty-four hours from the removal of the goods, and not only that writ-
ten notice is required, but there must be a protest, either by some law officer or at least by registered letter; then proceedings before the Court must be instituted within one month. Such are the provisions of the French law, and I may say that they always work very well. When the merchants have applied to have that Bill passed through Parliament, they have never raised any objection to that provision. In the new Bill which we are now drafting, and which is going to be put before the French Parliament, those provisions of Article 435 have been maintained. I suggest that fifteen days should not be accepted. If you put fifteen days, you may surely as well put nothing, because if the merchant is to give notice fifteen days after the goods are removed from the warehouse or the quay, the shipowner has no possible means of checking the claim or ascertaining whether [111] it is well founded or not. Therefore I beg to support Sir Norman Hill’s amendment.

I may add that I think Article 435 of our Code also exists in most Continental Codes. Therefore, there would be no difficulty at all in getting this principle adopted in all Continental legislation.

Mr. Howard Robinson: Mr. Chairman and Gentlemen. I should like to support Mr. McConechy’s amendment, because in these days theft is being practised so freely, and with such skill, that I do not think the consignee would be able to discover many of his losses until he got his packages into his warehouse at all.

The Chairman: May I point out to Mr. McConechy and Mr. Robinson that all that arises from the form of words which Sir Norman Hill has introduced is that if, after the removal of the goods, there is some manifest cause of complaint and it is raised, the person who has the manifest cause of complaint is to show that the cause of complaint exists, and the shipowner is not to be excluded from justice by showing facts of which he had not knowledge.

Sir Norman Hill: That is so, Sir. Might I point out in answer to the point Mr. McConechy has raised, and in answer to the French Code, there is surely an essential difference between a clause which bars out a claim, and a clause which shifts the onus of proof. If we were asking to bar out the claim, it would be clearly necessary for us to say: so many days after removal; but if we are merely shifting the onus of proof, then surely the time is when it is claimed. The ingenuity of the pilferer we are all aware of; but I do not think the receiver of the cargo has a good a chance of detecting whether the pilferer has been at work as the shipowner had when he received the cargo. I think it cuts both ways, and we have tried to keep to the spirit of the code; we are merely shifting the onus of proof, not barring out claims.

Mr. Dor: It is really far more moderate than the French or Continental law.

Sir Alan Anderson: One further point in support of Sir Norman Hill’s contention, Sir, is that the skilful pilferer is a landsman. The sea pilferer just smashes in the case and puts it to his side of the wharf. We have all great difficulty in detecting pilferage, and it is just because of that, that we cannot send out cargoes to all the railways of the world with the full onus upon us, and we do need this protection.

[112]

The Hon. John McEwan Hunter: There is just this objection to the argument of Sir Norman Hill with regard to the capability of the receiver ascertaining damage or loss on a cargo as compared with the shipowner. There is this difference I wish to point out, that the space of time between the consignor and the shipment is less; nor is there the same opportunity for pilferage or damage between the manufactory or the workshop and the ship. But there is a long voyage and a very great opportunity of people handling these goods who are not particularly honest, which makes the risk infinitely greater, and therefore the receiver of the goods takes the whole of that risk on a very short notice. That is, he takes delivery, and with that delivery he takes the risk of pil-
ferage and other damage that may have occurred on the voyage. There is a very small risk lying between the shipper and the shipowner. Therefore, I think the extra time suggested by Mr. McConchy is certainly deserving of consideration. (Hear, hear).

**Lord Phillimore:** I think the clause suffers from the way in which it has been expressed. I confess it took me some trouble and time before I quite understood it. I understand the object of the clause is this. If the consignee before the goods are taken away says: There is something wrong here, then the burden is on the shipowner of discharging himself, but if he waits until after the goods have come away, then he has to prove that there is something wrong.

**Sir Norman Hill:** That is all.

**Lord Phillimore:** That is all. I think it might have been expressed in a way that would have been more easy to understand. Amongst other things I noted this: it is “prima facie evidence of the delivery by the carrier of the goods described in the bill of lading”. The “goods described” does not necessarily mean the “goods as described”: six bales of silk of such and such a quality, or size or measurement, or weight, or something of that kind: you have received that: you are no longer to be entitled to make any complaint about that. I think it means “as described in the bill of lading”. And I also confess I think it would have been better to put it in this way: If the consignee gives notice before removal of the goods - some words to express that the burden is upon the shipowner; if he gives notice after the removal of the goods, the burden is upon him.

The Chairman: At present we have the amendment of Mr. McConchy to extend the time for claims to a period after the removal of the goods. Does Mr. McConchy desire a vote upon the amendment? It is a mere question of who shall have to make the claim and support it.

**Mr. McConchy:** Personally, I am quite agreeable to leave it to the Drafting Committee to put it somewhat in the words that Lord Phillimore has suggested.

**The Chairman:** Very well.

**Mr. McConchy:** Because the point that strikes me most is that in many cases it is manifestly impossible for the receiver of the cargo to send a written notice at the time of delivery. I suppose a statement on receipt indicating the shortage or the condition of the goods would be considered as notice?

**Sir Norman Hill:** Certainly.

**Mr. McConchy:** In that case I am quite in agreement with that, [114] and if it is drafted somewhat on the lines that Lord Phillimore suggested, personally I am quite willing to accept it.

The Chairman: Upon that understanding the Committee would agree that the amendment shall be withdrawn; and is the Committee agreed upon that same understanding with regard to the drafting, to incorporate the new clause 6 in the draft? The question is that the new clause 6 be added to the draft. Is the Committee agreed?

**Text adopted by the Conference**

PART II - HAGUE RULES

Article 3 (6) - Notice of loss or damage

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[365]

6. Unless notice of a claim for loss or damage and the general nature of such claim be given in writing to the carrier or his agent at the port of discharge before OR AT THE TIME OF the removal of the goods INTO THE CUSTODY OF THE PERSON ENTITLED TO DELIVERY THEREOF UNDER THE CONTRACT OF CARRIAGE, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

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Morning sitting of 10 October 1922

[348]

Sir Norman Hill:

Now coming to details there [349] is what Judge Hough said. When it comes to the notice clause in particular, it seems to me that at the Hague we struck out on quite new lines, and I believe they are the straight honest lines. The notice clause in the past in most bills of lading has been a barring out clause that unless the cargo owner gives notice within a limited period, sometimes it was hours, sometimes it was days, his right went, whatever were the facts. We might have damaged his goods; we might have lost his goods, but if we had got over that number of hours or that number of days he had no more claim. Well, it was a very convenient way of dealing with a man, but I am not sure that it was a very just way of dealing with a man. The big departure we made at the Hague was this. There is not a single word in our Rules, until you come to the period within which suits must be brought, which bars out any claim. All it says is that unless we are notified before the goods are taken away from us that there is a claim or - I must not use the word “claim” because that is criticised - that the goods have been damaged or they are short, then the receiver of the cargo is put in exactly the same position as we were in when we took it on board the ship, that is, it is to be presumed that he has taken what it is presumed we took. That seems to me to be an absolutely just basis upon which to deal as between the interests.

Afternoon sitting of 10 October 1922

[388]

M. René Verneux:

En troisième lieu, je considère que la Commission devrait éliminer du projet des points qui véritablement ne doivent pas y être insérés logiquement. Ce sont les dispositions qui concernent les fins de non recevoir pour défaut de protestation et les prescriptions. Ces questions-là devraient être réservées pour le Code international de l’Affrètement. C’est dans ce sens que s’est prononcée l’Association Française du Droit Maritime en adoptant le rapport de M. Georges Marais qui, tout à l’heure, voudra bien sans doute expliquer les raisons pour lesquelles il convient de distraire ces points du projet concernant la responsabilité des propriétaires de navires dans les contrats de transport.
Afternoon sitting of 11 October 1922

Sir Norman Hill (Rapporteur of the Sub-Committee): The next point arises on Rule 6 of the same Article. It is at the foot of page 3 of the print that the Comité has circulated and at the foot of page 4 of the red and black print. The clause begins “Unless notice of a claim...”. There is just one point there which is purely verbal which I think it would be well to clear away. We are going to leave out “a claim for”; we are going to let it read: “Unless notice of loss or damage and the nature of such loss or damage”. That is to avoid the possibility of a man losing his right of claim, by not specifying that he has a claim for a certain amount in pounds, shillings and pence.

Sir Ernest Glover: What paragraph and Article is it? Can we have it over again?

The Chairman: It is Article 3(6). I will read the first few lines as they are: “Unless notice of a claim for loss or damage and the general nature of such claim be given” and so on. “Written” has been struck out in the course of previous revisions, and it read: “Unless notice of a claim for loss or damage and the general nature of such claim be given”. What is proposed is to make that “Unless notice of loss or damage” leaving out “a claim for” - “and the nature of such” leaving out “general”, and instead of “claim” introducing the words “loss or damage”, so that it would read: “Unless notice of loss or damage and the nature of such loss or damage be given”.

Dr. Éric Jackson: I do not understand that there is any proposition before the Committee to strike out “general”.

Sir Norman Hill: No, “general” stands in - “general nature of such loss”.

The Chairman: Very good; then “the general nature” stands.

Sir Norman Hill: Now, Sir, the other points that arise under that Rule 3, as to the period or as to the time from which the notice is to count, and as to the time within which the suit is to be brought, were considered very carefully indeed by the Committee. They considered them in relation to Article 4(5) which fixes the maximum amount of £100. Your Sub-Committee realise and indeed it has been made manifest at the meetings of this Conference, that there is very great diversity of opinion on these points. Take for example the period within which the suit is to be brought. In this country it is six years; in France it is one month. There are so many views upon this point that your Sub-Committee, having considered all these views, would submit to the Conference that there are right and proper points upon which we should ask the Diplomatic Conference to decide. They are not points of vital importance going to the whole. You will recollect, as we have drafted the Rules and as we all approve of them, the want of notice does not bar out a claim. That is all gone. The want of notice merely shifts the burden of proof. If the receiver takes over the goods without notifying a claim for loss or damage, he is presumed to have received the goods in the same manner as we are to be presumed to have received the goods when we sign the Bills of Lading. It is not a matter of very vital importance.

The Chairman: Sir Norman, it is suggested to me that you may not be thought to have made quite clear to the Conference what is involved in your phrase: “the time from which the notice is to run”.

Sir Norman Hill: The point we have to consider, and of course it is a very difficult point, is this. You can use the words “unloaded from the ship”, that the notice has to
be given on the goods being unloaded from \[454\] the ship. That would be perfectly precise, but we all think that that would be very unfair. The receiver of the cargo might have no opportunity of seeing the cargo at the moment it is unloaded from the ship. You can go right to the other end and you could say: “from the time when the receiver of the cargo takes delivery”. That might be if the receiver of the cargo was negligent months after the ship had been unloaded. That again would be very unreasonable. In the amended Rule as we have it we used a term which we thought, so far as our experience in this country is concerned, was reasonable. We took it that the notice was to be given “at the port of discharge before or at the time of removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage”. We thought that that was not an unreasonable time to give the cargo. The language was questioned, and of course it is open to abuse. The person who is entitled to delivery under the contract of carriage can delay coming forward if he pleases for a year or any other time, though that is not what is meant, and if any better words could be found - we as businessmen were rather puzzled - we thought the diplomatists had better have a try; but we all know what we mean that, if there is loss or damage detected by the person who is really interested in the cargo, he should notify it at once before he takes the cargo away.

The Chairman: Sir Norman, as you are dealing with that, are you able to give us any words which you are proposing to modify in the document or are you leaving it to a Resolution?

Sir Norman Hill: Well, Sir, I cannot tell you that your Sub-Committee are prepared to offer any alternative words, but they thought it was a point that should be considered, when you were considering whether it should be two years or some period within which suit is to be brought.

The Chairman: I followed that. I only wanted to know in advance whether the proposal of the Sub-Committee is for a modification of the draft here or whether it is a Resolution.

Sir Norman Hill: It is, Sir, that these points should be left to be dealt with by the Diplomatic Conference, and we should abide by the decision that they arrive at.

The Chairman: It is a resolution.

Sir Norman Hill: A resolution.

Dr. Eric Jackson: I am sorry to interrupt Sir Norman again, but I did not understand that the Committee were in favour of altering the words “into the custody of the person entitled to delivery thereof” in any way. What was in question was whether the words “under the contract of carriage” should be there as well or not. My Federation attach very great importance indeed to the wording “into the custody of the person entitled to delivery thereof”, and I understood the view of the Committee was that those words certainly stood; but there was a question raised by some of the members of the Committee as to whether “under the contract of carriage” should stand or not. I am open to correction on that point and one other point made by Sir Norman. I understand he says that the point of the £100 was raised on the Sub-Committee. I did not understand it to be raised at all.

Sir Norman Hill: Then, Sir, there is the next point, and if I am not conveying the views of the Sub-Committee - I did my best to ascertain them - I shall regret it very
much with regard to my fellow members and still more to the Conference. As I understand it our recommendation is that we leave to the Diplomatic Conference to settle, we accepting their decision, first, the time from which the notice of loss or damage is to run - that depends upon what is to be treated as delivery, as the handing over from the ship.

[460]

Mr. W. W. Paine: Before Sir Norman leaves the rostrum may I ask one very minor point. It is perhaps of importance.

The Chairman: Mr. Paine, I am going to call upon each of the gentlemen who rose and who I thought would better reserve their inquiries until Sir Norman had concluded his statement. I will take your question now or theirs, just as it is convenient.

Mr. W. W. Paine: I think it might be convenient whilst Sir Norman is in the rostrum. “The time from which the notice is to run” under Article 3(6) seems to me to be a funny expression, if you look at the terms of Article 3(6). I want to see whether what is meant is not the time at which that notice is to be given, because there is no period of notice.

[461]

Sir Norman Hill: Yes, that is a better expression.

Mr. W. W. Paine: The time at which notice is to be given.

[463]

Dr. Eric Jackson: The other point which I made as a point of order when Sir Norman Hill was addressing the Conference - I make it again - was that I understood that the words “into the custody of the person entitled to delivery thereof”, under clause 6 Article III, had been accepted.

The Chairman: Wait a moment, I want just to make sure that I appreciate it on the document: “before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof”. You say that is where the agreed words as you understand them end.

Dr. Eric Jackson: I understood that up to that point there was no divergence of opinion. There was some divergence of opinion as to whether the following words “under the contract of carriage” should come out or not, and we simply said that could be left to the Diplomatic Conference to settle; but I want to make it perfectly clear that, so far as I understood the Committee, the rest “into the custody of the person entitled to delivery thereof” stood.

Mr. Louis Franck: Yes.

The Chairman: I will ask Sir Norman whether it is his view that the agreed words are the words “at the time of the removal of the goods into the custody of the person entitled to delivery thereof”.

Sir Norman Hill: Sir, you must not put it too high. The Sub-Committee were not prepared this morning to pass that Rule in any particular form of language, I think that they were satisfied with those words, but those words hinge on the next words, and I do not think it was the wish of the Sub-Committee - certainly I did not understand it - merely to refer three words to the Diplomatic Conference. I do not think the Sub-Committee would have thought that they could fairly make such a recommendation to the Diplomatic Conference. As I understand, you will have on the Diplomatic Conference a very able representative of the Sub-Committee in the person of Judge Hough who heard everything that was said. I think that the members of the Sub-Committee were satisfied with those words, but if the Diplomatic Conference want to ad-
just the following words, it may be that they will want to adjust those words, and I do not think the Sub-Committee wanted to tie their hands.

Dr. Eric Jackson: It is, question for the Federation, for whom I act, as to how far, having got these amendments with difficulty out of the shipowners, they can leave it to somebody, upon which they will not be represented, to alter those amendments.

The Chairman: I think this is debate. We only want to know at present what the views of the Committee are.

Mr. Möller: I would like to say as regards this question of “into the custody” that I understood the same as Sir Norman Hill has described it, that there was some doubt in our minds as regards the proper phrasing of it.

The Chairman: Which is that?

Mr. Möller: That is clause 6 of Article 3 “into the custody of the person entitled to delivery thereof”. I believe I was the person who raised the point and I said that I thought that my objection would be met by striking out the words that Mr. Jackson has told you, namely “under the contract of carriage”, but I distinctly did not understand that we would leave these words “into the custody of the person entitled to delivery thereof”, and only submit the further words to the Diplomatic Conference. My understanding was just as Sir Norman Hill has described it, that we would leave the entire matter to the decision of the Diplomatic Conference.

Mr. Louis Franck: I do not think there was really, as to the root of the thing, any dissenting view. The case which was put before us was the following one. You see here that this Rule will not apply until the time when the goods get into the custody of the person entitled [467] to the delivery thereof under the contract of carriage. In 99 cases out of 100, there is not the slightest difficulty about that; the person entitled to receive the goods under the contract of carriage is the consignee or the holder of the bill of lading or his agent. But there may be cases where the goods are left over for several months, let us say in a bonded warehouse of the State or with Customs, or on the quay even, and the question is whether you are going to construe a case of that sort as coming under these rules, or whether you are going to keep the shipowner always liable even if the goods have gone practically out of his possession or out of his control. Then the suggestion of Mr. Möller was that this difficulty would be met if the words “under the contract of carriage” were struck out, and then we decided that, without any prejudice to the principle, we would leave this narrow question of construction, of drafting, to the Diplomatic Conference. The idea is very clear. If it is a matter of responsibility, the responsibility which comes under this Convention will cease for the ship under the ship’s tackle, but as far as the delivery of the goods is concerned, and the application of this clause saying that if there is no notice and the goods are taken away without notice, it will be prima facie evidence that all was right with that delivery, surely the shipowner must make a real delivery, but what that delivery is to be it will be for the law of the land, the law of the port of destination to say. There is the end of it. So I think that really we can take notice of the fact, that the gentleman who raised objection on the matter, would be satisfied if the words “under the contract of carriage” were left out, and as [468] for revising this drafting we can leave it to the Diplomatic Conference.

The Chairman: With that exception, is the Conference ready to proceed from that point? Is that agreed? (Agreed).

The Chairman: Then Article 3(6). Is it agreed with regard to the first two lines, that
the words shall read: “Unless the notice of loss or damage and the general nature of such loss or damage be given”. Is that agreed? (Agreed).

The Chairman: Then in the same Article, with regard to the period of time, is it agreed that, due regard being had to the first term in the present statement of the period of time, namely “the time of the removal of the goods into the custody of the person entitled to delivery thereof”, it shall be left to the Diplomatic Conference to determine the best mode of expressing what is just between the respective interests? Is that agreed? (Agreed).

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

6. Unless notice of a claim for loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading

Conférence Diplomatique - Octobre 1922
Séances de la Sous-Commission
Première Séance - 19 Octobre 1922

M. le Président fait observer que la Conférence de Londres du Comité Maritime International n’est pas arrivée à un accord complet au sujet de cet article, mais a laissé à la Conférence de Bruxelles le soin de fixer dans quel délai, notification de perte ou de dommage doit être faite, et dans quel délai l’action de ce chef doit être introduite. Le Président prie donc les membres de bien vouloir élaborer un autre texte, afin de faciliter l’examen de toute la question.

A cet effet, il propose lui-même le texte suivant:
“A moins d’une notification par écrit de la perte ou du dommage apparent et de la nature générale de la perte ou du dommage donnée par écrit au transporteur ou à son agent au port de déchargement, avant ou au moment de la remise des marchandises sous la garde de la personne en droit de les recevoir, pareil enlèvement

Diplomatic Conference - October 1922
Meetings of the Sous-Commission
First Session - 19 October 1922

The Chairman observed that the London Conference of the Comité Maritime International had been unable to reach absolute agreement on the subject of this article, but left it to the Brussels Conference to set the time within which notice of loss or damage must be given, and when suit on this ground must be begun. The Chairman asked the members to draft a substitute text, in order to facilitate the examination of the whole matter.

To this end, he proposed the following text himself:
“Unless notice of apparent loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof, such removal shall create a presumption that the person
Article 3 (6) - Notice of loss or damage

constituerait une présomption de la réception, par la personne qui y a droit, des marchandises comme elles sont décrites dans le connaissement.

“Une mention de la perte ou du dommage inscrite sur le reçu délivré au transporteur pour les marchandises constituera une notification valable comme requise ci-dessus.

“A moins de notification des pertes ou dommages non apparents et de la nature générale de ces pertes ou de ces dommages faite par écrit au transporteur ou à son agent au port de déchargement, dans les soixante jours de la date de l’enlèvement des marchandises comme dit ci-dessus (ou à partir de la date à laquelle les marchandises auraient été délivrées normalement), ni le chargeur, ni le navigateur ne sont ou ne pourront en aucun cas, être rendus responsables de pareils pertes ou dommages; . . . . . . . .”

M. de Rousiers, Délégué de la France, propose le texte suivant:

“A moins qu’une notification de perte ou dommage et la nature générale de cette perte ou dommage ne soit signifiée au transporteur ou à son agent au port de déchargement dans les formes et dans les délais prescrits par la loi nationale du navire, l’enlèvement des marchandises constitue, sauf preuve contraire, une présomption de la délivrance par le transporteur des marchandises telles qu’elles sont décrites au connaissement”

Il explique que son but est simplement de régler la notification de la perte ou du dommage et la force probante de pareille notification, tout en laissant à la loi du port de déchargement le soin de régler les autres détails.

M. Bagge, Délégué de la Suède, propose de modifier le début de la disposition comme suit:

“A moins que notification d’une réclamation pour perte ou dommage et la nature générale de cette réclamation ne soit signifiée par écrit au transporteur ou à son agent au port de déchargement dans un délai rai-
En présence de ces divers textes, la Commission décide de procéder au vote au sujet de cet article.

L’amendement du Délégué des États-Unis et du Délégué de la Suède ne recueillent chacun qu’une voix. Les Délégués des Pays-Bas et de la France votent pour la proposition du Délégué français, tandis que ceux de la Belgique et de la Grande-Bretagne votent pour le maintien du texte de l’avant-projet.

Dans ces conditions, il est décidé de faire trancher la question par la Conférence plénière, en donnant l’occasion aux membres de s’entendre dans l’intervalle avec leurs collègues en vue d’arriver à une solution.

Sir Leslie Scott, Délégué de la Grande-Bretagne, signale que cette disposition est très importante. Le texte porte qu’il faut “une notification de perte ou de dommage au moment de l’enlèvement des marchandises”. De sorte que si à ce moment il n’est pas donné pareille notification, il y aura une présomption de la bonne livraison; de plus dans tous les cas, il y aura une prescription de deux ans. Parfois, la disposition en question constituera une difficulté trop grande pour le récepteur. M. le Président a suggéré de stipuler qu’en cas de dommage apparent, visible, avis doit en être donné au moment de l’enlèvement, faute de quoi il y aura une présomption de bonne livraison; de plus dans tous les cas, il y aura une prescription de deux ans. Parfois, la disposition en question constituera une difficulté trop grande pour le récepteur. M. le Président a suggéré de stipuler qu’en cas de dommage apparent, visible, avis doit en être donné au moment de l’enlèvement, faute de quoi il y aura une présomption de bonne livraison; de plus dans tous les cas, il y aura une prescription de deux ans. Parfois, la disposition en question constituera une difficulté trop grande pour le récepteur. M. le Président a suggéré de stipuler qu’en cas de dommage apparent, visible, avis doit en être donné au moment de l’enlèvement, faute de quoi il y aura une présomption de bonne livraison; de plus dans tous les cas, il y aura une prescription de deux ans.
M. le Président remarque que l’action, dans ce cas, n’est plus nécessaire.

M. de Rousiers, Délégué de la France, souligne que c’est donc la prescription qui est en cause.

Sir Leslie Scott, Délégué de la Grande-Bretagne, tient à relever l’importance de cette question. Tandis que le texte de Londres n’accorde qu’une présomption de bonne livraison, M. le Président déduit du défaut de notification la perte de tout recours.

M. le Président dit que c’est bien ainsi qu’il entend les choses.

Sir Leslie Scott, Délégué de la Grande-Bretagne, doute fort que les négociants du monde entier acceptent pareille disposition. Ceux de la Grande-Bretagne ne le voudront certainement pas.

M. Le Jeune, Délégué de la Belgique, signale que de par sa profession, il a été appelé à couvrir ce genre de risques, et il doit avouer que c’est bien rarement que l’on voit se produire des procès de ce genre, c’est-à-dire après un délai aussi long. Il ajoute que lorsque des réclamations sont formulées au sujet de marchandises qui ont séjouré pendant un délai aussi long dans un magasin ou sur quai, il y a neuf chances sur dix pour que ce soit un cas qui mérite peu de considération. Son expérience quotidienne est que lorsqu’il se produit une perte ou une avarie, il en est informé le plus souvent avant même que le débarquement soit terminé.

C’est aussi l’avis de M. le Président, qui trouve peu intéressantes les réclamations survenant après un long délai (stale claims).

M. Langton, Délégué de la Grande-Bretagne, soutient qu’il y a des cas où cela peut constituer une injustice envers le destinataire, par exemple, lorsque des marchandises sont envoyées du continent en Angleterre, où elles séjourent quelque temps pour être réexpédiées par exemple en Suède.

M. le Président observe que dans ce cas, il s’agit d’un transport sous connaissance direct. Au cas où un agent reçoit les marchandises au port intermédiaire, il a pour devoir de constater leur état. La Chairman remarked that legal action in this case was no longer necessary.

Mr. de Rousiers, French delegate, emphasized that it was therefore the limitation period that was at issue.

Sir Leslie Scott, British delegate, further underlined the importance of this matter. Whereas the London text only accorded a presumption of full delivery, the Chairman deduced from the lack of notification the loss of all redress.

The Chairman said that this was just as he understood matters.

Sir Leslie Scott, British delegate, strongly doubted that merchants the world over would accept such a clause. Certainly those from Great Britain would not want it.

Mr. Le Jeune, Belgian delegate, indicated that in his profession he was called to cover this type of risk, and he had to attest that it was rare to see such legal proceedings, that is to say, after so long a period of time. He added that when claims were made concerning goods that has spent such a long time in a warehouse or on a quay, it was a nine out of ten chance that the case merited little consideration. His daily experience was that once loss or damage occurred, he was informed of it immediately - even before unloading was finished.

This was also the view of the Chairman, who found stale claims of little interest.

Mr. Langton, delegate from Great Britain, held that there were cases where that might constitute an injustice towards the consignee; for example, when goods were sent from the Continent to England, where they remained some time before being reshipped, for example, to Sweden.

The Chairman remarked that in that case it was a matter of carriage under a direct bill of lading. In the case where an agent received the goods at the intermediary port, he had an obligation to state their condition. The United States rule is healthy and comes from a good business attitude.
règle des États-Unis est saine et procède d’une bonne morale commerciale.

Sir Leslie Scott, Délégué de la Grande-Bretagne, comprend les raisons de M. le Président et de M. Le Jeune. Mais, s’il est vrai que les réclamations tardives sont souvent d’une honnêteté douteuse, il ne faut cependant pas en conclure que l’on ne doit en aucun cas accorder un recours. Puis, la Grande-Bretagne a une situation spéciale; elle a beaucoup de trafic à longue distance; pour formuler une réclamation, il faut souvent demander des renseignements dans un pays d’outre-mer et il paraît injuste de dire à ces chargeurs que s’ils n’obtiennent pas ces renseignements de suite, ils seront punis en ce sens qu’ils perdront leur recours. Sir Leslie Scott [199] a eu récemment dans la pratique deux cas de ce genre excessivement malheureux, où les chargeurs étaient cependant absolument de bonne foi; et il s’agissait d’expéditions venant de l’Australie. Les négociants britanniques consentent à accepter la proposition aux termes de laquelle le défaut de notification constituera une présomption, mais non pas à ce qu’il puisse entraîner la déchéance de leur action.

M. le Président propose de laisser décider cette question par la Conférence plénière et de se contenter, en Commission, d’exposer les points de vue personnels. Sir Leslie Scott, Délégué de la Grande-Bretagne, croit savoir que l’on a proposé d’abandonner la question aux législations nationales.

M. de Rousiers, Délégué de la France, assure qu’en effet, il a été question de laisser hors de la Convention internationale la fixation de délai.

M. le Président rappelle, d’autre part, la proposition de M. Bagge, portant:

“A moins qu’une notification de perte ou dommage et la nature générale de cette réclamation ne soit signifiée par écrit au transporteur ou à son agent au port de déchargement dans un délai raisonnable, après l’enlèvement de la marchandise... (le restant comme au projet, sauf que le délai sera d’un an au lieu de deux ans)”.

Sir Leslie Scott, British delegate, understood both the Chairman’s and Mr. Le Jeune’s reasoning. But if it were true that late claims were often of dubious honesty, there was no need to conclude that one should on no account provide redress. Great Britain had a special position. She had a great deal of long distance traffic. In formulating a claim, it was often necessary to ask for information from an overseas country and it seemed unfair to tell shippers that if they did not obtain this information on the double they would be punished in the sense of losing their means of redress. Recently Sir Leslie Scott [199] had had practical experience of two extremely sad cases of this type where the shippers were, however, absolutely in good faith; and it had been a matter of shipments from Australia. The British merchants agreed to accept the proposal on condition that the lack of notification would constitute a presumption, but not entail the forfeiture of any legal action.

The Chairman proposed leaving this matter for the plenary conference and for the commission to content itself with an exposé of personal points of view.

Sir Leslie Scott, British delegate, put faith in the knowledge that they were proposing to leave the question to their national legislatures.

Mr. de Rousiers, French delegate, vouched that, in fact, it was a matter of leaving the fixing of the limitation period out of the international convention.

The Chairman recalled, on the other hand, Mr. Bagge’s proposal:

Unless notice of a claim for loss or damage and the nature of such claim be given in writing to the carrier or his agent at the port of discharge within a reasonable time of the removal of the goods.... (with the remainder of the section unchanged except the period for bringing suit should be changed from two years to one year).

Mr. Bagge, Swedish delegate, further commented that he had not quite understood what was intended by the words
M. Bagge, Délégué de la Suède, remarque, en outre, qu’il n’a pas bien compris ce qu’on entend par les mots “nature générale”. Il faudrait préciser.

M. le Président exprime l’avis que cela veut dire que si quelqu’un reçoit un lot de marchandises accusant, par exemple, un manquant, il lui suffirait de dire: “il y a manquant d’autant de caisses”, ou bien “autant de caisses de marchandises abîmées ou pourries”, sans cependant qu’il soit tenu d’indiquer également le degré de l’avarie.

Sir Leslie Scott, Délégué de la Grande-Bretagne, ajoute qu’on a inséré les mots “nature générale” pour éviter l’exigence d’un rapport d’expertise au moment de la réclamation.

M. le Président affirme que c’est exactement ce que l’on a voulu; la notification peut être faite par tout commerçant, sans qu’il doive être expert.

M. Bagge, Délégué de la Suède, observe que cela peut encore présenter des difficultés dans certains cas. A supposer une cargaison de bois, il est souvent difficile pour l’acheteur d’indiquer exactement un manquant, car le comptage (tallying) n’est pas toujours très exact à l’embarquement ou au débarquement.

M. le Président estime que, dans ce cas, la réclamation pourra spécifier qu’il y a manquant d’environ cent ou d’environ mille pièces.

M. Langton, Délégué de la Grande-Bretagne, ajoute que l’on doit donc indiquer qu’il y a manquant, ou que la dimension des colis n’est pas exacte et que c’est là ce qu’on entend par “nature générale”.

M. le Président, en présence de ces divergences d’opinions, propose de procéder à un vote.

Votent:
- Pour l’amendement de M. le Président, le Délégué des États-Unis;
- Pour l’amendement de M. de Roussiers, les Délégués de la France et des Pays-Bas;
- Pour l’amendement de M. Bagge, le Délégué de la Suède;
- Pour le texte du projet, les Délégués

“The Chairman expressed the opinion that they meant that if someone received a batch of goods charging that some were missing, for example, it would be enough to say “some cases missing” or “so many cases of goods spoilt or rotten” without, however, having to indicate precisely the degree of the damage.

Sir Leslie Scott, British delegate, added that the words “general nature” had been included to avoid the need for an expert’s report at the time of the claim.

The Chairman affirmed that that was indeed the intention; that the notification could be made by any merchant without the need for him to be an expert.

Mr. Bagge, Swedish delegate, observed that that might still pose problems in certain cases. Think of a cargo of timber. It is often difficult for the buyer to indicate precisely how much is missing since the tallying is not always very exact at either loading or unloading.

The Chairman felt that, in that case, the claim might specify that there were about one hundred or one thousand pieces missing.

Mr. Langton, British delegate, added that one should therefore show that there were missing goods or that the dimension of the package was not exact, and that that was what was meant by “general nature”.

The Chairman, with all these conflicting opinions, proposed a vote.

Results of the vote:
- In favor of the Chairman’s amendment, the United States delegate;
- In favor of Mr. de Roussiers’s amendment, the delegates from France and the Netherlands;
- In favor of Mr. Bagge’s amendment, the Swedish delegate;
- In favor of the existing text, the delegates from Belgium and Great Britain;

Mr. Rambke, German delegate, would have supported Mr. de Roussiers’s amendments had the limitation period been reduced from two years to one, as
de la Belgique et de la Grande-Bretagne.

M. Rambke, Délégué de l’Allemagne, se raillerait à l’amendement de M. de Rousiers, si le délai était réduit de deux ans à un an, comme le propose la Suède.

M. le Président signale que ce vote n’engage aucun pays, mais que la Commission pourra faire rapport à la Conférence plénière sur les difficultés éprouvées pour arriver à un accord. La prolongation de la discussion en commission est donc inutile.

Sixième Séance Plénière - 24 Octobre 1922

[129]

M. le Président. - Nous nous trouvons ici devant une grave difficulté. Il s’agit de déterminer comment le réceptionnaire des marchandises doit réserver ses droits s’il y a manquant ou avarie aux marchandises. Le texte proposé dit:

A moins qu’une notification de réclamation pour perte ou dommage, et la nature générale de cette réclamation ne soient signifiées par écrit, au transporteur ou à son agent au port de déchargement, avant ou au moment de l’enlèvement des marchandises et leur remise sous la garde de la personne ayant droit à la délivrance sous l’empire du contrat de transport, cet enlèvement constituera une preuve de prima facie de la délivrance par le transporteur des marchandises, telles qu’elles sont décrites au connaissement, et en tous cas, le transporteur et le navire seront déchargés de toute responsabilité pour perte ou dommage, à moins qu’une action ne soit intentée dans les deux ans de la délivrance des marchandises ou de la date à laquelle les marchandises eussent dû être délivrées.

En cas de perte ou dommage certain ou présumé, le transporteur et le réceptionnaire se donneront réciproquement toutes les facilités possibles pour l’inspection et le comptage de la marchandise.

Il y a eu, à ce sujet, toute une série de propositions, mais on n’est pas arrivé à proposed in the Swedish amendment.

The Chairman indicated that this vote did not bind any country, but that the Commission might make a report to the plenary conference on the difficulties experienced in reaching an agreement. Any further prolongation of the discussion within the commission was therefore pointless.

Sixth Plenary Session - 24 October 1922

[129]

The Chairman. - We find ourselves here faced with a real problem. It is a matter of determining how the receiver of goods should reserve his rights if there is a shortfall in or damage to the goods. The proposed text says:

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading and in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within two years after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

There was a whole series of proposals on this issue, but we did not reach agreement and the commission finally decided to reserve the matter for your examina-
un accord et finalement la Commission a décidé de réserver ce point à votre examen. Si vous me permettez de vous donner mon opinion, je trouve qu’aucune des formules proposées n’est bonne. Il n’y a qu’un bon système en cette matière, c’est d’admettre comme règle qu’au moment où les marchandises sont délivrées, il faut qu’on fasse constater contradictoirement leur état et qu’on formule immédiatement des réserves. Tout au plus, peut-on le faire après cela dans un délai très court. C’est là tout ce qu’il faut exiger. Ensuite, il faut qu’il y ait un délai de prescription. La formule me semble pas compliquée. Je trouve que c’est une question qu’on a tort de régler dans une convention internationale. En effet, il est très facile de régler ce point d’après la législation nationale. Les capitaines ne sont, en règle générale, pas tenus de faire ces choses eux-mêmes, ils ont des agents ou des courtiers qui leur diront ce qu’il est nécessaire de faire. D’un autre côté, les réceptionnaires sont sur place et connaissent la loi à laquelle ils sont soumis. La législation nationale consacrera le règle que la réception de marchandises faite sans réserves en écrit, au moment de la délivrance ou dans un délai très court et sans constatation contradictoire de leur état, vaudra preuve du bon état de ces marchandises et de leur réception, la preuve contraire réservée. Je voudrais cependant entendre les auteurs des différents amendements qui ont été suggérés.

M. Ripert. - Je voudrais simplement faire observer que, lorsqu’il s’agit de transports internationaux par chemin de fer, on distingue entre les dommages apparents et non apparents. La délégation française ne pourrait accepter qu’un très court délai de protestation. Nous nous rallierons, par conséquent, à l’une ou à l’autre solution: ou bien un court délai international, qui soit le même pour tout le monde, ou bien à la solution qui laisse à la législation nationale de chaque pays le soin de régler ce point.

Mr. Ripert. - I should like to point out simply that, when dealing with international rail transport, we make a distinction between apparent and non-apparent damages. The French delegation would only be able to accept a very short protest period. We shall therefore support either one of the two following solutions: either a short international time limit that should be the same worldwide, or the solution that leaves to national legislation the responsibility for regulating this matter.
établir à l’article 3 est très importante. Les chargeurs et les réceptionnaires anglais attachent un très grand prix (ce qui est peut-être incompréhensible pour certains) à ne pas être privés de leur droit absolu d’action. Ils acceptent la limitation de ce droit, déjà contenue dans les règles où l’on dit que la réception des marchandises sans contestation constitue une preuve *prima facie* ou présomption, sauf preuve contraire, de la délivrance par le transporteur des marchandises en bon état. À mon avis (et je crois pouvoir dire que, comme avocat, j’ai acquis à ce sujet quelque expérience), il n’y a qu’un seul cas sur dix mille où le destinataire pourrait prouver, à la satisfaction du tribunal, que les dommages ont été causés avant la livraison, sous l’empire de ces règles, s’il ne fait pas sa réclamation de suite ou dans un délai très court. Il y a une certaine connexité, comme une parenté, entre ces règles et la règle établie au n° 4: lorsque nous avons examiné, tout à l’heure le n° 4, nous avons remarqué que certains délégués du continent considéraient comme très importante la règle qu’un connaissement constitue une preuve absolue. J’ai remarqué que dans ce cas, la règle 4 était à mi-chemin entre les deux systèmes, en faveur du récepteur. Il en est absolument de même en ce qui concerne la règle 6; elle est encore une fois à mi-chemin entre les deux points de vue extrêmes, mais cette fois, en faveur du transporteur. Il est nécessaire de nous rappeler toujours ce fait, que l’origine de ces règles a été un compromis entre les armateurs et les chargeurs et ces règles, qui ont toutes les deux à leur base la limite de la *prima facie evidence*, constituent une partie très importante de ce compromis entre les deux intérêts. Comme avocat, comme juriste, je n’aime pas beaucoup la méthode de rédaction employée; je n’aime pas même les dispositions trop détaillées. Mais, ici, il ne s’agit plus d’une affaire à régler par les juristes, par les avocats et par les professeurs; c’est un compromis qui a donné toute satisfaction aux négociants et aux propriétaires de navires. Laissons donc established in article 3 to be very important. The English shippers and receivers attach a high price (something that may be incomprehensible to certain people) to being deprived of their absolute right of legal action. They accept the limitation of this right already contained in the rules, where it is stated that the uncontested receipt of goods constitutes prima facie evidence of the delivery by the carrier of the goods in good condition. To my mind (and I believe I can say that, as a barrister, I have acquired some experience of the matter) there is only one case in 10,000 under these rules where the receiver might prove, to the satisfaction of the court, that the damages were caused before delivery, if he does not make his claim immediately or within a very short period. There is a certain connection, like a compromise, between these rules and the rule established in paragraph 4. When we looked at paragraph 4 just now, we noted that certain delegates from the Continent took as very important the rule that a bill of lading constituted absolute evidence. I commented that in that case, paragraph 4 was half-way between the two systems, in favor of the receiver. It is absolutely the same thing when we look at paragraph 6. It is once again half-way between the extreme viewpoints, but this time in favor of the carrier. We should always keep in mind the fact that the origin of these rules was a compromise between shipowners and shippers, and these rules, which both have at heart the limit of prima facie evidence, constitute an important part of this compromise between the two interests. As a barrister, as a jurist, I do not very much like the method of drafting used; I do not even like clauses that are too detailed. But here we are no longer dealing with a matter to be regulated by jurists, by barristers, and by professors, it is a compromise that has given complete satisfaction to merchants and shipowners. Let us have the compromise as it has been concluded. If we others, English delegates, must return to our country with an amendment to this
subsister le compromis telle qu’il a été conclu. Si nous autres, Délegués anglais, nous devions rentrer dans notre pays en rapportant une modification à ce compromis, j’ai bien peur de l’accueil qu’on nous ferait. Nous avons pouvoir de signer sans réserves, la convention relative à ces règles, pourvu qu’il n’y ait pas de changements importants. Or, je serais obligé de considérer un changement à cette règle comme constituant une modification substantielle et je vous avoue que je désire beaucoup pouvoir signer la Convention.

M. Ripert. - Je désire répondre un mot à Sir Leslie Scott, qui dit que l’article 6 résulte d’un compromis entre armateurs et chargeurs. Je lui ferai observer qu’il est cependant nécessaire, dans ce compromis, de tenir un peu compte de nos législations continentales et du point de vue pratique. Je fais deux grosses objections au paragraphe 6 qui exige que le destinataire proteste immédiatement en recevant les marchandises et par écrit. Chez nous, on lui accorde un délai de vingt-quatre heures, et, s’il s’agit d’avaries non apparentes, je me demande comment il pourrait faire une protestation immédiate? A ce point de vue donc, le réceptionnaire est complètement défavorisé par rapport au droit actuel, et, très certainement, nous entendrions des protestations très vives de la part des chargeurs si nous disions qu’ils ne pourront plus réclamer contre l’armateur au cas où, en recevant la marchandise, ils n’ont pas protesté par écrit.

Seconde objection: en revanche, le paragraphe 6 permet à un réceptionnaire qui a reçu sans protestation de faire toujours la preuve contraire, puisque la réception ne constitue qu’une présomption prima facie. Or, pour les avaries non apparentes, on pourra toujours étalier qu’au moment où on a reçu le colis il était en bon état, mais qu’il s’est révélé ensuite des dégâts qu’on fera constater huit jours après par huissier. Dans ce cas, notre législation établit que si l’on n’a pas agi dans le mois, l’action est périmée. Du moins, l’armateur sait, qu’au-delà de ce compromis, I fear for the welcome we shall receive. We have the power to sign, with reservation, the convention in relation to these rules provided that there are no major changes. However, I would be obliged to consider a change to this rule as a substantial change and I vow to you that it is very much my desire to be able to sign the convention.

Mr. Ripert. - I should like to reply to Sir Leslie Scott, who says that paragraph 6 results from a compromise between shipowners and shippers. I would point out to him that it is necessary, however, in this compromise to take somewhat into account our Continental legislations and to assume a practical standpoint. I have two major objections to paragraph 6, which demands that the receivers should protest immediately on receipt of the goods and do so in writing. Under our law, he is allowed 24 hours for this. If it were a question of non-apparent damages, I wonder how he would be able to make such an immediate claim? From this vantage point the receiver is completely disadvantaged in relation to the law as it stands. We would most certainly hear very lively protests from the shippers if we were to say they would not be able to claim against the shipowner in the case where, on receipt of the goods, they did not put their protests in writing.

Second objection: On the other hand, paragraph 6 allows a receiver who has received without protest always to offer contrary evidence, because the receipt only constitutes prima facie evidence. So, for non-apparent damages we can always establish that at the time when a package was received it was in good condition, but that it later turned out to be damaged and that this can be made known a week later by an officer of the court. In this case, our legislation provides that if one has not acted within the month then the suit is no longer valid. At least the shipowner knows that beyond this period there is no further claim to be feared. But, if we adhere to the proposed text, the shipowner will re-
délai, il n’a plus aucune réclamation à craindre. Mais, d’après le texte qui nous est proposé, l’armateur restera exposé à une action pendant deux ans, de sorte que le compromis ne lui est pas favorable. Suivant que les tribunaux seront plus ou moins en faveur du chargeur, vous les verrez déclarer qu’on a fourni la preuve contre la présomption prévue à l’article 6 et ils admettront plus ou moins facilement l’action des chargeurs contre le transporteur qui, après un aussi long délai que deux ans, ne pourra faire une preuve utile. Il y a là un système qui ne peut pas cadrer avec nos législations continentales.

Je demanderai à la Délégation anglaise deux choses: la première est que la notification ne doive pas se faire immédiatement, s’il s’agit d’avaries non apparentes, afin de donner au chargeur un délai de vérification. La deuxième serait d’abaisser la prescription à un délai beaucoup plus court. De cette façon, nous sauvegarderions les droits des destinataires de marchandises qui ne peuvent pas cadrer avec nos législations continentales.

Je demande à la Délégation anglaise deux choses: la première est que la notification ne doive pas se faire immédiatement, s’il s’agit d’avaries non apparentes, afin de donner au chargeur un délai de vérification. La deuxième serait d’abaisser la prescription à un délai beaucoup plus court. De cette façon, nous sauvegarderions les droits des destinataires de marchandises qui ne peuvent pas cadrer avec nos législations continentales.

Mr. Berlingieri. - Je me rallie à ce que vient de dire l’honorable Délégué français. En Italie, nous avons une disposition légale (art. 415 cod. comm.), suivant laquelle une différence entre les cas d’avaries apparentes et celui des avaries non apparentes est établie. Nous ne pouvons pas empêcher le réceptionnaire d’actionner l’armateur dans ce dernier cas s’il agit dans un certain délai. Pour nous, c’est huit jours, quand il s’agit d’avaries qui n’ont pas pu être découvertes au moment de la réception et pourvu qu’on prouve que la perte ou l’avarie est arrivée dans l’intervalle entre la livraison au transporteur et la récep-

main open to suit for two years so that the compromise is not in his favor. Depending on the courts being more or less in favor of the shipper, you will see them declare that evidence against the presumption foreseen in paragraph 6 had been furnished. They will then allow more or less easily the suit of the shippers against the carrier who, after a period of time which may be as long as two years, will not be able to provide any useful evidence. That is a system that does not sit well with our Continental legislation.

I shall ask the English delegation two things: The first is for the notice not to be given immediately in a case of non-apparent damages so as to give the shipper time to verify. The second is greatly to reduce the prescribed time limit. In this way, we shall safeguard the rights of the receivers of goods who cannot always recognize the damages that have occurred and we shall safeguard above all the shipowning interests that would know at the end of what time, they need no longer fear the claims of the shippers. I ask that this should be truly a compromise not only between English shippers and owners but among legal systems from all nations.

Mr. Berlingieri. - I support what the honorable delegate from France has just said. In Italy we have a legal provision (article 415 of the Commercial Code) in which a distinction is drawn between the case of apparent and non-apparent damages. We cannot prevent the receiver from prosecuting the carrier in the latter case if he acts within a certain time limit. For us that is one week when dealing with damages that could not be discovered at the time of receipt, provided that it is proven that the loss or damage occurred in the interval between delivery to the carrier and receipt. How would one, in fact, in this instance record reservations immediately? It would put the receiver in an absolutely unfavorable position. I cannot think that we came here to defend in particular the interests of the carriers and that we would rush to im-
tion. Comment voulez-vous, en effet, dans ce cas faire immédiatement des réserves? C’est mettre le réceptionnaire dans une situation absolument défavorable. Je ne comprends pas qu’on vienne ici défendre spécialement les intérêts des transporteurs et que l’on veuille imposer aux réceptionnaires l’obligation de faire immédiatement des réserves pour une avarie qu’ils ne peuvent découvrir au moment où ils reçoivent les marchandises.

M. le Président. - Il y a, en somme, deux questions en discussion. La première est de savoir s’il faut distinguer entre les avaries apparentes et les avaries occultes. La seconde est de savoir s’il faut donner un certain délai après la réception des marchandises pour formuler des réserves. Il ne paraît pas qu’il y ait obstacle absolu à une entente sur ces points: ce ne sont pas des questions capitales. Du moment où les droits des armateurs sont suffisamment sauvegardés, cela suffit. Ils le sont parfaitement si l’on dit, par exemple, que pour les avaries apparentes les réserves doivent être faites par écrit au moment de l’enlèvement ou dans les vingt-quatre heures ou encore dans les quarante-huit heures, c’est-à-dire le surlendemain au plus tard. A cette règle-là, Sir Leslie Scott, on ne peut pas faire d’objection, car c’est la règle pratiquée en matière de transports par chemin de fer dans tous les pays qui ont adhéré à la Convention de Berne et à laquelle les armateurs sont habitués sur le continent. En ce qui concerne les avaries occultes, il est juste aussi d’accorder un délai plus long. La Convention de Berne donne sept ou huit jours. Je ne crois pas qu’il soit excessif si le colis est en bon état apparent, si la caisse est intacte de laisser sept jours pour vérifier le contenu. Si j’expédie au Congo Belge une caisse de champagne, quand à l’arrivée la caisse paraît intacte, alors que quelqu’un à bord a remplacé les bouteilles par de l’eau minérale ou par des cailloux, il ne faut pas qu’on vienne opposer au réceptionnaire qu’il a reçu la caisse en bon état pose upon the receiver the obligation to record reservations immediately for a loss that could not be discovered at the time the goods were received.

The Chairman. - To summarize, there are two matters under discussion. The first is to determine whether it is necessary to distinguish between apparent and hidden damages. The second is to determine whether it is necessary to allow a certain time period after the receipt of goods to formulate reservations. It does not seem as if there is any absolute obstacle to an understanding on these issues, which are not capital issues. From the time when the rights of the shipowners have been sufficiently safeguarded, that is adequate. They are perfectly safeguarded if we say, for example, that for apparent damages reservations must be given in writing at the time of unloading or within 24 hours or 48 hours, that is to say the following day at the latest. To that rule, Sir Leslie Scott, one cannot object because it is the rule followed in regard to rail transport in all those countries that adhered to the Berne Convention and to which shipowners are accustomed on the Continent. The Berne Convention allows for eight days. I do not feel it would be excessive if the package is in apparently good condition, if the case is intact, to leave seven days to check the contents. If I were to send a case of champagne to the Belgian Congo, when on arrival the case seemed intact, although someone on board had replaced the bottles by mineral water or by pebbles, we should not oppose the receiver who received the case in good condition and who no longer had the right of claim.

Second observation: Mr. Ripert is perfectly correct to say that we should retain a little more latitude in the time period, but I feel it is not necessary, as under French law, to demand a “notification signifiée”. The English text says “notice of claim to be given in writ-
et qu’il n’a plus le droit de réclamer.

Seconde observation: M. Ripert a parfaitement raison de dire qu’il faut réserver dans les délais un peu plus de latitude, mais j’estime qu’il ne faut pas, comme sous la loi française, exiger une notification signifiée. Le texte anglais porte: notice of claim to be given in writing. [132] Cela veut dire une protestation par écrit, mais cela signifie nullement une notification signifiée, car cette dernière expression implique un exploit d’huissier.


Mr. Beecher. - Cet article est probablement celui qui soulèvera le plus d’opposition de part et d’autre si nous le modifions. . . . . . . . . Il y a un point sur lequel j’appelle votre attention. Vous avez fait mention de l’usage en vigueur sur le continent, mais il me semble que tous ces usages ont pour effet de priver le chargement de son droit d’action et que le défaut de notification ne constituerait qu’une présomption sauf preuve contraire contre le chargement. Dans les règles adoptée les armateurs ont pratiquement renoncé aux clauses dont ils ont eu le bénéfice pendant des années. C’est là une concession complète faite aux chargeurs. Si l’on propose d’accorder aux chargeurs de nouvelles concessions qu’ils n’ont jamais demandées, il

Sir Leslie Scott. - I agree with Mr. Beecher in saying that the concession relevant to the notice constitutes an ad-
me semble que nous devons procéder avec circonspection. Si l’assemblée m’y autorise je préparerai une proposition que je lui soumettrai en temps utile pour que nous puissions la discuter demain.

Sir Leslie Scott. - Je suis d’accord avec M. Beecher pour dire que la concession relative à la notification, constitue un avantage en faveur des chargeurs. La vérité est que cette clause a fait l’objet de longues discussions entre les parties intéressées, non seulement en Grande-Bretagne, mais également ailleurs. S’il est proposé maintenant d’accorder un délai de vingt-quatre heures après l’enlèvement des marchandises pour notifier les pertes ou dommages, cela devrait être soumis à la condition que l’armateur doit avoir l’occasion de voir les marchandises. Le but de la clause en sa forme actuelle était d’obtenir que la notification se fit avant que les marchandises n’échappent au contrôle du transporteur, afin que ce dernier ait l’occasion de vérifier si la réclamation est fondée en fait. Donc, si vous décidez aujourd’hui qu’une réclamation peut être formulée après l’enlèvement des marchandises il faut en compensation accorder au transporteur le droit de les inspecter. Je n’ai pas bien compris la proposition relative au délai de sept jours.

M. le Président. - Cela visait les dommages occultes.

Sir Leslie Scott. - Je reconnais qu’il y a des raisons théoriques et peut-être quelques raisons pratiques pour établir une distinction entre les dommages apparents et les dommages non apparents. Mais cela a déjà été longuement discuté et les parties intéressées sont arrivées à la conclusion que cela n’était pas nécessaire.

M. Le Jeune. - En prenant la parole dans ce débat, je fais surtout appel à votre esprit de conciliation. Je crois qu’en Belgique nous sommes dans la même situation qu’en France et en Italie. Par conséquent notre sentiment sur le fond de la question doit être sensiblement le même. Il me sera donc d’autant plus facile de dire que sur cette question tous les États sont en principe d’accord vantage pour les shippers. The truth is that that clause had been the object of lengthy discussion between the interested parties, not only in Great Britain but also elsewhere. If the proposal is now to grant a time limit of 24 hours after the unloading of the goods in which to notify loss or damage, it should be submitted on condition that the shipowner should have the opportunity to see the goods. The aim of the clause in its present form was to make sure that the notification was made before the goods left the control of the carrier so that he would have the opportunity to verify the claim was based on fact. So, if you decide today that a claim can be formulated after the unloading of the goods, we must as compensation grant the carrier the right to inspect them. I have not well understood the proposal relating to the time limit of seven days.

The Chairman. - That was envisaged for non-apparent damages.

Sir Leslie Scott. - I recognize that there are theoretical reasons and perhaps some practical reasons for establishing a distinction between apparent and non-apparent damages, but that has already been long debated and the interested parties concluded that it was not necessary.

Mr. Le Jeune. - In taking the floor in this debate, I am above all appealing to your spirit of reconciliation. I believe that in Belgium we are in the same position as France and Italy. Consequently, our feeling about the heart of the matter must be practically the same. Therefore, it will be all the easier for me to say that on this matter all States are, in principle, in agreement with the French and Italian delegations. This leads me to abide by the prior decisions on this matter and to all that, with my Belgian colleagues, I have had the opportunity of hearing in the course of the long discussions that have taken place many times, namely, that these rules are aimed at establishing
avec les délégations française et italienne. Ceci m’amène à me rapporter aux rétroactes de cette question et à tout ce que, avec mes collègues belges, j’ai eu l’occasion d’entendre au cours des longues discussions qui se sont produites maintes fois, à savoir, que ces règles ont pour but d’établir un connaissement négociable, de valeur réelle. Quels sont les résultats des accords et des conventions qui ont été conclus après des mois, et je dirai même après des années de négociations, non pas entre les Gouvernements, mais entre les parties intéressées, les chargeurs et les transporteurs, entre une énorme quantité de transporteurs et de chargeurs [133] du monde entier? Nous savons très bien que l’un des points principaux de cet accord c’est précisément l’article que nous discutons et je pense qu’il serait extrêmement dangereux pour nous de le modifier dans le fond. Ce que nous désirons tous c’est d’arriver à un accord, à une convention qui donne plus de sécurité au commerce et principalement aux tiers porteurs d’un connaissement. Si vous voulez examiner les choses d’un point de vue purement commercial vous voudrez bien me permettre de vous dire comme assureur, c’est-à-dire comme l’homme qui en dernier ressort est celui qui paie le dommage, que nous voyons tous les jours se produire des pertes et des réclamations pour avaries. Or quel est le véritable intérêt pour tout le monde? C’est d’éviter des procès et des chicanes. Comment peut-on éviter des chicanes, des contestations et des injustices? C’est en accordant un délai raisonnable pour la constatation des dégâts. Un négociant qui a l’habitude des affaires trouve plus pratique de mettre sa marchandise en magasin sans attendre pour cela plusieurs jours. Nous, qui sommes de la pratique, nous savons que lorsqu’un navire arrive au port et décharge ses marchandises sur quai il ne s’écoule pas une heure avant que nous recevions des intéressés un coup de téléphone pour nous annoncer qu’il y a de l’avarie sur tel ou tel lot de marchandises. Bien des fois lorsque le réceptionnaire ne reconnaît les a negotiable bill of lading of real value. What are the results of the agreements and conventions concluded after months, and I might even say years of negotiations, not between governments, but between interested parties, shippers and carriers, between a vast number of carriers and shippers [133] world-wide? We know very well that one of the principal points of this agreement is the very article under discussion, and I think that it would be extremely dangerous for us to make any basic alterations to it. What we want is to reach an agreement, a convention that gives greater security to trade and principally to the third-party holders of a bill of lading. If you want to look at things from a purely commercial point of view, you will be quite willing to let me tell you in my role of insurer, that is to say, as the man who in the last resort is the one who pays for the damages, that we see losses occurring every day and claims for damages. So what is the real point of interest here? It is to avoid legal action and chicanery. How can one avoid chicanery, disputes, and injustice? By granting a time limit that is reasonable for the declaration of damages. An experienced businessman finds it more practical to put his goods in a warehouse without waiting several days. We, who are practical men, know that when a ship arrives in port and unloads its goods on the quay, not an hour goes that there is damage to such and such a lot of goods. Often when the receiver does not recognize the damage immediately - a fairly unusual state of affairs - such cases will not generally evoke great sympathy. It is the insurer who at the end of the day must pay the damages and the insurer asks only one thing: that we should retain the rules as they stand, because he knows that with the liability you are heaping up on the captain’s and the carrier’s shoulders you are benefiting the position of the shipper to a degree that he would certainly not have expected three or even ten years ago. Consequently, I am allowing myself to appeal once more to your spirit of reconciliation and I hope that in
dégâts qu’après coup - ce qui est d’ailleurs fort rare - ces cas ne nous inspirent généralement pas grande sympathie. C’est l’assureur qui en fin de compte doit payer les dommages et l’assureur ne demande qu’une chose dans le monde entier: c’est que l’on maintienne les règles telles quelles parce qu’il sait qu’avec la responsabilité que vous mettez sur le dos du capitaine et du transporteur vous améliorez la situation du chargeur dans une proportion qu’il n’aurait certes pas espérée il y a trois ou même il y a dix ans. Par conséquent, je me permets encore une fois de faire appel à votre esprit de conciliation et j’espère qu’en compensation des avantages que l’on fait aux chargeurs sur cette question, fort accessoire dans la pratique, des délais pour la signification de la réclamation aux transporteur, la Conférence se ralliera à ces règles. De cette façon nous aurons un ensemble de règles certainement acceptables et désirables et il serait hautement regrettable et contraire aux intérêts du commerce même si pour une raison d’ordre secondaire comme celle-ci, nous nous trouvions dans l’impossibilité d’arriver à la conclusion de cet accord.

M. le Président. - La Délégation française persiste-t-elle dans sa proposition de laisser un délai après la réception?

Mr. Ripert. - Avec la dernière énergie, Monsieur le Président (Rires).

M. Bagge. - Ainsi que cela est constaté dans le rapport de la Commission je n’ai pas, comme plusieurs membres d’ailleurs, reçu des instructions quant à l’attitude de mon Gouvernement au sujet de la convention proposée. Par conséquent ce que j’en dis n’est que mon opinion personnelle. Mais j’ai pu comprendre des explications de Sir Leslie Scott que si l’on pouvait s’entendre sur un délai fort court, par exemple, vingt-quatre heures après la livraison des marchandises, il faudrait d’autre part donner au transporteur une occasion de contrôler l’état des marchandises. Je me borne-rai pour le moment à faire remarquer recompense for the advantages accorded the shippers on this issue, which is quite secondary in practice, of time limits for the notification of claims to carriers, the conference will support these rules. In this way we shall have a set of rules that is certainly acceptable and desirable, while it would be highly regrettable and against the interests of trade itself if for a reason of secondary importance, like the one here, we were to find ourselves at an impasse in reaching a conclusion to this agreement.

The Chairman. - Does the French delegation wish to persist in its proposal for a time limit after receipt?

Mr. Ripert. - With its last strength, Mr. Chairman! (Laughter).

Mr. Bagge. - As stated in the commission’s report, I have not, like several members from other countries, received instructions as to the attitude of my government on the proposed convention. Consequently, what I say about it is only my own personal opinion. However, I have been able to appreciate Sir Leslie Scott’s explanation that if we wanted to agree upon a much shorter time, for example, 24 hours after delivery of the goods, it would also be necessary to give the carrier an opportunity to check the condition of the goods. I shall restrict myself for the present to pointing out that under current Swedish law it is stipulated that when goods have been delivered to a receiver who has no legal expertise, but who is intent upon making a claim for these goods, he is obliged to ask for an expert opinion before the end of the working day following delivery, in default of which the burden of proof is shifted.

I suppose that that is more or less the opinion expressed by Sir Leslie Scott. We have not supported the proposals made because, with us, we prefer to grant consignees a reasonable time from the unloading of goods. But I am persuaded that my Government will exam-
que dans notre loi suédoise actuelle il est stipulé que lorsque des marchandises ont été délivrées à un réceptionnaire dénué d’expertise et s’il entend réclamer ensuite à raison de ces marchandises, il a l’obligation de demander une expertise avant l’expiration du jour ouvrable suivant la livraison, à défaut de quoi le fardeau de la preuve est renversé.

Je suppose que c’est là à peu près l’avis exprimé par Sir Leslie Scott. Nous n’avons pas suivi les propositions faites parce que chez nous, nous préférons donner aux réceptionnaires un temps raisonnable à partir de l’enlèvement des marchandises. Mais je suis persuadé que mon Gouvernement examinera avec attention les propositions qui ont été faites ici de divers côtés.

M. le Président. Quelle est votre opinion au sujet de la question en discussion, savoir si notification de la réclamation doit être faite avant l’enlèvement ou bien les vingt-quatre ou quarante-huit heures après l’enlèvement?

M. Bagge. Je suis d’avis qu’il vaut mieux de laisser au juge le soin de décider si cette notification a été faite dans un délai raisonnable. Par conséquent, le fardeau de la preuve est renversé. Je sais bien qu’il en résulte une incertitude pour le négociant et pour l’homme d’affaire mais cela a certainement l’avantage de permettre au juge de rendre des décisions tout à fait équitables.

M. le Président. Ceci est une troisième proposition, qui consiste à laisser la durée du délai à l’appréciation du juge. Il serait difficile d’entrer dans cette voie. Il ne s’agit pas en effet d’une fin de non-recevoir, mais d’une question de preuve. Il faudrait donc arriver à une formule qui donne satisfaction aux délégations française et italienne.

Imaginez que l’on n’ait pas fait une protestation dans les vingt-quatre heures. Le réceptionnaire est
dono supposé avoir reçu la marchandise
dans l’état décrit dans le connaissement.
La délégation anglaise dit que c’est une
présomption, mais que l’on peut faire la
preuve contraire et je suis bien sûr
qu’avec la jurisprudence de nos tribunaux,
le chargeur pourra agir cinq ou six
mois après pour prouver que la mar-
chandise a été avariée par eau de mer.
L’armateur va donc être exposé à ces ré-
clamations pendant tout ce temps. C’est
pour cela que j’ai demandé, qu’après un
délai de quarante-huit heures, la remise
de la marchandise sans protestation
constitue une présomption absolue.

M. Berlingieri. - Parfaitement, une
déchéance!

M. le Président. - Cela est aller trop
loin, c’est toucher le fond de l’affaire.
D’ailleurs, si vous êtes déjà couvert par
la présomption, la preuve est difficile à faire.

M. Ripert. - Non pas si l’on prouve que
l’avarie se rapporte au transport par mer et
vous aurez une action pendant un an.

M. le Président. - Je vous signale que
toute cette situation va être considéra-
blement modifiée au point de vue de la
preuve par l’adoption de ces règles.
N’oubliez pas que désormais, il ne suffi-
ra plus de prouver que l’avarie est pro-
duite par eau de mer. Vous devrez prou-
ver la cause de l’avarie, parce que toutes
les fautes nautiques, qui peuvent causer
une avarie par eau de mer ne sont plus
comprises dans la responsabilité du pro-
priétaire. Je crois que si vous avez ce re-
cours vous serez bien couverts et je
criais qu’il ne soit impossible d’obtenir
l’accord des Anglais et des Américains,
sur votre proposition de déchéance.

Je crois que nous pourrions nous en-
tendre de la façon suivante:
1° Adopter dans ses grandes lignes l’article 6;
2° Examiner si on peut donner un
délai supplémentaire de vingt-
quatre ou quarante-huit heures;
3° Réduire la prescription à un an.

Enfin, on pourrait se mettre d’accord
pour ne pas exiger de réserves par écrit
lorsque l’état des marchandises a été
constaté contradictoirement.

posed to have received the goods in the
condition described in the bill of lading.
The English delegation says that that is
prima facie evidence, but that one can
present contrary proof, and I am sure
that with the jurisprudence of our courts
the shipper will be able to bring suit five
or six months afterwards to prove that
the goods had been spoilt by seawater.
The shipowner is going to be exposed,
therefore, to claims throughout this time.
That is why I asked that after a time lim-
it of 48 hours, the delivery of goods with-
out protest should constitute an absolute
presumption.

Mr. Berlingieri. - Exactly, forfeiture!

The Chairman. - That is going too
far, it is touching the heart of the matter.
Moreover, if you are already covered by
the presumption, the proof is difficult.

Mr. Ripert. - Not if it is proven that
the damage is related to the carriage by
sea and you bring a suit within a year.

The Chairman. - I would point out to
you that this entire position is going to
change considerably from the eviden-
tiary point of view with the adoption of
these rules. Don’t forget that henceforth
it will no longer be sufficient to prove
that the damage is produced by seawater.
You will have to prove the cause of the
damages because all the nautical faults
that can cause damage by seawater are
no longer included in the owner’s liabili-
ty. I believe that with this recourse you
will be well covered, and I fear that it will
be impossible to obtain the agreement of
the English and Americans to your pro-
posal of forfeiture.

I believe we can reach agreement in
the following way:
1. The adoption of the main lines of
paragraph 6.
2. Examination of whether we might
grant a supplementary time period
of 24 or 48 hours.
3. A reduction of the limitation peri-
od to one year.

Finally, we can reach agreement by
not demanding reservations in writing
when the condition of the goods had
been cross-checked.

Article 3 (6) - Notice of loss or damage
Conférence Diplomatique - Octobre 1923  
Séances de la Sous-Commission  
Deuxième Séance Plénière -  
6 Octobre 1923

M. de Rousiers. - C’est déjà constaté par écrit alors?

Diplomatic Conference - October 1923  
Meetings of the Sous-Commission  
Second Plenary Session -  
6 October 1923

Mr. de Rousiers. - Is it already certified in writing then?

[52]

M. le Président.  

On the subject of article 3, § 5, there were no comments.

Concerning paragraph 6, relevant to the measures to be taken for making statements of loss and damages, the Chairman indicated that the English delegation, in an attempt to avoid a misinterpretation of the phrase “les réserves sont inutiles s’il y a constatation contradictoire au moment de la réception” (the notice in writing will not be admissible if the state of the goods has, at the time of their receipt, been agreed to be otherwise than as stated in the notice), had provided him with an English translation and asked to state that the formula submitted conformed to the spirit of the convention. There was room to take into account the fact that in England the practice of cross-checking was not customary.

Sir Leslie Scott read the text: “No notice in writing need be given if at the time of delivery the extent of loss or damage has been ascertained between representatives of the goods and of the ship or a joint survey held”.

The Chairman translated it thus: “Aucun avis par écrit ne doit être donné si au moment de la livraison, la perte ou le dommage a été constaté entre les représentants de la marchandise et du navire ou si une expertise commune a été tenue”.

Mr. Ripert asked if this text was to be introduced into the convention.

The Chairman responded negatively.

M. le Président.

Au sujet de l’article 3, § 5, il n’y a pas d’observations.

En ce qui concerne le par. 6 relatif aux mesures à prendre pour faire les constatations de pertes ou avaries, M. le Président signale que la délégation anglaise en vue d’éviter une mauvaise interprétation des termes “les réserves sont inutiles s’il y a constatation contradictoire au moment de la réception” lui a remis une traduction anglaise et demande de constater que la formule qu’elle soumet est conforme à l’esprit de la convention. Il y a lieu de tenir compte du fait que en Angleterre n’existe pas l’habitude des constatations contradictoires.

Sir Leslie Scott donne lecture du texte: “No notice in writing need be given if at the time of delivery the extent of loss or damage has been ascertained between representatives of the goods and of the ship or a joint survey held”.

M. le Président le traduit ainsi: “Aucun avis par écrit ne doit être donné si au moment de la livraison, la perte ou le dommage a été constaté entre les représentants de la marchandise et du navire ou si une expertise commune a été tenue”.

M. Ripert demande si ce texte sera introduit dans la convention.

M. le Président répond négativement; le texte de la convention est du reste meilleur. La commission constate que la formule anglaise peut donner satisfaction.
M. Richter fait observer que dans la convention figure à plusieurs reprises l’expression “dommage” sous des formes différentes “dommage causé aux marchandises”, “dommages les concernant”, “dommages survenant aux marchandises”, etc. Il voudrait savoir si ces expressions signifient le dommage matériel seulement ou bien si elles comprennent également le retard par exemple.

M. le Président reconnaît qu’il serait désirable d’employer partout la même expression. Quant à l’interprétation des mots pertes et dommages, il estime qu’il s’agit de toutes les causes légitimes de dommages-intérêts.

M. Richter constate que les retards rentrent dans cette expression.

M. Bagge insiste sur cette constatation; il voudrait savoir si les retards tombent sous les Règles de la Haye, étant donné qu’il est stipulé que le transporteur doit veiller de façon appropriée au chargement et au déchargement des marchandises transportées. Si le chargement ou le déchargement est retardé de façon à causer un dommage, le transporteur sera-t-il tenu de ce retard en vertu de la convention.

M. le Président estime que oui. Ce retard fera partie des pertes et dommages qui résultent du contrat.

M. Bagge fait ressortir qu’il est d’une très grande importance de savoir si les règles sont limitées aux dommages à la cargaison elle-même ou non. De la solution de cette question pourrait aussi dépendre l’interprétation de l’art. 4 § 3 qui contient des stipulations quant aux dommages subis par le navire.

M. le Président ne partage pas l’opinion de M. Bagge qui pense que les termes de la clause 3 ont besoin d’être précisés pour ne pas comprendre dans les pertes et dommages les surestaries, ou d’autres causes du même genre. Quant il s’agit de pertes ou dommages certains occasionnés par l’inexécution des clauses de la convention, il faut y comprendre tout ce qui normalement rentre dans les dommages-intérêts. Ainsi si une marchandise est endommagée et que par
suite d’un retard le dommage s’aggrave de façon à ce qu’il faudra réfectionner les colis, l’ensemble de ce dommage doit être considéré comme un dommage à la marchandise.

M. Bagge demande quelle est, dans ce cas, la solution, s’il n’y a pas de dommage à la cargaison elle-même, mais s’il s’agit uniquement d’un dommage provenant de retard, la baisse du prix de la marchandise par exemple, ou bien l’arrivée tardive d’une cargaison saine.

M. Ripert constate que si le dommage provient d’un retard, il n’y a pas de fin de non-recevoir; il n’y a que la prescription du 4° alinéa du § 6. Au sujet de cette prescription d’un an à partir de la délivrance de la marchandise ou à partir de la date à laquelle elle eût dû être délivrée, une difficulté surgit: celle de connaître la date exacte. Il y a certains contrats qui parlent de la date approximative d’arrivée au port, mais personne ne connaît la date de délivraison, à moins que le capitaine ne décharge d’office. Or, quand il s’agit d’une prescription d’un an, jour par jour, la question présente une très grande importance.

M. le Président répond que les tribunaux fixeront cette date. Normalement, la date à laquelle les marchandises auraient dû être délivrées, est la date d’arrivée du navire. Ainsi, dans le cas d’un connaissance donnant la faculté de délivrer par un autre navire ou de réexpédier par un second navire, le tribunal dira que normalement cette marchandise devait être délivrée à l’arrivée du navire et dans la détermination de cette date, il ne se montrera pas difficile si les destinataires usent d’une diligence raisonnable. Ces questions de prescription internationale sont délicates, parce que beaucoup de législations nationales n’en prévoient pas; mais, dans la pratique, peu de difficultés se présentent parce que, celui qui doit recevoir des marchandises à tout intérêt à ne pas attendre longtemps. Quant à la question posée par M. Richter il est entendu que la Convention ne limite pas le droit commun et que tout ce que le droit commun comprend comme dom-

what was understood by damages. So if goods were damaged and as a result of a delay this damage was worsened in a way that necessitated repairs to the packages, all of this damage must be deemed as damage to the goods.

Mr. Bagge asked what the solution would be if there was no damage to the cargo itself but it was uniquely a matter of damage resulting from delay, a fall in the price of goods, for example, or the late arrival of a sound cargo.

Mr. Ripert stated that if the damage resulted from a delay there was no estoppel. There was only the time limit of the fourth paragraph of article 3(6). On the matter of the limitation period of one year from delivery of the goods or from the date on which delivery had been due, there was a problem; that of knowing the precise date. There were certain contracts that spoke of the approximate date of arrival in port, but no one knew the date of delivery unless the captain officially unloaded. When it was a matter of a limitation period of one year, day by day, the question was of very great importance.

The Chairman replied that the courts would fix that date. Normally, the date at which the goods would have been due to be delivered was the date of the arrival of the ship. Thus, in the case of a bill of lading providing the right of delivery by another ship or of transshipment by a second ship, the court would say that normally these goods were to be delivered on the arrival of the ship and within the expiration of this date. This would not prove difficult if the receivers used reasonable diligence. These questions of international limitation periods were delicate ones, because many national laws did not provide for them but, in practice, few difficulties were encountered because the person who was to receive the goods had every interest in not waiting long. As far as the question posed by Mr. Richter was concerned, it was understood that the convention did not limit general law and that all that general law included as damages and losses would al-
mages et avaries sera également compris dans la convention.

M. Berlingieri demande quelle serait la solution si, par application de l’article 4, par. 4, il y avait un déroutement déraisonnable.

M. le Président répond qu’il y aurait une indemnité de retard dans ce cas.

M. Struckmann estime que dans l’alinéa dernier du § 6, de l’article 3, l’expression “perte ou dommage certains ou présumés” ne correspond pas au texte anglais “actual or apprehended loss”.

M. Berlingieri fait observer qu’il s’agit d’une disposition purement académique sur la solidarité entre le transporteur et le réceptionnaire, solidarité qui n’existe pas.

On pourrait donc supprimer cet alinéa.

M. Alten, revenant au 1er alinéa du § 6 qui stipule que le réceptionnaire doit donner avis des pertes ou dommages avant ou au moment de l’enlèvement des marchandises, signale que, puisque la phrase ne porte pas “au moment où les marchandises doivent être enlevées”, le destinataire ou le réceptionnaire pourrait retarder arbitrairement son obligation de donner avis. Il vaudrait mieux par conséquent supprimer la règle contenue dans ce paragraphe.

M. le Président répond qu’en pratique le destinataire désire recevoir sa marchandise le plus tôt possible. S’il ne se présente pas et qu’il abandonne sa marchandise, il agit généralement à l’encontre de son intérêt ou la marchandise n’a plus de valeur et dans ce cas l’armateur peut s’adresser au chargeur pour réclamer le fret. Mais en tout cas les droits du transporteur ne sont pas diminués par la convention.

Fifth Plenary Session -
8 October 1923

M. Bagge signale que le mot “dommage” apparaît dans différents articles, dommages (art. III, § 6, art. IV, § 1, 2, 3, 4) dommage concernant les marchan-

so be included in the convention.

Mr. Berlingieri asked what the solution would be if, as in article 4(4), there was an unreasonable deviation.

The Chairman replied that there would be an indemnity for delay in this case.

Mr. Struckmann felt that in the last paragraph of article 3(6), the phrase “perte ou dommage certains ou présumés” (certain or presumed loss or damage) did not correspond to the English text “actual or apprehended loss”.

Mr. Berlingieri pointed out that it was a matter of a purely academic provision on the fellowship between the carrier and the receiver, fellowship that did not exist.

Therefore this paragraph could be deleted.

Mr. Alten, returning to the first paragraph of article 3(6), which stipulated that the receiver must give notice of loss or damage before or at the time of the removal of the goods, indicated that because the phrase did not say “at the time when the goods must be removed”, the consignee or the receiver could arbitrarily retard his obligation to give notice. It would be better, consequently, to delete the rule contained in this paragraph.

The Chairman replied that, in practice, the consignee wanted to receive his goods as soon as possible. If he did not appear, but abandoned his goods, it was a matter generally against his interest or the goods no longer had any value. In that case the shipowner could turn to the shipper to reclaim the freight charge. But, in any case, the rights of the carrier were not lessened by the convention.

Cinquième Séance Plénière -
8 Octobre 1923

[90]

Mr. Bagge indicated that the word “damage” appeared in different articles: damage (article 3(6); article 4(1), (2), (3), (4)), damage in connection with goods
dises (art. III, § 8) dommage causé aux marchandises ou les concernant (art. IV, § 5 et 6) dommage survenant aux marchandises ou concernant leur soins. Comme la délégation allemande l’a souligné, il croit nécessaire de stipuler que ces expressions ne se rapportent qu’aux dommages matériels causés aux marchandises et non à d’autres dommages spéciaux comme ceux résultant du retard.

M. le Président répond que la signification de ce mot s’entend d’après le droit commun. Tout ce qui n’est pas réglé par la convention sera réglé par la législation nationale; bien entendu ce mot ne comprend pas les dommages indirects, il ne s’applique qu’aux dommages [91] qui normalement donnent lieu à dommages-intérêts au cours du transport maritime. Mais c’est aux législations nationales qu’il appartiendra de décider si dans un compte de dommages-intérêts quant aux marchandises, il faudra comprendre tel article ou tel poste.

M. Bagge demande si le dommage résultant d’un retard sans que la marchandise elle-même soit endommagée tombera sous l’application de la règle.

M. le Président déclare que non, ces règles ne concernant que le transport de marchandises.

Septième Séance Plénière - 9 Octobre 1923

M. Richter demande aussi de constater dans le rapport la portée des mots “contradictoirement constatés” dans le paragr. 6 de l’article 3.

M. le Président déclare que le rapport contiendra l’interprétation indiquée par les délégués anglais, qui ont demandé de constater que ces mots signifient que les deux parties, soit le capitaine, ou ceux qui représentent le navire, soit les intérêts cargaison, ont constaté entre eux l’état de la marchandise, ou qu’une expertise impartiale a été faite.

Seventh Plenary Session - 9 October 1923

Mr. Richter also asked for the scope of the words “agreed to be otherwise”, in article 3(6) to be determined.

The Chairman stated that the report would contain the interpretation given by the English delegates who had asked to state that these words signified that the two parties, either the captain or two who represented the ship or the cargo interests, had determined between themselves the state of the goods, or that an impartial expert had done so.
ARTICLE 3

6. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

En tout cas le transporteur et le navire seront déchargés de toute responsabilité pour pertes ou dommages à moins qu’une action ne soit intentée dans l’année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées.

ILA 1921 Hague Conference
Text submitted to the Conference
[None]

Second day’s proceedings - 31 August 1921

[112]

Lord Phillimore: This is quite a different matter, Sir, but on the same clause. We are not passing an Act of Parliament or a Bill. As I understand we are merely incorporating clauses in a bill of lading. I rather doubt whether the Courts would pay attention to a limitation of liability in the way of time that we put in the bill of lading. This last clause “and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within twelve months after the delivery of the goods” seems to me to be legislation. At any rate, I think it ought to be expressed in some other way. It looks as if we were making a special statutory limitation in a case of this kind, and as a lawyer it strikes me that that is rather an infringement upon the powers of the legislature, or might be so construed in some countries. I think it ought to be put in some quite different way (I have not thought how) to show that it is a contract by the shipper that he will not sue after twelve months. I think the real way to put it is something of this sort: “and the consignee undertakes to make no claim unless he brings it within twelve months” - something of that kind; I have not thought it out; but I think there are objections to it as it stands.

The Chairman: Lord Phillimore has brought to the notice of the Committee two matters which raise questions for the Drafting Committee, which is what I think he intends.

Lord Phillimore: Yes.

[114]

Mr. McConchy: There is one further point which I think should be referred to the Drafting Committee. The proposed clause as it stands now does not, I think, cover the
case where the goods are not delivered at all. For the purpose of saying when the time shall run, I suggest that the Drafting Committee should put in some such words, at the end of the clause as it stands now, as “or if the goods are not delivered, unless suit is brought within twelve months from the time when the goods would normally have been delivered”.

The Chairman: My impression is that the clause is not intended to deal with the failure to carry out the contract at all; it is intended to deal with the partial failure, but I am sure the Drafting Committee will take notice of the observations that have been made. The question is that the new clause 6 stand part of the draft. Is that agreed? (Agreed).

Text adopted by the Conference

[258]

.......................................................... AND IN ANY EVENT THE CARRIER AND THE SHIP SHALL BE DISCHARGED FROM ALL LIABILITY IN RESPECT OF LOSS OR DAMAGE UNLESS SUIT IS BROUGHT WITHIN 12 MONTHS AFTER THE DELIVERY OF THE GOODS.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[365]

.......................................................... and in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within 2 YEARS after the delivery of the goods OR THE DATE WHEN THE GOODS SHOULD HAVE BEEN DELIVERED.

Morning sitting of 10 October 1922

[349]

Sir Norman Hill: ..........................................................
When you come to the question of how long, whether it should be 12 months or two years, the gentlemen I dealt with representing the cargo owners who were not at the Hague attached importance to it being extended to two years. Frankly I think it unfortunate that I agreed [350] to two years for the purpose of the Imperial legislation here, and I must stand by that agreement.

Afternoon sitting of 10 October 1922

[402]

Mr. F. Berlingieri (Genoa): ..........................................................
Certes, Messieurs, nous ne pouvons nous dissimuler que ces règles ont besoin de quelques améliorations et modifications. Ainsi, dans le projet présenté à la Conférence, j’ai remarqué que l’on a prolongé la période de prescription jusqu’à deux années. Je trouve pour ma part que cela est énorme. En Italie, la jurisprudence est orientée dans le sens d’une diminution et je pense qu’un prescription d’une année suffit, comme cela est prévu dans les Règles de la Haye.
Afternoon sitting of 11 October 1922

Sir Norman Hill (Rapporteur of the Sub-Committee):

The time within which suit is to be brought is of vital importance, but I think we are all agreed that the only thing we want to do, is to fix a reasonable time. I think that our French friends agree that their month is a little short; I think that our French friends and some other of our friends agree that possibly six years is rather long. (Laughter).

Sir Norman Hill:

Then, Sir, there is the next point, and if I am not conveying the views of the Sub-Committee - I did my best to ascertain them - I shall regret it very much with regard to my fellow members and still more to the Conference. As I understand it our recommendation is that we leave to the Diplomatic Conference to settle, we accepting their decision, first, the time from which the notice of loss or damage is to run - that depends upon what is to be treated as delivery, as the handing over from the ship. Secondly the time within which suit is to be started or claim barred,

The Chairman:

Now with regard to the second question, the limitation of suits, the limitation of actions, is it agreed that the just period to be fixed as that within which action is to be brought should be left to the Diplomatic Conference?

Sir Stephen Demetriadi: I am in a little difficulty in accepting that. In this country we deal very largely with Australia, a great distance from here. If we are given 12 months within which to bring a suit, we may have to send out to Australia for certain information. If that information is not right we have not time to refer it back again and get it back within a twelve month. It is a great distance from here to Australia. That is why we put in two years.

The Chairman: May I point out that I hope the members of the Diplomatic Conference, with the assistance of Sir Leslie Scott, will recognise what are the various centres of commercial action and what are the periods of correspondence between them, which must be safeguarded by the period of limitation fixed by their decision?

Sir Stephen Demetriadi: If I may put it in this way, having brought it to the attention of this Meeting, I leave it at that.

The Chairman: Thank you. Then is it agreed to leave that question to the Diplomatic Conference? (Agreed).

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.
M. le Président fait observer que la Conférence de Londres du Comité Maritime International n’est pas arrivée à un accord complet au sujet de cet article, mais a laissé à la Conférence de Bruxelles le soin de fixer dans quel délai, notification de perte ou de dommage doit être introduite. Le Président prie donc les membres de bien vouloir élaborer un autre texte, afin de faciliter l’examen de toute la question.

À cet effet, il propose lui-même le texte suivant:

en aucun cas non plus, le navire ou le transporteur ne seront ou ne deviendront responsables du chef de pertes ou dommages, apparents ou non apparents, à moins qu’une action de ce chef n’ait été intentée dans l’année qui suit l’arrivée du navire au port de déchargement”.

M. Bagge, Délégué de la Suède, propose de modifier le début de la disposition comme suit:

“A moins que notification d’une réclamation pour perte ou dommage et la nature générale de cette réclamation ne soit signifiée par écrit au transporteur ou à son agent au port de déchargement dans un délai raisonnable après l’enlèvement des marchandises…” (le reste comme dans le texte original).

Le délai pour intenter l’action devrait, en outre, être réduit de deux ans à une année.

En présence de ces divers textes, la Commission décide de procéder à un vote au sujet de cet article.

L’amendement du Délégué des États-Unis et du Délégué de la Suède ne recueillent chacun qu’une voix. Les Délé-
M. Ripert.

Je demanderai à la Délégation anglaise deux choses: La première est que la notification ne doive pas se faire immédiatement, s'il s’agit d’avaries non apparentes, afin de donner au chargeur un délai de vérification. La deuxième serait d'abaisser la prescription à un délai beaucoup plus court. De cette façon, nous sauvegarderions les droits des réceptionnaires de marchandises qui ne peuvent pas toujours connaître les avaries subies et nous sauvegarderions surtout les armements qui sauraient au bout de quel délai, court, ils n’ont plus à redouter de réclamations des chargeurs. Je demande que ce soit véritablement une compromis non pas seulement entre chargeurs et propriétaires anglais, mais entre les systèmes de droit de tous les pays.

M. Berlingieri.

Pour ce qui est du délai de la prescription, j’ai vu que la commission l’avait réduit à un an. À présent, on réclame deux ans. En Italie, nous ne pourrions accepter ce terme de deux ans; tout au plus une année. Dire qu’un armateur doit rester sous la menace d’une action de la part du réceptionnaire pendant deux années après le départ de son navire, c’est impossible et nous ne pourrions l’accepter en Italie.

Comme j’ai la parole sur cette question, je me permets de signaler un doute que je porte à l’article de la proposition du Délégué français, tandis que ceux de la Belgique et de la Grande-Bretagne votent pour le maintien du texte de l’avant-projet.

Dans ces conditions, il est décidé de faire trancher la question par la Conférence plénière, en donnant l’occasion aux membres de s’entendre dans l’intervalle avec leurs collègues en vue d’arriver à une solution.

Sixième Séance Plénière - 24 Octobre 1922

M. Ripert.

I shall ask the English delegation two things: The first is for the notice not to be given immediately in a case of non-apparent damages so as to give the shipper time to verify. The second is greatly to reduce the prescribed time limit. In this way, we shall safeguard the rights of the receivers of goods who cannot always recognize the damages that have occurred and we shall safeguard above all the shipowning interests that would know at the end of what time, they need no longer fear the claims of the shippers. I ask that this should be truly a compromise not only between English shippers and owners but among legal systems from all nations.

Mr. Berlingieri.

As for the matter of the prescribed time limit, I see that the commission reduced it to one year. At present we are claiming two years. In Italy we could not accept a term of two years, at the most one year. To say that a shipowner must remain under threat of a suit from the receiver for two years after the departure of his ship is impossible and we would not be able to accept it in Italy.

As I have the floor on this issue, I will allow myself to reveal a doubt that I have. We are about to set a prescribed time limit. Supposing that we set it at one year. Do you believe that in a bill of lading the shipowner will have the facility to...
qui me vient. Nous allons donc établir un délai de prescription. Supposons que nous l’arrêtions à une année. Croyez-vous que dans un connaissement l’armateur ait la faculté de réduire ce délai. Y a-t-il, dans la Convention, une disposition qui empêche l’armateur de réduire ce terme? D’après les principes du droit commun, un délai de prescription ne peut être prolongé, mais il peut être restreint: c’est la doctrine chez nous. Or, il y a des connaissements de compagnies de navigation qui ont réduit le délai de prescription prévu par la loi. Croyez-vous qu’aux termes de notre convention, le propriétaire de navires ou le capitaine puissent réduire le terme, par exemple, à six mois ou à trois mois? C’est une question. Je suis d’avis qu’il faudrait l’empêcher. Il y a dans cet article, sous le n° 8, une disposition qui porte: “Toute clause, convention ou accord dans un contrat de transport exonérant le transporteur ou le navire de responsabilité pour perte ou dommage concernant des marchandises, provenant de négligence, faute ou attendant cette responsabilité autrement que ne le prescrit la présente Convention, sera nulle, non avenue et sans effet”. Croyez-vous que cette disposition comprenne le cas que je viens de signaler? Je ne le crois pas, et si nous voulons empêcher qu’on réduise le délai de prescription il faudra le dire dans la Convention. On pourrait peut-être soutenir que cet article empêche l’armateur de le faire, mais il vaut, en tout cas, mieux se mettre d’accord sur ce point et l’éclaircir de façon qu’il n’y ait plus de doute possible.

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M. Beecher. - Cet article est probablement celui qui soulèvera le plus d’opposition de part et d’autre si nous le modifications. Sur un point il devrait cepen-dant être modifié, c’est en ce qui concerne le délai de deux ans accordé pour introduire l’action. Nos armateurs sont unanimes à dire que c’est là une invita-

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Mr. Beecher. - This article is probably the one that will raise the most opposition on all sides if we were to change it. It should be changed on one point, however, and that is on the matter of the two-year time-limit within which suit can be brought. Our shipowners are unanimous in saying that it is an invitation to fraud-
tion aux réclamations frauduleuses et je crois que nos chargeurs insisteront pour avoir deux ans dans l’espoir d’obtenir un délai d’un an. Quant aux autres modifications proposées, il serait nécessaire de nous en donner le texte et de nous laisser le temps de les examiner.

M. le Président. - Je vous signale que toute cette situation va être considérablement modifiée au point de vue de la preuve par l’adoption de ces règles. N’oubliez pas que désormais il ne suffira plus de prouver que l’avarie est produite par eau de mer. Vous devrez prouver la cause de l’avarie, parce que toutes les fautes nautiques, qui peuvent causer une avarie par eau de mer ne sont plus comprises dans la responsabilité du propriétaire. Je crois que si vous avez ce recours vous serez bien couverts et je crains qu’il ne soit impossible d’obtenir l’accord des Anglais et des Américains, sur votre proposition de déchéance.

Je crois que nous pourrions nous entendre de la façon suivante:
1° Adopter dans ses grandes lignes l’article 6;
2° Examiner si on peut donner un délai supplémentaire de vingt-quatre ou quarante-huit heures;
3° Réduire la prescription à un an.

Enfin, on pourrait se mettre d’accord pour ne pas exiger de réserves par écrit lorsque l’état des marchandises a été constaté contradictoirement.

Septième Séance Plénière - 25 Octobre 1922

Sir Leslie Scott. - Un seul article est encore à régler. Nous avons réservé hier l’article III/6, au sujet duquel nous avons eu de longues discussions et qui nous a causé bien des difficultés. Depuis lors nous avons eu plusieurs conversations entre délégues français et anglais et nous ulent claims and I believe that our shippers will insist on having two years in the hope of obtaining a limit of one year. So to the other proposed amendments, it would be necessary to give us the text and then allow us time to study them.

The Chairman. - I would point out to you that this entire position is going to change considerably from the evidentiary point of view with the adoption of these rules. Don’t forget that henceforth it will no longer be sufficient to prove that the damage is produced by seawater. You will have to prove the cause of the damages because all the nautical faults that can cause damage by seawater are no longer included in the owner’s liability. I believe that with this recourse you will be well covered, and I fear that it will be impossible to obtain the agreement of the English and Americans to your proposal of forfeiture.

I believe we can reach agreement in the following way:
1. The adoption of the main lines of paragraph 6.
2. Examination of whether we might grant a supplementary time period of 24 or 48 hours.
3. A reduction of the limitation period to one year.

Finally, we can reach agreement by not demanding reservations in writing when the condition of the goods had been cross-checked.

Seventh Plenary Session - 25 October 1922

Sir Leslie Scott. - One article alone remains to be decided. Yesterday we passed over article 3(6), on which we have had long discussions and which has caused us many difficulties. Since then there have been several discussions between the French and the English dele-
nous sommes ralliés à la proposition de notre Président. J’espère que la Conférence voudra bien accepter cette rédaction, parce qu’il est extrêmement difficile de n’apporter aucun changement à cet alinéa. Nous suggérons donc d’adopter la rédaction suivante: “à moins qu’une notification de pertes ou dommages et la nature générale de ces pertes ou dommages ne soient donnée par écrit au transporteur ou à son agent dans le port de déchargement, dans le cas où il s’agit de dommages apparents avant ou au moment de l’enlèvement des marchandises et de leur remise sous la garde de la personne ayant droit à la délivrance sous l’emprise du contrat de transport, ou dans le cas d’avaries non apparentes dans les trois jours du dit moment, cet enlèvement constituera jusqu’à preuve contraire, une présomption que les marchandises ont été livrées par le transporteur, etc.”.

Nous maintenons le reste de l’article tel qu’il est rédigé, sauf que pour le délai nous le réduisons de deux ans à un an.

M. le Président. - Vous adoptez donc, je crois, la rédaction proposée par le Délégué des États-Unis, à la Commission?

Sir Leslie Scott. - Oui, Monsieur le Président.

M. le Président. - “Notification d’un avis” n’est pas le mot propre.

Sir Leslie Scott. - La rédaction n’est peut-être pas très bonne, mais c’est le principe qui importe.

M. le Président. - Donc la Délégation anglaise propose de dire:

1° Qu’en cas d’avaries occultes avis des pertes ou dommages devra être donné dans les trois jours après la délivrance de la marchandise, et

2° De réduire le délai de deux ans à un an. En substance, c’est à peu près ce que j’avais eu l’honneur de proposer; seulement, j’avais dit quarante-huit heures au lieu de trois jours. Il est bien entendu, n’est-ce pas, que les réserves sont inutiles si l’état des marchandises a été constaté contradictoirement au moment de l’enlèvement?

M. Ripert. - D’accord!

M. Berlingieri. - Je me rallie aussi à ce texte.

M. le Président. - Sauf rédaction on est donc d’accord sur ce texte.

gates and we have come round to supporting the proposal of our Chairman. I hope that the conference is willing to accept this drafting as it seems extremely difficult not to make any alteration to this item. We therefore suggest the following drafting: “Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal [153] of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods, etc.”.

We retain the rest of the article as it stands, except for the limitation period, which we would like to reduce from two years to one.

The Chairman. - I believe you are adopting the text proposed to the commission by the delegate from the United States.

Sir Leslie Scott. - Yes, Mr. Chairman.

The Chairman. - “Notification d’un avis” (notice of a notice) is not a very good way of putting it.

Sir Leslie Scott. - The drafting is not perhaps very good, but it is the principle that matters.

The Chairman. - The English delegation is therefore proposing the following:

1. That in the case of non-apparent damages, notice for loss or damages should be given within the three days following delivery of the goods, and:

2. A reduction in the limitation period from two years to one. In substance, this is more or less what I had the honour of proposing, only I had said 48 hours instead of three days. It is appreciated, I hope, that reservations are useless if the condition of the goods has been cross-checked at the time of removal?

Mr. Ripert. - Agreed!

Mr. Berlingieri. - I too support this text.

The Chairman. - So, apart from drafting, we are in agreement on this text.
ARTICLE 3
Text as amended by the 1968 Protocol

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

M. J. Moore (United States): . . . . .

[448]
The next subject was the time limit in respect of claims for wrong delivery.

[449]
The Maritime Law Association of the United States on this point finds itself in the large majority, which would simplify and clarify the present rule by specifically making the carrier’s liability with respect to the goods subject to a limitation as to time, only as regards loss or damage but in other respects as well.

Those who have expressed a preference for maintaining the status quo on these points either have indicated that preference as a choice between the Sub-
The Travaux Préparatoires of the Hague and Hague-Visby Rules

de la Commission tendant à appliquer une prescription de deux ans aux réclamations concernant une livraison à une personne qui n'y a pas droit, et le statu quo, soit comme une opposition à la rédaction.

Il semble qu'un amendement clairement rédigé, prévoyant une prescription d'un an sur une base plus large emportera l'approbation générale.

It appears that a clearly drafted revision providing for a one year limitation on a broadened basis would receive general approval.

Committee on Bills of Lading Clauses
Verbatim Reports No. 8 - 12 June 1963 P.M.

M. Le Président (J. Van Ryn):

Mr. J. C. Moore (United States of America). Mr. Chairman, as I understood the position at the end of the day yesterday, the Chairman asked us to sleep on this and see if we could simplify it in the morning. I have talked with a number of my colleagues who have, and as a result the United States delegation moves the following Resolution:

“The Sub-Committee having fully considered the question of the time limit for claims by cargo owners against carriers directs the Drafting Committee to prepare and submit a draft amendment to the 3rd paragraph of Article 3(6) of the Hague Rules, such amendment to provide a one year limitation of time to sue in the broadest possible terms”.

M. Le Président. Je remercie M. Moore de sa communication. Mais je crois que je dois faire une première observation. Tel que l’amendement est proposé, il tend à donner au comité de rédaction une compétence qui n’est pas la sienne. Avant que nous ne demandions au comité de rédaction d’établir un texte, il faut évidemment que la commission elle-même se soit prononcée sur le fond de la question. Or, sur le fond de la question précisément, étaient apparues hier des difficultés.

Si je puis résumer ce qui avait été dit hier de part et d’autre, je crois pouvoir le faire comme ceci: on a reproché à la recommandation de la commission internationale de donner seulement une solution partielle au problème en se bornant à mentionner la prescription en ce qui concerne l’action basée sur le “wrong delivery”. C’est la principale objection que l’on a faite pour éviter qu’il ne soit procédé au vote sur ce point.

L’amendement qui a été rédigé notamment par les représentants de l’association française et de l’association portugaise je crois, a pour but, si j’en comprends bien la portée, de donner au problème une solution plus complète. Je crois donc qu’avant d’envoyer le problème au comité de rédaction, il faudrait que nous nous prononcions sur cet amendement. Je suis tout disposé à mettre aux voix ensuite l’amendement de l’association américaine en tant qu’il propose simplement de généraliser la prescription d’un an de manière à ce qu’elle s’applique aussi au cas de “wrong delivery”. Mais je pense qu’il est plus logique que nous examinions en premier lieu l’amendement qui donne une solution complète, et je vous propose d’ouvrir une discussion sur ce nouvel amendement dont vous [42] avez le texte sous les yeux.
Je donnerai la parole à ceux qui le désirent pour s’expliquer au sujet de cet amendement.

La parole est à M. Prodromidés, de la délégation française.

**M. Prodromidés.** Messieurs, l’amendement qui vous est proposé est proposé au nom tant de la délégation française que de la délégation portugaise et de la délégation polonaise. Il vous est proposé sous réserve de rédaction parce que nous avons rédigé cela très activement; le texte peut être modifié par le comité de rédaction. Ce qui comporte pour le moment, ce n’est pas la rédaction, ce sont les idées. Il s’agit pour vous, de dire si vous approuvez les idées qui figurent dans cet amendement. Si vous les approuvez, il est probable que l’amendement aura besoin d’être rédigé sous une forme meilleure.

Ainsi que notre Président vous l’a rappelé, Messieurs, l’amendement part de l’idée suivante: on ne peut pas, dans notre convention, si nous décidons de nous occuper de la “wrong delivery”, traiter cette question seulement d’une façon partielle. Logiquement, vous ne pouvez pas traiter cette question sous l’angle de la prescription sans commencer par trancher le point essentiel de savoir si la convention elle-même s’applique ou ne s’applique et que vous ne dites rien de plus, elle s’applique avec la limitation de responsabilité de 10.000 Fr. par colis. Si vous parlez de la prescription seulement, implicitement on paraît dire que sur le fond même de la question on rend la convention applicable au cas de la “wrong delivery”.

Et dire implicitement que la convention s’applique au cas de la wrong delivery, sans dire un mot de plus, sera interprété comme signifiant que la convention s’applique avec sa limitation. Or, il n’est pas concevable, si le transporteur a commis la faute de remettre la marchandise à une personne qui n’est pas le porteur du connaissement, qu’il puisse dire à cette personne: je me suis trompé, voilà 10.000 Fr.

L’amendement tâche de trancher l’ensemble de la question, à la fois la question de fond pour dire premièremenet que la question s’applique, et deuxièmement qu’elle s’applique sans que, dans cette hypothèse, le transporteur puisse invoquer les dispositions de la convention qui exclut ou qui limite sa responsabilité; et la question de la prescription.

Il ya eu deux tendances. La première tendance a été de dire: nous allons conserver le délai d’un an pour que l’ensemble des actions régies par notre convention soit soumis à la non-prescription d’un an. Mais vous avez vu que la commission internationale vous a proposé un délai de deux ans. Pourquoi? Parce qu’on a dit que lorsque le réceptionnaire reçoit une marchandise avariée ou avec des manquants, il sait pertinemment qu’il a une réclamation à présenter. Il lui appartient de faire diligence et d’agir dans le délai d’un an. Mais dans le cas de la “wrong delivery”, le véritable titulaire du connaissement peut ne connaître la situation réelle, c’est-à-dire peut n’apprendre qu’il y a eu “wrong delivery” et non pas perte de sa marchandise, que beaucoup plus tard; de sorte que le comité aurait voulu que le délai d’un an de prescription commence seulement à [44] courir le jour où il a eu connaissance qu’il y a eu “wrong delivery”. Si le délai d’un an ne court qu’à partir de ce jour, le délai devient indéterminé car il peut ne prendre connaissance de cela que beaucoup plus tard, dans 2, 3 ou 4 ans.

Si cette prescription devient indéterminée dans son délai, cela présente de gros inconvénients au point de vue de la durée de la caution, de la garantie que le transporteur va demander à la personne à laquelle il va remettre la marchandise sans production du connaissement. Or, il faut que l’on sache pendant combien de temps la banque qui va donner sa caution va se trouver engagée.

Nous avons donc essayé de concilier l’idée de base de la prescription d’un an avec l’idée que tout de même il faut que le véritable titulaire qui peut ne connaître la situa-

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[44]
tion que longtemps plus tard, puisse bénéficier d’un délai plus long.

Ces deux idées se concilient en même temps avec la troisième qu’il faut tout de même qu’il y ait quelque chose d’assez précis au point de vue de la durée pour que la banque qui va donner sa garantie sache pendant combien de temps elle est tenue.

Nous vous proposons un système qui consiste à dire ceci: la prescription de l’action du véritable titulaire du connaissement contre le transporteur en cas de “wrong delivery” sera une prescription de un an à dater du jour où cette personne à eu connaissance de la “wrong delivery”, sans cependant que ce délai puisse excéder deux ans à dater de l’émission du connaissement.

Ces explications données, Messieurs, je vais rapidement vous lire le texte que vous avez sous les yeux. Je répète que ce texte contient les idées que je viens d’exprimer mais il n’est pas parfait dans sa rédaction. Si vous approuvez les idées qui sont contenues dans ce texte, le comité de rédaction verra s’il y a lieu de l’améliorer. Je vous en donne lecture:

“En cas de livraison de la marchandise à une personne qui n’y avait pas droit d’après le connaissement, l’action contre le transporteur de la personne ayant droit à la livraison se prescrit par un an à dater du jour où cette personne a eu connaissance de la livraison indûment faite sans que ce délai puisse cependant excéder deux ans à partir du jour de l’émission du connaissement. En pareil cas, le transporteur ne peut se prévaloir des dispositions de la convention qui excluent ou limitent sa responsabilité”.

Merci, Monsieur le Président.

M. Le Président. Messieurs, vous avez entendu la justification de la proposition faite par l’Association française. Je pense que nous n’allons pas ouvrir à nouveau une discussion générale sur cette question parce que nous n’en finirons pas et nous devons terminer nos travaux ce matin. Nous avons encore d’autres questions à traiter aujourd’hui. Je vous demanderai donc, si vous le voulez bien, si certains d’entre vous désirent prendre la prole, que ce soit uniquement au sujet du texte de l’amendement qui vient d’être proposé. Ensuite, nous le mettrons aux voix après avoir entendu les explications que j’espère aussi brèves que possible de ceux qui désirent en donner.

La parole est à Monsieur Gram de la délégation norvégienne.

Mr. Gram (Norway). Mr. Chairman, Ladies and Gentlemen, I have taken the floor not to discuss this question any further. I could not disagree more with the difficulties enumerated by the representative of the French Delegation, but I think we have had discussion enough and I think that if we are to make any headway we must leave some of the present difficulties to the drafting committee and I formally move that the Chairman should put the American resolution to the vote without any further discussion whether in principle or in detail.

Mr. C. Miller (Gt. Britain). Mr. President I am not going to detain you more than thirty seconds I was only going to say exactly the same thing as Mr. Gram has just proposed only probably in less felicitous language.

M. Le Président. Si personne ne demande la parole au sujet de cet amendement, nous allons, si vous le voulez bien, le mettre aux voix.

Je crois devoir attirer votre attention sur le point suivant. Cet amendement contient en réalité deux parties: la première figure dans le second alinéa de l’amendement. Il s’agit d’une proposition qui n’a rien à voir avec la recommandation de la commission internationale. Cette proposition consiste à dire que lorsqu’il s’agit d’une action fon-
Article 3 (6) - Time bar

dée sur un cas de “wrong delivery”, le transporteur ne bénéficiera pas de la limitation de sa responsabilité. Cela c’est une règle. On vous propose de l’adopter parce que l’on ne veut pas donner à cette question une solution fragmentaire et on veut donc que la question du délai de prescription soit réglée en même temps que la question de la responsabilité.

Un premier point est donc de savoir si la commission est d’accord pour adopter cette proposition suivant laquelle en cas de “wrong delivery”, le transporteur ne pourra pas se prévaloir de la limitation de la responsabilité.

L’amendement contient une deuxième proposition. C’est une proposition relative au délai de la prescription qui serait soumis, en cas de “wrong delivery”, au régime particulier un peu compliqué à première vue peut-être, qui figure dans le premier alinéa de l’amendement.

Je crois que nous devons voter séparément sur ces deux propositions; la question est de savoir dans quel ordre.

La parole est à M. Moore de la délégation des États-Unis.

[71-80]

Mr. Moore (United States). Mr. Chairman, a point of order Mr. Chairman, The parliamentary position is perfectly clear. There is only one thing we can do now which is to vote, on whether we should vote on the American resolution that question is not debatable. There is no other question before the House.

[81-90]

M. Le Président. Je crois que nous devrons voter sur la proposition américaine et nous le fcrons certainement. Mais je crois que nous devrons voter aussi sur l’amendement proposé par l’association française. Si vous le voulez bien, c’est par là que nous commencerons.

Je vais mettre les deux parties de l’amendement dont vous avez le texte sous les yeux, séparément aux voix.

Je commencerai par l’alinéa 1er qui concerne le délai de prescription. Je suppose que je n’ai pas besoin de relire ce texte puisque vous en avez connaissance. Je mets donc aux voix le 1er alinéa de l’amendement proposé par les délégations française, portugaise et polonaise.

La parole est à M. Moore de la délégation des États-Unis.

[91-100]

Mr. Moore (United States). Mr. President a point of order I appeal from the ruling of the Chair.

[101]

M. Le Président. Mais je ne peux pas répéter toujours la même chose. Ceci s’écarter de la commission internationale. Les autres amendements seront discutés par la suite, notamment celui de la délégation américaine qui consiste à généraliser le délai d’un an. Je vous en prie, ne compliquez pas la tâche du Président. Elle n’est déjà pas si simple! Mon seul souci est d’avancer le plus possible sans omettre quoi que ce soit qui doit être examiné.

Je répète donc l’ordre dans lequel nous allons voter. Nous voterons en premier lieu sur le premier alinéa de l’amendement français, portugais et polonais. Si cet amendement n’est pas adopté, nous voterons ensuite sur la proposition américaine en ce qui concerne le délai. Lorsque nous aurons fixé la question du délai, nous aborderons le
second alinea of the amendment français qui traite d’une question tout à fait différen-
te. Par conséquent, l’assemblée aura l’occasion de se prononcer successivement sur le
délai qu’elle désire voir appliquer à l’action en cas de “wrong delivery”. Lorsqu’elle au-
tra pris une décision sur ce premier point, je la consulterai sur la question de savoir si
elle désire consacrer d’autre part la règle suivant laquelle le transporteur, en cas de
“wrong delivery”, ne peut pas se prévaloir de la limitation de la responsabilité. Je pen-
se que de cette façon, nous éviterons de confondre des questions différentes.

Je mets aux voix le premier alinea de l’amendement français, portugais, polonais
par vote à mains levées.

Le premier alinea de l’amendement n’est donc pas adopté par 14 voix “contre”, 3
voix “pour” et 2 abstentions.

[102-110]

Je mets maintenant aux voix l’amendement américain. Je crois qu’il est substan-
tiellement repris dans les commentaires écrits de l’association américaine dont j’ai le
texte sous les yeux. Voici le texte de la résolution proposée par la délégation américai-
ne.

[111-120]

The President. The Sub-Committee, having fully considered the question of time
limit for claims by cargo owners against carriers, would like the drafting committee to
prepare and submit a draft amendment to the third paragraph of Article III (6) of the
Hague Rules such amendment to provide a one-year limitation of time to sue in the
broadest possible terms.

[121-130]

M. Le Président. C’est-à-dire y compris le cas de “wrong delivery”. Que ceux qui
sont en faveur de cette résolution veuillent bien lever la main.

Le projet de résolution de l’association américaine est approuvé par 15 voix
“pour”, 2 voix “contre” et 2 abstentions.

Il nous reste maintenant à nous prononcer sur le deuxième alinea de l’amendement
français, dont la portée, je le répète, est de prévoir une disposition que le comité de ré-
daction devrait évidemment encore examiner notamment quant à la place où elle de-
vrait figurer dans la convention, suivant laquelle le transporteur en cas de “wrong de-
livery” ne pourra pas se prévaloir de la limitation de responsabilité. Votons sur cette
proposition par mains levées.

Le second alinea de l’amendement des délégations française, portugaise et polon-
naise n’est pas adopté par 8 voix “contre”, 6 voix “pour” et 5 abstentions.

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M. Le Président (J. Van Ryn) ..................................................

[1]

Nous avons alors la question n° 3. Je prends les questions dans l’ordre où elles se
présentent dans le rapport de la Commission internationale.

En ce qui concerne la question n° 3, dans l’ordre des questions [2] telles qu’elles
figurent dans le rapport de la Commission internationale, le comité de rédaction s’est
efforcé d’exécuter la résolution adoptée ce matin sur la proposition de l’Association
américaine et vous propose d’adopter l’une des deux rédactions qui sont indiquées
dans le texte que vous avez sous les yeux.

Première proposition: pour l’article 3(6), “en tout cas le transporteur et le navire seront déchargés de toute responsabilité quelconque relative à la marchandise”.

Proposition de la minorité libellée comme suit: “en tout cas le transporteur et le navire seront déchargés de toute responsabilité quelconque relativement aux marchandises sous l’empire des dispositions de la présente Convention”.

La résolution invite le comité de rédaction à adopter une rédaction aussi large que possible.

Y a-t-il des observations à formuler au sujet des propositions du comité de rédaction, en ce qui concerne la question n° 3?

Il faudra que la commission prenne parti sur la rédaction qu’elle adopte, étant donné qu’il y a deux projets qui lui sont soumis, une proposition de la majorité du comité de rédaction et l’autre de la minorité.

**M. Prodromidès** (France). Il faut que je vous explique en quelques mots pourquoi vous avez deux textes. Sans explication, le texte de la minorité ne se comprend pas.

Tout cela, Messieurs, a pour cause notre bataille de ce matin sur la “wrong delivery”.

Vous vous rappelez que la Commission internationale était d’avis de ne pas s’occuper de la question de la responsabilité sur la “wrong delivery” mais seulement de la question de la prescription. Vous vous rappellerez que je proposais un délai de deux ans.

Ce matin, on a décidé, sur la proposition de M. Moore, de prendre un délai uniforme d’un an. Mais cela veut-il dire, par là même, que nous voulons trancher la question de la responsabilité, c’est-à-dire que dans le cas de la “wrong delivery”, le transporteur peut bénéficier de la limitation de la responsabilité?

Si nous prenons le texte de la majorité “toute responsabilité quelconque” cela implique qu’on ne parle pas expressément de la “wrong delivery”, cela explique que même en cas de “wrong delivery” la prescription est toujours d’un an, mais cela paraît impliquer que la “wrong delivery” se trouve traitée par la Convention et que par conséquent la Convention est applicable.

Au contraire, dans le texte de la minorité, en disant “responsabilité quelconque sous l’empire des dispositions de la Convention” on laisse la porte ouverte sur le point de savoir si la Convention s’applique ou non à la “wrong delivery”.

Si on décide que la Convention s’applique à la “wrong delivery” la prescription sera d’un an et la limitation de la responsabilité jouera, ni la limitation.

[4-10]

Autrement dit, la minorité a proposé d’ajouter les mots “sous l’empire des dispositions”, pour ne pas trancher expressément la question de “wrong delivery”, parce que cette minorité a pensé que cette question n’a pas été éclaircie à 100% ce matin. On laisse donc la porte ouverte à la discussion.

**M. Le Président.** Si plus personne ne demande la parole, je vais mettre aux voix la proposition de la majorité du comité de rédaction.

[11-20]

**Mr. P. Gram.** (Norway): Mr. Chairman, I shall be very brief. I just want to say that we take this matter up in order to clear up small practical points in the matter of wrong delivery limitation, and the minority drafting will not help us at all. I come from a country where questions of wrong delivery are not treated according to our judgments as being within the scope and for instance within the limitation as to amount of the convention. What we want to have in the whole idea by taking this up was to have one
small practical matter settled, and that was to have the time limitation, and in the minor-
ity drafting that goes overboard.

So I think I speak for other Scandinavian countries also. We will move for the ma-
jority drafting.

[21]

M. Le President. Si plus personne ne demande la parole, je vais donc mettre aux
voix la proposition de la majorité du comité de rédaction.

La rédaction proposée par la majorité est adoptée par 9 voix contre 2 et 2 absten-
tions.

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[81]

M. Le Président. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Il nous reste encore un peu de temps jusqu’à trois heures et il y a encore deux ques-
tions qui pourraient être examinées. L’une est celle à laquelle a fait allusion M. Pro-
que dans le peu de temps qui nous reste nous avons plus de chance d’aboutir à un re-
sultat en ce qui concerne la question n° 16 pour la raison suivante: dans les commen-
taires qui ont été faits par les associations nationales, je relève celui de l’association al-
lemande qui insiste pour que ce problème soit étudié et qui demande d’une façon pré-
cise qu’il soit mentionné expressément que la période d’un an indiquée à l’article 3,
par. 6, la prescription d’un an pour les actions contre le transporteur peut être pro-
longée après accord mutuel à cette fin entre les parties.

Dans certains pays, l’interprétation donnée à l’article 3, par. 6 fait obstacle à ce que
celui puisse être prolongé, notamment, par l’accord des parties.

Il faudrait donc un texte spécial pour que cette solution soit possible. Dans les
autres pays, il n’y a pas de difficulté et le [82] problème ne se pose pas.

Il n’y a pas d’amendement précis proposé par la délégation allemande mais la ré-
daction ne paraît pas devoir faire de grandes difficultés si la commission se trouvait
d’accord sur le principe tel qu’il est énoncé dans les commentaires de l’Association al-
lemande. Il s’agit donc de prévoir que le délai d’un an puisse être prolongé moyennant
l’accord des parties.

Est-ce que quelqu’un demande la parole sur cette proposition que je me suis per-
mis de préciser comme je viens de la faire?

M. Burchar-Motz (Allemagne). Vous avez très bien expliqué cette proposition, Mon-
sieur le Président, et je ne crois pas qu’il soit utile que je prenne la parole à ce sujet.

M. Le Président. C’est une proposition qui, comme celle que nous avons adoptée
tout à l’heure, est plus une question de forme qu’une question de fond. Dans la plu-
part des pays il va de soi que le délai peut être prolongé si les parties sont d’accord
mais, dans d’autres pays, il faudrait un texte pour que ce soit certain.

Si personne ne demande la parole nous allons mettre la proposition aux voix, étant
bien entendu que le comité de rédaction sera invité, s’il y a lieu, à nous soumettre un
texte que nous pourrons examiner à notre séance de la fin de l’après midi.

M. Prodroimides. La question ne porte que sur le point de savoir si les parties, par
leur accord, peuvent prolonger le délai?

[83]

M. Le Président. Exactement.

Je demande donc à la commission de se prononcer sur cette proposition.
Que ceux qui sont en faveur de cette proposition veuillent bien lever la main.
Epreuve contraire.
La proposition est adoptée par 5 voix contre 1 et 8 abstentions.
Les huit abstentions sont bien compréhensibles puisqu’il y a beaucoup de pays que
la question n’intéresse pas.

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[42-50]

La question n° 16 est relative à l’article 3, paragraphe 6, alinéa 4. Elle consiste à
ajouter à l’article 3, paragraphe 6, alinéa 4, la phrase suivante: “ce délai - c’est le délai
d’un an - peut toutefois être prolongé moyennant l’accord des parties intéressées”.
Pas d’objection?
La parole est à M. Loeff.

[51-60]

Mr. J. Loeff (Netherlands). Mr. Chairman, ladies and gentlemen, it is a bit difficult
to say anything on the text that has just now been given to us. I think at any rate that
we shall say that prolongation of the period can only happen after the arrival of the
ship and not in the bill of lading. You could put into the bill of lading that the period
for beginning suit would be two or three years against the provision of the Convention
and I think against the intention of everybody present here.

Mr. H. Moore (United States). With all respect to Mr. Loeff, no client of mine will
ever get such things in his bill of lading. If the carrier was to extend the time in his bill
of lading and is crazy enough, it will be for him to do it. It may be contrary to the in-
tention, but it won’t do any harm.

[61-70]

M. Le Président. La remarque qui vient d’être faite par M. Moore est celle qui avait
été faite au comité de rédaction.
Si la rédaction rencontre l’approbation de la commission nous sommes, Messieurs,
au bout de nos peines.

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[84]

Nous pouvons alors aborder, si la délégation française le souhaite, l’examen de la
question n° 14.
La parole est à M. Prodromidés.

M. Prodromidés (France). La question n° 14, Messieurs, est une question très
simple et je pense qu’elle n’est pas de nature à soulever de discussions passionnées.
C’est un peu une question de procédure qui est la suivante: nous avons, en matière de
transport, une prescription d’un délai d’un an..
Je suis le chargeur et j’assigne le transporteur; je suis en règle si je l’assigne même
la veille du jour de l’échéance du délai d’un an, mon procès contre lui est parfait. Sup-
posez maintenant que le transporteur assigné par moi estime qu’il a le droit d’assigner
une autre personne, un autre transporteur peut-être qui lui aussi est régi par le même
délai d’un an. Si j’assigne ce transporteur quatre ou cinq jours seulement avant
l’échéance de la prescription il n’a pas le temps lui-même d’assigner à son tour l’autre
La délégation française vous propose un texte qui est destiné à protéger ce transporteur contre ce délai. Nous ne changeons rien au délai de prescription d’un an mais nous disons que lorsque le transporteur exerce une action en garantie contre une autre personne il peut valablement assigner cette autre personne après l’expiration du délai d’un an mais à la condition que son assignation en garantie ait été signifiée au plus tard dans les trente jours qui suivent le jour où lui-même a été assigné. Il s’agit donc de proroger le délai mais de le proroger avec une limite. Nous disons que si le premier transporteur a été assigné dans des conditions telles qu’il ne lui reste pas encore trente jours devant lui avant l’expiration du délai d’un an, il sera en règle en assignant en garantie l’autre transporteur, même si le délai d’un an est déjà expiré mais à la condition qu’il ne laisse pas passer au plus trente jours après le jour où il a été lui-même assigné.

Vous voyez, Messieurs, que c’est une question de procédure destinée à protéger le transporteur assigné par le chargeur et qui, lui-même, a une action en garantie à exercer contre un autre transporteur.

M. Le Président—Messieurs, vous avez entendu quelle est la portée [85-90] de la proposition française. Cette proposition est fort simple et, à moins que quelqu’un ne désire prendre la parole ou demander une explication, je propose de la soumettre au vote immédiatement.

Personne ne désirant prendre la parole nous allons mettre aux voix cette proposition.

Que ceux qui sont en faveur de la proposition française veuillent bien lever la main.

Epreuve contraire.

La proposition est adopté par 9 voix contre 1 et 6 abstentions.

Séance Plénière - 14 Juin 1963

3e Recommandation
La troisième recommandation positive, pages 16 et 17 du rapport de la Commission internationale, concerne la “prescription en matière de réclamations relatives à des délivrances à personnes erronées” ou “time limit in respect of claims for wrong delivery”.
La Commission de cette Assemblée propose le texte qu’elle formule à l’art. 1, par. 2 du document n° 5 sur ce point.

L’amendement proposé est à insérer...
dans l’Article 3(6) § 4, il est libellé comme suit:

“Les actions récursoires pourront être exercées même après l’expiration de l’année prévue au paragraphe précédent, si elles le sont dans le délai déterminé par la loi du tribunal saisi de l’affaire.

Toutefois, ce délai ne pourra pas être inférieur à trois mois à partir du jour où la personne qui exerce l’action récursoire a elle-même reçu signification de l’assignation”.

Il s’agit d’une proposition conjointe des Délégations Francaise et Américaine et j’ai cru comprendre qu’elle est appuyée par beaucoup d’autres Délégations.

Le Président. Nous sommes saisis d’un amendement de la Délégation Américaine, au texte proposé par la Commission. Cet amendement se suite après le texte proposé par la Commission de cette Assemblée, c’est-à-dire le texte de l’art. 1(2) au sujet duquel, comme tel, l’amendement n’est pas présenté. Nous le prendrons dans un instant parce qu’il y fait immédiatement suite.

Je propose à l’Assemblée de faire connaître ses observations sur l’art. 1(2)

S’il n’y a pas d’observation sur l’art. 1(2), je considère que l’Assemblée suit la Commission sur ce point.

Passons à la disposition immédiatement suivante, à laquelle se rapporte l’amendement qui vient de nous être exposé par la Délégation Américaine. L’amendement fait l’objet du document STO/6. Il tend à [509] substituer à l’article 1, par. 3 du rapport de la Commission le texte qui fait l’objet de l’amendement document STO/6 présenté par la Délégation Américaine et sur lequel le commentaire vient de vous être fait.

La Délégation Américaine signale que son amendement document STO/6 doit être légèrement corrigé. Je vous prie de bien vouloir prendre ce document et de lire la dernière ligne comme suit: “when the person bringing such recourse action has settled the claim or has been served with process in the action against himself” ou, en français: “où la
personne qui exerce l’action récursoire a réclamé ou a elle-même reçu signification de l’assignation”.

L’amendement présenté par la Délégation Américaine - document STO/6 - étant ainsi au point, je le soumets au vote de l’Assemblée.

Ont voté pour: Belgique, France, Allemagne, Grande-Bretagne, Grèce, Inde, Pays-Bas, Suisse, Etats-Unis.

Ont voté contre: Italie, Norvège, Suède.

Se sont abstenu: Canada, Danemark, Finlande, Irlande, Japon, Pologne, Portugal, Espagne, Yougoslavie.

Le Président: L’amendement est adopté.

Diplomatic Conference - May 1967

Amendment adopted by the Stockholm Conference:

In Article 3, § 6, paragraph 4 is deleted and replaced by:

“In any event the carrier and the ship shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Such a period may, however, be extended should the parties concerned so agree”.

Amendment submitted by the Delegation of France

Article 1, Paragraph 3 of the Stockholm Draft

Add to the end of the suggested amendment the words: “...intervening subsequent to the accident”.

Procès-Verbal de la Commission

Résumé des débats

Le Délégué français, M. Govare, justifie l’amendement de son pays en relevant que si l’accord de prolongations pouvait être conclu avant tout sinistre, il deviendrait rapidement une clause de style.

Meetings of the Commission

Summary of the debates

The French delegate, Mr. Govare, justified his country’s amendment by pointing out that if the extension agreement could be concluded before the accident, it would soon become a standard clause.
2. CONN. 9, by France.

Vote: for: 13; against: 9; abstentions: 8;
Total: 30.

The amendment was adopted by the commission. The following words are added to the last sentence of article 1(3): “intervening subsequent to the accident”.

The text of article 1(3) of the Visby Rules, as modified by amendment CONN. 9, was adopted by the commission.

Vote: for: 22; against: none; abstentions: 3;
Total: 25.
ARTICLE 3

6. In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

ILA 1921 Hague Conference
Text submitted to the Conference
[None]

Text adopted by the Conference
[None]

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
[365]

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all possible facilities to each other for inspecting and tallying the goods.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
[378]

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.
ARTICLE 3

New paragraph added by the 1968 Protocol

6 bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

CMI 1963 Stockholm Conference
Report of the Committee on Bills of Lading Clauses

[93]

14. Time limit for recourse action (Art. 3(6)).

The Sub-Committee discussed whether it should recommend a special time limit in respect of recourse actions. An example will illustrate the point:

When the goods reach their destination some of them are found to be damaged. The consignee puts forward a claim against the carrier. The claim is, however, presented near the end of the one year prescription period. The carrier pays damages (or refuses to pay and is sued just before the one year period comes to an end). The carrier feels satisfied that the damage to the goods actually occurred while they were in the hands of [94] another carrier who performed one part of the transport. He therefore tries to recoup the amount he has paid...
qui a effectué une partie du transport. Il essaye de récupérer le montant qu’il a payé (ou pour lequel il a été condamné entre-temps) par ce transporteur. Indépendamment du mérite de l’affaire, il échoue dans son action récursoire par suite du fait que la réclamation contre ce transporteur s’est prescrite entre-temps.

L’Article 487 du Code de Commerce Néerlandais, traite de ce problème et dispose entre autres :

“si le transporteur de son côté est partie à un contrat avec un autre transporteur, la réclamation initiale ne sera prescrite à l’égard de ce dernier que trois mois après la date à laquelle il aura payé ou aura été assigné, pourvu que ce paiement ou cette assignation ait eu lieu avant la fin de la période d’un an”.

L’Association Française de Droit Maritime a examiné plusieurs formules et au mois de février 1961 elle s’est prononcée en faveur du texte que voici :

“Dans tous les cas, l’action contre le transporteur à raison de toutes pertes ou dommages, ainsi que les actions récursoires, sont prescrites un an après la livraison des marchandises et, si la livraison n’a pas eu lieu, un an à dater du jour où elles auraient dû être livrées. Si l’action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu’un mois après l’exercice de l’action contre le garanti” - 2e Article 433: “...sont prescrites: toute demande en délivrance de marchandises ou en dommages-intérêts pour avarie ou retard dans leur transport ainsi que les actions en garantie qui pourront être formées sur lesdites demandes, un an après l’arrivée du navire. Dans les matières visées au paragraphe précédent, si l’action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu’un mois après l’exercice de l’action contre le garanti”.

Décision:
Les membres de la Commission ne considèrent pas ce problème comme très (or for which judgement has meanwhile been delivered against him) from that carrier. Irrespective of the merits of his case he fails to obtain recovery because his claim against the said carrier has meanwhile become time barred.

Article 487 of the Netherlands Commercial Code deals with this problem and provides i.a.:

“if the carrier on his part is party to a contract with another carrier, the former’s claim against the latter shall not become barred until three months have elapsed after he himself has paid or has been sued, provided one of these events has taken place within the said term of one year”.

The French Maritime Law Association has discussed various formulas and in February 1961 declared himself in favour of the following text:

“Dans tous les cas, l’action contre le transporteur à raison de toutes pertes ou dommages, ainsi que les action récursoires, sont prescrites un an après la livraison des marchandises et, si la livraison n’a pas eu lieu, un an à dater du jour où elles auraient dû être livrées. Si l’action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu’un mois après l’exercice de l’action contre le garanti” - 2e Article 433: “...sont prescrites: toute demande en délivrance de marchandises ou en dommages-intérêts pour avarie ou retard dans leur transport ainsi que les actions en garantie qui pourront être formées sur lesdites demandes, un an après l’arrivée du navire. Dans les matières visées au paragraphe précédent, si l’action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu’un mois après l’exercice de l’action contre le garanti”.

Decision:
The members of the Sub-Committee do not regard this problem as a very important one. Many of them are not aware that any difficulties have made them-
important. Plusieurs membres n’ont personnellement rencontré aucune difficulté dans la pratique. Le Code Néerlandais s’est occupé de ce problème et si d’autres pays estiment que le problème est suffisamment important, ils pourraient en faire de même. Comme il a déjà été précisé, la Commission est d’avis de limiter les recommandations aux points qui paraissent essentiels. Etant donné les circonstances la Commission n’est pas enclins à recommander une action sur ce point particulier.

CMI 1963 Stockholm Conference
Committee on Bills of Lading Clauses
Verbatim Reports No. 10 - 12 June 1963 P.M.

Le Président (M. J. Van Ryn):

[41]

A la question n° 14 il y a une proposition d’ajouter à l’article 3, paragraphe 6 bis, au sujet de l’action récursoire: “les actions récursoires pourront être exercées même après l’expiration du délai prévu au paragraphe précédent si elles sont intentées dans le délai d’un mois à partir du jour où les personnes qui les exercent ont été elles-même assignées”.

Cette proposition est adoptée.

Plenary Session - 14 June 1963

[525]

Le Président (M. Lilar):

14e Recommandation

Dans le rapport de la Commission internationale, figure le point 14: “Prescription des actions récursoires”, que nous avons déjà résolu par un vote il y a quelques instants.

Diplomatic Conference - May 1967
Text adopted by the Stockholm Conference

[672]

“Recourse actions may be brought even after the [673] expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has settled the claim or has been served with process in the action against himself”.
Minutes of the Commission

After article 3(6), add a paragraph 6bis as follows:

“Recourse actions may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has settled the claim or has been served with process in the action against himself”.

Vote: for: 21; against: 1; abstentions: 6;
Total: 28.

The Commission adopted the text as it stood.

After asking for the meaning of the word “recourse” (recursoire), the U.K delegate, Sir Kenneth Diplock, asked the Chairman to have the drafting committee modify the English translation.
ARTICLE 3

7. After the goods are loaded, the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in § 3 of Article 3, shall for the purpose of this Article be deemed to constitute a “shipped” bill of lading.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvii]

6. The bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if any “received for shipment” bill of lading or other document of title shall have been previously issued in respect of the goods, the shipper shall at the request of the carrier, master or agent be bound to surrender the same to the carrier, master or agent before the issue to him of the “shipped” bill of lading. [xlviii] A “received for shipment” bill of lading which has subsequently been noted by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, shall for the purpose of this Code be deemed to constitute a “shipped” bill of lading.
Second day's proceedings - 31 August 1921

The Chairman.

Then clause 7 - to substitute “7” for “6”. Is that agreed? (Agreed).

Sir Norman Hill has an amendment to introduce words at the beginning of clause 7, as it is now.

Sir Norman Hill: 7 provides for the issue on demand of a “shipped” bill of lading, and it lays down the conditions on compliance with which in every case the cargo owner can get the “shipped” bill of lading. The only suggestion I make is that we think clearly that that demand can only be made after the goods are loaded. It is obvious that it is a fraud to issue a “shipped on board” bill of lading before the goods are on board, and I am making it perfectly clear in this room that it is only after the goods are loaded that the cargo owner can demand a “shipped on board” bill of lading.

The Chairman: The words proposed to be inserted at the beginning are: “After the goods are loaded”. Is that agreed? (Agreed).

Sir Norman Hill has a further amendment.

Sir Norman Hill: Sir. The clause went on to provide “that if any ‘Received for shipment’ bill of lading or other document of title shall have been previously issued in respect of the goods, the shipper shall, at the request of the carrier, master or agent, be bound to surrender the same to the carrier, master or agent before the issue to him of the ‘shipped’ bill of lading”. The object is quite obvious: we cannot have two bills of lading running. I propose to leave out the words “at the request of the carrier, master or agent”. If the cargo owner has for his own convenience taken up a “received for shipment” bill of lading, the cargo owner must come and bring it. It is not for the shipowner to ask for it.

The Chairman: Does the Committee agree with Sir Norman Hill’s amendment? (Agreed).

Then the words “at the request of the carrier, master or agent” in line 5 of the clause are struck out. The question is that the clause as amended stand part. Is that agreed? (Agreed).

Then at the end of clause 7. “A “received for shipment” bill of lading which has subsequently been noted by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, shall for the purpose of this Code be deemed to constitute a “shipped” bill of lading”. Is that accepted? The question is that those words stand part. Now Mr. Paine has an amendment to move with regard to the whole of the clause. My impression is that it would be better to complete the clause upon what one may call a Committee consideration, and that then I should put the words that the amended clause stand part, and that then Mr. Paine should raise his question. Do we accept provisionally the lines in the original draft as I have read them? (Agreed).

Now Sir Norman Hill has an amendment. Dr. Bisschop has a suggestion to make.

Dr. Bisschop: Mr. Chairman. It has been held that the “received for shipment” document is not a bill of lading. Is it wise that we in our rules should adhere to the old phraseology and say a “received for shipment bill of lading”? Would it not be wise that we should refer this to the Drafting Committee with a recommendation that as much as possible the combination of the words “received for shipment” and “bill of lading” should be avoided? I will not [116] say in what manner, but I think if we adhere in the
one clause to the phraseology “shipped bill of lading”, and in the next clause to a “received for shipment bill of lading”, we add to the difficulties that have arisen between these two documents. (Hear, hear). It would be much better to adhere to the phraseology a “shipped bill of lading”, and call the other a document in a general way, or in any other description than has been put here. I move that the Drafting Committee should receive the recommendation of this meeting that as much as possible the combination of the words “received for shipment” and “bill of lading” should be avoided.

Sir Norman Hill: Sir. I hope the Committee will not support that recommendation. I think it raises very broadly the question whether the people are made for the law or the law is made for the people. There have been difficulties raised in some of the cases as to whether a “received for shipment” bill of lading is a bill of lading, and no doubt the learned judges who have discussed that difficult question in our Courts have decided correctly, but we know that there is a document which is a “received for shipment bill of lading”. It is a very valuable document [Lord Phillimore: Hear, hear]. It is of the very greatest use to the cargo interests; it was introduced at the request of the cargo interests, and I think myself that it would be disastrous to the flow of oversea commerce if anything were done to discredit that document [Lord Phillimore: Hear, hear]; and, because if it were discredited it would impede the flow of oversea commerce, it would react on the shipowner. The only interest that the shipowners have is that this document promotes and facilitates and encourages commerce; and if the Courts say that it is not a bill of lading - I do not know what the Courts in other countries will say - let it be a “received for shipment bill of lading”, and let the Courts attach the appropriate rights to that. I think it would be disastrous to discredit a document of so much value (Hear, hear).

Dr. Bisschop: The last thing I should like to do is to discredit a document which has been generally received. I only tried to direct the attention of the Drafting Committee to a phraseology which is certainly not entirely correct, and I leave it to the Drafting Committee to deal with the matter. I do not like that we should here pass over these two clauses without saying a word upon it, and I hope, Mr. Chairman, you will support me.

Mr. McConechy: I think it is putting too great a responsibility on the Drafting Committee to alter these words. These words ought to have the full consent of the meeting - so much depends upon them, and if we agree to that now I think the document should remain at that, with the explanation Sir Norman Hill has given us about it; there is such a tremendous amount of liability rests upon it.

The Chairman: I do not think Dr. Bisschop’s intention was in any way to suggest the use of language which would discredit the class of business transactions here in question. My impression was that what he desired to do was to call the attention of the Drafting Committee to the fact that it might be that the form of words used here will create three classes of documents, bills of lading under the rules, received for shipment bills of lading.

Sir Norman Hill: Under the rules?

The Chairman: Yes. Received for shipment bills of lading and receipts for goods - three classes of documents. It may well be that that is the proper mode of dealing with the matter. I do not think that Dr. Bisschop meant anything more than that he should like the Drafting Committee, when they were considering the language used, to consider whether that raised any ambiguity.

Sir James Hope Simpson: May I say that I think it would be rather unfortunate if the Drafting Committee altered the words “received for shipment bill of lading” because it has come to be the universally used phrase and we all know what it means. I think it would be a pity to discard it.
The Chairman: I am sure whatever consideration the Drafting Committee may be moved to give to this matter may be coloured by the very strong expressions of opinion that have come from, I think, all the interests involved.

Lord Phillimore: I think it is very important that we should do nothing which would make “received for shipment” bills of lading not commercial instruments, and it is very important that they should be considered as negotiable. I do not know whether Dr. Bisschop has considered the judgment which was rendered by the Privy Council in December last, to which I was a party, in which we did our very best to set up the “received for shipment” bills of lading as negotiable instruments; and, one does not remember these things very often, but, if I remember right, we actually allowed the endorsees of the document the title to sue, which is only given by Act of Parliament to endorsees of bills of lading; and therefore I think it is very desirable that we should call these “received for shipment bills of lading”.

The Chairman: Then the question is whether the first four lines on page 4 shall stand part. Is that agreed? (Agreed).

Now Sir Norman Hill has an amendment.

Sir Norman Hill: Sir. The point that we want to raise is with regard to the issue of these “Received for shipment” bills of lading and the “shipped on board” bills of lading. As I have said, we have established the practice of issuing a “received for shipment” bill of lading at the request of the cargo owners. It is particularly applicable to the liner services. There are regular sailings at fixed dates; there are regular berths, and, to meet the convenience of the cargo interests, the moment the cargo is put into the custody of the line the bill of lading has been given, enabling the cargo interest, not only to arrange its finance, but to enable the cargo interest to send forward the bill of lading very often by the same ship which is carrying the cargo. That has been an enormous convenience. If the alternative had been nothing but the “shipped on board” bill of lading, then in a great many cases, in a great many countries, the bill of lading would not have been in the hands of the cargo interest until after the ship had sailed with the cargo on board, and it would not have been at the port of destination when the ship arrived. It would disorganise business. To meet the demand which have been made upon us we are assuming the responsibility in every case to issue a “shipped on board” bill of lading. It is not an onerous obligation on us, provided we are only asked to give those bills of lading after the cargo is on board. It is the time-honoured, the original form, of bill of lading; it is the most convenient one for the shipowner to issue; it gives him time to get the returns in from the ship as to what cargo has been stowed, to compare it with the information given by the cargo owner, and it regularises business in the best manner and on the safest lines for the shipowner. That is his position; but it will expose the cargo owner to a very great deal of inconvenience and a great deal of expense. We want to make it perfectly clear that if under these rules, we agree on demand always to issue these bills of lading, that demand shall only be made on us fairly after the goods are on board. You will wreck the whole of the object that you have in view if there is unfair pressure brought to bear on particular shipowners to get the “shipped on board” bills of lading out of their hands when the cargo owner knows that the cargo is not on board, when the cargo owner knows that the cargo has only just been bundled down on the quay. If the cargo owner has to go off in a hurry to his bankers to draw against the cargo, he must be satisfied with a “received for shipment” bill of lading; if he wants to send forward the bill of lading by the same boat which is taking the cargo, which might be the mail boat, and he may know that the next mail ship will not go for another fortnight, he will have to be content with a “received for shipment” bill of lading. The only pressure to issue improperly “shipped on board” bills of lading can come from the cargo interests; and we have been turning over in our
minds what would be a fair and equitable - I will not say penalty, but a fair and equitable provision sufficiently stringent to prevent the cargo owner bringing improper pressure to bear on the shipowner; and what we suggest is, that if the cargo owner knowingly takes a "shipped on board" bill of lading when he knows that the cargo is not on board, then he is to forfeit his rights conferred by the bill of lading under section 2 of this Article of the Code.

The Chairman: Perhaps I may say to the Committee that at the original discussions upon this subject in May the Committee, as it was then constituted, was very definitely of opinion in favour of the view which Sir Norman Hill expresses in the first sentence of his proposed additional sub-section.

Mr. W. W. Paine: I have not the slightest objection, Sir, to the first sentence, but the second sentence of this paragraph is a very serious one. A banker in good faith may have accepted one of these bills of lading without any knowledge of the fraud that had been committed or concocted, I would say, between the shipper and the agent of the shipowner, and find that the bill in his hands was perfectly worthless.

Sir Norman Hill: No, not worthless.

Mr. W. W. Paine: Well, "forfeit all rights".

The Chairman: It is the shipper who forfeits all rights.

Sir Norman Hill: And the banker, Sir. He forfeits his rights under the Code, but he does not forfeit his rights to the goods. You could not claim against us for want of proper care and custody. You will have to take your chances: the goods will be yours, but they will be carried at your peril.

The Chairman: Is that quite clear from the drafting - "he shall [120] forfeit all rights conferred by such bill of lading under section 2 of this Article"?

Sir Norman Hill: It does not affect the property in the goods in any shape or form.

Mr. W. W. Paine: That would meet my objection.

Mr. McConechy: I do not quite follow Sir Norman Hill in this: "If a shipper shall knowingly accept a 'shipped' bill of lading". That implies that the shipowner must be party to that as well as the shipper?

Sir Norman Hill: Certainly.

Mr. McConechy: Should any loophole be given to either party to get out of what is clearly specified in the agreement?

Sir Norman Hill: The point is, who is the tempter, if I am right?
these rules? It seems to me it is rather unworthy of our rules. The first paragraph of it is a suggestion that [121] two people, the shipper and the shipowner, come together deliberately to issue a “Shipped” bill of lading, knowing that that is an improper act under this Code. They are both parties, more or less, to a fraud. In the second case, the wicked shipper who has successfully tempted the yielding shipowner loses such right as he possesses under the Code; but apparently the shipowner retains such rights as he may possess under the Code, and yet both have been parties to doing something which has been held to be fraudulent in issuing a “shipped” bill of lading before the thing are on board. I submit that it is not necessary to put this clause in the Code at all, and that it is unworthy of the Code.

Sir Norman Hill: That is the second part?

The Chairman: No, I think it is the whole of it. I think, Sir Norman, what is being pointed out is in effect this: that if the transaction in question took place in England the proper mode of dealing with it would be to indict the two parties concerned for fraudulent conspiracy, and so Mr. Rudolf rather suggests that it is not worth while to try to legislate by a small penalty against a fraudulent conspiracy. I think that is Mr. Rudolf’s suggestion?

Mr. Rudolf: Yes.

Mr. L. C. Harris: The necessity for this second clause is illustrated by what is going on to-day; and there must be many in this room who are aware of this state of affairs. In the Australian homeward trade it was discovered that there existed a practice for the agents, without the knowledge of the shipowners, to issue bills of lading before the goods are on board. The shipowners cabled out that the practice must be stopped immediately. The reply came back that it was quite impossible for the practice to be changed. We cabled again: it must be stopped. The reply came back that the matter was being taken up by the bankers, and the bankers, instead of assisting the owners to put it down at once, had referred it home to the bankers in England.

Mr. W. W. Paine: They will not be the tempters, I assure you.

Mr. L. C. Harris: Whether it reached the bankers I do not know, but as far as the shipowners are concerned that is where the matter has rested. We should have their assistance because the pressure to do this thing comes entirely from the shippers; the shipowner objects to it all the time. He wants to issue a “Shipped” bill of lading, and none other, at any time. He issues a “received for shipment” bill of lading only to suit the merchant’s requirements, and he is now in some cases being compelled to issue a “shipped” bill of lading by the agreed practice of a whole port, or a whole country, when the goods have not been shipped. Up to the present we have failed to stop this practice which we are very anxious to stop. We think this clause may help us to stop it.

The Hon. John McEwan Hunter: I sympathise very much with Sir Norman with regard to the pressure which is put on shipowners by shippers to get that special convenience that is necessary for financial purposes. At the same time I think something should be arranged between the shipowner and the shipper to cover that period. If that were done it seems to me that the issue of that instrument could be arranged between the shipper and the shipowner, and when the goods have been delivered, and everything else is in order, then there will be no difficulty in relieving the shipper of the responsibility, but for the time being, where the banker or the shipper receives a document under the pressure that they put on the shipowner, they must take the responsibility until the shipowner has had an opportunity of satisfying himself that the goods are delivered that are contained in the bill of lading. I can see that it is to the convenience of banking and financial purposes, particularly where shipping is not very regular, say between this country and Australia, where mails and ships do not travel,
often for one, two, three or four weeks, that the bill of lading should accompany the goods, otherwise the goods are lying at port for a month or more before they can be received and delivered, because of the delay that takes place. The real trouble lies with the shipper, and if the shipowner says: Unless you put your goods on my ship sufficiently early to allow me to issue the instrument necessary to you for financial purposes, then you must accept all responsibility until these goods are delivered, and I hand you that document, that would get over the difficulty.

Mr. Dor: As these rules we are discussing now are going to be offered to the world as standard rules, as a model of legislation for all States, I really do not think that we ought to provide for fraud and carefully to regulate fraud. Yet if you say “If the shipper shall accept ‘shipped’ bills of lading for goods before the latter were actually on board” - that means that shipowner and shipper have both been parties to a fraud, to an act which under our criminal law is worth several years of imprisonment and, perhaps, even of penal [123] servitude. Now can we contemplate such a fraud and look leniently upon it, and say that the shipper, who ought really to be put in the dock, will in such case simply lose his right under Article 2 and that the shipowner will get nothing, not even have a claim brought against him? We do not even say in this Article that it is wrong to do such a thing. Well, I do not think that we ought to put such a thing in our rules (Hear, hear!) which we are going to send out in Europe and all over the world. If you say that this great Association considers that such fraudulent arrangements between shipowner and shipper ought to involve as sole penalty the loss of the rights under Article 2, I am afraid that not many are going to adhere to our rules.

Sir Norman Hill: Sir. One feels very strongly about this. It is an example of what I ventured to submit to the Association yesterday that there is apparently one code of morality for shipowners, and another code of morality for cargo owners. (“No”). We have put a great many clauses in here which I think are most offensive to the shipowners. I think the whole of the rules are most offensive to shipowners to ram down their throats. But when there comes to be some clause which may hurt the susceptibilities of the cargo interests, then that is to be looked at in another way. (“No, no”). Put the shipowner in; put them both in. One shall forfeit all his rights under Article 2; the other all his rights under Article 4. Because this is a very wicked, vicious practice. There can be no business inducement which affects the mind of any shipowner to issue these “Shipped on board” bills of lading before the cargo is on board, except that he has been tempted by the cargo interests; and he is repeatedly told by the cargo interests that if he will not commit that fraud they will find somebody else who will. Mr. Harris has given you the instance with regard to Australia, and it is the fact - I have seen the documents - that the bankers there have been standing behind a fraud which the shipowners are trying to stop. It is convenient for the cargo interests, we know. When it comes to England I hope the bankers, I am sure the bankers, will speak out and say that there is to be no more of this. But it is a big point. Treat us both the same. I know there is a criticism, and it is a just criticism: We forfeit our rights under Article 4, the cargo forfeits its rights under Article 2.

Mr. Dor: That is not enough.

[124]
including receivers of the goods, they must take their share of the punishment, and they can only take it by our dealing with them under the rules.

Mr. W. W. Paine: I can only say, in answer to Sir Norman Hill, that if this comes to our notice, and I take it it will be the same with Sir James Simpson’s bank, the parties will get very short shrift indeed, for we as bankers would put our faces in the strongest possible way against anything of this kind. But I do trust that this Committee will not put this terrible blot upon these rules. I should be ashamed of rules going out with that clause in as being the representative work of this International Law Association.

Mr. Dor: Hear, hear!

Lord Phillimore: Would it not be possible first of all to move the first sentence, for I do not think anybody can object to that? It simply says that they are not to do it. And would it not be possible to put some clause such as this: “If any such bill is issued it shall have no operation” - some phrase of that kind?

Sir Norman Hill: It might forfeit the goods, my Lord.

Lord Phillimore: It would not forfeit the goods, because you could sue upon your title to the goods apart from the bill of lading. I think the first statement is desirable. I confess that I do not like saying that if people agree to such documents it shall confer the right on the Public Prosecutor of coming in and prosecuting, or even His Majesty’s subjects in England moving the Grand Jury to indict; I do not particularly like the form in which it is put. I think there is a good deal to be said for having some clause to that effect. Certainly I cannot understand, except from the rather sentimental point of view, any objection to it. The first sentence, at any rate, we ought to stand by.

The Chairman: Perhaps Lord Phillimore will tell me whether this will meet the idea he has in his mind: to omit everything after “ship” in the third line and to add, “and a bill of lading issued in contravention of this provision shall have no operation”?

Lord Phillimore: That is the sort of thing I would suggest.

[125]

The Chairman: That really, I think, is a substitute for Sir Norman Hill’s original proposal and the other proposal he was willing to add.

Sir Norman Hill: I am content with it.

The Chairman: I will read it again: “and a bill of lading issued in contravention of this provision shall have no operation”.

Mr. Rudolf: Of course it is not for me to raise the point, but I should think the bankers could not possibly accept that.

The Chairman: Mr. Paine says: “If we catch people at it we will let them know in a very definite way what we think about it, but it will not be business”. The question is that the words in the first two lines and the words “on board the ship” stand part of the draft. Is that agreed?

Mr. W. W. Paine: I am afraid the bankers cannot accept that for the very obvious reason that, whilst they are perfectly innocent, they will be made to suffer through the bill of lading being practically non-existent.

The Chairman: It would have no operation.

Mr. W. W. Paine: It may have had operation in the sense that he may have got it financed from the bank perfectly innocently in the meantime.

The Chairman: Will not you have an unanswerable cause of action against all parties concerned, shipowner and shipper, in respect of any moneys you have advanced?

Mr. W. W. Paine: We shall not have the goods.

The Chairman: You will have something better, I think. I do not know.

Mr. W. W. Paine: It depends on the parties.
The Chairman: A person who has such a claim is in a much stronger position than a person with any other claim.

Sir Norman Hill: The bank out there will have known all about it. They will have had the bill of lading in their possession before the ship starts loading.

The Chairman: I think I must put the words at the commencement of the clause.

Mr. Dor: I beg to move that the whole of the amendment should be left out, and I suppose Mr. Paine would second that.

Mr. W. W. Paine: Yes, I shall second that.

The Chairman: At present we have not put the amendment. I will put the additional sentence as a separate question presently, but we will see at present whether the preceding sentence stands part provisionally.

Mr. Rudolf: That is the first three lines?

The Chairman: Yes. As to the first three lines, is it the view of the Committee at present that that should stand part - not of the draft, but of the question? (Agreed).

With regard to the additional lines, is it the view of the Committee that the words which I suggested should be added as part of the question? (Agreed).

Now the question is that the proposed added sentences be inserted.

Mr. Dor: I can only repeat what I have already said.

The Chairman: Mr. Dor proposes to vote in the negative, and I understand Mr. Paine proposes to vote in the negative. I should like to know if any member desires to add anything.

Mr. J. R. Hobhouse: Mr. Chairman. I should like to say that this is a matter which has given the shipowners very great trouble, and I am pleased to know that in this case they are not the villains of the piece. With all due respect to Mr. Paine, I think I may say that the real difficulty has arisen from the action of the bankers. The banks for many years have accepted “shipped” or “received for shipment” bills of lading without any question - or without any warning, the poor innocent shipowner and the equally innocent cargo owner were told that “received for shipment” bills of lading could no longer be received, and that was put into force almost as an Imperial Ukase all over the world, as far as I know, certainly in those trades in which I am interested. The result of that has been that for practical purposes a “received for shipment” bill of lading has been ruled out, and the shipper has been obliged, in order to get his finance, to get a “shipped” bill of lading. The “received for shipment” bill of lading is a document, as several speakers have said, of great importance to the trade for this reason, that it enables the shipper to get his documents as soon as possible, and to get his financial arrangements made as soon as possible. It enables the bank to send them off in good time, so that they may arrive at the ports of destination and be handed over to the consignee, and the goods may be dealt with without delay. That document is one which is an absolutely essential part of the liner business, and, I do not say that the banks have not been forced into it, I do not know sufficiently of their business to judge, but they have, without notice, refused to accept that document which is one which has been in force for very many years and has proved invaluable.

Mr. W. W. Paine: That is the Eastern banks.

Mr. J. R. Hobhouse: I am speaking now of the business I know, which is Australia and the Far East. In the Far East, in order to be quite sure that my facts are correct, the banks have refused to accept the “received for shipment” bills of lading, and the shippers have been forced to get “shipped” bills of lading. Naturally, they wanted them as soon as possible, and they have brought pressure to bear on all the shipown-
ers to give them “shipped” bills of lading as soon as the cargo has been handed to the shipowner; that is to say, as soon as the cargo has been received for shipment. The shipowners are human beings like other people, and when cargo is scarce they perhaps allow rather more elasticity of morality than is altogether desirable; but the fact remains that, it is happening every day in the East, “shipped” bills of lading are being issued for goods which are not shipped, and the bankers are accepting them. They say, of course, “We would not think of accepting such a bill of lading”, but I know of cases where they have accepted “shipped” bills of lading on steamers which are not yet in port. That is happening every day, and unless the bankers can make some provision by which they will scrutinise the bills of lading that they accept, and weed out those bills of lading which are fraudulent, and not accept them, but send them back to be turned into “received for shipment” bills of lading, then I say some such clause as has been suggested is very desirable. It is not perhaps fair, it is not equitable, that the shipowner who signs a false bill of lading should get off comparatively lightly, but then he has no interest in signing that bill of lading; great pressure is brought to bear on him, and he does in fact sign it because he is afraid his neighbours will. Do not forget that he is incurring a very considerable liability. That cargo is very likely in lighters, and if that cargo is sunk and he has put his name to a “shipped” bill of lading, the fact that it was in lighters will be a very poor defence for him. I submit, Gentlemen, that if this clause is not agreed, [128] something similar is necessary to ensure that the bankers will act up to what Mr. Paine has said (and I believe him) is their intention.

Mr. W. W. Paine: Undoubtedly.

The Chairman: Now the time has passed when I believe it is usual at The Hague to adjourn for a very necessary purpose; and this discussion has reached a crisis. I think the interests of business will be best served by adjourning before a decision is arrived at.

(Adjourned)

Afternoon session
The Rt. Hon. Sir Henry E. Duke in the Chair

The Chairman: Sir Norman Hill will now, I dare say, tell the Committee whether there have been consultations, and whether any good has resulted from them, if there have been.

Sir Norman Hill: Sir Henry. I have been such a constant performer, and have bored the meeting so very much that I am pleased to say Mr. Paine will address the Committee.

Mr. W. W. Paine: Mr. President and Gentlemen. We are now on a clause which I am afraid I shall have to detain the Committee a few minutes about, because it is one that has caused us bankers the greatest difficulty of all the clauses in these draft rules. I am not putting it too high when I say that Sir James Hope Simpson and I came to this meeting as the delegates of the British Bankers’ Association with a strong mandate against the use of “received for shipment” bills of lading, except where the use of documents in that form has previously been established by custom or by a general understanding of all the parties interested. Now I want to say this, and I want to speak very carefully upon this point. You will remember that Sir James Hope Simpson and I, hav- ing come with a mandate of that kind, are in a very considerable difficulty. But as reasoning and reasonable men, we are not mere delegates, and we have to take into account the arguments that have been addressed to us, and I take it, and I am sure we shall be confirmed in taking this line, that it is not for bankers to settle, or to interfere with the settlement of, mercantile documents which the mercantile community [129]
consider to be for the benefit of the trade and commerce of our countries. (Hear, hear). The bankers, like everybody else, have to fall into the line which commerce of its own motion adopts. But at present, under the state of our law, very great difficulties arise in regard to these “received for shipment” bills of lading. The matter was referred to a small Committee of which I was a member, and Sir James Hope Simpson was also a member, and we made a report to our constituents, the British Bankers’ Association, upon the subject. In that report we considered very carefully the case, to which my Lord Phillimore has referred, of In re the “Marlborough Hill” [1921] 1 A.C. 444, which was decided in the Privy Council; and we foreshadowed in that report that, notwithstanding that decision, and although that decision had decided that for certain purposes, I think I am right in saying for the establishment of the jurisdiction of the Admiralty Court in New South Wales, a “received for shipment” bill of lading was a bill of lading, we ventured to express doubts as to whether the Courts would follow that decision in all cases. Those doubts within the last three weeks, or the last month or so, have unfortunately been fulfilled. Mr. Justice McCardie, one of our most learned and eminent judges of first instance, has exhaustively examined the whole of the cases in a case, I think I am right, I am speaking from memory, of the Diamond Alkali Export Corporation [1921] 3 K. B. 443, an American company, where he has decided that in a case in which a confirmed credit was opened by a banker in connection with a c.i.f. contract (I take it that expression is familiar to everybody, whether English, or anybody else), that contract was not satisfied by a “received for shipment” bill of lading. You will appreciate at once the seriousness of that decision from a banker’s point of view. He has opened a credit which calls for the usual shipping documents, or some similar phrase, or calls perhaps in detail for bills of lading, invoices and insurance policies. Now we have a decision of a very learned judge that in that state of affairs the credit is not confirmed by the delivery of a “received for shipment” bill of lading, instead of an ordinary bill of lading. I do not know what happened in that particular case, but it is quite obvious that in that case it might have been that the documents were thrown back on the hands of the bankers because they had not carried out, in accepting this document, the terms upon which they were authorised to grant the credit. [130] We had also foreseen two other objections to “received for shipment” bills of lading. It is an old-established principle in English law, it is established finally and for all time until a statute alters it, that where a contract calls for a shipment made in a certain month, that is a matter which goes to the root of the whole contract, as being a description of the goods. That was decided in the case of Bowes v. Shand (1877), 2 App. Cas. 455, by the House of Lords many years ago. Just see the bearing of that point on “received for shipment” bills of lading. Let us assume a banker opening a credit for a February-March shipment: he gets a “received for shipment” bill of lading dated, we will say, early in February: he may assume, and does assume, has hitherto assumed, that that would satisfy the terms of the contract which he is financing and endeavouring to carry out; but under a “received for shipment” bill of lading there is no security that in fact those goods will be shipped either during the month of February or even during the month of March; they might not be shipped until the month of April. If they are shipped in the month of April, even on the 1st April, then under the decision in Bowes v. Shand the description of the goods is not in accordance with the contract, and the banker, on a falling market, may find those goods thrown back upon his hands. So that you see that as the law at present stands the bankers are in a very great difficulty in regard to this question of “received for shipment” bills of lading.

But, as I said just now, bankers have to move like other people with the times, and, if the mercantile community decide that “received for shipment” bills of lading are necessary or useful and convenient for the purposes of commerce, I think I can say,
without going beyond my brief, that the bankers will certainly recognise that wish on the part of the mercantile community. (Hear, hear).

But, Gentlemen, you must please understand exactly what our difficulties are, and give us the means of meeting them. Now all our credits to-day, except in particular trades, have been opened upon the basis of certain documents. We have this decision which I have referred to, and I need not refer to again, to say that under the terms of those documents, if we take “received for shipment” bills of lading, we do so at our own risk, and contrary perhaps to the instructions of our customers.

What is the remedy? If all parties will agree to a particular form [131] of document, and will definitely include in their instructions to the bank an authority to accept that particular form of document, the bankers’ difficulties will, I think, disappear; at all events they will be largely removed; but, until we arrive at that state of things, that the consignor, consignee and banker are all agreed as to the particular form of document, we are in a grave difficulty in regard to “received for shipment” bills of lading.

Now what is the usual reason for the issue of “received for shipment” bills of lading? We have heard it from Sir Norman Hill; we have heard it from Mr. Hobhouse. I entirely accept everything that they say upon that point. A great deal of what they have said comes to me as news. Neither Sir James Hope Simpson nor I were aware of any things that they said this morning. We were not aware that any Eastern bank, or any bank, through its agents, was in any way countenancing or authorising the acceptance of “shipped” bills of lading with the knowledge that the goods had not yet been put on board. I said to Mr. Hobhouse at once: the bankers must do one of two things. The first alternative is this: if they will not accept “received for shipment” bills of lading, they must rigidly enforce their instructions to their agents to have nothing to do with them. They cannot allow their agents to put the pressure which was referred to upon the shipowner, because that would be obviously an unfair thing to do, and I am sure I am speaking the mind of the bankers when I am saying that they would not generally be parties to anything of the kind. (Hear, hear). The other alternative is this. I gather, and I am deeply impressed by what I have heard in this room this morning, that the general consensus of opinion among the mercantile community is, that “received for shipment” bills of lading have come to stay (hear, hear); that they are found a convenient form of document; and that the bankers ought, in the interests of trade and commerce, to see whether they cannot find means of adopting the wishes of the mercantile community in that respect. Now it has become a grave and a difficult question to know how that result is to be attained. I am afraid it cannot possibly be attained in this room, because it necessitates a great deal of discussion; but I do think that I may go this far and say on behalf of the bankers, that, if and when the members of the mercantile community will come together, and will in the clearest possible terms agree and will instruct the bankers to accept “received for shipment” bills of lading, the bankers will not stand in their way. But bear in mind that, so long as the “Received for shipment” bills of lading are issued, under pressure, by the shipowner with only the consignor’s instructions, we are always in the difficulty that the consignee, the importer in England, for example, may say: “I will have nothing to do with it, and you, the bank, had no authority to take that document”.

Now the problem before us is to get over that difficulty. It must be a matter of time, because all our documents will have to be re-framed; and I am going to suggest that, as soon as practicable, in the autumn, we shall endeavour to get the representatives of trade, the exporters and importers, into a conference with the bankers in England on that subject. The shipowners, I take it, and I gather from what Sir Norman Hill has said, take a neutral position in the matter. They, like ourselves, would say, I am sure: “We are desirous of facilitating British trade in every direction that we can, and we are
perfectly willing to issue “received for shipment” bills of lading if the mercantile community requires them”. Therefore, perhaps there is no need to summon the shipowners to the conference of which I am speaking. But you, Gentlemen, whose servants we are as bankers, must get together, and you must agree all round, consignors and consignees, that, in the particular cases in which you desire them, these “received for shipment” bills of lading are documents which will satisfy the terms of your contract, and you must then instruct the bankers accordingly. If and when that is done, I think that the bankers will fall into line; but I am speaking, as I told you, under circumstances of great difficulty, because I come here with a mandate as it were to some extent contrary to that to which I am speaking. As reasoning men, as I said before, we have to take the arguments which have been addressed to us into account; we have to give effect to them; and we have to report to our principals that in our judgment the position has somewhat changed since we have been here.

I think that covers pretty well the ground which I wanted to put before you. As far as I know at present, it is the Eastern banks mainly who have, as I gather suddenly - I did not know that before - stopped the use of these “received for shipment” bills of lading.

Lord Phillimore: Surely Mr. Paine is making a mistake. “received for shipment” bills of lading are inferior, but they are honest documents, The complaint made on this particular clause is that [133] shipowners have been made to give “shipped” bills of lading, and this clause is designed to prevent that. The whole of Mr. Paine’s argument here strikes me as being in support of it.

Mr. W. W. Paine: I am not controverting the amendment; I am simply putting my difficulties before the meeting.

Lord Phillimore: I do not understand that it was the Eastern banks who created these “received for shipment” bills of lading. They have been created a long time. Their use may have been developed or not by the Eastern banks, but the complaint of the Eastern banks was that they were getting “shipped” bills of lading when they ought only to get “received” bills.

Mr. W. W. Paine: I am afraid. I did not make myself quite clear. Mr. Hobhouse told me this morning - perhaps it was in an informal conference after the meeting had adjourned - that there had been a sudden order issued by the Eastern banks to their agents not to accept “received for shipment” bills of lading.

Lord Phillimore: Yes.

Mr. W. W. Paine: And that, in consequence of that order the consignors had been forced to get some sort of document which they could negotiate, and had consequently brought pressure upon the shipowners to issue “shipped” bills of lading when they had no business to do so. That was the line of my argument. I do not think I could have made myself quite clear. But I do not think, so far as my experience goes, that that has extended to other banks. It is also true, as Sir James Hope Simpson will tell you presently about a trade which he knows much more about than I do, that the “received for shipment” bills of lading have been long since established in certain American trades; I think I am right in saying, the cotton trade, and the packing trade; and they are established under conditions which do get rid of some of the difficulties, if not all of them, that I have mentioned to this meeting. It is expressly stipulated in those “received for shipment” bills of lading that the shipment shall be made within a specified time; and it is also stipulated, I understand, that the date of the “Received for shipment” bill of lading is accepted as the date of the shipment of the goods, and so it goes over the difficulty to which I have referred created by that old-established authority of Bowes v. Shand (1877), L. R. 2 A. C.455. [134] Now, Gentlemen, I have taken you fully into the confidence of the bankers; I have shown you the difficulties
under which they lie; I have shown you the difficulties under which we stand, or I stand in addressing you to-day, because of our mandate. I really honestly have not had sufficient time, and I hope I may be excused for not having a quicker witted brain to deal with a question of this kind in a very short interval, to formulate any amendment which entirely fits the case; but Sir Norman Hill, and Mr. Jones I think, have suggested that I might move a resolution to the following effect, even if if only is for the purpose of getting your minds, which will enlighten us. I do not want to put it in a dogmatic way, or in a way that is fixed and certain; I want to raise discussion in view of these difficulties of which I have told you, and then let us benefit by the opinions of all the experts that we have in this room, to see what is the satisfactory solution of this question. The resolution which I am prepared to move for that purpose is as follows: “That the Association recognises that the “received for shipment” bill of lading is a necessity of commerce, and recommends co-operation between all the interests concerned with a view to the solution of the difficulties which at present surround the use of that document”. And I will undertake, and I think Sir James Simpson will join with me in undertaking, that we will represent, as soon as we can in the month of September, to our Association the strong advisability of calling representatives of trade and commerce together in order to endeavour to find a solution of this question. (Applause).

Sir James Hope Simpson: Mr. President and Gentlemen. I wish to support in every particular what Mr. Paine has just said. I have no fear myself of the “received for shipment” bill of lading if its issue can be properly regulated and the points of difficulty which have hitherto surrounded it can be solved. We had this very difficulty to solve in connection with the import of cotton from the United States to England, or indeed to Europe, and it was solved after a great deal of difficulty by an arrangement of this kind: that cotton could be shipped on a through bill of lading issued under certain conditions approved by the Liverpool Bill of Lading Conference; it could be shipped on a Port bill of lading where the vessel was actually lying in the port awaiting the loading of the cargo under conditions arranged with the Liverpool Bill of Lading Conference; and it could be shipped on a Custody bill of lading, which is exactly the same thing as a “received for shipment” bill of lading, on conditions [135] arranged with the Liverpool Bill of Lading Conference, and the most important of those conditions was that the cotton should be shipped within twenty-one days after the date of the issue of the bill of lading.

Now what has taken place has been that every carrier of cotton in the United States, all the railroads, all the great steamship lines, all the agents of tramp steamers, every carrier, as far as could be ascertained, concerned in the conveyance by sea or by land and sea together of cotton from America to Europe entered into a definite agreement with the Liverpool Bill of Lading Conference Committee to observe the regulations that they laid down; and what happens now when any of those carriers commit a breach of those regulations and the breach is discovered is that the breach is reported by the bank - as it generally is a bank - who discovers the breach to the Chairman of the Liverpool Bill of Lading Conference. He at once communicates with the carrier; he says that he hopes that this has happened by mistake, but that no departure from the regulations will be permitted, and that if the mistake continues the banks will be informed that such and such a carrier’s bills of lading no longer conform to the regulations of the Bill of Lading Committee; and so far, and that is for a period of I think over ten years, that hint has been sufficient to maintain regularity of all that great mass of bills of lading. I suppose there is no group of bills of lading from any country to Europe so great in value and in number as the bills of lading from the United States of America for cotton, and it is a great thing to say that we have managed to solve in prac-
article the difficulties with which the “received for shipment” bills of lading in other directions to-day are confronted.

Now I meet with this difficulty. You might say to me: Why should not we apply the same system here? The great difficulty of applying this system to all the rest of the world outside the United States is this: that there are so many countries involved, so many different classes of trade commodities, so many different routes, so many different steamship owners and carriers that it would be impossible, in my opinion, to get the concurrence of all of them in a code of regulations. Therefore I share the view that Mr. Paine has expressed, that this is a matter of such extreme difficulty and delicacy that it would be a mistake to-day for us to attempt to frame any regulations attending the issue of “received for shipment” bills of lading, and that our proper duty is to try, in our different [136] countries, and we certainly are willing to try as far as Great Britain is concerned, to get all the interests concerned, that is the shipper, the ship, the consignee and the bankers and the underwriters to confer together, and to try to find some method of getting rid of the objectionable features of “received for shipment” bills of lading.

May I just add one note more, Sir, and then I shall not take up the time of the meeting any longer. I personally, having had that experience, have come to recognise that any practice which is found to be for the general convenience of trade is a practice which the bankers ought never to oppose, and, if they find difficulties arising in connection with it, they ought to try to solve those difficulties and not to try to abolish the practice. In this case, the case of “received for shipment” bills of lading, I have thoroughly recognised and I told my colleagues the bankers in London that the practice of issuing “received for shipment” bills of lading was a practice of great benefit to trade; that it is a great facility to all parties concerned and that if under the British law as declared just recently by Mr. Justice McCardie that bill of lading is held to be of no value in particular circumstances or in all circumstances, then so much the worse for British law [Sir Norman Hill: Hear, hear], and there will have to be steps taken to regularise a practice which is found to be of great general commercial utility. So I feel that I am not going back upon my own opinions when I say to-day that, although we were both of us asked to do our best to obtain the prohibition of “received for shipment” bills of lading, it certainly goes with my judgment to ignore those instructions, and to say to you that as far as we can we will go back to our colleagues in London and tell them that we believe that this “received for shipment” bill of lading is a document of very considerable international value, and that what we have to do is to regularise its issue. (Applause).

The Chairman: Perhaps I may remind the Committee that this discussion is not relevant to the clause which is immediately under consideration, but is relevant to an amendment of which Mr. Paine has given notice, and as Chairman I shall take it that the discussion which proceeds now by way of indulgence is the discussion proper to that amendment when it comes on for consideration, and that the same points will not be again discussed.

Mr. L. C. Harris: Perhaps I am in order in dealing with the question of “received for shipment” bills of lading.

[137]

The Chairman: Upon those conditions, yes.

Mr. L. C. Harris: I do not wish to deal with arguments: I only wish the Conference to be informed as to facts. I think there has been a tendency perhaps to think that “received for shipment” bills of lading are either something novel or something which now has already been cancelled through the action of bankers. Apart from that great
trade which Sir James Hope Simpson has already mentioned as being conducted on these lines - and we are very grateful to him, as shipowners all of us, for the forcible way in which it has been brought home to the Conference that there is a case where you must have combined action - the whole American trade in general cargo is done on bills of lading equivalent to and as I think actually in many cases “received for shipment”. The one I happen to hold in my hand actually has these words: “received in apparent good order and condition from [blank] to be transported by the good steamship [blank]”. I think words equivalent to goods for shipment; they are intended to be. As a representative of a concern which has run many lines out of New York for the last thirty years, I have never seen a general cargo from New York that was “shipped”; they are always “received”. We have from time to time endeavoured to get it altered, but we have given up long ago, because it is so much the constituted custom of New York, for reasons that we shipowners personally know very well - we have tried to beat it down before, but it is absolutely impossible - that all bills of lading must be issued when the goods are received on the wharf for shipment, and one of our great difficulties to-day in dealing with the pilferage question is that we cannot bring our bills of lading down to “shipped” bills of lading, so that we are only responsible for what goes into the ship. We are taking steps to try to amend that as best we can, but the great difficulty in our stopping pilferage in New York is that we are obliged by the custom, and I believe law, port regulations, or something, in America to issue bills of lading that we get in this form. I feel sensible that this meeting is representing European interests. I have not heard any representatives of the States speak. I am afraid they are not here. Therefore, as an inefficient representative of the trade, although not representing America, I would like to emphasise that the whole general cargo trade from America is done on such bills of lading, and I presume that the bankers have some method, and have had for the past thirty years or however long it has been going on, without all these difficulties, of tackling that position. I do not know how they do it, but the bankers surely advance money on American bills of lading as well as on others.

Mr. McConkey: Mr. Chairman. I take it that we have already agreed to clause 6 and the addition, because I had a special mandate?

The Chairman: No, Mr. McConkey.

Mr. McConkey: You are not going over that again?

The Chairman: Clause 6 is the amended clause which has been dealt with, but clause 7 is the old clause 6.

Mr. McConkey: You have agreed to the first two clauses of section 7.

The Chairman: No; at present the Committee has not accepted the additional words at the end of 7. It was for that reason that I called attention to the matter just now.

Mr. McConkey: But the previous part is accepted.

The Chairman: The part in black at the head of page 4 has been accepted.

Mr. McConkey: As long as you do that I feel quite right, because the Manchester Chamber of Commerce and the Manchester Association of Importers and Exporters have fully discussed these two points, and I was instructed to do my best to carry that through. I understand up to the printed part we have done so. The reason we are doing that is because the legal information that we have got is entirely different from that mentioned by Mr. Paine. He brings forward a judgment by Mr. Justice McCardie.

The Chairman: Mr. McConkey. I almost think I had better take the view of the Committee as to whether we should dispose of the small questions under Article 3 by the amendment at the end of section 7 of Article 3, and that then we should get as soon as we can to this larger question of “Received for shipment” bills of lading.
Mr. McConechy: I am quite agreeable as long as the first part is agreed.
The Chairman: We are mixing two subjects.
Lord Phillimore: Hear, hear!
Mr. McConechy: I move that the amendment that is put forward by Sir Norman Hill be deleted altogether.

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The Chairman: It is the matter which is properly before the Committee at this moment, and if I may suggest it to you it may be desirable that the Committee should take steps to get past this smaller matter and get ahead to the matter which you wish to discuss.
Sir Norman Hill: I think I might help the Committee. We have listened with very great attention to what has been said by our friends representing the bankers, and I should be quite content to withdraw entirely my proposed red ink addition to clause 7 on the understanding that some such resolution as that Mr. Paine has read would appear on our Minutes.
The Chairman: Mr. Paine has given notice of an amendment to the rules which raises the whole question, Mr. Paine's proposal of a new Article 5, which recognises "through" bills of lading.
Sir Norman Hill: Yes, Sir. I am not quite sure how far we have gone. We have not had an opportunity of having a copy of that further amendment in our hands; but I understand, Sir, that, thinking it all over, and in view of what has been said already here, the suggestion is that we should not try to cumber the Code with these further points; but that, if we could take it that in the opinion of the Association this form of bill of lading is necessary in the interests of commerce and that we do as an Association urge co-operation between all the interests with a view of finding a solution of the difficulties, we should then not attempt to deal with those difficulties in our set of rules.
The Chairman: May I remind you, Sir Norman, that we are to have, when the rules have been completed, a series of resolutions which you gentlemen discussed in my room last night.
Sir Norman Hill: I think this would be most appropriate.
The Chairman: I think in that series of resolutions Mr. Paine's suggested proposal would properly come.
Sir James Hope Simpson: Hear, hear!
The Chairman: That would clear the ground a good deal. Sir Norman Hill desires to withdraw the proposed amendment at the end of Article 3, new section 7, which was under discussion. Is it the pleasure of the Committee that that amendment be withdrawn? (Agreed).
The amendment is withdrawn.

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Mr. W. W. Paine: I am very anxious to save the time of this Committee, and to maintain these rules with as little alteration as possible, and I have seen my way, in conjunction with Sir Norman Hill, to withdraw this amendment, provided that in drafting - I think it is almost a matter to leave to the Drafting Committee - we can go back to clause 6 of Article 3 and express that in some very [202] slightly different form. I really hardly like to trouble the Committee with it, because Sir Norman Hill and I are agreed, and it really does not alter the sense of the words of paragraph 6 of Article 3, except in one way. We are anxious that the shipowner should not issue a "shipped" bill
without getting back into his possession for cancellation any “received for shipment” bill of lading which he may have already issued. I am told that he will do that for his own protection. It is most important from the point of view of the bankers, and if that is agreed, then I think it can be left to the Drafting Committee (Hear, hear), together with a very slight alteration in the definition clause in paragraph (b) “Contract of carriage”. We want to make that applicable not only to a bill of lading but also to so much of a through bill of lading, or of a port or custody bill of lading, as relates to contracts of carriage by sea. I believe that is agreed? (Agreed).

The Chairman: That was agreed yesterday afternoon.

Text adopted by the Conference

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7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that no “received for shipment” bill of lading or other document of title shall have been previously issued in respect of the goods.

In exchange for and upon surrender of a “received for shipment” bill of lading the shipper shall be entitled when the goods have been loaded to receive a “shipped” bill of lading.

A “received for shipment” bill of lading which has subsequently been noted by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, shall for the purpose of this Code be deemed to constitute a “shipped” bill of lading.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[365]

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship upon which the goods have been shipped and the date or dates of shipment and when so noted the same shall for the purpose of this Rule be deemed to constitute a “shipped” bill of lading.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

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No change.
M. le Président déclare que ce paragraphe remet en discussion la question du connaissement “reçu pour embarquement”. La rédaction du texte est peu claire. Le seul principe à retenir de la disposition est celui-ci: dès que les marchandises sont à bord, le chargeur a droit à un connaissement. Il propose donc de supprimer la première partie de ce paragraphe et ne conserver que la seconde.

M. Berlingieri rappelle que par cette disposition les chargeurs reconnaissent que le document qui n’est pas libellé “embarqué” reste néanmoins un connaissement.

M. Langton rappelle que par cette disposition les chargeurs reconnaissent que le document qui n’est pas libellé “embarqué” reste néanmoins un connaissement.

M. Loder est d’avis que le texte est suffisamment clair pour ceux qui ont suivi les travaux relatifs à la Convention.

M. Van Slooten fait ressortir que beaucoup de compagnies de navigation n’emploient que le connaissement “reçu pour embarquement” et que si le chargeur n’en voulait pas, ils refuseraient la cargaison.

M. le Président fait appel au grand esprit pratique de tous les membres. Il est exact qu’à l’occasion de l’élaboration de ces règles, on aurait voulu obtenir une sanction contre la pratique des “connaissements reçus pour embarquement”; les objections ont été nombreuses et insurmontables; pour aboutir à une solution, il a fallu accepter la dernière concession des transporteurs lorsqu’un document de ce genre a été délivré, le chargeur
pourra obtenir un véritable connaisse-
ment, dès que les marchandises sont
mises à bord. Puisque l’un des docu-
ments venait se substituer à l’autre, il fal-
lait les dater du même jour et on s’est mis
d’accord pour dire qu’on daterait le
connaissement “embarqué” du jour de la
délivraison effective. Le § 7 rappelle ces
négociations. Il n’était au surplus pas in-
utile de dire que lorsqu’il y a un connais-
sement reçu pour embarquement on a le
droit d’exiger un connaissement vérita-
ble, sinon le capitaine pourrait dire
qu’il a donné un document valant garan-
tie et qu’il n’en donne pas d’autre.
D’autre part, il n’était pas inutile pour la
protection des tiers porteurs de bonne
foi, de stipuler que le connaissement em-
barqué devra porter la date de l’embar-
quement.

M. Ripert croit que le texte peut prê-
ter à confusion; il prévoit le cas où un
connaissement “pour embarquement”, a
été délivré et où ce connaissement est re-
mis au capitaine pour que celui-ci l’échange contre un connaissement “em-
barqué”. Dans ce cas le capitaine aurait
la faculté d’annoter sur “ce” connaisse-
ment la date de l’embarquement. Sur le-
quel des deux? Et pourquoi est-on obli-
gé de remettre le premier document?

M. Berlingieri regrette que le texte
admette l’existence de connaissements
“reçu pour embarquement”, il a été dé-
claré qu’on voulait les exclure de la pra-
tique et maintenant on les sanctionne.

M. le Président fait observer que le
texte anglais marque de façon précise la
portée de la disposition. Celle-ci recon-
nait au chargeur le droit de refuser le
connaissement “pour embarque-
ment”; mais si le chargeur en a un, il peut
demander au capitaine un connaisse-
ment véritable. Un capitaine de mauvai-
se foi pourrait répondre qu’il a déjà don-
né un connaissement et qu’il n’en donne
pas d’autre. On a donc stipulé qu’un
chargeur peut exiger un connaissement
“embarqué” à condition de rendre
l’autre. Voilà la première hypothèse.
Dans la seconde hypothèse, lorsque le
chargeur présente un document “reçu
document of this type had been issued,
the shipper would be able to obtain a re-
al bill of lading, as soon as the goods
were aboard. Since one of the docu-
ments would replace the other, it was
necessary to date them on the same day
and it was agreed to say that the
“shipped” bill of lading would be dated
from the day of the effective delivery.
Paragraph 7 brought to mind these ne-
gotiations. Furthermore, it was not
pointless to say that when there was a re-
ceived for shipment bill of lading one
had the right to demand a real bill of lad-
ging; otherwise the captain might say that
he had already given an enforceable doc-
ument and that he would not give anoth-
er. On the other hand, there was some
point for the protection of bona fide
holders in stipulating that the shipped
bill of lading should bear the date of
shipment.

Mr. Ripert believed that the text
might lend itself to confusion. He fore-
saw the case where a “received for ship-
ment” bill of lading had been issued
and where this bill of lading was presented
to the captain for him to exchange it for
a “shipped” bill of lading. In this case the
captain would have the facility to note on
“this” bill of lading the date of shipment.

Mr. Berlingieri regretted that the text
permitted the existence of “received for
shipment” bills of lading. It had been
stated that their exclusion from practice
was desirable and now they were being
sanctioned.

The Chairman noted that the English
text precisely demarcated the scope of
the provision. It acknowledged the ship-
per’s right to refuse the “received for
shipment” bill of lading; but if the
shipper had one, he could ask the cap-
tain for a real bill of lading. A captain in
bad faith could reply that he had already
issued a bill of lading and would not is-
sue another. It was therefore stipulated
that a shipper could demand a
“shipped” bill of lading on condition
that he surrendered the other. That was
pour embarquement”, le capitaine a la faculté d’y ajouter la mention que les marchandises y mentionnées ont été embarquées à bord de tel navire et à telle date.

M. Ripert demande si dans ces conditions on ne pourrait trouver une autre rédaction que le libellé du paragraphe 7.

M. Alten conclut de l’avis exprimé que la Convention ne couvre pas le connaissement “pour embarquement”, que les dispositions des paragraphes 3 et 4 de l’article 3 ne s’y appliquent pas.

M. le Président précise l’esprit de la convention. Celle-ci ne consacre pas le droit de considérer ce document qu’on appelle “received for shipment B/L” comme un connaissement véritable. Mais dès qu’il est fait usage de pareil connaissement, celui-ci devient un document similaire.

M. Ripert craint que cela ne présente un grave danger et qu’il suffira de délivrer un connaissement “reçu pour embarquement” pour éviter les dispositions de la convention.

Sir Leslie Scott ne partage pas cette opinion. Il rappelle que le paragraphe 7 suppose que le connaissement “reçu pour embarquement” contient toutes les clauses requises par la Convention.

M. le Président fait observer qu’il y a une distinction à faire dans la discussion. D’abord, le connaissement “reçu pour embarquement” est un titre à la délivrance de la marchandise et le capitaine qui le délivre est tenu. Comme tel, ce document doit contenir toutes les clauses indiquées dans la convention. La seconde question est de savoir si pareil document a la valeur d’un connaissement. Il faut répondre négativement. Le texte ne vise même pas pareil document. Sir Norman Hill a expliqué devant le comité présidé par Lord Sterndale pourquoi il ne le faisait pas, mais ce document est considéré comme un écrit rentrant dans la large catégorie de documents qui, sans être des connaissements, sont des titres similaires.

M. Sindballe objet que les dispositifs...
tions des paragraphes 3 et 4 de l’article 3 ne se réfèrent qu’aux connaissements et non pas à des documents similaires valant titre.

M. le Président signale qu’il en est ainsi, parce que le point est résolu par l’article 1 b.

M. Sindballe répond que dans ce texte, il est dit expressément “les connaissements” mais non “les contrats de transport” et qu’il pourrait en être déduit que ces dispositions ne s’appliquent pas lorsqu’un pareil document est émis.

M. le Président estime que le texte ne peut être interprété de cette manière et qu’il faut prendre ces dispositions dans leur succession naturelle.

Sir Leslie Scott est d’avis que l’article 3 signifie qu’un document similaire, y compris le connaissement “reçu pour embarquement”, doit être régis par ces dispositions dès qu’il constitue un contrat de transport.

M. le Président fait observer que cela résulte du texte conformément aux dispositions précédentes, et propose pour éviter toute discussion à cet égard, d’ajouter au texte ces mots “conformément aux dispositions qui précèdent”.

M. Alten émet l’opinion que cette addition ne suffit pas. Comme il s’agit dans ce texte d’un connaissement “reçu pour embarquement” et non “embarqué” il vaudrait mieux dire expressément dans le paragraphe 7 que ces dispositions sont étendues même au connaissement “reçu pour embarquement”.

Mr. Sindballe objected that the provisions of article 3(3) and (4) only referred to bills of lading and not to similar documents of title.

The Chairman indicated that this was so, because the point was resolved by article 1(b).

Mr. Sindballe replied that in the text it was stated expressly “bills of lading”, not “contracts of carriage”, and that it might be deduced from this that these provisions did not apply when a similar document was issued.

The Chairman felt that the text could not be interpreted in this way and that the provisions should be taken in their natural order.

Sir Leslie Scott was of the opinion that article 3 meant that a similar document, including the “received for shipment” bill of lading, must be regulated by these provisions when it constituted a contract of carriage.

The Chairman pointed out that that resulted from the text in conformity with the preceding provisions. He proposed, in order to avoid any discussion, adding to the text these words “in conformity with the preceding provisions”.

Mr. Alten put forward the opinion that this addition was not sufficient. As it was a matter in this text of a “received for shipment” bill of lading and not “shipped”, it would be better to say expressly in paragraph 7 that these provisions extend even to the “received for shipment” bill of lading”.

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The Chairman did not share this opinion. If this observation was perhaps theoretically correct, in reality this question would not arise. Difficulties could only arise at the port of loading, where the quantity of goods loaded or the number of parcels would be stated. If, at that time, there were any legal dispute and if the captain refused to indicate the quantity, weight, or condition of the goods, either the shipper would content himself with a like document or he would not
courir ce risque et il réclamera un connaissance véritable conformément aux dispositions qui précèdent.

M. Ripert suggère une rédaction nouvelle: “lorsque la marchandise est chargée le transporteur, capitaine ou agent du transporteur devra si le chargé le demande, lui délivrer un connaissance constatant l’embarquement, et le chargé devra restituer le reçu ou le document similaire qui lui aura été délivré antérieurement. Si ce reçu ou document similaire contient les mentions prévues à l’article 3, § 3, le transporteur, capitaine ou agent du transporteur pourra simplement mentionner sur ce document le nom du navire et la date de l’embarquement et dans ce cas ce document vaudra connaissance constatant l’embarquement”.

M. Struckmann tient à faire remarquer que d’après une stipulation expressément insérée dans le code de commerce allemand, il y a 25 ans, un connaissance “received for shipment” est un véritable connaissance. Cette disposition restera intacte sous réserve de ce qui est dit dans l’article 3, § 7 des Règles de La Haye.

M. le Président confirme ce point de vue: la convention ne touche pas aux lois nationales et aux usages maritimes. Il signale qu’en présence de pareilles dispositions nationales celle du paragraphe 7 devient plus nécessaire encore puisque le chargé, quand il aura commencé par accepter un pareil document, pourra dire qu’il exige un connaissance qui constate que la marchandise a été embarquée.

M. Van Slooten signale aussi que le nouveau projet de loi hollandais ne comprend que pareil document.

M. Bagge demande s’il faut en conclure qu’il dépendra de la loi nationale qu’on délivre au chargé un connaissance ordinaire ou un connaissance “reçu pour embarquement”.

M. le Président répond négativement; ce qui dépendra de la loi nationale, c’est de savoir si un connaissance “reçu pour embarquement” sera considéré comme un document similaire for-
mément titre. Mais, quoi qu’en dise la loi nationale, le chargé aura le droit de réclamer, en vertu de la convention internationale, un connaissement “received on board”.

M. Bagge exprime un doute au sujet du point de savoir quel est le connaissement qui doit être délivré d’après le paragraphe 3. Sir Leslie Scott a commencé par déclarer que c’était un connaissement “embarqué” et non un connaissement “reçu pour embarquement”. Mais il a dit ensuite que non seulement la disposition s’appliquait à un connaissement ordinaire mais aussi à un document similaire.

Sir Leslie Scott émet l’avis que, par connaissement on entend uniquement un connaissement “embarqué”.

But whatever national law said, the shipper would have the right, by virtue of the international convention, to demand a “received on board” bill of lading.

Mr. Bagge expressed a doubt on the subject of knowing which is the bill of lading that must be issued under paragraph 3. Sir Leslie Scott had begun by stating that it was a “shipped” bill of lading and not a “received for shipment” bill of lading. But he had later said that the provision not only applied to an ordinary bill of lading but also to any similar document.

Sir Leslie Scott put forward the opinion that by bill of lading one understood solely a “shipped” bill of lading.

M. Louis Franck . . . . . . . . . . . . . . .

Au paragraphe 7, en ce qui concerne les marchandises pour lesquelles il est d’abord délivré un document ne constatant pas leur embarquement, la Commission a reconnu que pour la clarté, il fallait distinguer deux hypothèses.

Première hypothèse: Après avoir reçu un document “reçu pour embarquement”, le chargé demande un vrai connaissement pour marchandise “embarquée”; il peut l’obtenir et le capitaine est tenu de le fournir pourvu qu’il soit demandé au port d’embarquement et que le premier document soit restitué.

Seconde hypothèse: Le chargé demande simplement que le connaissement délivré en premier lieu, soit complété. Dans ce cas, le capitaine peut le compléter en y portant le nom du navire et la date de l’embarquement - en y portant en somme tout ce qui manque au premier connaissement.

In article 3(7), concerning the goods for which a document that did not state their shipment had originally been issued, the Commission had recognized that, for the sake of clarity, it was necessary to distinguish two hypotheses.

First hypothesis: Having obtained a “received for shipment” document, the shipper asked for a real bill of lading for goods “shipped”. He could get this and the captain was responsible for giving it to him, provided he asked for it at the port of shipment and returned the first document.

Second hypothesis: The shipper simply asks that the bill of lading originally issued should be completed. In this case, the captain could complete it by including in it the name of the ship and the date of shipment - by including in it, in fact, everything that was missing from the first bill of lading.
M. Ripert rappelle au sujet de l’article 3 paragraphe 7 qu’il avait été convenu dans une séance précédente que le document reçu pour embarquement, s’il est annoté par le capitaine, vaudra connaissement embarqué, mais à la condition qu’il contienne les mentions prévues à l’article 3 paragraphe 3; cependant le texte semble permettre de mentionner simplement le nom du navire. Il faudrait donc préciser et dire: qu’il pourra être considéré comme connaissement embarqué s’il contient les mentions prévues à l’article 3 paragraphe 3.

Mr. Ripert recalled, in regard to article 3(7), that it has been agreed during a previous session that the “received for shipment” document, if it has been annotated by the captain, was equivalent to a shipped bill of lading, but only on condition that it contained the information provided for in article 3(3). However, the text seemed to allow the simple inclusion of the name of the ship. It was therefore necessary to state more clearly that it could be deemed a shipped bill of lading if it contained the information provided for in article 3(3).
ARTICLE 3

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

ILA 1921 Hague Conference
Text submitted to the Conference
[xlviii]

7. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article shall be illegal, null and void, and of no effect.

Second day’s proceedings - 31 August 1921
The Chairman .........................................................

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Then Article III, clause 8 - that which is now clause 8. It is agreed to amend “7” to make it “8”? (Agreed).

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Mr. Rudolf: Can I just say one word on this clause? Simply as a matter of wording I suggest that after the word “relieving” we add “or lessening”.
Lord Phillimore: It will not be English.
Mr. W. W. Paine: You must put it at the end of the sentence.
Mr. Rudolf: I put it forward with the idea that the Drafting Committee can turn it into English if I have not spoken English.
The Chairman: I do not know if it will be possible to say “relieving the carrier or the ship wholly or partly from liability”, but that is purely a drafting matter.
Mr. W. W. Paine: I have it ready here. Clause 8 would read as follows: “Any clause,
covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability shall be null and void and of no effect”.

The Chairman: Yes. Lord Phillimore agrees that that would be effective. The question is that those words be there inserted.

Sir Norman Hill: I am not quite sure how that stand, Sir. You will recollect that in May the meeting of the Marine Committee then laid it down as an absolutely essential condition that in this new form there should be a maximum limit beyond which the shipowner was not responsible, and that, Sir, is taken from our Imperial Shipping Committee’s Report. Now so far as the Harter Act is concerned, the Courts in the United States have recognised that such a clause fixing a reasonable amount per package or per ton is not prohibited by the Harter Act. That is a point upon which we thought the cargo interests were absolutely agreed. You will recollect that the underwriting interests at our meeting in May suggested and pressed the point. If “or lessening” strikes at that we could not possibly agree to it.

The Chairman: I do not think it can, Sir Norman, because really, at least according to my view of it, to relieve from liability is to [141] relieve from any part of the liability. I believe the words which are suggested will not increase the effect of the clause, but if it is necessary to safeguard the provisions of the rules themselves with regard to recognised modes of assessing liability could not it be done, if there is a desire for language such as has been mentioned, by limiting the operation of the prohibition to a reduction of liability otherwise than in accordance with the rules?

Sir Norman Hill: I am quite content.

The Chairman: I think that is what is meant.

Mr. Rudolf: Yes.

The Chairman: Very good. Then would you give me your words, Mr. Paine?

Mr. W. W. Paine: Yes. They are contained in the amendments which Dr. Bisschop has there at the bottom of page 1.

Lord Phillimore: It is only adding after “provided in this Article” the words “or lessening”, and so on.

The Chairman: “Or lessening such liability otherwise than as provided in these rules”. Now the question is that those words be there inserted. Is that agreed? (Agreed).

Then the clause goes on to say: “shall be illegal, null and void and of no effect”. I have notice of an amendment from Sir Norman Hill to omit “illegal”.

Sir Norman Hill: I suggest the omission of “illegal”. I think it is absolutely essential if we are making these rules and not advising that they should be made law. I do not think by rules you could declare a thing illegal. Apart from that, I think there is another point upon which you, Sir, are much better able to help us than I can help the Committee. I think there is danger in putting in the word “illegal”.

The Chairman: I think so, too.

Sir Norman Hill: It is not in the Harter Act.

The Chairman: I think it is merely odious. It does no good; it may do harm.

Sir Norman Hill: And it might upset the whole contract.

The Chairman: I think so. If it had effect it might destroy the effect of the contract as a whole. The question is that the word “illegal” stand part. I understand the sense of the Committee to be that it shall not. (Agreed).

I have had notice of no further amendment. The question is that the clause as amended stand part. Is that agreed? (Agreed).
Text adopted by the Conference

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article OR LESSENING SUCH LIABILITY OTHERWISE THAN AS PROVIDED IN THESE RULES shall be null and void and of no effect.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules shall be null and void and of no effect.

Afternoon sitting of 11 October 1922

Sir Norman Hill (Rapporteur of the Sub-Committee): Gentlemen, the next point we dealt with arises under the same Article section 8. That is at the bottom of page 4. It is the clause which prohibits the carrier from inserting any clause relieving him from liability imposed by the Rules. A question was raised as to whether, what is commonly known as a “benefit of insurance” clause was such a clause. The clause in question as you know provides that the shipowner having met his liability is entitled to take over any insurance the cargo owner may have effected on his cargo, and the question is whether that clause would be a clause relieving the shipowner from liability within the meaning of the Rule. We are all quite clear that we mean to prohibit such a clause, and it is therefore proposed to introduce words to the following effect: “A ‘benefit of insurance’ or similar clause shall be deemed to be a clause relieving the carrier from liability”. That is to say that that clause will be a prohibited clause.

Mr. A. P. Möller: Will that be a prohibited clause? I did not understand that.

Sir Norman Hill: That is right, Mr. Möller.

The Chairman: I think on the whole that it would be better that members should reserve observations. It is not convenient to have a preliminary statement interrupted with discussion. Members will make a note of the reservations they desire to make.

The Chairman: Article 3, clause 8. It is proposed that this paragraph shall be added at the end of the clause: “A ‘benefit of insurance’ or similar clause shall be deemed to be a clause relieving the carrier from the liability”. Is that agreed?
**Sir Ernest Glover:** From a shipowner point of view we are not at all clear why that should be added. It seems to me that it is depriving the shipowner of something to which he is fairly entitled. I do not think Sir Norman has said it quite sufficiently up to the present; I cannot see any justification for giving a benefit to the merchants at the cost of the shipowner.

**Sir Norman Hill:** I do not think it is a case with which the British shipowners are very familiar. It is an American clause. I put it to the judge and he said: Yes, it was a clause which was used very largely in the United States and to which very great exception has been taken. I am not familiar with such clause in any British bill of lading. It provides that the shipowner having incurred a liability and having paid can step into the shoes of his cargo owner and recover from the cargo owner the amount for which the cargo was insured.

**Mr. Louis Franck:** May I add for Sir Ernest Glover’s information that as far as I am concerned and continental jurisprudence will be concerned, that clause would be considered as being void under paragraph 8, because it certainly is lessening and diminishing the liability which is on the shipowner under these conditions, if you give him the right by contract to take away from the cargo owner an insurance which the cargo owner has paid for by his premium and about which he has made his own bargain. There is no doubt that the general principle would already cover it, but the observation of the learned Judge was that as in the States there has been doubt on that, we ought to apply the old saying: “Things which go without saying go even better if you mention them”, and that is the reason for it.

**Sir Ernest Glover:** With that explanation I am satisfied.

**The Chairman:** I think that now it is explained, it is agreed by Sir Ernest Glover. Is it the view of the Conference that the proposed paragraph should be added at the end of clause 8 of Article 3? (Agreed).

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**Text adopted by the Conference**

*(CMI Bulletin No. 65 - Gothenborg Conference)*

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void, and of no effect. A BENEFIT OF INSURANCE OR SIMILAR CLAUSE SHALL BE DEEMED TO BE A CLAUSE RELIEVING THE CARRIER FROM LIABILITY.
M. Bagge, Swedish delegate, asked why the prohibition of the negligence clause had not been adhered to. Why was it necessary to extend this defence to the other obligations of the shipowner and to the direct recourse that the third party holder of the bill of lading had under the head of errors of description in the contract of carriage?

Mr. van Slooten, delegate from the Netherlands, asked to adhere to the exclusion of the negligence clause.

Mr. de Rousiers, French delegate, explained that it seemed necessary to define what it was forbidden to exclude by contract. The terms of article 3 aimed at creating a unanimous agreement on behalf of shipowners.

The Chairman replied that that provision had been introduced at the request of American interests. It was recognized that it was not indispensable but that they held to it in the United States, where they preferred a clear statement as to what one could or could not do. The United States supported the maintenance of the rules as formulated concerning the exactitude of the description of goods on the bill of lading so as to avoid the serious losses to which cargo owners and bankers had in the past been victim.

Mr. Langton, delegate from Great Britain, supported the views of Judge Hough. The aim was above all to make the bill of lading an “instrument of credit” of real value.

Mr. Bagge, Swedish delegate, returning to the clause concerning prima facie evidence, “Présumption sauf preuve contraire” (article 3(4)), related it to the present paragraph 8 and could not accept this “présumption”. Under Scandinavian law, the bill of lading constituted conclusive proof while the draft only considered the marks on the bill of lading as prima facie evidence.
M. le Président explained what prima facie evidence meant, which was, in effect, that the descriptive notes in the bill of lading remained conclusive evidence unless the shipowner proved there was an error.

Mr. Rambke, German delegate, observed that under German law the bill of lading constituted incontestable proof. He would not be able to recommend to his Government a convention that would reverse this principle.

The Chairman finally formulated the following opinion, which the commission accepted and requested to have inserted in the report of the conference:

In respect of article 3(8), it is the opinion of the Chairman and was the opinion of those participating in discussion at the London meeting of the Comité Maritime [190] International, that the result is: if a shipowner “has no reasonable means of checking” cargo by him received, he may still use such phrases as “about”, “more or less”, “weight, quantity, and number unknown” in qualification of statements of the bill of lading; but if the shipowner has in fact reasonable means of checking, he must issue a bill of lading giving quantity, etc., without modifying phrases.

If by inadvertence or mistake the shipowner issues a bill of lading for more than he actually receives without any modifying phrases, he is absolutely bound to the exact quantity, etc., of his bill to every bona fide holder for value of the erroneous bill of lading.

In practice, when modifying or indefinite phrases are used, and where there is an apparent “short delivery”, evidence is ordinarily taken as to the usual variance in outturn in the trade concerned; if the variance is greater than usual, the shipowners must pay for what exceeds the expected limit of variance.
merce dont il s’agit; si la freinte dépasse la normale, le propriétaire de navire est tenu de payer l’excédent.

Troisième Séance - 21 Octobre 1922

M. le Président demande si la Commission désire que cet avis explicatif soit incorporé dans le rapport à la Conférence Plénière?

Sir Leslie Scott, Délégué de la Grande-Bretagne, propose de dire dans le rapport à la Conférence que l’avis exprimé par M. le Président est partagé par les membres de la Commission, qui désirent qu’il en soit fait mention dans le compte rendu général de la Conférence. (Adhésion générale).

Sixième Séance Plénière - 24 Octobre 1922

M. le Président. - A l’article III, 8, il n’y a pas de modification proposée, il y a simplement une déclaration faite par le Président pour exprimer l’avis de la Commission. Pour le moment, cette déclaration figure dans une note à l’article. Les deux premiers paragraphes sont seulement d’interprétation. Je trouve que l’observation est juste. La Conférence considère donc ces paragraphes comme l’interprétation des dispositions de la Convention et le procès-verbal, ou une note, en fera mention, à ce titre.

M. Henriksen. - Je dois faire une réserve très formelle quant au dernier paragraphe de ce texte, où il est dit: “On a ordinairement recours à des moyens d’instruction au sujet des variations usuelles de rendement”.

Je ne vais pas entrer en ce moment dans une discussion au sujet de ce troisième paragraphe; je me borne à produire mes réserves.

M. le Président. - S’il y a objection, nous ne considérons pas ce paragraphe comme faisant partie de l’interprétation donnée à la convention. D’ailleurs, ce pa-
Article 3 (8) - Mandatory character of the Rules

M. Ripert. - Serait-il possible de connaître les objections faites?

M. le Président. - En relisant les trois observations, je pense que les paragraphes 1 et 2 sont une déclaration interprétative du texte de la Convention. Le dernier paragraphe dit simplement qu’en pratique, lorsqu’on fait usage de mentions restrictives ou de mentions indiquant que la marchandises est insuffisamment reconnue et qu’il y a un manquant apparent, on a ordinairement recours à des moyens d’instruction au sujet des variations usuelles de rendement dans le commerce dont il s’agit, si la freinte dépasse la normale, le propriétaire du navire est tenu pour l’excédent. Cela n’est pas une interprétation, c’est une déclaration de ce qui se passe en pratique et M. Henriksen dit qu’il n’est pas d’accord.

M. de Rousiers. - Sur quel point de la déclaration M. Henriksen n’est-il pas d’accord?

M. Langton. - Je crois que je comprends l’intention de M. Henriksen. Ce paragraphe semble déclarer que l’armateur doit toujours payer l’excédent. Mais cette phrase ne doit pas être prise comme faisant partie de l’interprétation. Il s’agit, en somme, d’un mot employé de façon malheureuse. Nous avons entendu simplement donner le résumé de ce qui est la pratique devant nos tribunaux, mais nous n’avons nullement voulu proposer que cela soit la règle. Je crois pouvoir affirmer que cette déclaration n’avait pas le sens d’une interprétation.

M. le Juge Hough. - A la demande des autres membres de la Commission, j’ai exprimé mon opinion, et dans la phrase qui commence par les mots “en pratique ....”, j’ai donné le résultat de mon expérience d’affaires de ce genre dans mon propre pays pendant de longues an-

interpretation made by the conference of the combination of article 3(3) and 3(8).

Mr. Ripert. - Would it be possible to know what objections were made?

The Chairman. - In re-reading the three comments, I think that paragraphs 1 and 2 are an interpretative statement of the text of the convention. The last paragraph simply states that, in practice, when we use modifying phrases in descriptions to indicate that goods are insufficiently identified and that there is an apparent shortfall, then there is generally recourse to the means of information on the normal variation in outturn of the trade concerned. If the variance is above normal, the shipowner is liable for the excess. That is not an interpretation, it is a statement of what happens in practice, and Mr. Henriksen says he is not in agreement.

Mr. de Rousiers. - On what point of the statement does Mr. Henriksen not agree?

Mr. Langton. - I think I understand Mr. Henriksen’s intention. The paragraph seems to say that the shipowner must always pay the excess. But this sentence must not be taken as being part of the interpretation. In fact it is a matter of a word unfortunately used. We understood simply that we were giving a summary of what is practical before our courts, but we never dreamed of proposing that that should be the rule. I believe I can attest that the statement did not have the sense of an interpretation.

Judge Hough. - At the request of other members of the commission I expressed my opinion, and in the sentence beginning “in practice ....”, I gave the benefit of my long experience in business of this kind in my own country. I can tell you that in so far as America is concerned, I am quite correct on this matter; but it was never my intention to propose it as a rule to be followed in other coun-
nées. Je puis vous dire que pour ce qui concerne l’Amérique, j’ai raison sur ce point; mais il n’était nullement mon intention de proposer cela comme une règle à suivre dans d’autres pays. S’il y avait la moindre objection pour n’importe quelle raison, je suis tout prêt à supprimer ce paragraphe dans le rapport de la Conférence.

M. le Président. - Il en résulte donc que, comme je l’avais compris, les deux premiers paragraphes sont considérés comme une interprétation de la Convention, tandis que le troisième paragraphe est simplement un exposé par M. le Juge Hough des cas jugés en Amérique.

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M. le Président est d’accord avec Sir Leslie Scott à ce sujet. Au sujet de l’article 3 par. 8, M. Ripert voudrait voir préciser le sens de la dernière phrase de ce paragraphe.

M. le Président répond qu’une clause du genre de celle prévue dans le texte tombe sous l’interdiction prévue dans la première partie de l’article; c’est une clause d’exonération et par conséquent elle est nulle. Il était utile de le dire parce que d’après le Harter Act la cession d’assurance est valable. On pourrait mettre: “toute clause obligeant le porteur du connaissement ou le chargeur à céder le bénéfice de l’assurance”; mais s’il n’est pas nécessaire de faire cette modification, il vaux mieux ne pas l’introduire.

Sir Leslie Scott indique que les mots: “Bénéfice de l’assurance ou clause similaire” donnent satisfaction.

M. le Président fera constater au Procès-Verbal que cette formule “bene-

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The Chairman agreed with Sir Leslie Scott on this point. On the subject of article 3(8), Mr. Ripert wanted to see a clearer definition of the meaning of the last sentence in the paragraph.

The Chairman replied that a clause of the type envisaged in the text fell under the interdiction provided for in the first part of the article. It was an immunity clause and consequently was null and void. It had been useful to say so because under the Harter Act the benefit of insurance clause was valid. One might say “any clause obliging the bearer of the bill of lading or the shipper to cede the benefit of insurance”, but it was not necessary to make this alteration. It was better not to introduce it.

Sir Leslie Scott indicated that the words “benefit of insurance or similar clause” were satisfactory.

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The Chairman would have it stated in the proceedings that this formula
fit of insurance or similar clause” was sufficient in English law.

Mr. Bagge asked if the words “failure in the duties and obligations” applied to the duties and obligations of the shipowner in the sense that if he issued a bill of lading it had to contain what was stipulated in article 3.

The Chairman replied in the affirmative. The clause was general since any agreement exonerating the carrier from liability was null and void.

Mr. Bagge pointed out that one might claim that the shipowner and the shipper might agree otherwise in the charter party. In paragraph 8, which contained the convention’s coercive clause, there was no mention of the “contract of carriage” that is to say, as in article 1(b), of the bill of lading or similar document of title.

The Chairman replied that from the moment the bill of lading was negotiable, they were no longer able to do so.

Mr. Berlingieri wished to see confirmed that a clause by which the shipowner exonerated himself from all liability for loss and damage that might be covered by insurance fell under the interdiction provided for by this article.

The Chairman confirmed this point. It was, in effect, a clause that transferred to the shipper liabilities incumbent upon the shipowner.

Mr. Richter wanted the proceedings to say that the words “négligence” (negligence) and “faute” (fault) were synonymous with the Roman Law terminology “dolus” and “culpa”.

The Chairman agreed on this provided that the following addition was made “failure in the duties and obligations provided for in this article” in order to indicate that it was a matter of liability by virtue of the contract of carriage. Under general law, the carrier, if he delivered the goods in a damaged state or if he failed to deliver them, was essentially subject to a presumption of fault, that is, in a case of failure to execute the contract he had to show that there had been either a case of force majeure or else a
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Enfin, la commission en est arrivée aux dispositions du par. 8 qui déclarent nulle toute clause qui serait contraire à ces obligations imposées au capitaine, et à cet égard il a été précisé, à la demande de certaines délégations, que cette nullité s’applique à toutes conventions qui se rapportent au transport. On a suggéré notamment l’hypothèse qu’il aurait été possible, sous l’empire de cette disposition, et avec une interprétation étroite de celle-ci, de dire qu’on pourrait demander au chargeur une lettre de garantie mettant à sa charge la responsabilité que l’article 8 met à charge de l’armateur; il a été déclaré que pareille lettre serait le corollaire du contrat de transport et tomberait sous l’application de cette disposition.

M. Richter, quant au mot “dommages”, pense qu’il serait utile de constater quelles sont les sortes de dommages tombant sous le coup de la convention, si ce sont seulement les dommages matériels que l’on vise, ou bien tous autres dommages. Il s’agit ici de l’objet même de la convention. La délégation allemande pourrait alors en substance adhérer à chaque proposition.

M. le Président exprime l’avis qu’il serait dangereux d’adopter des formules de cette espèce. Il s’agit des dommages-intérêts de droit commun pour la matière dont s’occupe la convention; mais il est très difficile de dire que ce sont les dommages matériels. Qu’est-ce qu’il faut entendre par dommage matériel? Est-ce qu’un retard peut être considéré comme tel?

M. Richter craint qu’il n’employe un mot peu approprié; il précise en disant “une lésion matérielle de la marchandise”.

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Finally, the commission arrived at the provisions in article 3(8), which declared null and void any clause that was contrary to those obligations imposed upon the captain. In this regard, it had been clearly stated, at the request of certain delegations, that this nullity applied to all agreements bearing on the carriage of goods. The hypothesis had been suggested that it would have been possible under this provision, with a narrow interpretation of it, to say that one might ask the shipper for a letter of indemnity assuming the responsibility that article 8 gave to the shipowner. It was stated that such a letter would be the corollary of the contract of carriage and would fall under the application of this provision.

Mr. Richter, as to the word “damages”, thought that it would be useful to establish what were the types of damages that fell under the convention - if it were only material damages that were envisaged, or all other damages. This was the very subject of the Convention. The German delegation might then substantially support each proposal.

The Chairman expressed the opinion that it would be dangerous to adopt such formulae. The subject-matter of the Convention was an issue of general law damages, but it was very difficult to say that these were material damages. What was one to understand by material damage? Could a delay be considered as such?

Mr. Richter feared that he had used a somewhat inappropriate word. He defined what he meant by saying “a material injury to the goods”.

Mr. Bagge supported the proposal of the German delegation. He could accept one or the other system, but it remained
M. Bagge appuie la proposition de la délégation allemande. Il peut accepter l’un et l’autre système, mais encore faut-il savoir exactement à quoi s’en tenir. La Convention peut régler les dommages-intérêts dus au chargeur ou au porteur du connaissaiissement peut régler seulement les dommages à la marchandise même et non pas d’autres dommages causés par un retard dans le chargement, le transport ou le déchargement lorsque la marchandise même n’a pas été atteinte par là ou bien aussi régler ces autres dommages. Ce sont là deux choses bien différentes. Dans le premier cas, il s’agit de dommages causés aux marchandises elles-mêmes; dans l’autre hypothèse il peut y avoir dommage causé par un retard qui n’a aucune influence sur la marchandise. C’est une question qui a lieu de résoudre par une interprétation de la Convention.

M. le Président croit qu’il faut comprendre ces mots dans le sens du droit commun, c’est-à-dire dans le sens général du mot dommages-intérêts, et qu’il vaut mieux laisser à chaque législation le soin de préciser. Quand on sort des généralités et quand on prend un cas précis, il n’est pas bien difficile de donner la réponse. A l’art. 3, paragr. 6, où il est dit “A moins qu’un avis des pertes ou dommages et de la nature générale de ces pertes ou dommages...”, il s’agit évidemment de perte ou dommage aux marchandises: le texte le dit clairement. A l’article III/8, il est dit:

“Toute clause ... exonérant le transporteur de la responsabilité pour perte ou dommage concernant des marchandises, provenant de négligences...”

Ici, la formule est probablement plus générale; et on ne peut pas plus s’exonérer des dommages pour retard que pour d’autres dommages si c’est un dommage atteignant la marchandise. C’est le droit commun. Si ce sont des dommages extrinsèques, qui ne concernent pas la marchandise, c’est une autre affaire. Par exemple, il peut y avoir un dommage provenant du fait qu’une fausse date ait nécessaire to know precisely what to hold to. The convention could regulate the damages due to the shipper or to the holder, could regulate only damages to the goods themselves and not other damages caused by a delay in loading, carriage, or unloading when the goods themselves had not been affected, or might also regulate these other damages. They were two quite different things. In the first case, it was a matter of damages caused to the goods themselves. Under the other hypothesis, there could be damage caused by a delay that had no affect on the goods. It was a question that needed to be resolved by an interpretation of the Convention.

The Chairman believed that it was necessary to understand these words, in a general law sense, that is to say, in the general sense of the word “damages”, and that it was better to leave each legislature the responsibility of deciding this. When one left generalities and [125] focused on a precise example, it was not very difficult to find an answer. In article 3(6), where it said “Unless notice of loss or damage and the general nature of such loss or damage...” , it was clearly a matter of loss or damage to goods. The text clearly states so. In article 3(8) it states:

Any clause ... relieving the carrier ... from liability for loss or damage to or in connection with goods arising from negligence ...

Here the formula is probably more general and one could no more exempt oneself from damages for delay than for other damages in the case of damage affecting the goods. That was general law. If these were extrinsic damages that did not relate to the goods, that was another matter. For example, there could be damage arising from the fact that a false date had been put on the bill of lading. Imagine the case of goods shipped on 3 February, although the captain issued a bill of lading dated 31 January. He would have done so because the shipper had to provide goods marked “January shipment”. It was clear that an exoneration clause covering the ship in such a case
été portée sur le connaissement: supposons le cas d’une marchandise embarquée le 3 février, alors que le capitaine délivre un connaissement daté du 31 janvier. Il aurait fait cela parce que le chargeur doit fournir des marchandises “embarquement janvier”. Il est clair qu’une clause d’exonération couvrant le navire en pareil cas serait contraire à l’obligation imposée au capitaine de donner un connaissement sincère.

M. Bagge dit que la question soulevée est le cas où il y a simplement retard, qui n’a pas causé un dommage à la marchandise même, mais qui fait que l’acheteur de la marchandise n’a pas reçu celle-ci dans le délai auquel il avait compté. Les dommages-intérêts résultant de ce retard, sans atteindre la marchandise, tombent-ils sous la convention? Il n’est pas possible de laisser cette question régie par le droit commun.

M. le Président répond que si on revoit les différents textes, il est bien évident qu’il s’agit d’un dommage matériel aux marchandises: Il y a seulement la formule “dommage aux marchandises ou les concernant” qui laisse un doute sur ce point.

M. Bagge croit que “concernant les marchandises” a été ajouté pour avoir une solution. On a repris ici le texte de la loi canadienne “in connection with goods”. Interrogée au sujet de la portée de ce texte, la délégation britannique a répondu que c’est avec intention qu’on a cherché une formule dans un article et une autre formule dans un autre article.

M. le Président estime qu’il est dangereux de formuler des règles absolues et de dire dans une convention qui n’est pas un droit complet, qu’on exclut le retard dans tous les cas. Mais la formule “dommage aux marchandises ou les concernant” est dans la convention et les tribunaux appliqueront cette formule. En principe, il est évident que la convention n’a pas pour objet de régler des dommages indirects, éloignés, lontains, mais c’est une question de droit commun. Si la loi nationale veut préciser la convention et dire quelles seront ces li-
mites dans telles conditions déterminées, elle pourra le faire.

Si elle ne contient pas le principe qu’il faut un rapport de causalité directe et immédiate, elle pourra comprendre toutes les formes de dommages mêmes indirects et éloignés; on ne répond en principe que des conséquences directes et immédiates et en général la jurisprudence tend à dire que le retard n’est pas une conséquence directe et immédiate; il y a cependant des cas exceptionnels comme dans certains transports spéciaux lorsqu’on a émis un connaissement antidaté, où ces dispositions s’appliqueraient.

M. Ripert demande si la formule “l’application des règles n’est pas limitée au dommage matériel” donnerait satisfaction.

M. le Président estime qu’il ne faut rien dire de plus que le texte actuel. L’application des règles quant aux dommages et intérêts est laissée au droit commun dans chacun des États contractants.

a direct and immediate consequence. However, there were exceptional cases, as in certain specialized transportation when one had issued an antedated bill of lading, where these provisions would apply.

Mr. Ripert asked whether the formula “the application of the rules is not limited to material damage”, would prove satisfactory.

The Chairman felt that nothing extra needed to be added to the present text. The application of the rules as to damages was left to the general law in each of the contracting States.
ARTICLE 4

1. Ni le transporteur ni le navire ne seront responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables, ou à approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées, de façon qu’elles soient aptes à la réception, au transport et à la préservation des marchandises, le tout conformément aux prescriptions de l’article 3, § 1. Toutes les fois qu’une perte ou un dommage aura résulté de l’innavigabilité, le fardeau de la preuve en ce qui concerne l’exercice de la diligence raisonnable tombera sur le transporteur ou sur toute autre personne se prévalant de l’exonération prévue au présent article.
Sir Norman Hill has an amendment.

Sir Norman Hill: Sir. I think it is only drafting, but I think it is necessary. It is “want of due diligence on the part of the carrier”.

The Chairman: As that is against the interests of the shipowner, I think that is a very candid suggestion.

Sir Norman Hill: I think it is necessary. Then the other point is a small point, “to make the ship” - we have here - “in all respects seaworthy”. When we were dealing with the question of seaworthiness before, in Article 3, we made the obligation “make the ship seaworthy”. I think it is well to keep the same term.

The Chairman: They are redundant additions, I think. Lord Phillimore, I think, agrees.

Lord Phillimore: I think they are better out.

The Chairman: The question is that the words “on the part of the carrier” be inserted after the words “want of due diligence”. Is that agreed? (Agreed).

And that the words “in all respects” after the word “ship”, in line 3, be omitted. Is that agreed? (Agreed).

Mr. Rudolf: Mr. Chairman. If I might say a word with regard to this, I am not quite clear about this clause, but it seems to me that there is rather a dangerous omission in it from the point of view of the cargo. Article 4(1), provides that the owner shall not be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence. In other words, if the unseaworthiness results in a loss, and it arises through the absence of due diligence, the shipowner is liable. But when we turn over to paragraph 2 “Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from”, and then are set forth a list of the particular types of accident. But surely that qualification should be subject to the shipowner having exercised due diligence to make his vessel seaworthy. By the first paragraph, if he uses due diligence he is not liable for loss or damage. The second paragraph without anything else says he is exempt from liability for loss by perils, dangers and accidents of the sea, but I can conceive a case of a vessel going to sea in an unseaworthy condition, and the operation of the sea on that vessel leads to a loss, and apparently under that section 2 that is a loss which the shipowner is exempt from.

Lord Phillimore: No; the law is well settled the other way. If the ship sinks from being unseaworthy, though she sinks from the waves washing over her and she would not have sunk in calm weather, it is not a peril of the sea. She is unseaworthy.

Mr. Rudolf: It is not an accident of the sea?

Lord Phillimore: These are all old and well settled exceptions.

Mr. Rudolf: I know they are settled, but I was wondering whether the effect of making those two paragraphs is going to alter what is the recognised law. That is what I have in mind.

Lord Phillimore: No.

Text adopted by the Conference

Article 4 - Rights and Immunities.
1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier.
CARRIER to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[366]

Article 4 - Rights and Immunities.
1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[379]

Article 4 - Rights and Immunities.
1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied AND TO MAKE THE HOLDS, REFRIGERATING AND COOL CHAMBERS AND ALL OTHER PARTS OF THE SHIP IN WHICH GOODS ARE CARRIED, FIT AND SAFE FOR THEIR RECEIPTION, CARRIAGE AND PRESERVATION. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

Conférence Diplomatique - Octobre 1922
Séances de la Sous-Commission
Deuxième Séance - 20 Octobre 1922

Mr. Bagge, Délégué de la Suède, demande des précisions quant à l'interprétation du mot "innavigabilité" dans cet article.

La Commission est unanimement d’avis qu’il faut s’en rapporter à l’interprétation dont il a déjà été question lors de la discussion du littera 1 (a), de l’article 3. Le 1° de l’article 4 ne s’applique qu’au défaut de navigabilité mentionné à l’article 3(1) (a), et limite

Diplomatic Conference - October 1922
Meetings of the Sous-Commission
Second Session - 20 October 1922

Mr. Bagge, Swedish delegate, asked for precision in the interpretation of the word “unseaworthiness” in this article.

The Commission was unanimous in its opinion that it was necessary to relate it to the interpretation that had already been looked at in discussion of article 3(1)(a). Article 4(1) only applied to the lack of seaworthiness described in article 3(1)(a), and limited
au commencement du voyage l’obligation d’exercer une diligence raisonnable.

**Troisième Séance - 21 Octobre 1922**

[200]

M. le Président rappelle qu’au sujet de cette question de “l’innavigabilité”, la Commission a été d’accord pour que l’obligation de faire diligence soit limitée au début du voyage. (Adopté).

**Septième Séance Plénière - 25 Octobre 1922**

[144]

M. le Président. Nous revenons maintenant à l’article 4(1), que nous n’avons pas discuté encore parce que j’ai pris d’abord les questions les plus importantes.

Je crois qu’il n’y a aucune observation. Puisqu’il y a une définition de l’innavigabilité, il sera plus pratique de dire: “Ni le transporteur ni le navire ne seront responsables de pertes ou dommages provenant ou résultant de l’innavigabilité tel qu’il est dit à l’article 3(1)”. Il n’y a pas d’autres observations? Dans ce cas l’article 4(1) est accepté.

**Third Session- 21 October 1922**

[200]

The Chairman noted that on the subject of “unseaworthiness”, the Commission had agreed that the obligation of due diligence should be limited to the beginning of the voyage. (Adopted).

**Seventh Plenary Session- 25 October 1922**

[144]

The Chairman. Let us now turn back to article 4(1), which we have not yet discussed since we dealt with the most important matters first.

I don’t think there are any comments. Since we have a definition of “unseaworthiness”, it will be most practical to say: Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness as set out in article 3(1).

Are there any further comments? In that case article 4(1) is carried.

Sir Leslie Scott. - Before leaving article 4(1), I would like to say a word on a matter of drafting. The word “unseaworthiness” is employed here with a meaning corresponding to that used in article 3(1)(a): “Put the ship in a seaworthy state”, that is to say, “the state of the ship itself”. Thus in article 4(1) we are saying that each time loss or damage occurs as a result of unseaworthiness, the burden of proof concerning the exercise of due diligence will fall on the carrier.

The word “unseaworthiness” used here has a significance far greater than in the second line, where the meaning of the word “unseaworthiness” in its English usage takes in all the obligations under article 3(1)(a), (b) and (c). We must, when preparing the definitive draft of this article, make several changes in order to avoid giving the word “unseawor-
Il faudra, quand on rédigera définitivement cet article, y apporter quelques changements afin d’éviter que le mot “innavigabilité” dans le même article n’ait deux significations différentes.

M. le Juge Hough. - On pourrait expliquer dans le rapport que “unseaworthiness” et “innavigabilité” dans l’article 4(1), signifient la même chose que dans l’article 4(1).

M. le Président. Je crois que dans le texte français, la chose est simple et claire.

Sir Leslie Scott. - On peut entendre la “navigabilité” dans le sens que le navire doit pouvoir affronter le vent et le mauvais temps, mais dans l’article 3 on inclut aussi l’équipage, l’approvisionnement et le bon état des installations.

M. le Président. Pour rencontrer l’objection, nous pourrions mettre: “le tout conformément aux prescriptions, de l’article 3(1)”.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Première Séance Plénière - 6 Octobre 1923

M. le Président trouve aussi que le texte aurait été plus élégant s’il avait été fait par des juristes. Quant à la seconde partie de l’observation de M. Ripert, elle serait à considérer si la Convention avait la portée qu’il lui donne. Mais l’article 5 ne permet pas au transporteur de modifier les droits, obligations et exonérations figurant dans les dispositions antérieures; il permet simplement “unseaworthiness” two different meanings within the same article.

Judge Hough. - We can explain in the report that “unseaworthiness” and “innavigabilité” in article 4(1) mean the same thing as in article 3(1).

Sir Leslie Scott. - The English version, “unseaworthiness”, in article 4(1) is used in the sense of “physical unseaworthiness”, that is to say, the body of the ship should be in a state able to withstand bad weather and wind.

The Chairman. I think the matter is quite clear and simple in the French version.

Sir Leslie Scott. We can understand “seaworthiness” in the sense of the ship having to be able to withstand the wind and bad weather, but in article 3, crew, supplies, and the good working order of equipment are also included.

The Chairman. To meet your objection we might put: “everything in conformity with the descriptions in article 3(1)”.

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
First Plenary Session - 6 October 1923

The Chairman also found that the text would have been more elegant had it been written by jurists. As to the second part of Mr. Ripert’s comment, it was a matter for consideration whether the Convention had quite the scope attributed to it. But article 5 did not in any way allow the carrier to modify the rights, obligations, and immunities that featured in the preceding clauses. It simply
Article 4 (1) - Exonerations: unseaworthiness

allowed the carrier to accept heavier responsibilities than those established in these articles. He could therefore accept responsibility for unforeseen events but he could never release himself from other responsibilities. Consequently, article 4 was completely binding on the shipper. The economy of the Convention was that article 3(8) proclaimed that the rules that preceded it were matters of public policy, any contrary clause, treaty, or agreement being null and void. It was necessary, therefore, to have another article restricting this general rule, and in which it would be provided that certain immunity clauses were permitted. This was the purpose of article 4, notably paragraph (2), where a whole series of cases were listed that in general law were within these rules.

Second Plenary Session - 6 October 1923

The Chairman then summed up the scope of article 4(1), which dealt with unseaworthiness. The carrier was not liable for the loss and damage that resulted therefrom, provided that the unseaworthiness did not result from a want of due diligence on his part.

Seventh Plenary Session - 9 October 1923

The principles enumerated in article 4 were simple. The first provision applied to seaworthiness and the resultant liability. It was the application of the rule of “due diligence” as provided for in English custom. It was, therefore, a fairly sensible extension of what was customary under another Anglo-Saxon jurisprudence.
ARTICLE 4

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:
   a) des actes, négligence ou défaut du capitaine, marin, pilote ou des préposés du transporteur dans la navigation ou dans l’administration du navire;
   b) d’un incendie, à moins qu’il ne soit causé par le fait où la faute du transporteur;
   c) des périls, dangers ou accidents de la mer ou d’autres eaux navigables;
   d) d’un “acte de Dieu”;
   e) du fait d’ennemis publics;
   f) d’un arrêt ou contrainte de prince, autorités ou peuple, ou d’une saisie judiciaire;
   g) d’une restriction de quarantaine;
   h) d’un acte ou d’une omission du chargeur ou propriétaire des marchandises, de son agent ou représentant;
   i) de grèves ou lockouts ou d’arrêts ou entraves apportés au travail, pour quelque cause que ce soit, partiellement ou complètement;
   j) d’émeutes ou de troubles civils;
   k) d’un sauvetage ou tentative de sauvetage de vies ou de biens en mer;
   l) de la freinte en volume ou en poids ou de toute autre perte ou dommage résultant de vice caché, nature spéciale ou vice propre de la marchandise;
   m) d’une insuffisance d’emballage;
   n) d’une insuffisance ou imper-

ARTICLE 4

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
   a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
   b) fire, unless caused by the actual fault or privity of the carrier;
   c) perils, dangers and accidents of the sea or other navigable waters;
   d) act of God;
   e) act of war;
   f) act of public enemies;
   g) arrest or restraint of princes, rulers or people, or seizure under legal process;
   h) quarantine restrictions;
   i) act or omission of the shipper or owner of the goods, his agent or representative;
   j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
   k) riots and civil commotions;
   l) saving or attempting to save life or property at sea;
   m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
   n) insufficiency of packing;
   o) insufficiency or inadequacy of marks;
   p) latent defects not discoverable by due diligence;
   q) any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of
Article 4 (2) - The catalogue of exceptions

fection de marques;

p) de vices cachés échappant à une diligence raisonnable;

q) de toute autre cause ne provenant pas du fait ou de la faute du transporteur ou du fait ou de la faute des agents ou préposés du transporteur, mais le fardeau de la preuve incombera à la personne réclamant le bénéfice de cette exception et il lui appartiendra de montrer que ni la faute personnelle ni le fait du transporteur ni la faute ou le fait des agents ou préposés du transporteur n’ont contribué à la perte ou au dommage.

proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

1. The Catalogue of Exceptions

ILA 1921 Hague Conference
Second day’s proceedings - 31 August 1921

[143]

Mr. Leopold Dor: The alteration I want to make is not specially on (a), but on all the amendments proposed by the shipowners for all that clause No. 2. I think it would be very unwise to make our rules look like a bill of lading. Especially as far as the Conference is concerned, if we go to the Chambers of Commerce (and I speak especially in view of the French Chambers of Commerce) and we say to them “All the interests concerned have met at the Conference of the Hague and have discussed this question and agreed upon those rules”; they will look at those rules and the first thing that will strike them is that they are much too long. You have in England a way of defining rules and legislation which is very different from ours. We try to make things as short as we can, and I fancy that you try to make them as long as you can (Laughter); but you certainly make them much longer than we do. The Marine Insurance Act, on that small point, is longer than our whole Civil Code, which covers the whole of French civil law. You like long enumerations. We like very short sentences in which there is embodied a principle which covers everything. You are always afraid of forgetting one thing or the other. We say the right way not to forget is not to enumerate. If you start making a long enumeration then you are sure to forget something. It seems to me that that is what we are doing in that long enumeration. Besides, not only the French cargo owners, but the French Chambers of Commerce, will say: “Oh, well, those shrewd English shipowners have managed to convince the International Law Association to put one of their bills of lading into the Hague Rules 1921, and they will now say no longer bills of lading, but ‘Here are the Hague Rules, 1921’”. You want to avoid that. That Article, before the amendments or without the amendments, is already quite long enough.
The shipowners have added to it, and added things for which I think they are not at all responsible, because under common law, at least under French [144] common law, they are not responsible for the acts of war or for riots and civil commotions or anything which is beyond their control, and really the whole or practically the whole of those amendments could be put in a single word - what we call in France a case of force majeure, and what you call, I think, causes beyond the control of the shipowner.

Dr. Bisschop: Mr. Chairman. In order to try to meet the objection of Mr. Dor, I wonder whether it would not be possible to combine (a) and (q). In (a) the shipowner is excused for errors of navigation and in (q) “Any other cause of any kind whatsoever arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier”, which is a very wide clause and comes at the end of the long enumeration of cases in which the shipowner is excused from liability. Would not it be possible to combine those two, because (q) does not, I believe, enter into errors of navigation, but if we have “Errors in the navigation or in the management of the ship”, and further “any other cause of any kind whatsoever arising without the actual fault or privity of the carrier”, should not we be able to word it in such a way that it would include (b) too?

Mr. Leopold Dor: Hear, hear!

The Chairman: I dare say Sir Norman Hill would consider that. After Mr. Dor had spoken, while Dr. Bisschop has been speaking, I have been looking down from (b) to (p), and on first sight it does look as if there are probably instances of causes of loss which are somewhat different from those in (q); but I do not know, it is dangerous to form a sudden opinion on a matter of that kind. Perhaps Sir Norman Hill knows?

Sir Norman Hill: I would not venture to argue the point with you, but the ground on which I would appeal to the Association is this. As I have told you in Article III, we have conceded all that the cargo owners want. If this is to go through we have to get it accepted by the shipowners, and I would despair of ever getting it accepted by the shipowners unless I could point to their old familiar exemptions. It may be that they are very conservative; it may be that they are very pig-headed, but we have, as shipowners, had rather a bitter experience of the treatment we have received not only from our own Courts, but from all other Courts. Apparently, in administering justice we have been judged on the assumption that [146] has been suggested that we dictated the terms. I hope that in future when the Courts are administering these rules all that kind of feeling will have vanished; but I could not satisfy my constituents amongst the British shipowners that they were safe in using these rules expressed in general words. So many things have happened. I instanced one yesterday which really started all this trouble. Every shipowner, I believe, of every nation believed that if his ship went to the bottom in a collision that ship was lost by a peril of the sea. Our Courts in England got to the bottom of it, and they said the collision was brought about by the negligence of the master or the negligence of the compulsory pilot, and therefore that ship for the purpose of the contract of carriage was not lost by the perils of the sea; it was lost by negligence. That is the start of all these elaborate clauses and all these troubles. I will be quite frank with you. Really and truly it would be hopeless for me to try to get this set of rules adopted unless we had these exceptions detailed: I do not say every one of them. There is just one other point. We are all now working on the lines of Mr. Harter. He is the founder of this system. In his Act he details them all. It has been followed in the Canadian Act; they are detailed. There is a grave risk that, if we draft a set of rules in which we have not detailed all these exceptions, but use general words, some Courts will say: “They cannot have meant to state the same things as the Harter Act or they would have used the same language”. Well, Sir, to sum up, I could not represent
to the Association that there would be any chance of getting the rules accepted by the British shipowners unless we had in detail such exemptions as are agreed to be fair and proper.

**Lord Phillimore:** Mr. Chairman. Mr. Dor’s observation is no doubt typical of the whole way in which legislation is constructed by English and foreign countries. I had occasion to think a good deal over this when we were dealing last year in this very building in the Jurists Committee with the mode in which we should express the laws which the judges were to administer, and I ventured to say then to my French friends and my other Continental friends (and they accepted it with great good humour) that the Continental Codes began by tying up people very strictly and then, being so afraid that the judge would decide inequitable by following these very strict rules, they shook the whole thing to pieces and gave the judge absolute power. It is not quite the same thing, but the Continental way of legislation by stating principles does leave from our point of view a great deal more to what they would call the appreciation of the judge than the English system does. It would probably be extremely difficult to put this bill of lading exactly into Continental language; Mr. Dor was pointing out to me yesterday that what was meant by “management of the ship” is a phrase that it almost untranslatable in French, and I think we must really adhere to our old lines. We have always been accustomed to have our bill of lading enumerate the excepted perils. It is perhaps not so scientific as the French form; on the other hand, it is safer because it leaves less to what is called the appreciation of the judge; and, not committing myself to every one of those clauses, not at the moment seeing the reason for (j) and being rather surprised at (q), I venture to say that the British system is the best one of following, as in the Harter Act, the old form of bill of lading and enumerating the various excepted perils.

**The Chairman:** There are two questions. The first is whether the Committee under the circumstances will consent to the principle of enumeration. It is at the will of the Committee to consent to the principle of enumeration. I take it that is agreed. *(Agreed).*

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**M. van Slooten**, Délégué des Pays-Bas, appuyé par M. Bagge, Délégué de la Suède, propose la suppression de l’énnumération (b)-(p).

De la discussion de cette proposition, il résulte que, s’il est vrai qu’il est conforme aux idées et intentions qui ont présidé à la rédaction de cet article d’exclure de la responsabilité les conséquences d’un fait non intentionnel du chargeur.

**Mr. van Slooten**, delegate from the Netherlands, supported by Mr. Bagge, Swedish delegate, proposed the deletion of the list (b)-(p).

The result of discussion of this proposal was that, if it were true that it was in conformity with the ideas and intentions that governed the drafting of this article to exclude from liability the consequences of a non-intentional act on the
ou de l'armateur, il convient, d'autre part, de ne pas perdre de vue que cette énumération un peu longue et parfois archaïque en sa forme, dont se sont servis les rédacteurs du projet répond à un usage établi dans la pratique, que le commerce connaît et que la jurisprudence a consacré; il serait dangereux d'innover sous ce rapport.

Tout en reconnaissant qu’une simplification serait souhaitable, il faut dire qu’on a vainement essayé d’y arriver. Le texte soumis à la Commission est, du reste, le fruit d’un accord après de grands efforts entre les juristes et les intéressés eux-mêmes et l’on ne pourrait à cette heure répudier cet accord, car plusieurs pays (notamment les États-Unis et la Grande-Bretagne) refuseraient de signer une convention ainsi modifiée.

La proposition des Délégués des Pays-Bas et de la Suède est appuyée par le Délégué de l’Allemagne; mais combattue par ceux de la Grande-Bretagne, de la Belgique, de la France et des États-Unis, elle n’est pas adoptée et la Commission se prononce en faveur de texte original du projet.

Troisième Séance - 21 Octobre 1922

M. le Président rappelle que MM. van Slooten, Bagge, et Rambke ont proposé de supprimer la longue énumération de cet article et de la remplacer par une simple exemption exonérant l’armateur de pertes ou dommages occasionnées par des causes qui ne sont dues ni au fait ni à la faute ou négligence de lui même ou de ses préposés.

Il est procédé à un vote au sujet de cette proposition.

Les Délégués de la Belgique, de la Grande-Bretagne, de la France et des États-Unis se prononcent en faveur du texte du projet. L’amendement n’est donc pas adopté.

Third Session- 21 October 1922

The Chairman recalled that Messrs. van Slooten, Bagge, and Rambke had proposed deleting the long list in this article and replacing it with a simple exemption exonerating the shipowner from loss or damages occasioned by causes that were due neither to his own nor his agents’ action, fault, or negligence.

This proposal was put to a vote. The delegates from Belgium, Great Britain, France, and the United States were in favour of the original text. Therefore, the amendment was not adopted.
Seventh Plenary Session - 
25 October 1922

[145]

Mr. Alten. - I should like to make a few comments on the series of exceptions in paragraph 2. This list is taken from the exonerations clauses developed in England and that have also been accepted by the shipowners and shippers of other countries although, for them, these exceptions do not have the same importance. The list of exemptions is based on the rules of English common law in which the carrier is absolutely liable for loss or damage except for these clauses of exonerations. In Continental countries, however, we do not have these rules. With us, the liability of the carrier is in principle an *ex culpa* liability. Consequently, the list of exceptions (b)-(p) seems to me to be redundant. I also have further objections: Firstly, the distinction made in the list between the different exemptions is not clear. For example, what is the difference between perils of the sea, dangers or other accidents, and “acts of God”? London’s maritime court may perhaps know but, for us, from the North, the distinction is incomprehensible. So I am asking what the real nature of these exemptions is. Are they of an absolute nature, or is their application subject to the causes listed corresponding to a fault, an act of negligence by the captain, the crew, or the shipowner? If loss or damage had not occurred without the coincidence of faults or negligence then, to my mind, these should be deemed the essential cause and the shipowner should be held liable in consequence. I believe this interpretation of the exceptions to be the fairest; the list would therefore have some importance with regard to the burden of proof. The arrangement under (q) puts the burden on the carrier to prove that the damage was not caused by fault on his part or on the part of the captain or the crew. In instances (b)-(p), on the other hand, the position might well be that if the carrier proved from among the limited exemptions one that might
preuve de ce que le dommage n’a pas été occasionné par une faute de sa part ou de la part du capitaine ou de l’équipage. Mais dans les cas (b) à (p), la situation serait peut-être que si le transporteur prouve parmi les exemptions énumérées une qui peut être considérée comme cause du dommage, le fardeau de la preuve est à charge du chargeur ou du destinataire alors qu’il a été commis une faute ou une négligence de la part du transporteur lui-même ou des personnes à son service. Cette interprétation devient très difficile cependant si l’on adopte la proposition de la Commission relative à l’article 4(2)(b) où il est ajouté que l’incendie exonère l’armateur à moins qu’il n’ait été causé par le fait ou la faute du transporteur. Cet ajout peut donner lieu à des conclusions contraires relativement à la faute des personnes au service du navire et relativement aussi aux autres exemptions. En conclusion, je trouve que ces dispositions sont tellement diffuses que nous ne pouvons les accepter dans notre pays.

**M. le Président.** - M. Alten a proposé, avec d’autres délégations, de remplacer cette formule générale de l’article 4(2) par une formule qui n’énumère pas les cas nombreux que vous trouvez là. Mais, si vous me permettez de faire une observation pour abréger la discussion, je ferai remarquer que M. Alten lui-même, a donné la raison pour laquelle cette solution toute rationnelle n’est pas recommandable, c’est que le droit anglo-saxon et le droit continental n’ont pas la même conception de la responsabilité du propriétaire de navire, tout au moins en théorie. En droit anglo-saxon, le transporteur est une espèce d’assureur qui garantit l’arrivée de la marchandise à destination et en bon état, tandis que le transporteur continental a une situation différente; certainement, il doit rendre les marchandises qu’il a reçues, mais il est soumis à la règle générale des cas de force majeure et des cas fortuits. Nous ne pouvons faire une convention si nous ne prenons pas une formule, qui couvre ces deux cas. Si au point [146] de vue de

be deemed to be the cause of the damage, the burden of proof would fall upon the shipper or receiver although, in fact, the carrier or persons in his service had committed a fault or act of negligence. This interpretation becomes very difficult, however, if we adopt the proposal of the Commission concerning article 4(2)(b), where we have added that fire exonerates the shipowner except when caused by the act or fault of the carrier. This addition may give rise to conflicting conclusions regarding the fault of persons in the service of the ship and also to other exemptions. In conclusion, I find that these arrangements are so diffuse that we cannot accept them in our country.

**The Chairman.** - Mr. Alten, together with other delegations, has proposed replacing this general formula in article 4(2) with a formula that does not list the numerous cases to be found there at present. But if you will allow me to make a comment to shorten discussion, I would point out that Mr. Alten himself supplies the reason why this wholly rational solution is not to be recommended: Anglo-Saxon law and Continental law do not have the same concept of a shipowner’s liability, at least in theory. Under Anglo-Saxon law, the carrier is a type of insurer who guarantees the arrival of the goods at their destination in good condition, whereas the Continental carrier has a different position. Certainly he must deliver the goods he has received, but he is subject to the general rule of cases of force majeure and of unforeseeable circumstances. We cannot create a convention if we do not find a formula that covers both instances. If, from the vantage point [146] of our own law, it is sufficient for the captain to be exonerated in all cases of force majeure or unforeseeable circumstances, it is not sufficient under Anglo-Saxon law. We must consequently create a formula that has a common meaning.
notre droit, il suffit que le capitaine soit exonéré pour toutes les causes de force majeure et de cas fortuit, en droit anglo-saxon cela ne suffit pas. Il faut par conséquent arrêter une formule ayant une signification commune.

**M. Berlingieri.** - Nous ne pourrions mettre dans le code italien une formule comme celle-ci!

**M. le Président.** - La solution sera très simple en pratique. Vous ne devez pas admettre cette formule dans votre code, mais vous devriez traduire honnêtement la disposition dans votre loi. Et si votre formule est plus simple, personne ne la critiquera. Je suis aussi de votre avis que cela ne sera pas d’un effet très élégant, mais il y a dans nos lois beaucoup de choses inélégantes déjà.

**M. Berlingieri.** - Il ne faut pas les empire pour cela.

**M. Ripert.** - Je crois que le code français est à peu près le même que le code italien. Or, nous accepterons très bien de faire passer cette disposition dans notre loi nationale. Mais j’appelle l’attention sur le dernier paragraphe:

"Le transporteur ne sera pas responsable pour toute autre cause ne provenant pas d’une faute actuelle ou de la participation du transporteur ... mais le fardeau de la preuve tombera sur la personne réclamant le bénéfice de cette exception”.

La personne réclamant le bénéfice de cette exception, c’est toujours le transporteur. Est-ce que cette formule a un sens pratique?

**M. le Président.** - C’est un mauvais texte, il faut mettre: “du fait ou de la faute”. Cela vaut mieux que “faute actuelle ou de la participation”.

**M. Ripert.** - Celui qui réclame le bénéfice de cette exception, c’est le transporteur évidemment.

**M. le Président.** - Oui. Je crois que nous devons nous en tenir au texte. Une délégation demande-t-elle un vote sur la question?

**M. Alten.** - Je prends part seulement à cette discussion \textit{ad referendum}, car je n’ai pas d’instructions spéciales.

**Mr. Berlingieri.** - We could not put a formula such as that in the Italian Code.

**The Chairman.** - The solution will be extremely simple in practice. You will not have to introduce the formula into your Code but you will have to translate the clause honestly into your law. If your formula is more simple, no one will criticize it. I share your opinion that it won’t be a very elegant thing, but there are already plenty of inelegant things in our laws.

**Mr. Berlingieri.** - There is no need to make them any worse.

**Mr. Ripert.** - I believe the French Code to be a little like the Italian. We are quite amenable to incorporating this clause into our national law, but I should like to call attention to the last paragraph:

The carrier ... shall not be responsible for... any other cause arising without the actual fault or privity of the carrier ... but the burden of proof shall be on the person claiming the benefit of this exception.

The person claiming the benefit of this exception will always be the carrier. Does this formula have any practical meaning?

**The Chairman.** - It is badly phrased, it should say: “the act or fault”. That would be better than “the actual fault or privity”.

**Mr. Ripert.** - The one who claims benefit from this exception is clearly the carrier.

**The Chairman.** - Yes. I think we should stick to the text. Does any delegation wish for a vote on the matter?

**Mr. Alten.** - I am only taking part in this discussion \textit{ad referendum}, as I have no special instruction.

**The Chairman.** - But you do have the
M. le Président. - Mais vous avez droit, à ce titre - surtout que vos observations extrêmement précises sont très intéressantes - de demander que la Conférence soit consultée. Seulement je crois que la difficulté n’est pas très grande surtout après la déclaration que viennent de faire nos amis français, qui ont, en somme, le même droit que vous.

M. Alten. - Ma supposition était que la Conférence ne voterait pas sur ce projet, mais qu’on élaborerait simplement un avant-projet, qui serait soumis aux Gouvernements.

M. Struckmann. - Quel est le sens du littéra (b) (incendie)? Je suppose qu’un incendie a été causé par une négligence du capitaine ou d’une autre personne au service du navire. Dans ce cas, d’après l’article IV des Règles de La Haye, le propriétaire du navire est-il responsable, oui ou non?

M. le Président. - Nous reprendrons cette question dans un moment, car elle se rapporte à l’article IV, 2, (b).

Je constate pour l’instant, qu’il n’y a pas de proposition pour supprimer l’énumération de l’article IV, 2.

M. Struckmann. - On ne peut voter sur le principe sans savoir quel en est le sens!

M. le Président. - On ne vote pas sur le principe, mais seulement sur la méthode.

Sir Leslie Scott. - Je me permets de faire remarquer qu’il est très difficile de toucher à cet article IV, 2. C’est un peu comme les tables de marbre de Moïse, sur lesquelles étaient inscrits les commandements de Dieu.

En séance plénière à Londres, cet article a fait l’objet de concessions et de stipulations pour chaque mot, et si nous avisions ici d’y modifier quoi que ce soit, nous mettrions le feu aux poudres et nous pourrions nous attendre à des choses bien désagréables. A mon avis donc, nous ferions mieux de ne pas y toucher.

M. Bagge. - Je me permets de signaler, right - above all since your extremely precise comments are very interesting - to ask that the conference be consulted. Although I believe that the problem is not very great, particularly following the statement of our French friends, who have, after all, the same law as you.

Mr. Alten. - I assumed that the conference would not vote on this draft but that we should simply draw up a preliminary draft for submission to our governments.

Mr. Struckmann. - What is the meaning of sub-paragraph (b) (fire)? Suppose that a fire was caused by negligence on the part of the captain or another in the ship’s service. In this case, with regard to article 4 of the Hague Rules, is the shipowner liable or not?

The Chairman. - We shall come back to that question in a moment as it is related to article 4(2)(b).

For the present I am stating that there is no proposal to debate the list in article 4(2).

Mr. Struckmann. - We cannot vote on the principle without knowing what the sense of it is!

The Chairman. - We are not voting on the principle, simply on the procedure.

Sir Leslie Scott. - I should like to point out that it is very difficult to alter article 4(2). It is a little like Moses and the tablets of stone on which the Ten Commandments were written.

In the plenary meeting at London, this article was the object of compromise and stipulations over each word, and if we were to suggest here modifying it in any way we would be putting a torch to a powder-keg and we could expect some fairly nasty results. In my opinion, therefore, we would be better to leave it alone.

Mr. Bagge. - I would like to point out that, in my opinion, it is not merely a
qu’à mon sens ce n’est pas simplement une question de rédaction, comme cela semble être l’avis de M. le Président, mais peut être aussi une question de principe. En prenant le principal, on constate que l’armateur n’est responsable que si lui ou ses préposés ont commis une faute ou se sont rendus coupables de négligence. Il en suit qu’il n’est pas responsable lorsqu’il s’agit d’une question de navigation même s’il y a eu une faute commise par ses préposés. Mais si nous nous rapportons la lettre (p) de l’énumération, il semble que l’armateur n’est pas responsable, même s’il y a faute du capitaine ou de l’équipage. Prenons un exemple: d’après la lettre (g), nous avons la stipulation que le transporteur n’est pas responsable pour pertes ou dommages résultant d’”arrêts ou contraintes de princes, autorités ou peuples, ou saisie judiciaire”, aussi le transporteur n’est-il pas responsable même s’il cause la saisie judiciaire, par exemple parce qu’il n’a pas payé des droits ou qu’il a commis une négligence. Il doit l’être évidemment. Et si c’est la faute de ses préposés, est-il alors responsable oui ou non? Il doit l’être.

Si vous mettez cela en concordance avec le littéra (b), auquel nous avons ajouté “à moins que cela se soit causé par la faute ou la négligence de l’armateur”, comment devons nous comprendre ce littéra (g)?

Je fais mention de tout cela pour démontrer que peut être il ne s’agit pas seulement d’une question de rédaction, mais bien d’une question de principe.

M. le Président. - Il est clair qu’on aboutira toujours, dans toute solution internationale, à devoir modifier dans une certaine mesure les législations nationales, et la seule conséquence de tout cela est que, quand vous aurez conclu cette convention, vous changerez votre loi ou vous ne la changerez pas. Je ne vois rien de déraisonnable dans la formule proposée. Nous ne voulons pas nous immiscer dans les lois nationales. D’ailleurs, n’oubliez pas, qu’en cette matière, il n’y a plus de droit commun. La seule différence, question of drafting, as the Chairman seems to believe, but it may also be a question of principle. Looking at the principle, we say that the shipowner is not liable unless either he or his agent has committed a fault or is guilty through negligence. It follows that he is not liable in a matter of navigation even if it is a matter of a fault committed by his agents. But if we relate it to letter (p) in the list, it appears that the shipowner is not liable even if there is a fault by the captain or the crew. Let’s look at an example: using letter (g), we have the provision whereby the carrier is not liable for loss or damage resulting from “arrest or restraint of princes, rulers, or people, for seizure under legal process”, so the carrier is not liable even if he is the cause of the seizure under legal process, for example, when he has not paid duty or has been negligent. Clearly he should be liable. And if it is the fault of his representatives, is he then liable - yes or no? He should be.

If you relate this to sub-paragraph (b), which we have added, “unless caused by the actual fault or privity of the shipowner”, how are we to understand sub-paragraph (g)?

I mention all this to illustrate that perhaps it is not simply a question of drafting but one of principle.

The Chairman. - It is clear that in every international solution one will always end up having to modify to some extent national legislation, and the only consequence of all this is that when you have concluded this Convention either you will change your law or you won’t. I see nothing unreasonable in the proposed formula. We do not wish to interfere in national law. Moreover, do not forget that as far as this issue is concerned there is no longer any general law. The only difference is that now you have only arbitrary solutions, whereas with the Convention you will have unification. However, we should not wish for the sun and the moon at the same time. If you are given the sun, be content with it!
c’est qu’actuellement vous n’avez que l’arbitraire, tandis qu’avec la convention vous aurez de l’unité. Il ne faut d’ailleurs pas vouloir, à la fois, le soleil et la lune. Si on vous donne le soleil, contentez-vous en!

J’insiste sur ce point que, si nous voulons finir demain, il faut que nous marchions. Si nous voulons faire une convention et discuter chacun de ces cas, qui ont déjà fait l’objet de longues discussions, nous n’arriverons pas à un résultat.

Je n’ai pas de propositions d’amendement à substituer à la formule.

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M. le Président

Le paragraphe 2 contient une longue énumération de clauses d’exonération présentant une certaine analogie entre elles jusqu’à la lettre (q). Certaines de ces dispositions ne sont peut-être pas indispensables, mais elles sont consacrées par une très longue pratique. Il y a avantage à les maintenir dans le texte car, pour certaines, il existe des différences entre les diverses législations. Ainsi, en droit anglais, l’incendie est considéré “prima facie” comme une force majeure, tandis que, d’après le droit continental, l’incendie est présomu fautif. Il faut donc que, pour l’uniformité, ce cas soit fixé dans la convention. En énumérant tous ces cas, l’armateur est protégé dans tous les pays.

M. Ripert critique l’énumération des clauses d’exonération; au littera (q) il est dit “toute autre cause ne provenant pas du fait ou de la faute du transporteur”, alors que, dans l’énumération il est un certain nombre de causes qui peuvent provenir de la faute du transporteur; par exemple, sous la lettre “g”, on prévoit la saisie judiciaire; celle-ci proviendra le plus souvent de la faute du transporteur; il semble que les chargeurs ne doivent

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The Chairman

Paragraph 2 contained a long list of immunity clauses that, until item (q), all bore a certain resemblance. Certain of these provisions were not, perhaps, indispensable, but they had been sanctioned by long customary use. There was an advantage in retaining them in the text because for certain of them differences existed in the various national laws. In English law, for example, fire is prima facie deemed to be like force majeure, while in Continental law fire is presumed “responsible”. It is therefore necessary that, for the sake of uniformity, this case should be settled in the Convention. By listing all these cases, the shipowner is protected in all countries.

Mr. Ripert criticized the list of the immunity clauses. In item (q) it said “Any other cause arising without the actual fault or privity of the carrier”, although in the list there were a certain number of causes that might arise from the fault of the carrier. For example, under item (g) “seizure under legal process” was envisaged. This would most often result from the fault of the carrier. It seemed that the shippers need
Article 4 (2) - The catalogue of exceptions

pas pâtir de ce fait. De même au littera “j” on prévoit les “grèves ou lockouts”; si souvent ce sont des événements de force majeure, ils sont quelquefois dus à la faute du transporteur, qui peut avoir intérêt à interrompre le trafic. Il faudrait donc ou bien supprimer l’énumération, ou bien prévoir dans chaque cas qu’il ne doit pas y avoir de faute.

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[58]

Sir Leslie Scott déclare que ce paragraphe est l’un de ceux qui ne peuvent pas être modifiés par les juristes, sans bouleverser toute l’économie de l’accord auquel les intéressés eux-mêmes sont arrivés. Cette clause a donné lieu à plus de discussions que n’importe quel autre article de la convention. Si, comme juriste, on pourrait critiquer cette rédaction, il est à craindre que, si on modifiait quoi que ce soit à l’énumération dont il s’agit, on ferait échouer toute la convention. Cette énumération ne contient que les clauses d’exception qui figurent dans presque tous les connaissements du monde et qui ont été adoptées entre armateurs et chargeurs suivant une méthode de sélection choisie par eux. Si cette énumération leur donne satisfaction, on ne voit pas pourquoi il y aurait lieu de la modifier et si cette rédaction peut sembler fautive, elle n’en est pas moins l’œuvre des gens d’affaires eux-mêmes, des commerçants et des armateurs, qui parlent ce langage spécial des connaissements et qui le comprennent.

M. Ripert répète que ses objections ne portent pas seulement sur la forme. Il y a dans le texte des expressions qu’on comprendra fort difficilement en France. Il est vrai que ces clauses sont extraites du connaissement, mais lorsque les connaissements français contiennent des exceptions de ce genre, il est admis par la jurisprudence que le chargeur peut faire la preuve de la faute du transporteur, tandis que le texte actuel établit une irresponsabilité absolue sans permettre de faire la preuve d’une faute. Ainsi, si un connaissement français porte une

[58]

Sir Leslie Scott declared that this paragraph was one of those that could not be changed by jurists without upsetting the whole economy of the agreement on which the interested parties themselves had decided. This clause had given rise to more discussion than any other article in the Convention. If, as a jurist, one might criticize this drafting, it was to be feared that if anything at all were altered in the list under discussion, one would ensure the failure of the whole Convention. This list contained only immunity clauses that were a feature of almost any bill of lading in the world and that had been adopted by shipowners and shippers under a method of selection chosen by them. If this list was satisfactory for them, one did not see why there was any reason to alter it, and if this drafting seemed faulty, it was no less the work of businessmen themselves, of merchants or shipowners who spoke this special language of bills of lading and who understood it.

Mr. Ripert repeated that his objections did not bear solely on format. There were in the text expressions that were very difficult to understand in France. It was true that these clauses had been taken from the bill of lading, but when French bills of lading contained exceptions of this type, French law had permitted the shipper to prove the fault of the carrier, while the present text established an absolute lack of responsibility without allowing evidence of fault. So if a French bill of lading had a clause in which the shipowner would not be liable in the case of seizure under legal process,
clause d’après laquelle l’armateur ne se-rait pas responsable en cas de saisie judi-ciaire, le chargeur peut prouver devant le tribunal que cette saisie était due à la fau-te de l’armateur. D’après ces règles, il ne le pourra plus désormais.

**M. Richter** croit également qu’il est indispensable d’établir le rapport qu’il y a entre les clauses (c) à (p) et la clause (q). D’après la déclaration de Sir Norman Hill devant le Comité Parlementaire (page 133), dans les cas (c) à (p) le transpor-teur ne peut pas se réclamer des excep-tions si le fait ou la faute du transporteur ou de ses préposés a contribué à la perte ou au dommage, mais contrairement à ce qui est stipulé par la clause (q), dans les cas (c) à (p) la preuve incombe non pas au transporteur mais au chargeur. On pourrait laisser subsister la disposition telle qu’elle est rédigée, mais en ajoutant les mots “à moins que le fait ou la faute du transporteur n’ait contribué à la perte ou au dommage” ; de cette façon, il se-rait clair que “l’onus probandi” incombe au chargeur.

[59]

**M. Loder** se rallie à l’opinion de Sir Leslie Scott. Le texte actuel est le résultat de longues et laborieuses discussions et il y aurait un grand danger à le modi-fier.

Il n’y a pas lieu de craindre, avec M. Ripert, qu’il n’y aura plus de preuve contraire; puisque dans la clause (q) on ajoute aux exemptions déjà prévues “toutes autres causes ne provenant pas du fait ou de la faute du transporteur”.

**M. Ripert** insiste néanmoins. Dans le paragraphe (a), on prévoit formellement une faute commise par les préposés du transporteur. Ensuite, le texte s’occupe des actes de Dieu, d’émeutes ou de troubles civils, où il n’y a pas faute pos-sible; puis, on envisage d’autres hypo-thèses, comme l’incendie, où il peut y avoir faute du transporteur. Pour les autres cas, où la faute est possible aussi, on n’en parle pas. Le texte devrait distin-guer (i) le littera (a); (ii) les cas de (b) à (p), constituant des causes d’exonération the shipper could prove before the court that this seizure had been due to the fault of the shipowner. Under these rules he would no longer be able to do so.

**Mr. Richter** also believed that it was indispensable to establish the relationship between items (c) to (p) and item (q). In the statement of Sir Norman Hill before the Parliamentary Committee (page 133), in the cases (c) to (p) the carrier could not demand the immunities if the privity or fault of the carrier or his agents had contributed to the loss or the damage, but contrary to what was stipu-lated in item (q), in the cases (c) to (p) the proof was incumbent not on the carrier but on the shipper. One could let the provision stand as it was drafted but add the words “unless the privity or actual fault of the carrier had contributed to the loss or damage”. In this way it would be clear than the burden of proof was incumbent upon the shipper.

[59]

**Mr. Loder** supported Sir Leslie Scott. The actual text was the result of long, lab-orious discussions and there would be great danger in altering it.

There was no reason to fear, with Mr. Ripert, that contrary evidence would no longer be allowed because under item (q) there was an addition to the exemp-tions already envisaged “any other cause arising without the actual fault or privity of the carrier”.

**Mr. Ripert** nevertheless persisted. In item (a) we formally provided for a fault committed by the carrier’s agents. Later the text turns to acts of God, riots or civ-il commotions, where no fault is possi-bile; then we provided for other hypo-thetical situations, like fire, where there might be a fault on the part of the carri-er. In other cases, where fault is also pos-sible, we do not mention it. The text ought to distinguish (i) item (a); (ii) the cases of (b) to (p), which constitute the causes for immunity without demonstra-
sauf démonstration de la faute par le chargeur; (iii) le littera (q) où le transporteur doit lui même faire preuve de la force majeure.

**M. Bagge** et **M. Straznichy** appuient les observations de M. Ripert.

**M. Loder** ne peut accepter l’opinion de M. Ripert, car il y a des cas pour lesquels la preuve contraire n’est pas admise; mais, en règle générale, la preuve contraire est possible et elle est admise pour le littera (b).

[60]

**M. le Président** . . . . . . . . . . . . . . . . . .

Revenant à l’idée de transaction entre armateurs et chargeurs qui est à la base de la convention, on peut dire que les armateurs n’ont pas reçu beaucoup; tout ce qu’il y a d’important dans ces clauses, ils l’avaient déjà de plein droit, sauf certaines difficultés de preuve. S’ils désirent voir insérer une clause générale dans la convention, c’est pour que, dans tous les pays du monde, ils soient certains qu’en cas de litige, il leur suffira de prouver le fait matériel. Ce n’est pas leur faire une grande concession et il y aurait lieu de l’accepter.

**M. Alten** appuie la proposition allemande qui semble correspondre à l’interprétation que les tribunaux des divers pays donnent à ces clauses d’exonération quand elles sont insérées dans un compromis. On pourrait ainsi conserver l’enumération et on obtiendrait une règle parfaitement correcte.

**M. le Président** pense qu’il suffit de constater que le principe général est que celui qui invoque l’exception doit faire la preuve.

**M. Struckmann** regrette de n’avoir pas encore compris les sens des Règles de la Haye dans les cas (e) jusqu’à (l). Il demande si, dans ces cas, le chargeur a ou non la faculté de prouver que le dommage a été causé par une faute commerciale du transporteur ou de ses agents. En cas de saisie judiciaire ou de quarantaine notamment, le chargeur pourrait-il prouver que ces faits sont dus à une faute commerciale du transporteur, ce dernier, par
exemple, n’ayant pas eu des papiers en règle ou ayant chargé des marchandises dont l’importation était prohibée?

**M. Bagge** est d’avis que si le chargeur prouve que la cause est due à la faute de l’armateur ou de son capitaine, le porteur du connaissement a droit à des dommages-intérêts. Il désire toutefois avoir l’opinion de la délégation anglaise sur ce point.

**Sir Leslie Scott** déclare que, d’après le droit commun, une cause d’exonération provenant de la négligence du préposé ne pourra être alléguée par l’armateur que si le connaissement stipule expressément le cas comme une négligence dont il sera exonéré. Quand il s’agit d’un connaissement établi suivant les règles de cette Convention, il faudra interpréter ce document comme formant un tout régi par toutes les dispositions de la Convention. Ainsi, l’article 3 impose à l’armateur certaines obligations; par exemple, la mise du navire en état de navigabilité; et le littera (c) de l’article 4 prévoit le “danger de mer”. Si le navire coule c’est évidemment une fortune de mer, mais si le navire a coulé parce qu’au commencement du voyage, il n’était pas en état de navigabilité, l’armateur n’aura pas l’avantage de cette exception de l’article 4 et il serait responsable en vertu de l’article 3.

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**M. Struckmann** demande s’il ne serait pas possible d’insérer dans le procès-verbal de la séance une déclaration disant que l’énumération du paragraphe 2 depuis (c) à (q), laisse intact le droit du juge de permettre, selon le droit commun, au chargeur de prouver que l’accident qui a causé le dommage résulte d’une faute personnelle commerciale du transporteur, de ses agents ou du capitaine.

**M. le Président** propose de réserver la réponse à la question soulevée (adhésion).

[61]

**Mr. Struckmann** asked whether it was not possible to insert in the proceedings of the session a statement to the effect that the list in paragraph 2 from (c) to (q) left intact, under general law, the right of the judge to allow the shipper to prove that the accident that had caused the damage resulted from the personal commercial fault of the carrier, of his agents, or of the captain.

**The Chairman** proposed reserving the reply to the question raised. (Carried).
M. le Président reprend l’examen de l’article 4 § 2. Il fait observer: 1° que les différents pays représentés à la Conférence ne rédigent pas habituellement les textes de loi de la même façon. Les uns ont recours à une rédaction synthétique, les autres à la méthode analytique. Ceux qui procèdent par principes généraux laissent aux tribunaux le soin de l’application. Les autres prévoient dans la loi le plus grand nombre de cas possibles, et y ajoutent une formule générale. Il faut tenir compte de ces différences et:

1°) dans le cas présent, il convient de maintenir l’énumération de cet article suivie d’une formule générale; d’autant plus que, d’après une disposition insérée dans la convention, la loi nationale sera libre de régler ce qui n’est pas prévu dans l’une ou l’autre des stipulations.

2°) Il faut observer que chaque mot de cette énumération est l’aboutissement ou bien de longues controverses, ou bien d’usages consacrés, ou bien encore de négociations entre divers groupes qui ont discuté les bases préliminaires de cette convention. Il en résulte que dans l’interprétation, il faut se défier de tout ce qui est interprétation par analogie ou interprétation “a contrario”. Il faut prendre le texte en lui-même et, en cas de doute, s’en rapporter aux origines, aux coutumes et à la jurisprudence; au surplus, la portée pratique des questions sur lesquelles il y a controverse possible, n’est pas grande: par exemple, en matière de quarantaine ou de saisie judiciaire y a-t-il responsabilité ou non? Ce ne sont pas des questions graves en pratique et elles ne dépassent pas les difficultés que les tribunaux ont à trancher tous les jours.

3°) Enfin le droit commun restera applicable nonobstant ces dispositions en tant qu’il n’y est pas dérogé. Ceci résout plusieurs des questions soulevées.

M. Ripert estime que, en réalité, le texte proposé présente, au point de vue

The Chairman began further examination of article 4(2). He pointed out, first, that the various countries represented at the conference did not customarily draft their laws in the same way. Some used a synthetic drafting, others an analytical method. Those that proceeded through general principles left up to the courts the responsibility of application. Others envisaged in the law the greatest number of possible cases and added a general formula to it. It was necessary to appreciate these differences and

(1) in the present instance, it was appropriate to keep the list in the article followed by a general formula - all the more so because, according to a provision inserted in the Convention, national law would be free to regulate what was not provided for in one or another of the stipulations.

(2) It was necessary to note that each word of this list was the result either of long controversy or sanctioned customs, or yet still of negotiations between various groups that had discussed the preliminary basis for this convention. The result was that in the interpretation it was necessary to mistrust everything that was interpretation by analogy or interpretation “a contrario”. The text should be taken at face value and, in case of doubt, with reference to origins, customs, and prior decisions. Moreover, the scope of questions on which there was room for controversy was not large. On the matter of quarantine or seizure under legal process, for example, was there liability or not? These were not serious problems in practice and they were no greater than the problems that courts had to settle every day.

(3) Finally, general law would remain applicable notwithstanding these provisions in so far as there was no derogation from it. It resolved several of the questions raised.

Mr. Ripert felt that the proposed text
pratique et surtout au point de vue des principes du droit français, les plus grandes difficultés. Sous des lettres différents se trouvent réunis à cet article des choses tout-à-fait distinctes: d’un côté la “negligence clause” et, d’autre part, des clauses de connaissance concernant les faits et les fautes du transporteur. La question est de savoir si la preuve de la faute du transporteur sera possible: une affirmation du président qui figurera au procès-verbal de la Conférence, ne suffira pas dès que l’on se présentera devant un tribunal continental; avec le texte tel qu’il est libellé sous le lettre (q), tous les armateurs soutiendront certainement qu’il y a cause d’irresponsabilité absolue.

M. Loder croit que tout le monde est d’accord quant au fond, mais que M. Ripert trouve le texte obscure. Quant à lui, il lui semble clair que, dans tous les cas, ce sera à l’armateur de prouver que le fait, l’exonérant de sa responsabilité, s’est produit. Mais par contre le chargement peut prouver que si le fait s’est produit, c’est par la faute du capitaine, et, dans ce cas, ce dernier ne pourra s’en exonérer.

Sir Leslie Scott propose de réserver le lettre (b) jusqu’à l’arrivée de M. Beecher, puisque c’est sur la proposition de celui-ci que ces mots ont été insérés.

[63]

M. Bagge croit qu’actuellement, en droit anglais, le chargement peut prouver non seulement qu’il y a faute du transporteur, mais aussi qu’il y a faute des préposés du transporteur.

Sir Leslie Scott répond qu’en réalité on ne peut dire de façon absolue que le droit anglais est dans l’un ou l’autre sens, car cela dépend toujours des stipulations du contrat. À son avis, (q) concerne les causes non désignées dans les alinéas (b) à (p), c’est-à-dire les causes d’exonération qui ne surviennent pas par le fait ou la faute du transporteur et de ses prépo-

did in fact present the greatest difficulties from a practical point of view and, above all, from the point of view of the principles of French law. Under the various items grouped under this article were things that were completely disparate. On one hand, the “negligence clause”, and on the other, the clauses of the bill of lading relating to the actual fault and privity of the carrier. The question was to know if proof of the fault of the carrier would be possible. A declaration from the Chairman to be featured in the proceedings of the conference would not be enough when one appeared before a Continental court. With a text much as it was worded under item (q), the shipowners would certainly all maintain that there were grounds for absolute irresponsibility.

Mr. Loder believed that everyone was basically in agreement, but that Mr. Ripert found the text obscure. In his opinion, it seemed clear that in all cases the shipowner would have to prove that the act exonerating him from his liability had actually occurred. In contrast, the shipper could prove that if the act had happened, it was the fault of the captain, and in this case the captain would not be able to exonerate himself.

Sir Leslie Scott proposed keeping item (b) aside until the arrival of Mr. Beecher because it was on his proposal that these words had been inserted.

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Mr. Bagge believed that presently under English law the shipper was able to prove not only that there had been a fault on the part of the carrier but also that there had been a fault on the part of the carrier’s agent.

Sir Leslie Scott replied that one could not really say in any absolute manner that English law favored one or the other meaning, because it always depended on the stipulations of the contract. In his opinion (q) dealt with the causes that were not covered in the items (b) to (p), that is to say, the grounds for
sés. En ce qui concerne les litteras (b) à (p), ces cas sont une cause d’exonération même lorsqu’ils sont dus à la négligence des préposés dans l’administration du navire; mais ils ne le sont pas quand ils sont dus à la négligence du transporteur lui-même. Cependant, la modification du littera (b) rend le texte peu clair.

**M. le Président** ajoute que le droit commun reste applicable: la preuve incombe au débiteur qui, d’autre part, est tenu de sa faute, les cas de force majeure et les clauses d’exonération exceptés. Dans cet ordre d’idées, M. Ripert a rendu un grand service en attirant l’attention de la conférence sur la clause “incendie”.

**M. Asser** dit que pour éviter tout malentendu on pourrait commencer l’article par la clause générale consacrant la responsabilité du transporteur du chef de sa propre faute et de celle de ses préposés et ensuite faire suivre les divers alinéas.

**M. le Président** répète que les fautes de navigation ou d’administration sont toujours exceptées, mais que, dans les cas de (b) à (p), la faute du propriétaire lui-même ne l’est pas. Dans cet ordre d’idées, il serait peut-être préférable de ne pas reproduire à propos de l’incendie, la modification introduite à la Conférence de 1922.

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**Sixième Séance Plénière - 8 Octobre 1923**

Mr. Alten critique la rédaction de l’article 4 § 2. Il propose d’admettre la responsabilité du transporteur même dans les cas visés sous (c)-(p), en tant que celui qui demande des dommages-intérêts, fait la preuve qu’un fait ou une faute du transporteur ou de ses agents ou préposés - non excepté sous (a) et (b) - a causé la perte ou le dommage des marchandises.

Sir Leslie Scott se rallie à la proposition de M. Alten. Mais, puisque M. Ripert a ajouté que le droit commun reste applicable: la preuve incombe au débiteur qui, d’autre part, est tenu de sa faute, les cas de force majeure et les clauses d’exonération exceptés. Dans cet ordre d’idées, M. Ripert a rendu un grand service en attirant l’attention de la conférence sur la clause “incendie”.

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Sir Leslie Scott soutient la proposition de M. Alten, mais, puisque M. Ripert a ajouté que le droit commun reste applicable, la preuve incombe au débiteur qui, d’autre part, est tenu de sa faute, les cas de force majeure et les clauses d’exonération exceptés. Dans cet ordre d’idées, M. Ripert a rendu un grand service en attirant l’attention de la conférence sur la clause “incendie”.

**Sixth Plenary Session- 8 October 1923**

Mr. Alten criticized the drafting of article 4(2). He proposed allowing the carrier's liability even in those cases envisaged in items (c) to (p), in so far as the person demanding damages offered proof that the actual fault or privity of the carrier or his agents or representatives - not exempted under items (a) and (b) - had caused the loss or damage to the goods.

Sir Leslie Scott supported Mr. Alten’s proposal, but since Mr. Ripert had
puts forth a similar text and the convention was drafted in French, he preferred the drafting of the French delegate.

Mr. Alten pointed out that Mr. Ripert did not go so far as he had because he limited himself to stating that the States could reserve this right.

The Chairman recalled that both he and Sir Leslie Scott had claimed that the carrier remained in principle subject to general law. Moreover there were three categories of cases together in this article: damages resulting from faults in navigation, in ship management, which were excepted under item (a); then fire, under item (b); finally, a category comprising those cases envisaged under items (c) to (p).

Sir Leslie Scott also saw three categories: first, negligence by agents (item (a)); second, all the exceptions described in items (b) to (p); third, the clause under item (q). Mr. Ripert’s proposal related in-differently to all the cases (b) to (p). It was necessary, therefore, to delete the words “unless caused by the actual fault or privity of the carrier” from item (b).

The Chairman concluded that in item (b) it was necessary to delete the words “unless caused by the actual fault or privity of the carrier”. There was no reason to have a special system for fire.

Mr. Struckmann indicated that from now the proposal of Messrs. Ripert and Berlingieri ought to define what was meant by all those instances in items (b) to (p).

Mr. Beecher objected that that stipulation would not correspond with the American law on this point. That law provided that when there was negligence on the part of the captain or the shipping agent, they would be liable. The provision proposed would amend a long established principle concerning fire and would impose a new burden on shipowners.

Mr. Loder proposed leaving this question temporarily to allow for reflection.
La seconde a donné lieu à de longues discussions et on s’est demandé s’il ne pourrait pas être trouvé une formule plus précise et plus heureuse. Mais on a rappelé les origines de cette rédaction, inspirée par l’usage et la pratique; la jurisprudence devra donc se guider d’après les usages et la pratique; la Commission a considéré que ce texte n’a pas été obtenu par une rédaction systématique, d’après un plan préconçu et par des rédacteurs libres de formuler leur pensée d’une manière correcte et elegante, mais bien d’après des formules insérées depuis de longues années dans les connaissance et qui avaient subi l’épreuve de la pratique, mais en tenant compte de ce que souvent il y a eu à ce sujet discussion marché, marchandages et compromis transactionnels, que, dans ces conditions, tout ce qui serait argument par analogie ou a contrario devrait être traité avec beaucoup de mesure et de prudence.

Il a été formulé assez heureusement un commentaire de cet article, sur la proposition de la délégation anglaise, disant qu’il y a trois grandes subdivisions.

La première comprend le cas où il s’agit de fautes du capitaine ou des préposés de l’armement dans la navigation ou l’administration du navire, c. à d. la gestion technique et nautique. En pareil cas, il n’y a pas de responsabilité de la part de l’armateur pour ces fautes. C’est la compensation de l’obligation imposée à l’armateur d’accepter toujours la responsabilité en cas de soins à donner à la cargaison.

La seconde catégorie comprend une série d’événements qui on pourrait considérer comme “force majeure” où l’armateur n’est pas responsable; ce sont les cases (c) à (p). Dans tous ces cas, on s’est demandé ce qui arriverait si une faute était commise qui serait la véritable cause de la dommage. It was decided that a distinction had to be made. If it were a...
cause du dommage causé. On a répondu qu’il fallait distinguer; si c’est une faute se rapportant à ce qui est dit à l’alinéa (a) (acte ou faute du capitaine ou des préposés dans l’administration technique ou nautique du navire), elle ne peut être invoquée contre l’armement; mais si c’est une autre faute, sortant de ces cas là, elle peut être invoquée contre l’armateur, de même que sa faute personnelle. Mais ces dommages sont conditionnés par la règle de la causalité et il appartiendra à chaque législation nationale de déterminer ce qui est la cause véritable du dommage - si c’est l’événement ou si c’est la faute.

Enfin, troisième catégorie: les cas autres que ceux énumérés déjà, ne venant pas du fait ou de la faute du transporteur ou de ses préposés; dans ces cas, l’armateur est exempté de responsabilité à condition de faire la preuve qu’il n’y a ni fait, ni faute de sa part. Il a été rappelé à cette occasion le principe de droit commun que le fardeau de la preuve incombera à la personne invoquant le bénéfice de cette exception.

fault relevant to what was said in item (a) (actual fault or privity of the captain or his agents in the technical or nautical management of the ship) it could not be used against the shipowning interests. If, however, it was another fault arising from such cases, it could be used against the shipowner just as in his own personal fault. But these damages were conditioned by the rule of causality and it was up to each national legislation to determine what the real cause of the damage was - if it were the occurrence or if it were the fault.

Finally, the third category: cases other than those listed already, resulting neither from the actual fault or privity of the carrier or his agents. In such cases, the shipowner was exempt from liability on condition that he prove there was neither fault nor privity on his part. At that juncture the principle of general law was recalled where the burden of proof would fall on the person claiming benefit from this exemption.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:
   a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
   (a) faults or errors in the navigation or in the management of the ship.

Second day’s proceedings - 31 August 1921

[142]

Sir Norman Hill: This clause, Article 4, is the shipowners’ clause. Now, Sir, I would venture to remind the Committee that we have dealt with the cargo interests clause in Article 3, and we have agreed and accepted the actual words that the cargo interests have put forward imposing the obligations on the ship with regard to seaworthiness, and, what is more important, we have accepted Article 3 (2), which says that “The carrier shall be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care, and unloading of the goods carried”. We have not sought to weaken those or qualify those in any way. When we come to Article 4 (2) our big point is the navigation point, and what we have asked is that we should have the words which from time immemorial have certainly appeared in all British bills of lading. “Faults or errors” have not appeared. They have been added. Our old words were: “Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship”, and we would ask, Sir, in our clause to have our old words; leave out “faults or errors”, and put in our old words instead.

[147]

Mr. MeConchy: On behalf of the interests I am here to represent, I am quite willing to accept what is printed here as amended by Sir Norman Hill. The only exception to that, if I may call it an exception, is with regard to “or in the management”. I put it not so much that I am going to object it whole-heartedly, but I would like, at some time or other, it to be explained. In our Chamber we did not understand the word “management” as it comes in here, because in the surface meaning of the word it contradicts all that has gone before; it even contradicts the preceding paragraph. I would suggest, if it is agreeable, that “or in the management” should be deleted in the same way as in the Australian Shipping Act, the Overseas Carriers Act. There must be some reason why it is in here, because the Canadian and Harter Act and the Dominion Act have it
in, but we as laymen do not understand why it is there, and to avoid any misunderstanding in future I would propose either that there should be some explanation about the real meaning of the word or else that it be deleted.

The Chairman: .................................................................

Then we may take them in their order. As between the conflicting interests which were represented upon the drafting, there is [148] agreement to Sir Norman Hill’s amended proposal as I understand it, except so far as it includes the words “or in the management”. Sir Norman Hill, would you deal with Mr. McConchy’s point?

Sir Norman Hill: We put it in, Sir, because of the limited meaning which has been attached in our Courts to the words “in the navigation”. There are operations that are performed in port which, if they had been performed at sea, would be, beyond all question, navigation; and it may be just an accident that they are performed in port. We recognise fully, Sir, that our Courts have held that “management of the ship” does not cover the stowage of the cargo; and if it would relieve the cargo interests we should be quite content to add “in the management of the ship otherwise than in the stowage of the cargo”.

The Chairman: That might by an exception introduce a larger meaning than the original words.

Mr. McConchy: That might be more dangerous.

The Chairman: May I suggest that a possible means of giving a narrow meaning to the words would be to make them “in the navigation and management”, so as to associate management with those matters with which, so far as my memory goes, management is associated in respect of liability?

Mr. McConchy: That would be better.

Sir Norman Hill: There are so many thing now. When we dealt with “navigation” in the old sailing days there was not much else; but now, when you think of the great modern cargo carrier there are all kinds of things which you have to entrust to your servants on board.

The Chairman: The distinction is as between the conduct of the ship as a ship, and the conduct of the individual operations which relate to cargo, and things of that kind.

Sir Norman Hill: Yes. Now we are accepting, as we understand it, full responsibility for the stowage, but we are not to be held liable for the default of the crew in the actual navigation of the ship - it is not in the voyage; it is in the navigation of the ship - and exactly what the navigation of a great modern cargo carrier is I do not know, Sir. Of course, whenever it comes to a question of seaworthiness, then the ship is judged as a cargo carrying instrument, and, if we were quite sure that the same principles would be applied [149] when you tested whether there was negligence in the sailing of that great cargo carrying instrument, that it would not be merely tested by the question: is this navigation or not? we would be content. But if you test it by the way in which the word is ordinarily used, navigation, that does not cover a tenth of the operations that are done on a great cargo carrying instrument.

Lord Phillimore: To give an illustration of that, I suppose if the captain got into trouble by a breach of the Harbour Regulations he would be fined.

Sir Norman Hill: That would be one; but if you take the shifting about of the ballast while the ship is lying in port, is that navigation? I suppose so.

The Chairman: The replacing of tools, pipes and things of that sort.

Sir Norman Hill: Yes.

The Chairman: The question frequently arises. I think “navigation” and “management” are so intimately connected.

Sir Norman Hill: There are many cases; we are all familiar with that, Sir, and of course when we come to a question like screwing down the ports.


The Chairman: Is this a question which we might leave to the Drafting Committee? I do not think there is any difference in principle.

Sir Norman Hill: We do not want, by putting in “in the management”, to go back on having accepted responsibility for stowage. We do not want to go back on that.

Mr. McConchy: I know that, but still you want it to be clear.

Mr. Dor: I quite understand that “management” must be put in. The only difficulty I see is, that these rules are going to be translated into French. I suppose you are going to do like you did with the York-Antwerp Rules, have an English document and a French document?

Sir Norman Hill: Yes.

Mr. Dor: I shall be extremely obliged to Sir Norman Hill if he tells me how we are going to translate into French “navigation and management”. I have tried for the last ten years, and I have not succeeded. If you say “navigation et administration du navire”, that is no good, because “administration” is too wide, and it will cover negligence in respect of the cargo. For instance, we had a great number of cases in which the Marseilles Court were holding that “management” did not cover shortage of cargo, and the Aix Court of Appeal for a good many years held that the Marseilles Court was wrong, and that “navigation” being the nautical side of the ship, “management” would most surely mean the “administration”, and therefore covered all the handling of the cargo and covered the case of shortage of cargo. So that if we had cargo, so many bags, missing, it was covered by the exception “management”. Of course it was wrong, and after a good many years the Court of Appeal of Aix recognised that it was wrong. But if you put it in French, “administration”, it would certainly cover the handling of the cargo. If you put “navigation et direction du navire”, it does not mean much. What is the “direction du navire”? Our distinction of course is between what we call “fautes nautiques” and “fautes commerciales”, the nautical faults and the commercial faults; but that is not translation. We cannot translate the rule which reads “act, neglect or default of the master”, and so on, “in the navigation or in the management of the ship” by just the “fautes commerciales” of the master or pilot or mariners. Therefore, I should be much obliged to Sir Norman Hill if he would give me the way to translate it. You must not forget that this is not only a question between British shipowners and cargo owners.

Sir Norman Hill: No, certainly not.

Mr. Dor: I am afraid that the British interests are so largely and so ably represented in this meeting that the meeting may lose sight of the fact that you are not laying down rules for the British Empire, but for the world, and that it is no good your rules being accepted by the British owners only. Sir Norman Hill was saying, for instance, “Well, the British cargo owners are content to have that long enumeration”, but you do not know if all the Continental cargo owners will be content. In the same way, in the matter of “management” we cannot possibly put in French the English word “management”; therefore you have to find out some way of expressing that in something which is legal French, and I leave it to Sir Norman Hill.

Mr. McConchy: In reading over this again I think it is not so very much against the cargo owners’ interests as I first thought, with this addition that Sir Norman Hill has added: “Act, neglect or default of the master, mariner, pilot, or the servants of the carrier” - adding in these words, “master, mariner”, and so on, which all means that this management is in connection with the navigation; so I am quite willing to leave it as it is, with the addition of these words in red.

Mr. De Rousiers: I would not like to enter into a discussion upon the meaning of French words here; but I think it is possible to make a proper translation of the word “management”. Management comes from an old French word which is “ménage”; and
“management of the ship” in fact may be translated very well by the words “exploitation du navire”. It may be explained in a very simple way. All that is regarding the management of the ship is one thing; what is regarding the management of the cargo is another thing, and in the Bill which was proposed in the Comité Maritime International by the Association Française we said: “L’armateur n’est pas responsable des fautes commises par le capitaine, le pilote, l’équipage et toute personne employée à bord dans l’accomplissement de leurs fonctions en ce qui concerne la navigation et la conduite du navire et son maintien en bon état de navigabilité, d’entretien et d’aptitude au service et généralement en tout ce qui ne se rapporte pas directement et uniquement à la cargaison”, which means the management of the ship, but not the care of the cargo. In fact the shipowner is not responsible for the management of the ship, but he is responsible for the care of the cargo. I think it may be translated very well.

Mr. Dor: I quite understand that French shipowners would be very pleased to have “management” translated by “exploitation”, because it would be very wide, and therefore it would cover points which might not be covered under the narrow English word “management”. Then I must ask you to make the English part a little longer in view of the French translation, and to say in your English part something showing that it is not the management of the cargo; something to make it clear, to make a dividing line between “management of the ship” and “management of the cargo”. You would say, if you were speaking in English only, that it is not necessary because when we say “management of the ship” it is understood that it is not “management of the cargo”, but we ought to have something which we could translate.

Mr. De Roussiers: I think we could do that very well in translating those words I was quoting. We say the shipowner is not responsible [152] as far as the management of the ship is concerned, but is responsible so far as regards the management of the cargo.

Mr. Dor: But it must be in the English text as well.

The Chairman: It seems to me that a question has arisen here which is a question of expression only, and that it would be better that it should be considered in a sitting of the Drafting Committee than that we should spend much time in debating it (Hear, hear), so I venture to suggest that, as there is no difference in principle upon Sir Norman Hill’s words as they are now amended, they should go to the Drafting Committee in Sir Norman Hill’s form. (Hear, hear). The question then is whether clause 2 (a) be passed in the form in which Sir Norman Hill has now amended it. Is that agreed? (Agreed).

Text adopted by the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   a) Act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.

Diplomatic Conference -
October 1922
Meetings of the Sous-Commission

Third Session- 21 October 1922

Mr. Bagge, delegate from Sweden, criticized the word “administration” (management). He would like to see it replaced by a more explicit term.

The Chairman, judging that this was a question of principle, found no grounds for changing the text.

Seventh Plenary Session-
25 October 1922

The Chairman
I shall therefore pass on to article 4(2)(a), where it is proposed that in place of “management” and “administration” we should employ more precise terminology.

Mr. Ripert. - There isn’t any!

The Chairman. - We have searched over the years. Management is the technical management of the ship above and beyond navigation itself and including the care of goods.

Mr. Bagge. - I had made my proposal because the Swedish shippers were energetically opposed to the expression “management”, which as it is now interpreted goes too far. They wanted to see inserted a word like “manoeuver”. I agree that it is not merely a question of drafting, but also one of a different meaning from what we want. In the Scandinavian Committee, we ended up accepting “manoeuvering”, whose meaning is distinct from management.
Il paraît qu’aux États-Unis cette expression est interprétée d’une façon plus favorable aux chargeurs que devant les tribunaux anglais et j’ai déjà dans la Commission exprimé l’avis que les tribunaux suédois feront comme les États-Unis et interpréteront en faveur des chargeurs cette clause, si nous l’acceptons.

It appears that in the United States this expression is interpreted in a way more favourable to shippers than it is in the English courts, and I have already expressed the opinion in the Commission that the Swedish courts would follow the United States and interpret this clause in favor of the shippers, if we accept it.

Mr. Berlingieri souligne qu’au sujet de l’interprétation du mot “management” il y a une jurisprudence divergente en France et en Italie depuis 25 ans.

Sir Leslie Scott fait remarquer que d’autre part, les tribunaux en France et en Italie ont interprété unanimement des connaissances anglais et l’Harter Act depuis bien longtemps.

Mr. Berlingieri emphasized that in the matter of the interpretation of the word “management” there had been a divergent jurisprudence in France and Italy for 25 years.

Sir Leslie Scott pointed out that, on the other hand, the courts in France and Italy had interpreted the English bills of lading and the Harter Act consistently for a long time.

Mr. Berlingieri estime que le mot “management” est vague et a donné lieu à confusion; il propos de le traduire par “administration technique”.

M. le Président reconnaît qu’il serait plus élegant de remplacer “management” par “administration technique du navire” par opposition à la garde de la marchandise. Mais il fait observer qu’en anglais, le sens est très clair. C’est tout ce qui concerne, en dehors de l’administration, la bonne gestion du navire, son entretien, son nettoyage, la mise à bord des câbles de rechange, des objets nécessaires, la fermeture des parties du navire qui ne sont pas, à proprement parler, les

Mr. Berlingieri felt that the word “management” was vague and allowed room for confusion. He proposed translating it as “administration technique”.

The Chairman recognized that it would be more elegant to replace “management” with “administration technique du navire” (technical management of the ship), as opposed to the custody of the goods. But he pointed out that in English the meaning was very clear. It included everything, except management, related to the good management of the ship - its maintenance, cleaning, the putting on board of spare cables, necessary items, the fastening of those parts of the ship
écoutes, les robinets etc. Sur une question de M. Berlingieri, M. le Président déclare que l’entretien des chambres frigorifères concerne la garde de la marchandise.

M. Sindballe préférerait également une autre expression que le mot “management”, mais il se rend compte qu’il serait difficile de la modifier à présent.

M. le Président est d’avis que si l’on sort des généralités et si l’on considère les clauses une à une, il ne subsiste guère de grandes difficultés. En ce qui concerne le littera (a), le mot “management” peut être remplacé par “administration technique”. Pour cette clause, il ne faut aucune réserve. Viennent ensuite les péris, dangers ou accidents de la mer; l’acte de Dieu, les faits d’ennemis publics, cas de force majeure, aucune réserve. Quant à la saisie, il s’agit de celle qui n’est pas causée par la faute de l’armateur; en cas d’abordage, par exemple, si le navire transporteur en faute est saisi au port, et si l’armateur ne donne pas caution, on ne peut dire que le propriétaire doit être responsable de cette saisie, puisque, d’après le littera (a), il n’est pas responsable des fautes commises par ses préposés. Mais il est inutile de faire de la théorie; en pratique, aucun navire ne reste à la chaîne dans de pareilles conditions. S’il reste, c’est que l’armateur est tellement insolvable qu’il importe peu de savoir s’il existe encore un recours.

The Chairman was of the opinion that if one left aside generalities and considered the clauses one by one, no great difficulties would remain. As far as item (a) was concerned, the word “management” could be replaced by “administration technique”. No reservation was necessary for that clause. Moving to perils, dangers, and accidents of the sea, act of God, acts of public enemies, cases of force majeure, there were no reservations. As to seizure, it was a matter of seizure that was not caused by the fault of the shipowner. In the case of collision, for example, if the carrier ship at fault was seized in port, and if the shipowner gave no warning, one could say that the owner must be liable for this seizure, because under item (a) he was not liable for faults committed by his agents. But it was pointless to theorize; in practice, no ship would remain chained up in such conditions. If it remained so, it would be because the shipowner was so insolvent that it was of little importance to know if redress still existed.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

b) fire, unless caused by the actual fault or privity of the carrier;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

(b) Fire.

Second day’s proceedings - 31 August 1921

[152]

Mr. W. W. Paine: Well, fire not wilfully caused by the agents of the shipowner.
The Chairman: Mr. Paine has an amendment.
Mr. W. W. Paine: “Unless wilfully caused by the carrier or his agents or servants”.
The Chairman: What do you say to that, Sir Norman?

[153]

Sir Norman Hill: I do not think one could take that. I do not think the shipowner has ever been held responsible for fire.
Lord Phillimore: Mr. Paine says “wilfully”. Of course, if the owner causes it wilfully he is responsible; no exception in the world would take away his responsibility.
Mr. W. W. Paine: His agent, Sir.
The Chairman: If it is done wilfully by the agent, it is a criminal act which is not within his agency.
Sir Norman Hill: I think the agent must be had up.
Mr. Dor: Does it mean that if the fire is caused, not wilfully, but by the negligence of the agent, the shipowner is not responsible?
Mr. W. W. Paine: Yes.
Sir Norman Hill: Clearly not.
Mr. Dor: He is not responsible? That is going further.
Sir Norman Hill: That is the “servants of the carrier”, is it not? In the cases you take is not fire one of the things we all insure against? It is the first peril you cover in everything.
The Chairman: I understand this is a mere matter of definition for the purpose of insurance, and perhaps I may venture to suggest to the Committee that these causes of liability were closely debated between the interests of shipowners and cargo owners.
who represented not only England but other countries, and where there is a standing
exemption from liability at present I do not assume that the Committee will go back
to examine its basis in the law of one country or another. Is “fire” to stand? (Agreed).

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[366]
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

(b) fire;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.

Conférence Diplomatique -
Octobre 1922
Séances de la Sous-Commission
Deuxième Séance - 20 Octobre 1922

[190]
M. le Président propose d’ajouter au paragraphe (b) “Incendie” les mots “à moins qu’il n’ait été causé par le fait ou la faute du transporteur”.
La Commission accepte cette proposition.

Troisième Séance - 21 Octobre 1922

[201]
M. le Président rappelle qu’il a proposé le texte suivant:
“Incendie, à moins qu’il se soit causé par le fait ou la faute du transpor-
teur”.

Diplomatic Conference -
October 1922
Meetings of the Sous-Commission
Second Session - 20 October 1922

[190]
The Chairman proposed the following addition to item (b): “Fire, unless caused by the actual act or fault of the carrier”.
The commission accepted this proposal.

Third Session - 21 October 1922

[201]
The Chairman recalled that he had proposed the following text:
Fire, unless caused by the actual fault or privity of the carrier”.
La Commission s’y rallie unanimitément.

_Septième Séance Plénière - 25 Octobre 1922_

[148]

**M. le Président.** - Passons au paragraphe 2 (b). Je crois que le texte de la Commission donne satisfaction à M. Struckmann.

**M. Langton.** - Dans le texte anglais, nous avons le mot “privity”. Il est très difficile de traduire ce mot, car cela signifie en anglais “connivance ou participation” et même “connaissance”.

Le Comité de rédaction a eu de grandes difficultés à traduire ce mot. Je ne connais pas d’expression française équivalente.

**M. de Rousiers.** - Je suis d’accord avec M. Langton, mais nous avons suggéré de mettre “fait et faute”; ces deux mots ensemble couvrant la signification anglaise.

**M. le Président.** - “Fait et faute” dans le droit continental, c’est l’ancienne définition romaine. Elle a toujours été suffisante; c’est d’ailleurs la définition de l’article 1382 du code.

**Sir Leslie Scott.** - Ce point est d’importance considérable et je propose de mentionner ce que vous venez de dire dans le rapport officiel de la Conférence.

**M. le Président.** - Cela figurera au rapport officiel. Cela exprime bien tout ce que nous avons en vue. Pour ceux qui sont régnis par le code français, cela embrasse tout: nous entendons par là ce que le droit anglais appelle: “negligence and privity”. Nous mettrons, de même, au paragraphe (i), “fait et faute du transporteur, fait et faute des agents”.

**The Chairman.** - Let us move on to paragraph 2(b). I believe the commission’s draft will satisfy Mr. Struckmann.

**Mr. Langton.** - In the English text we have the word “privity”. It is very difficult to translate this word as its English meaning is “connivance or participation” (connivance or participation) and even “connaissance” (knowledge).

The drafting committee had enormous difficulty in translating this word. I do not know of an equivalent French expression.

**Mr. de Rousiers.** - I agree with Mr. Langton, but we suggested putting “fait et faute” (act and fault), these two words together conveying the English meaning.

**The Chairman.** - “Fait et faute” in Continental law is the ancient Roman definition. It has always been sufficient; it is moreover the definition in article 1382 of the Code.

**Sir Leslie Scott.** - This point is of extreme importance and I propose mentioning what you have just said in the official conference report.

**The Chairman.** - It will feature in the official report. It expresses well all that is under discussion. For those governed by the French Code it embraces everything. We understand by it all that English law calls “negligence and privity”. All the same, we shall put in paragraph (i) “fait et faute du transporteur, fait et faute des agents” (act and fault of the carrier, act and fault of his agents).
M. Ripert fait ressortir que parmi les exceptions se trouve l’incendie pour lequel il y a une présomption de faute actuellement; pour tenir compte de cette présomption, on a ajouté les mots “à moins que l’incendie ne soit causé par le fait ou la faute du transporteur”. On peut se demander s’il en est de même pour la saisie judiciaire; car un armateur insolvables peut être la cause de la saisie de son navire.

Mr. Ripert emphasized that fire was included among the immunities. Here there was a presumption of actual fault. In order to take this presumption into account, the following words had been added: “unless the fire is caused by the actual fault or privity of the carrier”. One might wonder whether it was the same for the “seizure under legal process” because an insolvent shipowner might be the cause of the seizure of his ship.

M. Ripert insiste encore au sujet de la clause relative à l’incendie. Il a été dit que ce fait était une cause d’exonération à moins qu’il n’y ait faute du transporteur. Il semble donc que, chaque fois qu’il y a fait ou faute du transporteur, la clause d’exonération ne joue pas. Mais on n’a pas ajouté cette réserve aux autres lettres, de sorte que l’on se sait pas s’il y a dans ces cas irresponsabilité absolue ou non. Il faudrait mettre, dans le texte général, une clause réservant les faits et fautes du transporteur.

Mr. Ripert still persisted with the subject of the clause relating to fire. He had said that this act was a cause for exonerating provided there was no fault on the part of the carrier. It seemed, therefore, that each time there was actual fault or privity on the part of the carrier, the exonerating clause did not come into play. But this reservation had not been added to the other items, so that one did not know whether there was an absolute lack of liability or not in these cases. It was necessary to include in the general text a clause reserving the faults and privity of the carrier.

M. Berlingieri demande s’il ne suffirait pas d’effacer ces mots “à moins qu’il ne soient causés par les faits et fautes du transporteur” au littera (b); ce sont ces mots qui prêtent à confusion.

Mr. Berlingieri asked whether it was not enough to delete the words “unless caused by the actual fault or privity of the carrier” in item (b). These were the words that lent themselves to confusion.

Mr. Ripert ne le croit pas; car au littera (q), le texte prévoit la preuve par le transporteur.

Mr. Ripert did not think so, because in item (q) the text envisaged proof by the carrier.

M. Berlingieri. - Au paragraphe (d) “acte de Dieu”, il pourrait y avoir faute du transporteur.

Mr. Berlingieri. - In paragraph (d) “Act of God”, the fault of the carrier might be involved.

Sir Leslie Scott reconnaît qu’il y a quelque chose d’illogique à mettre la réserve “des faits et fautes du transporteur” au littera (b) alors qu’il y a la même disposition dans le littera (q). Mais il appréhende de changer ce paragraphe qui rappelle les pourparlers ayant conduit à la transaction à laquelle les intéressés sont arrivés.

Sir Leslie Scott recognized that there was something illogical in including the reservation “the actual fault or privity of the carrier” in item (b), when there was the same provision in item (q). But he feared altering this paragraph, which recalled the previous rounds of the compromise finally reached by the interested parties.
M. Ripert signale que la littéra (b) n’est pas l’œuvre des intéressés. Il a été rédigé à la Conférence de Bruxelles.

M. le Président croit se souvenir que c’est à la suite d’une remarque qu’il a faite que ce nouveau texte a été inséré; ce texte primitif disait simplement “incendie”. Mais, à Bruxelles et à Londres, il a fait observer qu’en matière d’incendie, il y avait entre les jurisprudences anglo-saxonne et continentale des différences considérables et qu’il y avait une distinction à faire. On a donc décidé que la responsabilité ne s’appliquerait pas lors-qu’il y a “fait au faute du transporteur lui-même”. Il ne s’en suit pas qu’il faut interpréter cet ajout “a contrario”. Il faut en effet distinguer entre deux hypothèses: l’une est celle où le transporteur lui-même, par un acte qui constitue une violation de ses obligations contractuelles, cause un dommage; il importe peu, dans ce cas, que ces dommages viennent atteindre la marchandise sous forme de périls de mer ou de quarantaine ou autrement; la vraie cause du dommage est l’acte du propriétaire. La seconde hypothèse, qui est la plus importante en pratique, est celle où il y a faute du capitaine ou des préposés de l’armateur. Le texte serait clair si on pouvait séparer les différentes hypothèses, mais l’avantage pratique de cette solution ne serait pas contrebalancé par l’inconvénient qui résulterait d’une modification du texte déjà soumis aux Parlements anglais et américain. Le “Bill” anglais est pratiquement voté sur la base des travaux antérieurs de la Conférence.

Sir Leslie Scott reconnait au sujet du paragraphe (b) que l’ajout des “faits et fautes” a été apportée au texte à la conférence de Bruxelles de 1922. A ce moment, le littéra (b) portait simplement le mot “feu”. C’est à la suite d’une proposition des États-Unis que, dans la sous-commission, on a proposé l’addition de ces mots et cet amendement a été accepté par la Conférence. Il vaudrait mieux, avant de se prononcer définitive-

Mr. Ripert indicated that item (b) was not the work of the interested parties. It had been drafted at the Brussels Conference.

The Chairman believed he could remember that this new text had been inserted following a remark he had made. The original text had simply said “fire”. In Brussels and London, however, he had remarked that where fire was concerned, there were considerable differences between Anglo-Saxon and Continental law and that a distinction should be made. It had been decided, therefore, that the liability would not apply when there was “actual fault or privity on the part of the carrier himself”. It did not follow from this that this addition had to be interpreted “a contrario”. It was necessary, in effect, to distinguish between two hypotheses. One, where the carrier himself, through an act that constituted a violation of his contractual obligations, caused damage. It was of little importance in this case that these damages happened to the goods under the guise of perils of the sea or quarantine or in some other way. The real cause of the damage was the act of the owner. The second hypothesis, which is the more important in practice, is where there was a fault by the captain or the agents of the shipowner. The text would be clear if one could separate the different hypotheses, but the practical advantage of this solution would not be counterbalanced by the inconvenience that would result from an alteration to the text which had already been submitted to the British and American legislatures. The English “Bill” was practically voted on on the basis of the earlier work of the conference.

Sir Leslie Scott appreciated with regard to item (b) that the addition of “actual fault or privity” had been made to the text at the Brussels Conference in 1922. At that time, item (b) said simply the word “fire”. It was after a proposal from the United States that the addition of these words had been proposed in the sub-commission and the amendment accepted by the Conference. It would be
ment, attendre l’arrivée du délégué américain.

**M. le Président** croit qu’on pourrait supprimer l’ajout du littéra (b), mais il faut observer que la question aurait surtout de l’importance si, dans l’énumération, il y avait vraiment des cas importants en pratique; or tel n’est pas le cas: la plupart des éventualités prévues ne permettent guère la preuve d’une faute.

Il y a lieu de rappeler aussi que le droit anglais admet la règle “proxima causa spectatur, non remota.”

better, before making any definitive pronouncement, to await the arrival of the American delegate.

**The Chairman** believed that the addition to item (b) might be deleted, but he pointed out that the question would be of overwhelming importance if, in the list, there actually were some important cases in practice, or if such were not the case, the majority of the eventualities mentioned would not permit proof of a fault.

There was also reason to mention that English law allowed the rule “proxima causa spectatur, non remota.”
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

   c) perils, dangers and accidents of the sea or other navigable waters;

ILA 1921 Hague Conference
Text submitted to the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (c) Dangers of the sea or other navigable waters.

Second day’s proceedings - 31 August 1921

[154]

The Chairman: Then (d). You have an amendment on (d), Sir Norman.
Lord Phillimore: That is only a verbal amendment.
The Chairman: Your verbal amendment is to enlarge the word “dangers” into “perils, dangers and accidents”.
Sir Norman Hill: It is only sentiment. We have always had that.
The Chairman: I know. That is drafting. The question is that (d) be passed. (Agreed).

Text adopted by the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

   (c) PERILS, dangers AND ACCIDENTS of the sea or other navigable waters;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(c) perils, dangers and accidents of the sea or other navigable waters;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (d) act of God;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (d) Acts of God.

Second day’s proceedings - 31 August 1921

[153]

The Chairman: “(e) Act of God”. That is familiar. The question is that (e) be passed. (Agreed).

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[366]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (d) act of God;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (e) act of war;

ILA 1921 Hague Conference
Text submitted to the Conference

[none]

Second day’s proceedings - 31 August 1921

[153]

The Chairman: “Act of war”. Is that agreed? (Agreed).

Text adopted by the Conference
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(e) ACT OF WAR;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[366]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(e) act of war;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

   f) act of public enemies;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (e) Acts of public enemies.

Second day’s proceedings - 31 August 1921

[154]

The Chairman: “(g) Acts of public enemies”.
Lord Phillimore: What does that mean - pirates?
Sir Norman Hill: That is taken, my Lord, from the Harter Act, the Canadian Act, and the Australian Act. I do not know.
Lord Phillimore: It may mean pirates.
Sir Norman Hill: It may mean pirates; I suppose so.
The Chairman: It is difficult to know what it means. Is (g) agreed? (Agreed).

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (f) act of public enemies;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.
ARTICLE 4

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:

   g) d’un arrêt ou contrainte de prince, autorités ou peuple, ou d’une saisie judiciaire;

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ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

   g) arrest or restraint of princes, rulers or people, or seizure under legal process;

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ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

Second day’s proceedings - 31 August 1921

[154]

The Chairman: “(b) Arrest or restraint of princes”, and so forth. That is agreed, I take it. (Agreed).

Text adopted by the Conference

No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (g) arrest of restraint of princes, rulers or people, or seizure under legal process;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.
Conférence Diplomatique - Octobre 1923  
Séances de la Sous-Commission  
Deuxième Séance Plénière -  
6 Octobre 1923

[58]

**M. Sindballe**  
Il croit nécessaire de revenir au point de vue exprimé par M. Ripert, notamment en ce qui concerne la lettre (g) relative à la saisie judiciaire; il ne semble pas raisonnable de dire que le transporteur sera déchargé de toute responsabilité dans tous les cas de saisie judiciaire, car son navire peut être saisi par sa propre faute. Il faudrait tout au moins restreindre l’exonération au cas où il n’y a aucune faute du transporteur ou du capitaine.

**M. le Président** suggère d’ajouter au texte “à moins qu’elle ne soit causée par un fait ou une faute du transporteur dont il n’est pas exonéré par la présente convention”.

**ARTICLE 4**

2. **Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:**

h) d’une restriction de quarantaine;

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Diplomatic Conference - October 1923  
Meetings of the Sous-Commission  
Second Plenary Session -  
6 October 1923

[58]

**Mr. Sindballe**  
He believed it was necessary to return to the point of view expressed by Mr. Ripert, notably in regard to item (g), relevant to seizure under legal process. It did not seem reasonable to say that the carrier would be relieved of all liability in all cases of seizure under legal process, because his ship might be seized through his own fault. It was nevertheless necessary to restrict immunity to the case where there was not fault on the part of the carrier or the captain.

**The Chairman** suggested adding to the text “unless caused by the privity or fault of the carrier from which he does not have immunity under the present Convention”.

**ARTICLE 4**

2. **Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:**

h) quarantine restrictions;

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ILA 1921 Hague Conference  
Text submitted to the Conference

[none]

Second day’s proceedings - 31 August 1921

[156]

**The Chairman:** “(i) Quarantine restrictions”. (Agreed).

**Text adopted by the Conference**

2. **Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:**

(h) quarantine restrictions;
PART II - HAGUE RULES

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(h) quarantine restrictions;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.

M. Ripert indicated the case of a ship in quarantine. This case might be due to the fault of the shipowner if he gave the order to put into a contaminated port.

The Chairman replied that in this case, as well, the shipowner could exonerate himself since it was a fault of his agents.

Mr. Ripert cited the case where the shipowner himself gave the order and could not exonerate himself from his own fault. It was an exceptional case, but nevertheless it would be difficult to have a legislature allow the exoneration of the shipowner when his fault was revealed.

The Chairman observed that the shipper had been recompensed; the right of immunity for faults of stowage had been removed from the shipowner.

Elsewhere, the principle of the convention was fair. The carrier was liable for the custody, preservation, stowage, and the delivery of the goods, that is to say everything that is truly important for the shipper, on condition that the shipper accepts liability for the cases of force majeure or cases against which he could insure himself.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

i) act or omission of the shipper or owner of the goods, his agent or representative;

ILA 1921 Hague Conference
Text submitted to the Conference
[xlviii]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(g) Act or omission of the shipper or owner of the goods, his agent or representative.

Second day’s proceedings - 31 August 1921
[156]

The Chairman: (j) “Act or omission of the shipper or owner of the goods, his agent or representative”. (Agreed).

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(i) act or omission of the shipper or owner of the goods, his agent or representative;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)
[380]

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;

Second day’s proceedings - 31 August 1921

[156]

The Chairman: “(k) Strikes or lockouts, or stoppage or restraint of labour from whatever cause, whether partial or general”.

Dr. A. Lind: I want to move an amendment. In my opinion those words are somewhat too much generalised. In our Dutch ports strikes and lockouts are only exemptions if they are effective and general. At home here I find that a right opinion, and I am opposing the amendment of Sir Norman Hill, who has added the words: “whether partial or general”. I would only say that partial strikes can never cover the responsibility of the shipowner; and for myself I should say that only a general strike, a really effective strike, can be excluded, and therefore I should propose to add the words “effective and general”.

Sir Norman Hill: Well, Sir, they are very difficult words to give way on. Our friends, the labour leaders, are quite alive to the way of fighting a strike, and that is by attacking us in sections. It would be first on one ship, then it would be the other ship, and by that means they could bring tremendous coercion on all the other interests. They can keep within the law and do their best to ruin the other interests individually. Nobody paid any attention to the old plan of the general strike, and nobody was responsible if there were a general strike. They understand that now, and they will alter their tactics accordingly. I think it would be a most dangerous thing to say that it is nothing but a general strike that must be recognised.

Lord Phillimore: Hear, hear!

The Chairman: May I suggest to the Committee that what is sought to be guarded against is rendering the shipowner liable as an insurer of loss caused by the interference of outside parties?

Sir Norman Hill: That is right.
The Chairman: And all that is sought, as I understand, is to make it clear that he shall not be liable as an insurer. Does the Committee accept (k) as amended: “ Strikes or lockouts, or stoppage or restraint of labour from whatever cause, whether partial or general”? Is that agreed? (Agreed).

Text adopted by the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Deuxième Séance Plénière - 6 Octobre 1923

[59]

M. Sohr, au sujet du paragraphe relatif aux grèves ou lockouts pense que ces cas font ressortir qu’on ne peut mettre les cas (a) à (p) sur le même pied que (q). Il faudrait dire que, si la grève ou le lockout est provoqué par la faute de l’armateur, celui-ci en est responsable.

M. Ripert signale que, dans la jurisprudence française, même lorsque l’armateur insère une cause de grève, les tribunaux disent que, s’il a provoqué la grève à tort, le chargeur peut réclamer des dommages-intérêts.

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Second Plenary Session - 6 October 1923

[59]

Mr. Sohr, on the paragraph relating to strikes or lockouts, thought that these cases emphasized that one could not put cases (a) to (p) on the same footing as (q). It would be necessary to state that if the strike or lockout was provoked by the fault of the shipowner, he was liable.

Mr. Ripert indicated that in French law, even when the shipowner inserted a strike clause, the courts said that if he had wrongfully provoked the strike, the shipper could claim damages.
M. le Président admet cette observation, mais fait remarquer que la clause par laquelle l’armateur s’exonère des défauts dans l’arrimage est admise également. Or, ce cas est bien plus important qu’un “lock out” qui ne retarde le navire que de quelques jours au port. Ce qui importe pour le chargeur c’est que sa marchandise soit bien gardée, surveillée et qu’on ne la délivre pas en mauvais état; actuellement, quand le chargeur réclame, on lui oppose qu’il y a une petite clause dans le connaissement et qu’il n’a aucun droit. La convention y met un terme.

The Chairman allowed this comment but pointed out that the clause by which the shipowner exonerated himself from the faults in stowage was also allowed. This case was more important than a “lockout”, which only kept the ship in port for a few days. What was important for the shipper was that his goods were well looked after, and that they were not delivered in poor condition. At present, when the shipper complained he was told that there was a small clause in the bill of lading and that he had no right. The convention put an end to that.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

   k) riots and civil commotions;

ILA 1921 Hague Conference
Text submitted to the Conference

[none]

Second day’s proceedings - 31 August 1921

[157]

The Chairman: “(l) Riots and civil commotions”. (Agreed).

Text adopted by the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (k) RIOTS AND CIVIL COMMOTIONS;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (k) riots and civil commotions;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

1) Saving or attempting to save life or property at sea;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(i) Saving or attempting to save life or property at sea;

Second day’s proceedings - 31 August 1921

[157]
The Chairman: “(m) Saving or attempting to save life or property at sea”. (Agreed).
Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[366]
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(l) Saving or attempting to save life or property at sea;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]
No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

- m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

ILA 1921 Hague Conference
Text submitted to the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (j) Inherent defect or vice of the goods.

Second day’s proceedings - 31 August 1921

The Chairman: “(n) Inherent defect, quality or vice of the goods”. (Agreed).
Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (m) INHERENT LIABILITY FOR WASTAGE IN BULK OR WEIGHT OR inherent defect, quality or vice of the goods;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (m) INHERENT WASTAGE in bulk or weight or inherent defect, quality or vice of the goods;
M. de Rousiers, Délégué de la France, propose de remplacer le littera (m) par le texte suivant:

Freinte en volume ou en poids ou toute autre perte ou dommage résultant de vice caché, nature spéciale ou vice propre de la marchandise.

Les délégués de la Belgique et de la France expliquent que le terme “freinte de route” a une signification bien connue et précise. Toute marchandise soumise à un transport par mer de quelque durée est sujette (à part de rares exceptions), à des différences de poids en plus ou en moins, soit par suite de l’évaporation que subit la marchandise sous l’influence notamment de la chaleur des cales, soit par l’absorption de l’humidité de l’air. Il n’y a d’exception à cette règle que pour quelques rares marchandises ne subissant pas d’influences extérieures, tels des lingots ou des barres de fer ou d’acier. C’est donc ce qu’on appelle le “rendement normal”, dont tous les négociants tiennent compte dans leurs calculs de prix de revient.

A défaut de tous autres cas d’exonération prévus dans la convention, il ne saurait être question de mettre à charge du transporteur des diminutions de poids ou de volume qui ne seraient que la conséquence normale et habituelle du voyage, sans qu’il y ait fait ou faute aucune du transporteur ou de ses agents. Le même principe s’applique pour les augmentations de poids.

C’est afin de rendre l’idée plus claire que la Conférence décide à l’unanimité d’accepter la proposition du Délégué de la France.

M. le Président signale que, sur la proposition de MM. de Rousiers et
Langton, on a modifié l’expression “freinte de route ordinaire” en “freinte en volume ou en poids”.
La Commission se déclare d’accord au sujet de cette modification.

Langton, the phrase “freinte de route ordinaire” (normal loss in transit) had been altered to “freinte en volume ou en poids” (loss in bulk or weight).
The commission declared itself in agreement on the subject of this alteration.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

n) insufficiency of packing;

ILA 1921 Hague Conference
Text submitted to the Conference

[xlviii]
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(k) Insufficiency of packing.

Second day's proceedings - 31 August 1921

[157]
The Chairman: “(o) Insufficiency of packing” (Agreed).

Text adopted by the Conference

No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(n) insufficiency of packing;

CMI 1922 London Conference
Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
ARTICLE 4

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:

   o) d’une insuffisance ou imperfection de marques;

ILA 1921 Hague Conference
Text submitted to the Conference

[none]

Second day’s proceedings - 31 August 1921

[157]

The Chairman: “(o) Insufficiency or inadequacy of marks”. (Agreed).

Text adopted by the Conference
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (O) INSUFFICIENCY OR INADEQUACY OF MARKS;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

   (o) insufficiency or inadequacy of marks;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
ARTICLE 4

2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

   p) latent defects not discoverable by due diligence;

ILI 1921 Hague Conference
Text submitted to the Conference
[none]

Second day’s proceedings - 31 August 1921
[154]

Mr. Knottenbelt: I wanted to propose an addition here. Once taking the principle that we make an enumeration, I think it is the opinion of the Dutch shipowners that it would be of interest to add “latent defect”. That is always to be found in all bills of lading.

The Chairman: Latent defect of what?

Mr. Knottenbelt: Of the ship; that the ship is not seaworthy.

The Chairman: Is that a latent defect at the time of sailing? Because if it is I imagine she is not seaworthy. I thought we had dealt with that.

Mr. Knottenbelt: It is in all bills of lading. If that is omitted I think there is some danger that the judge will take it that it was our opinion not to cover the owner against latent defects of ship and machinery.

The Chairman: Mr. Knottenbelt. You will be a member of the Drafting Committee, I hope. Can you raise it there?

Mr. Knottenbelt: I think so, if it is accepted as possible to exchange views upon it.

The Chairman: I do not think the Committee would desire to exclude the question if it were not in a position to deal with it now for want of time to understand it.

Mr. Knottenbelt: Certainly; I prefer that the Committee decides it, Mr. Chairman.

Lord Phillimore: Might I point out I think that the gentleman’s difficulty is a latent defect in seaworthiness?

Sir Norman Hill: Yes.

Lord Phillimore: That is met by section 1. He is not to be liable for damage arising from unseaworthiness unless the damage [155] is caused by his want of due diligence. If it is a really latent defect there is no want of due diligence in not discovering it.

Mr. Knottenbelt: It does not follow that every latent defect constitutes unseaworthiness. It is possible that there is a latent defect which does not make the ship seaworthy, and still leads to damage.

The Chairman: Not according to the English view, because a ship to be seaworthy must not only be fit to keep the seas, but she must be fit to carry her cargo and carry the appropriate cargo; and if it is a latent defect which injures the cargo it is a defect of seaworthiness.

Mr. Knottenbelt: I think there are many of these items to be brought under a gen-
eral redaction; but the fact that we enumerate now different exceptions makes it necessary in our opinion to except this.

Lord Phillimore: I think not, because it has been met carefully by paragraph 1, that the owner is not to be liable for damage resulting from unseaworthiness if he is diligent, and this is a damage resulting from unseaworthiness.

Mr. Knottenbelt: Will you agree that that is unseaworthiness?

Lord Phillimore: Seaworthiness means not merely the ability to float on the sea, but fitness to convey the cargo in its proper condition, and a ship, for instance, which has tainted holds is a ship which is unseaworthy quoad that cargo.

Mr. Rudolf: Would it not be fully met by paragraph (q)? Does not paragraph (q) deal with this point?

Sir Norman Hill: In the Drafting Committee, when we drafted the Code we had the latent defect exemption in our minds, and we thought we had fully covered it, as Lord Phillimore said, under Article III 1, that is the obligation to exercise due diligence; and then if you will see in sub-paragraph (c), it is due diligence in making “the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation”. (a) deals with the absolute seaworthiness of the ship as we people who are interested in ships understand it. (c) deals with seaworthiness as we find judges interpreting seaworthiness. We tried to cover them both in either (a) or (c), and we thought we had fully covered latent defects in that way.

Mr. Knottenbelt: Mr. Chairman. I am quite content, as every one is of opinion that it is covered.

The Chairman: And, Mr. Knottenbelt, you will find probably that, if you sit upon the Drafting Committee, your colleagues will be quite ready further to discuss the matter.

Mr. Knottenbelt: Thank you.

Text adopted by the Conference

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

............................................................

(p) LATENT DEFECTS NOT DISCOVERABLE BY DUE DILIGENCE;

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

............................................................

(p) latent defects not discoverable by due diligence;

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

No change.
2. Neither the carrier nor the ship shall be responsible, for loss or damage arising or resulting from:

q) any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

ILA 1921 Hague Conference
Text submitted to the Conference

Second day’s proceedings - 31 August 1921

The Chairman: (q)?
Lord Phillimore: On (q) I wanted just to ask a question of Sir Norman Hill. I have been looking at the Harter Act and recalling a very interesting case in which the present Lord Mersey was counsel on one side, and I was on the other, and I see that the Harter Act exempts the seizure under legal process. I do not find that here, and I fancy it was intentionally omitted. I do not want to suggest that it should be inserted; I only wanted to be quite sure that the Committee had that before them.

Sir Norman Hill: It is in (h), my Lord.

Mr. Dunlop: It is at the end of (h) “Arrest or restraint of princes”.

Lord Phillimore: Yes “or seizure under legal process”. I did not notice the last words.

The Chairman: With regard to (q) the Committee appears to me to have adopted the principle that the shipowner ought not to be an insurer against the interference of
other parties. If that is so, it is difficult to see how you are going to balk at \((q)\), how you fail to adopt \((q)\). It is merely to give general effect. Then is \((q)\) agreed? (Agreed).

**Text adopted by the Conference**

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

\[ (q) \text{ ANY OTHER CAUSE arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier.} \]

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**CMI 1922 London Conference**

*Text submitted to the Conference*

(CMI Bulletin No. 65 - Gothenborg Conference)

[367]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

\[ (q) \text{ any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier BUT THE BURDEN OF PROOF SHALL BE ON THE PERSON CLAIMING THE BENEFIT OF THIS EXCEPTION TO SHOW THAT NEITHER THE ACTUAL FAULT OR PRIVITY OF THE CARRIER NOR THE FAULT OR NEGLECT OF THE AGENTS, SERVANTS, OR EMPLOYEES OF THE CARRIER CONTRIBUTED TO THE LOSS OR DAMAGE.} \]

**Text adopted by the Conference**

(CMI Bulletin No. 65 - Gothenborg Conference)

[380]

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

\[ (q) \text{ Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, or SERVANTS of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the AGENTS OR SERVANTS of the carrier contributed to the loss or damage.} \]

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**Conférence Diplomatique - Octobre 1922**

*Séances de la Sous-Commission*

*Septième Séance Plénière - 25 Octobre 1922*

[146]

Mr. Ripert. - Je crois que le code français est à peu près le même que le code italien. Or, nous accepterons très bien de faire passer cette disposition dans notre

**Diplomatic Conference - October 1922**

*Meetings of the Sous-Commission*

*Seventh Plenary Session - 25 October 1922*

[146]

Mr. Ripert. - I believe the French Code to be a little like the Italian. We are quite amenable to incorporating this clause into our national law, but I should
loi nationale. Mais j’appelle l’attention sur le dernier paragraphe:

“Le transporteur ne sera pas responsable pour toute autre cause ne provenant pas d’une faute actuelle ou de la participation du transporteur... mais le fardeau de la preuve tombera sur la personne réclamant le bénéfice de cette exception”.

La personne réclamant le bénéfice de cette exception, c’est toujours le transporteur. Est-ce que cette formule a un sens pratique?

M. le Président. - C’est un mauvais texte, il faut mettre: “du fait ou de la faute”. Cela vaut mieux que “faute actuelle ou de la participation”.

M. Ripert. - Celui qui réclame le bénéfice de cette exception, c’est le transporteur évidemment.

like to call attention to the last paragraph:

The carrier ... shall not be responsible for... any other cause arising without the actual fault or privity of the carrier... but the burden of proof shall be on the person claiming the benefit of this exception.

The person claiming the benefit of this exception will always be the carrier. Does this formula have any practical meaning?

The Chairman. - It is badly phrased, it should say: “the act or fault”. That would be better than “the actual fault or privity”.

Mr. Ripert. - The one who claims benefit from this exception is clearly the carrier.

Conférence Diplomatique -
Octobre 1923
Séances de la Sous-Commission
Deuxième Séance Plénière -
6 Octobre 1923

[57]

M. Sohr fait remarquer que la portée du littera (q) n’est pas de promulguer un principe général dont les litteras précédents seraient une illustration; le texte consacre d’abord des exceptions couramment acceptées dans les connaissances et qui, dorénavant, représenteront un acquit pour les armateurs; en outre, il y a un article d’une allure générale, mais qui n’est cependant pas le principe à la base de tout l’article.

[60]

S’occupant du littera (q), dernier alinéa, Sir Leslie Scott rappelle que Sir Norman Hill devant le comité parlementaire britannique a expliqué que les causes énoncées précédemment sont de la même espèce que celles prévues sous la lettre (q).

Diplomatic Conference -
October 1923
Meetings of the Sous-Commission
Second Plenary Session -
6 October 1923

[57]

Mr. Sohr pointed out that the scope of item (q) was not to promulgate a general principle of which the preceding items were an illustration. The text, first of all, sanctioned those exceptions commonly accepted in bills of lading and which, from now on, would offer a means of release for shipowners. Furthermore, it appeared to be a broad provision, but it was not the principle underlying the whole article.

[60]

Dealing with item (q), the last line, Sir Leslie Scott recalled that Sir Norman Hill had explained before the British Parliamentary Committee that the causes previously stated were of the same type as those envisaged under item (q).
ARTICLE 4

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

ILA 1921 Hague Conference
Text submitted to the Conference
[none]

Text adopted by the Conference
[none]

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

3. THE SHIPPER TO THE SAME EXTENT AS THE CARRIER SHALL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE SUSTAINED BY THE CARRIER OR THE SHIP ARISING OR RESULTING FROM ANY OF THE CAUSES PARTICULARISED IN THE ABOVE SECTION 2 UNDER THE HEADINGS (B), (C), (D), (E), (F), (G), (H), (J), (K), (P) AND (Q).

Afternoon sitting of 11 October 1922

[457]

Sir Norman Hill (Rapporteur of the Sub-Committee): The next point of substance arises on Article 4(3). That is on page 6 of this copy and at the bottom of 6 on the red and black copy. That is the clause which provides that “The shipper to the same extent as the carrier shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from” and then reference is made to the perils. Your Sub-Committee had difficulty in attaching a very precise meaning to that clause as it stood, and their suggestion is that it should be revised and should read as follows: “The shipper shall not be responsible” - that is striking out the words “to the same extent as the carrier” - “for loss or damage sustained by the carrier or the ship arising or resulting from” - then these are new words “any cause without the act, fault or neglect of the shipper, his agents or servants”.

The Chairman: Would you read the clause again as it will stand amended, Sir Norman?
[458]

Sir Norman Hill: I will read: “The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or servants”.

Mr. W. W. Paine: Are the rest of the words all left out?

Sir Norman Hill: Yes, all the rest comes out.

Now, Sir, may I sum up. The points upon which the Sub-Committee suggest that the Conference should come [459] to a determination are: . . . . . . . . . . . . . . . . . . . . . .

The third point is whether or not the clause which we suggest, relieving the cargo from all liabilities caused by the act or default or neglect of cargo, is a reasonable clause and a better clause than the one we have got in print, and the last point is, coming back to the chartered boats point, as far as possible we want to leave to be determined by the charter the conditions as between the ship and the cargo owner. We want to leave it as far as possible to be determined by the charter, but we recognise that, if the rules are really to accomplish their main object, if under that charter party bills of lading are issued, then the bills of lading will have to conform with the code. (Applause).

[475]

The Chairman: Now Article 4(3). Will members follow my reading. The matter needs close attention. There are amendments proposed and I intend to put the clause phrase by phrase so that it shall appear in the form in which I think it is intended it shall appear. Is it agreed that the words “The shipper” shall stand? (Agreed).

Is it agreed to omit the words “to the same extent as the carrier”? (Agreed).

Is it agreed that the words “shall not be responsible for loss or damage sustained by the carrier of the ship arising or resulting from any” shall stand? (Agreed).

Is it agreed that the words “of the” shall be omitted? (Agreed).

Is it agreed that the word “causes” shall be made to read “cause”? (Agreed).

Is it agreed to leave out the words after the word “cause” now inserted? (Agreed).

Is it agreed to insert in substitution for those words these words: “without the act, fault or neglect of the shipper, his agents or servants”? (Cries of “Agreed”).

Mr. Harry R. Miller: May I ask a question upon that? I do not know whether the Committee, in re-drafting this clause, had before them the possibility of cargo’s contribution to a general average claim. It seems to me that to say that the shipper should not be responsible for the loss sustained by the ship arising from “any cause without the act, fault or neglect” might exclude - I do not say it does, but I should like information on the subject - the possibility of the shipowner recovering from the cargo owner his proportion of general average. I do not say that it does that, but it struck me that it might read in that way, because it is “loss” and it may be a general average loss as distinguished from sacrifice; it may be a loss sustained by the ship and it does arise from a cause without the act or fault of the shipper.

The Chairman: I will ask Mr. Franck to deal with the question, Mr. Miller.

Mr. Louis Franck: It is quite useful that this question be raised. The answer to my mind is that nothing in these rules has to interfere with general average. These [477] rules are limited to their object. They are restrictions to the freedom of contract and such restriction is not to be construed in an extensive way; so, general average stands
entirely independent from this. I may add that even if you read the words, nothing in clause 3 is likely to interfere with general average. It says: “The shipper shall not be responsible for loss or damage sustained”. General average is not based on the responsibility for loss or damage. General average is based on services rendered by or at the cost of one of the parties to the whole adventure, and that sort of partnership in the cost of that service, just as there has been a partnership in the benefit of the act, is ruled by a special set of principles which are adopted in all maritime laws, so that you may be quite sure it is a different matter.

Mr. H. B. Hurd (Glasgow): May I venture, arising out of Mr. Franck’s remarks, to suggest that we do introduce the exception of general average in this Code in section 7 of this Article. Therefore I venture to think if we introduce the exception in clause 7 we should include it, as Mr. Miller has pointed out, in section 3.

The Chairman: Yes, Mr. Hurd, it had been suggested to me, this being a negative provision with regard to general average, that it might be that the Conference would express its view as to whether this draft was intended in any way to interfere with the existing state of things with regard to general average unless it was so expressed.

Sir Norman Hill: Sir, we discussed it at the Sub-[478]Committee and I thought it would be provided in the Convention that this Convention does not affect the law of general average.

Mr. R. A. Patterson: I should like to say I have been told by Mr. Jackson that there was a general dislike to the form which we have already employed in this clause “under the headings b), c), d) and e)” and so on. It seems to me that the clause you are proposing is too wide and too narrow at the same time. May I take one single point? The words “strikes or lockouts or stoppage or restraint of labour from whatever cause whether partial or general”. You may say that that is without the powers of the consignee of the goods, but it will form a very fruitful source of discussion.

The Chairman: May I ask if this refers to Article 4(3).

Mr. R. A. Patterson: Yes.

The Chairman: But we have passed it.

Mr. R. A. Patterson: I understood you to say that before you passed it you asked for remarks.

The Chairman: No, we are upon the question of inserting the words “without the act, fault or neglect”. The Conference agreed. If necessary I will refer to the Shorthand Writer but my own understanding was that the Conference agreed.

Mr. R. A. Patterson: I understood you to say that there were amendments to be moved and I was waiting for the amendments to be moved before speaking.

The Chairman: The only question which was raised was general average and that was raised upon the point of whether the words should be added, but I must rule - the Conference of course can reverse its decision no doubt - that the Conference has decided to omit the words after the word “cause” down to the words “(p) and (q)”. (Hear, hear). That is what the Conference has decided. Now, the Conference, as I understood, had also agreed to substitute for those words “without the act, fault or neglect of the shipper, his agents or servants”.

Mr. R. A. Patterson: I had not heard those words put.

The Chairman: I will put the words and any debate that is necessary will then arise. I put the question whether the Conference agrees to the insertion of the words which have last been read. (Cries of “Agreed”).

Mr. R. A. Patterson: I object to it.

The Chairman: I have not taken the division.

Mr. R. A. Patterson: I object to those words because I think the clause is too general in its nature: “any cause”, I think there is a distinct advantage in the particularising. In the case of the shipowner you particularise and you give him all the various
causes. In the case of the receiver of cargo you strike it out and you give him a general cause. I think that is not the way to treat it. I think the fair and proper way is to give equal treatment to both sides on this matter. If you are going to give the shipowner the particular exceptions, I think you ought to give exceptions to the shipper. I understand - Sir Stephen will correct me - that this matter was discussed and the clause was inserted at the direct request of the shippers involved, because they thought it was very important that they should have equal protection with the shipowner if the shipowner claims exemptions. One of the greatest objections that the traders of the country have made, is to the very wide range of exemptions and we thought it was only fair that the traders should have equal exemptions, and in my opinion, I may be wrong, of course, the clause as worded will not protect the receiver to the same extent as the shipowner is protected.

The Chairman: My own impression about it is that the words framed here have been designed to give the shipper the largest protection that could be devised for him. I may be wrong about it, but I must take the judgment of the Conference upon the subject. Is it the sense of the Conference that the words which have been read be inserted in the clause? (Agreed).

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

3. THE SHIPPER SHALL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE SUSTAINED BY THE CARRIER OR THE SHIP ARISING OR RESULTING FROM ANY CAUSES WITHOUT THE ACT, FAULT OR NEGLECT OF THE SHIPPER, HIS AGENTS OR HIS SERVANTS.

Conférence Diplomatique -
Octobre 1923
Séances de la Sous-Commission
Troisième Séance Plénière -
7 Octobre 1923

[63]

M. Bagge propose la suppression du paragraphe 3 à l'article 4 qui lui paraît peu clair; il semble n’être que la reproduction d’une règle générale suivant laquelle le chargeur n’est pas responsable des pertes ou dommages causés par sa marchandise s’il n’y a pas faute de sa part ou de ses agents.

Sir Leslie Scott croit, en effet, que cette clause n’est qu’une simple constatation d’une règle générale insérée à la demande des chargeurs.

M. Bagge conclut que, dans la loi nationale, cette stipulation pourra être omise.

Diplomatic Conference -
October 1923
Meetings of the Sous-Commission
Third Plenary Session -
7 October 1923

[63]

Mr. Bagge proposed the deletion of article 4(3), which seemed to him to be rather unclear. It appeared to be only a reproduction of a general rule under which the shipper was not liable for loss or damage caused by his goods if there was no fault on his part or that of his agents.

Sir Leslie Scott believed, in effect, that this clause was only a simple statement of a general rule inserted at the request of the shippers.

Mr. Bagge concluded that in national law this stipulation could be omitted.
Le 3° du même article prévoit que le chargeur ne sera pas responsable des pertes ou dommages subis par le transporteur ou le navire provenant de toute cause quelconque sans qu’il y ait acte, faute ou négligence du chargeur ou de ses agents ou préposés.

[121]

Article 4(3) provided that the shipper would not be liable for loss or damage suffered by the carrier or the ship resulting from any cause whatsoever without there being fault, privity, or negligence on the part of the shipper or his agents or representatives.
ARTICLE 4

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvi]

3. Any deviation in saving or attempting to save life or property at sea, or any deviation authorised by the contract of carriage [xlix] shall not be deemed to be a breach of or departure from the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

Second day’s proceedings - 31 August 1921

[157]

The Chairman: Clause 3. “Any deviation in saving or attempting to save life or property at sea, or any deviation authorised by the contract of carriage shall not be deemed to be a breach of or departure from the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom”. Is that agreed? (Agreed).

Text adopted by the Conference

3. Any deviation in saving or attempting to save life or property at sea or any deviation authorised by the contract of carriage shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
4. Any deviation in saving or attempting to save life or property at sea, or any deviation authorised by the contract of carriage (PROVIDED THAT SUCH DEVIATION SHALL BE REASONABLE HAVING REGARD TO THE SERVICE IN WHICH THE SHIP IS ENGAGED) shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

No change.

M. Langton, British delegate, observed that “deviation” implies a “wrong-doing out of contract”. But this idea was not applied in practice. If parties agreed on a possible deviation to a specified port and expressed this agreement in the bill of lading, it remained permissible to claim that this deviation had been unreasonable in law.

The Chairman proposed substituting the following text to replace paragraph 4:

Any deviation in saving or attempting to save life or property at sea, any deviation to ports or places specifically stated in the contract of carriage, and any deviation reasonable, having regard to the service in which the ship is engaged, shall not be deemed infringements or breaches of these rules or of the contract of car-
Article 4 (4) - Deviation

Cet amendement est adopté par les voix des Délégués de la France, de l’Allemagne, des Pays-Bas, de la Suède et des Etats-Unis, contre celles des Délégués de la Grande-Bretagne et de la Belgique.

Troisième Séance- 21 Octobre 1922

M. le Président trouve illogique de dire qu’une déviation convenue entre parties peut être déclarée raisonnable ou déraisonnable. Si la déviation se fait vers un port non spécifié dans le contrat ou dans le connaissement, il croit que la formule proposée par lui couvre complètement le cas.

Le but de l’article 2 est de restreindre la liberté de contracter en ce qui concerne le déroutement.

M. van Slooten, Délégué des Pays-Bas, estime, au contraire, que son but est de rendre la deviation clause valable.

M. Langton, Délégué de la Grande-Bretagne, déclare que, d’après lui, l’intention des rédacteurs était la suivante: en Angleterre, on estime qu’en réalité, la liberté de contracter n’existe pas entre chargeur et armateur. Tantôt, c’est l’armateur qui stipule comme il l’entend, parce qu’il est maître du marché; tantôt, la balance penche du côté des chargeurs. Or, certaines déviations stipulées qui peuvent paraître raisonnables à première vue, ne le sont pas dans des cas particuliers. C’est le cas, par exemple, d’une déviation qui prolonge à l’excès un transport de marchandises périssables. Les tribunaux doivent donc avoir le pouvoir de déclarer que pareilles clauses sont déraisonnables.

M. le Président propose de noter que la commission est d’avis que le but de cet article est de laisser aux tribunaux la fa-

riage; and the carrier shall not be liable for any loss or damage resulting therefrom.

This amendment was adopted by the votes of the delegates from France, Germany, the Netherlands, Sweden, and the United States, against those of the delegates from Great Britain and Belgium.

Third Session- 21 October 1922

The Chairman found it illogical to say that a deviation agreed upon between parties would be declared reasonable or unreasonable. If the deviation was made to a port not specified in the contract or in the bill of lading, he believed that the formula proposed by him covered all eventualities.

The purpose of article 2 [sic] was to restrict the freedom to contract in so far as concerned deviation.

Mr. van Slooten, delegate from the Netherlands, felt, to the contrary, that its purpose was to make the deviation clause valid.

Mr. Langton, British delegate, declared that so far as he was concerned, the intention of the framers was as follows: in England, it was felt that the freedom to contract did not really exist between shipper and shipowner. Sometimes, it was the shipowner who drafted the contract as he saw fit because he was master of the undertaking; sometimes, the balance tipped in favor of the shipper. So, certain agreed deviations that could seem reasonable at first sight were not so in particular instances. This is the case, for example, with a deviation that prolonged excessively the transport of perishable goods. The courts must therefore have the power to declare such clauses unreasonable.

The Chairman proposed noting that the Commission was of the opinion that the purpose of the article was to leave to
culté de décider dans chaque cas, si le déroutement convenu est raisonnable eu égard au transport dont il s’agit.

Mais il ajoute que si des membres de la commission ne sont pas d’avis que ceci rend exactement leur pensée, on pourrait suggérer un autre texte pour l’article.

MM. Le Jeune et Langton votent pour le texte du projet.

MM. de Rousiers, Rambke et Bagge pour le texte avec l’amendement.

M. van Slooten pour l’amendement et l’interprétation des Règles de La Haye.

Quatrième Séance - 23 Octobre 1922

M. le Président donne lecture de son rapport, qui est approuvé à l’unanimité.

Comme on n’avait pu se mettre d’accord sur l’article 4(4), M. le Président a rédigé le texte suivant, qu’il soumet à la commission:

“Toute déviation en vue de sauver ou de tenter de sauver des vies humaines ou des biens en mer, toute déviation vers des ports ou des points spécifiés dans le contrat de transport et toute déviation raisonnable eu égard au service auquel le navire est employé, ne seront pas considérées comme des infractions ou des violations des présentes règles ou du contrat de transport; et le transporteur ne sera pas tenu des pertes ou dommages en résultant”.

Cet amendement est adopté par les votes de la France, de l’Allemagne, des Pays-Bas, de la Suède et des États-Unis; la Grande-Bretagne et la Belgique votent en sens contraire.

Fourth Session- 23 October 1922

The Chairman read his report, which was unanimously approved.

Since no agreement had been reached on article 4(4), the Chairman re-drafted it as follows and submitted it to the Commission:

Any deviation in saving or attempting to save life or property at sea, any deviation to ports or places specifically stated in the contract of carriage, and any deviation reasonable, having regard to the service in which the ship is engaged, shall not be deemed infringements or breaches of these rules or of the contract of carriage; and the carrier shall not be liable for any loss or damage resulting therefrom.

This amendment was adopted by the votes of France, Germany, the Netherlands, Sweden, and the United States; Great Britain and Belgium voting against.
Sixième Séance Plénière -
24 Octobre 1922

[135]

M. le Président .................
Le texte ne diffère pas beaucoup de la proposition originale. La Grande-Bretagne maintient-elle son opposition à l’amendement proposé?

M. Langton. - Je regrette de devoir la maintenir. Je suis convaincu que, dans l’intérêt même de notre œuvre, il ne serait pas bon pour nous de donner notre consentement à une clause pareille. Nous ne pourrions en exiger l’application par nos tribunaux.

M. le Président - Dois-je comprendre que si vous êtes armateur et moi chargeur et que nous convenons que le navire pourra aller à tel port déterminé, la Cour anglaise interviendrait et pourrait dire que cela n’est pas raisonnable?

M. Langton. - Oui, même si le port est nommé, nos cours peuvent décider que cela est une déviation déraisonnable. Si on met dans un contrat, pour un transport de Norvège aux États-Unis, que le navire peut aller à Vladivostok, nos cours diraient certainement que cela est déraisonnable. On ne peut pas faire un voyage pareil!

M. le Président. - La jurisprudence dont vous parlez s’applique-t-elle en matière de connaissements ou simplement en matière d’assurances? Dans ce cas, je comprendrais que l’on ne permette pas une déviation aussi considérable. Mais, s’il me plaît, à moi, d’envoyer ma marchandise faire le tour du monde, en quoi cela peut-il regarder un tribunal aussi raisonnable que la Cour anglaise? Et pourquoi ne pourrions-nous pas faire un voyage de Norvège à Vladivostok et de là aux États-Unis?

M. le Juge Hough. - La substance de l’amendement qui a été approuvé par la commission était basée sur mon opinion que, parlant pour moi-même (et sans même...
me demander que mes collègues me suivent, parce que j’étais prêt à m’incliner devant la majorité), aucun juge ou tribunal dans le monde entier ne devrait avoir le droit de dire qu’un contrat qu’il m’a plu de conclure n’est pas raisonnable.

Sir Leslie Scott. - Moyennant changement de deux mots dans la rédaction j’accepterais. Je demande à M. le Juge Hough de supprimer le mot “raisonnable”.

M. le Président. - Mais cela veut-il dire que le déroutement doit être raisonnable, même lorsqu’il est spécifié dans le contrat?

Sir Leslie Scott. - Cela veut dire que lorsque l’armateur insère dans son connaissement un nombre fantastique de ports, avec stipulation qu’il peut se rendre de l’un à l’autre et plusieurs fois, il n’y aurait pas un tribunal anglais qui l’admettrait, parce qu’on considérerait que c’est un prétexte pour ne pas exécuter le contrat; et, en pareil cas, le fait qu’un port est mentionné au contrat ne suffirait pas pour rendre le déroutement raisonnable.

Mr. Beecher. - Je m’oppose à cette clause si l’on dit que, quand des parties ont expressément convenu qu’un navire peut aller dans des ports déterminés, l’on pourrait dans la suite prétendre que l’armateur s’est rendu coupable de déroutement et qu’il a perdu tout le bénéfice du connaissement. Ce qui est vrai c’est que, dans leurs connaissements, certains armateurs stipulaient le droit de faire escale en un nombre d’endroits non spécifiés; si le transporteur prétendait en déduire qu’il peut aller dans une situation inttolérable sans qu’il ait aucun recours et dans ces conditions je comprendrais que l’on décidât qu’une certaine déviation n’est pas raisonnable eu égard au trafic dans lequel le navire est engagé.

M. Alten. - Quant au fond, je suis d’accord avec la délégation américaine, whole world should have the right to declare a contract unreasonable that I wished to conclude.

Sir Leslie Scott. - With a change of one word in the drafting I would be willing to accept it. I ask Judge Hough to delete the word “reasonable”.

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The Chairman. - But would that mean that the deviation must be reasonable, even when specified in the contract?

Sir Leslie Scott. - It means that when the shipowner embodies in the bill of lading a fantastic number of ports with the stipulation that he can go from one to the other and several times, there would be no English courts that would allow it because it would be deemed a reason for not executing the contract. In such a case, the fact that a port is specified in the bill of lading would not be sufficient to make the deviation reasonable.

Mr. Beecher. - I am opposed to this clause if we are saying that when the parties have expressly agreed that a ship may go to certain specified ports it can be claimed immediately that the shipowner has rendered himself guilty of deviation and has forfeited all the benefit of the bill of lading. What is true is that in their bills of lading certain shipowners used to stipulate the right to call at a number of non-specified places. If the carrier claimed to deduce from this that he could come and go to these ports several times, then this clause would put the shipper in an intolerable position without his having any redress, and under these conditions I could appreciate that we might conclude that a certain deviation was not reasonable with regard to the ship’s trade.
mais je crois qu’il existe une légère confusion quant aux termes parce qu’on ne parle pas dans la pratique de déviation quand on se réserve dans un contrat le droit d’envoyer un navire dans des ports spécifiés.

**M. de Rousiers.** - Tout le monde est d’accord sur la question des déviations lorsqu’il s’agit de sauver des vies humaines ou des marchandises en mer. Tout le monde est d’accord aussi qu’une déviation raisonnable inscrite dans un contrat ne serait pas non plus une violation de la convention. Mais là où commence la différence, c’est quand il s’agit de savoir si une déviation inscrite dans un contrat doit être considérée comme déraisonnable ou doit être justifiée comme raisonnable.

Est-il nécessaire que la convention tranche cette question? Elle n’avait pas été envisagée à La Haye, et je crois que nous pourrions mettre tout le monde d’accord en laissant cette question à l’appréciation de nos propres tribunaux. Ne mettons pas la convention en danger en voulant embrasser des matières trop larges, alors qu’on a simplement voulu restreindre la liberté des armateurs pour certaines clauses.

**M. le Président.** - Je pense que nous mettrons tout de même “raisonnable”.

**Plusieurs membres.** - Non, non!

**M. de Rousiers.** - Aucun déroutement! Laissons de côté “déroutement raisonnable”: nous ne nous mettrions pas d’accord.

**M. le Président.** - L’amendement américain diffère du texte en ce qui qu’il prévoit précisément la déviation vers des points spécifiés dans le contrat de transport. Les Américains ne sont pas en désaccord avec les Anglais lorsqu’il s’agit simplement d’une clause générale de déviation figurant dans le connaissement. Il faut l’y laisser figurer et la considérer comme valable, car si vous ne faites pas cela, vous aurez beau admettre qu’un déroutement est permis dans les limites rai-

**Mr. Alten.** - As to the basis of this question, I am in agreement with the American delegation, but I believe there is some slight confusion over terminology because we do not talk in practice of deviation when we reserve the right in a contract to send a ship to specific ports.

**Mr. de Rousiers.** - Everyone agrees over deviations when it is a matter of saving human life or goods at sea. Everyone also agrees that a reasonable deviation included in the bill of lading would no longer be a violation of the convention. But differences appear when it is a question of knowing whether a deviation written into a contract should be deemed unreasonable or justified as reasonable.

Is it necessary for the Convention to settle this question? It had not been envisaged at the Hague, and I believe we might all be in agreement if we leave this question to our own courts. Les us not put the Convention in jeopardy by trying to embrace matters beyond our authority, when what was wanted was a simple restriction on the shipowners’ freedom in certain clauses.

**The Chairman.** - I think that, all the same, we can include “reasonable”.

**Several members.** - No! No!

**Mr. de Rousiers.** - No deviation! Les us have “reasonable deviation” aside; we shall not reach agreement.

**The Chairman.** - The American amendment differs from the text in that it provides precisely for deviation to specified places in the contract of carriage. The Americans are not in disagreement with the English when it is simply a matter of a general clause of deviation featured in the bill of lading. It is necessary to let it feature there and to consider it as valid because if you do not, you will have difficulty admitting that a deviation is permitted within limits. You will
sonnables, vous ne le pourriez plus sous l’empire de ces règles, parce que ce sera une clause dérogatoire aux principes généraux de la responsabilité. M. Langton vous l’a dit de façon claire: un voyage du Havre à New-York par Vladivostok serait déclaré par une cour anglaise comme déroutement déraisonnable. Mais s’il s’agit de Bordeaux seulement? On pourrait mettre “toute déviation vers des ports ou des points spécifiés dans le contrat de transport”. Je parle en réalité dans le sens de vos idées. Je comprends que l’on vous dise: Si vous mettez en termes généraux que vous avez la faculté de dévier en voie directe ou rétrograde, vous devez le faire de façon raisonnable. Là il ne faut pas faire d’objections, car c’est logique. Mais là où naît la difficulté c’est lorsqu’il y a des ports spécifiés. Vous vous proposez de ne pas en parler? (Signes de dissentiment).

Puisque nous ne sommes pas d’accord nous laisserons cette question à la décision de chaque tribunal.

Septième Séance Plénière - 25 Octobre 1922

M. le Président . . . . . . . . . . . . . . . . . . .

Nous reprenons l’étude du rapport sur les connaissances. Nous en étions arrivés aux clauses relatives aux déroutements. J’ai à vous faire part d’un amendement proposé par la délégation française:

“Aucun déroutement pour sauver ou tenter de sauver des vies humaines ou des biens en mer, ni aucun déroutement raisonnable au cours du voyage ne sera considéré comme une infraction aux présentes Règles ou au contrat de transport et le transporteur ne sera pas tenu des pertes ou dommages en résultant”.

Les différentes délégations qui no longer be able to do so under these rules because it will be an inferior clause to the general principles of liability. Mr. Langton has made it clear to you: a journey from le Havre to New York via Vladivostok would be pronounced an unreasonable deviation in an English court. But were it to be a question simply of Bordeaux? We might put down “any deviation to ports or points specified in the contract of carriage”. I am talking in reality of the spirit of your ideas. I appreciate that you are told: If you put in general terms that you may deviate directly or in a retrograde manner you must do so reasonably. There can be no objection to that because it is logical. But the difficulty arises when we have specified ports. Do you propose not discussing it? (Signs of dissent).

Since we are not in agreement we shall leave this question to individual courts.

Seventh Plenary Session - 25 October 1922

The Chairman . . . . . . . . . . . . . . . . . . .

Let us return to our examination of the report on bills of lading. We have reached those clauses dealing with deviation. I have to read to you an amendment put forward by the French delegation:

Any deviation is saving or attempting to save life or property at sea, any deviation reasonable in the course of the voyage shall not be deemed to be a breach of the present rules of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

The different delegations that had expounded on this question, notably the
s’étaient expliquées sur cette question, notamment la délégation américaine et la délégation anglaise, acceptent cette formule, d’après ce qui m’a été dit. Vous voyez que nous nous bornons à affirmer le principe d’un déroutement raisonnable en cours du voyage; nous laissons donc, en somme, aux délégations nationales la question de savoir quand il y a un déroutement et quand il y a un itinéraire fixé dans le contrat. Il sera loisible aux tribunaux de chaque pays de décider que, quand des ports ou des points d’un pays ont été nominativement désignés, cela n’est pas un déroutement mais bien le voyage convenu.

M. le Juge Hough. - Au nom des États-Unis qui ont proposé l’amendement mentionné par la Commission, j’accepte la proposition de M. de Rousiers, tout en déclarant que le motif de mon adhésion est que cette rédaction, fort habilement conçue, laissera, à mon avis, aux tribunaux de mon pays la liberté de décider, comme je crois qu’ils le feront, qu’une déviation convenue entre parties, est raisonnable par ce fait.

Sir Leslie Scott. - Je tiens à exprimer les remerciements de la délégation britannique aux Délégués des États-Unis pour leur consentement à ce texte.


Diplomatic Conference -
October 1923
Meetings of the Sous-Commission
Third Plenary Session -
7 October 1923

Mr. Alten voudrait faire une observa-
tion au sujet du paragraphe 4. Il estime que l’exonération qui est prévue va trop loin et que le transporteur ne doit pas être libéré de sa responsabilité pour pertes et dommages résultant d’un déroutement, pour sauver des biens en mer, à moins que celui-ci ne puisse être considéré comme raisonnable.

M. van Slooten observe que la clause critiquée par M. Alten est en usage dans tous les connaissements. Cette disposition “for the purpose only of saving life and property” se trouve dans le Harter Act et dans le Canadian Act.

M. le Président croit qu’il est désirable de laisser la clause telle quelle. En théorie, M. Alten peut avoir raison; on peut dire que deux intérêts matériels se trouvent en conflit: sauver la cargaison en péril et le risque de causer un dommage à sa propre cargaison. Mais, dans la pratique, les choses ne se présentent pas ainsi. Il y a intérêt primordial, au point de vue général, à encourager les navigateurs à se porter secours et à se livrer à des opérations de sauvetage - parce que le sauvetage des biens et le sauvetage des personnes se confondent. Le risque qu’il pourrait y avoir à engager des navires à ne pas sauver des personnes serait plus grand que celui de causer du dommage à la cargaison. D’ailleurs, le sauvetage n’est pas une opération qui puisse retarder considérablement le voyage.

M. Sindballe déclare que cette question a été considérée par les armateurs tout autant que par les chargeurs comme de la plus haute importance pratique et il désire faire observer que le texte du Harter Act n’est pas exactement le même que celui-ci. Il propose de remplacer le mot “any deviation” par les mots “all deviations”. À son avis, tous déroutements doivent être raisonnables.

Sir Leslie Scott rappelle que cette question a été longuement discutée entre 

ment on paragraph 4. He felt that the immunity that was envisaged was too broad and that the carrier must not be freed from his liability from loss and damage resulting from a deviation to save goods at sea, unless it could be reasonable.

Mr. van Slooten remarked that the clause criticized by Mr. Alten was in use in all bills of lading. This provision “for the purpose only of saving life and property” was found in the Harter Act and the Canadian Act.

The Chairman believed it to be desirable to leave the clause as it was. In theory, Mr. Alten could be right. One might say that two material interests were in conflict: to save the cargo in peril and the risk of causing damage to his own cargo. But in practice things did not happen like that. There was a prime interest, from a general point of view, in encouraging navigators to go to help and to undertake rescue operations - because the rescue of goods and the rescue of people were intermingled. The risk that might exist in having ships not save people would be greater than that of causing damage to the cargo. Moreover, the rescue was not an operation that could greatly delay the voyage.

Mr. Sindballe stated that this question had been considered by shipowners just as much as by shippers as of the highest practical importance and he wanted to point out that the text of the Harter Act was not exactly the same as the one here. He proposed replacing “any deviation” with the words “all deviations”. In his opinion, all deviations must be reasonable.

Sir Leslie Scott noted that this question had been long debated between the interested parties who had purposely chosen this precise formula. They knew
les intéressés qui ont choisi à dessein cette formule précise. Ils savent pourquoi et il n’appartient pas à la commission d’y modifier quoi que ce soit.

**M. le Président** trouve que la signification du Harter Act est absolument la même que celle de cette clause.

**M. Loder** ajoute que toute la force de la stipulation se trouve dans le mot “raisonnable”.

**M. Bagge** conclut que le déroutement doit donc être toujours raisonnable, même s’il s’agit de sauver des marchandises.

**M. le Président** précise que tout déroutement pour sauver des vies humaines ou des marchandises est par le fait même raisonnable. Il est déraisonnable, en pratique, d’imaginer qu’un armateur tenterait de sauver un navire, si ce n’est pas raisonnable. Des transatlantiques sont appelés quelquefois au secours d’un petit navire chargé de bois; pour opérer le sauvetage des marchandises, ce transatlantique devrait perdre 2 ou 3 jours. En pareil cas, il ne sauvera pas les marchandises, il préférera sauver les passagers et l’équipage et laisser aller le navire. La garantie que l’on aura c’est que le navire ne fera pas un déroutement raisonnable parce qu’il saura qu’en pareil cas, il n’aura pas une indemnité adéquate. Avant tout, il faut encourager les marins à sauver leurs semblables en mer. Peut-être pourrait-on mettre “en aucun autre cas raisonnable”.

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**Septième Séance Plénière - 9 Octobre 1923**

**M. le Président (Louis Franck)** . . . . 

En ce qui concerne l’al. 4, relatif au déroutement, la question a été posée de savoir si cette formule au sujet du dérou-

why and it was not up to the Commission to alter it in any way.

**The Chairman** found that the meaning of the Harter Act was absolutely the same as that in this clause.

**Mr. Loder** added that all the force of the stipulation was found in the word “reasonable”.

**Mr. Bagge** concluded that the deviation must therefore always be reasonable, even when it was a matter of saving goods.

**The Chairman** specified that any deviation for saving human life or goods was *ipso facto* reasonable. It was unreasonable in practice to imagine that a shipowner would attempt to save a ship if it were not reasonable. Transatlantic liners were sometimes called to the aid of a small boat loaded with timber; to carry out the rescue of the goods, this liner would have to lose 2 or 3 days. In such a case, he would not save the goods. He would prefer to save the passengers and the crew and let the ship go. The guarantee one would have was that the ship would not make any reasonable deviation because it knew that in such a case it would not have adequate indemnity. Above all, it was necessary to encourage the sailors to save their comrades at sea. Perhaps one might say “in any other reasonable case”.

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**Seventh Plenary Session - 9 October 1923**

**Mr. Louis Franck (Chairman)** . . . . 

Concerning article 4(4), relevant to deviation, the question was posed of knowing whether this formula dealing
With deviation was absolute and whether there might not be clauses further extending the limit of liability, as in article 5, which permitted a shipowner to accept more onerous conditions. It seemed from all the evidence that nothing would prevent a shipowner from granting more beneficial conditions, from the point of view of deviation, to a series of shippers. (This question was of particular interest to the Americans). If he wanted, for example, expressly to undertake to go from a specified port to another port directly and without putting in anywhere else, he was bound to do so. He would not be able to make use of the Convention to say later “I can do what I undertook not to do”.


tement est absolue et s’il ne pourrait y avoir de clauses étendant davantage la limite de responsabilité conformément à l’art. 5 qui permet à un armateur d’accepter des conditions plus lourdes. Il paraît de toute évidence que rien n’empêcherait un armateur d’accorder au point de vue du déroutement, à une série de chargeurs (et cette question intéresse surtout les Américains), des conditions plus favorables. S’il lui plaît par exemple de s’engager de façon expresse à se rendre d’un port déterminé à un autre port en droiture et sans aucune escale, il est tenu de le faire et il ne pourrait se prévaloir de la convention pour dire ensuite: “Je puis faire ce que je me suis engagé à ne pas faire”.

The Travaux Préparatoires of the Hague and Hague-Visby Rules
ARTICLE 4

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

ILA 1921 Hague Conference
Text submitted to the Conference

[xliv]
Second day’s proceedings - 31 August 1921

[157]

The Chairman: Clause 4. “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods for an amount greater than £ per package, or £ per cubic foot, or £ per cwt. (as declared by the shipper and inserted in the contract of carriage, whichever shall be the least) of the goods carried, unless the nature and value of such goods have been declared by the shipper and inserted in the bill of lading. The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier”.

I think Sir Norman Hill has the first amendment of which notice has been given there.

Sir Norman Hill: My first suggestion is to leave out the words at the beginning of the bracket: “as declared by the shipper or inserted in the contract of carriage”.

The Chairman: Then Mr. Paine has a previous amendment.

Mr. W. W. Paine: Mr. President and Gentlemen. In considering this clause it seemed to us to be practically impossible to fix the sum. I will tell you why. The pound sign has to be translated into francs, or marks, or dollars. Now I will assume a shipment from Warsaw; at the present time I believe it takes 7,500 marks to equal £1 sterling to-day, but that might all be changed in a year, and I do not see how in the present disorganised state of Exchanges you can possibly insert a sum which will convey any relative value in the various countries, and therefore our amendment was - it rather controverted Sir Norman Hill’s amendment - that this clause should read: “the sum per package, or per cubic foot, or per cwt., or kilo, or other measure of capacity or weight declared by the shipper and inserted in the contract of carriage”. I really do not think you can put in the maximum amount.

Mr. Dor: I think it is most vital that you should limit the limitation of liability. If you do not, if you accept the views which have just been expressed, you may just as well close our meeting and do nothing; at least, as far as the Continent is concerned, your rules will be absolutely no good; and I give you my word that in France, if you have no limitation of the limitation of liability, no one will even look at them; they are absolutely no good. The way in which shipowners deal with that limitation of liability clause, is this. I told you that in some of their bills of lading now, they admit liability for bad stowage, for handling of the cargo, and so on; and then they go on and put at the end a clause limiting their liability to 100 francs per package, and in some cases to 10 francs per package. Now our Courts - which at present have swung round and are very much against exceptions in bills of lading, while ten years ago, and [159] still more twenty years ago, they were very much in favour of them - hold that the limitation of liability clause is valid, and we had a recent judgment saying that, although the clause limiting the liability to 10 francs is a mere farce (which were the actual words of the judgment), the Court is bound to recognise its validity. Therefore, unless you name a sum, and you name a pretty high sum, all your rules are absolutely a farce. It is absolutely no good to come and say: the shipowner will be responsible for this and that, and that other thing, and then to leave him that loophole to say: Oh, I will be responsible for all that, but only to the amount of 5 francs or 10 francs.

Mr. W. W. Paine: Pardon me; you have misunderstood my amendment altogether.

Mr. Dor: I am coming to the question of exchange.

Mr. W. W. Paine: But you have misunderstood the effect of it.

Mr. Dor: I understood that the amendment was not to fix any amount, excepting the amount which is declared in the bill of lading. What happens is this, that the shippers very often do not declare the value, because they are afraid of paying the Customs
or afraid of paying taxes - the ten per cent. tax, or luxury tax, or one of the other taxes; for a good many reasons they do not declare the value; and what you want to do away with is the fact, in bills of lading where no value is declared, that the shipowner is liable to limit his liability to 10 francs per package. As to the question of exchange, there is a very simple way of getting out of it. I propose that the sum per package should be £100, because it is a sum which has always been in most of the English bills of lading. I think it is also the sum which is in the Canadian Act or the Australian Act.

Sir Norman Hill: 100 dollars.
Mr. Dor: Well, in many of the English bills of lading it is £100.
Sir Norman Hill: In many £20.
Mr. Dor: And it was by the French bill, the French bill puts it at 2,500 francs - at a time when the exchange was not what is now - and the exposé de motif says that the amount is taken from a great many of the English liners’ bills of lading. Therefore I propose that the amount should be £100. The way of meeting the question of exchange is very simple. You have only to say £100 gold, and there you are, and it is a standard. Just as you say in the Peace Treaty so many million of gold marks, you say £100 gold. I further [160] say that it ought to be limited only to a limitation per package, because if you go on copying the bills of lading (because that is really what we are doing in these rules - instead of getting away from the bills of lading we are copying them) and saying so much per package, or so much per cubic foot, or so much per cwt., whichever is the least, you always leave the possibility to the shipowner to get out of it. Here you have a case containing something very valuable, but it is very small. In this case you take it by cubic foot. In another case it would be again something very valuable, but very light, and there you take it by the weight, and limit the shipowners’ liability according to weight. You must make sure, and I think it is perfectly reasonable to say that the owner will not be able to limit his liability to less than £100 per package, and per package only, leaving out the cubic foot and the cwt.

Sir Norman Hill: But, Sir, if you have a hold full of wheat, is that a package?
Mr. Dor: You cannot limit your liability for wheat. There is no limitation of liability for wheat. It is for parcels.

Sir Norman Hill: That is per weight, is it not? You must have weight. To deal with Mr. Paine’s point first. You see, as we drafted this for consideration we tried to cover two points. May I begin with the second part of the clause? The second part of the clause as it stands provides what Mr. Paine wants, that is agreement between the shipowner and the cargo owner as to the figure to be inserted in the bill of lading. Now, Sir, there is another point we had to cover. We had to give effect to the Canadian Act and the Imperial Shipping Committee’s Report, that the amount that is so inserted must not be less than a definite figure, and that was stipulated for, as Mr. Dor has pointed out, in the interests of the cargo owner. In the first part of the clause, to make the second part effective, we must have the definite figure. So far as we are concerned, as shipowners, I think we should be perfectly content to deal only with per package, if that means per consignment; but surely that would be inequitable.

Mr. Dor: Per package.

Sir Norman Hill: But we must have something besides per package. I think, Sir, the words that I am moving to omit, “as declared by the shipper and inserted in the contract of carriage”, were left in by error before we had drafted the second part of the clause. As [161] long as those words are in, the second part of the clause is nonsense. You want a positive figure in the first part of then leave it open to the parties to agree in the second part; but to protect the cargo interests the figure agreed on must not be less than the fixed amount. As to the fixed amount it is true that in some bills of lading they have got up to the £100. That, I think, is only recently, in the extraordinary inflation of values.
Mr. Dor: In a pre-war bill of lading.

Sir Norman Hill: The old figure used to be £20 in an English bill of lading. In the United States the figure commonly used pre-war was 100 dollars. That is not in the Act; that was put into the bills and accepted by the United States Courts as not repugnant to the Act. The Canadian Act has 100 dollars.

Mr. Dor: In the pre-war bills of lading it was £100.

Sir Norman Hill: Well, very few.

Mr. Dor: You will find in that paper which I read in 1912, that was before the war, I quoted that sum of £100, which was taken from the English bills of lading.

Sir Norman Hill: The amount is important. And then as to the adjustment as between weight, measurement and package I think something like that will have to be inserted. I think the principle that has been adopted with us so far has been the assumption that the average package will represent 10 cwt. in weight, or 20 cubic feet. That has been taken as the average. Therefore, you see, if you start with 100 the cubic foot would be five, and the cwt. would be ten. That would be the proportion that we have been in the habit of using. There is nothing sacred about that, and we are absolutely with Mr. Dor that our labours are all in vain unless we are carrying all shipowners with us.

Mr. Dor: If you make it so that you will be liable for less than £20, or £100, per package, all your labours are in vain. If your rule is framed in such a way that when the package is light, or small, the shipowner will be responsible for less than £20 or £100 per package, then the whole thing is no good.

Sir Norman Hill: Make it £20 per package; start with that.

Mr. Rudolf: I agree with Mr. Dor that this is really one of the most vital clauses, and one which perhaps presents more difficulty than almost any in these proposed rules.

The Chairman: Might I interrupt you a moment? I have been asked to inform the meeting that a meeting on the subject of deck cargoes which had been called at the Palace Hotel at half-past four is proposed to be held here after we have concluded today's sitting.

Mr. Rudolf: Just to resume. When I gave evidence before the Imperial Shipping Committee I was examined very closely on this, and it was one of the most difficult points I had to deal with; but I think it ought to be made quite clear at this juncture that the meeting have it in mind that, when we as cargo owners suggest some maximum limit, that does not mean to say that if the package is lost that is the value the shipowner will pay. It only means to say, up to that value, if it be larger. If the package is of lesser value, that lesser value is the amount he has to pay. Under the Harter Act clauses were inserted: “Not accountable for more than such a value”. Our Courts interpreted that clause as contravening the principles of the Harter Act. The shipowners then, who, as Mr. Dor has said, carefully watch these things, put in a clause saying that as between the parties the value in case of loss shall be agreed as being so much. That the Courts held as not being any infringement of the Harter Act. That gives them power then to put in the bill of lading, if they like, £1 or 1s. as being the value of the package, and that is the thing which we as cargo owners are determined, if possible, to get over. Of course my instructions are that we should suggest that the actual value per package should be £200. That may sound rather a large figure, but I do think it is desirable, subject to dealing in a reasonable and fair way with the shipowners, that we should as far as possible get as many cases to come within the maximum liability and avoid having to make any more exceptional cases, that is, cases in which the value has to be specially declared, than necessary. £200 may seem today a high figure, but there is no doubt about it, that values are steadily trending downwards, and that as time goes
on the application of the £200 maximum limit will become less frequent. We had a very similar position in the war time. At that time we, as underwriters, were faced with this. The statutory liability in Great Britain for vessels in £8 per ton. It was fixed at a time when that probably represented the true value of the vessel, but in the war time the shipping got up to £50 a ton. No amendment was asked in that, nor did we ask for any amendment, because we said: [163] this is more or less a temporary condition. The Continental law and the United Stated law were in the same condition; in the event of loss the value for which they were responsible was the actual value of the property after the loss, together with the pending freight. That imposed an enormous liability upon American shippers at that time, but again we said it was a temporary measure. We think that though the £200 may seem large, it is after all only temporarily that it is likely to be effective for its full extent. We think therefore that to be a reasonable sum. As regards the question what limit, if any, should be put in respect of per cubic foot or per cwt., I do think that if we agree to the value per package we have sufficient business acumen to decide the ratios that per cwt. and per cubic foot should bear to that.

Mr. de Rousiers: Mr. Chairman. I quite agree with Mr. Dor that there must be a limitation of the limitation of responsibility, and I must say that shipowners as a body want to do honest business, and they do not want by a kind of trick to escape a responsibility which they are willing to take on their shoulders, but I think that to fix a sum, and be obliged to fix it in English money, is a great difficulty just now. It was noticed by the representative of the bankers. I would say that with that fixed sum there is no relation whatever between the possible profit of the shipowner and the possible charge on the shipowner, if some claim arises against him. So I think that those inconveniences would be met if, instead of considering a fixed sum, you would consider that so many times the freight - I do not venture to say how many times, say five times, ten times, say what you like - should be the limitation of the responsibility of the shipowner. Suppose the freight is 100 dollars, or 100 francs, or what you like, if you take ten times, for instance, the limitation of responsibility should be 1,000 dollars or 1,000 francs. So there would be a relation between the possible profit of the shipowner and his possible responsibility. If you put such a rule no trouble will arise by reason of the freight being taken in dollars or in francs, or in pounds or shillings or anything, because there is always the relation between the money in which the freight was taken and the money in which the indemnity would be given to the shipper.

Mr. W. W. Paine: I think it is a very good idea.

Mr. Dor: May I add one word?

The Chairman: Yes, Mr. Dor.

Mr. Dor: You want, in drawing up these rules, to prevent further legislation. I can assure you that, so far as the Continent is concerned, you will not prevent further legislation if you do not make it quite clear that a definite stop is put to the actual practice - it is much more a Continental practice than an English practice - of practically evading liability by having a limitation of liability which is trifling. For instance, if you limit it to the freight it is absolutely no good, because sometimes you have a case of silk, where the freight is 35 francs, and you have in our Courts cases, which have been quoted by the cargo owners, and are held up as cases which require State legislation, saying that for that case of silk, which is worth 1,000 francs, or 3,000 francs, you are given 37 francs, which is the freight between Marseilles and Algiers. Therefore, I think it is all very well to settle these rules for yourselves - the British shipowners are very well represented, Sir Norman Hill is very persuasive - but it is no good if you issue the rules and no one takes them up. This is a touchstone by which your rules are going to be judged. If you do not effectively limit that limitation of liability they are no good.
The freight system of Mr. De Rousiers may be all right if you multiply it by a very high figure. If you say twenty times the freight, that is all right; but if you say once, or twice, or three times the freight, that is absolutely no good.

As to the question of cubic foot and weight measurement, you must remember that you have afterwards the words “whichever is the least”. That is a trick according to which the shipowners is responsible for practically nothing, because a case of silk does not weight much, and is not many cubic feet; and when you have put your ratio between cubic foot and package, and so on, and you apply it to the value of the goods, it does not work. Make it clear; put what you like per cubic foot and hundredweight, as long as you make it clear that in no case shall the responsibility per package be less than £100. It must be understood that what you say about cubic foot and hundredweight will not in any way influence the responsibility per package; the shipowner will not be able to say: “Here is a package which is lost, but I am not responsible for £100 because the package weighs only so many pounds; therefore I am only responsible for £3 15s.” You must make that quite clear.

The Hon. John McEwan Hunter: Mr. Chairman. I think perhaps we might adopt the suggestion of the previous speaker on my [165] right, Mr. De Rousiers, and see whether we could not find some multiple that we could adopt. It seems to me to solve the money problem, the future value and the whole of the difficulties that have been raised by the last speaker. If we could defer the matter, either to a Committee or discussion amongst ourselves, I think that we should find in that the solution of the difficulties with which we are faced. I quite understand that we must fix the maximum, and fix the maximum high. That does not mean that with a parcel of small value a larger sum would be collected than its value, but the protection which the last speaker asked for, and which I think should be given, could be ascertained and safeguarded by making the maximum as high as possible.

Third day’s proceedings - 1 September 1921

The Chairman:

Yesterday afternoon the Committee found itself in something like an impasse by reason of the divergence of opinion upon Article IV, clause 4, imposing limitation of liability. I think there was a general view that the language of the draft with the proposed amendments, and, indeed, without the proposed amendments, was not quite so clear as the Committee would have desired. Sir Norman Hill was in possession of the subject at the time, and he has handed me this morning an alternative to the proposed amendments which he produced yesterday, which it is desirable, I think, that I should read to the Committee. He proposes to omit the first paragraph in 4, and to substitute for it this paragraph: “Unless the nature and value of the goods have been declared by the shipper before the goods are shipped, and have been inserted in the bill of lading, neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the goods for an amount greater than (a) a sum equal to (so many) times the freight charged for carriage by sea of the goods lost or damaged ascertained on the basis upon which the freight rate is calculated in the contract of carriage, or (b) the value of such goods, whichever of such amounts shall be the least”. That is Sir Norman Hill’s amended proposal. It would provide a new basis for discussion, but the principle involved in it was discussed yesterday. I think, as Sir Norman Hill was in charge of the amendment which is before the Committee, he is entitled to ask the leave of the Committee to substitute this proposal for his previous proposal. The question is whether Sir Norman Hill shall have the leave of the Committee to make a substituted proposal. Does the Committee agree? (Agreed).
I call upon Sir Norman Hill. I may say, in order that Sir Norman Hill may be aware, that Mons. Dor has given notice of a proposal to the effect that the limitation should be a limitation to an amount of not greater than £100 sterling, gold, so as to make the provision that the limitation of liability should be an amount of £100 sterling, gold, per package; and Mr. Dor would omit the reference to the alternative mode of calculation by cubic foot, or by the cwt. I mention that because it is very desirable that the Committee should know at the outset of the renewed discussion what is likely to be the course of it.

Sir Norman Hill: Thank you, Sir. Well, Mr. Chairman, I think we are all agreed on one point, that it is responsibility, if there is loss, for the cargo. The cargo owner is not to recover more than his loss. We are all agreed on that. We have to select the appropriate words, whether it is the c.i.f. value, which, I suppose, would be most appropriate for manufactured goods which were being exported, or whether it is the market value, which I suppose would be more appropriate for produce which is being imported, or whether we can take one or other of them, the invoice value or the market value. I think that is the only point we have to agree upon in order to be sure that the cargo owner does not make a profit out of the loss. None of us wants that, and none of us wants that the shipowner shall do more than pay for the loss. So one of our alternatives is a simple matter. The other point is a much more difficult point. We in drafting the Code for your consideration, reviewing the practice of countries generally, had followed - Mr. Dor says, perhaps viciously followed - the practice of bills of lading, and that was putting in a figure calculated either on weight, measurement, or on package. That is what we had done. I confess we did not know what figure to put in, so we left it blank. The practice has varied very much. So far as I know, the first Code which contained a definite figure was the Canadian Code, and that was 100 dollars. The 100 dollars, I believe, was taken from the practice which had been established in the United States trade, and which had been recognised by the United States Courts as not being contrary or repugnant to the Harter Act. In practice we had got into the habit of putting 100 dollars into bills of lading which were under the Harter Act. Canada found that practice running, and Canada put in the 100 dollars. Now, the practice spread, and there has been a variety of practices and of amounts. The highest one I know of was mentioned by Mr. McConkey, and in an Eastern bill of lading it has gone up to £200. But it is very important to bear in mind the condition which attaches in that bill of lading. The amount is a very favourable one, £200, to the cargo, but there is attached to that this condition, that, if in fact the package is worth more than £200, and that fact is not disclosed and declared on shipment, there is no claim at all; you do not get anything.

Mr. McConkey: That is only one bill of lading.

Sir Norman Hill: That is one bill of lading which has got the maximum amount.

The Chairman: Might I ask, Sir Norman, whether that is a bill of lading sanctioned by the United States under the Harter Act?

Sir Norman Hill: No, Sir; it is used in the United Kingdom to the Far East, which is not under the Harter Act. I agree, that bill of lading would not be sanctioned in the United States trade, but that condition has been attached to the maximum amount. The liners say, and they say quite frankly: we must know the value of the packages; when we do know them we will assume responsibility for them, and we will make special provisions for their safe carriage; if we are not given the chance of making those special provisions it is your fault, and you will get nothing. We do not propose, or we have not proposed in drafting the Code, to put in a clause of that kind. Then the great difficulty in fixing the amount is the question of the currency. It seems to me that it would be absolutely inequitable to fix in £ sterling, payable in gold. I think it would be...
most arbitrary and most unjust to some other nations to-day; it might be different na-
tions to-morrow. It would be absolutely uncertain. What would be the liability at-
tached to the shipowner? If you are going to have an amount and you can agree the
currency in which it is to be paid, you cannot, I think, adopt Mr. Dor’s suggestion and
have simply one figure. Suppose, for example, you took £100; how you would apply
that to the cargo of wheat in bags I cannot think. You would get into ridiculous fig-
ures. I cannot think how you would apply it. Now, there was a suggestion made in the
room yesterday, and I think that it is a great reflection on the Committee that drafted
this Code for the consideration of this meeting, and I was one of the Committee, that
the solution suggested yesterday had not occurred to us: that is, Mr. De Rousiers’ sug-
gestion that we should make the amount dependent on the freight.

The Chairman: Forgive me interrupting you, Sir Norman. That is, as I understand,
to make the amount dependent on the freight where the shipper has not thought fit to
declare a value?

Sir Norman Hill: Absolutely, Sir. Leave the shipper free to declare his value; leave
him to adjust before shipment if there is any extra freight to be paid; that is all agreed;
absolutely free to state any value he pleases. If he does not do that, if we make the val-
ue dependent on the freight, we get rid of all these clauses, which Mr. Dor quite prop-
erly says “my friends in France will not understand, or, if they do understand, they will
only think it is a reproduced bill of lading in the worst form”. We get rid of all these
questions about whether it is measurement or weight or package. We say: take the
freight as it is to be calculated under the bill of lading. If it is a freight so much per cwt.,
according to weight, that is the freight. If it is measurement, that is the freight you take.
If it is package, that is the freight you take. Then, if we can accept that, the only ques-
tion is by what figure are we to multiply it. Mr. De Rousiers suggested that if the
shipowner was to be penalised to the extent of five or ten times his freight, that would
be a fair and reasonable punishment. I do not quite know if it is punishment that we
want; we want recompense for the cargo; but it is quite clear, I think, that it is not the
wish of the cargo owner to make the shipowner into an underwriter. The cargo owner
might like to get a policy of insurance from the shipowner for nothing; but he knows
that he will not get it, and he knows that, if there is too high a value placed on the car-
go, then, of necessity, his freight will be calculated in regard to two considerations. The
first will be the services rendered by the shipowner as the carrier. That will depend on
the weight or the bulk of the stuff carried and the distance it is to be carried, and such
like. The other consideration will inevitably be the value of the goods, if anything hap-
pens to them, and that will be quite a novel form of calculation for the shipowner. The
box or the packing case is exactly the same apparently; it is secured in exactly the same
way; it takes up the same space in the ship; it has to be carried to the same distance. In
one box there may be cotton; in another box silk. If the shipowner is to be made into
an underwriter, inevitably one of the elements in estimating freight will be the value: is
it silk, or is it cotton? Now we know from the work we have done to-day that the car-
go owner will still have to continue to insure against navigation risks; and we believe,
and we think the cargo owner must be satisfied, [177] that it will only mean a dupli-
cation of insurance to a certain extent.

Now, Sir, Mr. De Rousiers’ figure I think was, from the point of view of punish-
ment, sufficient. Whether it was sufficient from the other point of view, of recom-
pense, I am in a little doubt; and what I would venture to suggest is that we should
adopt this, and, instead of saying ten times the freight, that we say twenty times the
freight. There you will get really a substantial figure, certainly on the long voyages. It
has been suggested that if it is a cross-Channel voyage, twenty times the freight will be

[176]
a very small matter. Agreed. The freight is a small matter, but it cannot stand insurance; and if you want to have both carriage and insurance you will have to pay for it, and you come back to the point, which we all know from our experience, that the loss and the damage is not one per cent.; it is not a half of one per cent.; I doubt if it is a quarter of one per cent. Is it wise to establish a Code under which, for the sake of argument, the cargo owners will pay more freight in 100 shipments in order to have a claim in the case of the 100th shipment that goes wrong? Is that good business? We want to promote overseas commerce. The more it moves the better it is for the shippers. We believe that would be bad business; it would not promote and facilitate, it would not cheapen, overseas commerce.

The currency question is a big one, and I quite follow Mr. Dor’s objection to elaborate calculations; but there is no elaborate calculation if you say the limit is twenty times the freight as it is calculated in the bill of lading. You have quite a simple calculation; you get quite a simple figure; and you get at an amount which is expressed in the currency of the person who is held responsible and of the owner of the cargo. If the cargo is shipped from France the freight is expressed in francs, and the value of the cargo is expressed in francs, and the indemnity is on that basis. If it is shipped from England, and it is in £ sterling, that basis would apply.

Now, Sir, I think it is very important that we should get this clause through, and that we should get it through unanimously. We were very much concerned, in drafting it, not only from the British shipowners’ point of view, but from all our fellow shipowners’ point of view and, I think, on this point, and I hope on all the other points, we have always borne in mind that if we are to make a set of rules it is the shipowners of all countries that will have to work together. I think we have always been alive to that.

With those remarks I beg to move the substituted amendment. I would like to make clear, Sir, that I have only touched the first clause of it. I propose to leave in the words: “The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier”; and to leave in: “By agreement between the carrier, master or agent of the carrier and the shipper, another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named”. I propose to leave those in, and my substitution is merely for what Mr. Dor has criticised as rather an elaborate calculation.

The Chairman: The question is that, in lieu of the words in the first six lines of the first paragraph of clause 4, the words in red shall be inserted. I call upon Mr. Dor.

Mr. Dor: Sir. I am afraid we have now got to the point which may be the stumbling block. It is very important, if these rules are adopted here, that they should also be adopted not only by shipowners but by the various cargo owners on the Continent; and that very point of a limitation of liability clause is the point of which cargo owners, Chambers of Commerce, and so on, are extremely suspicious; because they know from experience that it is always by that limitation of liability clause that the shipowners have been able to evade the effect of any concessions which they had made to the cargo owners. If we go back to them with anything but a clear limitation of liability clause of £100 free of tax, if we present anything else, I feel absolutely certain that they simply will not look at it, and will go on with legislation.

There is one point of principle of which I want to remind the Committee. Sir Norman Hill has been talking about penalising the shipowner, but that is not at all the point. (Hear, hear). It must be remembered that the limitation of liability clause is an exceptional favour granted to the shipowner, and which he is the only one to enjoy. The railway carrier does not enjoy it.
Sir Norman Hill: Yes.

Mr. Dor: No. If I send a package of silk from Lyons to Algiers, if the case is lost on the line to Marseilles the railway company has to refund the full value of the case, and they have not the right to put in their bill of lading any limitation of liability. When that case goes from Marseilles to Algiers, then the shipowner is entitled to limit his liability. It is not a question of penalising the shipowner; it is simply a question that we want him to be liable for the goods which he carries; we want him to be liable for the negligence of his servants in the stowage and handling of the cargo. (Hear, hear). When the case has been lost by the negligence of his servants, why should not he be liable for the whole of the value of that case? He says: “But I cannot be liable to an unlimited extent. If you send diamonds or furs, and do not tell me anything about them, I cannot be in the position of finding, when the case is lost, that I owe you £100,000”. Agreed. Therefore, we agree that you ought to be protected against excessive values of which you do not know. That is all. It is already a very great concession to you to say that in no case will you be liable for more than £100 per package, even when that package is worth £200 and when it has been lost by the negligence of your servants.

Now you say: “Oh, we will multiply the freight”. First of all, allow me to tell you, with due respect, that anything that may be proposed by the shipowners on that limitation of liability clause, by the mere fact that it is proposed by them, will be viewed very suspiciously - at least, in my country - by the Chambers of Commerce, and I may tell you the reason. It is because we have judgment after judgment where it is said the shipowner is liable for such and such a thing, and then you find it further, “but he will be liable only up to 100 francs” or “up to 10 francs”. And if you peruse the reports which have been drawn up by the various French Chambers of Commerce (because while in England you have been having agitation for the last three or four years, we have had it in France for the last twenty years - we started in 1902, and there is hardly a Chamber of Commerce in France which has not one or several reports drawn up on that) you will find that it is on that point that they are especially suspicious. Besides, they have some very good reasons for being suspicious. Mr. De Rousiers was telling us the other day, when I said there is no freedom of contract, that there is freedom of contract, and that in France you have a bill of lading where, after all the exceptions, there is a special insurance clause in which the shipowner undertakes, for a little extra freight or extra premium of insurance, to do away with all exceptions and to be responsible for the negligence of his servants; and he said: “Well, you see we offered the two systems and the cargo owners did not accept that system of being fully insured”. It may interest you to know how they are fully covered. A gentleman having to ship a motor car from Algiers to Marseilles took that insurance clause and paid the extra freight. The motor car was put on deck and was badly secured; instead of being tied by the top of the car, it was tied up by the left. It got loose and got damaged. On arriving at Marseilles the case was brought into Court, and the shipowners, the Compagnie Transatlantique, admitted that the damage was done by bad stowage. Then they said: “According to clause No. so and so of our bill of lading we are entitled to put the car on deck without the shipper’s consent and without giving him any notice. According to the clauses of the insurance part, when anything is on deck we are responsible only for total loss. Therefore, as shipowner we put your motor car on deck, and we are responsible for nothing; as underwriters we are not responsible because your car is on deck, and therefore we are not responsible for negligence for the loss”. That was the defence taken up by the Compagnie Transatlantique. They were condemned by the Marseilles Court and the Aix Court of Appeal in the most severe manner. The Aix Court of Appeal went as far as to say that it was almost dishonest to put up such a defence. Notwithstanding that, they went up to the Court of Cassation, and I hear that they have got through the first stage, they have got through the first.
stance, and I suppose they will get through the second, and will get the Aix Court of
Appeal judgment reversed. That is why the shippers do not trust those various alter-
native bills of lading, because they know that they are framed in such a way that the
shipowner will always get out somehow or other. The question is, now we are coming
to them and saying: “Here the British shipowners, together with representatives of the
British Chambers of Commerce, have come to an agreement on those terms, and we
ask you to drop the movement in France for legislation and to accept those terms”.
They will not accept them unless you have got the clear £100 per package. I hear that
the gentleman representing the cargo interests here wants £200. I suggest that £100
would be a fair compromise on account of the gold question.

The currency question is not at all a difficult one. It has been seized upon by the
shipowners in this case simply because they know that whatever they agree to in re-
spect of negligence of servants, and so on, will be of no consequence to them, provid-
ed they keep that [181] safeguard, that lifebelt, which is the limitation of liability
clause; and with great skill they have seized upon that currency question to deviate
the question. Let us take the currency difficulty. It is very simple. £100 is a figure which
was in British bills of lading before the war. It was taken from them by the French bills.
I have not got copies of the bills of lading here, but you will find in the Report of 1912
that I took that figure in liner bills of lading from British liner bills of lading. £100 gold
before the war was very much more than £100 gold now. It was very much more be-
cause there is not only the question of the gold; there is the question of the rise in val-
ue. With £100 gold you can get nowadays very much less than with £100 gold before
the war.

Sir Norman Hill: Oh!
Mr. De Rousiers: No.
Mr. Dor: I think so. I think values have risen. Let us take it at the same if you like.
In any case it is not more. There you are. What does it mean when you say £100 gold?
It simply means that we shall have to compare the various currencies with the actual
gold currency which I think is a dollar. To know the exact value now of £100 gold you
compare it with the dollar, and you will get the right number of pounds paper. The
same with francs. If you have £200, that in francs at the old exchange would be 5,000
francs. In adopting that amount of £100 you make it 2,500 francs at the old exchange,
and 5,000 at the actual exchange, which is a perfectly fair sum. But the main point is
this, that what we want is simply the shipowner to be responsible for the value of the
cargo which has been lost owing to his negligence, or to the negligence of his servants,
and that we simply allow him to protect himself for extraordinary values.

In respect of freight I do not think the proposition is at all practicable or at all just.
We are chiefly concerned in France in our bills of lading question with cargoes be-
tween Algiers and Marseilles, Tunis, Algeria - I mean the North Coast of Africa - and
France, and it is those Chambers of Commerce, of the Algerian and Tunisian ports,
and of Marseilles, and Lyons, too, which have taken the leading part in the agitation
against bills of lading. It is a very short voyage and the freight is very small; and it is not
very equitable that when a case goes from Marseilles to Algiers the shipowner will be
limited to a very small amount, and when the case goes from Marseilles to Australia he
will be limited to a very big amount. I [182] do not think that is at all an equitable way
of limiting the shipowner’s liability.

In any case I may tell you this. You want to do something which will go through.
Unless you accept a clear cut limitation of liability, it will not. The French shipowners
are very ably represented here. They could not send you two men who know this ques-
tion better than Mr. De Rousiers, the Secretary General of our French Committee of
Shipowners, and Mr. Verneaux, the Legal Adviser of the Messageries Maritimes; but
the cargo owners are not represented. They were not invited to the Conference held
in London when those things were drafted. Our leading Chambers of Commerce I do not think were invited - were they?

Mr. De Rousiers: Mr. Girard, President of the Chamber of Commerce of Marseilles, was at the International Chamber of Commerce in London.

Mr. Dor: I am not talking of the International Chamber. I am talking of the Conference of this Committee of the Association in London in May.

The Chairman: Dr. Bisschop can tell Mr. Dor of that.

Dr. Bisschop: The French Chambers of Commerce were invited, but they could not be present.

Mr. Dor: Well, in any case it will come to this. I have already been asked by the Marseilles Chamber of Commerce, when this meeting is over, to report to them; I think Mr. De Rousiers knows too that the Paris Committee of Underwriters will look to me to give them a report of these rules and my opinions about them, and I expect that several of our bodies of the same kind will ask me for what I think of it. I tell you frankly - it is nothing offensive at all, it is simply that I think the meeting ought to know how we stand; it is much better to be frank - that if that limitation of £100 per ton - I do not say £200 as the cargo interests say - is not adopted, I shall give my French friends my opinion that they ought to have nothing to do with the whole thing, and that they ought to proceed with their Bill. That Bill is before Parliament, and it has been embodied in the French new Maritime Code. The British shipowners may say: “We do not care; as long as we and the British cargo owners agree between ourselves, that is enough for us”. But I remind you, Sir Norman Hill, that your liners go to French ports, and that in the French Bill it will be provided that it applies to any cargo going [183] to any French port, or going from any French port, and that there is absolutely no possible way of evading it. It also provides that no foreign Court has jurisdiction; so that when your British liners go to any French port, or take cargo in any French port, they will be submitted to that Bill, and that Bill is far more drastic than any of the rules we have drawn up. I am told by the representative of the Scandinavian people that the position is the same in the Scandinavian countries; and I was told yesterday by a Spanish advocate that in Spain they have already got a decree which forbids any clauses or exceptions contrary to the Code of Commerce. Therefore you will soon have the whole of Continental Europe absolutely closed by most drastic Bills. I think it is in the interests of the shipowners to avoid that, and, in order to avoid it, they must convince the cargo owners that they are sincere, and they will not convince them that they are sincere if they do not make it quite clear that the limitation of liability clause will not be the means of evading the responsibility.

With regard to the smaller question of omitting £ per cubic foot, or £ per cwt., that is rather important because that question of cubic foot and cwt. is nothing but a trap. Sir Norman Hill told you that it is necessary when you have got bags of wheat. He said: how are you going to limit that unless you take weight into account? But for bags of wheat you do not need to limit your liability at all; where you need to limit it is for packages of extraordinary value. That is a point which you must not lose sight of. Therefore, for bags of wheat, which are packages of very small value, you do not need any limitation of liability. That bag of wheat is worth less than £100; therefore, you are responsible for the full value of that bag of wheat. When it comes to small packages which are worth more than £100, then you are entitled to limit your liability unless the value is declared; but when a package of small value is given to you, the question of limitation of liability does not come in at all. Where the trap is, is this, that when you have fixed a limitation also by cubic foot and by cwt., you add “whichever shall be the least”. Therefore, when you have a case of silk, you measure it, and you say: “oh, but £100 does not come in there”.

The Chairman: I am not sure, Mr. Dor - I should like this cleared up - whether it
really is intended that there should be the alternative against the shipper.

**Mr. Dor:** It says so.

**The Chairman:** In the original language I know it was, and my [184] impression was that it was well chosen. I am not sure whether it is not intended to make the alternatives at per cubic foot or per cwt. absolute alternatives and have them bear some definite relation to the £100.

**Sir Norman Hill:** Certainly, Sir.

**The Chairman:** I understand from Sir Norman Hill that that is so, and that this phrase “whichever shall be the least” came in, by some inadvertence, in the wrong place.

**Mr. Dor:** In that case I should ask the shipowners, are they willing that the Drafting Committee should add words to this effect: that in no case will the cubic foot or cwt. limitation make them liable for less than £100 per package? That is what we want. We do not want, when we have a case of silk which is worth £500, and that case is lost, the shipper to say: “I am not going to give you £100; I am going to give you £53, or, I am going to give you £21, because your case weighs so much, or because your case measures so much”. Therefore, if the shipowners say: “We give power to the Drafting Committee to put such words in that when there is a package the limitation of liability will never be less than £100 per package”, we shall be quite content; but I think that if the shipowners agree to that, they may just as well do away with the cubic foot and cwt., because, as I say, they do not want to limit their liability for bags of wheat, they do not want to limit their liability for things which are worth 10s. or 20s., or £3 of £4 per package. The whole question only turns upon packages of great value, and that is what the Committee must not lose sight of. When I say that, I do not at all speak in the name of the cargo owners. You know very well I have sometimes spoken in favour of the shipowners at these meetings, but the cargo owners are content to give the shipowner that concession, which no other carrier has, of being able to limit his liability for packages of extraordinary value [Sir Norman Hill: No, no], but in no case must it be less than £100 per package; and I think you may take it for granted that, either the shipowners will accept this willingly, or it will be decided by the meeting, or, and it will be the last alternative, the whole thing will come to nothing, and the shipowners will have to face legislation in practically the whole of Europe.

I appeal to Sir Norman Hill, and to the shipowners, to show to the whole of the Continental cargo interests that they are really [185] sincere and willing to meet their wishes, and I appeal to them to accept £100 per package. If they do not, then I respectfully press, Mr. Chairman, when the discussion is over, to take a special vote and have a special record taken of the number of votes, so that the Continental cargo interests may know exactly how the question was decided. (Applause).

**Mr. L. C. Harris:** Mr. Chairman. It is rather difficult to speak on behalf of shipowners without showing the feeling that, being human, we resent just as much as the gentlemen on the other side the harsh things which are said about them. I want to avoid using harsh terms. I agree, I think, entirely with the question of principle as expressed by Mr. Dor, but I cannot agree with his application of it in any single case. I do not understand the type of shipowners with whom he has had to deal. (Hear, hear). They do not represent the type whom I represent here; they do not represent the class of business that we are accustomed to do. He has asked us to show our sincerity. It is a long journey, but I hope to begin to show to the gentleman that we are sincere, and no greater index of our sincerity has been given than the withdrawal by Sir Norman Hill of the first drafting, and the proposal that he has now put before you.

I might say in regard to the £100 per package, that in application - I have had to deal with the merchants all my life in these matters - there is nothing more unsatisfactory to the merchant than the £100 per packages basis. May I give the instances which,
so far as my recollection goes, many years ago first induced us to increase the clause dealing with so much per package. This is from the shipowners’ point of view. There was a package which measured 6 inches cubed; I leave you to imagine exactly what the dimensions are. It, through the fault of the stevedore, the shipowner’s servant if you like, fell into the dock. It had been declared to be a case of cutlery. The claim for that six inches of cargo, including the packing, came to £250, because it turned out to be silver fruit knives. We immediately saw how unreasonable it was that we had had the ordinary rate of freight for ordinary cutlery for a mere six inches, the 80th part of a ton, in the days when freights were, I suppose, about 25s. to 30s. It was a long time ago. It was not a minimum rate; it was amongst a consignment. The shipper sent down various packages, and this one was six inches, and we had a claim for £50. Was it reasonable that a little tiny package like that should be sent down amongst a lot of general cargo to be stowed in the ordinary way when it was so valuable, instead of being sent down with a special value? Now, it is essential that we should have some idea of the contents of cases: for instance, it is no good sending down butter and calling it cheese: butter is much more likely to melt than cheese; and we have to choose the suitable places for suitable cargo. The bottom of the hold is not a good place for some cargo; the top is not a good place for other cargo; and No. 1 hold is not nearly as good a place for some cargo as No. 3, and vice versa - we must know something about these things, not only their quality, but also their value; and then we are able to stow valuable goods well covered by other heavy goods which are not easily moved, and so forth. All these things enter into our conducting our business, not only with satisfaction to ourselves but also to our merchants. And do believe me, Gentlemen, that the object of shipowner is to carry on their business satisfactorily to their clients as well as themselves. The £100 per package was found quite inadequate. I will give you another instance. I always like to give facts, because you will find it is better than giving theories. We were loading a boiler in Glasgow. It weighed 21 tons and a fraction - just over the 20 tons. The stevedore who was working for us in Glasgow (we have to use other people) used gear which had been tested up to 20 tons, and apparently it was very near the margin, so the boiler dropped from above the hatch. It was the first thing going into the ship. By great good fortune, it was being loaded into No. 3 hold. That was a case where distinctly No. 3 hold was better than No. 1, because as a naval officer discovered during the war - he found numbers in merchant ships - we had a big tunnel - one of our ships was being surveyed and rejected because it had a great big tunnel in the after hold which made it quite unsuitable to carry cargo. This tunnel fortunately saved the ship, because, being round, it was very strong, otherwise that boiler would have gone through the ship. Now you see we might have lost our ship, but if we damaged that boiler we should pay £100 for it. It is not satisfactory in either direction. We load packages constantly of over 30 to 40 tons a piece. We load them with our own gear. We have to pay £100 a package. It is not good enough; it is not what we want.

Again the £100 sterling basis, satisfactory as it may be to the French shippers to-day on account of the rate of exchange, I do not think would be accepted by American shippers to-day, and, although [187] they do not seem to be present, I think you have to calculate with them.

There is a further fact I would like to give you in which I am at variance with Mons. Dor. He discovered a bill of lading before the war in which the value of £100 was given. I must accept his statement, but I state that that is not representative of bills of lading before the war. I state on the contrary that about £20 per ton was the usual figure in bills of lading before the war. I think the clauses were very loose. They have only recently been finding how to fix that very difficult problem satisfactorily. It has been a difficult thing; the clause has been increasing and increasing because of its inefficient working. We are trying to find an efficient clause. There has been no efficient clause hitherto.
May I state this fact, that before the war with unfortunately a very considerable experience of general averages with general cargoes, cargoes such as the gentlemen are interested in both from this country and New York, it was a standard fact, upon which we could rely before in any case the facts were ascertained, that a cargo on the whole always averaged, when you wanted a contribution to general average, when you got the whole values in, between £20 and £22 per ton. There is a gentleman, the late President of the Average Adjusters’ Association of England, here who will confirm that fact; and if, when there was a general average and we wanted the actual values of the cargo, it invariably proved over such a mixture of general cargoes that the average value came to £20 a ton, and we were allowing indemnities at the rate of £20 a ton in our bills of lading. Was not that a very just basis? I think it was. Today temporarily values have gone up very considerably, and as the result the merchants have asked the shipowners naturally to increase the limits in the bills of lading. They have been increased to £100, and in one particular case, it may be two, but in one particular case where the merchants are combined, where they never been refused yet by the shipowners, the great Australian export trade, they have £200. They have never been refused by the shipowners yet anything that that Association has offered, because the Association brings its members to a reasonable basis before they approach the shipowners, and in that trade, because they asked for £200 and because the things worked so smoothly, it was given to them. It was recognised to be very excessive at that time when prices were at their highest. In [188] Manchester Mr. McConchy, I believe, was a party to drawing up an outward bill of lading in which, by agreement between the Liverpool and Manchester shippers and the shipowners £100 was agreed at that very time of highest prices. Is it reasonable to ask us to stereotype in these rules, that will last for many years, the figure which was agreed upon mutually at the time of highest prices? It will not be equitable, because when prices revert to something like their old basis, why should we be held responsible for as much as £100 which at that time was realised to be a very excessive value? You have to have some means for adjusting what to-day may be a reasonable figure to what in the future will be a reasonable figure.

Again I would like to emphasise this, that really what the gentleman wants is not an insurance. You want to insure that shipowners (and other members of the transport, too, I would like to say, but we are concerned with shipowners) shall take due care, so far as they are able, of the cargo committed to their trust; and that is our object. (Hear, hear). All you want is to have such a value, large or small, as may be necessary to make us take proper care of the cargo, and that is all we want. I say, unhesitatingly, that that is the wish of the shipowners, because I have been acting in a representative capacity with regard to this particular matter of values of cargoes and bills of lading, and I am sure that they do not wish to discard all responsibility; it is a libel upon shipowners to say that they want to. You may find one somewhere, but you will have to hunt a long way in England to find one shipowner who wishes to avoid all responsibility. To convince you of that may I say that a year ago we were paying claims in my one company at the rate of a quarter of a million a year. Is that a system of evading responsibility? In my company we were paying claims to merchants at the rate of a quarter of a million a year. We have been paying attention to the matter since, and we have reduced that ten-fold, but that is not by a system of evading responsibility. (Hear, hear). It is not by throwing it back on the merchants, but by stopping the claims arising. We do not wish to evade responsibility; we meet our responsibilities, but we are trying to take all care of the cargo. All you want is to have such a figure as will ensure due care of the cargo. We have heard the various elements that go to make freight. I have tried to explain how we must take more care of one sort of cargo than another; but if it is merely cast-iron pigs you have not to take nearly the same care of them, whatever their value, as you have with more delicate things, [189] and you must know
these things in order to calculate the freight. All these things we have to take care of are what we charge for. That is how we base our freight. Therefore, so long as you get due care, if the remuneration you give us is in proportion to the liability you place upon us, could any fairer system be found? Again, how simple. The great difficulty in settling claims is to decide what is the fair basis. Every bill of lading carries on it the amount of freight paid. Is it not the simplest thing for any kind of agents in any part of the world, be they English or any other nationality, because we have to deal with such a variety of agents? They have only to take the bill of lading: they ascertain the freight; it is fixed; there is no dispute at all, and pay so many times the value. I feel that Sir Norman Hill has been exceedingly generous in suggesting twenty times the freight. I appeal to everybody that, if for 12s. 6d. we are to be responsible for twenty times that amount, that is adequate to make us take care of the cargo that we take. I am not going to dissent on that, because we are here to make the whole thing go through; but I do think it is very generous to say twenty times. But there it is. We want to get something which will make this go through. I am not objecting to it, but I do say I think we have been very generous in putting forward that suggestion.

There is just one other point which, if I may, I would emphasise. The shippers know perfectly well that freights do not increase according to the distance or the length of voyage. Therefore, in respect of your short distance voyages you will, in proportion to the time that the voyage occupies, have a higher rate of remuneration than you will have for the longer voyages. You frequently pay, it may be 12s. 6d. or 20s. to a Continental port, and to Australia 30s., the voyage taking ten times as long. Therefore, there is compensation in that, if you take the rough with the smooth. Australia is the longest voyage, and a Continental port is the shortest. You get a very fair average by reason of the fact that freights for short distances are not mathematically in proportion to the distance, and therefore I think for that reason the rate per freight is very good.

Now, as a further token of our sincerity, may I say, with regard to that expression about being a trick, I personally do not like a rate per ton or by measurement; it is always causing difficulty; it does not lead to a settlement which is mutually satisfactory; but if it is on the basis of freight I can conceive there is no trick in it at all. It is a thing that was suggested and immediately agreed.

Mr. Rudolf: Mr. Chairman. I recognise that our time is precious to-day, and I will say what I have to say in as few words as possible. Yesterday I suggested that the maximum liability should be £200. That was what those whom I represent considered a reasonable figure. Since, however, I have been in this Conference, I have studied the feeling of our Continental friends, and I am prepared to recommend to my friends to accept the suggestion put forward by Mr. Dor, that we should take the figure at £100, eliminating the charge per cubic foot and per cwt. or per ton.

Now, Sir, with regard to the suggestion that has been put forward today by Sir Norman Hill, that the measure of liability should be based on so many times the amount of freight, that is of course an entirely novel proposition as far as we in England are concerned, I think, and it came upon us rather as a surprise. At the same time, I think it is so entirely foreign to the ideas that we hold, at least in Great Britain, that I am doubtful if it will be acceptable. Then Sir Norman Hill referred to why there should be the same liability attaching in the case of a short voyage, with a low rate of freight, as in a long voyage with a higher rate of freight, for which a higher sum would be paid on the higher rate of freight; but it does appear to me that to lose a package by default on a short journey is practically as grave an offence as to lose a package by default on a long journey. Then another point which occurs to me is this: Goods, when they leave
the hands of the consignor, pass by assignment in the course of transit to the consignee, and when they arrive in the possession of the consignee, he is in a position of not knowing, in the event of loss, what is the nature of the responsibility of the shipowner. That responsibility is going to vary with the cheapness of the freight which the particular consignor has been able to obtain. That seems to be quite wrong in principle. As a rule the measure of indemnity, when a loss takes place, is the actual loss, and it should be assessed on the basis of the value of the goods at the point at which they part company with the custody of the carrier.

The Chairman: Mr. Rudolf, would you be so good as to tell the Committee what the real obstacles are to declaring the value for the purpose of securing indemnity?

Mr. Rudolf: What I feel about the question of declaring the value for indemnity is this, that assuming we pay an ordinary rate of freight we are entitled as cargo owners to have a certain limited maximum value of responsibility returned to us. When you come [191] to declaring value in excess of £100 I quite agree that that is a question which really concerns the cargo owners, the underwriters and the shipowners; it is a question of adjustment of liability between the shipowners and the underwriters.

The Chairman: Excuse my putting questions to you: but why not declare the value at £100 or at £200? If the object is to secure care, declare a value which will secure care. If the object is to avoid the necessity of insurance, declare a value which will cover it. I am putting these to you as possibilities, because we are in danger of wrecking this business at the rate we are going on; that is all.

Mr. Rudolf: I do not want to be destructive, if I can possibly avoid it; but as regards what was spoken by Mr. Harris here in reference to the limitation of liability in certain bills of lading, I took the figure of £200, because that was a figure which was adopted after very careful consideration, and put in practice by the Australian Commonwealth Line of steamers as being a fair maximum figure. Other Australian lines adopted the same figure, and the Far East also. I quite appreciate there are certain claims which shipowners may not be liable for, but the cargo owners want to have it settled that the claims will be paid by right under the Code. During the course of these proceedings on several occasions, or on one or two occasions, Sir Norman Hill, who has been the protagonist for the case of the shipowners, has said points have come up which, if passed and carried, he could not go back to his constituents and recommend them to accept. I want to be perfectly frank with those liner representatives, and I say this: if anything less than £100 per package is agreed upon, I cannot, in face of my own views, and what I know to be the views of my colleagues at home, go back and recommend this amended figure.

Mr. De Rousiers: Mr. Chairman. I will only add a very few words to answer the very clever argument which was presented by Mr. Dor. First, Mr. Dor told you about the case of a motor car which had been transported from Algiers to Marseilles. I know the case very well, but I must say, as far as I am informed, it was not at all a case of limitation of liability; it was a case which was decided upon a very special rule of our Home trade regarding deck cargo; and so, if I am well informed, I think that even with the limitation of £100, the case of the motor car would have been decided in exactly the same way; so I think that argument has nothing to do with it. The case is very striking. I know it.

Now, I have no authority whatever to speak in the name of French shippers, but if I were a French shipper I would really complain about the argument of Mr. Dor, because he made the French shippers more black and more prejudiced than they are in fact; more black, first, because they do not ask so much as he asks for them. In the
French Bill Mr. Dor was referring to and which he was quoting, the limitation of liability proposed is 2,500 francs, and, as far as I know, that is a sum much lower than £100 gold just now, and so there is a discrepancy between the demand of the French shippers and the demand of Mr. Dor of £100 gold. I say also that they are not so prejudiced as to object to a motion because it comes from the shipowners. There is no discussion possible if we are to wait for the proposal of the shippers, without having the right to say something from our side. (Hear, hear). It is true that the motion was first moved by my friend Mons. Verneaux, who is the legal adviser of the Messageries Maritimes, and it is a great pity for it that it had such a disreputable father (laughter), but I think it is very easy for one of you to give it a very reputable godfather. It is not very difficult; you have only to admit it. We did not move the thing on the part of shipowners; we moved it because we thought it was a solution, and a just and possible solution, of the difficulty. Mr. Dor told us yesterday that what we were offering was a trifle, when I spoke about ten times the freight. If it was a trifle, the freight is a tenth part of a trifle; and if you admit the proposition of Sir Norman Hill it will be the twentieth part of a trifle, and I do not suppose shipowners would decide to ask such a freight, so really it is something in fact.

Another thing still. Mr. Dor made a great point of the fact that the alternative of taking cubic feet, or of measurement, or the package, deceived in fact the shippers; but with the proposition of Sir Norman Hill there is nothing of that kind. If the freight is counted by measurement, the indemnity will be counted by measurement; if the freight is counted by package, it will be counted by package; and in fact the shipper will be treated for the indemnity exactly as he has to be treated for the freight, and I suppose that [193] is justice. Those are the very few words I wanted to say in answer to Mr. Dor.

Mr. Howard Robinson: Mr. Chairman and Gentlemen. I rise to support Mr. Dor’s amendment, and I hope it will have unanimous support, otherwise I fear that all our work done here will fall to the ground. I feel persuaded, Gentlemen, that, unless such a provision is made, this Code of Rules will not be accepted by the Chambers of commerce in England, and particularly by the Birmingham Chamber of Commerce, and the merchants of that great city, whose interests I come here to represent.

Mr. Sidney Boulton: Mr. President and Gentlemen. So far as I represent underwriters I feel that I stand here in a more or less neutral position between our friends the shippers and the shipowners. I have listened with great interest to the proceedings, and I have an increasing hope that our work here may result in something of permanent value, something that we have been looking forward to for years. (Hear, hear). The matters which have been discussed to-day on the question of the limitation of the owners’ liability, are matters which largely fall beyond my own experience. I have listened to the two sides of the question, and I am bound to say I have come to the conclusion that for definiteness and for simplicity and everybody knowing where they stand, I am in favour of the proposition of Mr. Dor. (Hear, hear). I cannot understand the relation that is endeavoured to be set up between the freight and the damage sustained by the cargo owner. I have heard various arguments to that effect, but they have not convinced me, and it appears to me that the twenty times the value of the freight would not lead to simplicity, to definiteness, or, above all, to meeting the justice of the case. However, I feel that it is not in my province as an underwriter to dictate in these matters, and, if those terms are accepted by the representatives of the shippers and the Chambers of Commerce, then I have nothing more to say; but I feel bound to express my opinion, as a neutral in the matter, in favour of the simplicity and definiteness of the £100 limit of limitation of liability.

Sir Norman Hill: Sir. Might I venture a suggestion? I really have not had an opportunity of conferring with all the gentlemen with whom I am acting; but would this meet
the cargo owners, if we read No. 4: “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods of a greater value than £100 unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading”?

Mr. McConchy: Yes, we would accept that.

Sir Norman Hill: The object of it is this. I want to be quite clear to Mr. Dor, because he has blamed me a little bit in some of the things he said. I have not tried to approach the subject in the spirit that I think he thinks. (Hear, hear). Now, may I say I think dictating rules is bad business, but it is clearly the wish of the Committee that the rules should be dictated. I have accepted that and I am trying loyally to make the best of the rules, and make them the best working rules. You see the object; if the goods are in fact of a greater value than £100 per package we must be told, so that we can take the proper steps to make them as safe as we can. Is that a fair suggestion?

Mr. Dor: May I ask: will the effect of the clause be that if a case of silk is shipped of the value of £150, and you are not told anything, you will be responsible for £100?

Sir Norman Hill: No.

Mr. Dor: You will not be?

Sir Norman Hill: No.

Mr. Dor: Then I am afraid that will not do.

The Chairman: I am not sure. Let me read the words as I have them: “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods of a greater value than £100 unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading”. Sir Norman, are those the words?

Sir Norman Hill: Yes; but may I say, before I say “Yes” to your question, I mean, and I purposely mean, that if the package is worth £150 I must be told before shipment? If I am not told, I am not going to be responsible for that package, because it goes right against my chances. Take the instance which Mr. Harris has given you - an extreme instance - a minute package worth £50, a minute package worth £300 or £1,000; that is the package which tempts the pilferers, and we have to make arrangements accordingly. If it is silk, that tempts the pilferers more than if is cotton. We ought to make arrangements accordingly. There is not, surely, any hardship on the shipper to tell us quite frankly what is the value. We know that the average value of the packages is far below the £100. Nearly the whole of the trade will go through without any trouble, but you come up the point in which there are packages of value, and those packages we ought to be told of, so that we can see to the stowing, to the safe custody during the loading and discharging.

Mr. Rudolf: Sir Norman, would this meet your view: suppose that in any case where the package exceeded £100 it was notified to you that that package did exceed £100, without actually saying what the value was?

Sir Norman Hill: Mr. Rudolf, yes; if you will take the penalty, the penalty is on you.

The Chairman: It is a penalty put on the shipper.

Mr. Dor: Might I say a word on this new proposal?

The Chairman: Mr. Dor, I am not clear in my own mind whether the draft statute in France at present under consideration does not have the effect of Sir Norman Hill’s amendment.

Mr. Dor: No, Sir. I have the Bill here if you like to read it.

The Chairman: I will accept your statement.

Mr. Dor: You may take my word, because I have drafted it myself. First of all, I hope the meeting will allow me to say that, if in my previous statement I have said anything that my friends amongst the shipowners have thought harsh and strong, it is merely that I was carried away by the discussion, and that I did not mean anything un-
kind to people who are just as much friends to me as the cargo owners, and long-standing friends. But what I want to point out, is that the great ingenuity with which the shipowners are dealing with this clause and putting forward proposition after proposition to evade the one which the cargo owners want, the one which will give satisfaction to cargo owners, shows you that you have reached here the crux of the question. We are trying to shut the door by which liability will be evaded, and of course the shipowners with great skill are trying to leave the door, if not open, at least ajar. That proposition does not meet the case for the following reasons.

The Chairman: Mr. Dor. May I make a suggestion to Sir Norman [196] Hill, in the interests of time, before you proceed? Would Sir Norman Hill consider this? We have seen what the difficulty is: “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods to an amount beyond £100 per package, unless the nature and value of such goods have been declared”, and so on.

Mr. Dor: That quite meets the case.

The Chairman: Perhaps Sir Norman Hill will consider that while you are addressing the meeting?

Mr. Dor: That quite meets the case, but the clause as it stands does not meet it for the following reasons. When a case of silk is worth £120, and no value has been declared, the shipowner will be responsible for nothing. That means this: that case of silk is lost by the negligence of the master; it is admitted; the shipowner will say: “I admit that that case was lost by my own negligence, I am the one who was responsible, but I am not going to pay you one penny, because your case was worth £120, and you did not declare it”. Now who will suffer? Is it the shipper who did not declare? Is it the consignee?

Mr. Chairman: Might I ask Mr. Dor whether it would meet his view if there were the limitation upon the limitation that the shipper should declare the nature of the goods? For instance, if he is shipping silk he would say: “I am shipping silk”.

Mr. McConechy: Certainly.

The Chairman: If Mr. Dor would consider that. It is this difficulty about the reluctance to declare value which is at the root of the whole matter.

Mr. Dor: The difficulty is to make the consignee suffer for an admission of the shipper.

The Chairman: But they will not suffer. The consignee will take care, and the consignor, that they do not suffer when there is money in view.

Mr. Dor: Your draft, Sir, as you read it last, is perfect as far as I am concerned. I absolutely concur in the last draft which you read.

The Chairman: Now I hope Sir Norman Hill will see whether there is any real hardship in that. You get a real security for care and for diligence, which is what you want, because you do not want the shipowners to insure, and you get protection for the shipowner by knowing what kind of commodity he has to take care of.

Mr. McConechy: I agree to it.

Mr. Cleminson: Mr. Chairman.

The Chairman: Mr. Cleminson. I am not sure that discussion at the moment is what
we want. I am not sure that a little conversation is not what we want (Hear, hear), and, if the Committee will allow me, I will adjourn the session for five minutes. (Hear, hear). (Adjourned for five minutes)

**The Chairman:** Gentlemen. I propose to read the clause, as to the disputed part of it, in the form in which it has been discussed in the conversation. “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods to an amount beyond £100 per package, unless the nature of such goods has been declared by the shipper before the goods are shipped and has been inserted in the bill of lading”. Now, Gentlemen, I think it is within my province as Chairman to remind you what is in question. It is not insurance. (Hear, hear). That is a separate business. It is to secure that the shipowner does his duty in taking care of the goods (Hear, hear); and the real question is, as it seems to me, whether the due diligence and vigilance of the shipowner are best secured by putting upon him an obligation fixed at per package, or best secured by terms fixing upon him an obligation in proportion to freight. My own impression, after listening to the discussion, is that diligence and vigilance will be best secured, under present conditions, by fixing the amount at per package. It is a rough and ready way. Every shipper knows that he will have to insure valuable goods if he is going to take care of them himself; every shipowner knows that the shipper can put upon him under the original proposal a liability up to £200 or £100 by making a declaration of an arbitrary amount of £100 or £200. There really I think is not very much in it; but my own view is that, in the form in which the words are now framed, the shipowners are giving a real security for diligence and vigilance, precautions against pilfering, and matter of that kind; and that, if we are to do work at this Conference, and not to see our efforts dissipated, it would be probably a judicious thing to accept the proposal in the form in which it is now embodied. (Hear, hear). I ask the Committee if it is possible to accept this form of words by common consent. Perhaps members will consider whether that cannot be done.

**Mr. Rudolf:** May I ask one question? I just want to make it quite clear that the liability, in the event of the nature of the goods not being declared, is limited to £100?

**The Chairman:** Yes, I so understand it.

**Mr. Rudolf:** And even if the nature of the goods is not declared, while the claimant could not recover the actual value of the goods, he still remains entitled to recover the maximum of £100?

**The Chairman:** So I understand.

**Sir Norman Hill:** With regard to the £100, you have left it without any explanation. If you express it in gold it would to-day be very much against our British shipowners, and in the United States it would be substantially against cargo owners.

**The Chairman:** Cannot we trust the Exchange to regulate itself? (Hear, hear).

**Sir Norman Hill:** Cannot we take it at par value?

**Mr. Dor:** I should like to say a word upon this.

**The Chairman:** I hope we are not going to discuss. There is a great peril in discussion.

**Mr. Dor:** I do not want to discuss; I only want to agree. I only want to say that, if it is acceptable to shipowners, I think it might be also acceptable to cargo owners, that we should say £100 at par value, and I know that that would meet Mr. D Rousiers’ objection.

**The Chairman:** Is that so?

**Mr. Dor:** Yes, he told me so.

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**Mr. Knottenbelt:** May I ask something? Why is “value” taken away?

**Sir Norman Hill:** “Unless the nature and value”.
Mr. Knottenbelt: I think there was no opposition to the principle that the shipowner shall pay £100. He will pay more than £100 when the value is declared.

The Chairman: I follow the question now.

Mr. Knottenbelt: Why is “value” struck out now?

The Chairman: I follow the question. It is asked: Why eliminate the obligation to pay upon value? The answer is, because it is not, as I understand, the practice of business to insert the value of the goods in bills of lading, and because of business objections, which have not been formulated, existing. This is a compromise now.

Sir Norman Hill: Yes, Sir. With great respect I quite follow what is in your mind, and we are doing our best to get to a common agreement. If we submit to the £100 maximum without any declaration we cannot work the rest of the scheme without being given the value. If they want to get more than the £100 they cannot tell us the nature of it without telling us the value.

The Chairman: I follow that.

Sir Norman Hill: It need not be put on to the bill of lading, but we must be told, otherwise we cannot work it. You see, if you look at the clause here, I am liable, without any information, up to a maximum of £100, “unless the nature”, as you have it, Sir, “of such goods has been declared by the shipper before the goods are shipped and has been inserted in the bill of lading”. Now, Sir, there is nothing there indicating what I am liable for in excess of the £100.

Mr. Dor: May I interrupt a moment? Surely there is no objection to putting “nature and value”?

Mr. W. W. Paine: Yes, over £100 surely.

Mr. Dor: That means that the shipowner will not be responsible for more than £100 unless the value is declared. I have no objection to that, and you have no objection to that?

Mr. W. W. Paine: No, certainly not; it certainly must be right.

The Chairman: I will read the words again as amended. We are making progress, and I am much obliged to the gentlemen, because it would be really almost a shocking thing if business men could not come to an understanding where there are merely words [200] between them. (Hear, hear). “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods to an amount beyond £100 at par value per package unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading”. Does the Committee agree? (Agreed).

Mr. W. W. Paine: As a banker I want to ask - it does not convey any impression to my mind - as to what “£100 at par value” is? I have no knowledge of what it means.

Mr. Dor: We mean pre-war.

Mr. W. W. Paine: You mean gold?

Mr. Dor: No.

Mr. W. W. Paine: What do you mean?

Mr. Dor: We mean taking the £ at 25 francs exchange, at the pre-war exchange. In the “Times” they always put “Par value 25 francs”, and then the exchange of to-day so much.

Mr. W. W. Paine: I think you want to qualify that. I think you want some words in there.

Mr. Robert Temperley: The Drafting Committee will see to that.

The Chairman: Is it to be £100 at the current value of £100 sterling? (No, no).

Mr. W. W. Paine: It is with reference to the exchange.

Mr. Dor: What Mr. De Rousiers wanted was £100 at what we call the normal exchange, or the pre-war exchange, where the £ is worth 25 francs. That is what I understood he wanted.
Mr. W. W. Paine: May I suggest that it should be expressed in this way: “£100, or, at the par value of exchange in any other currency”? That is what is intended.

Sir James Hope Simpson: May I offer an observation on that? Let us take this case. Suppose you are exporting timber from Poland, if a claim arises and £100 is tendered, the Pole will get what will be worth I suppose to-day about 5s.; whereas if you take the current rate of exchange, he will get something like 700,000 Polish marks. That is a very serious thing. It seems to me that all calculations of business are not based upon theoretical standards like the par values; they are based on current rates of exchange; and it seems to me that the proper method is to say this, that it [201] shall be limited to £100, or, in the case of conversion into a foreign currency the equivalent of £100 at the current rate of exchange.

Mr. Dor: If you like.

Sir James Hope Simpson: That means the Frenchman to-day will get 4,700 francs against 2,500 pre-war.

Mr. Dor: That is quite all right; especially as we hope the exchange will soon right itself.

The Chairman: Then it reads: “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods beyond £100, or the equivalent in other currencies at the current rate of exchange”.

Sir James Hope Simpson: That is right, Sir.

Mr. De Rousiers: Quite right; that is exactly the reverse of the proposal which was made. That means in France you must pay just now about 5,000 francs instead of 2,500. You take the freight in francs, and you have to pay the indemnity in pounds. That is exactly the reverse.

The Chairman: I am afraid we must not go back; whether we are right or wrong, we must stand by what we have done. “£100, or the equivalent in other countries at the current rate of exchange, per package, unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading”. (Hear, hear). Now I proceed: “The declaration of the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier”. Then: “By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named”. Is that agreed? (Agreed).

Text adopted by the Conference

4. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods in an amount beyond £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods in an amount beyond £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named.

The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

Sitting of 10 October 1922

Sir Leslie Scott: .................................................................

The other question is in regard to that raised by His Honour Judge Hough, namely, with regard to the £100 limit of liability. I should like to hear a word or two about that.

Sir Norman Hill: With regard to the second point as to amount, you, Sir, can tell the Solicitor General a great deal more than I can about it. When we got to the £100 limit at the Hague is was a matter of the greatest controversy. I lost my temper and I think a good many other people lost their tempers.

The Chairman: I did not.

Sir Norman Hill: No, you sat absolutely calm and when we got up to the breaking point you said: “Now I am going to suspend the sitting for a quarter of an hour, and then during the quarter of an hour you lectured the hottest headed of us and the end of it was that we came in and we said that we would take what we thought was a very extravagant term. Of course we agreed it and we will take it. We still think it is an extravagant term and we think that having put it so high you are really putting an unnecessary burden on transportation. We stand by it. After all in 99 cases out of 100 we are carrying the goods of honest people, and even if they are not quite honest they are dealing with goods which are quoted freely on the markets of the world, and we know the real value and we shall have to pay according to the real value. The big £100 limit may afford some attractions to people who are not quite straight and we shall have to shoulder that, and pass it on in the freights we charge to the honest men. That will be the end of it. But really there is no question of principle in it. It was hard fighting and we could not get our way.

Afternoon sitting of 10 October 1922

M. René Verneux: .................................................................

En second lieu, il faudrait que cette Commission eût pouvoir d’opérer certains amendements. En ce qui me concerne, il y a un amendement que je réclame avec le
Comité Central des Armateurs de France: c’est notamment celui qui vise la limitation de la responsabilité à £100 par colis ou par unité. Lors de la Conférence de la Haye, par la bouche de M. de Rousiers, nous avons demandé que la limite ne fût pas une somme fixe, mais un multiple du fret. La suggestion n’a pas été adoptée; néanmoins, elle avait recueilli les suffrages de beaucoup de membres. C’est pourquoi je demande que la Commission amende le projet sous ce rapport de façon plus équitable et pratique.

Mr. Noboru Ohtani (Japan): Mr. Chairman. What I am going to say is principally on behalf of the Japanese Shipowners Association. When the Rules were before the International Conference of Shipowners in London last December, at which I had the pleasure of being present, I made certain reservations in respect of the minimum amount of the shipowners’ liability, which is fixed at £100. From various gentlemen here I understand that this was a very knotty problem at The Hague. The Japanese shipowners are still of the opinion that this amount is too high. It is because the cargoes moving in the Eastern ports are not like those shipped from European or American ports. They are usually of a rough character such as agricultural products, or marine products, and in most cases, the value per unit does not come up so high as £100.

Afternoon sitting of 11 October 1922

Sir Norman Hill (Rapporteur of the Sub-Committee): Those seem to us to be points and also the point with regard to the maximum liability of £100 with which we think the Diplomatic Conference can be trusted to deal.

Now, Sir, it is quite clear that there are members of that Sub-Committee who take very clear and very firm views indeed that the £100 is a business bargain, and that it must stand. There are other members of the Sub-Committee who were not at our meeting at the Hague, who take equally clear and positive views that that is too much. We could not bring back from the Sub-Committee any recommendation. You have our suggestion that we should leave it to the Diplomatic Conference. It will be for you, Sir, to say whether or not you think that is a wise recommendation, that we should leave the three points to them: the time from which the notice is to run, the period within which the suit is to be brought, and the amount.

Then, Sir, there is the next point, and if I am not conveying the views of the Sub-Committee - I did my best to ascertain them - I shall regret it very much with regard to my fellow members and still more to the Conference. As I understand it our recommendation is that we leave to the Diplomatic Conference to settle, we accepting their decision, first, the time from which the notice of loss or damage is to run - that depends upon what is to be treated as delivery, as the handing over from the ship. Secondly the time within which suit is to be started or claim barred, and thirdly, as I understand it - I am afraid that some members of the Sub-Committee think that my understanding is at fault - the limit of the £100. It is not that we want the Diplomatic Conference to start all over again and decide out of its innate wisdom the right solution on all those points. We thought that we had got it up to the point at which we could not
get to an agreement, but if the Diplomatic Conference reviewed all the considerations that had been placed before us, they were points upon which we could take their judgment as an impartial tribunal. That is the second point.

M. Leopold Dor: I have, Sir, very few words to add.

The Chairman: Not debate.

M. Leopold Dor: Not debate. It has been said by Sir Norman Hill that we agreed to leave the wording of that paragraph, the question of the time limit and the £100 per ton to the Diplomatic Conference. I quite agree with Sir Norman Hill as regards the first two points. I do not think the wording of the paragraph matters very much. As to the time limit, we wanted one year and the English delegates wanted two years.

The Chairman: This is debate, and I have passed from the point by direction of the Conference.

M. Leopold Dor: But as to the £100 limit, I do not understand that we were to leave it to the Diplomatic Conference. If that point had been raised in that Committee, I should have opposed with all the strength of which I may have been capable and I think that it is vital that we should not invite the Diplomatic Conference to dabble with that question of the £100 limit on which agreement was arrived at with such difficulty.

The Chairman: This is debate. I must ask Sir Norman Hill whether in his view the Committee was agreed to submit to the Diplomatic Conference the question of the limitation of amount, namely, the £100.

Sir Norman Hill: So I understood, Sir.

The Chairman: Then I will ask Mr. Franck what is his view first. Will the Committee be ready to accept the view of Mr. Franck on that subject?

Dr. Eric Jackson: Certainly.

M. Leopold Dor: Certainly.

Sir Norman Hill: Certainly.

Mr. Louis Franck: Then, Gentlemen, you will quite understand how difficult it is, when time is so short, that we cannot make a written report. The exchange of views upon this matter of the £100 was only very short, and made for a part in French, and it may have escaped the notice of Sir Norman Hill what was the real meaning. My opinion is that the Commission was of opinion that we should not bring that matter back before the Conference, but that we should stick to the bargain which has been made and keep the £100. (Hear, hear).

The Chairman: Before inviting the members to agree to accept Mr. Franck’s decision, I ought to have consulted the Chairman, Judge Hough. Perhaps Mr. Justice Hough will tell us whether he has anything to add to that?

Mr. Judge Hough: It appears to me it is question of reporting. I have a very distinct impression that the question of the time of making claim, the way of making claim [470] claim, and the amount to which each claim would normally be limited, were all tied and fastened together. That was so in my mind and I went away from the Committee meeting, with the belief that all of those subjects so tied together were properly, in the opinion of the Sub-Committee, to be left for consideration at Brussels in which I agree with Sir Norman Hill.

The Chairman: We are in this position that Sir Norman Hill has consented and the other members have consented to accept the view Mr. Franck had formed. I daresay the learned judge will find himself in a position, as this is a matter of reporting, to fall in with the Committee about it. May I assume that?

Judge Charles Hough: I assume the Report is in favour of the statement made.
Now Article IV, Clause 5. The question here is whether a representation shall be made to the Diplomatic Conference upon the subject of Article IV, clause 5, and in particular the limitation as to damage to an amount not exceeding £100 per package. I think I ought to take the sense of the Conference as to whether the Conference desires to make a representation to the Diplomatic Conference upon the terms of that Article.

Mr. J. R. Rudolf (Liverpool): Mr. Chairman. I am sorry, at this stage of our proceedings, to introduce anything which may appear to run counter to the spirit of unanimity which appears to prevail; but, Sir, with regard [482] to this clause, the £100 limit of liability, you may recall that at the Hague Conference a moment arrived in our proceedings when I, as one of the representatives of cargo, had very frankly to state that, if the shipowners were not prepared to consider a limit of liability, in so far as I was concerned, and my constituents were concerned, I could not usefully remain at the Conference. You, on that occasion, Sir, very advisedly I think, suggested that we should adjourn for tea. We did follow that course, and after that innocent refreshment, those of us representing cargo came back with the £100 limit of liability in our pockets. That was owing in a great sense to the conciliatory spirit exhibited by the shipowners; and I say here frankly to-day that, with the values as they rule to-day as compared with the values which ruled at the time of our Conference at The Hague, I doubt very much if we would have got today such a minimum limit as £100; but it may be a satisfaction for our shipowner friends in years to come to remember that they dealt with us generously.

Now, Sir, why were we, as representatives of the cargo, so insistent upon having this minimum limit? The reason was that we had found from bitter experience that, in the case of legislative enactments such as the Harter Act and other similar Acts, they provided for the nature of the liability to be assumed by the carrier, but they did not provide for the measure of damages which might flow from a breach of that responsibility on the part of the carrier; in other words the legislative enactments embodied in those documents were quite illusory. It was perfectly competent to a carrier, while being responsible [483] under the terms of the Act for the nature of the liability, to insert a stipulation in the contract of carriage to the effect that, as between the parties to the contract, the value per package should be agreed at so and so; in other words it practically rested with the carrier to say what amount he should be liable for in the event of damages occurring. Let me give the Conference, if I may, a concrete instance of what I have in mind. 20 bales of cotton insured under a bill of lading embodying the Harter Act were mis-delivered at Havre. The value of the cotton at that time was approximately £40 to £45 per bale, yet the bill of lading included the clause that the value as between the parties was to be taken as 100 dollars per bale. At the rate of exchange then ruling that represented some £25 per bale as against a value of £40 to £45. The carriers declined to pay anything more than 100 dollars per bale, and the Courts upheld their view. The Courts in this country I believe, the Courts in the United States I believe, and in many Continental countries, have also given their sanction to a stipulation of that nature in a contract. That is why we, as cargo representatives, consider that if you do away with this minimum limit of liability you destroy one of the twin corner stones of the whole principle of these Rules. We have fought as cargo owners for that, and we cannot, as far as the interests which I represent are concerned, consent to one of the most vital principles of the Rules being relegated to the consideration or to the decision of a body such as the Diplomatic Conference. The Diplomatic Conference may be perfectly well, and, I have no doubt, undoubtedly, capable to deal with all matters of jurisprudence and [484] questions of drafting regulations, but I do say, Sir, that the Diplomatic Conference are not the body to consider questions of com-
commercial values as between commercial men. (Hear, hear). And I say that we should be very badly advised, I think, if we do not agree to allow that stipulation to remain in the Rules as amended, and as they are before us to-day, and to eliminate entirely any question of referring such a point to the Diplomatic Conference. (Hear, hear).

Mr. E: B. Tredwen: I should like to speak on this subject, because in the Australian trade, which I particularly represent, the maximum limit, and it is a maximum limit not a minimum limit, as Mr. Rudolf stated, is £200. In all these matters it is a question of compromise. We were not desirous of giving up the £200 which we can go up to under the previously existing bills of lading, but in order that we might carry out the agreements arrived at at The Hague we, as a trade, were willing to give up that and come to £100. But I think it will be a great mistake to go below that, and, particularly as £100 was agreed to at The Hague, I think we should carry out loyally the arrangements made at The Hague, and vary those Rules as little as possible. (Hear, hear). Therefore I think it will be very undesirable to make any alteration in this, especially as in the trade I particularly represent it is half the amount that we previously were getting. (Applause).

M. Laurent Toutain: I have just a word to say. It is not quite clear to me if the provision in these Rules means that the £100 is the maximum responsibility or [485] if there is to be admitted a proportion of it for the real value of the thing, or if the shipowner is always responsible up to the amount of £100. There are differences of decision on this question in the Courts.

The Chairman: I will ask Mr. Franck to reply.

Mr. Louis Franck: My Lords and Gentlemen. The reply is that this figure of £100 is a maximum limit and in all cases, and I think we ought to maintain it. It does not really matter very much: the main thing is that there is limit, and this is a very reasonable one, and I should say, a very generous one, and we ought not to ask more.

Mr. Leopold Dor: I only want to ask Mr. Franck whether he does not really mean a minimum limit?

Mr. Louis Franck: No.

Mr. Leopold Dor: That is rather important.

Mr. Louis Franck: It is a maximum.

Mr. Leopold Dor: Do you mean that the £100 is the maximum, because I understand you to want to mean that the £100 is the minimum limit of responsibility, and that the shipowner cannot limit his liability for any package to less than £100.

Mr. Louis Franck: Yes.

Mr. Leopold Dor: I call that a minimum limit, not a maximum.

[486]

Mr. Louis Franck: Oh, well.

The Chairman: The question which I submitted was whether the Conference desires to make any representation to the Diplomatic Conference upon the matter raised by Article IV, Rule 5. Does any member offer any further observations upon that?

Me. J. S. McConechy: I only wanted to say that it is not a question for the Diplomatic Conference, and I quite agree with all that Mr. Rudolf has said. It is no use my wasting time by going over the ground again.

The Chairman: Mr McConechy, as the members know, speaks for the Manchester interests in particular. Now I put the question: Is it the desire of the Conference that any representation should be made to the Diplomatic Conference upon the question involved in Article 4(5)? (No). Then I take it that it is not the opinion of the Conference that any such representation should be made. That is agreed? (Agreed).
Text adopted by the Conference  
(CMI Bulletin No. 65 - Gothenborg Conference) 

[381]

No change.

Conférence Diplomatique - 
Octobre 1922 
Réunions de la Sous-Commission 
Deuxième Séance - 20 Octobre 1922

Chairman, Mr. Justice Hough

Mr. Langton, British delegate, indicated that it would be necessary to say in the English text “become liable” instead of “responsible”, the latter expression was not favored in England. The commission made no objection to this proposal.

Mr. Molengraff, delegate from the Netherlands, entered objections with regard to the expression “in any event” (en aucun cas) in connection with article 3(2). There is no relationship between seaworthiness and responsibility for the ship’s equipment and supplies on the one hand and the declaration of value of goods on the other. The limit of £100 should not relate to losses or damages in respect of unseaworthiness, but solely to custody of cargo, that is to say, to the responsibility and care of goods.

Mr. Langton, British delegate, observed that the basis of the agreement reached between shippers and shipowners was not to “custody of cargo” but rather seaworthiness. If it were simply a matter of the handling of cargo, then the limit should have been set at a lower level. Mr. Molengraff had called into question the very basis of the compromise between the interested parties.

The Chairman observed that in practice the original shipper was not much concerned with the notification of claims. Rather it was the large shipping associations who were interested in this
Ces réclamations ne sont pas traitées de façon différente selon qu’elles sont le résultat d’innavigabilité ou d’une autre cause. L’innavigabilité est une cause fondamentale annulant le contrat, tout comme la déviation injustifiée.

**M. Langton**, Délégué de la Grande-Bretagne, fait observer que la clause d’“act of God”, par exemple, dépend de la garantie de navigabilité. Cette garantie n’existant plus, l’exception elle-même devrait disparaître.

Mr. Langton, British delegate, pointed out that the “act of God” provision, for example, depended on the guarantee of seaworthiness. If that guarantee ceased to exist, then such an exception should itself disappear.

[192]

**M. de Rousiers**, Délégué de la France, se demande ce que représente, au point de vue des pays non anglais, la limite de £ 100? Cette question devrait être réglée indépendamment du change.

Mr. de Rousiers, French delegate, wondered what, from the point of view of non-English countries, the limit of £100 represented? This question ought to be regulated independently of exchange.

À la Conférence de La Haye, les Délégués français avaient proposé de dire: tel pourcentage ou l’équivalent au pair en la monnaie en laquelle le fret est payable.

At the Hague Conference, the French delegates had proposed saying: such a percentage or the equivalent at par in the currency in which the freight is payable.

**M. Bagge**, Délégué de la Suède. - La question se pose tout comme pour la convention sur la limitation de la responsabilité.

Mr. Bagge, Swedish delegate. The question is exactly the same as that posed for the convention on the limitation of liability.

Dans les États où la livre sterling ne constitue pas l’unité monétaire, la limitation exprimée dans la présente convention en livres sterling pourra être fixée par la loi de cet État en monnaie d’or nationale à un montant correspondant autant que possible à la valeur de ladite livre sterling, selon les rapports existant quant au poids et au titre entre la livre sterling et la monnaie d’or de l’État en question.

In the States where the pound sterling is not the unit of currency, the limitation expressed in the present Convention in pounds sterling may be fixed by the law of that State in national gold coin at a rate corresponding, as far as possible, with the value of the said pound sterling using the existing reports as to the weight and standard between the pound sterling and the gold coinage of the State in question.

**M. de Rousiers**, Délégué de la France, est d’avis que tout le monde sait ce que veut dire “contre-valeur en or”.

Mr. de Rousiers, French delegate, was of the opinion that the whole world knew what was meant by “counter value in gold”.

**M. van Slooten**, Délégué des Pays-Bas, est d’avis que la limite de £ 100 par colis est bien trop élevée. Le chiffre de 100 $ suffirait.

Mr. van Slooten, delegate from the Netherlands, was of the opinion that the limit of £100 per package was too high. The figure of $100 would be sufficient.

**Mr. de Rousiers**, French delegate, was of the opinion that the whole world knew what was meant by “contre-valeur en or”.

**M. Bagge**, Swedish delegate. The question is exactly the same as that posed for the convention on the limitation of liability.

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**M. de Rousiers**, French delegate, was of the opinion that the whole world knew what was meant by “counter value in gold”.

**M. van Slooten**, delegate from the Netherlands, was of the opinion that the limit of £100 per package was too high. The figure of $100 would be sufficient.

**The Chairman** remarked that in the United States, they had wanted to determine the average value of all packages ar-
ce. - Je crois que £ 100 est, en effet, excessif; mais je m’abstiendrai de revenir sur ce point parce que, personnellement, j’ai consenti à admettre le chiffre de £ 100, pour ne pas mettre la convention future en échec.

M. Le Jeune, Délégué de la Belgique, est d’avis que l’on ne peut revenir sur le chiffre de £ 100. Cela mettrait à néant tout le système élaboré au prix de tant de peines et de labeur. D’ailleurs, ce chiffre n’a rien qui doive nous effrayer, puisque £ 100 n’est qu’une limite maximum, mais que, dans chaque cas, on ne devra payer en fait que la valeur réelle du colis.

**Troisième Séance - 21 Octobre 1922**

On reprend la discussion de l’article 4(5).

M. le Président propose d’omettre complètement le dernier paragraphe du 5°: “La déclaration du chargeur quant à la nature et à la valeur des marchandises déclarées constituera une preuve de pri- ma facie, mais ne liera pas le transporteur, à qui la preuve contraire est réservée”. A son avis, en effet, une déclaration quel-conque faite par un chargeur peut valoir comme preuve contre le déclarant même, mais non contre son co-contractant.

M de Rousiers, Délégué de la France, répond que ce que les rédacteurs ont eu en vue, c’est une déclaration insérée dans le connaissement, qui peut donc parfaite- ment lier le transporteur.

D’autres membres appuient cette opinion.

M. le Président constate donc que la Commission interprète ce texte comme s’appliquant aux déclarations faites par le chargeur, acceptées par le transporteur et insérées dans le connaissement.

M. van Slooten, Délégué des Pays-Bas, insiste sur sa proposition concernant la réduction du chiffre de responsabilité de £ 100 par colis à 100$. 

M. Bagge, Délégué de la Suède, d-
Maître de Rousiers entend par l’expression “au pair” (par value) pour les £100.

Maître de Rousiers, Député de la France, répond que la valeur “au pair” ne change jamais.

Maître Le Jeune, Député de la Belgique.
- La valeur de la livre varie de jour en jour.

Le Président a compris que Maître de Rousiers a voulu dire, à la séance précédente, que du moment où il y avait perte, on vérifierait d’abord en quelle monnaie le fret est stipulé. Le fait de stipuler le fret en francs met le franc au pair. De cette façon, £ 100 au pair voudrait dire 2.525 francs.

Maître Le Jeune, Député de la Belgique, remarque que c’est la valeur réelle des objets perdus qui devra être payée. Le taux du change ne vient en ligne de compte que lorsqu’il s’agit de déterminer ce que £ 100 représentent.

M. le Président rappelle qu’il y a eu trois propositions au sujet de ce paragraphe.

M. Molengraff a proposé que les réclamations pour perte ou dommage soient assimilées à celles concernant les manquements aux obligations conférées par l’article 3(2).

M. de Rousiers a parlé des £ 100 et de l’équivalent en monnaie française.

M. Bagge a suggéré une rédaction dans le sens des autres conventions: £ 100 or ou équivalent en monnaie-or.

Au nom des États-Unis, M. le Juge Hough a proposé de rédiger le troisième paragraphe comme suit:

La déclaration du chargeur quant à la nature et à la valeur des marchandises déclarées, si elle est insérée dans le connaissement, constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester.

Et il a ensuite proposé de remplacer les deux premiers alinéas par le texte suivant:

Le transporteur comme le navire ne seront en aucun cas tenus des pertes expression “au pair” (par value) for £100.

Mr. de Rousiers, French delegate, replied that the par value never changed.

Mr. Le Jeune, Belgian delegate. The value of the pound varies from day to day.

The Chairman understood that what Mr. de Rousiers had meant, during the preceding session, was that after a loss occurred the first thing to be verified would be the currency in which the freight was specified. The fact of specifying the freight in francs put the franc at par value. In this way £100 at par value equaled 2,525 francs.

Mr. Le Jeune, Belgian delegate, observed that it was the real value of the lost objects that should be paid. The rate of exchange was only taken into account when it came to determining the value of £100.

[202] The Chairman reminded the commission that the paragraph contained three proposals.

Mr. Molengraff had proposed that the claims for loss or damage should be compared to those concerning breaches of obligations conferred by article 3(2).

Mr. de Rousiers had mentioned £100 and its equivalent in French currency.

Mr. Bagge had suggested a form of drafting consistent with other conventions: £100 gold or equivalent in gold coinage.

On behalf of the United States, Judge Hough had proposed a redrafting of the third paragraph as follows:

The declaration made by the shipper as to the nature and value of any goods declared, if embodied in the bill of lading, shall be prima facie evidence; but shall not be binding or conclusive on the carrier. And he had then proposed to replace the first two paragraphs with the following text:

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connec-
ou dommages causés aux marchandises ou les concernant, pour une somme dépassant 100 £ par colis ou unité, ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et insérées dans le connaissement.

Par convention entre le transporteur, capitaine ou agent du transporteur, et le chargeur, une somme maximum différente de celle inscrite dans ce paragraphe peut être fixée, pourvu que ce maximum ne soit pas inférieur à £ 100 ou à leur équivalent.

La commission se déclare d’accord sur ce dernier texte.

On vote ensuite sur les propositions faites en ce qui concerne la limite de £ 100. La proposition de M. van Slooten tendant à fixer à $ 100 au lieu de £ 100, n’est pas acceptée.

M. Bagge, Délégué de la Suède, rappelle qu’à la Conférence de Londres, Sir Norman Hill a déclaré que cette disposition ne s’appliquerait pas aux cargaisons en vrac.

M. van Slooten, Délégué des Pays-Bas, ajoute qu’il a cité le cas d’une cargaison de blé en vrac pour laquelle on avait émis dix connaissements.

M. le Président concède qu’une cargaison en vrac n’est pas un colis.

M. Bagge, Délégué de la Suède, en conclut que la disposition ne s’applique pas à ces marchandises.

M. le Président objecte le cas d’une cargaison en vrac, dans lequel le récepteur se présente avec un connaissement pour 1,000 bushels. Si, au déchargement, il n’y a que 900 bushels, l’armateur sera évidemment tenu pour le manquant. Il n’avait qu’à se protéger contre pareil manquant.

Sir Leslie Scott, Délégué de la Grande-Bretagne, demande quelle date l’on prendra pour le taux du change?

M. Langton, Délégué de la Grande-Bretagne, souligne que cette question est importante eu égard aux variations multiples des cours.
M. le Président estime que c’est là une question encore plus difficile que celle des connaissements; elle se présente d’ailleurs dans toutes espèces de procès.

Septième Séance Plénière - 25 Octobre 1922

[140]

M. le Président. - Il a déjà été décidé à l’unanimité que la dernière phrase serait modifiée comme suit:

La déclaration du chargeur quant à la nature des marchandises déclarées, si elle est insérée dans le connaissement, constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur, qui pourra la contester.

M. le Président. - . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

N’y-a-t-il pas d’autres observations au sujet de cette modification proposée à l’unanimité? Dans ce cas, je la déclare acceptée. Il y a ensuite eu une proposition de Pays-Bas, tendant à remplacer le chiffre de £ 100 par 100 dollars. Cette proposition a été repoussée. Nous maintenons donc £ 100 (Adhésion).

Les États-Unis ont ensuite proposé un amendement que vous trouverez à la page 5. C’est plutôt une amélioration de rédaction:

Le transporteur comme le navire ne seront en aucun cas tenus des pertes ou dommages causés aux marchandises ou les concernant, pour une somme dépassant £ 100 par colis ou unité ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et insérées dans le connaissement.

Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, une somme maximum différente de celle inscrite dans ce paragraphe peut être fixée pourvu que ce maximum ne soit pas inférieur à £ 100 ou leur équivalent. (Adopté).

La question qui se pose ensuite est de cerning bills of lading; it appeared elsewhere in all sorts of lawsuits.

Seventh Plenary Session - 25 October 1922

[140]

The Chairman. - It has already been unanimously decided that the last sentence should be amended as follows:

The declaration made by the shipper as to the nature and value of any goods declared, if embodied in the bill of lading, shall be prima facie evidence; but shall not be binding or conclusive on the carrier.

The Chairman. - . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Are there any other comments on this amendment proposed unanimously? In that case, I declare it accepted. There was then a proposal from the Netherlands which is intended to replace the figure £100 by $ dollars. This was rejected. We are therefore keeping to £100. (Agreed).

The United States then put forward an amendment that you will find on page 5. It is really an improvement to the drafting:

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

By agreement between the carrier, master or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum be not less than £100 or its equivalent. (Carried).

The question that now arises is to decide whether it is necessary to do as in the convention on liability where it is
savoir s’il ne faudrait pas faire comme dans la convention sur la responsabilité où il est dit que les monnaies étrangères s’entendent valeur-or? Logiquement il faudrait avoir la même règle, si vous voulez avoir la même base.

M. de Rousiers. - Je crois que nous pourrons nous arrêter à n’importe quelle formule, si nous avons un taux inéchangeable. Mais si vous mettez £ 100 vous serez obligés de fixer la date du change. Donc, il vaut mieux s’en tenir à ce qui a été accepté de commun accord entre les armateurs et les chargeurs. J’ai déjà dit que 100 £ est exagéré, mais puisque nous admettons ce chiffre, je demanderai seulement que la date qui devra être prise soit la date du règlement du dommage. Il a été proposé aussi de prendre la date du paiement du fret. Il importe peu que ce soit l’une ou l’autre date; ce qui importe c’est que l’on sache exactement laquelle et que cela soit indiqué d’une façon claire. Dans l’esprit de la Commission, c’était, je crois, la date du paiement du fret.

M. le Juge Hough. - Non, à mon esprit c’était la date à laquelle l’indemnité devenait due.

M. le Président. - Si c’est cela, il n’y a qu’une formule pratique: c’est de dire que l’équivalent s’entend à la date d’arrivée au port auquel la marchandise est destinée.

En effet, si vous prenez la date du paiement, cela peut différencier de cinq ou de six jours. Je vous propose donc de mettre:

Ou l’équivalent de cette somme en
une autre monnaie au cours du change à la date de l’arrivée du navire au port.

Sir Leslie Scott. - C’est-à-dire, au port de déchargement?

M. Ripert. - Au port de déchargement des marchandises dont il s’agit.

M. le Président. - C’est une pure question de change, mais je préfère beaucoup la date d’arrivée. La seule raison pour cela est que la date d’arrivée au port
est une date fixe. Si vous prenez, au contraire, une autre date comme le déchargement, ou l’exigibilité, il peut y avoir plusieurs jours de différence.

Sir Leslie Scott. - Nous acceptons cette proposition.

M. de Rousiers. - Mettons: “Le changement sera calculé à l’arrivée du navire au port de déchargement”.

M. Beecher. - Je pensais que le dernier alinéa du paragraphe 5 était supprimé. Il est condamné autant par les chargeurs que par les assureurs et les propriétaires de navires en Amérique comme n’étant basé sur aucun principe sain et comme constituant une invitation à la fraude. Pour autant que je sache, ce paragraphe adopte une proposition qui n’est admise par la loi d’aucun pays. Il essaie de faire admettre une déclaration par le chargeur comme constituant une présomption, sauf preuve contraire, à son profit. C’est une stipulation contre l’armateur qui n’a pas d’occasion raisonnable pour se défendre.

Prenons, par exemple, le cas d’expédition de marchandises par des chargeurs absolument inconnus de celui qui reçoit un connaissement avec la valeur indiquée que l’armateur déclare accepter. Le connaissement est négociable. Dans la suite, les marchandises s’étant perdues, une réclamation est produite pour la pleine valeur des marchandises telle qu’elle est indiquée au connaissement. Ce connaissement ne constitue qu’une prima facie evidence pour le transporteur. Ceci est à défendre quand il n’y a aucune preuve de la valeur réelle des marchandises. Tout ce que l’on pourra faire, c’est de produire le connaissement et le juge devra accorder la demande à moins que le transporteur ne puisse fournir la preuve du contraire. Cette règle renverse absolument les principes de la loi américaine, d’après laquelle, lorsque quelqu’un formule une réclamation, il doit apporter certaines preuves et il doit se soumettre à la “cross examination”. C’est d’ailleurs une question qui n’est pas à sa place ici. À Londres, j’ai voulu me rendre compte de l’origine de cette clause et l’on m’a dit take another date, such as that of unloading or settlement, there may be several days difference.

Sir Leslie Scott. - We accept that proposal.

Mr. de Rousiers. - Let us put: “The exchange will be calculated on the ship’s arrival at its port of discharge”.

Mr. Beecher. - I thought the last subparagraph of paragraph 5 had been deleted. It was condemned as much by the shippers as by the underwriters and shipowners in America for having no basis in any rational principle and for constituting an invitation to fraud. For all I know, this paragraph is adopting a proposal that is not permitted under the law of any country. It is trying to pass off a notice by the shipper as constituting prima facie evidence to his own benefit. It is a provision against the shipowner who is given no reasonable opportunity to defend himself.

Take, for example, in the case of the consignment of goods by shippers who are completely unknown to the person who receives a bill of lading showing the value that the shipowner says he will accept. The bill of lading is negotiable. As such, the goods being lost, a claim is filed for the value of the goods as it appears in the bill of lading. This bill of lading does not constitute prima facie evidence for the carrier. This should be forbidden when there is no other proof of the true value of the goods. All that one can do is to produce the bill of lading, and the judge will have to allow the claim unless the carrier can produce evidence to the contrary. This rule completely reverses the principles of American law in which when someone formulates a claim he must have certain proofs and must subject himself to cross examination. That is, however, a question that has no place here. In London, I wanted to discover the origin of this clause and I was told that certain shippers and shipowners had insisted on this arrangement although it seemed totally unreasonable, and that in
que certains chargeurs et armateurs avaient insisté sur cette disposition bien qu’elle paraît absolument déraisonnable et qu’en Angleterre les armateurs comp-
taient se défendre en faisant ouvrir les co-
lis. En Amérique, pareille disposition n’est pas admise au point de vue légal et elle est aussi impraticable. Elle tendra seulement à encourager les fraudes, mais elle ne peut être d’aucune valeur réelle pour le transporteur honnête.

M. le Président. - Je croyais que cela avait été accepté, mais je remarque main-
tein, par les observations de M. Bee-
cher, que ce n’est pas le cas. Il s’agit des déclarations insérées dans le connaisse-
ment. Le capitaine n’est pas obligé, je pense, d’accepter une déclaration quant à la valeur de la marchandise. Il n’est pas même obligé de l’accepter quant à la na-
ture de la marchandise, sauf dans les cas où il s’agit d’une identification générale et pour autant seulement qu’il puisse s’en as-
surer. La question est alors de savoir si, quand le capitaine accepte volontaire-
ment la déclaration de valeur, d’une part, et que, d’autre part, il accepte la déclara-
tion de la nature de la marchandise, il est excessif de dire que, jusqu’à preuve du con-
traire, il est lié par les clauses qu’il a acceptées.

M. le Juge Hough. - Afin que les autres Délégués puissent comprendre la situa-
tion, qu’il me soit permis de donner une explication personnelle. A la suite des déclarations de mon collègue au sujet des effets de cette disposition au point de vue de la loi des Etats-Unis et des usages du commerce maritime, je suis d’accord avec lui. Cependant, j’ai été aussi d’accord pour admettre cette clause et je suis enco-
re toujours disposé à l’accepter pour la raison suivante: [142] Cette clause ne s’applique que lorsque la valeur indiquée est supérieure à £ 100 par colis ou unité et, dans ce cas, les règles permettent à chaque transporteur de stipuler le fret qui lui convient. Vu donc l’insistance des char-
geurs et la grande influence dont ils dis-
posent, considérant aussi la faculté qu’à l’armateur de demander n’importe quel taux de fret, je dois dire (et je regrette

England the shipowners relied for their defence on opening the packets. In America, such an arrangement is not permitted from a legal point of view, nor is it practical. It will only tend to encour-
age fraud while it cannot be of any real value to the honest carrier.

The Chairman. - I thought that that had been accepted, but I see now from the comments of Mr. Beecher that it was not so. It concerns the details inserted in the bill of lading. The captain is not obliged, I think, to accept a declaration as to the value of the goods. He is not even obliged to accept one as to the na-
ture of the goods, except when dealing with a general description and then only for as much as he might need to be con-
fident of. The question is therefore to discover if, when the captain voluntarily accepts the declaration of value from one source and the nature of the goods from another, it is too much to say that, until proof to the contrary, he is bound by the provisions he has accepted.

Judge Hough. - In order that the oth-
er delegates may comprehend the situa-
tion, please let me offer a personal expla-
nation. Regarding my colleague’s state-
ment on the effect of this provision un-
der the laws of the United States and un-
der maritime commercial practices, I am in agreement with him. However, I was also prepared to accept this provision and I am still prepared to accept it for the following reason: [142] This provi-
sion only applies when the declared value is greater than £100 per piece or item, and in such a case the rules allow the car-
rrier to stipulate the freight charge that suits him. Taking into account the insis-
tence of the shippers and the great influ-
ence they bring to bear, and considering also the ability of the shipowners to de-
mand whatever freight-charges they like, I have to say (and I regret that my opin-
ion is different from that of my esteemed colleague) that today it has become quite normal for the carrier to accept a higher declaration of value and, in conse-

d'être sous ce rapport d'une opinion différente de celle de mon estimé collègue) que, de nos jours, il est devenu une chose normale que lorsque le transporteur accepte une déclaration de valeur plus élevée et porte, par conséquent, en compte le taux de fret qu'il désire, le connaissement des marchandises est devenu, en quelque sorte, comme une police d'assurance avec valeur agrée. Je sais bien que l'assimilation n'est pas parfaite, mais l'idée est la même. C'est pour ce motif que je suis disposé à adhérer au texte proposé.

_M. Henriksen._ - A la suite de ce que M. le Juge Hough vient de dire, je voudrais demander qu'il soit inséré au dernier paragraphe du n° 5, l'explication que M. le Juge Hough a donnée, c'est-à-dire que cela ne se réfère qu'aux cas où l'on déclarerait pour la marchandise une valeur supérieure à £ 100 par colis. Tel que le paragraphe est rédigé en ce moment, je me range à l'avis de M. Beecher, à savoir qu'il n'est pas admissible pour les arma- teurs, mais il le deviendrait si nous y insérons ce que M. le Juge Hough a déclaré.

_M. le Président._ - Je ne pense pas que nous puissions faire cela. Ce que M. le Juge Hough a dit, c'est que la question n'a d'importance que quand la valeur dépasse £ 100. Mais, à mon avis, je ne vois pas pourquoi, si le propriétaire de navire permet à son capitaine de signer des connaissements avec une valeur déclarée, pareille clause devrait être sans effet. L'armateur n'a qu'à dire à son capitaine qu'il ne doit pas signer de pareils connaissements ou qu'il ne doit pas même accepter de déclarations quant à la nature, si ce n'est conformément au texte de l'article 3(3).

_Judge Hough._ - Personnellement, je serais très heureux de voir insérer ce que M. Henriksen a dit. Mais j'appelle son attention sur la rédaction de l'article 4(5) tel qu'il figure actuellement dans l'avant-projet. Les derniers mots du premier paragraphe, to charge the freight rate that he wants. The bill of lading has become, in a way, a sort of insurance policy with an agreed value. I know that this is not a perfect analogy, but the idea is the same. It is for this reason that I am prepared to support the proposed text.

_Sir Leslie Scott._ - I had asked permission to speak, but, after hearing Judge Hough, I have nothing to add. If the conference is prepared to accept the amendment prepared by the commission, that will suit us very well.

_Mr. Henriksen._ - Following Judge Hough's remarks, I would like to ask that the explanation he gave be added to the last subparagraph of paragraph 5 - that is to say, that this only applies to the situation where a value of more than £100 is declared for goods. As the paragraph stands at the moment, I share the views of Mr. Beecher, that it is not admissible for the shipowners but it would become so if we insert what Judge Hough has said.

_The Chairman._ - I do not think we can do that. Judge Hough has said that this question is only of importance if the value is greater than £100. But, in my view, I do not see why, if the owner of a ship permits his captain to sign a bill of lading with a declaration of value, such a clause would be without effect. The shipowner has only to say to his captain that he should not sign such a bill of lading or not even accept such a declaration if it is not in accord with the text of article 3(3).

_Judge Hough._ - Personally, I should be very happy to see such an insertion as Mr. Henriksen has mentioned. But I would draw his attention to the wording of article 4(5) as it appears in the draft. The final words of the first paragraph - "unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading" - and the declaration in the last phrase that we are currently discussing seem to me clearly to refer to
À moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et n’aient été insérées au connaissement” et la déclaration dans la dernière phrase dont nous parlons en ce moment me paraissent évidemment se référer aux “marchandises déclarées” du premier paragraphe. De sorte que “marchandises déclarées” et “déclaration du chargeur” se confondent.

Sir Leslie Scott. - Je serais du même avis que M. le Juge Hough, si dans la phrase nous ajoutions les seuls mots “ainsi déclarées” (so declared).

Mr. Beecher. - Si cette stipulation du droit du capitaine de refuser des marchandises pour lesquelles il est déclaré une valeur supérieure à £ 100 était dans la loi américaine, je ne m’y opposerais pas. Mais ce n’est pas notre loi. Chez nous, le transporteur doit accepter les marchandises, que leur valeur déclarée soit ou non supérieure à £ 100 et, cependant, nos chargeurs ne croîtraient pas un instant être livrés à la merci des transporteurs: ils ne voudraient en aucun cas donner leur assentiment à l’adoption des règles. L’une des plaintes les plus sérieuses de la part de nos chargeurs est que le transporteur abuse de son droit avec regard à “déclaré value” so as to prevent the shippers from demanding a value above £100 - and it is because the shippers believe that they now have the opportunity to ship their goods at a higher declared value that they have given their agreement. When a declaration of a higher value is made, the carrier must accept it whether or not he wishes to. In these circumstances you will understand that the proposal that the shipper’s declaration be admitted as prima facie evidence is both unjust and undesirable. My colleague’s view that this corresponds to an insurance policy with an agreed value comes back to our saying that we should transform the carrier into an insurer. But I cannot believe that he really wished to see the carrier become effectively an insurer issuing policies with an agreed value. If that were true, then the proof should be both final and conclusive. However, if the premise is that the carrier remains simply a carrier, the proposal seems to me defective from all points of view.
agréeée. Si cela était vrai la preuve devrait alors être finale et concluante. Mais, dans la supposition que le transporteur reste simplement transporteur, la proposition me paraît vicieuse à tous les points de vue.

[M. Sohr. - M. le Juge Hough a produit un excellent argument en comparant cette situation à celle d’un assureur. Il y a cependant une différence entre la situation de l’assureur et celle de l’armateur qui a émis un connaissance pour des marchandises avec valeur déclarée : c’est que l’assureur d’une police avec valeur agréée est tenu à cette valeur, sauf dans un seul cas : le cas de fraude. Vis-à-vis de l’armateur au contraire cette déclaration ne constitue qu’une présomption sauf preuve contraire, ce qui veut dire que, quand le chargeur ou le consignataire réclame une valeur excessive, l’armateur peut contester cette valeur. En conclusion donc, la situation de l’armateur est pleinement sauvegardée, tandis que la situation d’un assureur sur une police à valeur agréée est beaucoup moins favorable.

M. Beecher. - Lorsque les marchandises sont perdues en mer, le transporteur est dans la même situation.

M. Sohr. - Les assureurs demandent toujours la valeur de facture et les armateurs pourront prendre la même précaution : ils ne payeront pas sur simple production du connaissance, mais bien sur preuve de la perte. Comme le texte lui-même dit que ce n’est qu’une présomption sauf preuve contraire et non pas une preuve concluante, les armateurs pourront toujours demander des justifications.

M. le Président. - Nous pouvons terminer cette discussion. Pour autant que je comprends, il y a unanimité pratique parmi tous les Délégués, pourvu que l’on précise que la déclaration dont il s’agit est celle visée au paragraphe 1°. Il y a au sein de la Délégation des États-Unis deux opinions différentes, mais je n’ai pas reçu de proposition de sa part, car dans nos délibérations il n’y a pas de propositions individuelles. Par conséquent, je devrai demander à nos amis des États-Unis quelle
two American delegates have different views.

Mr. Berlingieri. - I would like to make an observation on the subject of the drafting. I think it is useful so that there should be no mistakes in other cases. If one adds “but this will not bind the carrier, who may contest it”, it seems to me to be redundant. Prima facie evidence will suffice. In article 3(4) we have used the same expression - “prima facie evidence”.

The Chairman. - So the carrier may furnish such evidence.

Mr. Berlingieri. - That is pointless.

The Chairman. - All the same, one is tempted to believe that evidence in the bill of lading would have more value if you said prima facie evidence alone.

Mr. de Rousiers. - We should perhaps say “prima facie evidence provided by the carrier”.

The Chairman. - Let us put “prima facie evidence which it is open to the carrier to provide”. (Agreement).

We come thus to the last paragraph, where it is a question of agreements between carriers and shippers. Is it necessary to say “captain or agent of the carrier”? If we do, then we must say this throughout and that seems to me unnecessary. When one says “carrier”, one means agents, captains, and all who have the qualification to act in this capacity. (Agreement).

Our final task is the question of exchange: “The rate of exchange shall be taken to be the rate ruling on the day of the arrival of the ship at the port of discharge of the goods concerned”.

Mr. Bagge. - I should like to draw attention to the fact that in the French translation there is an omission in the paragraph concerning the Swedish proposal on the subject of currency.

The Chairman. - That’s not terribly important: it will be the value on the date of the ship’s arrival at its port of discharge.
l’arrivée du navire au port de déchargement.

M. Bagge. - En or ou quoi?

M. le Président. - Non, on prendra la valeur de la livre telle qu’elle est ce jour-là.

M. Bagge. - J’ai proposé que ce soit une valeur en or et je désire simplement faire remarquer que la traduction n’est pas exacte parce que le mot “gold” devrait être traduit par “d’autres pièces d’or” au lieu de “pièces d’argent”.

M. le Président. - Mais la question a déjà été tranchée et cette assemblée a décidé que ce serait l’équivalent de la livre au change du jour de l’arrivée du navire. Quant à la traduction nous la mettrons en règle.

L’article sera donc rédigé comme suit:

“Le transporteur comme le navire ne seront, en aucun cas, tenus des pertes ou dommages causés aux marchandises ou les concernant pour une somme dépassant £ 100 par colis ou unité ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargé avant leur embarquement et insérées dans le connaississement. Cette déclaration ainsi insérée dans le connaississement constituera une présomption sauf preuve contraire qu’il sera loisible au transporteur de fournir. Par convention entre le transporteur et le chargé, une somme maximum différente de celle inscrite dans ce paragraphe peut être fixée, pourvu que ce maximum ne soit pas inférieur à £ 100 ou à leur équivalent. Le cours du change sera pris au jour de l’arrivée du navire au port de déchargement.”

M. Beecher. - Ma proposition était que cette déclaration ne sera ni concluante, ni finale envers le transporteur.

M. le Président. - C’est pour cela qu’on a inséré dans la clause que cette déclaration constituera une présomption...
sauf preuve contraire qu'il sera loisible au transporteur de fournir.

M. Ripert signale que l’interprétation du paragraphe 5 soulève des difficultés. La Fédération des Industriels et Commerçants français, qui semble en désaccord avec les armements, lui a écrit officiellement au sujet de l’interprétation à donner à cette clause qui dit que le transporteur n’est responsable qu’à concurrence de £ 100 par colis ou par unité. Il y a deux façons possibles d’interpréter cette limitation:

1°) Quelle que soit l’importance du dommage causé, une fois ce dommage évalué, le transporteur ne paiera jamais plus de £ 100;

2°) un colis embarqué est évalué à £ 100; par conséquent, en cas de dommage, celui-ci sera réglé proportionnellement à l’importance de l’avarie par rapport à la valeur supposée de £ 100.

Sir Leslie Scott estime que c’est la première interprétation qui est la bonne.

M. Ripert dit que si on ne déclare pas de valeur et que le dommage réel est de £ 75, cela peut aller; mais quid quand un colis valant £ 300 est avarié pour la moitié? va-t-on donner 100 ou 50? La prétention des armateurs français est que, dans ces cas, en ne déclarant pas que le colis vaut £ 300, le chargeur a voulu indiquer qu’ils le considéraient comme valant £ 100 et qu’en conséquence, l’armateur est responsable pour la moitié de cette valeur.

Sir Leslie Scott déclare que la seule règle est que l’armateur ne sera pas tenu au-delà d’une limite de £ 100; ce n’est pas la règle de trois en matière d’assurance.
M. Ripert objecte que cela conduit à des conséquences singulières; un chargeur expédie un colis valant £ 150. Il déclare cette valeur. Il y a avarie de moitié, que va-t-il toucher?

M. Loder répond qu’il touchera sa perte réelle, soit £ 75.

M. le Président ajoute qu’il s’agit d’une limite de responsabilité et non pas d’une assurance. Autre chose est de savoir si, dans un cas de ce genre, l’armateur ne pourra pas mettre dans un connaissement une clause disant que si la valeur de la marchandise n’a pas été déclarée sincèrement, le fret pourra être augmenté, soit double, soit triplée. Mais la règle est claire et l’interprétation donnée par Sir Leslie Scott est la bonne: il y a un maximum, mais ce n’est pas la valeur proportionnelle en matière d’assurance.

M. Ripert objecte que les cas de perte totale sont relativement rares et que, généralement, les réclamations portent sur de simples avaries.

M. le Président signale que les déclarations de valeur sont plus rares encore.

M. Loder ajoute qu’il appartiendra toujours au chargeur de prouver la valeur, s’il déclare £ 100 et, si le dommage n’atteint que £ 75, il n’aura que £ 75.

M. Ripert croit qu’on ne déclarera jamais de valeur parce que, de la sorte, on aura droit à £ 100.

M. Langton croit que M. Ripert se trompe. Le chargeur n’a aucun intérêt à ne pas déclarer la valeur parce qu’il n’est pas en droit de réclamer plus que sa perte réelle qui peut n’être que de £ 5. En pareil cas, il ne touchera que £ 5 au lieu de £ 100 et, dans tous les cas, il doit prouver sa perte.

M. Ripert signale qu’il est rare d’avoir une valeur de £ 100 par colis.

M. le Président dit que le texte distingue entre les connaissements où la valeur est déclarée et ceux sans déclaration de valeur. Si la valeur est déclarée, elle fera foi, puisqu’elle est acceptée par deux parties, même au delà de £ 100. La règle de la limite de £100 ne s’applique qu’aux connaissements sans valeur déclarée, de
Article 4 (5) - Limits of liability

sorte que la crainte de voir le chargeur spéculer sur cette disposition n’existe pas: s’il ne déclare pas de valeur, il sera soumis au droit commun.

M. Alten ne trouve pas juste que la seule déclaration du chargeur puisse renverser le fardeau de la preuve. À son avis, il doit toujours incomber au réclamateur de fournir la preuve de sa créance, même si la valeur est insérée.

M. le Président dit que la déclaration de valeur n’est pas une des mentions obligatoires en vertu de l’article 3 § 3 et que, si le transporteur n’est pas d’accord sur cette valeur, il lui suffit de ne pas l’accepter. Dans la pratique qu’advendra-t-il? La plupart des transports se font sans qu’il y ait dommage et c’est pourquoi le chargeur ne déclarera pas un colis comme valant Frs 25.000 alors qu’il ne les vaut pas. Il devrait payer un fret en conséquence. Mais la raison pour laquelle on renverse le fardeau de la preuve est logique. Au moment du chargement des marchandises à transporter, il est déclaré qu’elles valent Frs 20.000. Si cette valeur est acceptée au moment où tout était intact, on doit la considérer “prima facie evidence” comme exacte.

Reste d’ailleurs le droit d’ouvrir le colis, de le faire examiner par des experts et de constater, par exemple, que des colis déclarés comme contenant du champagne ne contenaient que de l’eau minérale.

M. Alten voudrait faire une observation au sujet du paragraphe 4. Il estime que l’exonération qui est prévue va trop loin et que le transporteur ne doit pas être libéré de sa responsabilité pour pertes et dommages résultant d’un déroutement, pour sauver des biens en mer, à moins que celui-ci ne puisse être considéré comme raisonnable.

M. Van Slooten observe que la clause critiquée par M. Alten est en usage dans tous les connaissances. Cette disposition “for the purpose only of saving life and property” se trouve dans le Harter Act et dans le Canadian Act.

Mr. Alten did not find it fair that the mere statement of the shipper could shift the burden of proof. In his opinion it should always be incumbent on the claimant to furnish the proof of his claim, even if the value had been inserted.

The Chairman said that the statement of value was not one of the obligatory leading marks described in article 3(3), and that if the carrier was not in agreement on this value all he had to do was not accept it. In practice, what would happen? Most journeys were made without any damage and that was why the shipper was willing not to state that a package was worth 25,000 francs when it was not. He would have to pay a freight charge as a result. But the reason for which the burden of proof was shifted was logical. At the time the goods to be transported were loaded, it was declared that they were worth 20,000 francs. If this value was accepted when everything was intact, one should consider it “prima facie evidence”.

Moreover, the right to open the package remained, to have it examined by experts and state, for example, that the packages declared as containing champagne only contained mineral water.

Mr. Alten wanted to make a comment on paragraph 4. He felt that the immunity that was envisaged was too broad and that the carrier must not be freed from his liability from loss and damage resulting from a deviation to save goods at sea, unless it could be considered reasonable.

Mr. van Slooten remarked that the clause criticized by Mr. Alten was in use in all bills of lading. This provision, “for the purpose only of saving life and property”, was found in the Harter Act and the Canadian Act.
M. Richter appuie l’amendement de M. Alten au sujet du paragraphe 5 alinéa 2. Il voudrait également sa suppression. La preuve incombant au transporteur est difficile dans bien des cas; par exemple lorsqu’il s’agit de caisses fermées. Le président a cité tout à l’heure l’exemple de caisses de champagne contenant de l’eau minérale. Comment dans ce cas le transporteur pourra-t-il faire cette preuve?

M. le Président signale qu’il pourrait demander la facture d’origine de la fabrique d’où viennent les produits, comme le font les assureurs. Il ajoute que si l’armateur ne veut pas courir de risque, il peut ne pas accepter la déclaration de valeur.

M. Richter objecte que, dans ce cas, le chargeur s’adressera à un autre transporteur et, finalement, l’armateur devra accepter cette déclaration pour des raisons de concurrence.

M. Asser objecte qu’il pourrait demander aussi un supplément de fret.

M. Ripert signale que, dans les polices, les assureurs se réservent, malgré la déclaration de valeur, le droit de demander les justifications.

M. le Président insiste sur le fait que cette déclaration ne constituera qu’une présomption sauf preuve contraire.

M. Bagge propose que les États qui n’ont pas la £ comme unité monétaire, aient la faculté d’exprimer cette limite de 100 £ dans leur propre monnaie - or. Le texte ne permet pas de mettre, par exemple 1800 couronnes - or.

M. le Président estime que c’est ce qu’on appelle une somme équivalente, le change étant même prévu dans la convention.

M. Ripert croit que cette disposition quant au change est inutile si l’on prend une valeur - or dans les lois nationales.

M. le Président objecte que le cours du change est à considérer même si l’on prend une valeur: c’est le “gold point”. Il propose de mentionner au procès-verbal
que l'équivalent dans une autre monnaie s'entend de la valeur en chiffres ronds.

**M. Sohr** dit que si M. Ripert trouve qu'en pratique la disposition quant au cours du change est inutile c'est parce que, dans la plupart des cas, le navire ira décharger dans un Etat contractant. Mais si un navire anglais chargé de marchandises françaises va décharger en Chine, qui, par hypothèse, n'est pas un Etat contractant, c'est la convention qui sera applicable et, au moment où l'on paiera l'avarie, il faudra que l'on sache que la £ ou les francs français devront être payés au cours du jour dans le port chinois.

**M. Ripert** estime que tout naturellement ce devrait être le cours de la livre-or et du franc-or.

**Sir Leslie Scott** ne voit pas la nécessité de modifier quoi que ce soit à cet article sur lequel l'accord avait existé jusqu'ici. Il n'est pas nécessaire à son avis d'ajouter "en chiffres ronds".

**M. Bagge** estime qu'il faut stipuler dans la convention qu'il s'agit d'une valeur-or puisque autrement la loi suédoise, par exemple, ne pourra pas fixer un chiffre en couronnes suédoises. Pour qu'il y ait une stabilité absolue dans la valeur de la £, il faut qu'il s'agisse des £ or, et non pas des £ papier.

**M. Loder** constate qu'en pratique cela revient au même.

**Sir Leslie Scott** admet qu'il ya une différence: en mettant "valeur-or" on augmente la limite de responsabilité de 5%: il tient essentiellement à ce que les armateurs anglais restent libres de ne payer que £ 100 anglaises et non pas £ 100 en or ce qui fait réellement £ 105.

**M. Beecher** rappelle que, à propos de l'article 15 de la convention sur la limitation de la responsabilité, il a été admis que non seulement dans les Etats où la £ n’est pas l’unité monétaire, mais qu’en Grande-Bretagne également, la conversion des £ se ferait en chiffres ronds; de cette façon, les différences signalées disparaîtront et on pourra donc payer £ 100 en billets de banque.

**M. le Président** signale qu’il est un tionning in the proceedings that the equivalent in another currency was understood as the value in round figures.

**Mr. Sohr** said that if Mr. Ripert found that in practice the provision as to the rate of exchange was useless it was because in the majority of cases the ship would be going to discharge in a contracting State. But if an English ship loaded with French goods unloaded in China, which was ex hypothesi not a contracting State, it was the convention that would be applicable and at the time when one paid for the damage it would be necessary to know whether the pound or French francs ought to be paid at that day’s rate in the Chinese port.

**Mr. Ripert** felt that naturally it ought to be the rate of the gold pound or the gold franc.

**Sir Leslie Scott** did not see the necessity for altering whatever it was in this article on which the agreement had existed until now. It was not necessary in his opinion to add “in round figures”.

**Mr. Bagge** felt that it was necessary to stipulate in the Convention that it was a matter of a gold-value because otherwise Swedish law, for example, would not be able to set a figure in Swedish kroner. In order that there should be absolute stability in the value of the pound, it was necessary to deal in gold pounds and not in paper pounds.

**Mr. Loder** stated that in practice it came to the same.

**Sir Leslie Scott** thought there was a difference. By including “value in gold”, the limit of liability was being raised by 5%. It came down essentially to the English shipowners being free to pay only 100 English pounds and not 100 gold pounds, which would actually be £105.

**Mr. Beecher** mentioned that à propos of article 15 of the Convention on the limitation of liability, it had been admitted that not only in the States where the pound was not the unit of currency, but also in Great Britain, the conversion of pounds would be made in round figures. In this way the differences indicated would disappear, and one would be
peu délicat de parler de valeur de la £ or alors que la livre est à 3 ou 4% seulement au dessous du pair, mais il suffirait d’introduire les mots “en chiffres ronds” pour supprimer ces difficultés. Au moment de la ratification de la convention, il s’agira de traduire en chiffres ronds dans la législation nationale la limite de 100 £ et les pays pourront procéder, comme l’a suggéré M. Beecher, en prenant le chiffre de la monnaie paritaire et si la £ est encore à 5% au dessous de la valeur - or on mettra la monnaie nationale à 5% de moins également.

M. Ripert demande si les divers pays seraient libres de prendre le cours moyen de la £ pendant les deux ou trois dernières années.

M. le Président répond qu’il faudra faire la conversion sur la base or.

Sir Leslie Scott propose de laisser le paragraphe 5 tel qu’il est et d’ajouter à la fin parmi les autres articles, une disposition à ce sujet.

M. le Président propose d’y spécifier que les unités monétaires dont il s’agit s’entendent valeur or; il croit que tous pourront être d’accord sur cette proposition.

M. Bagge déclare qu’il lui paraît clair que le paragraphe 5 n’est pas applicable aux cargaisons en vrac.

Sir Leslie Scott dit qu’il est évident que, dans ce cas, il n’est pas question de colis ou d’unité.

M. Bagge a posé cette question parce que Sir Norman Hill a déclaré à la Commission du Parlement britannique que ce paragraphe s’appliquait “aux bulk cargoes transportées à un taux fixe par tonne, cwt. quarter ou cental”.

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Mr. Bagge declared that it seemed clear to him that article 4(5) did not apply to bulk cargoes.

Sir Leslie Scott said that it was clear in that case it was not a question of package or unit.

Mr. Bagge had asked the question because Sir Norman Hill had stated before the British parliamentary committee that this paragraph did apply to “bulk cargoes carried at a fixed rate by ton, cwt, quarter or cental”.

able, therefore, to pay £100 in bank notes.

The Chairman indicated that the value of the gold pound was something of a delicate matter when the pound sterling was only 3 or 4% below par. However, it was enough to introduce the words “in round figures” to remove these difficulties. At the time of the Convention’s ratification, it would be a matter of translating the limit of £100 into round figures in national legislation. The countries would be able to proceed, as Mr. Beecher had suggested, by taking the figure of the equivalent currency and if the pound was still 5% below the gold-value, one would also put the national currency at 5% less.

Mr. Ripert asked if the various countries would be free to take the average rate of exchange of the pound during the last two or three years.

The Chairman replied that the conversion would have to be made on the basis of gold.

Sir Leslie Scott proposed leaving article 4(5) as it was and adding at the end, among the other articles, a provision to this end.

The Chairman proposed specifying that the monetary units involved meant gold value. He believed that everyone could agree to this proposal.
A l’alinéa 5, la commission, après une longue discussion, est arrivée à la formule actuelle. On a admis que la valeur serait une valeur-or; que pour les cas où une autre valeur serait déclarée, pareille déclaration devait être sincère.

Une délégation a demandé si une déclaration de valeur inférieure faite de bonne foi, et à la connaissance de l’armateur, pouvait être considérée comme tombant sous le coup de cet article. On peut laisser à la législation nationale le soin de préciser le point. Mais il y a lieu de mentionner que l’aspect de l’article est de frapper d’une pénalité l’intention de tromper.

Il n’y a pas eu d’observations importantes à relever à l’article 4.

Mr. Alten fait observer que dans le même paragraphe 5, alinéa 2, la phrase “Cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester”, n’est pas conforme au texte adopté par la dernière conférence plénière. Les procès-verbaux de celle-ci portent à la page 144 que le texte alors adopté disait:

“Cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire qu’il sera loisible au transporteur de fournir”.

Mr. le Président répond qu’il n’y a pas de différence en fait et que le texte inséré ici est celui qui est sorti des Règles de La Haye.

Mr. Alten insiste en disant qu’il ne faut pas seulement que le transporteur le conteste, mais il faut qu’il fasse la preuve contraire.

Mr. le Président constate qu’il est évident que le sens est bien comme l’in-
M. Alten. Le rapport indiquera qu’il ne suffit pas de contester, mais qu’il faut renverser la présomption.

**The Chairman** replied that there was, in fact, no difference and that the text inserted here was the one taken from the Hague Rules.

**Mr. Alten** persisted, saying that it was not only necessary for the carrier to contest it but for him to provide proof to the contrary.

**The Chairman** confirmed that it was clear that the meaning was as Mr. Alten indicated. The report would show that it was not sufficient to contest it, but that it was necessary to reverse the presumption.

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M. le Président fait observer que dans le même article, paragraphe 5, le second alinéa: “cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire” suffit et qu’il est superflu d’ajouter “mais elle ne liera pas le transporteur qui pourra la contester”.

M. Ripert craint que si on supprime cette phrase, il faille de nouveau ajouter un commentaire.

M. le Président suggère de mettre “qui pourra être fournie par le transporteur”.

M. Ripert exprime le désir de voir maintenir le texte tel qu’il est arrêté.

**The Chairman** remarked that in the second paragraph of article 4(5), “cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire” (this declaration if embodied in the bill of lading shall be prima facie evidence), was sufficient, and that it was superfluous to add “mais elle ne liera pas le transporteur qui pourra la contester” (but shall not be binding on the carrier who will be able to contest it).

**Mr. Ripert** was afraid that if this phrase were deleted it would again be necessary to add a commentary.

**The Chairman** suggested using “qui pourra être fournie par le transporteur” (which the carrier will be able to provide).

**Mr. Ripert** expressed the desire to see the text kept as it was.
5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connexion with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

ILA 1921 Hague Conference
Text submitted to the Conference

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connexion with, goods if the nature or value thereof has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error.

Second day’s proceedings - 31 August 1921

The Chairman: I do not know whether the Committee thinks it can advantageously discuss the detail of this matter this afternoon, or whether it might not be practicable, and perhaps advisable, as we must resume this branch of our work to-morrow morning, to hold over clause 4 until to-morrow morning, in order that interested parties may see if they can find a mode of accommodation. Would that be the view of the Committee? (Agreed).

Then what I had in view was to ask the Committee to sit until 5 o’clock and to finish Article 4. My impression is that, except for this question on 4(4) we could do both things. There is the second paragraph of clause 4, but perhaps we had better leave the whole of clause 4. Clause 5. “Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error”.

Mr. McConney: The only alteration I would suggest is with regard to the word “falsely”; I do not quite like that, and I would like to change it into “wilfully” - “if the nature or value thereof has been wilfully misstated”.

The Chairman: “If the nature or value thereof has been wilfully misstated”. Is that it?

Mr. McConney: Yes.
Mr. W W. Paine: Leaving out the words at the end?
Lord Phillimore: Yes.
Mr. McConney: Leaving out the words at the end.
The Chairman: It is proposed by Mr. McConney that the clause [166] shall read in these words: “Neither the carrier nor the ship shall be responsible in any event for
loss or damage to or in connection with goods if the nature or value thereof has been wilfully misstated by the shipper”, and stop there.

Mr. McConechy: Yes.
The Chairman: What do the Committee say as to that? Is it agreed?
Sir Alan Anderson: Is that quite right, Sir? If the value has been misstated.
The Chairman: Wilfully misstated.
Sir Alan Anderson: I know, but I object to the “wilfully”. If the value has been misstated then surely the ship ought not to be responsible.
Mr. McConechy: I am trying to get rid of your word “falsely”.
Sir Alan Anderson: I know; but if you make a mistake - it is almost incredible that you should do so, but if you do make a mistake and put down a wrong value, ought the ship to be responsible?
Sir Norman Hill: Sir Alan will appreciate that the clause which we are now dealing with, deprives the cargo owner of any claim. If the value is incorrectly stated, but honestly, mistakenly, stated, then the cargo owner can claim the real value against you up to the limit. He does not claim beyond the limit, whatever is the real value of the goods. He cannot get above the limit.
Sir Alan Anderson: Yes, I see.
The Chairman: Is that agreed? (Agreed).

Text adopted by the Conference

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been WILFULLY MISSTATED BY THE SHIPPER.
M. van Slooten, Délégué des Pays-Bas, fait observer que, lorsqu’il existe une fausse déclaration du chargeur, c’est habituellement au détriment du consignataire.

M. le Président se demande pourquoi, dans ce cas, l’armateur devrait pâter de cette fraude? Le consignataire a toujours le droit de se retourner contre son chargeur.

M. de Rousiers, Délégué de la France, voudrait voir disparaître du texte anglais le mot “willfully” (sciemment erronée). Ce terme s’applique bien en matière pénale, mais, en matière commerciale, il importe peu que les déclarations erronées soient ou ne soient pas faites de propos délibéré. C’est le fait du déclarant, mais non sa faute que l’on considère.

M. le Président fait observer que si une déclaration erronée est faite de propos délibéré, elle est le fait d’un individu malhonnête; si, au contraire, la déclaration erronée est le résultat d’une erreur, il ne faut pas la punir sévèrement.

M. van Slooten, Délégué des Pays-Bas, estime que, puisque l’armateur est tenu par la déclaration du chargeur, il faut qu’il ait comme contre-partie la stipulation que si des déclarations erronées sont faites, le navire n’en sera pas responsable.

M. de Rousiers, Délégué de la France, exprime l’avis que cette sanction est trop ou trop peu sévère. Elle l’est trop si l’armateur est responsable à raison d’une déclaration inexacte qui n’influence pas le contrat. Elle l’est trop peu si la déclaration influence le contrat. Il est possible, par exemple, que l’on ait fait une déclaration inexacte en vue des droits de douane.

M. le Président ne peut partager cette manière de voir. La déclaration devrait toujours être exacte.
M. de Rousiers, Délégué de la France, maintient qu’en tout cas cette expression “willfully” ne devrait pas se trouver dans une convention commerciale.

M. Bagge, Délégué de la Suède, propose de supprimer l’article 4(6).

M. Le Jeune, Délégué de la Belgique, appuie cette suggestion.

MM. van Slooten, Délégué des Pays-Bas, et Rambke, Délégué de l’Allemagne, adhèrent à la proposition de M. Bagge.

The Chairman was unable to share this way of looking at things. The declaration should always be correct.

Mr. de Rousiers, French delegate, maintained that whatever the case, the expression “willfully” had no place in a commercial agreement.

Mr. Bagge, Swedish delegate, proposed the deletion of article 4(6).

Mr. Le Jeune, Belgian delegate, supported this suggestion.

Messrs. van Slooten, delegate from the Netherlands, and Rambke, German delegate, acceded to Mr. Bagge’s proposal.

The Chairman recalled that Mr. de Rousiers had asked for the deletion of the word “willfully”, which he applied to penal matters and not to commercial matters.

The Commission adhered to the draft; but...

Mr. Langton pointed out that the precise English translation of the French term “sciemment” would be “knowingly”. At this suggestion, the commission unanimously agreed to alter the text accordingly.

Conférence Diplomatique - Octobre 1923
Réunions de la Sous-Commission
Troisième Séance Plénière - 7 Octobre 1923

M. Bagge propose la suppression de l’alinéa 6. Si une déclaration sciemment erronée de la nature ou de la valeur des marchandises était sans influence sur la manière dont le transporteur manipule celle-ci, dans ce cas il ne serait plus raisonnable de l’exempter de toute responsabilité pour pertes ou dommages causés. Cet alinéa laisse des doutes à cet égard et mieux vaudrait le supprimer.

M. Straznicky partage cette opinion.

Mr. Bagge proposed deleting article 4(6). If a knowingly erroneous statement of the nature or value of the goods had no influence on the way in which the carrier handled them, then it would not be reasonable to exempt him from all liability for loss or damage caused. This paragraph left doubts in this respect and it would be better to delete it.

Mr. Straznicky shared this opinion.

The Chairman observed that this had
PART II - HAGUE RULES

Article 4 (5) - False statement of shipper

M. le Président observe que cette stipulation a été insérée dans le but de détourner les chargeurs de commettre une fraude. En effet, ce n’est que le cas de fraude qui est visé ici.

M. Ripert constate que lorsque le chargeur ne fait aucune déclaration pour une marchandise valant £ 100, il sera payé en cas d’avarie à concurrence de £ 100. Mais s’il déclare £ 150 une marchandise en valant £ 500 on lui dira qu’il n’a droit à rien.

M. Bagge ajoute que, quand il s’agit d’un porteur de bonne foi du connaissement, le transporteur pourra néanmoins lui opposer que le chargeur n’a déclaré que £ 150 au lieu de £ 500 et, par conséquent, lui refuser toute indemnité.

M. Berlingieri propose de modifier cette disposition en ce sens que le chargeur sera responsable des dommages qui peuvent résulter de la fausse déclaration faite sciemment.

M. le Président observe que cela va de soi.

M. Beecher observe que ce n’est pas le chargeur qui peut faire une déclaration quelconque dans le connaissement puisque ce document est établi par le transporteur. D’autre part, il demande s’il y a une disposition qui oblige le chargeur à déclarer la nature des marchandises ou leur valeur?

M. le Président répond qu’il n’y a pas d’obligation pour le chargeur de faire mention de la valeur. Mais s’il le fait, il doit faire une déclaration sincère: voilà la portée de la convention. Ceci est une compensation à la responsabilité jusqu’à preuve contraire que le capitaine a assumée.

M. Berlingieri demande si cette sanction existe même si la déclaration n’a pas eu d’influence sur le dommage. Cela devrait être, car cette stipulation a pour but de punir quelqu’un qui a fait une déclaration fausse.

M. Ripert observe que la peine est tout au profit du transporteur qui encaisse le fret.

M. le Président rappelle l’économie de la convention. Les chargeurs ont donc été insérées avec l’aim de dissuader les shippers de commettre une fraude. En effet, ce n’est que le cas de fraude qui est visé ici.

Mr. Ripert stated that when the shipper made no declaration for goods worth £100, he would be paid, in the case of damage, to the amount of £100. But if he declared £150 for goods worth £500, he would be told he had no right to anything.

Mr. Bagge added that when it was a matter of a bona fide holder of a bill of lading, the carrier could nevertheless object that the shipper had only declared £150 instead of £500 and consequently refuse him any indemnity.

Mr. Berlingieri proposed amending the provision in the sense that the shipper would be liable for the damages that might result from a false declaration knowingly made.

The Chairman observed that that went without saying.

Mr. Beecher commented that it was not the shipper who was able to make whatever declaration on the bill of lading because the document was drawn up by the carrier. On the other hand, he asked if there was a provision that obliged the shipper to declare the nature of the goods or their value?

The Chairman replied that there was no obligation on the shipper to state value. But if he did so, he had to make a true declaration. That was the scope of the Convention. This was a type of compensation for the liability for contrary evidence that the captain had assumed.

Mr. Berlingieri asked if this sanction existed even when the declaration had had no influence on the damage. That should be the case, because the aim of the stipulation was to punish the person who had made a false declaration.

Mr. Ripert observed that the punishment was all to the benefit of the carrier who received the freight charge.

The Chairman mentioned the economy of the Convention. The shippers had asked whether they could make a declaration of value above £100. If the carrier
mandé qu’ils puissent faire une déclaration de valeur supérieure à £ 100. Si le transporteur l’accepte, le chargeur aura un titre “prima facie” démontrant que cette valeur est la vraie. Les armateurs ont répondu qu’ils voulaient bien accepter cette stipulation, mais qu’ils entendaient avoir le droit à faire le preuve contraire et que, s’il y a valeur fausse (ce qui ne pourrait être que dans un but de fraude), ils ne payeront rien.

M. Ripert trouve que cela pourrait être logique dans le cas d’augmentation de la valeur réelle, mais non pas pour une déclaration portant diminution de cette valeur.

M. Sindballe ne peut admettre que cette sanction frappe non seulement le chargeur qui a fait la fausse déclaration, mais également le porteur de bonne foi du connaissement.

Sir Leslie Scott admet cette situation en vertu de cette convention que le chargeur n’est pas obligé de déclarer la valeur de la marchandise qu’il expédie. Mais l’article 4(5) stipule que, bien qu’en règle générale le transporteur ne sera pas responsable pour plus de £ 100 par colis, cependant si le chargeur, de sa propre initiative, déclare la nature de la marchandise et sa valeur, et fait insérer ces mentions dans le connaissement, dans ce cas le transporteur peut-être tenu responsable pour une somme plus élevée que £ 100 et tou-[68]chera donc un fret plus élevé. Voilà la transaction qui a été conclue entre le transporteur et chargeur. Le transporteur devient en quelque sorte assureur. Le paragraphe 6 forme partie intégrante du paragraphe 5 et doit s’interpréter en conjonction avec lui: il dispose que le transporteur ne sera pas responsable du dommage causé aux marchandises ou les concernant si le chargeur a sciemment inséré dans le connaissement une déclaration fausse de la valeur ou de la nature; il est bien vrai qu’un tiers pourrait, dans certains cas, avoir à pârir de cette situation s’il ignore qu’une fausse déclaration a été faite dans le connaissement par le chargeur. Mais l’une des raisons pour lesquelles cette accepted it, the shipper would have a “prima facie” title showing that this value was correct. The shipowners had replied that they would really like to accept this stipulation, but they understood that they had the right to offer contrary evidence and that if the value were false (which could only be with the aim of committing fraud) they would pay nothing.

Mr. Ripert found that that might be logical in the case of an increase in the true value, but not for a declaration that lowered the value.

Mr. Sindballe could not agree to this sanction affecting not only the shipper who had made the false declaration but also the bona fide holder of the bill of lading.

Sir Leslie Scott could agree to the situation by virtue of the Convention that the shipper was not obliged to declare the value of the goods he shipped. But article 4(5) stipulated that although as a general rule the carrier would not be liable for more than £100 per package, if, however, the shipper, on his own initiative, declared the nature of the goods and their value, and inserted these details in the bill of lading, then in this case the carrier might be held liable for a higher sum than £100 and would [68] receive, therefore, a higher freight charge. That was the compromise that had been concluded between the carrier and the shipper. The carrier became, in a way, an insurer. Paragraph 6 was an integral part of paragraph 5 and should be interpreted in conjunction with it. It provided that the carrier would not be liable for the damage caused to the goods or relating to them if the shipper had knowingly inserted in the bill of lading a false declaration of value or nature. It was true that a third party might, in certain cases, have to suffer from this situation if he did not know that a false declaration had been made by the shipper on the bill of lading. But one of the reasons why this clause had been agreed was that the only way of preventing this type of fraud was to remove the incentive for the fraud.
This clause might be criticized from a legal point of view. But it had been carefully drawn up in common agreement by the interested parties in conjunction with a large number of other provisions that had been the subject of long discussions between them. The British delegation would have to oppose any amendment to this successful compromise.

Mr. Sohr felt that after these explanations it was difficult to amend the text in question. On the other hand, it was necessary to recognize that there was a foundation for the criticism of Messrs. Ripert, Beecher, Bagge and Sindballe. But the solution had to be found on the side of the insurers. They were going to be injured by the provisions of this article unless they were careful. But they could protect themselves. In practice, the proof of value was provided between the carrier and the shipper as between insurer and insured, by the production of the invoice and the insurance policy. The means of protecting oneself was for the insurers to include a clause in their policies that specified “that the value declared in the bill of lading ought to tally with the value insured”. It was certain that if there were a difference between the value of the invoice, the insured value, and the value on the bill of lading, it would be the insurers who would eventually suffer.

Mr. Ripert accepted Sir Leslie Scott’s explanations for the knowingly erroneous declaration of exaggerated value. But they were not valid when they referred either to a declaration of lesser value, or to a declaration of the nature of the goods.

The Chairman was of different opinion from Mr. Ripert as far as the nature of the goods was concerned. He found that it was extremely important for the shippers to declare truthfully the nature of the goods.

Mr. Ripert objected that from the point of view of the liability limited at £100 per package, the nature of the goods was immaterial. For example, it could be that the nature had not been
qualité n’ait pas été exactement déclarée en vue de certaines mesures fiscales.

Sir Leslie Scott n’est pas de cet avis; il signale qu’il y a eu beaucoup de ces cas jugés par les tribunaux anglais: par exemple, des marchandises emballées ont été déclarées comme étant de la toile alors qu’en réalité les colis contenaient de la soie: les transporteurs n’avaient de ce fait touché qu’un taux de fret inférieur.

M. le Président estime que par “sciemment erroné” on a voulu dire une déclaration fausse faite de propos délibéré, intentionnellement; il dit que M. Asser suggère une formule portant que ce n’est pas l’erreur de bonne foi, mais bien l’intention de tromper qui a présidé à l’opération que l’on a en vue. M. Asser propose de dire “ayant fait sciemment une fausse déclaration de la nature ou de la valeur”.

M. Struckmann demande s’il ne serait pas advantageous de distinguer entre les cas où la déclaration sciemment erronée se rapporte à la nature de la marchandise et le cas où elle se rapporte à sa valeur. A son avis, le tiers porteur du connaissement doit absolument être protégé quand il s’agit de la nature de la marchandise, même si le chargeur a frauduleusement une déclaration fausse. D’autre part, le tiers porteur du connaissement acquéreur de bonne foi ne doit pas être absolument protégé quant aux indications de la valeur des marchandises; et on pourrait traduire ces observations en ajoutant à l’alinéa 6 les mots “néanmoins quant à la déclaration de la nature, cette disposition ne touche pas aux droits du tiers porteur du connaissement, acquéreur de bonne foi”.

M. le Président craint qu’en admettant une formule de ce genre, on ne teurte le principe qu’en transférant un connaissement par une clause à ordre il n’est pas possible de transferer plus de droits que l’on en a soi-même. S’il est déclaré comme étant de la soie ce qui en réalité n’est que du coton, il n’est pas possible que le tiers porteur réclame de la soie. Autrement, la fraude contre le précisément declared in view of certain fiscal measures.

Sir Leslie Scott was not of this opinion. He indicated that there had been many such cases judged by the English courts. For example, packed goods had been declared as being of cloth although in reality the packages contained silk. The carriers had thus only received the lower freight rate.

The Chairman felt that by “knowingly erroneous” one meant a false declaration made deliberately, intentionally. He said that Mr. Asser suggested a formula stating that it was not a bona fide error, but rather the intention to deceive that had dominated the transaction he had in mind. Mr. Asser proposed saying “having knowingly made a false declaration of the nature or value”.

Mr. Struckmann asked whether it would not be advantageous to distinguish between the cases where the knowingly erroneous declaration related to the nature of the goods and the cases where it related to their value. In his opinion, the holder for value of the bill of lading must be absolutely protected when it was a matter of the nature of the goods, even if the shipper had fraudulently made a false declaration. On the other hand, the holder for value of the bill of lading who had acquired it in good faith should not be absolutely protected as to the details of the value of the goods. These comments might be included by adding to article 4(6) the words “nevertheless, as to the declaration concerning their nature, this provision does not affect the rights of the good faith holder for value of the bill of lading”.

The Chairman was afraid that by accepting such a formula one would run up against the principle that in transferring a bill of lading by a clause “to order” it was not possible to transfer more rights than one had oneself. If what was really only cotton were declared to be silk, it was not possible for the holder for value to claim for silk. Otherwise the fraud against the carrier would benefit the holder for value. So the holder for
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transporteur bénéficierait au tiers porteur. Or, ce tiers porteur n’a aucune excuse à invoquer. Il doit savoir mieux que personne que la déclaration est erronée. Par exemple, il a acheté du pétrole qui a été déclaré comme un acide inoffensif. Il sait ce qu’il achète, car il a la facture; on peut donc le rendre responsable de la fausse déclaration. Il connaît également la valeur de la marchandise; mais peut-être qu’on pourrait, par une déclaration interprétative, admettre que la valeur inférieure à la valeur réelle ne devrait pas être une cause d’irresponsabilité.

M. Sindballe ne comprend pas la raison de cette stipulation. Sir Leslie Scott prétend que l’intention des intéressés était de faire disparaître un motif incitant le chargeur à commettre des fraudes. Or il semble que si la disposition telle qu’elle est conçue est admise, les conséquences de la fraude commise par le chargeur retomberont sur le tiers porteur du connaissement ou sur l’armateur mais non pas sur le chargeur lui-même. Sans doute, l’armateur ou le porteur du connaissement pourront exercer leur recours contre le chargeur. Il semble cependant que cette clause ne fera pas disparaître le motif engageant les chargeurs, à faire de fausses déclarations.

Sir Leslie Scott admet qu’en certains cas, le tiers porteur et le transporteur peuvent être considérés comme innocents. Mais quand la déclaration de la nature des marchandises est fausse et que le chargeur le sait, le porteur du connaissement a un recours contre son vendeur si quelque chose n’est pas en règle: il ne peut s’en prendre au transporteur qui ignore si ce qu’on a déclaré comme étant de la soie n’est en réalité que des chiffons; c’est à lui l’acheteur à savoir si le vendeur avec lequel il traite mérite confiance; il est complètement indépendant et il peut traiter ou ne pas traiter comme il l’entend, tandis que, lorsqu’il y a fausse déclaration faite sciemment par le chargeur, le transporteur ne peut en avoir connaissance par la nature même des choses. C’est le motif pour lequel les armateurs ont insisté vivement sur cette value had no excuse to call upon. He ought to know better than anyone that the declaration was erroneous. For example, he had bought oil that had been declared an inoffensive acid. He knew what he was buying because he had the invoice. Therefore he could be made liable for the false declaration. He also knew the value of the goods. Perhaps one might by an interpretative declaration accept that a lower value than the real value ought not to be a reason for non-liability.

Mr. Sindballe did not understand the reason for this stipulation, Sir Leslie Scott claimed that the intention of the interested parties was to get rid of a motive encouraging the shipper to commit frauds. It seemed, therefore, that if the provision as conceived was accepted, the consequences of a fraud committed by the shipper would fall on the holder for value of the bill of lading or on the shipowner but not on the shipper himself. Without doubt, the shipowner or holder for value of the bill of lading might exercise their rights of redress against the shipper. However, it seemed that this clause would not get rid of the incentive for shippers to make false declarations.

Sir Leslie Scott accepted that in certain cases the holder for value and the carrier could be deemed innocent. But when the declaration of the nature of the goods was false and when the shipper knew it, the holder of the bill of lading had recourse against the vendor if something was not in order. He could not lay the blame on the carrier who did not know if what had been declared as silk was in reality only rags. It was up to him, the purchaser, to know whether the vendor with whom he was dealing merited his confidence. He was totally independent and could come to terms or not as he saw fit, while when there was a false declaration knowingly made by the shipper, the carrier could not know by the very nature of things. These were the grounds on which the shipowners had vigorously insisted on this provision. The
British government had instructed its delegation to oppose the abandonment of this point of view adopted by practical men.

Mr. van Slooten added that the provision under discussion had been taken literally from the Canadian law and has not given rise to any difficulty.

The Chairman appealed to the good will of the members of the Commission. He noted that, above all, no one was obliged to make a declaration of value. If one were made, it had to be truthful; otherwise one risked having no redress in the case of loss. As to the holder for value, he was not without reproach. Not even a bank was; it had to know with whom it was dealing. In many cases the holder for value saw the invoice, received the insurance policy. In all cases where there was a CIF contract, the purchaser received the bill of lading, the attached invoice, and the policy, and consequently there was no danger that he was not informed. The shipowner, in contrast, could be deceived as to the nature of the goods with the aim of obtaining a reduced freight charge. It was only right to discourage these frauds.

From the practical point of view, the interest of the question was minimal because the shipper was not obliged to declare a value. Without doubt he had to declare the generic nature of the goods but not their quality. So far as Mr. Struckmann’s proposal was concerned, he did not believe it was necessary to adopt it. Certain laws in Holland, notably, affected not only the falsity of the declaration but the use of the declaration for the purpose of fraud. The written lie alone was not enough. An external act was necessary to back it up. The Chairman proposed the following draft: “knowingly made a false declaration of the nature or value”. It was not sufficient if it were a simple error or a bona fide omission. It was necessary that it should be a false declaration made knowingly.

Mr. Ripert asked if the English delegation would accept that when one declared a lower value, it would not fall
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Sir Leslie Scott replied that it was possible that the paragraph had been formulated with the purpose of preventing false declarations of lesser value for extremely valuable goods, declarations made to avoid payment of the corresponding freight charge.

The Chairman said that it could be said, in contrast, that the purpose had been solely to prevent the shipowner from being obliged to pay an excessive indemnity.

Mr. Ripert indicated that the shipper could be in agreement with the shipowner. He personally accepted the formula “knowingly made a false declaration as to the nature or value”.

Mr. Beecher wondered if they had actually intended to punish the shipper who, all things considered, was content to be partly his own insurer. If the real value of the goods shipped was £1000 but the shipper wanted to be his own insurer for half, declaring a value of only £500, should he because of that be deprived of all rights to indemnity for damages on the pretext that he had knowingly declared £500?

Sir Leslie Scott said that nothing in the Convention prevented a shipper from shipping a package worth £1000 and declaring it at £500, but in that case the last sum mentioned would be the limit of the shipowners’ liability.

Mr. Beecher proposed that, this being so, he had still knowingly made a false declaration as to the value of the goods.

Sir Leslie Scott replied that it was not so if at the time he declared it to the shipowner, the shipowner realized that the declared value was only partial. If the shipowner had his wits about him, the rights of the shipper would remain intact. The shipowner would not be able to claim that it was a false declaration if he was himself aware of the situation.

Mr. Beecher wanted, in this case, to...
Sir Leslie Scott objecte que cela souleverait des difficultés dans la pratique. Un employé du chargeur pourrait, par exemple, prétendre avoir mis au courant l’officier de bord.

M. Beecher demande ce qu’il faudrait faire alors pour que l’armateur sache que la déclaration était erronée et que la valeur réelle était par exemple de £ 1000?

M. le Président répond qu’en pareil cas, il en ferait mention dans la correspondance.

Sir Leslie Scott ne pense pas, au surplus, que la conférence doive encourager des arrangements de ce genre entre chargeur et armateur.

M. le Président dit qu’il sera fait mention au procès-verbal des observations de Sir Leslie Scott et de M. Beecher.

M. Beecher signale qu’une objection a été faite aux Règles aux États-Unis; on a fait valoir que l’article 4(6) ne semble pas limité aux déclarations de l’article 4(5). Il demande pourquoi le paragraphe 6 ne fait pas partie du paragraphe 5, ou pourquoi il n’est pas précisé que les déclarations visées au paragraphe 6 sont celles dont il est question au paragraphe 5.

M. le Président propose de modifier le numérotage adopté: le chiffre 6 disparaîtra donc (Assentiment général).

M. Beecher déclare que son gouvernement estime que la pénalité imposée au chargeur par cette disposition est trop rigoureuse lorsque l’armateur lui-même est coupable de [71] négligence grave qui entraîne la perte ou l’avarie des marchandises; la protection que la disposition accorde à l’armateur devrait être limitée aux cas où il n’y a pas de négligence grave de sa part, c’est-à-dire, quand il n’y a pas manque absolu de soins. Les tribunaux auront à déterminer exactement ce qu’il faut entendre par là.

M. Langton objecte que les cours anglaises ont plusieurs fois déclaré qu’il était complètement impossible de faire une classification et de dire où commence la faute lourde. Cette controverse est add the words “whose falsity was known by the shipowner”.

Sir Leslie Scott stated that that would only raise difficulties in practice. An employee of the shipper might, for example, claim to have informed the officer on board.

Mr. Beecher asked what would have to be done, then, for the shipowner to know that the declaration was erroneous and that the real value was, for example, £1000?

The Chairman replied that in such a case it should be mentioned in correspondence.

Sir Leslie Scott did not think, moreover, that the conference should encourage such arrangements between shipper and shipowner.

The Chairman said that he would mention in the proceedings the comment of Sir Leslie Scott and Mr. Beecher.

Mr. Beecher indicated that an objection had been raised to the rules in the United States. It had been asserted that article 4(6) did not seem to be limited to the declarations of article 4(5). He asked why paragraph 6 was not part of paragraph 5, or why it was not stated clearly that the declarations envisaged under paragraph 6 were those also dealt with in paragraph 5.

The Chairman proposed altering the numbering used. Paragraph 6 would therefore disappear. (General agreement).

Mr. Beecher declared that his government felt that the penalty imposed upon the shipper by this provision was too rigorous when the shipowner himself was guilty of [71] grave negligence that involved loss or damage to the goods. The protection that the provision afforded to the shipowner ought to be limited to cases where there was no serious negligence on his part, that is, when there was no absolute carelessness. The courts would have to decide precisely what should be understood by that.

Mr. Langton alleged that English courts had on several occasions declared that it was utterly impossible to make any
maintenant abandonnée et on considère seulement s’il y a faute ou s’il n’y a pas faute; la distinction suggérée par M. Beecher paraît impossible en pratique.

M. le Président signale que quand on dit que “ni le transporteur ni le navire ne seront en aucun cas responsables, etc...” on entend par là la responsabilité du transporteur comme telle en vertu de son contrat de transport. Mais s’il commet un acte qui, par son caractère, tombe sous le coup du droit commun en matière de faute (c’est la loi aquilienne), il peut être condamné pour quasi-délit. Surgit alors, il est vrai, une autre controverse: à savoir, si l’on peut invoquer la loi aquilienne quand y a un contrat.

M. Berlingieri voudrait voir appliquer ces principes si le navire devient inamovible à cause d’une faute de l’armateur.

M. le Président ne croit pas qu’une cour de justice en arrive jamais à juger en ce sens. Mais il déclare que, dans le cadre d’une convention internationale, on ne peut entrer dans ces détails. Aucun chargeur n’est tenu de faire une déclaration de valeur - et, dans la pratique, pas un sur cent, n’en fait; - il est évident que s’il fait pareille déclaration, celle-ci doit être sincère et représenter la vérité absolue.

Au sujet de l’article 4 (7) (4 § 6 nouveau).

M. Alten est d’avis que dans le cas de transport des marchandises de nature inflammable, explosive ou dangereuse, le transporteur doit être exonéré aussi envers le tiers porteur du connaissement et il propose de supprimer dans le paragraphe les mots “pour le chargeur”. (Adhésion).

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M. Richter a une objection très grave contre l’article 4 (5) alinéas 2 et 5 (ancien paragraphe 6). Il serait fort difficile pour la délégation allemande de recomman-

classification and say where serious fault began. This controversy had now been abandoned and one judged only whether there was fault or not. The distinction suggested by Mr. Beecher seemed impossible for all practical purposes.

The Chairman indicated that when one said that “neither the carrier nor the ship shall be responsible in any event”, what one understood was the responsibility of the carrier under his contract of carriage. But if he committed an act that by its nature fell within the general law concerning actual fault, he could be condemned for a “quasi-tort”. Then, here was another controversy: namely, can one involve tort law when there is a contract.

Mr. Berlingieri wanted to see these principles applied if the ship became unseaworthy through a fault of the shipowner.

The Chairman did not believe that a court of justice would ever arrive at such a judgment. But he stated that within the framework of an international convention one could not go into these details. No shipper was bound to make a declaration of value - and in practice not one in a hundred was made. It was clear that if he made such a declaration, it has to be genuine and to represent the absolute truth.

Turning to article 4(7) (new article 4(6):

Mr. Alten was of the opinion that in the case of the carriage of goods of an inflammable, explosive, or dangerous nature, the carrier should also be immune in relation to the holder of the bill of lading, and he proposed deleting in this paragraph the words “to the shipper”. (Carried).

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Mr. Richter had one very serious objection to article 4(5), sub-paragraphs 2 and 5 (formerly 6). It would be extremely difficult for the German delegation to
der à son gouvernement la signature de la convention si ces deux dispositions ne sont pas supprimées. La délégation anglaise a déclaré qu’elle reconnaît le bien-fondé de ces objections, mais que la suppression était impossible parce que ces dispositions constituaient un élément de la transaction survenue entre armateurs et chargeurs. Or, ces dispositions ne sont pas des éléments mais représentent bien la totalité de cette transaction. L’alinéa premier est une disposition en faveur des chargeurs et l’ancien paragraphe 6 est une compensation pour le transporteur. En supprimant donc les deux dispositions, on donne satisfaction aux intérêts anglais.

M. le Président ne croit pas que l’on puisse recommencer cette discussion. Personne n’est obligé de faire une déclaration de valeur; mais quand on en fait une, c’est l’affaire de ceux qui veulent courir ce risque. En pratique, il n’y a pas un connaissement sur mille qui indique la valeur des marchandises. Il espère donc que la délégation allemande, qui a donné tant de preuves de bonne volonté, n’insistera pas.

M. Richter rappelle qu’il parle dans l’intérêt des banquiers et des tiers porteurs qui sont innocents de toute fraude.

M. le Président n’est pas non plus partisan de ces dispositions pénales, mais il ne pense pas que cette question secondaire doive arrêter la convention. Il conclut que, sous réserve de ce qui a été dit au sujet de l’article 3 (4), la commission est d’accord pour recommander la signature de la convention aux gouvernements sous les réserves indiquées. Il se propose de faire un rapport que la commission aura à approuver dans sa dernière séance.

recommend signature of the convention to its government if these two provisions were not deleted. The English delegation had declared that it recognized the foundation for these objections, but that deletion was impossible because these provisions constituted an element of the compromise worked out by shipowners and shippers. The provisions were not elements of, but represented the whole of, this compromise. The first sub-paragraph was a provision in favor of the shippers and the former section 6 was compensation for the carrier. Therefore, by deleting these two provisions, the English interests would be satisfied.

The Chairman did not believe one could start this discussion again. No one was obliged to make a declaration of value; but when one was made, it was the business of those who were willing to take the risk. In practice there was not one bill of lading in a thousand that indicated the value of the goods. He hoped, therefore, that the German delegation, which had given so many indications of good will, would not insist.

Mr. Richter emphasized that he spoke in the interest of bankers and holders of bills of lading who were innocent of all fraud.

The Chairman was no longer a supporter of the penal provisions, but he did not think that a question of such secondary importance should halt the convention. He concluded that, subject to what had been said on article 3(4), the commission was agreed to recommend the signature of the Convention to governments with the various reservations noted. He proposed making a report that the Commission would have to approve in its last session.
PART II - VISBY RULES

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ARTICLE 4
Nouveau texte du paragraphe 5 adopté par le Protocole de 1968

“5. a) A moins que le nature et la valeur des marchandises n’aient été déclarées par le chargement avant le chargement et que cette déclaration ait été insérée dans le connaissement, le transporteur, comme le navire, ne seront en aucun cas responsables des pertes ou dommages des marchandises ou concernant celles-ci pour une somme supérieure à l’équivalent de 10.000 francs par colis ou unité ou 30 francs par kilogramme de poids brut des marchandises perdues ou endommagées, la limite la plus élevée étant applicable.

b) La somme totale due sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au jour et au lieu où elles auraient dû être déchargées.

La valeur de la marchandise est déterminée d’après le cours en bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes nature et qualité.

c) Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour regroupier des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré comme un colis ou unité au sens de ce paragraphe. En dehors du cas prévu ci-dessus, cet engin sera considéré comme colis ou unité.

d) Par franc, il faut entendre une unité consistant en 65,5 milli-
grammes d’or, au titre de 900 millièmes de fin. La date de conversion de la somme accordée en monnaie nationale sera déterminée par la loi de la juridiction saisie du litige.

e) Ni le transporteur, ni le navire n’auront le droit de bénéficier de la limitation de responsabilité établie par ce paragraphe s’il est prouvé que le dommage résulte d’un acte ou d’une omission du transporteur qui a eu lieu, soit avec l’intention de provoquer un dommage, soit témérairement, et avec conscience qu’un dommage en résulterait probablement.

f) La déclaration mentionnée à l’alinéa a) de ce paragraphe, insérée dans le connaissement, constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester.

g) Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, d’autres sommes maxima que celles mentionnées à l’alinéa a) de ce paragraphe peuvent être déterminées, pourvu que ce montant maximum conventionnel ne soit pas inférieur au montant maximum correspondant mentionné dans cet alinéa.

h) Ni le transporteur, ni le navire ne seront en aucun cas responsables, pour perte ou dommage causé aux marchandises ou les concernant, si dans le connaissement le chargeur a fait sciemment une fausse déclaration de leur nature ou de leur valeur.”

d) A franc means a unit consisting of 65,5 milligrammes of gold of millesimal fineness 900. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.

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

f) The declaration mentioned in sub-paragraph a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.”
CMI 1959 Rijeka Conference  
Report of the Chairman of the International Sub-Committee, Mr. Kay Pineus  

[138]  
a) Ainsi, il est certain que les auteurs de la Convention ont eu l’intention de réaliser une uniformité en matière de limite de responsabilité à appliquer dans les Etats contractants. Actuellement on applique suivant l’Etat où le différend est tranché les limites que voici. (Extrait de “On Ocean Bills of Lading” de A. Knauth):

<table>
<thead>
<tr>
<th>Pays</th>
<th>Unité</th>
<th>Limitation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Allemagne</td>
<td>Mk.</td>
<td>1,250</td>
<td>$ 300</td>
</tr>
<tr>
<td>Australie</td>
<td>£.</td>
<td>100</td>
<td>$ 224</td>
</tr>
<tr>
<td>Canada</td>
<td>$</td>
<td>500</td>
<td>$ 503</td>
</tr>
<tr>
<td>Danemark</td>
<td>Kr.</td>
<td>1,800</td>
<td>$ 261,66</td>
</tr>
<tr>
<td>Egypte</td>
<td>£.</td>
<td>100</td>
<td>$ 280</td>
</tr>
<tr>
<td>Espagne</td>
<td>P.</td>
<td>5,000</td>
<td>$ 550</td>
</tr>
<tr>
<td>Etats-Unis</td>
<td>$</td>
<td>500</td>
<td>$ 500</td>
</tr>
<tr>
<td>France</td>
<td>F.</td>
<td>50,000</td>
<td>$ 142,50</td>
</tr>
<tr>
<td>India</td>
<td>R.</td>
<td>1,500</td>
<td>$ 280</td>
</tr>
<tr>
<td>Italie</td>
<td>L.</td>
<td>2,500</td>
<td>£ 10</td>
</tr>
<tr>
<td>Norvège</td>
<td>Kr.</td>
<td>1,800</td>
<td>$ 244</td>
</tr>
<tr>
<td>Pays-Bas</td>
<td>Fl.</td>
<td>600</td>
<td>$ 160</td>
</tr>
<tr>
<td>Royaume-Uni</td>
<td>£.</td>
<td>100</td>
<td>$ 280</td>
</tr>
<tr>
<td>Suède</td>
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<td>$ 347</td>
</tr>
<tr>
<td>Union de l’Afrique du Sud</td>
<td>£.</td>
<td>100</td>
<td>$ 280</td>
</tr>
</tbody>
</table>

Plenary Session - 25 September 1959  

[382]  
M. F. Nordborg, Suède (traduction)  

Il y a beaucoup de systèmes différents pour appliquer la limite de responsabilité. Un de ceux-ci est celui qui applique la valeur-or sans réserve. Je ne pense pas qu’il y ait encore des pays qui sont attachés à ce système. Il y a ensuite le système qui applique la valeur-or comme une règle générale et la valeur-papier à l’égard des États qui appliquent la valeur-papier comme une règle générale. C’est le cas de la Suède. Ensuite vient le système qui applique la valeur-papier comme une règle générale et la valeur-or en cas de réciprocité. C’est le cas, par exemple, de la Norvège et de la Finlande. Il y a des valeurs papier doubles; c’est le cas de l’Angleterre. Finalement, il y a uniquement la valeur-papier dans des pays tels que le Danemark.

A première vue, il peut paraître qu’il n’y a pas une grande différence entre les pays qui appliquent la valeur-or comme une règle générale et les pays qui appliquent la valeur-papier comme une règle générale avec la réserve qu’en cas de réciprocité la valeur-or est appliquée. En fait, la différence est plutôt importante puisque l’application de la valeur-or comme règle générale signifie que si le transporteur et le réclamant sont des ressortissants d’un même pays, la valeur-or sera appliquée alors qu’au cas où la valeur-papier est appliquée comme règle générale, la valeur-papier sera appliquée au même cas.

Qu’on applique l’amendement à l’Article 10 ou qu’on ne l’applique pas, des conflits de lois paraissent inévitables, mais cette question de savoir si l’une ou l’autre loi incorporant les Règles de La Haye est applicable n’aurait pas beaucoup d’impor-
tance si les États s’acquittaient de leur obligation conformément à la Convention de Bruxelles sur les connaissements, c’est-à-dire en appliquant la valeur-or, puisque dans pareil cas nous obtiendrons probablement l’unité monétaire fixée par la Convention.

La délégation suédoise propose que les États s’acquittent de cette obligation d’appliquer la valeur-or comme une règle générale chaque fois qu’il y a lieu de fixer une limite de responsabilité.

[385]

M. J. Honour, Grande Bretagne (traduction) ..............................................

Reprenant la deuxième conclusion de la Sous-Commission, je désire une fois de plus approuver la délégation des États-Unis et déclarer que nous ne désirons pas procéder à d’autres révisions de cette Convention. Nous craignons, tout particulièrement, que si nous commençons par essayer d’obtenir une uniformité sur la limitation de la responsabilité, il soit très possible que les Parlements des États contractants examinent [386] la limite de beaucoup plus près qu’avant et qu’ils disent: “si la limite était de £100 en 1924, quelle doit être la limite aujourd’hui?”. Je pense que personne ici ne désire que les Parlements aient cette occasion. Dans notre pays, nous sommes tout à fait satisfaits de l’arrangement qui est en vigueur actuellement; nous n’avons aucun problème particulier dans ce domaine. Nous avons un arrangement sur la clause-or, suivant lequel les parties intéressées se sont mises d’accord de considérer la limite de £100 comme une limite de £200. Nous trouvons que c’est un compromis que toutes les parties ont accepté et qui donne entière satisfaction et nous le recommandons aux autres pays qui pourraient éprouver des difficultés en ces matières.

[388]

M. F. Norrmen, Finlande (traduction): ......................................................

En ce qui concerne les différentes valeurs de limitation actuellement employées dans les différents États contractants, le problème est probablement plus profond. Toutefois, au nom de l’Association Finlandaise de Droit Maritime, je recommande aux États qui ont ratifié la Convention de 1924 et aux autres États qui pourraient la ratifier, de faire usage de la valeur-or, ce qui fut l’intention originale.

En outre, je désire préciser qu’en Finlande nous sommes toujours disposés à appuyer la valeur-or lorsqu’une nouvelle Convention concernant des problèmes maritimes internationaux est en préparation. Ainsi, je désire déclarer que nous coopérerons avec le Comité Maritime International s’il estime opportun d’entamer la préparation d’une Convention supplémentaire pour résoudre certains problèmes concernant des connaissements qui n’ont pas été résolus jusqu’à présent.

M. A. Suc, Yougoslavie (traduction): ...........................................................

[390]

La Convention sur les Connaissances présente deux lacunes importantes. L’une concerne les transports en provenance de l’État non contractant; l’autre concerne l’absence d’uniformité en ce qui concerne les montants de la limitation de l’Article 9 (2). Ces deux questions semblent constituer le plus grand obstacle à l’application uniforme de la Convention et elles semblent mériter notre attention immédiate. Notre but principal ne sera atteint que si les deux peuvent être résolus. C’est la raison pour laquelle je désire proposer que nous passions un effort pour trouver, et pour mettre devant la Conférence, le texte d’une nouvelle clause remplaçant l’ancienne relative à la Livre or et qui devrait nous permettre d’avoir le même montant de limitation dans chaque État contractant, uniquement exprimé dans sa propre monnaie. S’il s’avérait impraticable de trouver une nouvelle rédaction convenable pour cette clause au stade
actuel nous pourrions avoir, au moins, un échange de vues sur ce point qui pourrait être utile pour les travaux futurs de la Commission Internationale.

[391]

Je voudrais en venir maintenant à la deuxième conclusion de la Commission. Nous pensons que cette question doit être abordée en se basant sur une unité monétaire abstraite comme c’est le cas dans beaucoup d’autres Conventions. Je voudrais vous rappeler que nous avions une solution similaire dans l’Article 22 de la Convention de Varsovie de 1929, et dans l’Article 11 du protocole de La Haye de 1955; les deux concernent le transport aérien; dans l’Article 3(6) de la Convention de Bruxelles sur la limitation de la responsabilité des propriétaires de navires de 1957 et dans l’Article 6 (3), du projet final de la Convention sur le transport de passagers de 1957, qui tous les deux concernent des questions maritimes. Nous avons des sujets similaires dans d’autres domaines de transport. Je voudrais mentionner l’Article 20, paragraphe 3, du projet de Convention pour le transport de marchandises par eaux intérieures de Genève de 1959; la Convention sur les chemins de fer CIM et CIV de Berne de 1952 et l’Article 23, paragraphe 3, de la Convention pour le transport de marchandises par route, CMR, de Genève de 1956. Chacune de ces Conventions se réfère soit à une unité monétaire valant 65,5 milligrammes d’or, soit à une unité monétaire valant 10/31 grammes d’or, les deux d’un titre de 0,900.

Conférence de Stockholm du CMI - 1963
Rapport de la Commission sur les clauses des connaissements

[79]


L’Article 9 de la Convention 1924 est libellé comme suit:

“Les unités monétaires dont il s’agit dans la présente convention s’entendent valeur or.

Ceux des Etats contractants où la livre sterling n’est pas employée comme unité monétaire se réservent le droit de convertir en chiffres ronds, d’après leur système monétaire, les sommes indiquées en livres sterling dans la présente convention.

Les lois nationales peuvent réserver au débiteur la faculté de se libérer dans la monnaie nationale, d’après le cours de change au jour de l’arrivée du navire au port de déchargement de la marchandise dont il s’agit.”

a) Clause Or.

On peut difficilement mettre en dou-

CMI 1963 Stockholm Conference
Report of the Committee on Bills of Lading Clauses

[79]

4. Gold Clause, Rate of Exchange, Unit Limitation (Art. 4 (5) and 9).

Article 9 of the 1924 Convention reads thus:

“The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting states in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned”.

a) Gold Clause.
There can be little doubt that the 1924 Convention intended there to be a uniform limit of liability representing the equivalent of £ 100 in gold. The liberty given in Article 9 to convert the limitation figure into national currencies has contributed to the present situation of widely different limitation figures as set out in the report presented to the CMI in September 1959.

Today £ 100 in paper currency represent roughly some $ 280,70 whereas £ 100 in gold are worth £ 293,11 in paper or $ 824 or [80] in Poincaré francs 12,421.35. It can also be expressed this way that £ 100 in paper currency represent only about £ 34.1.4 in gold.

A system which allows the limitation figures to depreciate and to vary in various countries seems due for overhaul.

If one and the same figure can be applied in all Contracting States this would greatly reduce the importance of which COGSA is applicable.

In order to achieve uniformity and as far as possible avoid fluctuations in currencies to interfere with the result the Sub-Committee recommends that the use of the Poincaré franc, now appearing in the 1957 Convention on Limitation of Shipowners’ Liability and in the 1961 Convention on the Carriage of Passengers by Sea, should be adopted. The Poincaré franc can very well be defined in the first paragraph of Article 4 (5) which would mean that the first paragraph of Article 9 could be struck out.

In order fully to achieve this end the Sub-Committee also recommends that Article 9 (2), granting liberty to the Contracting States to translate the limitation amount into terms of their own monetary system in round figures, should be struck out.

As for the figure that should appear the Sub-Committee agreed that 10,000 Poincaré francs was fair and reasonable. This figure represents, at the rate of exchange of the 6th November 1961, about $ 662, £ 235, N.Frs. 3,255, Fl. 2,385, DM 2,650, and Sw.Kr. 3,432.

b) Rate of Exchange.
Article 4 (5) - Limits of liability

It is obvious that as the Poincaré francs is only a way of expressing a certain amount of gold, no Court of Law will give a judgment merely for this or that amount of Poincaré francs without indicating a date for the rate of conversion, nor would an agreement between a carrier and a claimant as to payment be realistic unless a date of conversion from Poincaré francs into an existing currency were agreed upon.

For this purpose the Sub-Committee considered whether it should make any recommendation as to the date of conversion. The following dates were discussed a) the date of judgment, b) the date the amount becomes due, c) the date of payment or d) various combinations of these dates.

While the Sub-Committee is well aware that the present rule that conversion shall take place at the date of arrival of the vessel might prove highly unsatisfactory the very full debates the Sub-Committee has had on this particular point show that it is not possible to find a new solution for the date of conversion which would prove acceptable to all systems of law represented within the Sub-Committee. The result of the exchange of views is therefore that a) the last [81] paragraph of Article 9 should be struck out and b) the date of conversion should be left to national law to decide.

If a subject matter is not expressly dealt with in the Convention it follows that it will be for the applicable national law to govern the subject. For this reason the view was put forward that it was not necessary expressly to refer this matter to national law. However in view of the protracted debates held on this particular point the Sub-Committee feels it would be advisable to make a special reference to national law in this respect which could be put as a new paragraph in Article 4 (5).

c) Package and unit.

As was bound to happen the Sub-Committee found that its agreement on the 10,000 Poincaré francs was in some respects linked with the question of the...
à la loi nationale, référence qui pourrait être insérée sous forme d’un nouveau paragraphe dans l’Article 4 (5).

c) Colis ou unité.

Il était inévitable que la Commission estime que son accord sur les Francs Poincaré 10.000 était dans une certaine mesure lié à la définition de “Colis et unité”.

Afin d'obtenir une plus grande clarté sur la signification de l'expression “colis ou unité” les solutions possibles suivantes ont été examinées.

1. Uniquement “colis” comme une règle générale et à titre subsidiaire “unité de fret” pour couvrir les cargaison en vrac;
2. Uniquement “Unité de fret”;
3. “Unité réelle de fret” comme une règle générale et à titre subsidiaire “unité de fret usuelle” pour les cas des frets forfaitaires;
4. Uniquement “Unité d’embarquement”;
5. Uniquement “Unité de commerce”;
6. Uniquement “Unité de poids/volume”; le montant de la limitation devrait être appliqué à un certain taux par tonne ou par 40 pieds cubes suivant que l’un ou l’autre donne le montant de limitation le plus élevé.

La Commission a examiné ce problème avec beaucoup de soin et a discuté chacune des solutions proposées. Toutefois, en guise de résultat des investigations, la majorité de la Commission est arrivée à la conclusion que la meilleure base de limitation c’était “Colis ou unité” et qu’aucune définition générale de ces mots ne pouvait couvrir tous les cas possibles. La majorité a été d’avis qu’aucun problème sérieux n’a surgi, en ce qui concerne la signification à donner aux mots “Colis ou unité”, dans les États contractants qui ont adopté le texte de la Convention sans modification sur ce point particulier.

Décision:
La majorité de la Commission recommande de :
1) supprimer l’Article 9
2) amender l’Article 4 (5) comme suit:

In order to obtain greater clarity of meaning of the expression “package or unit” the following possible solutions were examined.

1. Only “package” as a general rule and as a subsidiary “freight unit” to cover bulk cargoes;
2. Only “freight unit”;
3. “Actual freight unit” as a general rule and as a subsidiary “customary freight unit” in lumpsum cases;
4. Only “shipping unit”;
5. Only “trade unit”;
6. Only “weight/volume unit”; the limitation amount should apply to a certain rate per ton or per 40 cubic feet whichever produces the higher limitation figure.

The Sub-Committee examined this problem very carefully and discussed each of the suggested solutions. As a result of its investigations, however, the majority of the Sub-Committee found that no better basis, for the limitation amount than the “package or unit” exists and that no general definition of the said words to cover every contingency can be made. The majority felt that no serious problems have arisen regarding the construction of the words “package or unit” in those Contracting States who have adopted the text of the Convention without any alteration on this particular point.

Decision:
The majority of the Sub-Committee recommends that:
1) Article 9 be struck out
2) Article 4 (5) should read as follows:
“Le transporteur comme le navire ne seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant pour une somme supérieure à l’équivalent de francs Poincaré 10.000,- par colis ou unité, chaque franc étant constitué par 65,5 milligrammes d’or au titre de 900 millièmes de fin, à moins que le nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissement.”

“Cette déclaration ... (pas de changement) ... constitué.”

“Par convention ... (pas de changement) ... ci-dessus fixé.”

“Ni ... (pas de changement) ... valeur.”

“La date de conversion de la somme accordée en monnaie nationale sera déterminée conformément aux dispositions de la loi du tribunal saisi de l’affaire.”

3) de maintenir le statu quo en ce qui concerne “colis et unité”.

Réserves:

1. Un des membres de la Commission a émis l’avis que le projet de l’Article 4 (5) pourrait ne pas être nécessaire puisque la loi nationale est d’application même sans aucune disposition spéciale et puisque, de toute manière, la disposition recommandée par la majorité est incomplète en ce sens qu’elle ne tient pas compte des cas où un paiement est basé sur un accord entre parties.

2. Un membre de la commission estime qu’afin de réaliser l’unification voulue, l’unité de base à laquelle le montant de la limite s’applique devrait être plus clairement défini dans la convention. Par conséquent, le montant-limite devrait, en règle générale, s’appliquer à “l’unité réelle de fret”, et, en cas de fret global, à “l’unité de fret coutumier”. Le terme “colis” qui figure actuellement dans la convention devrait être supprimé.

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading”.

“This declaration ... (no change) ... on the carrier”.

“By agreement ... (no change) ... above named”.

“Neither the ... (no change) ... of lading”.

“the date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seised of the case”.

3) the status quo be retained in respect of “package and unit”.

Reservations:

1. One member of the Sub-Committee feels that the proposed last paragraph of Article 4 (5) might be unnecessary as national law would become applicable even without any special provision and that anyhow the provision recommended by the majority is incomplete in that it does not take into account the cases where a payment is based on an agreement between the parties.

2. One member of the Sub-Committee is of the opinion that in order to achieve the necessary unification the basic unit to which the limitation sum shall apply should be more clearly defined in the Convention. Therefore the limitation sum should be made to apply as a general rule to “the actual freight unit” and, in cases of lumpsum freight, to “the customary freight unit”. The expression “package” now appearing in the Convention should be struck out.
Nous passons maintenant à l’examen du dernier point inclus dans cette recommandation n° 5. C’est l’ajout éventuel au paragraphe 4 de l’article actuel, d’un n° 7, rédigé comme le prévoit le rapport de la commission internationale, page 30.

Je rappelle la portée de cette disposition.

Il s’agit d’une disposition qui prévoit que le transporteur ne pourra pas bénéficier de la limitation prévue par la convention, en cas de faute intentionnelle ou de faute lourde. J’emploie ces termes, pour être plus bref, il s’agit toujours des mêmes cas que ceux prévus dans le paragraphe 4. Il s’agit maintenant de la responsabilité du transporteur lui-même.

Est-ce que quelqu’un demande la parole au sujet de cette disposition dont le rejet est proposé par plusieurs associations, dont l’association canadienne, danoise, norvégienne et américaine?

Si personne ne demande la parole, je vais mettre cette proposition aux voix.

Mr. P. Gram (Norway). Mr. Chairman, Gentlemen, this new proposed point 7 to Article 4 of course came up as a consequence of the Himalaya Clause 4 which we have just rejected in this committee, so it should follow quite logically that this article 7 (2) 4 should necessarily also as the same reasoning applies I think the intention of the acts will take care of this. You gentlemen know in a convention or a legal convention or legal background to take due judicial regard of an intentional act by the carrier himself, and as to the second part of the rule the gross negligence rule, it is exactly the same problem. This is just a source for unnecessarily making quibbles over the degree of fault.

M. le Président. C’est tout à fait exact au point de vue historique. C’est effectivement comme suite à l’adoption éventuelle du paragraphe 4 que la commission internationale a envisagé la disposition que nous discutons actuellement. Mais il faut reconnaître qu’au point de vue logique, cette disposition se conçoit parfaitement, même après le rejet du par. 4.

Par conséquent, je ne crois pas qu’on puisse considérer qu’elle tombe de plein droit. La commission se prononcera sur ce point mais je crois qu’il convient de soumettre cette disposition à un vote distinct.

Quelqu’un demande-t-il encore la parole sur la disposition que nous discutons?

Si personne de demande la parole, je demanderai à la commission de se prononcer sur l’adoption éventuelle de ce texte qui devrait donc, dans l’intention de la commission internationale, constituer le n° 7 de l’art. 4 actuel. Votons à mains levées. Résultat: la proposition est rejetée par 12 voix opposées, aucune voix favorable et 4 abstentions. Nous renvoyons donc au comité de rédaction le texte ainsi abrégé de la recommandation n° 5, ce dont le comité de rédaction nous sera sans doute reconnaissant.
Le Président (J. Van Ryn): .................................................................

Nous pouvons alors revenir en arrière et examiner les deux questions que nous avions laissées en suspens.

La première est celle de savoir s’il est possible de trouver [3-10] une formule qui remplacerait dans l’art. 4 (5) les mots “colis et unité”. Nous avions chargé un groupe de travail d’examiner cette question. J’ai été informé ce matin qu’après de longs échanges de vues, le groupe de travail est arrivé à la conclusion qu’il était préférable de demander à la commission d’approuver purement et simplement les conclusions sur ce point de la commission internationale, cette conclusion étant qu’il y a lieu de maintenir le statu quo en ce qui concerne l’expression “colis et unité”. Telle est donc la conclusion de la recherche, des échanges de vues du groupe de travail.

Dans ces conditions, je mets directement aux voix à moins que quelqu’un ne demande la parole.

La parole est à M. M. Hill de la délégation britannique.

Mr. Martin Hill (United Kingdom). Mr. Chairman, as Chairman of the little Working Party that has met this morning, I have been asked to make a short statement.

The International Sub-Committee studied this problem for something like three years and came to the conclusion, as said in the Report, that it is best to leave it as it is and not to try and define “unit” any more closely.

We had a very interesting discussion on it for three quarters of an hours and the result of that discussion is, as you have just stated, Mr. Chairman, that we recommend that the Sub-Committee’s decision be adopted.

We realise that there is risk of lack of uniformity through different interpretations in the different courts and, of course, in the United States the Hague Rules Act is different on this point, so that there is inevitably a difference there. On the other hand, I think it is right to say that the view of certainly the majority of the Sub-Committee this morning was against introducing the conception of freight unit which, as I said the day before yesterday in discussing this subject does lead one to quite inconsistent and undesirable consequences. If for instance you take the simple example of a motor car, which undoubtedly is a unit, if it is packed in a case it would be limited to 10.000 Poincaré francs and there would be no argument about it. If you then say the unit should be related to the basis of freight calculation, that basis, to the best of my knowledge, varies quite considerably in different liner trades and you could have cases and, in fact, you have had a case in the United States when on the basis of freight unit it would rank for purposes of limit as nine units so that if it is packed in a case the limit would be one of 10.000 francs [12-20] and if it is unpacked the carrier would pay 90.000 francs.

One cannot really have that. It would be creating a far worse disease than any existing disease by going away from a conception of unit, whatever it might be, to a definite conception of freight unit.

The general trend, and I put it rather carefully in that way, the general trend I think of our discussion this morning was that a package is a package and you only move away from the package to the unit, when you are definitely not dealing with a package, then the line of thought and it was only a line of thought and we are not attempting to express any opinion was that a unit is a single article - one unit, one single article - and the only problem you then come up against is that arising in the case of bulk cargo; our
line of thought this morning was that it would be interpreted in the case of bulk cargo to mean the freight unit.

However, as I said the decided recommendation of the Sub-Committee this morning is that the recommendation of the International Sub-Commission be adopted by this meeting. Thank you. (General applause).

M. le Président. Si personne ne demande plus la parole sur cette question, je vais, conformément à la proposition du groupe de travail, mettre aux voix l’approbation de la recommandation de la commission internationale, c’est-à-dire le maintien du statu quo en ce qui concerne les mots “colis et unité”. Que ceux qui sont en faveur du maintien du statu quo lèvent la main.

La recommandation de la commission internationale est donc adoptée par 16 voix contre une et aucune abstention.

Plenary Session - 10 June 1963

Mr. J. Moore (United States): . . . . .

On the Gold Clause, Rate of Exchange, Unit Limitation, the Maritime Law Association of the United States approves and supports the amendment proposed by the Subcommittee.

With regard to the date for conversion of the sum awarded into national currency, we note that a number of national Associations have urged that the date of conversion be the date of payment.

Thus in our countries, the rules of procedure make it quite impossible to accept the date of payment rule.

It is out of the question, politically,
due totalement impossible par les règles de procédure.

Il est hors de question, au point de vue politique, de changer cette règle de base de la procédure pour les besoins de ce menu point de droit maritime.

Je pourrais faire remarquer que dans mon pays il y a 51 Gouvernements qui ont chacun un chef de l’exécutif indépendant, leur législation propre, leur organisation judiciaire et leurs règles de procédure. Il est manifestement impossible pour nous, de changer la loi de ces 51 Gouvernements.

Nous pourrions éventuellement accepter la date du jugement comme la date de la conversion mais c’est absolument la dernière date que nous puissions accepter. L’amendement proposé par la Commission permet aux pays qui ne peuvent modifier leur procédure, en conséquence, d’adopter la meilleure solution possible. C’est la raison pour laquelle il nous paraît préférable d’adopter la proposition de la Commission et de laisser à la loi nationale le soin de déterminer la date de conversion. Il nous semble que cette solution ne provoquera que dans de très [450] faibles mesures des recherches d’un forum favorable et c’est le but que le C.M.I. doit poursuivre. J’espère que nos bons amis des pays européens ne penseront pas que nous sommes, de quelque manière que ce soit, partiaux ou capricieux mais c’est un simple fait pour nous que si un amendement de la convention adopte le principe de la date du paiement, il ne sera pas possible pour nous de l’accepter, et je pense que nous serons tous d’accord que toute absence de signature à nos conventions doit être grandement déplorée.

diplomatic conference - may 1967

text adopted by the cmi stockholm conference:

[673]

in article 4 of the convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following:

“Neither the carrier nor the ship shall in any event be or become liable for any loss
or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading”.

**Procès-Verbal de la Commission**

A l’article 4, le premier alinéa du paragraphe 5 est remplacé par la disposition suivante:

“Le transporteur comme le navire se seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant pour une somme supérieure à l’équivalent de 10.000 francs, par colis ou unité, chaque franc étant constitué par 65,5 milligrammes [670] d’or au titre de 900 millièmes de fin, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissement.

Trois amendements avaient été introduits:
1. CONN. 4, par la Norvège 1.
2. CONN. 5, par la République Fédérale d’Allemagne 2.
3. CONN. 6, par les U.S.A 3.

Vu l’importance et les répercussions de l’amendement CONN. 6, et à la suite d’un long débat concernant le principe du calcul de la limitation de responsabilité, le Président, comme suite à une suggestion de Sir Kenneth Diplock tendant à confier l’étude des diverses solutions possibles à un petit groupe de travail, a consulté la commission quant à l’opportunité de trancher immédiatement le fond ou de donner suite à la proposition de Sir Kenneth Diplock.

10 Délégations se sont prononcées en faveur d’un vote immédiat; 5 Délégations se sont abstenuées; 14 Délégations se sont prononcées pour l’ajournement

**Minutes of the Commission**

In article 4(5), the first paragraph is replaced by the following:

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligrams [670] of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading”.

Three amendments were submitted:

1. CONN. 4, by Norway.1
2. CONN. 5, by the Federal Republic of Germany.2
3. CONN. 6, by the U.S.A.3

Given the importance and the repercussions of amendment CONN. 6, and following a long debate on the principle of calculating the limits of liability, the Chairman, in response to a suggestion by Sir Kenneth Diplock to entrust the study of the different possible solutions to a small working group, consulted the Commission as to the advisability of immediately deciding on the substance or following the proposal of Sir Kenneth Diplock.

Ten delegations were in favor of an immediate vote; five delegations abstained; fourteen delegations opted for postponing the discussion and creating

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1 Subsequently withdrawn: see page 533.
2 Subsequently withdrawn: see page 533.
3 See page 540.
A working group.

The Chairman asked Mr. Van Ryn to chair this group and called on the delegations of the U.K., the U.S.A., France, The U.S.S.R. and Norway to nominate one of their number to join the group.

Diplomatic Conference - May 1967
Text adopted by the CMI Stockholm Conference:

[673]

Article 2

In Article 4, paragraph 5, shall be added the following:
“The date of conversion of the sum awarded into national [674] currencies shall be regulated in accordance with the law of the court seized of the case”.

Procès-Verbal de la Commission

Le texte de l’article 2, § 2 est adopté tel quel par la Commission.

Vote: pour: 23;
contre: 3;
abstentions: 2;
Total: 28.

Résumé des débats:

La Délégation de la République Fédérale d’Allemagne soutenue par la Délégation des Pays-Bas, considère qu’il faut un critère uniforme et que, dans cette optique, la date de conversion la plus appropriée est celle de l’arrivée au port de déchargement.

La Délégation française est d’accord sur le principe de l’uniformité, mais souhaite que la date de conversion soit la plus proche possible du jour du paiement effectif et propose en conséquence que soit retenue celle de la décision de justice définitive.

Les Délégations des U.S.A. et de la Suède proposent le maintien du texte proposé en insistant particulièrement sur le fait que ce système est celui qui peut le mieux prévenir les spéculations éventuelles.

Minutes of the Commission

The text of article 2(2) was adopted by the Commission as it stood.

Vote: for: 23;
against: 3;
abstentions: 2;
Total: 28.

Summary of the debates:

The German delegation, supported by the Dutch delegation, is of the opinion that there must be a uniform criterion and that, in this case, the most appropriate conversion date would be the date of arrival of the ship at the port of discharge.

The French delegation agreed with the uniformity principle, but hoped that the conversion date would be as near as possible to the day of effective payment, and consequently suggested that the date of the final judicial decision be adopted.

The delegations of the U.S.A. and Sweden proposed the adoption of the suggested text, particularly emphasizing the fact that this system was the one most likely to prevent any possible speculation.
Minutes of the Commission

Report by Professor Van Ryn, Chairman of the Working Party on § 1 of Article 2 of the Visby Rules

May 22, 1967

I regret to have to say that the working party is not in a position to submit to the Commission a solution which obtained the support of all the members. The attenuating circumstance that it can invoke is that this is a complex and difficult problem.

The modification to article 4 § 5, limiting the carrier’s liability to 100 pounds per package or unit, is one of the two most important amendments proposed by the Draft Protocol. The other is the modification to Article 10.

These two modifications have been deemed indispensable for a long time. They form the basis of the work carried out in this field by the CMI since 1959.

The work of the CMI hitherto has simply had a dual object with regard to Article 4 § 5 (limitation of liability).

1. To remedy the irregular situation which has progressed since 1924, owing to the fact that the number of countries which have had recourse to the provisions of Article 9, and have converted the sum of 100 pounds into the national currency, the limit of liability has become extremely variable from one country to another; moreover, following the progressive fall in value of all currencies, the limit has fallen appreciably below the level which the 1924 Convention was intended to fix.

There was also controversy - mainly in Great Britain - of whether the amount of 100 pounds should be understood as 100 pounds in gold or 100 pounds paper money.

Article 2 § 1, of the Draft Protocol brought a remedy to this situation by henceforth expressing the limit of liability by an amount of money of account itself based on a weight of gold - an amount to which it will henceforth be necessary to refer in all the countries which shall have signed and ratified the Protocol - since the possibility for the States to express this limitation in national currency no longer exists anyway.

The level of the limit (10,000 francs, termed “Poincaré”) is equal to about $ 662, pounds 235 or 3,255 new French Francs. This is 20 or 25% lower than the 100 pounds in gold adopted in 1924, but is certainly an appreciable improvement on the level to which the limit has in fact fallen in the different countries.

2. The work of the CMI had a second objective, and this was to give more clarity to the expression “per package or unit”.

The report concluded as follows: The Commission has examined this problem very carefully and discussed each of the solutions proposed. At any rate, by way of result of the investigations, the majority of the Commission arrived at the conclusion that the best basis of limitation was “package or unit”, and that no general definition of these words could cover every possible case. The majority were of the view that no serious problem has arisen in regard to the meaning to be attached to the words “package or unit” in the contracting States which have adopted the text of the Convention without modification on this particular point.

It is for this reason that the Draft Protocol contains no amendment on this matter.

However, it has become increasingly clear that the 1924 solution based on limitation of liability per package or unit is no longer satisfactory.

It has in any case always been imperfect, because in certain cases it leads to unacceptable results, while in others it provides no definite solution.
1) Liability limited per “package or unit” becomes derisory in the case of machinery or heavy engineering products such as locomotives and electrical transformers for example.

2) In the case of bulk cargoes it has been necessary to have recourse to some form of fiction and consider every ton or every item as separate units or packages, according to whether the freight is calculated per ton or per item.

The imperfect 1924 solution is becoming more and more cumbersome in view of present transport trends, both from the technical and legal point of view.

A. For the other forms of transport the system of the limitation of liability is still based on the weight of the goods (except naturally in the case of an express declaration of value inserted into the Bill of Lading):

- Warsaw Convention
- C.I.M.: International Carriage of Goods by Rail
- C.M.R.: Carriage of Goods by Road.

Combined carriage is becoming more and more common; consequently, different systems of limitation are difficult to accept.

In the case of carriage of goods which has to be effected by air then by sea followed by road, the limit would vary according to whether the loss or average happened at sea, in the air or on the road.

Since the limitation of liability on the basis of the weight of the goods seemed the best solution for the other forms of transport, consideration should be given to whether it must be otherwise for carriage by sea.

B. The development of transport by containers also goes to aggravate the imperfection of the present system. The “container” literally forms a unit. Its contents can however be of great value: typewriters, precision tools etc.

Rationally, it would be tempting to say: “Let us disregard this outside cover and see how many units there are inside”.

In practice it will often not be possible to do this because, as has been emphasized, it is not always feasible to divide the contents into “units” or “packages”.

It is certainly considerations of this sort which explain the amendment proposed by the United States Delegation (Doc. CONN. 6). The main object of this amendment in its final form is to abolish the limitation based on the notion of “package or unit” and to replace it by a limitation based on weight.

More specifically, the amendment proposes the same limitation as that of the C.M.R., namely 25 germinal francs per kg of goods lost or averaged.

The working party has also been apprised of a new Norwegian amendment (Doc. CONN. 16) which, in a spirit of conciliation, proposes combining the existing system with a limitation based on weight.

This amendment means that when the weight of a package or unit exceeds 333 kg, the limit begins to exceed 10,000 F. in gold.

Thus a remedy would be brought to the drawbacks of the old system in cases such as locomotives and transformers. This would also bring an acceptable solution in the case of containers.

The drawbacks of disparate systems in the case of combined transport still remain. These two proposals were examined by the working group and in particular the attempted compromise on by the Norwegian Delegation were sympathetically welcomed, but each of the proposals came up against an objection upon which the representative of the British Delegation laid particular stress.
The substitution, either in whole or in part, of the governing laws of 1924 by a limitation of responsibility based on weight \[719\] (so many gold francs per kilogramme) constitutes a fundamental change which could only be discussed after a thorough study by the interested parties in order to permit an assessment of the repercussions and to establish in rational and equitable manner the new limit of responsibility which would thus be adopted.

Nevertheless, the working group considers that the proposals which have been made deserve a close examination; the discussion of these, since this would be premature at present, should be undertaken again in the near future.

This being so, and bearing in mind certain precedents the representative of the British Delegation proposed to recommend the postponement of the discussion of Art. 2, par. 1 of the Draft Protocol until a special limited session of the Diplomatic Conference, which could, it is suggested, take place within six to eight months. In the meantime, the necessary studies could be made and the Conference would then be in a position to decide, with full knowledge of the issues involved, between the various proposals put before it.

It would then be required to take position with regard to several questions.

Among others:

1) Should the present system be completely replaced by a limitation of the responsibility based on gross weight of the goods? Amendment of the United States.

2) Is it better, at least, to adopt by way of compromise a mixed system as suggested by the Norwegian amendment or the subsidiary American amendments CONN 195 and 206?

3) In the case of an affirmative decision to one of the first two questions, what should be the amount per kg to which the responsibility is limited.

The working document (Doc. CONN. 15) drawn up by the Delegation of the United States will help in appreciating the concrete significance of the present proposal.

To adopt the same basis as the CMR (25 germinal francs per kg) as the American amendment proposes means the limitation of the responsibility to $8.16 per kg. It corresponds to 10,000 Poincaré francs for a package of 81 kg.

The limit proposed by the Norwegian amendment (30 Poincaré francs per kg) is the equivalent of $2 per kg. This equals 10,000 Poincaré francs for a package of 333 kg.

As a point of reference, it should be noted that the limit laid down by the Warsaw Convention (as modified by the Hague Protocol) is 250 Poincaré francs per kg, that is about $16.50 while the limit laid down by the CIM is 100 Germinal francs, that is about $32.65.

4) Supposing that a mixed system as proposed in the Norwegian amendment is admitted, should it not be agreed that it would always be the highest maximum which would apply?

The question arises for packages weighing less than 333 kg. This seems to be the sense of the amendment itself (“not less than…”). But the point should be made clear.

5) If no radical change should be retained, there remains to be examined the German amendment which replaces, in Article 2 par. 1 of the Draft Protocol the amount of 10,000 francs by that of 15,000 francs, thus avoiding a lowering of the level of responsibility in relation to the limit of £100 in gold fixed in 1924.

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5 Subsequently withdrawn.
6 See page 540.
This is the first proposal:
The majority of the members of the working group spoke in favour of the consideration of the Norwegian amendment - the text of which was added to include the observations which were made.
Notably: that the weight is not always indicated on the bill of lading.
The new system implies that the weight would be mentioned.
If it is not, the only way to avoid the limitation by package or unit will be the declaration of value.
In any case, the representative of the British Delegation stated that the adoption at the present time of such an amendment - without preliminary study of its practical repercussions - could be of a character to prevent the signature of the protocol itself by the United Kingdom.
In these circumstances the Commission should decide if it would not be wiser to propose to the Plenary Assembly postponement of the discussion to another session and eventually the adoption of modifications to Article 4 § 5 of the Convention of 1924.

*Plenary Session - Fourth Session 17 May 1967*

[76]

Mr. A. Rein (Sweden): .................................................................

The second proposal is in regard to the so-called unit limitation. This is a point where international unity has never been achieved. The unit limitation rule has been interpreted differently in the different contracting States, not only by the judiciaries of those States but even by the legislators. Therefore, the unity aimed at has not been achieved and there is no harm in looking for a better solution. We believe that a better solution is to be found because [77] the unit limitation in itself, apart from the fact that international unity has not been achieved, is not a good one. Since the unit limitation was introduced as a novelty in the Hague Rules, we now have other conventions on the transport of goods by rail, road and air. In all these conventions the simple kilogram limitation has been adopted. We believe that the time has come when maritime transport should join the other industries. There is no longer any reason for this maritime peculiarity. It is not even a good one - that is, it is not universal. It would be a pity if we now proceeded to a revision of the Hague Rules, a task which is undertaken only at intervals of 20 or 30 years, but did not correct these two flaws in the present Rules.

[79]

Mr. Schmeltzer (U.S.A.). The United States would like to announce its support for the proposal made by our learned friend from Norway, insofar as the change in limitation of liability from the present per unit limitation to a weight basis that is consistent with the C.M.R. Convention is concerned. The reasons supporting this change were eloquently and correctly expressed by our friend from Norway. In addition, however, I think we should all recognise that the time is coming when cargo will move in containers or pallets via more than one system of transportation, by the land system in connection with the ocean system. Therefore it is essential to try to get some harmony between the limitation of liability law that exists on land and that which exists on the sea. Thank you.
The Rt. Hon. Lord Justice Diplock (United Kingdom). At the Commission this morning I explained, I am afraid at almost too great a length, the reasons why we think that it is desirable that the discussion upon article 2 § 1 should be adjourned for a brief period to enable us to consult the interests concerned and to work out what are the consequences of any fundamental change in the basis of limitation.

Since I think that nearly all countries were represented at the Commission, I do not propose to repeat what I said this morning. The purpose of the adjournment is two-fold, first, to try to avoid the disaster of having half the maritime countries of the world subscribing to the old Hague Rules, with that particular method of limitation, and the other half of them subscribing to the Visby Rules with a different method of limitation.

We are not, as I said then, unsympathetic to the proposals which have been put forward for altering the basis of limitation. We say that we did not come to this Conference prepared to deal with a fundamental alteration of the basis of limitation. We have come with our calculations prepared to support the changes in the existing basis and it would be quite impossible for us in the United Kingdom Delegation – this, I think, is true of many other Delegations – to come to a conclusion on this fundamental change without an opportunity of consulting the interests and seeing what the best method of change is.

It is for that reason, and to ensure that there is not any lengthy delay, that we are proposing that there should be a short adjournment on this matter alone. The period of adjournment can be worked out in detail later, but I would propose that it should be to a date to be decided by our kind hosts, the Belgian Government, not later than 29th February next year. I gather that it would probably be more convenient technically for the Belgian Government to make it that date rather than the 6-9 months which I suggested earlier.

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Document CONN 2 is the draft Protocol approved by the CMI Stockholm Conference, the text of which is reproduced below in Part III at p. 843.
I do not propose to take up your time any further, but I urge upon you that, if we are to make a practical Convention, we should have an opportunity of considering what the implications of this fundamental change will be. Given that time, I myself have little doubt that we should be able to get a system of limitation, probably on the Norwegian basis or something like that, which would be acceptable to the great majority of countries here. It is only if the changes that we make are acceptable to the great majority of countries that we shall have succeeded in doing something good out of this Conference instead of something which, I fear, might be very bad - that is, having wide divergence of method of limitation in the different countries of the world.

I beg to move the Resolution which was put to the Commission in the name of the United Kingdom Delegation.

Mr. Chairman. Gentlemen, the motion of adjournment which was put to the Commission in the name of the United Kingdom delegation deals with, and I repeat, article 2(1) of the draft of the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading.

Is the assembly in agreement with the proposal of the British delegation in the condition it was put forward?

Dr. R. Herber (Federal Republic of Germany). Mr. Chairman, Ladies and Gentlemen, we have some doubts still upon what we shall be voting. If we adopt the British proposal and we postpone the decision on article 2, paragraph 1, how shall we then deal with the rest of our Convention, that is to say, with the rest of the Visby Rules? Shall we have as concerns the rest of the Visby Rules an independent Convention and a Convention which should be open for independent signature and independent ratification? This would have the apparent disadvantage that we probably would be going to alter the original Hague Rules twice, once by the rest of our draft, and secondly by the decision taken later on article 2, paragraph 1. In our opinion we can only proceed as follows: if we postpone the decision on article 2, paragraph 1, we may perhaps vote upon the rest of the Visby Rules and once by the rest of our Convention, but we may not open the rest to any signature or ratification. That is to say, if we adopt the British amendment, we are to postpone at least the final decision about the draft we are dealing here. I would be grateful to the British Delegation if the British Delegation would be so kind as to explain their point of view on this argument. Thank you very much.

M. le Président. Messieurs, je tiens à préciser la question qui vient d’être posée par la délégation allemande. En ce moment, nous sommes saisis d’une demande d’ajournement portant sur l’article 2 paragraphe 1 et sur aucune autre disposition.

The Chairman. Gentlemen, I would like to specify the question put by the German delegation. At this time we are dealing only with a request of adjournment relating to article 2(1) and no other clause.

If your assembly decides - and we
Si votre assemblée décide - et il faudra que nous passions au vote pour le savoir - d’ajourner l’article 2 paragraphe 1, il appartiendra ensuite à cette même assemblée de décider si elle désire se prononcer ou non sur le reste de la Convention. Vous saurez donc si les divers articles que vous avez votés feront l’objet d’une décision finale au cours de cette conférence ou pas.

Commençons par voir si la proposition de la délégation britannique est acceptée. Cette proposition consiste à ajourner l’examen de l’article 2 paragraphe 1. Ceux qui sont en faveur de cet ajournement voudront bien répondre affirmativement.

Il est procédé au vote sur la proposition présentée par la délégation du Royaume-Uni en vue de l’ajournement de l’examen de l’article 2 paragraphe 1 du document CONN 2.

Algeria: abstains; Argentina: yes; Australia: yes; Austria: abstains; Belgium: yes; Bulgaria: yes; Cameroon: absent; Canada: yes; Congo: abstains; Denmark: yes; Ecuador: abstains; Ethiopia: absent; Federal Republic of Germany: abstains; Finland: yes; France: yes; Great Britain and Northern Ireland: yes; Greece: yes; India: absent; Iran: abstains; Ireland: yes; Israel: yes; Italy: yes; Japan: yes; Korea: abstains; Lebanon: absent; Liberia: yes; Madagascar: yes; Mauritania: abstains; Monaco: yes; Morocco: abstains; Nicaragua: absent; Nigeria: absent; Norway: abstains; Peru: abstains; Philippines: abstains; Poland: yes; Portugal: absent; Republic of China [Taiwan]: abstains; Spain: yes; Sweden: abstains; Switzerland: abstains; Thailand: abstains; The Netherlands: yes; Togo: abstains; U.S.S.R.: yes; United Arab Republic [Egypt]: yes; United States of America: yes; Upper Volta [Burkina Faso]: absent; Uruguay: absent; Vatican City: yes; Venezuela: abstains; Yugoslavia: yes.
43 Délégations ont pris part au vote.
25 ont répondu “oui”.
18 se sont abstenues.

En conséquence, la proposition d’ajournement est adoptée.

M. le Président. Messieurs, le Secrétariat va établir le texte de la Convention telle qu’elle se présente après le rejet des amendements et l’ajournement de la proposition que vous venez de décider. Ce texte nouveau vous sera présenté au cours d’une prochaine séance. Pour déférer à la demande qui vient d’être formulée par la délégation allemande, votre assemblée décidera l’ajournement éventuel du vote sur l’ensemble de ce texte.

Conférence Diplomatique
Douzième session (2ème Phase) - Février 1968

Première session plénière 19 Février 1968

Présidence de M. Albert Lilar, Président

M. le Président. Mesdames, Messieurs, au moment d’ouvrir cette deuxième phase de la douzième session de la conférence diplomatique je vous souhaite une nouvelle fois la bienvenue parmi nous.

Il restait à mettre au point certaines dispositions du projet de protocole ou de convention portant modification de la Convention internationale pour l’unification de certaines règles en matière de connaissement. Votre conférence a estimé que pour certaines dispositions, dont elle a précisé la portée et l’objet, il convenait que les délégations puissent se concerter et aussi prendre contact avec les intérêts respectifs dans leur pays.

Certains articles de ce projet de convention ont été adoptés par la conférence tel que cela résulte de l’Acte final de la douzième session, première phase. Ces articles, dit l’acte final, seront insérés tels quels dans le protocole ou la convention internationale après l’adoption des

Diplomatic Conference
Twelfth Session (2nd Phase) - February 1968

First Plenary Session 19 February 1968

Mr. Albert Lilar, Chairman.

The Chairman. Ladies and gentlemen, as we open this second phase of the twelfth session of the Diplomatic Conference, I once again wish to welcome you.

There remained some work to be done on certain provisions of the Draft Protocol or the Convention to amend the International Convention for the unification of certain rules of law relating to bills of lading. Your Conference felt that for certain provisions, for which it had defined the scope and goal, it was preferable for the delegations to consult with and contact the respective interested parties in their countries.

Certain articles of this draft Convention were adopted by the conference in the way that they stood in the Final Act of the twelfth session, first phase. These articles, known as the Final Act, will be inserted without any modifications into the Protocol or the International Convention after the adoption of the articles
articles dont l’examen a été ajourné.

Sur proposition de plusieurs délégations, et plus spécialement de la délégation du Royaume-Uni, il a été entendu que serait ajournée la discussion sur l’article 2 (1), sur l’article 5 et sur les Clauses finales du projet de protocole.

Il a été convenu également que tous les amendements aux articles et clauses tenus en suspens et introduits pendant la douzième session demeureront en discussion, sauf retrait. Il avait été décidé que tout nouvel amendement à ces articles ou clauses finales devrait être soumis au gouvernement belge avant le 15 octobre 1967.

En résumé, la Conférence aura à l’ordre du jour de sa session actuelle trois sujets: l’article 2(1), l’article 5 et les clauses finales.

Dans les documents qui ont été distribués, plus particulièrement dans le document SG 2 du 14 février 1968, les délégations trouveront le relevé des amendements et sous-amendements proposés au cours de la première phase de la douzième session ainsi que des amendements présentés postérieurement à la clôture de cette première phase suivant la procédure proposée à la conférence et adoptée par elle.

Si votre conférence est d’accord, je lui propose de procéder comme suit pour l’examen de chacun des trois sujets.

Pour l’article 2, § 1er, je voudrais demander avant tout aux délégations qui ont introduit des amendements pendant la première phase de la session, amendements énumérés dans le document que je viens de vous citer, si elles maintiennent ces amendements ou si elles y renoncent. La conférence pourra ainsi apprécier si ces textes sont toujours ou ne sont plus en discussion. La même question se pose en ce qui concerne les amendements et sous-amendements à l’article 2, § 1er, qui ont été introduits après la clôture de la première phase de notre session et qui sont énumérés au même document. Lorsque nous disposerons ainsi avec précision de la liste des [37] textes proposés et des amendements en discussion, nous for which the examination was adjourned.

Following a number of proposals put forth by several delegations, and particularly by the United Kingdom delegation, the discussion on article 2(1), article 5, and the final clauses was adjourned.

It was also agreed that all the amendments to articles and clauses held in abeyance and introduced during the twelfth session will remain in discussion, unless they are withdrawn. It was decided that any new amendments to these articles or final clauses should be submitted to the government of Belgium before October 15, 1967.

In summary, the conference will have on the agenda of the present session three subjects: article 2(1), article 5, and the final clauses.

In the documents that have been handed out, in particular in document SG2 of February 14, 1968, the delegations will find a list of the amendments and sub-amendments put forward during the first phase of the twelfth session as well as the amendments presented after the end of this first phase according to the procedure suggested during the conference and adopted by it.

If your conference agrees, I suggest that we proceed in this way to examine each one of the three subjects.

For article 2(1), I would like first to ask the delegations that put forward amendments during the first phase of the session, the amendments listed in the document that I have just mentioned, whether or not they are maintaining these amendments. The Conference would then know whether these texts are still in discussion or not. The same question applies to the amendments and sub-amendments to article 2(1) that were put forward after the end of the first phase of our session and that are listed in the same document. When we are able to ascertain with precision the list of the [37] proposed texts and the amendments in discussion, and if the Conference agrees, we will then be able to start. Lastly, during this general
Pourrons commencer, si la Conférence est d’accord. Enfin, au cours de cette discussion générale, nous verrons s’il y a lieu à un moment donné, de soumettre la mise au point des différentes questions à une commission ou à un comité de rédaction.

Dans cette proposition d’organisation de nos travaux, je voudrais avant tout que nous soyons bien d’accord sur les textes dont nous aurons à discuter, soit en séance plénière soit en commission. C’est pourquoi je demande d’abord aux délégations de vouloir bien nous faire savoir si parmi les amendements qui ont été déposés soit au cours de la première phase de notre session soit ultérieurement, il en est qui sont retirés ou si, au contraire, ils sont maintenus et doivent donc faire partie de la discussion générale.

Je ne sais si les délégations sont en mesure de faire connaître immédiatement leur réponse à cette question ou si elles souhaitent pouvoir se concerter et donner la réponse par exemple au début de la séance de cet après-midi.

Je vais pour votre facilité prier le secrétaire général de la conférence de donner la liste des amendements présentés à l’article 2 (1), en distinguant les amendements présentés pendant la première phase de notre Session ou ultérieurement.

Art. 2, § 1er.

Amendements introduits pendant la première phase de la Session.
- Amendement CONN 4 introduit par la délégation norvégienne: retiré.
- Amendement CONN 5 introduit par la délégation de la République Fédérale d’Allemagne: retiré.
- Amendement CONN 6 introduit par la délégation des Etats-Unis: maintenu.
- Amendement CONN 16 introduit par la délégation norvégienne: maintenu.

While I am suggesting a way to organize our work, I would like first of all for everyone to agree on the texts that will be discussed either in plenary session or in committee. This is why I ask first that the delegations let us know if among the amendments that have been put forward either during the first phase of the session or later there are some that have been withdrawn or, on the contrary, have been maintained and must be debated during our general discussion.

I do not know if the delegations are able to let us know immediately or if they wish to consult one another and give an answer, for instance, at the start of the afternoon session.

To facilitate things for you, I ask the General Secretary of the conference to give the list of amendments put forward for article 2(1), distinguishing between those submitted during the first phase of our session and those put forward later.

Art. 2(1)
Amendments submitted during the first phase of the session.
- Amendment CONN 4 submitted by the Norwegian delegation: withdrawn.
- Amendment CONN 5 submitted by the German delegation: withdrawn.
- Amendment CONN 6 submitted by the United States delegation: maintained.
- Amendment CONN 16 submitted by the Norwegian delegation: maintained.
- Amendement CONN 19 introduit par la délégation des Etats-Unis: maintenu.
- Amendement CONN 20 introduit par la délégation des Etats-Unis: maintenu.

_Amendements introduits selon la procédure prévue a l’Acte final._
- Document n° 1, amendement introduit par la délégation du Royaume-Uni: maintenu.
- Document n° 2, amendement introduit par la délégation de la République Fédérale d’Allemagne: maintenu.
- Document n° 4, amendement introduit par les délégations de Finlande, Norvège et Suède: maintenu.
- Document n° 6, amendement introduit par la délégation de Yougoslavie: retiré.
- Document n° 7, amendement introduit par la délégation des Pays-Bas: maintenu.
- Document n° 10, amendement introduit par la délégation du Danemark: maintenu.
- Document n° 11, amendement introduit par la délégation Belge: maintenu.
- Document n° 12, amendement introduit par la délégation de l’Argentine mais ne contenant que des observations: maintenu.
- Document n° 13, amendement présenté par les délégations de Finlande, Norvège et Suède, mais ne contenant que des observations: maintenu.
- Document n° 14, amendement introduit par la délégation du Royaume-Uni: maintenu.
- Document n° 15, contenant des observations faites par la délégation de Norvège: maintenu.

- Amendment CONN 19 submitted by the United States delegation: maintained.
- Amendment CONN 20 submitted by the United States delegation: maintained.

_Amendments submitted according to the procedure provided by the Final Act._
- Document No. 1, amendment submitted by the British delegation: maintained.
- Document No. 2, amendment submitted by the German delegation: maintained.
- Document No. 4, amendment submitted by the delegations of Finland, Norway, and Sweden: maintained.
- Document No. 6, amendment submitted by the Yugoslavian delegation: withdrawn.
- Document No. 7, amendment submitted by the Dutch delegation: maintained.
- Document No. 10, amendment submitted by the Danish delegation: maintained.
- Document No. 11, amendment submitted by the Belgian delegation: maintained.
- Document No. 12, amendment submitted by the Argentine delegation, but containing only remarks: maintained.
- Document No. 13, amendment submitted by the delegations of Finland, Norway, and Sweden, but containing only remarks: maintained.
- Document No. 14, amendment submitted by the British delegation: maintained.
- Document No. 15, containing only remarks by the Norwegian delegation: maintained.

* The text of the Documents subject to consideration by the Conference is published at the end of the Reports of the 19 February 1968 Session, at pages 541-547
M. le Président.

Nous savons maintenant quels sont les textes de base et les amendements à examiner.

Il me paraît souhaitable que nous examinions séparément les trois sujets qui nous sont soumis. Nous pourrions, si vous le souhaitez, échanger d’abord quelques idées générales. Je vous suggère de constituer pour chacun des sujets un groupe de travail séparé chargé de trouver, à la lumière des idées peut-être nouvelles qui peuvent encore avoir surgi, un accord sur les nombreuses suggestions dont nous sommes saisis à propos de ces textes.

Je propose à la conférence d’entamer dès à présent, la discussion générale sur l’article 2, § 1er. L’assemblée est-elle d’accord pour que nous procédions dès ce matin à cet échange de vues général?

Mr. Pineus (Sweden). Mr. Chairman, Gentlemen, we are faced with a subject which draws always great attention from all parties, and perhaps the legal aspect of it is drawing more attention than it deserves because the investigation we have made in our country which is Sweden is a very thorough investigation of the economical aspect of the limitation problem and shows that, seen from the practical and economical aspect, it has not that importance that some of you, perhaps, may believe. We know that the figures that appeared in the present Hague Rules were always intended to be far above the average value on cargo transported on shipboard. The idea behind the limitation introduced in the 1924 Convention was to protect the carrier against excessive and extraordinary claims, but not to give the average value of the cargo. For that reason I think we should approach this subject with some calm and try to find practical and workable solutions that will facilitate international conformity. My delegation, the Swedish, the delegation of Finland and the delegation of Norway have submitted Document 4 which contains an amendment, and at a later stage apparently I am supposed to speak on behalf of that and explain what it is. But I think as we are opening with the general debate and I am here, I should try to underline that, from an economical point of view, the whole subject of limitation has been slightly over-valued, if I may say so, and I think I am allowed to do so because of the careful study of the business side of it we have made at home. Thank you, Mr. Chairman; I will come back at a later stage.

M. le Président. Quelqu’un demande-t-il la parole en ce qui concerne l’article 2, (1)?

La parole est à la délégation irlandaise.
Mr. M. McGovern (Ireland). Thank you, Mr. Chairman. My Delegation take the view that the changes proposed by the various amendments are not really necessary. We share the view expressed by the Scandinavian Delegate that the problem is not one of great magnitude. We feel that the Hague Rules were a compromise between the practice, the rights of ship owners and the rights of cargo, that, in giving up some of the rights which they enjoyed prior to the enactment of the Hague Rules, ship owners got certain rights one of which was to limit their liability to a sum which had been agreed, admittedly in gold. We feel there is certain merit in restoring the compromise which was reached in 1924 by raising the limit of liability per package or unit to such a sum as will be equivalent in present day terms to the amount of 100 pounds gold then agreed. We do not like the proposals to change the basis of limitation from one based on package or unit to one based on weight, because we are not convinced of the necessity for this change at this time. The position is that carriers by air have one limit of liability; carriers by land have two different limits of liability depending on whether they carry by rail or by road. We see, therefore, at this time no good reason why there should not be a different limit in respect of carriage by sea. It seems to us that at a time when various forms of transportation, particularly those operating on land, have not yet reached agreement as to what the appropriate limit should be, we are somewhat premature in the maritime field in trying to bring our rule of limitation into harmony with one or other of the varying rules.

We feel that the emergence of transportation in containers does pose a problem which must be faced, but we suggest the way in which this problem ought to be faced is not by amending the Hague Rules which govern ordinary carriage by sea but that when the new convention upon which the Comité Maritime International is now working in respect of carriage by container or combined transport is finally adopted it will provide a solution to this problem, and so we ought to wait until this time for the solution of this problem.

Professor Manca (Italy). I think the opinion expressed by the delegation of Ireland is quite correct. Particularly for practical reasons we cannot take the weight as parameter of the limitation of liability.

We must remember that article 3, par. 3 of the 1924 Convention states that after receiving the goods into his charge the carrier or the master or the agent of the master shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things the number of packages or pieces or the quantity or the weight as the case may be, as furnished in writing by the shipper.

Therefore, all bills of lading which mention the number of packages, or the number of pieces, or the quantity are in accordance with article 3, par. 3 although they do not mention the weight of the goods loaded.

It must be pointed out that no amendment has been proposed to this provision during the long years of elaboration of the Hague Rules and at the first phase of this Diplomatic Conference.

Not only, but in practice other indications different from weight are often inserted in bills of lading. For instance in bills of lading covering shipments of logs from the Philippines Islands to Europe only the volume in cubic meters is indicated without any reference to the weight. In all these cases in which the weight does not appear in the bills of lading, it is absolutely impossible to take the weight as the unique basis of limita- tion. We do not think, for these reasons, that the amendment laid down by Denmark, Finland, Norway and Sweden can be adopted.

But also other amendments, in which a mixed system, based on unit or package and on weight, is envisaged, present the notable defect that, if the bill of lading does not show the weight, the alternative would be always transformed in a horn of the dilemma and the duality in a singleness.
This would happen, in particular, if the amendments proposed by the United States and the Federal Republic of Germany were approved.

The combined system can be applied only if and when the weight is shown in the bills of lading; for this event, the limitation might be referred, in a subordinate way, also to the weight.

A logical proposal in this sense has been already submitted to the Conference by the yugoslavian delegation: according to it, the principal provision ought to cover the limitation based on package or unit, and a subordinate provision ought to cover the limitation based on the weight, but only if the weight of the package or the unit has been acknowledged by inserting it in the bill of lading.

Our view is that such a mixed system is logical and praise-worthy.

Mr. M. J. Kerry (United Kingdom). I would like to make a few general remarks about the views of the United Kingdom delegation.

First of all, we consider that the present limitation by package or unit is inappropriate to our container traffic and causes considerable doubts and difficulties. The proposed container convention will deal with through-container traffic by road and sea or rail and sea, and will not cover the problems which arise where a container is sent by sea only and is covered by a bill of lading. Therefore, the Hague Rules should be appropriate to container traffic. It follows, therefore, that a per kilo basis is the best way to deal with this particular problem, in our view.

However, the per kilo basis has two disadvantages, firstly it is not really appropriate for small packages of a reasonably high value. Secondly, it gives rise to practical administrative difficulties. For that reasons, we prefer the alternative basis of limitation along the lines that our amendment proposed.

M. le Président. La parole est à la délégation française.

M. de Bresson (France). Monsieur le Président, j’aimerais indiquer dans cette discussion générale quelles sont les préoccupations de la délégation française au regard des textes qui nous sont soumis.

Nos réflexions s’inspirent de trois idées générales.

La première est qu’en matière de transport maritime, nous nous trouvons, eu égard à la nature des marchandises transportées, devant des problèmes spécifiques. Par conséquent, nous ne devons pas craindre d’adopter des solutions originales par rapport aux Conventions de Varsovie ou de Berne. Deuxième remarque, dans les textes que nous allons élaborer, nous devons chercher à tenir compte de l’évolution dans la nature des marchandises transportées, et moderniser autant que faire se peut les conventions existantes.
Troisième remarque, il convient d’établir sur ce sujet un équilibre aussi judicieux que possible entre les différents intérêts qui se trouvent concernés en l’espèce. Ceci nous amène à nous prononcer en faveur d’un système souple. Nous pensons que cette souplesse se trouvera consacrée par l’adoption d’un système mixte, ce qui permettrait de retenir plusieurs systèmes, à savoir celui du colis et de l’élément de chargement, celui du poids calculé au kilo, ainsi qu’un système d’unité de volume, mentionné au connaissement.

Ces systèmes seraient évidemment ouverts au choix du réclamant.

Enfin, ces systèmes ne fonctionneraient que sous réserve qu’il n’y ait pas eu préalablement valeur déclarée.

Voilà, en termes très généraux, comment la délégation française conçoit le système qu’elle souhaiterait voir adopté par la Conférence. Je vous remercie.

Mr. le Président. La parole est à la délégation des Pays-Bas.

Mr. A. Loeff (Netherlands). Mr. Chairman, Ladies and Gentlemen, there is one general observation I would like to make on behalf of the Netherlands delegation. There is a big difference between the figures of limitation per kilo proposed, among other by the Netherlands delegation and by the Scandinavian delegation.

In this respect I would like to observe that it is easily forgotten that there is a general rule in the Hague Rules providing for unlimited liability of the carrier. It is under the proviso that the shipper declares what the value is of his goods. In that case, the carrier has unlimited liability for the value, and that is why, if the value has been declared, the carrier can have special care for the goods.

If there is no declaration of the value it is general cargo and therefore the Netherlands delegation has thought it advisable not to raise the limitation too much per kilo because if you multiply that amount by the total weight of the cargo you come to enormous amounts. For the value of the cargo, I repeat that a simple declaration of the value will do for unlimited liability which is not so in the air traffic nor in road traffic.

Mr. H. J. Darling (Canada). Mr. Chairman, I would like to state very briefly a few observations we have in coming to this Conference.

We regard the purpose of the Conference as dictated by three circumstances: first of all, the changes in the price level since 1924. In Canada, the wholesale price level has approximately doubled during that period. Secondly, to revert to an international monetary standard, the gold franc, as in other conventions. Thirdly, to take note of the larger packages now moving in international trade, notably containers.

These changes all imply the need for an upward adjustment of the limit of liability and each proposal should be examined as to the extent to which it meets this criterion.

The Canadian delegation, therefore, is interested in the following objectives: To
raise the floor on the liability limits which now in our money stand at $500 Canadian, to reflect to some degree the increase in price level since that period. Secondly, to provide a progression by a rate per kilo for the larger packages in containers now moving in international trade.

As to the floor, we feel that it could well be based on a weight standard and that it could apply to all packages under a certain level, that is to say 100 kilos. However, in studying the transfer to a limitation based on weight, we have come to the conclusion that the present concepts of “package” and “unit” cannot be abandoned easily but should rather be integrated into the new system. The liability limit must be applied to some specific element of the goods described in the bill of lading, and that means the retention of the concept of “package” and “unit”. The liability would apply to the weight per unit. Not to do this would involve the intricate and unsatisfactory procedure of determining the actual weights of goods damaged or the approximate damage.

If we take the example of the fender of an automobile, it is the weight of the fender which governs one’s bulk, or in large cases the weight allocation on which the liability should be based. We feel it should be based on the weight of the package by unit.

M. le Président. Si personne ne demande la parole dans la discussion générale, je propose à la conférence de constituer immédiatement la commission qui examinera par le détail les divers amendements de l’article 2 (1) et qui pourrait se réunir cet après-midi.

Si la Conférence est d’accord, je lui demanderai de suggérer le nom d’un président chargé de la lourde tâche de diriger ces travaux.

M. Govare (France). Je propose M. Van Ryn comme président.

The Chairman. If nobody asks for the floor for the general discussions, I suggest that the conference immediately set up the committee that will study in detail the various amendments to article 2(1), which could meet this afternoon.

If the conference agrees, I would ask that you suggest the name of a chairman who would be charged with the difficult task of presiding over this work.

Mr. Govare (France). I propose Mr. Van Ryn as chairman.

M. Van Ryn (Belgique). Je suis à la disposition de la Conférence.

M. le Président. Y a-t-il d’autres candidatures? M. Van Ryn est élu à l’unanimité. Nous allons donc lui demander de vouloir bien se charger de la présidence de cette Commission et de la réunir cet après-midi, à trois heures.

Je demanderai à toutes les délégations de vouloir bien désigner celui des délégues qui participera aux travaux de la Commission qui s’occupera donc de l’article 2 (1).

[47]

Mr. Van Ryn (Belgium). I am at the service of the conference.

The Chairman. Are there any other candidates? Mr. Van Ryn is unanimously elected. We are then going to ask you to chair this committee and to meet at three o’clock this afternoon.

I would ask all the delegations to please appoint the delegate who will participate in the work of the committee that will consider article 2(1).
Appendix to the Reports on the First Plenary Session of 19 February 1968

Text of the amendments

Amendment submitted by the Delegation of the United States of America

Article 1, paragraph 1 of the Stockholm Draft (1963)

For consideration in relation to other provisions of the Hague Rules, the U.S. Delegation proposes that in Article 4 of the Convention the first subparagraph of paragraph 5 be deleted and replaced by the following:

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 25 francs per kilogram of gross weight of the unit of goods lost or damaged, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

“Franc” means the gold franc weighing 10/31 of a gramme and being of millesimal fineness 900.

“Unit of goods” means in a case where the shipment is divisible, each divisible part; in a case where the shipment is not divisible, the entire shipment”.

Amendment proposed by the Norwegian Delegation

Article 2, paragraph 1 of the Stockholm Draft

In article 4 of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following:

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in excess of an amount per package or unit, which shall be the equivalent of 10,000 francs, but not less than 30 francs per kilogram gross weight of the package or the unit, provided such weight is inserted in the Bill of Lading, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and the value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading”.

Amendment submitted by the Delegation of United States of America


“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 125 francs per kilogram, whichever is higher, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading”.
PART II - VISBY RULES

Article 4 (5) - Limits of liability

Diplomatic Conference - February 1968

[187] Document No. 1

Original: English

Article 2, paragraph 1

Amendment submitted by the Government of the United Kingdom

It is proposed that the following should be substituted for paragraph 1 of Article 2:

"1. In article 4 of the Convention the first sub-paragraph of paragraph 5 shall be deleted and replaced by the following:

"Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding the equivalent of

Fr. 10,000 per package or unit or Fr. 30 per kilo of gross weight of the goods

lost or damaged, whichever is the higher

unless the nature and value of such goods have been declared by the shipper before

shipment and inserted in the bill of lading.

A franc means a unit consisting of 65.5 milligrams of gold of millesimal fineness

900”.

[190] Document No. 2

Article 2, paragraph 1

Comments by the Government of the Federal Republic of Germany

The Government of the Federal Republic of Germany, according to the procedure outlined by the Final Act of the XIIth session of the Diplomatic Conference, submits the following comments in respect of article 2 (1) of the draft protocol:

The Federal Republic of Germany considers it desirable in principle to assimilate the rules of the convention governing limitation of the carrier’s liability to corresponding rules in international conventions concerning the law of other means of transport. Therefore, it supports the proposal of the Delegations of Norway and the United States of America, to change over to a system of limitation of carrier’s liability based on the weight of the goods. However, following the lines of the Norwegian amendment CONN 16, the “package or unit” - limitation should be retained as an additional criterion in order to avoid disadvantages for cargoes of high value but small weight.

To meet these requirements the Federal Government is in favour of a mixed system, which leaves to the shipper the choice between two different kinds of calculating the limit: The lump sum per package or unit on one hand and the kilogram-system on the other hand.

As concerns the new kilogram-system, there are to be made two further remarks: Firstly, it should be fixed an absolute upper limit of liability in order to maintain a real limitation of carrier’s liability as well as to facilitate insurance calculation; naturally, the amount of that upper limit must be high enough to meet reasonable values of greater consignments. Secondly, the calculation of the amount of liability should differ from the calculation applicable under the other system. Whereas the lump sum per package or unit limits the liability, according to the present practice, even in case of damage caused only to part of the contents of the package, the liability calculated per kilogram should be limited by the weight of the goods actually damaged that is to say, not necessarily of the whole package. This ruling is to avoid that in case of large packages, e.g. containers, the often considerable weight of the whole package practi-
cally will abolish the limitation of liability at all.

On the lines of these remarks the Government of the Federal Republic of Germany proposes the following wording of article 4 para 5 of the Hague Rules:

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding

  a) either 12,500 francs per package or unit, or 
  b) 25 francs per kilogram of the goods actually lost or damaged, but in no case more than 100,000 francs per package or unit.

unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading. Each franc shall consist of 65,5 milligrams of gold of millesimal fineness 900.”

[193]

Document No. 4

Article 2, par. 1 of the Stockholm Draft

Amendment proposed by the delegations of Finland, Norway and Sweden

In article 4 of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following:

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 25 francs per kilogramme of gross weight lost or damaged, each franc consisting of 10/31 of a gramme of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading.”

Alternatively: “Neither the carrier nor ......................the equivalent of 123 francs per kilogramme of gross weight lost or damaged, each franc consisting of 65,5 milligrammes of gold of millesimal fineness 900, unless the nature and ................. the Bill of Lading.”

Document No. 7

Article 2, paragraph 1

Comments by the Netherlands Government

The Netherlands Government would propose that paragraph 1 of Article 2 (paragraph 5 of Article 4 in the 1924 Convention) be amended as follows:

“Unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the Bill of Lading neither the carrier nor the ship shall be or become [197] liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit plus .............x............. francs every kilogram by which the package or unit exceeds the weight of 1,000 kilogram, provided always that the total liability shall not exceed an amount of 20,000 francs.

The franc mentioned in this paragraph is to be taken to consist of ..................etc.”

The proposal to restrict the limitation to the weight only is not considered acceptable. A mixed system, as suggested by Norway and the United States, would in the opinion of the Netherlands Government be preferable, if it were not for the fact that this might conceivably involve the risk of the liability becoming unacceptably high for very heavy packages or units if it were calculated on a certain amount per kilogram.

For this reason another solution is being proposed, in which a ceiling is fixed for the limited liability according to the mixed system. On the basis of the limited liability accepted at Stockholm of 10,000 francs per package or unit, a supplementary liability could be agreed upon for each kilogram of heavier packages or units, with the proviso that the total liability shall not exceed a sum of say 20,000 francs, irrespective
of the weight of the package or unit.

As regards the sum under “x”, the Netherlands Government has in mind a sum of between 10 and 30 francs.

[200]

Document No. 10

Article 2, paragraph 1

Sub-amendment submitted by the Government of Denmark to the Amendment submitted by the Government of the Federal Republic of Germany in document No. 2

The Government of Denmark according to the procedure outlined by the Final Act of the XIIth session of the Diplomatic Conference, submits the following comments in respect of article 2 para 1 of the draft protocol.

The Government of Denmark considers as does the Government of the Federal Republic of Germany that it is desirable in principle to assimilate the rules of the convention governing limitation of the carrier’s liability to corresponding rules in international conventions concerning the law of other means of transport. It is likewise in agreement with the Government of the Federal Republic of Germany that an absolute upper limit of liability should be fixed. However a somewhat lower limit would be preferable.

When the limitation of the carrier’s liability is based on the weight of the goods with an upper ceiling, there is in the opinion of the Government of Denmark no need to maintain, in addition, the traditional limitation system based on a lump sum per package or unit.

In order to avoid disadvantages for cargoes of high value but small weight the amount per kilogram should be somewhat higher.

For these reasons the Government of Denmark proposes the following Sub-amendment to the Amendment submitted by the Government of the Federal Republic of Germany in document No. 2:

1) Delete the words under a) “either 12,500 francs per package or unit, or”
2) Insert under b) instead of “25 francs per kilogram of the goods actually lost or damaged”, “60 francs per kilo of gross weight of the goods lost or damaged”.
3) Insert instead of “100,000 francs per package or unit” “50,000 francs per package or unit”.

[201]

Document No. 11

Article 2, paragraph 1

Sub-amendment presented by the Belgian Government to the amendment of the Government of the United Kingdom

It is suggested to substitute in the 4th paragraph of that amendment the figure: Frs. 10,000 by: Frs. 12,500

[203]

Document No. 12

Translation

Comments by the Government of the Republic of Argentina

The Government of the Republic of Argentina have made with accuracy the study of the projects of amendment presented by the Governments of the United Kingdom, Federal Republic of Germany, Finland, Norway and Sweden and consider that, in the
principal, the amendment presented by the Government of the Federal Republic of Germany seems to be the best solution.

The consecration of an alternative limitation for parcel or unity and for kilogram of failing or dated merchandise must be completed with a limited maximal sum in case of the hypothesis that the limitation for kilogram of weight should take a rule.

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Thereupon, that those limitation alone must work in the case that the nature and the value of the merchandises should be declared by the shippers and inserted in the bill of lading, in order to ask the payment of a freight ad valorem if it is suitable.

With the proposed solutions by the Government of Great Britain, included the memorandum of the British Association of Maritime Law, presented by the Board of Trade of the United Kingdom for establishment as limited maximum sum of the real value of the market of the failing or dated merchandises in the port of discharge all limitation of responsibility will be practically eliminated in much cases of great loading or containers of great volume.

The British project in this case should have only as object the exclusion of indemnisations for indirect data.

The Government of the Republic of Argentina consider - in synthesis - that it must support the solution that result of the amendment presented by the Government of the Federal Republic of Germany, but which the establishment of maximal tops counseled by the experience and - thereupon - in the case of no declaration by the shipper of the nature and value of the merchandises and inserting of this declaration in the bill of lading.

Without prejudice of the exposed facts, the Government of the Republic of Argentina reserve the right to present a more extensive information regarding the express amendments, include in the opportunity of the Conference.

[206]
sults indicate that the CMR limitation would be sufficient to cover practically all damage to general cargo and that the increase in price to be paid in the form of insurance would indeed be negligible. This adds to the weight of the argument that limitation should be based on weight only and should be on the same level as in the CMR Convention; it should be kept in mind that the limitation rule primarily was intended to apply in case of damage to exceptionally valuable goods.

When the economical problems involved are small, more attention may well be paid to the legal technical aspects. The advantages of full correspondence between the two conventions concerned are obvious. To this should be added the fact that experience over the years has shown how difficult it is for the Courts to interpret the words “package or unit” and that no international uniformity [207] can be achieved on that basis. The Courts are forced to resort to interpretations of the freight contract and the intentions of the parties which is not the proper way to obtain uniformity and not a very useful basis for the interpretation of a mandatory rule.

The problem of limitation of liability is certainly not a great one seen from an economical point of view. Nevertheless the solution adopted in the future Hague-Visby Rules may well indicate whether or not the whole set of rules will have the vitality needed to survive in a modern world.

Document No. 14 rev. 1

Original: English

Article 2, paragraph 1

Memorandum by Government of the United Kingdom

Since submitting its amendment (Document No. 1 - Printed in “Documents 1 - Diplomatic Conference on Maritime Law XIIth Session (2nd phase) Brussels 1968”) the Government of the United Kingdom had given further consideration to the various amendments to the above named paragraph which have been submitted to the Conference.

The Government of the United Kingdom considers that there are advantages in the proposal of the Government of the Federal Republic of Germany (Document 2) that the Hague Rules should fix an absolute upper limit of liability in order to maintain a real limitation of the carrier’s liability and to facilitate insurance.

However the Government of the United Kingdom feels that the effect of the various proposals for increasing the amount of the maximum liability of shipowners under the first sub-paragraph of Article 4 (5) even if subject to the overriding figure proposed by the Government of the Federal Republic of Germany will be that that maximum will normally bear no relation to the value of cargo transported by sea save in the case of exceptionally large units or those of great intrinsic value. It is the value of the actual cargo lost or damaged which is in the majority of cases the true measure of the cargo owner’s loss, and any attempt to fix an arbitrary figure of limitation applicable to all cargoes must lead to [208] unsatisfactory results in many individual cases. Various figures at present proposed will permit courts to award damages in excess of the value of the goods in many cases.

Accordingly it is suggested that the fairest and most practical solution of the problem is to adopt as the measure of the carrier’s upper or maximum limitation of liability the value of the cargo actually lost or damaged at the place and time at which such cargo is discharged or, in the case of loss, should have been discharged.

The adoption of this measure of limitation of the carrier’s liability has also the merit of being applicable to cargo whether carried in “unitised” form, such as in containers or on pallets, or as conventional individual packages or units.

The Government of the United Kingdom accordingly submits the attached further amendment to Article 2 (1) of the draft Protocol or Convention.

It is intended that this amendment should be additional to any of the amendments
proposed which envisage a weight basis for the limitation of liability whether that be the sole basis as in the amendment submitted by the Governments of Finland, Norway and Sweden (Doc. 4) or as an alternative basis as in the amendments submitted by the Governments of the Federal Republic of Germany and the United Kingdom (Docs. 1 and 2).

Article 2, paragraph 1

**Amendment submitted by the Government of the United Kingdom**

It is proposed that the following sub-paragraphs shall be added to paragraph 1 of Article 2:

“When, under the provisions of this Convention the carrier and/or the ship is liable for any loss or damage to or in connection with goods, the extent of such liability shall not exceed the value of such goods at the place and time at which the goods are discharged or should have been discharged from the ship, and no further damages shall be payable.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality”.

[210]

Document No. 15

*Original: English*

**The Hague Rules Limitation per package or per kilogram**

Article 2, paragraph 1

*Supplementary comments by the Norwegian delegation.*

Certain investigations have been carried out in order to endeavour to predict the economic consequences of the Finish/Norwegian/Swedish proposal to introduce a pure kilogram limitation.

[211]

A total of 10,5 million tons of merchandise carried by sea during one year from the United States to Europe has been examined and the value per kg of each single consignment has been established.

This survey, however, does not reveal the average weight per package of the goods. One million packages of various liner cargoes (on worldwide basis, including also the Atlantic trade) totalling 112,000 tons have, therefore, been checked for the purpose of determining the mean weight per package. The result was an average of 98 kg per package.

Evidently, a survey based on such a limited volume is not necessarily representative, but we take it that an average weight of approximately 100 kg per package will be sufficiently accurate for the purpose of the present investigation.

The highest package limitation within the Hague Rules area is the U.S. limitation figure of $ 500. Based on an average weight per package of 100 kg the average compensation per kg is $ 5.

By applying the said average weight per package to the results of the survey of the value per kg of the said 10,5 million tons of merchandise it appears that only 8,7% of the cargo had a value exceeding $ 5 per kg.

The present CMR limitation equals roughly $ 8,16 per kg, and if this figure were to be applied, only 5,5% of the cargo would have a value in excess of the limitation.

On the strength of this calculation, therefore, a transition from the present U.S. Hague Rules limitation to the CMR limitation would entail an increase in liability of
no more than 3.2% for transatlantic cargoes (the difference between the said 8.7 and 5.5%).

Calculations based on averages may, of course, be somewhat misleading. Another test has therefore been carried out by one of the Scandinavian P & I clubs. A number of more important cargo claims spread over a 10 years period and comprising N. Kr. 35,6 million worth of claims have been spot-examined. Based on the actual settlement figures the applicable Hague Rules limitations brought about a reduction of only N. Kr. 350,000 or about 1%.

It is reasonable to assume, therefore, that a transition to the CMR limitation would represent a very moderate increase of the shipowners’ liability even compared with the present per package limitation figures. Presumably, these figures will have to be raised even if the principle of limiting per package is maintained.

[246]

Compte rendu des réunions de la Commission
Lundi 19 février 1968 (après-midi).

- Certaines délégations s’étant déclarées en faveur du maintien du système de 1924 (art. 4, § 5), la commission tranche que celui-ci doit être modifié (21 pour - 4 abstentions).

- Conformément aux règles traditionnelles, le Président ouvre le débat sur la proposition la plus radicale: adoptera-t-on à titre exclusif le critère du poids?

De nombreuses délégations expriment leur point de vue, en s’écartant souvent du sujet strictement assigné à la discussion

Les deux interventions les plus significatives sont celles:

1) de la Suède: celle-ci fait valoir que le système du poids supprime les difficultés d’interprétation des termes “colis” et “unités” et donne une solution au problème des marchandises transportées en containers.

2) du Royaume-Uni: celui-ci relève que le système du poids est trop défavorable pour celui qui charge des marchandises de grande valeur mais de poids léger - à moins de choisir une limite très élevée. Par ailleurs, ce système imposerait aux armements des frais d’administration très élevés.

La France s’oppose au principe de limitation par poids, marque son accord de principe sur un système mixte mais voudrait voir introduire la notion d’unité de volume comme critère supplémentaire de limitation, pour résoudre le problème des conteneurs.

Le vote donne les résultats suivants (25 votants):

- 16 contre le système du poids;
- 4 pour;
- 5 abstentions.

- Le Président constate que la commission se rallie en principe à un système mixte, basé à la fois sur les notions de poids et d’unité - étant entendu que le montant le plus élevé l’emportera.

Mardi 20 février 1968 (matin).

- A la suite d’un long débat, au cours duquel le problème des conteneurs est à nouveau évoqué, le Président décide de créer [247] un comité de rédaction, sous la présidence de Sir Kenneth Diplock (membres: U.S.A., Allemagne, France, Suède, Pays-Bas), avec une double mission:

a) rédiger un projet d’article 2, § 1, sans mention de montants;

b) proposer, sous la forme d’un article 2, § 2, un texte définissant les rapports entre les notions de “colis” et de “container”.

- La discussion porte ensuite sur la question de savoir s’il faut ou non adopter une
limitation, un plafond absolu (cf. doc. n° 2, d’Allemagne Fédérale, et deux autres propositions, danoise et hollandaise).
Il est entendu que ce plafond serait fixé en fonction de l’unité et non du poids.
Le vote donne les résultats suivants (27 votants):
- 15 pour la fixation d’un plafond;
- 11 contre;
- 1 abstention.
La Commission examine la proposition britannique déclarant que l’indemnité ne dépassera en aucun cas la valeur de la marchandise (Doc. n° 14).
Une discussion générale s’établit: pareil texte aurait-il pour portée de limiter la réparation au dommage matériel et direct (dommage “intrinsèque”)? Le délégué britannique répond oui.
L’amendement est soumis au vote:
- 11 voix pour;
- 4 contre;
- 11 abstentions.
L’amendement est adopté dans son principe.

Mardi 20 février 1968 (après-midi).
La séance est reprise sous la présidence de M. Govare. Lord Diplock annonce que le Comité de rédaction n’a pas terminé ses travaux.
Le Président déclare qu’au cours de la présente séance, la commission devra exprimer ses préférences quant aux montants des diverses limitations:

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a) limitation “colis”: faut-il maintenir le chiffre de 10.000 francs (Convention de 1924) ou le porter à 12.500 francs?
L’assemblée semblant fort partagée, il est procédé à un vote sur le chiffre de 12.500 francs:
- 7 voix pour;
- 12 contre;
- 6 abstentions.
Le chiffre de 10.000 francs est retenu;
b) limitation “poids”: initialement, plusieurs délégations hésitaient entre 25 et 30 francs. Mais dès lors que la Commission a retenu un chiffre bas pour l’”unité”, l’unanimité s’établit sur un chiffre élevé pour le poids: 30 francs (sans vote nominal);
c) limitation absolue: plusieurs propositions étant faites, le Président les met toutes aux voix, à main levée:
- plafond supérieur à 200.000 francs: 1 voix;
- plafond de 200.000 francs: 10 voix;
- plafond de 100.000 francs: 3 voix;
- plafond de 50.000 francs: 4 voix.

Mercredi 21 février 1968 (matin).
Les textes élaborés par le comité de rédaction sont distribués. Le Président déclare que la commission va avoir à se prononcer sur chacun de leurs alinéas.
La délégation française réitère sa proposition incluant la notion de “volume”. Décision est prise d’examiner en premier lieu les textes du comité de rédaction.
I. Article 2, § 1:
- al. 1: adopté sans observations;
Article 4 (5) - Limits of liability

- al. 2 (point a)): le chiffre de 10.000 francs est adopté;
- al. 3 (point b):
  1) le chiffre de 30 francs est adopté;
  2) le point de savoir s’il faut prévoir un plafond absolu est remis en question,
     plusieurs délégations insistant tantôt sur son arbitraire inévitable, tantôt sur
     le fait qu’il faut éviter un trop grand nombre de limitations;

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Vote (23 délégations):
- 8 voix en faveur du maintien du plafond;
- 13 contre;
- 2 abstentions.

Les mots “ne dépassant par un maximum de ... francs par colis ou unité” sont
supprimés;
3) “selon le montant qui est le plus élevé”: adopté à l’unanimité;
4) “le montant total récupérable......”: pour dissiper une équivoque, le Prési-
    dent décide de passer au vote, en insistant sur la présence du terme “total”.

Vote (23 délégations):
- 15 en faveur du maintien du texte;
- 2 contre;
- 6 abstentions.

Le texte du comité est adopté sous réserve de modifications de forme (en faire
un alinéa distinct).
- al. 4: mode d’estimation de la valeur des marchandises: le texte du comité
de rédaction est adopté.

II. Article 2, § 2.

La Commission vote sur la proposition française tendant à remplacer ce para-
graphe par un alinéa c) dans l’article 2, § 1, sur la notion du volume.

Vote sur la proposition française (22 délégations):
- 1 voix pour la proposition;
- 16 voix contre;
- 5 abstentions.

La proposition est rejetée, et le texte du comité est adopté sous réserve de modifi-
cations de pure forme.

Comments by the United States Government
on Proposals to Amend Article 2, paragraph 1

1. The United States Government has examined in great detail all of the aspects of
this problem and the many proposals that have thus far been advanced. This ex-
amination has been conducted in conjunction with interested segments of United
States industry such as shippers, carriers and insurers.

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2. As a consequence of this examination, the United States Government has decided
that it is able to support several of the proposals thus far advanced.

3. The United States, however, could not support limits of liability similar to those
suggested in the United Kingdom proposal (Document No. 1, dated 5 October
1967) unless such limits were coupled with a provision that would preclude the
possibility of containers, pallets or similar articles of transport used to consolidate
cargo, being considered packages for purposes of the application of the limit in Ar-
The object of such a provision would be to prevent palletized, containerized and other consolidated cargo from being treated less favourably in terms of limits of liability than these cargoes were treated prior to the advent of containerization or even now if these cargoes were not containerized or palletized. For example, a typewriter or television set valued at US $300 and weighing 20 kg would, if not containerized or palletized, be subject to a limitation of liability of 10,000 F.P. (US $662) under the British proposal. Even under present Article 4(5), these items would be subject each to a limitation of US $500 if not containerized or palletized. But if these items are containerized or palletized and if the British proposal is adopted without qualification, it would be argued that the container is the package and, therefore, the highest limitation that may be applied would be the weight limitation. This would limit recovery on the typewriter or television set to only some US $40 (30 F.P. X 20 kg). We do not believe that such an inequitable and anomalous consequence could or should be intended.

To avoid such a consequence, the United States would add to the first paragraph of Article 4(5) (paragraph 1 of Article 2) a proviso along the following lines:

"...provided that a container, pallet or similar article of transport equipment used for consolidating cargo shall not be deemed to be a ‘package’ within the meaning of this paragraph."

This proviso would follow the present wording of Article 4(5) or as that paragraph may be amended.

The same objective could be accomplished by adding an appropriate definition as paragraph (f) of Article 1 of the Convention. The United States is prepared to accept either approach or any other approach which would accomplish the objective.

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**Sixième Séance Plénière - 21 Février 1968**

M. le Président. Nous abordons l’examen des travaux de la commission relative à l’article 2, (1).

La parole est au président de la commission, M. Van Ryn.

M. Van Ryn (Belgique). M. le Président, Messieurs, la commission que j’ai eu l’honneur de présider a d’abord et surtout examiné les diverses questions énoncées déjà dans le rapport que j’ai eu l’honneur de faire au nom du groupe de travail constitué pour étudier la modification de l’article 2 des [93] Règles de Visby, le 22 mai 1967. Ce rapport est reproduit dans les documents de la conférence diplomatique, version française, à la page 710, CONN. 21.

La première question à résoudre était de savoir s’il convient de remplacer complètement le régime actuellement en vi-
Article 4 (5) - Limits of liability

replace the present system in effect by a system of limitation of liability based solely on weight. To this question, the committee, after a lengthy discussion, replied negatively by a vote of 16 to 4 with 5 abstentions. In the end, everybody agreed to admit implicitly that the committee marked its preference to replace the system of the 1924 Convention “limitation to £100 per package or unit” by what is called a mixed or alternative system: that is, this system will provide for a double limitation based on a fixed sum per unit or package, on the one hand, or a fixed sum per kilogram of gross weight of the lost or damaged goods.

It was this mixed system which, during our discussions of last May, was suggested by the Norwegian delegation. It was in this direction that the work of the committee proceeded and the crucial question, of course, is to know what would be the amounts acceptable for this double limitation.

Various proposals were made, in particular concerning the limitation per package or per unit. We dealt mainly with an amount of 10,000 Poincaré francs per package or unit. Another proposal was made to increase the amount to 12,500 francs. But after a discussion, this suggestion was rejected by a vote of 12 to 7 with 6 abstentions. It was then the limitation of 10,000 francs that has been adopted for the limitation per package or unit.

The second part of the option, the limitation based on gross weight of the goods lost or damaged, was less controversial and finally we opted - almost unanimously - for the amount of 30 Poincaré francs per kilogram of gross weight of the lost or damaged goods.

To give a concrete idea of what these amounts represent, I think that 10,000 francs per package represent approximately 662 U.S. dollars, while 30 francs per kilogram of gross weight of goods lost or damaged represent approximate-
brut de marchandises avariées ou endommagées représentent approximativement 2 $. La question suivante se trouve également indiquée dans le rapport que je me suis permis de rappeler à votre attention: ne faut-il pas [94] admettre que c’est toujours le maximum le plus élevé qui s’appliquera? Cette solution a été mise sans discussion, et elle est reprise dans le texte qui vient de vous être distribué.

Mais la commission n’a pas pu s’en tenir là car plusieurs questions nouvelles, qui n’avaient pas encore été débattues au mois de mai dernier, lui ont été soumises. La première est de savoir si, conformément à certaines suggestions faites dans divers amendements, il n’y avait pas lieu de compléter le système que j’ai appelé le système mixte ou alternatif, par une limite supplémentaire, par ce qu’on a appelé un plafond superieur ou maximum quand on applique la limite calculée sur la base du poids.

On a proposé que la limite calculée sur la base du poids ne puisse jamais conduire à un montant total par colis ou unité supérieur à 100,000 F. Nous avons discuté notamment au sujet de ce chiffre. A un certain moment, il a été porté à 200,000 F. Finalement, en prenant une décision au sujet de la limitation par colis et par kilogramme, la commission a reconsidéré l’ensemble du problème et elle a estimé qu’il n’y avait pas lieu de retenir cet élément supplémentaire, ce plafond maximum. La proposition a donc été rejetée par 13 voix contre 8, avec 2 abstentions.

Les raisons déterminantes ont été que d’une part, l’introduction de cet élément supplémentaire serait une source de complications et, d’autre part, que cela ne semblait pas répondre à une véritable nécessité, sinon même que cela pourrait conduire à des conséquences non souhaitables.

La deuxième question nouvelle que la commission a dû examiner est une difficulté suscitée par le fameux problème bien actuel des transports par conteneurs.

The following question appears also in the report that I brought to your attention: must we not [94] admit that it is the higher maximum that should apply? This decision was adopted without discussion, and it appears in the text that you have just received.

But the committee was not able to end the discussion at that because several new questions, which has not been debated last May, have now been submitted. The first is whether, according to certain suggestions made in various amendments, we had to add to what I have called the mixed or alternative system, another limitation, an upper limitation or upper ceiling when we apply a limitation calculated on the basis of weight.

Some suggested that the limitation worked out on the basis of weight should never lead to a total amount per package or unit superior to 100,000 francs. We particularly discussed this amount. At one time, it was raised to 200,000 francs. Finally, while taking a decision about the limitation per package and per kilogram, the committee reconsidered the whole problem and decided that it did not have to keep this additional element, this upper ceiling. The proposal was then rejected by a vote of 13 to 8, with 2 abstentions.

The main reasons were, on the one hand, that the introduction of this additional element would be a source of complication and, on the other hand, that this did not seem to fit a real necessity, and actually it could lead to unfortunate consequences.

The second new question that the committee had to study is a difficulty raised by the well-known problem of the shipment of containers.

We had to determine whether we had to consider a container, in other words, the container and the contents, as one package only or one unit only.

The United States delegation empha-
Il s’agissait de savoir si on allait désormais considérer un conteneur, c’est-à-dire le contenant et son contenu, comme un seul colis ou une seule unité.

La délégation des États-Unis a souligné, dans une note soumise à l’examen de la Commission, les conséquences choquantes qui résulteraient d’une telle conception. Par exemple, dans le cas de machines à écrire d’une valeur de 300 $ et d’un poids de 20 kilogrammes, si ces machines se trouvaient placées dans un conteneur, celui-ci serait considéré comme ne faisant, avec son contenu, qu’une seule unité ou un seul colis.

Tout le monde ayant reconnu le caractère choquant de ces conséquences, un texte a été préparé en vue de les éviter, et il n’a pu être mis au point que grâce aux efforts persévérants du comité de rédaction présidé par Lord Justice Diplock. Ce texte a donc été adopté, c’est celui qui figure à l’avant-dernier alinée du document [95] qui vient de vous être distribué (Document n° 18). Le système consacré par ce texte est le suivant: il sera permis au chargeur d’énumérer dans le connaissement, les colis ou les unités qui se trouvent dans le conteneur et s’il fait usage de cette faculté, chacun des colis ou chacune des unités dans le conteneur sera considéré comme un colis ou comme une unité distinct au point de vue de la limitation de la responsabilité. Si au contraire le chargeur ne fait pas usage de cette faculté, le conteneur sera considéré comme un seul colis. Pratiquement, il va de soi que l’option s’exercera dans chaque cas suivant ce que le chargeur estimerà conforme à ses intérêts. La solution adoptée se traduira naturellement par un taux de fret différent. Le chargeur aura ainsi toujours la possibilité d’éviter les conséquences choquantes qui avaient été critiquées.

Une remarque de détail: vous verrez que dans la version française du projet qui a finalement été arrêté, à l’avant-dernier alinéa concernant la question dont je viens de parler, un membre de phrase a provisoirement été laissé entre parenthèses. Si l’on traduit littéralement le texte, la solution adoptée se traduira naturellement par un taux de fret différent. Le chargeur aura ainsi toujours la possibilité d’éviter les conséquences choquantes qui avaient été critiquées.

An observation about a detail: you will notice that the French version of the draft that has finally been decided upon, at the next to last paragraph concerning the question that I have just discussed, a part of the sentence was left in parentheses. If we were to translate the English text literally, we would have to keep the words in parentheses, but it is certain that in the French version these words are redundant and seem to express the same thing twice. Should we then keep...
te anglais, les mots entre parenthèses doivent être maintenus, mais il est certain que dans la version française ces mots sont redondants et paraissent exprimer deux fois la même chose. Faut-il les maintenir et risquer de susciter ainsi une énigme pour les interprètes futurs de la convention qui diront, Messieurs, que vous n’avez certainement pas voulu parler pour ne rien dire et que ce pléonasme n’en est pas un. Néanmoins l’interprétation pourrait être fort délicate et le texte français - ceci est un avis personnel - serait plus clair si cette phrase n’était pas maintenue. Il me paraît que le texte sans ces mots, correspondrait, quant au sens, à la version anglaise.

Une troisième question nouvelle que la Commission a dû examiner est celle qui lui a été soumise à l’initiative de la délégation du Royaume-Uni. Celle-ci a souhaité introduire dans l’article 2, à l’occasion de la modification apportée au régime de la limitation de la responsabilité une disposition relative au mode de calcul de l’indemnité. Il ne s’agit donc pas, à proprement parler, d’une limitation de la responsabilité, il s’agit d’un mode de calcul. J’insiste sur ce point parce que le texte traduisant la proposition de la délégation du Royaume-Uni et qui figure à l’alinéa 2, pourrait faire croire qu’il s’agit d’une limite supplémentaire. En réalité, le but de cette disposition a été d’uniformiser - c’est ce qui nous a été expliqué - les règles généralement suivies pour le calcul des dommages et intérêts en cas de perte ou d’avaries de marchandises transportées par mer.

Cette disposition prévoit que:
“La somme totale due sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au jour et au lieu où elles auraient dû être déchargées”.

Il est apparu nécessaire d’apporter encore certaines précisions sur la manière de déterminer la valeur des marchandises. Ceci est prévu à l’alinéa suivant, re-

This proposal provides that:
“The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged in accordance with the contract or should have been so discharged”.

It was then necessary to be more precise in the method for determining the value of the goods. This is provided in the next paragraph, taken from the
La valeur de la marchandise est déterminée d’après le cours en bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes natures et qualité”.

Ce ne sont pas, à proprement parler, des innovations. Il s’agit simplement de l’expression d’usages ou de règles habituellement suivis, mais qu’il serait utile de codifier pour éviter toute incertitude dans l’avenir.

La proposition de la délégation britannique a été adoptée par 15 voix contre 2, et 6 abstentions.

Une quatrième question a également été soumise aux délibérations de la commission: il s’agissait de savoir s’il n’y aurait pas lieu d’ajouter une limitation par unité de volume.

C’était une innovation, tant par rapport à la convention de 1924, que par rapport au projet de protocole élaboré à Stockholm. Cette proposition a été discutée, puis finalement rejetée par 16 voix contre 1, et 5 abstentions.

Tel est, Monsieur le Président, Messieurs, le commentaire que je croyais devoir faire du document que vous avez sous les yeux et qui, je pense, traduit le résultat des délibérations de la commission.

Je me permets d’ajouter une dernière observation ayant trait à la présentation du texte. Il sera peut-être nécessaire - il me semble que cela peut se faire sans grand inconvénient - de modifier la répartition, ou du moins de bien séparer les différentes matières faisant désormais l’objet de l’alinéa 2, § 5. En effet, celui-ci se présentait, en 1924, sous une forme relativement simple. Le texte est devenu à présent très compliqué: nous avions déjà décidé, au mois de mai de l’année dernière, d’y ajouter deux dispositions, la commission vous propose aujourd’hui d’en ajouter encore plusieurs autres. Les alinéas suivants du même paragraphe 5 ont trait à d’autres questions. On peut se demander si, dans un but de clarté,
lorsque les textes eux-mêmes auront été adoptés, il ne conviendrait [97] pas d’envisager une subdivision de ce paragraphe 5 comme on l’a fait pour d’autres dispositions précédentes. Cette subdivision serait indiquée par des lettres et éviterait des erreurs dans les citations et dans les références à un ensemble de textes. Le motif en est que ces textes, à la suite de nos délibérations de l’année dernière et de cette année-ci, ont pris un caractère indiscutablement compliqué.

Mr. Philip (Denmark). Mr. Chairman, I have the honour on behalf of the delegations of the Federal Republic of Germany, Japan, the Netherlands and Denmark to introduce an amendment which I hope will be distributed to you now (Document n° 17).

As Mr. Van Ryn has just explained to you, we have in the Committee drafted an article which contains a limitation of liability based on alternative bases, one being the weight of the goods and the other being the traditional package of unit basis. In addition, we had in the Committee originally decided to provide a ceiling on the responsibility of the carrier. This ceiling was in fact divided into two, one being an absolute ceiling of 200,000 Francs per unit or package, the other being a kind of moveable ceiling, namely in the form of the value of the goods carried.

This beautiful house with two ceilings was turned down this morning. And what the delegations which I mentioned before want to do now is to reintroduce one of the ceilings.

There were, as I said, two ceilings in the house this morning. One was in the form of the amendment originally sponsored by the United Kingdom and which said that the total amount recoverable should not exceed the value of such goods at the place and time at which the goods are discharged according to the contract or should have been so discharged.

As you will see from the text which has now been distributed and which was introduced by Mr. Van Ryn, this passage has been changed and is now to be found in the third paragraph of the text before you, saying that the total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

This means that the provision now is a pure provision of calculation of damages and does no longer contain any limitation of liability.

We are prepared to accept this change and we think that it is correct that is should be made, because the provision as it originally stood was only to make for complications in the interpretation of [98] the provision. But we do think that there should be at least one ceiling left upon the responsibility of the carrier. We have by changing over to the weight limitation and by applying the sum of 30 Francs per kilogramme in fact more or less abolished the limitation with regard to very heavy cargo, and we feel that in relation to this very heavy cargo there ought still to be some kind of a ceiling or limitation. As you will see from the amendment distributed, it has been worded in relation to the text which we had before us in the Committee this morning.

But if you take the text now before you and look at the first paragraph of that text, you will find the two kinds of limitation in the last lines of the first paragraph “...nei-
ther the carrier not the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding the equivalent of Frs. 10,000 per package or unit or Frs. 30 per kilo of gross weight of the goods lost or damaged, whichever is the higher”. It is after the word “damaged” that our amendment should be added, reading “up to, but not exceeding a maximum of Frs. 200,000 per package or unit”, so that the complete text would be “…in an amount exceeding the equivalent of Frs. 10,000 per package or unit or Frs. 30 per kilo of gross weight of the goods lost or damaged, up to, but not exceeding a maximum of Frs. 200,000 per package or unit, whichever is the higher”.

In the French text we should add after the word “endommagée” (damaged) the words “ne dépassant pas un maximum de 200.000 F par colis ou unité” (up to, but not exceeding 200,000 francs per package or unit).

The amount of Frs. 200,000 is the result of the discussions yesterday in the Committee. There were several amounts suggested, namely Frs. 50,000, Frs. 100,000, and Frs. 200,000, and the last amount of Frs. 200,000 was passed in the Committee and was the amount which the Committee accepted yesterday but voted down today. We suggest we take up the amount of limitation which the Committee had already accepted but voted down again today. Thank you, Mr. Chairman.

Mr. A. Loeff (Netherlands). Mr. Chairman, Gentlemen, on behalf of the Netherlands Delegation I would very much like to say something about the so-called container clause. This clause was drafted because the American Delegation, as Mr. Van Ryn said, argued that in the case of many packages being in a container, the carrier would, on a unit basis, be less liable than if those packages were not shipped in a container but separately. But now the proposed container clause has gone, in our opinion, too far the other way, namely that for every package in the container there will be a maximum of liability of Frs. 10,000. Say, for instance, there are 500 typewriters in a container, more or less packed in wrappers, the liability of the carrier would be up to 500 times 10,000 Frs., that is, Frs. 5,000,000. That really cannot be the intention, because those typewriters, if there had been no container, would have been shipped, say, a dozen together in one wooden case, and the maximum liability would be Frs. 10,000. But no shipper would present 500 packages separately because that would cost him much too much freight, namely a minimum freight for each package. Therefore the Netherlands delegation is of the opinion that the container clause, as it is now worded, will result in considerable ambiguity of interpretation: what is a container - what is a similar article of transport - what is a unit? Therefore, we recommend that this clause be taken back and re-considered by the committee, or otherwise the Netherlands Delegation anyway would vote against it. Thank you, Mr. President.

M. de Bresson (France). Monsieur le Président, Mesdames, Messieurs, lors du débat général sur l’Article 2, paragraphe 1er, la délégation française avait exprimé l’espoir que les travaux de la conférence aboutiraient, dans le domaine des limitations de responsabilité, à un système qui moderniserait la convention actuelle et qui permettrait de l’adapter à l’évolution des transports internationaux.

La délégation française n’a pas le sentiment que le texte qui nous est soumis aujourd’hui réponde à cet objectif en ce
qui concerne un point essentiel dans le transport maritime moderne, à savoir celui des conteneurs. En effet, le texte qui nous est soumis propose de considérer le conteneur soit, si les éléments du chargement sont individualisés, comme divers éléments, soit au contraire, si ces éléments ne sont pas individualisés dans le connaissement, comme une seule unité. Ce système oblige donc pratiquement les chargeurs et les transporteurs à avoir connaissance à l’avance du contenu du conteneur et les oblige aussi à faire figurer ce contenu dans le connaissement.

En effet si l’on se rapporte au deuxième système envisagé, à savoir celui du poids, il est clair que ce système ne sera pratiquement pas applicable parce qu’il est difficile d’obtenir que les conteneurs soient pesés contradictoirement. Dès lors les plus grandes difficultés sont à prévoir en cas d’avarie ou de disparition d’un conteneur sur le point de savoir qui aura la charge de la preuve du poids de cet engin.

J’en reviens donc à ma conclusion, à savoir que sur les dispositions qui nous sont proposées nous obligeons pratiquement chargeurs et transporteurs à constater contradictoirement le contenu du conteneur avant son chargement. Or nous avons le sentiment que ce système est contraire à la philosophie même de l’emploi des conteneurs, qui est précisément destiné à simplifier les formalités du transport.

J’ajouterai que le système du poids serait d’autant plus inadmissible si l’on adoptait l’amendement que vient de présenter la délégation du Danemark, qui tend à fixer une limite unique avec un plafond global de 200.000 F ce qui compte tenu de ce que peut être le poids d’un conteneur constituerait une limite extrêmement basse.

C’est pour ces raisons que la délégation française avait pensé qu’il était plus raisonnable, puisqu’on envisageait un système mixte, d’aller un peu plus loin que le système par colis et par poids et maritime transport, that is the issue of containers. Indeed, the text that has been submitted proposes to consider a container either, if the elements of shipment are enumerated, as various elements or, to the contrary, if these elements are not enumerated in the bill of lading, as one single unit. This system obligates the shippers and carriers in practice to know the contents of the container in advance and obliges them also to declare the contents in the bill of lading.

Indeed, if we refer to the second system that has been devised, that is the weight-based one, it is clear that this system will not be applicable in practice because it is difficult to make sure that the containers are weighed so as to bind both parties. Thus, tremendous difficulties are to be expected in case of loss or damage of a container as to who will have the burden to prove the weight of this article.

These are the reasons that make the French delegation think that it would be more reasonable, because we were thinking of a mixed system, to go a little beyond the package and weight-based systems and to add into the equation the notion of volume. We know very well
d’ajouter dans les paramètres la notion de volume. Nous savons très bien que les problèmes que posent les conteneurs sont nombreux et délicats et qu’ils font encore l’objet d’examens d’ensemble. Mais nous pensions qu’une solution transitoire, qui n’était pas tellement novatrice et pas tellement compliquée, pouvait parfaitement retenir l’attention de notre conférence. Dès lors nous nous étions attelés au fond même du problème.

C’est pourquoi la délégation française maintient l’idée qu’à côté de la notion de limitation par colis et à côté de la limitation de poids, il serait possible de prévoir une limitation par volume. C’est dans ce sens que la délégation française rééditera dans quelques minutes un projet d’amendement.

Je vous remercie, Monsieur le Président.

M. le Président. La parole est à la délégation de la Cité du Vatican.

M. Tricot (Cité du Vatican). Monsieur le Président, Mesdames, Messieurs, notre délégation approuve les principes qui ont été retenus par la commission. Mais en ce qui concerne le texte relatif aux conteneurs, nous nous sommes permis de soumettre à votre assemblée un amendement. Je m’empresse de vous dire que cet amendement n’est pas nécessairement soumis avec la volonté de le faire triompher. Il a en grande partie la valeur d’une question.

Le problème que notre délégation veut vous soumettre est le suivant. Tout conteneur n’appartient pas nécessairement au transporteur maritime. Il peut donc, tout comme les marchandises qu’il contient, faire lui-même l’objet d’un transport et donc être l’objet transporté. Si le conteneur contient 25 colis, on transporte donc 25 colis plus 1, c’est-à-dire 26 objets. Si le conteneur ne contient aucun colis, il reste toujours un objet transporté, c’est-à-dire le conteneur lui-même. Si, suivant la formule retenue par votre commission, le conteneur contient un nombre de colis non énumérés au connaissement, nous avons été d’accord de considérer l’ensemble de ces colis that the problems posed by containers are numerous and delicate, and that they are still the subject of comprehensive studies. But we thought that a transitional solution, which is not so novel or so complicated, could very well merit the attention of our conference, especially because we have gotten down to the heart of the problem itself.

This is why the French delegation supports the idea that on top of the limitation per package and the limitation based on weight, we could provide for a limitation based on volume. It is in this sense that the French delegation will redraft in a few minutes our proposed amendment.

Thank you, Mr. Chairman.

The Chairman. The Vatican City delegation has the floor.

Mr. Tricot (Vatican City). Mr. Chairman, ladies and gentlemen, our delegation approves the principles that have been decided by the committee. But concerning the provision relating to containers, we are submitting an amendment to this assembly. I must, however, hasten to say that this amendment is not submitted with the intention of having it succeed. It is primarily a question.

The problem that our delegation would like to submit is the following: not every container necessarily belongs to the maritime carrier. It can, as well as the goods it contains, be the subject of shipment and consequently be the article carried. If the container contains 25 packages, we are then transporting 25 packages plus 1, in other words 26 objects. If the container does not contain anything, it still remains an article to be carried, in other words the container itself. If, following the formula arrived at by your Committee, the container contains a number of packages not enumerated in the bill of lading, we agreed to consider the sum of these packages as one unit. But we have then one visible unit, which is the container, and one invisible unit, which is the contents of the container. We should then
comme représentant une unité. Mais il existe alors une unité visible, qui est le conteneur, et une unité invisible, qui est le contenu du conteneur. Il faudrait donc prévoir dans le projet de convention que le nombre de colis énumérés au connaissement servira pour le calcul de la limitation de responsabilité mais que le conteneur lui-même peut être considéré comme une unité. Il faudrait aussi prévoir qu’en cas de défaut d’énumération au connaissement, l’engin de transport sera lui-même considéré comme un colis ou une unité, bien que ce soit manifestement le contenu qui soit visé.

Le conteneur comme tel est un objet dont la valeur n’est pas incorporée dans le ou les colis transportés. Il nous paraît dès lors souhaitable de compléter le texte ou tout au moins de remplacer une partie de la phrase du projet de protocole par un nouveau texte. Au lieu de dire “En dehors du cas prévu ci-dessus, l’engin sera lui-même considéré comme colis ou unité” il y aurait lieu de dire “En dehors du cas prévu ci-dessus le contenu de l’engin de transport sera lui-même considéré comme un seul colis ou unité et l’engin de transport lui-même sera toujours considéré comme une unité”.

Je veux bien admettre qu’il existe une position intermédiaire qui consiste à dire que lorsque le nombre de colis figure au connaissement, ce sera ce nombre plus un qui devra finalement entrer en ligne de compte. Je veux bien admettre aussi qu’on pourrait limiter à une unité la responsabilité totale du transporteur, lorsqu’aucune énumération ne figure au connaissement.

J’aurais en tous cas que la conférence s’exprime sur ce point.

M. le Président. La parole est à la délégation du Royaume-Uni.

Right Hon. Sir Kenneth Diplock (Great Britain). I will be very brief because we are discussing again matters which we have been discussing in great detail for the last two days.

The first observation I would like to make is that we will have failed in our task at this Conference and at the May Conference unless we can provide a solution which is provide in the draft of the Convention that the number of packages enumerated in the bill of lading would help in calculating the limitation of liability but the container itself could be considered as one unit. We should also provide that in case of non-enumeration in the bill of lading, the article of carriage will itself be considered as one package or one unit, even if it is manifestly the content that is targeted.

The container in itself is an article, the value of which is not incorporated in the packages carried. It would then be desirable to complete the text, or at least to replace the part of the sentence dealing with the protocol draft by a new sentence. Instead of saying “except as aforesaid such article of transport shall be considered the package or unit”, we should say “except as aforesaid the contents of the article of transport shall be considered as one single package or unit and the article of transport itself shall always be considered as one unit”.

I am ready to admit that there exists an intermediate position that consists of saying that when the number of packages is embodied in the bill of lading, it will be this number plus one that in the end should count. I know also that we could limit to one unit the total liability of the carrier when there is no number inserted in the bill of lading.

In any event, I would like the conference to express its position on this question.

The Chairman. The British delegation has the floor.
acceptable to the great majority of nations. That means that no nation can get exactly what it wants. Earlier this afternoon I expressed the great appreciation of my nation for the compromise which you were able to reach about Article 5.

I would like to say something about the three matters which have been raised. The first is the question of the ceiling of 200,000 francs. In the drafting committee we did produce a draft which set out that and other ceilings. It seemed to us that the scheme so set out was of itself too complicated to appeal to the majority of nations, but when we came to consider what, if there were a ceiling, the figure should be, and when the figure selected was the highest thought of, 200,000 francs, it became clear to those of us who voted against that proposal that it would cause injustice which might well make many nations refuse to adhere to the Convention. As a matter of arithmetic, at 30 francs per kilo the figure of 200,000 francs is reached at 6.6 tons. Already many containers carry 20 tons, and some carry over 30 tons.

In the result, the amount of recovery of anyone with goods in a container not specifically enumerated as packages would depend upon the size of the container in which it happened to be placed. If it was a 6.6 ton container or less, he would get the full amount of 30 kilograms per ton, if it was a 21 ton container he would only get one-third that amount. If it was a 33 ton container, he would only get one-fifth the amount.

With great respect, that does not seem to make good sense from the shipper’s point of view, or indeed from that of the carrier.

Secondly, a word about the container clause. This was one which caused the greatest possible difficulties with us and the greatest amount of discussion in the drafting committee over which I had the honour to preside. Let me say at once the clause in its present form is not the clause as I personally would have wished to have it, that is as my nation would have wished to have it. It may well be that it is not in the exact form that any other nation would wish to have it, but it was a compromise solution which it seemed to us and to the Commission as a whole was one which could attract the support of all the countries.

That is why I venture to suggest that it would be most undesirable to make any amendment to the container clause.

[103]

May I just say one word about the amendment by the representative of the Vatican City? What he has proposed is, I think, unnecessary; it is also different from what the clause says at the moment. The position, as I understand it, is quite clear: if you have a container said to contain, to take an easy number, ten packets, then the container and anything else it contains is another packet, that is to say eleven packets altogether. If there is nothing else in the container, the container is the package itself, the unit itself.

One final matter and I need say no more on the question of volume: we found ourselves in the difficulty in the Commission that this was a matter which had not been considered at all. I will not attempt to answer specifically the objections which are put to the weight basis, except to say that with great respect I think they can all be solved under the system which has been adopted by the Commission.

Mr. Schmeltzer (United States). First I would subscribe wholeheartedly to the comments made by Lord Justice Diplock. Nobody who was not at the meeting of the drafting committee can realise how difficult it was to hammer our a compromise.

I would like to say, further, that the people who have just submitted amendments seem to be very worried about the new limitation of liability container ship operators will have to undertake under this compromise we worked out. The only ones who do not seem to be worried are the container ship operators who have to bear the cost.

Before I came to this Conference, I consulted with two great pioneering container ship companies in the United States. One is Sealand Service, which operates between
the United States and Europe, and the other is the Matson Navigation Company which goes between the United States and Japan. Both carriers sent me letters asking to do away with the notion that a container should be treated as a package for the purpose of limitation of liability.

I will quote from a letter from Sealand Service Incorporated, dated 13 February, 1968; the executive vice president of Sealand, after a very thoughtful discussion which is included in the letter, and which was considered by the appropriate executives of Sealand, the people who know most about containers, said: “The summary of our position in this matter is as follows.” (This is the first of three points of the summary) “An increase in the package limitation and the definition of a package is definitely in order”. The context of this letter makes it very plain that the kind of definition that Sealand is interested in is very much like the definition which came out of your drafting committee and your Commission.

The Matson Navigation Company sent me a telegram dated 9 February, 1968, which reads in part: “Suggest that proviso to limitation of liability rule be amended to read ‘provided that a container or similar article of transport equipment shall not be deemed to be a package’.”

It appears that everybody is worried about the claims undertakings of the container ship operators except the container ship operators.

Container ships have to compete with conventional ships and aeroplanes for cargoes. The cargoes which are most important and lucrative to be carried in containers are the high value manufactured goods such as television sets, typewriters and cigarettes. To compete successfully for such cargoes, the container ships must have reasonable, relatively simple and uniformly applicable rules as to limitations of liability. This is what we have tried to produce in the draft submitted to you today by Professor Van Ryn.

All of the amendments which have been suggested here today simply complicate the system. They put in overall limitations which container ship operators like Sealand and Matson do not want.

I strongly suggest that these amendments be rejected and that the draft submitted by Professor Van Ryn be approved by this Conference.

Mr. Philip (Denmark). I shall be very brief, but I would like respectfully to differ from the argument put forward by Lord Justice Diplock against the amendment which I introduced a moment ago.

We have just heard that containers should not be regarded as one unit or parcel, and that is what the document we are discussing now says, that only if there is no mention of the number of packages in the bill of lading, the container is known as a package in itself.

This goes to show that the example which Lord Justice Diplock gave, saying that if a container weighs more than 6.6 tons, then it will come under the limitation of 200,000 francs does not work if we apply the rule contained in the Article suggested to you. The moment we apply that rule, it is the parcels in the container which are weighed and we will never get up above the 6.6 tons.

The ceiling would only apply to containers if no mention is made of the number of packages in the container, otherwise they will only apply to very heavy cargo such as locomotives and the like.

Mr. Herber (Fed. Rep. of Germany). Ladies and gentlemen, when reading the various amendments lying now before us, one could have the impression of there being only little agreement on the text worked out in the Commission. But such an impression was not justified. I would like to say at first therefore that the German delegation
in principle agrees with the text worked out by the Commission and that it regards this text as a very useful compromise of the divergent opinions.

As regards the amendment put forward by various delegations, amongst them the Federal Republic of Germany, in document number 17, aiming to insert an upper limit on the liability calculation on the kilogram basis, I am in the lucky position to be able to refer to the very clear and excellent motivation given by the Danish delegation. I agreed specially with the opinion that this limitation practically will be no ceiling in case of container traffic. In order to meet this modern form of traffic we have worked out, by a very carefully prepared compromise the rule you will find in paragraph 4 of the draft Article.

Regarding this rule, there is no real danger in my opinion that there should be an unreasonable cutting off of liability in the case of container transport. The provision is proposed in order to maintain the present state of the Hague Rules in so far as they give an absolute limitation of the liability in all cases. As the draft now stands, we have such an absolute limitation of the liability only in the case of liability per package or unit, that is to say the liability of 10,000 francs, but not in the case where the liability is calculated per kilogram. Thus we propose to insert it.

The proposal is not destined to put into danger the carefully achieved compromise, but is an additional provision which we should in my opinion at first vote on before dealing with the various objections put forward in so far as the container clause is concerned. Therefore I would like to confine myself at the moment to this proposal, that is to say amendment number 17, and leave any remarks if necessary to the container clause for a later stage. Thank you, Mr. Chairman.

Mr. J.A.L.M. Loeff (Netherlands). Mr. Chairman, I should like to say a few words on the container clause, not to open a discussion, but just to put on record here, to the Plenary Session, what, as far as I know, is the general opinion of everybody who took part in the discussion on the container clause.

The fact is that the container clause envisages three possibilities. The first is that the bill of lading does not give any enumeration of what is contained in the container. The second possibility is that the bill of lading gives a complete enumeration of the contents of the containers, and the third possibility is that the bill of lading says for instance the contents are 10 cases of spare motor parts and further general merchandise.

Now I think everybody agrees, and I only say this to put it on record here, everybody agrees that the container clause covers those three possibilities and we think that is clear from the words “as far as these packages or units are concerned”.

Now the French translation has the translation of these words in brackets, and I think there would not be a good translation of the English text if these words in brackets in the French translation would be deleted as these words make it clear that also the third possibility, that a bill of lading enumerates 10 cases plus some general merchandise, is covered by the container clause. I thank you.
que les 10.000 F par colis ou unité ou 30 F per kilo de poids brut nous paraissent acceptables.

Pour cette raison, nous pensons que le montant de 100.000 F Poincaré par kilo ou unité, proposé par la République fédérale d’Allemagne, doit être retenu (Document n° 2).

Mr. Rein (Norway). Mr. Chairman, gentlemen, I think it is important to remind you that we should not forget the basic principle underlying the Hague Rules limitation. The basic principle is this: if a commodity is particularly or excessively valuable compared with its weight or size the shipowner should be protected by a kind of standard value because when the value of the goods has not been declared it is unfair on the shipowner to present him with a bill for an enormous amount in respect of the loss of a small parcel; you could not expect this parcel to be so valuable.

This was the principle behind the 1924 conception of limitation, and this is still the principle. There has never been a question of a limitation meaning that one who ships a large amount of cargo shall be less well compensated than one who ships a small amount. If a carrier accepts for transportation a locomotive he knows jolly well that this is a very expensive piece of cargo and he cannot expect if he destroys that locomotive to compensate it as though it was a motorcar. The conception of a ceiling, therefore, is entirely against the underlying principle of the whole idea of limitation. It is not meant to protect the shipowner against paying compensation for a large valuable piece which he has accepted and seen that it is a valuable piece; he knows it jolly well.

It has also been said by my good friend Mr. Philip that the present limitation figures do in effect abolish limitation unless we put a ceiling to them. I suggested to Mr. Philip that if he really believes this he should oblige us by putting in not the figure of 30 but the figure of 123, in order to be in line with the CMR Convention and thus obtain uniformity. My offer was not accepted, which I interpreted to mean it is not correct, it is not true, that there is no limitation in the figure of 30. And anybody can see that it is not true, because what it means is that any amount of weight above the 330 kilos corresponding to the lower level is compensated only with the amount of about $ 2 per kilogramme, and you can all readily imagine many commodities which are worth more than $ 2 per kilogramme. Therefore the limitation is effective, it is effective where it should be effective, namely where the commodity has a value per weight unit above a certain average.

There should not be any ceiling meaning that large quantities of goods shipped are compensated less well than small quantities. Thank you, Mr. Chairman.

M. Tricot (Cité du Vatican). Monsieur le Président, Messieurs, après les interventions que vous avez entendues, je me suis permis de prendre contact avec le président de la commission et le président du comité de rédaction du protocole qui vous est soumis.

L'interprétation du texte de la Commission paraît bien être que le conteneur est un colis s’ajoutant aux autres lorsque les colis sont énumérés au connaissement. Conteneur et contenu ne sont 10,000 francs per package or unit and 30 francs per kilogram of gross weight.

For these reasons, we think that the amount of 100,000 Poincaré francs per kilogram or unit, proposed by the Federal Republic of Germany, must be adopted.

Mr. Tricot (Vatican City). Mr. Chairman, gentlemen, following the statement that you have just heard, I took the liberty of contacting the Chairman of the Committee and the Chairman of the Drafting Committee of the Protocol which has been submitted to you.

The Committee’s interpretation of the text seems to be that the container is a package added to the others when the packages are enumerated in the bill of lading. The container and its contents
M. le Président. La parole est à la délégation de l’Irlande.

Mr. McGovern (Ireland). I must say I think we have come a long way since May 1967. We would never have heard of any of the proposals on which we have spent so much time here at the adjourned session of this conference were it not for the emergence of containers, and it troubles me somewhat that the entire system of limitation is about to be changed, as clearly it is about to be changed, because of containers.

I do not think that we have a serious commercial problem here. This was said on the first day of this conference. And I am somewhat worried about the fact that the very purpose for which the Brussels diplomatic conference exists, namely to achieve a measure of uniformity in the law of the sea, is in grave danger in my view of being put to one side now, because it seems to me that if we endorse the proposals which we have before us and upon which so much earnest work was done we may find ourselves in a situation that many of the countries which have adhered to the original Hague Rules will decline to ratify this protocol and we may have two sets of Hague Rules in force, all because of a problem which is not a major commercial problem today, namely the carriage of containers.

I suggested on the first day of this Conference that there was a very easy solution to this problem, a solution which exists in my view under the Hague Rules but which calls for some slight amendment in the level of shipowners’ liability, an amendment which will bring that level up to such a point as will make it incumbent on a shipowner to take due care of the cargo entrusted to him but which will not transform the shipowner into a creature who is discharging not only the burden of his business, which is the carriage by sea, but also puts him in a position where he virtually becomes the insurer of the cargo.

I believe that the marine underwriters of the world are quite prepared to take these risks; they have been doing it for years now and they know better than the shipowners how to assess the risks. I am disturbed by the fact that if we proceed as has been suggested the limit of a shipowner’s liability for one container containing 500 packages could be as high as five million Poincaré francs, as one of the Dutch delegates pointed out. I am concerned as a practical shipowner with the practical problems which will arise. The bill of lading is made out by the shipper of the goods. The shipper of the goods may state that his container contains so many packages. What happens if the shipowner has no reasonable opportunity of checking the accuracy of the statement contained in the bill of lading and presented to him for signature? Can he refuse, in accordance with Article 3.3 to sign the bill of lading, and, if he does, does he not perpetrate an injustice on the cargo if the present reasoning be correct? The very purpose for which containers have come is to enable cargoes, and particularly high value general cargoes, to be moved safely and efficiently and quickly. But this very purpose is likely to be frustrated if it becomes incumbent on a ship owner in order to avoid what he would regard as an excessive liability to open every container and check its contents. I do not believe that this will be accepted by the commercial world. I think that we are in grave danger of creating a lawyer’s benefit, and I have a suspicion that the work which we are doing at this Conference may be ultimately frustrated when people have had more time to think about this thing.
I venture to suppose that the protocol will not be as acceptable as the original Hague Rules. I feel that we have gone so far along this road that there is very little chance of turning back now. But I thought I ought to make these remarks because I am afraid, on behalf of my delegation, I will have to vote for the rejection of this text. I am sorry that this is so because I know how much work has gone into it and I know the spirit of compromise which has prevailed at this Conference. I am sorry if I seem to be lacking in that spirit, but one might as well stand by a view. Compromise is not always the best solution to a problem; frequently it is, but not always, and I would prefer to avoid the risk of disturbing the considerable degree of uniformity which we now enjoy in this field than to commit my Delegation to something which I believe gravely endangers that uniformity.

Dr. Rolf Herber (Federal Republic of Germany). Mr. Chairman, I should like to make some remarks as regards the proposal of the distinguished delegate of Spain in so far as he has proposed to insert the sum of 100,000 francs as a ceiling. The joint proposal of Denmark, the Netherlands and the Federal Republic contains, as you see it before you, 200,000 francs. The original proposals of the Federal Republic, Denmark and the Netherlands contained other figures. We had proposed 100,000 francs, the Danish had proposed 50,000 francs and the Netherlands had proposed, if I remember correctly, 20,000 francs. But I would like to stress that we no longer maintain the proposal of 100,000 francs and I think it is the same with the other delegations. Having put forward this amendment we are now proposing 200,000 francs and therefore I only want to make it clear that if the Spanish delegation seriously propose 100,000 francs it would be necessary to put forward a formal sub-amendment. But we think this figure of 200,000 francs as a ceiling for the calculation on the kilo basis was taken after long debates in the Commission, and according to a vote taken on this figure in the Commission on the assumption that there would be a ceiling chosen at all.

In so far as the various arguments put forward in this debate are concerned, I think all these arguments against and in favour of the ceiling have been discussed already very extensively in the Commission. We all know them and we should come, if I may propose this, to a vote in this respect.

In so far as the container clause is concerned, it is a compromise; it could be ameliorated but I doubt if it could be ameliorated in the plenary session. If the objections are maintained I would like to propose referring this part of the proposal again to the commission. I do not think we can deal with these serious problems in plenary, and personally I doubt whether it is possible to find a better solution than that contained in the proposal of the commission. Thank you, Mr. Chairman.

Mr. Antonio Belaunde-Moreyra (Peru). Mr. President, the Peru delegation wholeheartedly approves the amendment submitted by the delegations of Germany, Denmark, the Netherlands and Japan, putting a maximum limit of 200,000 francs in the case of the weight system. With regard to the container clause, the delegation of Peru would like to say that it would consider it convenient to extend this maximum limit clause to this container clause, so that in the case of many units being inserted into a container, the maximum responsibility for the container would be also 200,000 francs. This is not a formal proposal. Our intention is only to state that in case a clause of this kind is not adopted, we would have to vote against the container clause. Thank you.

M. le Président. Messieurs, si plus personne ne demande la parole, je vous propose de déclarer les débats clos pour ce soir. Certains amendements ayant été distribué à la dernière minute et la nuit portant toujours conseil, je vous propose

The Chairman. Gentlemen, if nobody is asking for the floor. I propose that we close the debate for this evening. Some of the amendments have been distributed at the last minute and because the night will always bring advice, I sug-
gest we meet tomorrow morning at 10.00 to vote, in accordance with the rule, the amendments first, followed by the text proposed by the committee.

Le Président.

Nous passons à l’autre sujet qui fait l’objet de notre réunion de ce matin. Nous avons, hier soir, clôturé les débats sur les problèmes soulevés par l’article 2, § 1.

Nous nous trouvons en présence d’un texte soumis par le comité de rédaction désignée par votre assemblée et sur ce texte, il y a deux amendements. L’un de ces amendements est présenté par les délégations de la République Fédérale d’Allemagne, du Japon, des Pays-Bas et du Danemark.

Nous déclare donc la discussion générale close.

Septième Séance Plénière - 22 Février 1968

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Nous déclare donc la discussion générale close.

We move on to the other subject, the main topic of our meeting this morning. We ended, last night, our debate on the problems that article 2(1) would create.

We have before us a text submitted by the drafting committee appointed by your assembly. And on this text, there are two amendments. One of them is submitted by the delegations of the Federal Republic of Germany, Japan, the Netherlands, and Denmark.

The other is submitted by the French delegation.

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8 Document 17

Article 2, paragraphe 1

Amendment submitted by the Delegations of the Federal Republic of Germany, Japan, The Netherlands and Denmark

Après le mot “endommagées” ajouter les mots “ne dépassant pas un maximum de 200.000 francs par colis ou unité”.

9 Document 20

Article 2, paragraphe 1

Amendment submitted by the French Delegation

In article 4 of the Convention the first sub-paragraph of paragraph 5 shall be deleted and replaced by the following:

§ 1. - Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, or 3,000 francs per unit of volume mentioned in the bill of lading, the choice being left to the claimant.

The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

A franc means a unit consisting of 65.5 milligrams of gold of millesimal fineness 900’.
L’autre est présenté par la délégation française.

Un troisième amendement avait été présenté par la délégation de la Cité du Vatican (Document n° 19). Il a été retiré au cours de notre réunion d’hier.

Nous aurons donc à nous prononcer d’abord sur chacun de ces amendements, nous devrons ensuite considérer le vote sur les textes proposés par la Commission.

Notre collègue, le représentant du Royaume-Uni, s’est demandé s’il n’était pas opportun que le texte même, sans faire l’objet de considérations ou d’un débat, soit expliqué, avant qu’il ne soit procédé à divers votes, par le président du comité de rédaction, le texte de ce comité n’ayant pas fait l’objet d’un débat.

Je crois qu’il n’y a pas d’inconvénient à lui demander de fournir ces quelques indications préalables à nos votes. Je prie le délégué du Royaume-Uni de vouloir bien nous donner ces quelques éclaircissements.

A third amendment had been submitted by the Vatican City delegation. It was withdrawn during our meeting, yesterday.

Our colleague, the representative of the United Kingdom, wondered whether it would not be appropriate that this same text, without being the subject of considerations or debate, be explained, before we proceed to the various votes, by the chairman of the drafting committee, because the text of this committee has not been the subject of a debate.

I do not see any problem in asking him to furnish us with some indications prior to our votes. I ask the British delegate to give us these clarifications.

Right Hon. Sir Kenneth Diplock (United Kingdom). Mr. Chairman, it is good of you to give me an opportunity as chairman of the Drafting Committee to explain to you the purpose of this clause.

The clause is what I may call a package deal; that is to say, all the paragraphs of it are inter-related so that to consider one paragraph apart from the others will give a false impression of what is intended to be accomplished by the clause which the committee has drafted.

We are dealing here with shipowners’ liability for goods lost or damaged. The shipowners’ liability for such goods is, in the case of goods lost, for the value of the goods. That is the prima facie liability, and in 90 per cent of cases that is the amount which he will pay. Under this clause no difference is made in that and the freight is usually fixed upon that basis. That is dealt with in paragraphs 2 and 3 of the clause which deal with the method of calculating the loss. The majority of cases will be covered by those paragraphs and the shipper, the owner of the goods, will receive their full value in the event of total loss.

The clause with which we are concerned, which was Article 4.(5) of the Hague Rules Convention, was a clause which was introduced to deal with goods of exceptional value. For those goods, where the liability of the shipowner would be higher than that which he would expect, unless he knew their value, there was the provision that even if the value of the goods exceeded a certain value, then only that amount, at that time fixed at £ 100 per package or unit would be payable, unless the value was declared.
This gave to the shipper of the valuable goods an option; either he could declare the value and pay the higher rate of freight appropriate to it, or he could refrain from declaring the value, in which case he would recover from the shipowner only the maximum of £ 100 per package. That gave him the commercial choice of deciding whether his cargo underwriter would charge him more in extra premium that the extra freight he would have to pay to the shipowner for accepting liability for the higher value declared.

In 1924, there were only the traditional methods of shipping cargo. It was therefore possible to agree, as was found at the conference in Brussels which produced that Convention, upon a figure which would represent the turning point between the exceptionally valuable cargo and the ordinary average run of cargo which the shipowner would expect. That figure was fixed then at £ 100 sterling.

There has been a considerable change in the value of money since. Traditional methods of stowing and shipping will continue, and therefore they must continue to be provided for. The alteration which you will find in paragraph 5 (i) in relation to the traditional methods of shipping is the increase of the £ 100 of the 1924 Convention to the figure of 10,000 Poincaré francs which, it was the view of the Commission, represented a fair figure for the average cargo packed in the ordinary way.

So that old method for the traditional shipment of cargo continues under the new clause, only with the increase in the amount per traditional package from £ 100 to francs gold 10,000.

What the old Hague Rules did not deal with was the big unit. That might be either a big machine, like a locomotive, or a large machine, or it might be now the big package - what we have called the container, pallet or other article of transport used to consolidate goods. So far as the big machine was concerned, there was no difficulty about that under the old rules because one could always declare the higher value if one was prepared to pay the higher rate of freight. But when one comes to the big package then there are other difficulties which arise. The figure of 10,000 francs is an appropriate figure for the ordinary kind of package. The average weight of a traditional, package or crate or bale is about 100 kilograms. But that sum of money is quite inappropriate for containers already in use, which may contain up to 30 or 40 metric tons of goods.

Obviously if a package, of that size, the container, is going to be considered as a package or unit for liability, a figure of 10,000 francs is inappropriate. It was because of the problem of the big container, which is itself a package, that it became necessary, it was thought at our Conference in May, that some provision should be made to deal with the big package, the package which today may run to 30 or 40 tons, and within a few years may be much larger than that. The problem was how to deal with that kind of big package.

The view that was expressed was that one should deal with that by putting a maximum liability on it, depending upon the weight of the cargo which it contained. That is putting upon it a figure which would represent a reasonable average value per kilo of weight. This is the same principle by which the Commission arrived at a figure for the reasonable ordinary value of the tradition sized package. The figure of francs 30 per kilogram was the figure arrived at in the Commission as a result of a general consensus that this would meet the requirements of the cargo of ordinary value packed in the large container.

Those are the two matters which are dealt with in paragraph (i). That means that for any package, and for this purpose (I will come to the container clause in a moment) the container may be a package, there will be a maximum liability, if the weight does not exceed 333 kilos, of francs 10,000. Above that weight, which is what francs 10,000
represents at francs 30 per kilo, you will get a rising maximum according to the weight of the package. That in itself is very simple, the figures were based on the average sort of cargo, so as to exclude the exceptionally valuable cargo.

As with the package limitation so with the weight limitation. If the shipper wants to make the ship owner liable for a greater sum than the maximum provided by paragraph (i), all he has to do is to declare the value and pay the appropriate higher rate of freight. So far the matter is very simple.

Next we had to consider the special problem of containers because it is mainly the problem of containers which has made it essential to turn over from a simple package basis to include a weight basis as well.

Now there are many intractable problems about containers but so far as this clause is concerned, there was only one quite simple problem. A container is a package which may contain other packages. It may contain for example 100 crates of various kinds of merchandise. The problem is where you have a container which contains inside it other traditional packages or units, is the liability going to be calculated upon the container as the package, which [118] would almost certainly involve the weight basis, or is it to be calculated on the individual packages within the container as if they were stowed in the traditional way in the hold?

Now the answer to that is a very simple answer. It is for the shipper and the carrier to decide whether they want the particular container to be treated as the package for the purpose of limitation of weight, or whether they want the smaller packages or units in it to be so treated; and no doubt when the latter alternative is taken, that is to say the individual packages are to be treated as separate units, a higher rate of freight will be payable than when the container is to be the unit - a higher rate of freight because the maximum liability, may itself be higher.

A very simple answer then: it is for the parties to the contract of carriage to decide what shall be the unit. Shall it be the container or shall it be any traditional units inside? What is essential is that into whoever’s hands the bill of lading may come, the hands of the consignee, of the banker who finances the transaction, or of the insurer, it will appear on the face of the bill of lading whether the package for purpose of maximum liability is the container, or the individual packages inside the container. No doubt, as I say, the freight rates will be different according to which is chosen. That is a matter of commercial judgement for the shipper and carrier to make, and it is as I understand it the desire both of shippers, and of carriers, and of container operators that they should have the option, to decide between themselves which shall be the package so that the rate may be so determined. This is the view for example of the British shippers and carriers whom I have of course consulted on this. It is also true as I understand of American carriers. If I may read a further passage from the letter from Sealnd which Mr. Schmeltzer quoted yesterday, this makes it quite clear. They say this “It would be a simple matter to establish a definition since a container is an instrument of transportation service and not a package” - that is where the container is being used by the shipowner as part of a hold - and then it goes on “except when the container is used as a package such as in the case of bulk liquids, or” - and these are the important words - “per container rates where the underlying carrier assumes no responsibility for the contents or methods of stowing within the container”. So what we want to do is to leave open to the shipping industry, the shippers and the ship owners, to decide as a matter of business whether they want to get “per container rates” in which case the container will be treated as the package, or the [119] ordinary freight rates in which the traditional packages within it will be treated as individual packages.

Now there are a number of ways in which one could give them that liberty of choice and give it in such a form that it will appear to anyone who sees the bill of lading which contract they have chosen. That is the whole point of the container clause.
which is paragraph (iv) of the Committee’s draft to enable anyone who looks at a bill of lading, relating to transport by container, pallet, or other similar method of grouping goods, to see whether the container is the package for the limitation clause, or whether the packages in it are. Under this paragraph all you will have to do is to look at the bill of lading and see, does it contain any figures of the numbers of packages other than the containers themselves. So with any bill of lading which goes into anyone’s hands it is possible at once to see whether it is the container which is the unit for the purposes of calculating the maximum liability - we are only dealing with maximum here - or whether it is any of the packages within it.

The clause is drafted in this way, because you may get in a bill of lading a variety of descriptions of goods in a container. You may get the simple one where it says a container “said to contain” so many packages, or “containing” so many packages, say 20 packages. You look at the bill of lading, you see the figure 20, and you know that each of those 20 packages is a unit for the purpose of calculating the maximum.

It may be, on the other hand - and this is the normal form of bill of lading in the case of the European short sea trades at the moment - one container “said to contain” general merchandise. There is only one figure on the bill of lading, therefore the container is the package for the purpose of calculating the maximum. But you may get the mixed case - and we are providing for the future and we want to deal with all cases - where the bill of lading says one container containing four crates of typewriters and general merchandise. Well, what is to be done then? The answer is provided by paragraph (iv). You look at the bill of lading and you see that there is the figure 4 relating to the crates of typewriters. Each of those crates of typewriters is a unit for the purpose of calculating the maximum. You look at the bill of lading and you see that there is also general merchandise without any figure in front of it, and then the clause says the container with the general merchandise, is to be treated as an other package. So this is a perfectly simple way of seeing from the bill of lading what the maximum liability of the shipper is for the goods. And it has this advantage - and this is essential in anything we are trying to do for commerce - that it leaves it to the shipper and the carrier to make their own bargain as to whether they want the higher maximum on the internal package basis and the higher freight, or the lower freight on the basis of the container and its contents being the package. Anyone looking at the bill of lading can tell which option has been exercised in respect of which goods in the container.

Now, that is the purpose of the container clause. One might have drafted it in a variety of different ways. We did discuss a number of possible drafts in the committee in order to get the effect which I have endeavoured to explain to you, and this was the compromise draft which was acceptable to all of us who were on the committee. And I would venture to suggest to you, because we had great difficulty in arriving at it, that even if you do not think the style of drafting is lapidary, you should accept it as long as it is pretty clear what the intent is, and I venture to say that the intention is what I have described to you.

That, then, is the basis of the clause. And you notice that each of the four paragraphs is closely interrelated. The whole clause is a package deal. The second and the third paragraphs deal with what I repeat is the ordinary case, because the maximum only applies in a very small minority of losses. These paragraphs deal with the ordinary case where the shipper is liable up to the value of the goods, and that will cover somewhere between 80 and 90 per cent of all goods shipped. Paragraph (i) deals with the maximum liability per unit of freight, whether those units are traditional packages either stowed separately or stowed within a container and enumerated in the bill of lading or are the container themselves. And paragraph (iv) deals with the way in which on looking at a bill of lading you can be sure which maximum, that of a container itself or a single package or that of all or any individual packages within a container, has been
selected by the carrier and the shipper as a matter of commercial bargain between
them.

Now, I have stressed the interrelation of those four clauses for this reason: there are
a number of amendments which have been put forward suggesting alterations in one
or other of the clauses, and in particular there is the amendment on which you will
shortly be voting, of providing a top limit to the weight limitation - what has been
called “the ceiling”. It has been suggested by some speakers that there is no ceiling in
the rules in the event of a total disaster. I would just remind you of this, that under the
1957 convention as to limitation of liability there is always the global limitation based
upon the tonnage of the ship, and article 8 of the [121] Hague Rules provides that
nothing shall affect the rights and obligations of the carrier under any statute at the
time being in force relating to the limitation of the liability of owners’ sea going ves-
sels. So you have got in addition the disaster limitation under the 1957 convention.

Now let me deal with the suggestion that there should be a further ceiling - that is
to say, however large the container, whatever the weight of goods in it, there should be
no recovery beyond 200,000 francs. I would point out that that runs counter to the
whole philosophy of this clause into which it would be inserted. The philosophy of this
clause is to deal with the cargo of exceptional value. It used to be only exceptional val-
ue per package or unit, it is now exceptional value per package or unit or in the case
of the larger ones per weight of these goods lost or damaged. The effect of putting on
a global ceiling introduces an entirely different concept. It introduces a maximum
based upon the quantity of goods you ship, whatever their value. Even though you are
shipping goods of ordinary value, if you ship them in a large container under rates in
which the large container is the unit, then your recovery will be less because you have
shipped them in a large container rather than in a small container. So to start with it
runs counter to the whole system of this clause, which is to deal with goods of excep-
tional value, not of exceptional quantity.

The result of that is that if you adopt a ceiling which is going to come into opera-
tion at all, and if you adopt in particular a ceiling of 200,000 francs, you give rise to the
results which I suggested briefly yesterday. The maximum amount recoverable by the
owner of the goods would depend upon the size of the container in which either he or
the container operator or grouper has put them. As I pointed out, if the container plus
contents weighs less than 6.66 tons he gets the maximum of 30 francs per kilo. Once
the weight gets beyond 6.66 tons, and it gets up under present practice to between 30
and 40 tons the maximum recovery which the shipper can get grows less and less, and
at 33 tons is one-fifth of 30 francs per kilo, simply because he put it into a large con-
tainer instead of a smaller container. And remember here there are three kinds of con-
tainers: first, the shipowners container which he uses merely as part of the hold and in
which case he will issue the bills of lading for the individual packages in the tradition-
al ways.

Secondly, we are dealing with the shipper’s container in which all the goods are
those of the shipper. So far as he is concerned there is the bargain which he can make
which I have already [122] described, depending on whether he wants to get the
freight rates for which the container will be a single package or whether he wants the
maximum recovery for each package of goods inside, in which case the number of such
packages will appear in the bill of lading.

Thirdly, you get - and this is the important one to consider - the container opera-
tor’s container in which the goods inside belong to a variety of different owners. How
are you going to deal with that? Take the case of total loss and take the case of a 33 ton
container. Under the system in this Article as drafted by the Committee, it is perfectly
simple to discover what the maximum recovery for each individual owner is. It is 30
francs per kilo of his goods which are lost or damaged.
Now take the case where there is the global limitation. How are you going to apportion that 200,000 francs between the owners of the various goods? This adds a further injustice to the individual owner of goods packed in the container, because not only will his recovery depend upon the size of container in which the goods were put but it will also depend upon the weight of other goods over which he has no control which are placed in the same container. Now, that might not matter so much as long as everyone knows where they stand when the contract of carriage is entered into. But if you get documents as consignee simply showing that you have goods packed in a container, you will have no idea, if you put into paragraph (i) back a ceiling of 200,000 francs or any other figure, what your maximum recovery as owner of those goods may be, because what your maximum will be will depend upon a whole variety of factors not ascertainable from the bill of lading. It will depend upon the size of the container in which your goods are packed and the weight of other goods in it.

That, in the view of the drafting Committee - or, perhaps, I should say, in my own view - is an impossible situation from the commercial point of view, for three reasons. First, it runs counter to the whole philosophy of the clause which is dealing with maxima for goods of exceptional value, not exceptional quantity. Secondly, it involves the injustice of the chance of what other goods are put in the container. Thirdly - and this is so important - it does make it impossible for those into whose hands the bill of lading comes to know what the maximum liability is, whereas if you leave the clause as it is anyone who gets a bill of lading, either for the purpose of advancing credit on it or as consignee, can see at once - looking at the bill of lading - what his maximum recovery is. If his goods are not enumerated as individual packages, then he knows that his recovery is 30 francs per kilo of goods lost or damaged. It is for that reason that to accept the ceiling would affect each of these clauses which we have worked out with a great deal of effort and difficulty in the Commission and in the drafting Committee so as to produce a package deal in which all the clauses are related to one another and the whole clause is directed to maximum liability for goods of unusual value.

For the great majority of goods this clause will not apply at all, because the value will be below the maximum. It is for the minority of goods that it is essential to know what the maximum is for commercial reasons, for settling freight and insurance, and if you adopt this clause it will enable shipper and ship owner to do just that.

M. le Président. Messieurs, nous allons mettre successivement aux voix les différentes propositions qui vous sont soumises. Le premier vote que vous aurez à émettre concerne l’amendement proposé par les délégations de la République Fédérale d’Allemagne, du Japon, des Pays-Bas et du Danemark (Document N° 17).

Pour éviter tout malentendu je rappelle que l’amendement tend à ajouter à la fin du premier alinéa du texte proposé par le comité les mots “ne dépassant pas un maximum de 200.000 francs par colis ou unité”. Vous devez donc par votre vote faire savoir si vous souhaitez que cet ajouté soit fait au texte proposé par le comité.

Il est procédé au vote.

Voir le vote ci-dessous.

The Chairman. Gentlemen, we will put successively to a vote the various proposals that have been submitted to you. The first vote that we will cast concerns the amendment proposed by the delegations of the Federal Republic of Germany, Japan, The Netherlands and Denmark.

To avoid any misunderstanding, I repeat that the amendment adds to the first paragraph of the text proposed by the committee the words “up to but not exceeding a maximum of 200,000 francs per package or unit”. You will have to decide through your vote whether you wish to add these words to the text submitted by the committee.

We proceed to the vote.
Algeria: abstains; Argentina: yes; Belgium: no; Bulgaria: absent; Cameroon: abstains; Canada: no; Congo: absent; Denmark: yes; Ecuador: abstains; Federal Republic of Germany: yes; Finland: yes; France: no; Ghana: no; Great Britain and Northern Ireland: no; Greece: no; India: abstains; Iraq: absent; Ireland: yes; Italy: yes; Japan: yes; Korea: abstains; Lebanon: abstains; Liberia: abstains; Mauritania: abstains; Monaco: no; Morocco: abstains; Nicaragua: absent; Nigeria: no; Norway: no; Paraguay: absent; Peru: yes; Philippines: abstains; Poland: no; Republic of China [Taiwan]: abstains; South Africa: no; Spain: abstains; Sweden: no; Switzerland: no; Thailand: abstains; The Netherlands: yes; Togo: abstains; U.S.S.R.: abstains; United States of America: no; Uruguay: abstains; Vatican City: no; Yugoslavia: yes

41 Délégations ont pris part ou vote. 10 ont répondu “oui”; 15 ont répondu “non”; 16 se sont abstenues. En conséquence l’amendement n’est pas adopté.

M. le Président. Nous avons à nous prononcer maintenant sur l’amendement présenté par la délégation française (Document n° 20). Cet amendement présente si je puis dire deux aspects. Le premier consiste à ajouter à la fin de l’alinéa premier, après les mots “perdues ou endommagées” les mots “ou 3.000 francs par unité de volume mentionnées au connais- sement au choix du réclamant”.

La seconde partie de cet amendement consiste à supprimer la clause relative aux conteneurs. Je crois pouvoir di- re, avec l’agrément de la délégation française, que, puisque nous voterons dans quelques instants séparément sur le maintien ou la suppression de cette clau- se relative aux conteneurs, l’assemblée peut se prononcer dès à présent sur la première partie de l’amendement.

Il est procédé au vote sur la première partie de l’amendement de la délégation française:

41 délegations took part in the vote. 10 voted “yes”. 15 voted “no”. 16 abstained

As a result, the amendment was not adopted.

The Chairman. We have to decide now on the amendment submitted by the French delegation. This amendment presents, if I may say, two aspects. The first one consists of adding at the end of the first paragraph, after the words “lost or damaged” the words “or 3,000 francs per unit of volume mentioned in the bill of lading, the choice being left to the claimant”.

The second part of this amendment consists of omitting the container clause. I think I can say with the agreement of the French delegation that, because we are voting in a few minutes separately on keeping or omitting the container clause, the assembly can decide now on the first part of the amendment.

We proceed to vote on the first part of the amendment of the French delega- tion.
PART II - VISBY RULES

Article 4 (5) - Limits of liability

Algeria: abstains;  
Argentina: abstains;  
Belgium: no;  
Bulgaria: absent;  
Cameroon: abstains;  
Canada: abstains;  
Congo: absent;  
Denmark: no;  
Ecuador: abstains;  
Federal Republic of Germany: abstains;  
Finland: no;  
France: yes;  
Ghana: no;  
Great Britain and Northern Ireland: no;  
Greece: no;  
India: abstains;  
Iraq: absent;  
Ireland: no;  
Italy: yes;  
Japan: no;  
Korea: abstains;  
Liberia: abstains;  
Mauritania: abstains;  
Monaco: yes;  
Morocco: abstains;  
Nicaragua: absent;  
Nigeria: no;  
Norway: no;  
Paraguay: absent;  
Peru: abstains;  
Philippines: abstains;  
Poland: no;  
Republic of China [Taiwan]: abstains;  
South Africa: no;  
Spain: abstains;  
Sweden: no;  
Switzerland: no;  
Thailand: no;  
The Netherlands: no;  
Togo: abstains;  
U.S.S.R.: no;  
United States of America: no;  
Uruguay: abstains;  
Vatican City: no;  
Yugoslavia: yes.

41 délégations ont pris part ou vote.  
4 ont répondu “oui”;  
19 ont répondu “non”;  
18 se sont abstenues.

En conséquence, la première partie de l’amendement de la délégation française n’est pas adoptée.

M. le Président. Nous allons maintenant passer au vote sur le texte proposé par le comité (Document N° 18). Comme nous avons encore à nous prononcer sur la deuxième partie de l’amendement proposé par la délégation française, je vous propose de procéder de la manière suivante.

Nous voterons d’abord sur les trois premiers alinéas du texte proposé par le comité, ainsi que sur le dernier alinéa qui est libellé comme suit: “A franc, il faut entendre une unité consistant en 65,5 milligrammes d’or, au titre de 900 millièmes de fin”. Le premier vote porte donc sur l’ensemble du texte proposé par le comité à la seule exception de la clause relative aux conteneurs.

Je vous demanderai ensuite d’émettre un deuxième vote sur le maintien...

41 delegations took part in the vote.  
4 voted “yes”.  
19 voted “no”.  
18 abstained.

As a result, the first part of the amendment submitted by the French delegation was not adopted.

The Chairman. We will now vote on the text proposed by the Committee. As we still have to decide on the second part of the amendment submitted by the French delegation, I suggest we proceed in the following way.

We will first vote on the first three paragraphs put forward by the committee, as well as the last paragraph which is drafted as follows: “A franc means a unit consisting of 65.5 milligrams of gold of millesimal fineness 900”. The first vote will thus be on the whole text submitted by the Committee except for the container clause.

I will then ask you to cast a second vote on the maintenance or the elimination of the container clause.
ou l’élimination de la clause relative aux conteneurs.

[126]

Enfin, lorsque vous vous serez prononcés sur ces deux parties du texte de la Convention, nous voterons sur l’ensemble.

Nous commençons donc par le vote des trois premiers et du dernier alinéa du texte de le comité, en réservant la clause relative aux conteneurs.

Il est procédé au vote.

Algeria: abstains; Argentina: abstains; Belgium: yes; Bulgaria: absent; Cameroon: abstains; Canada: yes; Congo: absent; Denmark: abstains; Ecuador: yes; Federal Republic of Germany: yes; Finland: abstains; France: yes; Ghana: yes; Great Britain and Northern Ireland: yes; Greece: yes; India: abstains; Iraq: absent; Ireland: no; Italy: yes; Japan: abstains; Korea: yes; Lebanon: abstains; Liberia: yes;

41 Délégations ont pris part ou vote. 24 ont répondu “oui”; 1 a répondu “non”; 16 se sont abstenu es. En conséquence, le texte est adopté.

M. le Président. Nous allons maintenant émettre un vote sur l’alinéa relatif aux conteneurs. Je vois qu’un membres demande la parole; je lui rappelle que la discussion est close. Mais peut-être la demande-t-il pour une motion?

[126]

Finally, once we have voted on these two parts of the text of the Convention, we will vote on the whole text.

We will begin by voting on the first three and the last paragraph of the text of the Committee, reserving the container clause.

We proceed to the vote.

Mauritania: abstains; Monaco: yes; Morocco: yes; Nicaragua: absent; Nigeria: yes; Norway: yes; Paraguay: absent; Peru: abstains; Philippines: abstains; Poland: yes; Republic of China [Taiwan]: yes; South Africa: yes; Spain: abstains; Sweden: yes; Switzerland: yes; Thailand: yes; The Netherlands: yes; Togo: abstains; U.S.S.R.: abstains; United States of America: yes; Uruguay: abstains; Vatican City: yes; Yugoslavia: abstains.

41 delegations took part in the vote. 24 voted “yes”. 1 voted “no”. 16 abstained. As a result, the text is adopted.

The Chairman. We will now cast a vote on the container clause. I think that a member is asking for the floor. I remind him that the discussion is closed. But may he is asking to make a motion?
Mr. J.A.L.M. Loeff (Netherlands). Mr. Chairman, I would only like to make an observation on the French translation. As far as I see it the French translation is a correct one of the English text, with the exception that the words “packages or units are concerned” have been translated “(en ce qui concerne ces colis ou unités)”. Those words have been put in brackets.

It is difficult to say whether it is an exact translation, but at any rate, as far as I see it, those brackets have no meaning at all, so we may strike them out.

Mr. Van Ryn (Belgium). Mr. Chairman, you will recall that yesterday afternoon, while I was presenting my report, I emphasized that in the French version of the container clause, the words “(en ce qui concerne ces colis ou unités)” seem to be redundant and give to the whole text a certain unpleasantness - I apologize, I am a Belgian and not a Frenchman - to the French ear.

When we read this paragraph: “lorsqu’un cadre, une palette ou tout engin similaire...”, we seem to be hearing the same thing twice.

This inconvenience in the drafting does not exist in the English version, because it was specified that both parts of the sentence were necessary, whereas in French, this is not the case.

Having chaired the Committee, but not having taken part in the discussion of the drafting committee, I admit that I am unable to propose a better French translation that would adequately render the nuances that the English text clearly embodies.

The existing French translation is not a happy rendition of the text. If this structure is maintained, it would give...
La traduction française telle qu’elle se présente n’est pas heureuse. Si ce texte est maintenu, il donnera lieu dans l’avenir à des commentaires peu flatteurs de la part de ceux qui se targuent de quelque purisme en ce qui concerne la langue française.

M. le Président. Messieurs, est-il indiscrét de ma part de demander à la délégation française quel est le texte qui aurait son agrément? Je crois pouvoir l’interpeller sur ce point.

M. de Bresson (France). Monsieur le Président, à mon sens, la solution est simple. Elle consiste à soustraire les mots mis entre parenthèses car je n’imagine pas qu’ils ajoutent quoi que ce soit à la version française du texte.

Je partage entièrement l’opinion émise par le président du groupe de travail à savoir que si ces mots demeuraient dans le texte, leurs interprètes français se trouveraient embarrassés pour en justifier la présence.

Par conséquent, et sauf objection des rédacteurs de la version anglaise du texte, il me paraît que la meilleure façon de faire correspondre les deux versions est de supprimer les mots: “(en ce qui concerne ces colis ou unités)”.

M. le Président. La parole est à la délégation britannique.

The Right Hon. Sir Kenneth Diplock (United Kingdom). The drafting committee, under my presidency, naturally drafted this in English. I do not pretend for a moment to say what is the best French translation of what we drafted in English, and I am sure if the French delegation and Mr. Van Ryn think it would be better in the French to remove those words, that would have the approval of everyone.

M. le Président. Messieurs, nous considérons donc que les mots: “(en ce qui concerne ces colis ou unités)” sont supprimés dans le texte français.

Nous passons donc au vote sur le paragraphe ainsi corrigé:

“Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour grouper des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré comme un colis ou unité au sens de ce para-

rise in the future to unflattering [128] commentaries from those who may champion some purism in the French language.

The Chairman. Gentlemen, would it be indiscreet on my part to ask the French delegation what is the text that would be appropriate to them. I am calling the French delegation on this point.

Mr. de Bresson (France). Mr. Chairman, in my mind, the solution is simple. It consists in striking out the words between brackets because I cannot imagine that they would add much of anything to the French text.

I entirely agree with the opinion expressed by the chairman of the working group, namely, that if these words were to remain in the text, the French interpreters would have a great problem justifying their presence in the text.

Consequently, unless the drafters of the English version see any objection, it seems to me that the best way to make both versions correspond to each other is to strike out the words: “en ce qui concerne ces colis ou unités”.

The Chairman. The British delegation has the floor.
graphe. En dehors du cas prévu ci-dessus, l’engin sera lui-même considéré comme colis ou unité”.

Il est procédé au vote.

[129]

41 Délégations ont pris part ou vote. 22 ont répondu “oui”; 3 ont répondu “non”; 16 se sont abstenues.

En conséquence, le texte est adopté.

M. le Président. Messieurs, nous passons au vote sur l’ensemble du texte proposé par la commission. Il s’agit donc bien du texte tel qu’il figure au document n° 18, avec pour seule mise au point la suppression dans la version française des mots: “(en ce qui concerne ces colis ou unités)”.

Il est procédé au vote.

[129]

41 delegations took part in the vote. 22 voted “yes”. 3 voted “no”. 16 abstained.

As a result, the text is adopted.

The Chairman. Gentlemen, we will now vote on the whole text proposed by the committee. In particular, it is the text as it appears in document no. 18, with the only change being the striking out of the French version of the words: “(en ce qui concerne ces colis ou unités)”.

We proceed with the vote.
Algeria: abstains; Argentina: abstains; Belgium: yes; Bulgaria: absent; Cameroon: abstains; Canada: yes; Congo: absent; Denmark: abstains; Ecuador: yes; Federal Republic of Germany: yes; Finland: yes; France: abstains; Ghana: yes; Great Britain and Northern Ireland: yes; Greece: yes; India: abstains; Iraq: absent; Ireland: abstains; Italy: yes; Japan: no; Korea: yes; Lebanon: abstains; Liberia: yes; Mauritania: abstains; Monaco: abstains; Morocco: yes; Nicaragua: absent; Nigeria: yes; Norway: yes; Paraguay: absent; Peru: abstains; Philippines: abstains; Poland: yes; Republic of China [Taiwan]: yes; South Africa: yes; Spain: abstains; Sweden: yes; Switzerland: yes; Thailand: yes; The Netherlands: yes; Togo: abstains; U.S.S.R.: abstains; United States of America: yes; Uruguay: abstains; Vatican City: yes; Yugoslavia: abstains.

41 Délégations ont pris part ou vote. 23 ont répondu “oui”; 1 à répondu “non”; 17 se sont abstenues. En conséquence, le texte du document 18 est adopté.

41 delegations took part in the vote. 23 voted “yes”. 1 voted “no”. 17 abstained. As a result, the text of document 18 is adopted.

[215] Document n° 18
Original: Français

Artcle 2, paragraphe 1
Texte proposé par le Comité de rédaction
A l’article 4 (de la Convention), le premier alinéa du paragraphe 5 est remplacé par les dispositions suivantes:

(i) “A moins que la nature et la valeur des marchandises n’ait été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée dans le connaissement, le transporteur, comme le navire, ne seront en aucun cas responsables des pertes ou dommages des marchandises ou concernant celles-

(i) “Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding the equivalent of Frs 10,000 per package
ci pour une somme supérieure à l’équivalent de 10.000 francs par colis ou unité ou 30 francs par kilo de poids brut [216] des marchandises perdues ou endommagées, la limite la plus élevée étant applicable.

(ii) La somme totale due sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au jour et au lieu où elles auraient dû être déchargées.

(iii) La valeur de la marchandise est déterminée d’après le cours en bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes nature et qualité.

(iv) Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour grouper des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré comme un colis ou unité au sens de ce paragraphe (en ce qui concerne ces colis ou unités). En dehors du cas prévu ci-dessus, cet engin sera lui-même considéré comme colis ou unité.

(v) Par franc, il faut entendre une unité consistant en 65,5 milligrammes d’or, au titre de 900 millièmes de fin.”

or unit or Frs 30 per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(ii) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

[217]

(iii) The value of the goods shall be fixed according to the commodity price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(iv) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(v) A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900.”
ARTICLE 4

Nouvelle redaction du paragraphe 5 modifié par le protocole de 1979 (les sous-paragraphes modifiés (a) et (d) sont imprimés en majuscules).

5. a) À MOINS QUE LA NATURE ET LA VALEUR DES MARCHANDISES N’AINTE ÉTÉ DÉCLARÉES PAR LE CHARGEUR AVANT LEUR EMBARQUEMENT ET QUE CETTE DÉCLARATION AIT ÉTÉ INSÉRÉE DANS LE CONNAISSEMENT, LE TRANSPORTEUR, COMME LE NAVIRE, NE SERONT EN AUCUN CAS RESPONSABLES DES PERTES OU DOMMAGES DES MARCHANDISES OU CONCERNANT CELLES-CI POUR UNE SOMME SUPÉRIEURE À 666,67 UNITÉS DE COMPTE PAR COLIS OU UNITÉ, OU 2 UNITÉS DE COMPTE PAR KILOGRAMME DE POIDS BRUT DES MARCHANDISES PERDUES OU ENDOMMAGÉES, LA LIMITE LA PLUS ÉLEVÉE ÉTANT APPLICABLE.

b) La somme totale dûe sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au lieu et au jour où elles auraient dû être déchargées.

La valeur des marchandises est déterminée d’après le cours en bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes nature et qualité.

c) Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour grouper des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré com-

ARTICLE 4

New text of paragraph 5 as amended by the 1979 Protocol (the amended sub-paragraphs (a) and (d) are printed in upper case).

“5.a) UNLESS THE NATURE AND VALUE OF SUCH GOODS HAVE BEEN DECLARED BY THE SHIPPER BEFORE SHIPMENT AND INSERTED IN THE BILL OF LADING, NEITHER THE CARRIER NOR THE SHIP SHALL IN ANY EVENT BE OR BECOME LIABLE FOR ANY LOSS OR DAMAGE TO OR IN CONNECTION WITH THE GOODS IN AN AMOUNT EXCEEDING 666,67 UNITS OF ACCOUNT PER PACKAGE OR UNIT OR 2 UNITS OF ACCOUNT PER KILOGRAMME OF GROSS WEIGHT OF THE GOODS LOST OR DAMAGED, WHICHEVER IS THE HIGHER.

b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for
me un colis ou unité au sens de ce paragraphe. En dehors du cas prévu ci-dessus, cet engin sera considéré comme colis ou unité.

d) L’UNITÉ DE COMPTE MENTIONNÉE DANS LE PRÉSENT ARTICLE EST LE DROIT DE TIRAGE SPÉCIAL TEL QUE DÉFINI PAR LE FONDS MONÉTAIRE INTERNATIONAL. LA SOMME MENTIONNÉE À L’ALINÉA A) DE CE PARAGRAPHE SERA CONVERTIE DANS LA MONNAIE NATIONALE SUIVANT LA VALEUR DE CETTE MONNAIE À UNE DATE QUI SERA DÉTERMINÉE PAR LA LOI DE LA JURISDICATION SAISSIE DE L’AFFAIRE.

LA VALEUR EN DROIT DE TIRAGE SPÉCIAL D’UNE MONNAIE NATIONALE D’UN ÉTAT QUI EST MEMBRE DU FONDS MONÉTAIRE INTERNATIONAL EST CALCULÉE SELON LA MÉTHODE D’ÉVALUATION APPLIQUÉE PAR LE FONDS MONÉTAIRE INTERNATIONAL, À LA DATE EN QUESTION POUR SES PROPRES OPÉRATIONS ET TRANSACTIONS. LA VALEUR EN DROIT DE TIRAGE SPÉCIAL D’UNE MONNAIE NATIONALE D’UN ÉTAT NON MEMBRE DU FONDS MONÉTAIRE INTERNATIONAL EST CALCULÉE DE LA FAÇON DÉTERMINÉE PAR CET ÉTAT.

TOUTEFOIS, UN ÉTAT QUI N’EST PAS MEMBRE DU FONDS MONÉTAIRE INTERNATIONAL ET DONT LA LÉGISLATION NE PERMET PAS L’APPLICATION DES DISPOSITIONS PRÉVUES AUX PHRASES PRÉCÉDENTES PEUT, AU MOMENT DE LA RATIFICATION DU PROTOCOLE DE 1979 OU DE L’ADHÉSION À CEUI-CI OU ENCORE À TOUT MOMENT PAR LA SUITE, DÉCLARER QUE LES LIMITES DE LA RESPONSABILITÉ PRÉVUES DANS CETTE CONVENTION ET APPLICABLES SUR SON TERRITOE, la purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits
RITOIRE SONT FIXÉES DE LA MANIÈRE SUIVANTE:

i) EN CE QUI CONCERNE LA SOMME DE 666,67 UNITÉS DE COMPTE MENTIONNÉE À L’ALINÉA (A) DU PARAGRAPHE 5 DU PRÉSENT ARTICLE, 10.000 UNITÉS MONÉTAIRES;

ii) EN CE QUI CONCERNE LA SOMME DE 2 UNITÉS DE COMPTE MENTIONNÉE À L’ALINÉA (A) DU PARAGRAPHE 5 DU PRÉSENT ARTICLE, 30 UNITÉS MONÉTAIRES.

L’UNITÉ MONÉTAIRE À LAQUELLE IL EST FAIT RÉFÉRENCE À LA PHRASE PRÉCÉDENTE CORRESPOND À 65,5 MILLIGRAMMES D’OR AU TITRE DE 900 MILLIÈMES DE FIN. LA CONVERSION EN MONNAIE NATIONALE DES SOMMES MENTIONNÉES DANS CETTE PHRASE S’EFFECTUERA CONFORMÉMENT À LA LÉGISLATION DE L’ETAT EN CAUSE.

LE CALCUL ET LA CONVERSION MENTIONNÉS AUX PHRASES PRÉCÉDENTES SERONT FAITS DE MANIÈRE À EXPRIMER EN MONNAIE NATIONALE DE L’ETAT, DANS LA MESURE DU POSSIBLE, LA MÊME VALEUR RÉELLE POUR LES SOMMES MENTIONNÉES À L’ALINÉA (A) DU PARAGRAPHE 5 DU PRÉSENT ARTICLE, QUE CELLE EXPRI-MÉE EN UNITÉS DE COMPTE.

LES ÉTATS COMMUNIQUERONT AU DÉPOSITAIRE LEUR MÉTHODE DE CALCUL, OU LES RÉSULTATS DE LA CONVERSION SELON LES CAS, AU MOMENT DU DÉPÔT DE L’INSTRUMENT DE RATIFICATION OU D’ADHÉSION ET CHAQUE FOIS QU’UN CHANGEMENT SE PRODUIT DANS LEUR MÉTHODE DE CALCUL OU DANS LA VALEUR DE LEUR MONNAIE NATIONALE PAR RAPPORT À L’UNITÉ DE COMPTE OU À L’UNITÉ MONÉTAIRE.

e) Ni le transporteur, ni le navi-
Article 4 (5) - Limits of liability

re n’auront le droit de bénéficier de la limitation de responsabilité établie par ce paragraphe s’il est prouvé que le dommage résulte d’un acte ou d’une omission du transporteur qui a eu lieu, soit avec l’intention de provoquer un dommage, soit témérairement, et avec conscience qu’un dommage en résulterait probablement.

f) La déclaration mentionnée à l’alinéa a) de ce paragraphe, insérée dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester.

g) Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, d’autres sommes maxima que celles mentionnées à l’alinéa a) de ce paragraphe peuvent être déterminées, pourvu que le montant maximum conventionnel ne soit pas inférieur au montant maximum correspondant mentionné dans cet alinéa.

h) Ni le transporteur, ni le navire ne seront en aucun cas responsables, pour perte ou dommage causé aux marchandises ou les concernant, si dans le connaissement le chargeur a fait sciemment une fausse déclaration de leur nature ou de leur valeur.”

ship shall be entitled to the benefit of the limitation provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

f) The declaration mentioned in sub-paragraph a) of this paragraph, embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading”.
In 1978 the Executive Council of the CMI set up an International Sub-Committee, under the Chairmanship of Prof. Jan Schultsz, with the task of replacing in Article 4 paragraph 5 (d) of the 1924 Bills of Lading Convention as amended by the 1968 Protocol, and in Article 3 paragraph 1 of the 1957 Limitation Convention the Poincaré franc with the Special Drawing Right.

The report of the International Sub-Committee, which is reproduced below together with the draft Protocol to the 1924 Bills of Lading Convention, was published in the CMI Newsletter of July, 1979.

Report accompanying two draft protocols for the amending of Maritime Conventions.

1. The Comité Maritime International, recognizing that a number of international conventions - other than those which constitute the subject matter of this report - had been amended so as to replace definitions of the maximum liability of a person (having such connection with international transportation as was indicated in each of the conventions in question) in terms of gold value by some other unit of account, felt that a few conventions dealing with maritime transportation were, similarly, in need of amendment. In view of the role played by the CMI in preparing those conventions, the CMI thought that it might be the appropriate body to initiate steps leading to such amending, and it now presents a draft of two Protocols for the amending of, respectively, the International Convention relating to the limitation of the liability of owners of sea-going ships of 1957 and the International Convention for the unification of certain rules of law relating to bills of lading of 1924 as amended by the Protocol of February 23, 1868.

2. With respect to the necessity of the amending the following observations may be made.

In order to obtain international uniformity, any amount of maximum liability has to be expressed in an universally accepted parameter not being the national currency of any State. Gold used to be such parameter. This was particularly true at the time when a substantial number of countries operated within a system where gold had a stabilized price expressed in the currency of one country (viz. 1 oz. gold = US $ 35). This period, however, ended in March 1968 and since that time there no more is a uniformly applied fixed parity - to the contrary, gold is quoted on “free markets” as well as in officially determined parities. Action was taken by the International Monetary Fund to the extent that, in 1971, it created Special Drawing Rights, a unit of account then with a value fixed in terms of gold. In 1976 it was decided to go a step further and to determine the value of S.D.R.’s on the basis of the weighted currencies of sixteen Member-States. As from April 1, 1978 Member-States of the I.M.F. are not any more allowed to express the value of a currency in terms of gold. Therefore the amending of the conventions became an urgent matter.

3. Following the example of the protocols to the international conventions referred to in the very beginning of this report the drafts make use of the Special Drawing Rights as determined by the International Monetary Fund in order to express and define the maximum of the liability in question. In conformity to international practice, 15 “francs” as defined in the original Conventions (currently referred to as “Francs Poincaré”) are equated to 1 Special Drawing Right.

Furthermore provision is made for those Member-States who are not Members of the International Monetary Fund. In the same way as is the case in the other protocols.
just mentioned, they shall be entitled to make use of “monetary units” which are identical to the “Francs Poincaré”.

4. No suggestions will be found in the two drafts with respect to the number of ratifications that will be required so that the Protocol will enter into force. On the one hand, it may be argued that this number should be identical to the number required for the entry into force of the original convention which it is designed to amend. However, in view of the obligations imposed by the I.M.F., such number may well be too high. Under these conditions it was thought preferable to leave the matter open.

5. Finally an explanation should be given for the fact that drafts are presented for two Brussels Conventions only whereas, in actual fact, three further Conventions might, conceivably, have been given the same attention.

With respect to one of these Conventions, viz. the Convention on the liability of operators of nuclear ships, it was thought inappropriate to amend it in view of the fact that the Convention itself has not yet come into force by lack of a sufficient number of ratifications. Should an additional number of States feel the desire to ratify the Convention then, no doubt, all interested States will enter into negotiations with a view to amend the Convention.

With respect to two other Conventions, viz. the Convention for the unification of certain rules relating to the limitation of the liability of owners of seagoing vessels and the International Convention for the unification of certain rules of law relating to bills of lading, both signed at Brussels on August 25th, 1924, it should be pointed out that the first mentioned Convention has been largely superseded by the 1957 Limitation Convention, whereas the second has been amended by the 1968 Protocol, one of the essential objects of the Protocol being to provide a solution for the problems that had arisen as a consequence of the 1924 Convention using as a monetary unit the pound sterling “to be taken to be gold value”. Under these conditions it was feared that, to present a draft for the amending of the 1924 Conventions would not contribute to international uniformity. Therefore no proposal to that effect is presented.


The Parties to the present Protocol being parties to the International Convention for the unification of certain rules of law relating to bills of lading, done at Brussels on 25th August, 1924, and the Protocol to amend that Convention, done at Brussels on 23rd February, 1968.

Have agreed as follows:

Article 1


Article 2

1. Article 4, paragraph 5, a) of the Convention is replaced by the following:

a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or 2 units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher.
2. Article 4, paragraph 5, d) of the Convention is replaced by the following:

   d) The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in sub-paragraph a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

   (a) in respect of the amount of 666.67 units of account mentioned in sub-paragraph a) of this paragraph, 10,000 monetary units;

   (b) in respect of the amount of 2 units of account mentioned in sub-paragraph a) of this paragraph, 30 monetary units.

   The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

   The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in Article 4, paragraph 5, sub-paragraph a) as is expressed there in units of account.

   States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument referred to in Article 3 and whenever there is a change in either.

Diplomatic Conference - October 1979

Final Act of the Thirteenth Session of the Diplomatic Conference on Maritime Law (Brussels, 19-21 December 1979)*

The Thirteenth Session of the Diplomatic Conference on Maritime Law was held in Brussels from 19 to 21 December, 1979 at the invitation of the Belgian Government with a view to revising the provisions concerning the units of account with respect to:

- The International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, which was adopted in Brussels on 10 October, 1957;

* Published in the CMI News Letter, March, 1980
PART II - SDR PROTOCOL

Article 4 (5) - Limits of liability


The Conference used the texts prepared by the Belgian Government as its working documents.

In witness whereof, the delegates have set their signatures to this final document.
Done at Brussels on this 21st day of December, 1979, in one copy, in the English and French languages.


The Contracting Parties to the present Protocol,
Being Parties to the International Convention for the unification of certain rules of law relating to bills of lading, done at Brussels on 25th August 1924, as amended by the Protocol to amend that Convention, done at Brussels on 23rd February, 1968,
Have agreed as follows:

Article 1


Article 2

1. Article 4, paragraph 5, a) of the Convention is replaced by the following:

“a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666,67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.”

2. Article 4, paragraph 5, d) of the Convention is replaced by the following:

“d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the Interna-
tional Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

(a) in respect of the amount of 666.67 units of account mentioned in sub-paragraph a) of this paragraph, 10,000 monetary units;

(b) in respect of the amount of 2 units of account mentioned in sub-paragraph a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900°. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned. The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

Article 5

This Protocol shall be open for signature by the States which have signed the Convention of 25 August 1924 or the Protocol of 23 February 1968 or which are Parties to the Convention.

Article 6

(1) This Protocol shall be ratified.

(2) Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification of the Convention.

(3) The instruments of ratification shall be deposited with the Belgian Government.

Article 7

(1) States not referred to in Article V may accede to this Protocol.

(2) Accession to this Protocol shall have the effect of accession to the Convention.

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

Article 8

(1) This Protocol shall come into force three months after the date of the deposit of five instruments of ratification or accession.

(2) For each State which ratifies this Protocol or accedes thereto after the fifth deposit, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.
ARTICLE 4

6. Goods of an inflammable, explosive or dangerous nature to the shipment of which the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ILA 1921 Hague Conference
Text submitted to the Conference

Sir Norman Hill: Sir. We suggest that the nature and character thereof must be declared in writing by the shipper to the carrier before shipment. You see, Sir, as the clause stands now it is “unless the carrier, master, or agent of the carrier has consented to their shipment”. We are dealing with a very serious and important matter with...
regard not only to these goods, but to the safety of the whole ship and all the cargo, and there must not be any doubt as to whether the consent has been given.

The Chairman: That means, Sir Norman, does not it, to interpret consent as being consent upon knowledge communicated by the person having the knowledge?

Sir Norman Hill: That is right.

The Chairman: I dare say the Committee takes that view, if Mr. McConechy agrees.

Mr. McConechy: I do not agree as to that. This is a clause which has been very carefully considered by my Committee, and our Chairman happens to be an exporter of chemicals, and he wanted to define in some sort of way that the name of the cargo you are shipping indicates whether it is exceptionally dangerous or not. For instance, very ordinary cargo may at some time be ignitible. I believe under certain chemical conditions flour will be ignitible. Are you to make a written statement of such things as that?

The Chairman: Nobody has ever suggested that flour was explosive or vicious, or especially dangerous.

Mr. McConechy: That I agree, but what I mean is this. I suppose the meaning of this is that a shipper of chemicals, which are generally considered to be dangerous, has to send a certificate, along with that shipment, of the character of the goods. That is the meaning of that, is not it?

Lord Phillimore: Then he has to make a statement as to the nature and character of the goods, not a certificate that it is not inflammable; he has to say that it is sulphuric acid, or something of that sort.

Mr. McConechy: Then it is merely a statement of the goods you are shipping, which tells its own story?

Sir Norman Hill: That is all.

Mr. McConechy: That is all that is understood from it?

The Chairman: Yes. The question is that those words in red be there inserted. That I understand is agreed? (Agreed).

Then, after the word “damages”, that the words “and expenses” be inserted. That seems to me to be drafting. Is that agreed? (Agreed).

Then, at the end of the clause these words: “If any such goods shipped with such consent shall become a danger to the ship or cargo they may in like manner be destroyed or rendered innocuous by the carrier without compensation to the shipper”. Is that agreed? (Agreed).

Text adopted by the Conference

6. Goods of an inflammable or explosive nature, or of a dangerous nature, unless the nature and character thereof have been declared in writing by the shipper to the carrier before shipment and the carrier, master or agent of the carrier has consented to their shipment, may at any time before delivery be destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such consent shall become a danger to the ship or cargo they may in like manner be destroyed or rendered innocuous by the carrier without compensation to the shipper.
7. Goods of an inflammable or explosive nature, or of a dangerous nature, THE NATURE AND CHARACTER WHEREOF ARE UNKNOWN TO THE CARRIER BEFORE SHIPMENT AND TO THE SHIPMENT WHEREOF THE CARRIER, MASTER OR AGENT OF THE CARRIER HAS NOT CONSENTED, may at any time before delivery be destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

7. Goods of an inflammable or explosive nature, or of a dangerous nature, to the shipment whereof the carrier, master or agent of the carrier has not consented, WITH KNOWLEDGE OF THEIR NATURE AND CHARACTER may at any time before DISCHARGE BE LANDED AT ANY PLACE, or destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be LANDED AT ANY PLACE, OR destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

Conférence Diplomatique - Octobre 1922
Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

M. le Président. - Le but de cette disposition est de donner au capitaine qui trouve à bord des marchandises dangereuses le droit de les débarquer, de les rendre inoffensives ou de les jeter à la mer.

M. Bagge, délégué de la Suède, remarque, que d’après le texte, le capitaine pourrait jeter les marchandises inflammables même si celles-ci peuvent rester dans le navire sans danger pour celui-ci.

M. le Président estime qu’il est évident que le capitaine doit agir suivant ce qu’aux États-Unis on appelle common sense. Supposez que des marchandises dangereuses se trouvent dans le compartiment n° 2, en même temps qu’une autre cargaison, alors que le compartiment n°
1 est vide. Il pourrait, dans ce cas, séparer les marchandises dangereuses des autres. Ce sont des choses qui doivent être laissées à son bon jugement.

M. Bagge, délégué de la Suède, signale que d’après les lois scandinaves lorsque les marchandises peuvent rester à bord sans danger, le capitaine ne peut s’en débarrasser. Il propose d’insérer dans cet article une clause en ce sens.

M. de Rousiers, Délégué de la France, fait observer que cette clause pourrait être dangereuse. En effet un capitaine n’est pas un chimiste et il peut, dans certains cas, se rendre difficilement compte jusqu’au quel point il expose son navire à un danger en laissant pareilles marchandises à bord. Mieux vaut s’en remettre tout simplement au bon sens du capitaine.

M. le Président. - M. Bagge propose de dire comme en droit suédois que ce n’est que lorsque les marchandises ne peuvent rester à bord du navire sans danger pour celui-ci qu’elles peuvent être jetées ou abandonnées. Le Président estime que cela est déjà exprimé clairement dans la convention.

M. Le Jeune, délégué de la Belgique, propose une petite modification de pure rédaction: “Marchandises de nature inflammable, explosive ou dangereuse”, au lieu de: “ou inflammable ou dangereuse”.

M. le Président estime aussi que la répétition du mot “ou” est inutile. La commission se rallie à l’amendement de M. Le Jeune.

M. Richter signale que dans le texte définitif de l’article 4, le paragraphe 7 devient le paragraphe 6. (Assentiment).
ARTICLE 4 BIS

Nouvel article adopté par le Protocole de 1968

1. Les exonérations et limitations prévues par la présente Convention sont applicables à toute action contre le transporteur en réparation de pertes ou dommages à des marchandises faisant l’objet d’un contrat de transport, que l’action soit fondée sur la responsabilité contractuelle ou sur une responsabilité extra-contractuelle.

2. Si une telle action est intentée contre un préposé du transporteur, ce préposé pourra se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la Convention.

3. L’ensemble des montants mis à la charge du transporteur et des ses préposés ne dépassera pas dans ce cas la limite prévue par la présente Convention.

4. Toutefois le préposé ne pourra se prévaloir des dispositions du présent article, s’il est prouvé que le dommage résulte d’un acte ou d’une omission de ce préposé qui a eu lieu soit avec l’intention de provoquer un dommage, soit témérairement et avec conscience qu’un dommage en résulterait probablement.

ARTICLE 4 BIS

New article adopted by the 1968 Protocol

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

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.
Conférence de Stockholm du CMI - 1963
Rapport de la Commission sur les clauses des connaissements

[83]

5. La responsabilité extra-contractuelle, le problème de l’“Himalaya”.

La commission s’est rendu compte des tentatives - souvent couronnées de succès - d’éviter la limitation et les exonérations de la Convention sur les connaissements.

Ainsi, dans certains pays une des parties contractantes peut non seulement assigner sur base du contrat, mais également sur base d’une responsabilité quasi-délictuelle.

C’est la raison pour laquelle, dans le cadre de la responsabilité quasi-délictuelle, le transporteur peut être privé du bénéfice de la limitation et de la prescription d’un an. La plaignant peut également arriver à ses fins en assignant sur base de la responsabilité quasi-délictuelle des personnes autres que le transporteur (p. ex. le capitaine, l’agent, un membre de l’équipage etc.). Les rédacteurs de la Convention de 1957 sur la limitation de la responsabilité des propriétaires de navires se sont rendu compte de cette pratique et l’article 6 (2), qu’ils ont introduit, y a mis un terme.

Decision:

Afin d’évincer la possibilité d’éviter les dispositions contractuelles et les lois basées sur la convention, la commission recommande au C.M.I. d’adopter le nouvel article que voici:

“1) Toute action relative à des dommages contre le transporteur, qu’elle soit basée sur une responsabilité contractuelle ou quasi-délictuelle, ne peut être introduite que sur base des dispositions et des limitations prévues par la présente Convention.
2) Si une telle action est intentée contre un préposé ou un agent du transporteur ou contre un sous-traitant indépendant employé par lui dans le transport des marchandises, ce sous-traitant, préposé, agent ou

CMI 1963 Stockholm Conference Report of the Committee on Bills of Lading Clauses

[83]

5. Liability in tort, the “Himalaya” problem.

The Sub-Committee was aware that attempts have been made - and often successful ones - to get around the limitations and exemptions of the B/L Convention in different ways.

Thus in some countries a contracting party may sue not only in contract but also in tort. Therefore, if sued in tort, the carrier may find himself deprived of the benefit of limitation and of the one year prescription period etc. Or the plaintiff may gain his end by suing in tort others than the carrier (e.g. the master, the agent, a member of the crew etc.).

The draftmen of the 1957 Convention on Limitation of Shipowners’ liability were aware of this practice and in Article 6 (2) they introduced a rule to stop it.

Decision:

In order to avoid the possibility of by-passing the contract and the legislation based on the convention the Sub-Committee to the C.M.I. recommends that the following new Article be adopted:

“1) Any action for damages against the carrier, whether founded in contract or in tort, can only be brought subject to the conditions and limits provided for in this Convention.
2) If such an action is brought against a servant or agent of the carrier or against an independent contractor employed by him in the carriage of goods, such servant, agent or independent contractor shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
sous-traitant indépendant sera autorisé à se prévaloir des moyens de défense et des limites de responsabilité que le transporteur peut invoquer en vertu de la Convention.

3) L’ensemble des montants récupérables à charge du transporteur, ses préposés, agents et sous-traitants indépendants au service du transporteur, ne dépassera pas dans ce cas la limite prévue par la Convention.

4) Néanmoins le préposé, agent ou sous-traitant indépendant n’aura pas le bénéfice des dispositions précitées s’il est démontré que la perte ou le dommage résulte d’un acte ou omission de ce préposé, agent, ou sous-traitant indépendant commis avec l’intention de causer la perte ou le dommage ou avec négligence et avec la connaissance qu’une perte ou un dommage en résulterait probablement.

Il faudrait tenir compte des dispositions du sous-paragraphe (4) du nouvel article. Afin d’être sûr que la situation du transporteur est la même que celle du préposé dans ces circonstances, la commission recommande en outre d’ajouter à l’article 4 une nouvelle disposition qui portera le n. 7 et sera libellée comme suit: “Ni le transporteur, ni le navire n’auront le bénéfice des exonérations et des limites de responsabilité prévues par la présente Convention s’il est démontré que la perte ou le dommage résulte d’un acte ou d’une omission du transporteur lui-même commis dans l’intention de causer une perte ou un dommage ou avec négligence et en sachant qu’une perte ou un dommage en résulterait probablement.”

Réserves:
1. Un membre est d’avis qu’il conviendrait d’ajouter à la fin du texte du point n. 4 les mots suivants “...à moins que la faute commise par le préposé avec négligence et avec la connaissance qu’une perte ou un dommage en résulterait probablement ne l’ait été dans la navigation...”

4) Nevertheless, the servant, agent or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent or independent contractor done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result.”

The provisions of sub-paragraph (4) of the proposed new Article will be noted. In order to ensure that the position of a carrier is the same as a servant in such circumstances the Sub-Committee further recommends that to Article 4 be added a new provision which would have no. 7 and would read thus: “Neither the carrier nor the ship shall be entitled to the benefit of the defences and limits of liability provided for in this Convention if it is proved that the loss or damage resulted from an act or omission of the carrier himself done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result.”

Reservations:
1. One member is of the opinion that the following words should be added at the end of the text appearing in point no. (4) “…provided that the fault recklessly committed by the servant with knowledge that loss or damage would probably result was not done in the navigation or in the management of the ship”.
ou dans l’administration du navire”.

2. Un membre propose de rédiger comme suit le texte du point 4:
“(4) Néanmoins, le préposé, agent ou sous-traitant indépendant n’aura pas le bénéfice des dispositions précitées s’il est démontré que la perte ou le dommage résulte d’un acte ou d’une omission de ce préposé, agent ou sous-traitant commis dans l’intention illégale [85] de causer la perte ou le dommage. Si l’acte ou l’omission ayant causé la perte ou le dommage n’a pas été fait dans la navigation ou l’administration du navire, les personnes précitées ne pourront pas bénéficier des dispositions ci-dessus s’il est prouvé que leur acte ou omission a été fait par négligence et avec la connaissance qu’une perte ou un dommage en résulterait probablement.

3. Alors que les principes généraux précités rencontrent l’approbation de la Commission tout entière, une minorité désire insérer dans le rapport, qu’elle ne peut pas souscrire à ces dispositions, lorsqu’elles concernent les sous-traitants indépendants. A leur avis un sous-traitant qui est indépendant par rapport au transporteur ne devrait pas, par suite du seul fait qu’il fournit des prestations qui pourraient avoir été fournies par le transporteur lui-même, être autorisé à se prévaloir de la limitation et des exonérations de la Convention. Une distinction devrait être faite entre, d’une part le transporteur, ses préposés ou agents, et d’autre part le sous-traitant indépendant. Les préposés et agents devraient être protégés pour des raisons sociales et devraient bénéficier de la Convention alors que, de l’avis de la minorité, ces considérations ne s’appliquent pas aux sous-traitants indépendants qui ne devraient pas avoir le bénéfice de ce régime.

Problème additionnel:
Ce problème est en relation avec le problème plus vaste de la responsabilité de l’employeur à l’égard de son préposé ou, comme certains membres l’on présenté, de l’identité légale. Lors de la discussion le point a été soulevé de savoir si

2. One member proposes the following wording of point no. (4):
“(4) Nevertheless, the servant, agent, or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent, or independent contractor done with unlawful [85] intent to cause loss or damage. If the act or omission from which the loss or damage resulted was not done in the navigation nor in the management of the ship, the afore-mentioned persons shall, furthermore, not be entitled to the above provisions if it is proved that their act or omission was done recklessly and with knowledge that loss or damage would probably result.

3. While the general principles set out above meet with the approval of the full Sub-Committee a minority wishes to put on record that they cannot adhere to these provisions as far as independent contractors are concerned. In their view a contractor who is independent of the carrier should not, by the mere fact that he performs duties which might have been performed by the carrier himself, become entitled to avail himself of the limitation and exceptions of the Convention. A distinction should be drawn between, on the one hand the carrier, his servants or agents and on the other, the independent contractor. The servants and agents should be protected for social reasons and should have the benefits of the Convention whereas, in the view of the minority, these reasons do not apply to the independent contractor who should thus not have this benefit.

Additional problem:
This problem is connected with the much larger problem of the responsibility of the employer for his servant, or, as some put it, the legal identity. In the discussion the point was raised whether the fact that a stevedore or a longshoreman acted with intent to cause damage,
le fait qu’un arrimeur ou un acconier agit avec l’intention de causer un dommage, priverait son employeur, la société d’arrimage, du droit d’invoquer la limitation et les exonérations de la convention. De l’avis unanime de la commission ce point pourrait sans nul doute être soulevé par la pratique. D’après certains membres, l’idée d’identifier l’employeur à ses préposés aboutirait à la conclusion que, lorsqu’un préposé ne peut pas se prévaloir des exonérations et des limites de la Convention, son employeur ne devrait pas non plus avoir ce droit.

Toutefois, la commission n’a pas été enclinée à s’engager formellement dans l’interprétation de cette nouvelle règle sur ce point.

would deprive his employer, the stevedore firm, of the right to avail itself of the limitation and exceptions of the Convention. The Sub-Committee agreed that this certainly was a point which well might arise in practice. According to certain members of the Sub-Committee the concept of identifying the employer with his servant would lead to the result that when the servant could not avail himself of the benefits and limits of the Convention neither should his employer be entitled to do so.

The Sub-Committee does not feel inclined, however, formally to commit itself as to the interpretation of the new rule in this respect.

Committee on Bills of Lading Clauses
Verbatim Reports No. 5 - 11 June 1963 A.M.

[22/30]

M. le Président (M. J. Van Ryn):

Je vous avais proposé ensuite de suivre l’ordre des recommandations qui figurent dans le rapport de la commission internationale, mais un membre de la délégation allemande m’a demandé de discuter en premier lieu, la question que nous connaissons tous maintenant sous le nom de problème de l’Himalaya.

S’il n’y a pas d’objection à ce changement dans l’ordre de nos travaux, je me propose donc d’aborder la discussion de cette recommandation qui porte le n° 5 dans le rapport de la commission internationale.

Il y a de nombreux amendements sur ce point et en premier lieu, une proposition qui est faite sur la question de principe.

Plusieurs associations ont exprimé l’avis que, pour des raisons de principe, il convenait de n’insérer dans la convention internationale, aucune disposition sur les points qui font l’objet de la recommandation n° 5.

C’est l’avis exprimé dans les commentaires écrits par l’association allemande, l’Association néerlandaise et espagnole. C’est également l’avis que se trouve exprimé dans le Minority Report of the Maritime Law Associations.

Avant d’ouvrir le débat sur cette question préalable, je voudrais donner la parole à M. C. Miller.

[31]

Mr. C. Miller (Great Britain). Thank you, Mr. President, for giving me the opportunity of explaining how this matter arises and why it is that we, the British Maritime Law Association have to ask the Commission to give us their assistance in this matter. This is not specially an English problem as I understand that the United States delegation is also concerned with it but it arises in this way.

May I explain it as quickly and, I hope, as lucidly as possible. A problem arises because of the fundamental problem of the English law of contract which is that a per-
son who is not a party to a contract can derive no benefit from it. I am not defending that principle nor am I saying it is wrong. I am only saying there it is. It is not confined to maritime law. It is a general principle of our law of contract as a whole. That is the reason why if an action is brought against one of the servants or agents of the shipper or carrier, either against the captain, or the chief officer, or the officer of the watch, that officer cannot avail himself of the exemption clauses in the bill of lading for the simple reason that that officer is not a party to the bill of lading. It would be impossible for us to put the matter right by proposing this to our Parliament because an amendment of this general principle of our law of contract would require an Act of Parliament asking them to provide by statute that a person who is not a party to a contract can derive benefit from it because the answer would be that the only people hampered by that principle would only be a very small section, though a very important class of people, an important class of traders, those who carry goods by sea. You cannot alter a fundamental principle of your law just because a somewhat narrow domestic difficulty arises. What you can do is to alter the law on the Carriage of Goods by Sea Act which is the means by which we have implemented the Hague Rules.

We want to be careful in our jurisdiction, that is to say the United Kingdom jurisdiction, how we do it because our Carriage of Goods by Sea Act makes the Convention a compulsory contract, but it is still a contract. Therefore, if we merely say in one of the Rules, the Rules themselves, that the benefit of the exemption clauses in the contract shall be enjoyed by the servants or agents of the shipowners, that will simply be a clause in a contract, as I endeavoured to explain. The compulsory contract is still a contract and the same principle of law will apply to it. What we want is a specific section in the Act of Parliament which will embody, I hope, the amendments to the Hague Rules which we are now discussing.

The reason for this is that actions against servants or agents of the shipowner are in practical effect actions against the carrier himself.

It has been said by some of the National Associations why should a cargo owner - and we are only considering cargo owners here - not be able to pursue his action against the man who has been negligent, such as the Chief officers: the officer in charge of the cargo, or the officer of the watch in case of a collision, the officer of the watch who gave a wrong order?

To those who put forward this argument, it is from a practical point of view nonsense. What does the carrier want? What he thinks he can get, but I doubt very much whether he thinks he can get £100,000 worth out of the chief officer in charge of the cargo, or the chief engineer who is negligent. He knows them well not to be rich and he knows very well that unless the carrier stands behind the unfortunate officer, he will not get his shipment’s worth. That is the practical reason for these actions and there is no injustice in saying to the cargo owner: “we have made a bargain with you which is now embodied in the Hague Rules whereby we agree, we the carrier agree only for you to be allowed certain exemptions. But you, the cargo owner are not to get round that by saying: my chief officer is responsible and making me pay through him”. That is what anybody engaged in the shipping agency business knows. This may be a personal theory of mine but there are numerous cases in which that has been done and the result of this is that the shipowner has had to pay far beyond the limit to the cargo owner because the action was taken again.

The British Maritime Law Association supports the viewpoint as exposed in the Sub-Committee Report on pages 29 to 33 that the carrier, servants or agents should be protected for the reasons that I have given. Actions brought against servants or agents are, in practical effect, against the carrier himself. We do not, however, support that this should include independent practice for the reason that the carrier can protect himself by contract.
We have discussed this matter, I hope, with great care with those of us on our Association who represent cargo interests, cargo underwriters, and independent shippers who do not insure, both of which eminent bodies are represented in our Association and they have persuaded us that it is our unanimous view which I am now putting forward, that it would be wrong to demand that this correction of the Hague Rules, which we are now asking for, should include independent contractors, which means it would not include stevedores. Again from a practical solace, there is good reason for that. In practice, when the carrier engages a stevedore to do the carrier duty of loading or discharging, when the carrier has undertaken the duty of performing these operations, the carrier gives the stevedore an indemnity. If he did not give him this indemnity, the stevedore would have to insure for third party liability and add these expenses on to the stevedore charges. That is a good reason why shipowners do, in most ports of the world give stevedore indemnity. That being so, it would be extremely difficult for us to support the suggestion that independent contractors should be included and indeed, we are opposed to it so that we support the minority view set out in the Report, page 33, par. (3).

But we do ask that the carrier be protected from or against his own servants or agents which, in practice, really is confined to actions against his sea-going servants, that is officers serving in his ship and we also think that if there could possibly arise a case in which loss or damage to cargo was caused by the owners’ own agents on shore - and I personally cannot think of such a case arising - that should be covered also. It is mainly the officers serving in his ship. That is the proposition I put before you. I have endeavoured to state our point of view as shortly as possible making it clear why it is absolutely essential to us and why we seek to impress upon you the equity of our request.

M. le Président. Vous avez entendu, Messieurs, les raisons pour lesquelles l’Association britannique considère comme essentiel que soit adoptée, en principe, la recommandation n° 5.

Je voudrais maintenant demander aux représentants des Associations qui s’opposent pour des raisons de principe à cette recommandation be bien vouloir faire connaître par un porte-parole les motifs de leur opinion.

La parole est à M. Röhreke, de la délégation germanique.

Mr. H. G. Rohreke (Federal Republic of Germany). Let me first thank you, Mr. Chairman, for having changed the agenda for today and let me say at the outset that we fully appreciate what has been said by Mr. Miller in favour of the suggested recommendation. We believe that there are reasons which should also be considered which in our view are not in favour of this recommendation. The German Maritime Law Association, as you will have seen from the report, does not stand behind this recommendation. It really believes that it should not be adopted. If we follow up the careful path which has been suggested in the opening session of this Conference then I feel this is one point which should not be stressed, and indeed there may even be a danger that it may become for the rules a sort of stab in the back.

For some countries there really exists no need for an amendment to the Rules because there are appropriate bill of lading clauses which can be inserted in each individual document. You will be aware that particularly the Baltic and National Maritime Conference and the P. and I. Clubs have developed such clauses and I know many companies who include these clauses in their bills of lading already. There are certainly countries in which these clauses may not be held valid but there are those in which
they will hold good. As far as my country is concerned I am rather sure that an appropriate bill of lading clause will do.

For this reason I have little doubt that the recommendation which has been made in the report of the sub-committee would stand a certain chance of being added on the statute book in my country at least as far as paragraphs 1 to 3 are concerned. I should add however that this would inevitably mean inserting a rule on tort into the law of contract, and this of course is a matter of principle which may easily become injudicious and for this reason some hesitation seems to be justified as to whether on this point of principle the recommendation as contained in paragraphs 1 to 3 would be passed to legislations.

The real trouble however arises over paragraph 4 and the suggested addition to Article 4. It is very remarkable that in almost every report by national associations there is disagreement with these two suggestions and they really are the crucial point of the whole matter, and indeed they touch at the root of the matter of a possible upsetting of one basic principle on which the Hague Rules are founded as at present. If one adds that suggested paragraph 7 to Article 4 it is certainly very doubtful where the restriction to the exception to this article begins and where it ends.

Now therefore the question arises whether it is possible to restrict the recommendation to paragraphs 1 to 3. In my opinion it is not possible. From information I have received there seems to be a real probability that if this recommendation as made by the Sub-Committee would be followed up, Governments would demand that it be supplemented by No. 4 and in addition to Article 4 of the Rules, and I do not see how we could avert such a demand. The result would be that the Rules would be altered in a way which we have certainly not wanted.

In concluding I would again say that I fully appreciate the reasons which are behind this suggested recommendation. I only fear that the primary effect of this recommendation will by far be outweighed by the secondary fact which I have just mentioned and for this reason, Mr. Chairman. I move that this recommendation should not be passed.

Mr. J. Loeff (Netherlands). Mr. Chairman, ladies and gentlemen, as I have already said yesterday on behalf of the Netherlands delegation our delegation is in full sympathy with the idea developed by the British delegation, but we are strongly opposed to the idea of using the Hague Rules in this connection. What we really do not understand is this. In the civil law, by which I mean very roughly speaking the law of continental Europe, it is possible in a contract between A and B to mention C in order to give him certain rights provided of course that he really indicates his intention to use these rights. That is a very old principle, I think it even arises in Roman law, and as explained very clearly by Mr. Miller it does not exist in English law. I think Mr. Miller said also very clearly that he regrets the absence of the principle in English law. Now I say again we are in full sympathy with the idea of that but, firstly, the Hague Rules are not the place for putting in that alteration, it would not even work and, secondly, I am not standing here to advise our English friends on their own legislature but why don’t you alter that principle? As far as I know there have been amendments to the common law by statute, for instance if I am correct the specifically Anglo-Saxon doctrine of frustration has been laid down in a special act. Why don’t you alter the general principle? It would be to the benefit of a lot of people who, if the proposal is adopted, would not have the possibility of relying on this amendment in your law.

Now the answer to that by Mr. Miller is “Look here, we can’t do that, you are going too far” and therefore we have to alter the Hague Rules. Now perhaps it is rather impertinent, but I would like to ask Mr. Miller a question in this respect.
Article 4 bis - Liability in tort

[54]

The Hague Rules have been imported into English law by the Carriage of Goods by Sea Act of 1924 and the Hague Rules, not all of them, only if I am correct the first 9 or eleven articles have formed a schedule to the Carriage of Goods by Sea Act, for part of it on this schedule as far as it goes is an exact translation of the Hague Rules. Now the Hague Rules are modified in some respects or made more precise in the Act which made them into English law.

My first question is why do you insist on amendment of the Hague Rules and why, if you want this amendment in your law do you not put that amendment in the Carriage of Goods by Sea Act with which we as the Comité Maritime International and the seafaring community have nothing to do? We should be very glad if you make that amendment in your own domestic law, but we pray you humbly leave the Hague Rules alone.

The second question is this. If you make an amendment to the Hague Rules or the Carriage of Goods by Sea Act I am sure, perhaps you will correct me, that will not help you 100 per cent for even if the present Article 10 of the Hague Rules is adopted and will be valid everywhere in the world there will still be the contract of carriage of goods by sea not governed by the Hague Rules, for instance carriage by a British or Dutch or Norwegian ship between two countries which have not adhered to the Hague Rules where there is full freedom of contract and such a contract is not governed by the Hague Rules. If you put into the Hague Rules or the Carriage of Goods by Sea Act a clause giving some rights to third parties, in the cases I have mentioned these third parties would not be in a position to avail themselves of it.

This leads me to the same conclusion, with full sympathy with the British standpoint, that if you want to get what you are asking then you have to make a general alteration of your law.

Ladies and gentlemen, I would like to say in developing points already made yesterday that this would cause a very deep-going alteration of the Hague Rules. The Hague Rules are really clauses in a contract between shipowners and cargo owners. If you put into the Hague Rules a clause giving certain rights to third parties then you alter the character of the Hague Rules fundamentally. It is not necessary to repeat what we said yesterday that we are very strongly against that. We must touch the Hague Rules as little as possible.

Mr. Chairman, I don’t think it is for the moment useful to criticise the text proposed by the Sub-Committee but I would like to say one word. If you look at the text attached yesterday in the matter of Article 10 it says that no action of damage against a carrier will be provided for in this convention, so if this becomes English law then every contract of carriage would be governed by the Hague Rules, and I really don’t know if that is your intention. I hope I have made myself clear. Thank you.

Mr. H. G. Mellander (Sweden). Mr. Chairman, ladies and gentlemen, I am going to speak in favour of the proposition. I would like to support the statement that this is not at all an exclusive problem to Britain and the United States. The problem has also arisen in at least one Swedish case, a destroyer which was damaged by a tugboat. In the contract with the tug owner the Swedish State had undertaken not to sue the towing company for more than, I think, 15,000 kroner but the State sued the master of the tugboat and thus collected 40,000 kroner for the damage to the destroyer. Mr. Röhreke said that we can have suitable bill of lading clauses, and we do have them. They may be good but if you go to England or if you are sued in America they will not hold because of the principle of privity of contract and the doctrine of consideration.
I would like to say that it is not a question of inserting a rule of tort in a convention on contractual relations because in this Convention parties should agree that one of the parties shall not be allowed to circumvent some of the rules by counterpart service. I think that is a contractual provision. It is to make an effective limitation of liability that we want to put in the proposed rule therefore this convention on bills of lading is the right place to take in the proposal, the so-called Himalaya rules.

And finally may I remind you that we have had some sort of rules in the Protocol of 1955 to the Warsaw Convention, in the 1957 Convention on Limitation and in the 1961 Passenger Convention.

[71/80]

Mr. le Président. Messieurs, nous avons entendu deux porte paroles en chaque sens. Je crois que les raisons d’ordre général qui peuvent être invoquées en faveur de la prise en considération de la recommandation n° 5, ou au contraire contre cette prise en considération, ont déjà été amplement développées et je donnerai la parole à ceux qui désirent encore la prendre mais en leur demandant de bien vouloir tenir compte de ce qui a déjà été dit.

La parole est au représentant de l’Association italienne, M. F. Berlingieri.

[81]

Mr. F. Berlingieri (Italy). Mr. President my delegation fully supports the amendment of the Sub-Committee and wishes to briefly explain why. It has been stated by Mr. J. Loeff that there is a principle of Roman law whereby there cannot be an action in tort when there is an action arising out of a contract. In our submission this should be true, but unfortunately the principle that when there is a right of action in contract there cannot be a right of action in tort should be applied in any case, in many circumstances has not been upheld by our Supreme Court. It has in fact been repeatedly stated by our Supreme Court that one may violate the general principle of *neminem laedere* even if this violation is committed by one party to a contract. The effect of this violation infringes upon the general rules and entitles the party who suffered the damage as a consequence of this violation to act in tort under the contract. This has the consequence that a claimant under a bill of lading has the right to choose between the action under the contract, which is submitted to the one year’s time limit, to the 10,000 Poincaré francs limitation, and to the general rules applicable to the contract, especially those relating to the burden of proof and the action in tort.

We believe that it is very important that we try to confine the application of the rule of tort to tort cases only and we try to explain and to clarify here that when we have a contract, only the law governing such contract applies, and by so doing we are not putting a rule of tort in the law of contract. We are just explaining very clearly that where we have a contract only the rules of the contract must apply and that the rule of tort cannot apply.

[82]

It has been submitted that this danger could be avoided by means of clauses in the bills of lading but unfortunately, at least under our law, no such clause would be considered valid because the law of tort, if it is considered applicable would, of course, overcome any contractual provision.

Thank you Mr. President.

[83]

Mr. W. Tetley (Canada). Mr. President I shall try to be brief as you have recom-
mended. This is clearly between common law and civil law. The delegations seem to be divided more on the basis on what has gone on in the past in other countries such as France. In Canada we have both the common law and the civil law. We have the law based on the Code Napoléon and they both get along well together. I therefore feel that in supporting this amendment that it is possible for the two laws to get along well here. I will add that in the Province of Quebec where we have the Code Civil and Civil Procedure that it is possible to issue an action in tort as well as in contract, which as Mr. Berlingieri has pointed out is possible in Italy, and other codified and civil law countries.

There are really two problems here. The first is to prohibit actions which circumvent the Hague Rules and we support that very strongly. The second problem is to include the master and members of the crew and perhaps others in the Hague Rules and to prevent them from being sued independently. We have even gone so far as to include the stevedores in our recommendation. As to suing the master of a ship or the crew, in Canada it is quite possible. I personally think an action against the master of a ship for cargo damage is right. There is an American reported judgment of the District Court of Michigan I think where an action was taken by haulage agreements against the master. The action was dismissed and the motion of the action itself was dismissed.

The problem is a very real one and I think that for the general betterment of the Hague Rules the amendment should be changed. As to the draft we in Canada are not satisfied with it at all but we are supporting the general principle and will vote for the amendment on the understanding of course, that more work will be done on the draft which was the same observation made by Mr. Loeff, and I won’t comment on it now.

Mr. J. C. Moore (United States). The view of the United States has been made quite clear in our report which has been circulated here, but it is perhaps somewhat of a delicate position and I do not propose now to go into it.

There are two things which have developed in the debate which I think should be straightened here and now. Mr. Miller described the problem that they have in the U.K. with the lack of consideration for a benefit given to a third party under contract. That principle of English law developed after our revolution and therefore does not appear in the United States law. However, during that same vague period our courts developed a principle that prohibits the exemption by contract from common negligence and we see a risk: therefore that the bill of lading clause in giving exemption to the master or officers or members of the crew or stevedores or independent contractor from liability for his own negligence might be held to be invalid on their claim. I do not want any of you to go away with any strange opinions about our law in the United States.

Mr. Loeff has said that the English domestic problem should be solved in England, and in the same way suggested that our domestic law should be changed by us, and I wish to associate myself wholeheartedly and my Association with what Mr. Miller said yesterday that the purpose of this organization is to seek uniformity to the greatest possible extent, and if we dismiss any change of the Hague Rules as being something outside the scope of the rules and say that it should be handled in the individual countries and letting them sort out their own domestic law we are merely inviting a great deal of work, in other words a great deal of disunity and confusion.

I would point out that we do have some reserves on the draft.

Mr. T. Ishii (Japan). We also agree to the amendment recommended by the Sub-
committee. From the legal point of view there is some doubt whether it is possible to restrict the liability in tort by the bill of lading, but I should like to support the recommendation. Thank you.

[101/110]

**M. le Président.** Messieurs, je crois que nous pouvons considérer que cette discussion sur la prise en considération est terminée. Nous avons entendu, d’une part, les raisons d’ordre pratique qui justifient la cinquième recommandation et nous avons entendu, d’autre part, les objections fondées essentiellement sur des principes et qui s’y opposent.

Je crois donc que le moment est venu pour notre commission de se prononcer sur la prise en considération, étant bien entendu que, si la commission décide de prendre en considération la recommandation, nous aurons ensuite à examiner successivement les différents paragraphes du texte proposé par la Commission internationale.

Je vais donc, si vous le voulez bien, mettre aux voix maintenant la question de savoir s’il y a lieu, en principe, d’envisager des dispositions du genre de celles qui font l’objet de la recommandation n° 5, la rédaction étant provisoirement réservée. La question de savoir si vous approuvez cette recommandation dans toutes ses dispositions ou seulement pour certaines d’entre elles est réservée. Nous ne votons actuellement que sur une question de principe: faut-il faire quelque chose sur ce point?

Que ceux qui sont en faveur du principe de la cinquième recommandation de la Commission internationale veuillent bien lever la main.

[111]

**Mr. J. C. Moore** (United States). May I ask what the precise position is if we vote in favour of doing something as suggested by the Sub-Committee, does it mean we take the whole of it?

**Mr. Van Den Bosch** (Belgium). No, as a matter of principle and then afterwards I will see what can be done. Those who are in favour?

[121/130]

**M. le Président.** Je vous remercie. Nous passons maintenant à l’épreuve contraire. Que ceux qui sont en principe contre l’introduction dans la convention de quelque disposition que ce soit au sujet du “Himalaya problem”, donc ceux qui sont en faveur du statu quo, veuillent bien lever la main.

La prise en considération de la recommandation est adoptée par 17 voix contre 2, et 1 abstention (Pologne).

Avant que nous abordions la discussion du paragraphe 1er, je voudrais donner satisfaction à M. Miller qui demande à dire encore quelques mots sur la question de principe, si j’ai bien compris.

[131/140]

**Mr. Miller** (Great Britain). Thank you for permitting me to interpose Mr. President. I am only doing so because I feel that this is a moment at which I should make this intervention. We have now voted by a large majority in favour of the principle of dealing with the Himalaya problem as set out in the report of the Sub-Committee but there is a vital amendment to that report not only by the British Maritime Association but, I understand by other organisations who are represented here, namely that only
servants or agents of the shipowners and not independent contractors should be included, and if this project goes to the drafting committee without that having been commented upon then the drafting committee will have no option but to accept the principle as drafted by the majority of the Sub-Committee, and at this point I would also like to make this statement that if by any chance, we should call it misfortune, the majority of this Sub-Committee should be in favour of including independent contractors then we should ask to be allowed to make a reservation on that subject so that any country which adopted this amendment of the Hague Rules should be permitted not to be in favour of independent contractors.

M. le Président. Je voudrais immédiatement rappeler M. Miller et lui dire que tous les amendements qui ont été proposés vont maintenant être discutés mais dans l'ordre, si je puis dire. Celui que vous venez d'envisager se rapporte au paragraphe 2 et je l'ai noté avec soin. C'est à propos du paragraphe 2 que nous aurons à noter ce qu'il y a lieu de faire. Je me proposais de commencer par le paragraphe 1er, ce qui me paraît logique, mais tous les amendements seront pris en considération, je puis vous le garantir.

M. Miller (Grande Bretagne). Je vous remercie.

M. le Président. En ce qui concerne le paragraphe 1er, il y a une proposition de l'Association finlandaise, proposition radicale qui consiste à supprimer le paragraphe 1er que l'Association finlandaise considère comme superflu.

Avant de donner la parole au représentant de l'Association finlandaise je voudrais demander au représentant de cette Association s'il ne s'agit pas d'un malentendu. En effet, dans la pensée des rédacteurs de la recommandation, le paragraphe 1er signifie que le destinataire, le porteur du connaissement, ne pourra pas exercer contre le transporteur une action fondée sur d'autres causes que le contrat de transport, c'est-à-dire un délit ou un quasi-délit. S'il le fait il sera soumis aux limitations et aux restrictions prévues par la convention, c'est-à-dire que cet article consacre le principe auquel, tout à l'heure, M. Berlingieri [142/150] a attaché une importance particulière. Je ne crois donc pas que l'on puisse considérer que cette disposition est superflu.

Si, néanmoins, l'Association finlandaise insiste sur sa proposition de supprimer ce paragraphe je demanderai à son représentant de bien vouloir prendre la parole.

La parole est au représentant de l'Association finlandaise.

Mr. H. Anderson (Finland). Mr. Chairman, Gentlemen, in the first paragraph of this amendment it is suggested that any action for damages against the carrier whether founded in contract or in tort can only be brought subject to the conditions and the limits provided for in this Convention. I have come to the conclusion that such actions can be taken against the carrier as the Convention stipulates, but in addition if there is an action for tort that can be taken against the carrier without having reference to the Convention. For this reason in my opinion, the whole paragraph is useless and particularly the reference to an action based on tort, is unnecessary. I thank you.

Mr. J.A.L.M. Loeff (Netherlands). Mr. Chairman, Ladies and Gentlemen, the preceding speaker has said that in his opinion the new article proposed by the Sub-Commission is superfluous. I should like to say that in a different way. I think it is very dangerous as far as I see the idea is now that in the Protocol to the Convention there will be a new article and the article is proposed as set out on page 29 of the report of the Sub-Committee, and if you let it stand as it is it reads: “any action for damages against
the carrier, whether founded in contract or in tort, can only be brought subject to the conditions and limits provided for in this Convention”. Then if this Convention is enacted in our country, in Holland, it becomes domestic law then every contractor as defined in the Hague Rules becomes subject to the Hague Rules and your Article 110 is 100 per cent superseded. Perhaps it is more a matter of drafting for what one really means is that one may not circumvent by bringing an action in tort.

I would recommend that if this is really the meaning you should say so.

[161/170]

M. le Président. M. Loeff vient donc de confirmer la portée du paragraphe 1er qui est bien celle que j’indiquais. D’ailleurs l’amendement rédactionnel de l’Association française le fait apparaître beaucoup plus clairement puisque cet amendement propose de rédiger le paragraphe 1er comme suit: “Le transporteur peut se prévaloir des dispositions de la Convention qui excluent ou limitent sa responsabilité, que l’action introduite contre lui pour cause de dommage le soit sur une base contractuelle ou sur une base quasi délictuelle”.

Le sens de cette disposition devient ainsi bien précis et je demande encore une fois à l’Association finlandaise si elle maintient sa proposition. Dans l’affirmative, je la mettrai immédiatement aux voix.

La parole est au représentant de l’Association finlandaise.

[171/180]

Mr. President. Do you maintain your proposal for the amendment of paragraph 1?

Mr. H. Anderson (Finland). I withdraw my amendment.

[181/190]

M. le Président. Il reste évidemment une question de rédaction mais les questions de rédaction, si vous le voulez bien, nous ne les étudierons pas ici.

Nous allons passer maintenant au paragraphe n° 2 auquel se rattachent plusieurs amendements.

Auparavant, je vais donner la parole à M. Loeff qui la demande.

[191/200]

Mr. J.A.L.M. Loeff (Netherlands). Mr. Chairman, I should like to ask a question of order. We accepted the principle that we deal with the Himalaya difficulty. All right. We are discussing the text proposed by the Committee. You have passed Para. (1), subject to a revision of the whole text by a Drafting Committee. I explained that the text is very dangerous, very dangerous really, but I want to know if you want to go very quickly through the whole thing subject to what the Drafting Committee will say. I quite agree but otherwise, we are going too fast and we do not want to be fast. Thank you.

[201]

M. le Président. Je crois que le comité de rédaction aura pour mission de tenir compte des décisions qui auront été prises par cette commission sur le fond des différentes questions et de donner ensuite à ces décisions la forme la plus appropriée. Les propositions du comité de rédaction seront bien entendu encore soumises à votre approbation avant d’être transmises à la Conférence plénière. Je crois que c’est la procédure usuelle et, personnellement, il me semble que c’est la seule possible. Je ne crois pas qu’elle puisse faire l’objet d’une critique quelconque. Chacun pourra faire en-
tendre son opinion sur le fond et les décisions qui auront été adoptées sur le fond par cette commission feront ensuite l’objet d’une rédaction appropriée qui vous sera soumise pour approbation.

Ceci étant dit, j’en reviens au paragraphe 2 au sujet duquel il y a plusieurs amendements.

Le premier amendement a pour but de supprimer dans le groupe des personnes visées par le paragraphe 2 le sous-traitant indépendant. On propose de mettre dans l’article 2 la mention des soustraitants, en anglais “independent contractors”. Cette proposition est faite par l’association britannique, par l’association yougoslave et par l’association polonaise.

**M. Prodromidès** (France). Par l’Association française aussi.

**M. le Président.** L’Association belge a déclaré qu’elle se réservait de prendre position sur ce point à la lumière de la discussion qui aurait lieu.

([202/210]

Il y a, d’autre part, sur le même point une proposition d’un caractère plus limité, c’est celle de l’association canadienne qui propose de mentionner seulement, au lieu d’une façon générale les sous-traitants indépendants, les “independent contractors”, uniquement les “stevedores”.

Pour mémoire, je signale, pour montrer que je ne l’ai pas perdu de vue, qu’il y a un amendement de détail proposé par l’association américaine, pour le cas où l’on adopterait le texte du paragraphe 2 qui est proposé par la Commission internationale. Cet amendement ne concerne, je crois, qu’une question de rédaction. Par conséquent, nous n’en tiendrons pas compte ici. Il ne sera pas perdu de vue si le texte qui est proposé par la Commission Internationale est adopté.

Je crois qu’il est préférable d’examiner ces divers amendements ensemble.

Le premier tend à la suppression pure et simple de la mention “des sous-traitants indépendants”, le second ayant pour objet la mention des seuls “stevedores”.

Je vais donc ouvrir la discussion sur ce point et demander à ceux qui ont proposé ces amendements de prendre la parole s’ils le désirent.

Qui demande à prendre la parole à l’appui de l’amendement de la Grande Bretagne, de la Yougoslavie, de la Pologne et de la France?

La parole est à M. Prodromidès.

([211]

**M. Prodromidès.** Monsieur le Président, Messieurs. Nous vous proposons d’éliminer les “independent contractors” dans ce texte. Il s’agit d’un contrat de transport qui, normalement, doit régir uniquement les rapports entre contractants c’est-à-dire le chargeur et le transporteur. Nous avons cependant admis le principe que les préposés du transporteur puissent bénéficier des mêmes dispositions car dans la mesure où le préposé du transporteur est personnellement responsable, pratiquement c’est le transporteur lui-même qui va devenir responsable parce qu’il va payer à la place de son préposé. Exemple: la convention stipule que le transporteur ne répond pas des fautes nautiques du capitaine, mais la convention permettrait d’agir pour une faute nautique du capitaine personnellement, et si le capitaine lui-même est condamné, il est bien évident que son armateur ne va pas le laisser et va payer à sa place. Par conséquent, dans la mesure où nous protégeons les préposés du transporteur, nous protégeons le transporteur lui-même et, en réalité, le transporteur et ses préposés n’en font qu’un.

Mais quand il s’agit des “independent contractors”, ce sont des personnes tout à
fait étrangères au transporteur. Ces personnes ont leurs statuts personnels qui sont régis par des règles qui leur sont personnelles. Dans certains pays, la responsabilité de ces “independent contractors” et plus particulièrement des acconiers est régie par le statut personnel.

Par conséquent, nous proposons d’une façon très ferme que, si dans le paragraphe 2 on adopte - et nous sommes partisans de l’adopter - la disposition d’après laquelle les préposés du [212] transporteur bénéficient des mêmes dispositions de la convention que le transporteur lui-même, cette faveur ne soit pas étendue aux “independent contractors” quels qu’ils soient, qu’ils s’agisse de stevedores ou d’autres personnes.

D’ailleurs, on ne voit pas très bien comment la chose va fonctionner. Je ne veux pas entrer dans les détails mais, tout au moins en droit français, la situation des stevedores est différente suivant qu’on considère que le stevedore intervient pour compte du réceptionnaire ou pour compte de l’armateur lui-même. Voici ce que je veux dire. Les connaissances stipulent très souvent que la responsabilité du transporteur prend fin au moment où la marchandise quitte le navire; et le connaissément très souvent ajoute que le capitaine quand il traite avec une entreprise d’acconage, le fait pour compte du réceptionnaire. La jurisprudence française a tiré la conclusion que, dans cette hypothèse, l’accord avec le réceptionnaire en vertu d’une stipulation qui a été faite par le capitaine lequel capitaine a traité avec le stevedore pour compte du réceptionnaire, permet au réceptionnaire d’avoir une action directe contre le stevedore, action contractuelle.

D’un autre côté, si le connaissément ne contient pas la disposition d’après laquelle le capitaine traite avec le stevedore pour compte du réceptionnaire, il en résulte que cet acconier va travailler pour compte du capitaine, je veux dire pour compte du transporteur. Dans ce cas, le réceptionnaire n’a plus d’action contractuelle directe contre le stevedore. Le transporteur va se retourner contre le stevedore responsable.

[213/220]

Tout cela sont des choses étrangères au contrat de transport proprement dit. Cette responsabilité du stevedore va être réglée par le statut particulier qui régit ce stevedore, qu’il s’agisse du droit commun ou qu’il s’agisse d’un statut particulier.

En résumé, Monsieur le Président, Messieurs, la délégation française est nettement d’avis de ne pas étendre le bénéfice de la convention aux préposés du transporteur mais aux seuls préposés du transporteur, pas aux independent contractors.

M. le Président. Quelqu’un demande-t-il encore la parole au sujet des amendements. La parole est à Monsieur Manca de la délégation italienne.

[221]

Mr. P. Manca (Italy). The Italian Association has approved the recommendation brought up by the Sub-Committee and especially the second paragraph. We must say that now upon reflection we must withdraw our approval and say that the amendment which has now been ventilated encounters our approval. In this paragraph, it is said that such an action is brought against a servant or agent of the carrier and this rule is quite logical, because the carrier is responsible not only for his own action but even for the action, the negligence of his servants and agents. But we want to know the reason why the independent contractor is put in this category, is put under the same condition as the servant or the agent.

It is very difficult for us to understand the reason why the independent contractor is considered in this paragraph. In fact, if a carrier stipulated a contract of carriage, he only is obliged to perform and to carry out this contract and it is not possible that, in
his place another person, another firm, another shipowner should enter and seek to perform the contract.

I mention this because under our law, namely under Italian law, we have a precise rule which forbids the transfer of the contract. When a contract is performed, is carried out, only the parties to this contract are entitled and have the obligation to carry out their undertaking. It is not possible that, for instance, if a contract is performed by, let us say, the Italian Line, another shipowner substitute himself for the performance of the contract, unless the other party has given his assent to this transfer. This means that this paragraph contemplates a condition which cannot be realised, namely that a shipowner is substituted to another shipowner.

I think that these rules of Italian Law are also contained in all other foreign legislations, due to their logical contents. But I want to suppose that this is not the case: that the transfer of a contract of carriage or another kind of contract was possible under the Italian legislation or under a foreign legislation. In this event, it must be thought that if the firm who enters into a contract of carriage is no more the carrier in this contract because the person responsible for the performance of the contract becomes the new carrier and therefore these rules appear to be quite useless also from this aspect. We wonder whether the wording is advisable, whether it is a good thing to delete this phrase “an independent contractor” and we approve the next paragraph, par. (2).

Mr. le Président. Quelqu’un demande-t-il encore la parole au sujet des amendements. La parole est à Monsieur Loeff de la délégation néerlandaise.

Mr. J.A.L.M. Loeff (Netherlands). Mr. Chairman, Ladies and Gentlemen, I am glad to understand that the whole matter will be submitted to a Drafting Committee. I have some objections against this paragraph. I can let it rest as far as para. (2) is concerned. I think at any rate that the idea is that para. (2) applied to the servants of the shipowner in the largest sense of the word, the largest sense possible. It is a problem to note the text of Article 4 (2) of the Convention which sets out the exemption of liability makes a distinction between the master and the mariner, the pilot on the one hand and the servants of the carrier on the other hand. I want to make it clear that in para. (2) of the newly proposed Article, “servants” has another meaning. It includes the master and the officers, and, of course, that is a matter of drafting. So I will not say anything more about it.

On another question: we have to decide what we are going to do about the pilot. What about the pilot? Can he avail himself of the exemption of liability? I do not know. Thank you.

Mr. W. Tetley (Canada). Mr. President, the Canadian delegation has not only added the words “stevedores” but we have added the words “Master and crew”, because we believe the wording of para. (2) is too vague to be of any use whatsoever, particularly in translation. If you strike out the words “sub-contractor or independent contractor” and leave in the word “agents” which is translated into French “agents”, the “agents” would certainly include the ship agents ashore who may hire their own stevedores. The “agents” will probably be the stevedores too, may be the pilot too as has been pointed out.

The term “agents” is extremely broad, whilst the term “servants” could mean almost any one, including a surveyor who certainly is providing service. In other words,
this par. (2) is a source of innumerable log cases and confusion. I think this Committee or the Committee formed for redrafting must very carefully decide which persons in particular are being included.

Do you include the stevedores? Do you include stevedores who are actually employees of the line? Let us suppose the French Line takes a cargo to Montreal and the crew does not see to the discharging but the stevedores, who are not independent contractors but actually employees of the French Line. Are those stevedores covered?

Do you intend to cover stevedores? That is the problem.

There will be another disadvantage to a company which does not use independent stevedores but its own stevedores in certain ports which is quite possible, incidentally, in many ports of Canada and many ports of the world. Therefore, I do not know if it is the duty of this Committee or of the minor Committee which has been formed to do the drafting but they must, I think, disregard this word “servant”, disregard this word “agent”, these words “independent contractor” and say exactly who you mean. Do you mean the Master, do you mean the Mate, all the officers, all the crew? Do you mean the pilot? Do you mean any stevedores? Or do you mean independent stevedores? Whom do you mean? Otherwise this will be a perfect cause and source of litigation.

[251/260]

M. le Président. Je crois que l’intervention qui vient d’être faite montre qu’en ce qui concerne le par. 2 la tâche du comité de rédaction sera particulièrement délicate parce que la rédaction est étroitement liée au fond même de la question.

J’ai retenu également de l’intervention qui vient d’être faite que j’avais peut-être tout à l’heure indiqué d’une manière inexacte la portée de l’amendement canadien. J’avais dit que l’amendement canadien consistait à remplacer “independent contractors” par “stevedores”. Ce n’est pas exactement cela. L’association canadienne propose, au lieu d’employer des termes abstraits comme “servant or agent” et “independent contractors”, d’employer des mots concrets comme “le capitaine, l’équipage et les arrimeurs, que ces derniers soient des préposés ou non”. Voilà donc une proposition concrète. Je voulais souligner que la portée de l’amendement canadien était donc sensiblement différente de celle que, par une erreur dont je vous prie de m’excuser, j’avais indiquée tout à l’heure.

La parole est à M. Perrakis de la délégation hellénique.

[261/270]

Mr. J. S. Perrakis (Greece). Mr. Chairman, the Greek Association would like to have clarification on the points raised by the French delegation and as far as that goes we would like to support the Canadian amendment. We especially are anxious to exclude independent contractors but by the words independent contractors either to understand a contractor or something to that effect, but definitely to include stevedores, agents, shore agents and pilots. Thank you.

[271/291]

M. le Président. Quelqu’un demande-t-il encore la parole? Si personne de demande la parole, je vous propose de mettre aux voix la proposition de l’Association canadienne en premier lieu. Je viens de la résumer; j’en reprends une fois encore le texte pour qu’il n’y ait pas de malentendus. Cette proposition se trouve d’ailleurs dans la brochure n° 2 à la page 33. Il s’agit de remplacer dans le paragraphe 2 tel qu’il est proposé par la commission internationale les mots: “servant agent, ...........” par les mots: “master-crew and stevedores”.

The Travaux Préparatoires of the Hague and Hague-Visby Rules
Ici j’ajoute, mais je ne sais si je traduis bien la pensée de l’Association canadienne “que ces arrimeurs soient des préposés ou non”. C’est ce que j’ai cru comprendre de l’intervention.

Je propose d’adopter “master-crew and stevedores”. En ce qui concerne les arrimeurs, vous n’êtes pas d’accord de dire qu’ils soient des préposés ou non.

Mr. W. Tetley (Canada). No, in saying nothing we mean stevedores of any type, even independent.

M. le Président. La parole est à Monsieur Van den Bosch de la délégation belge.

M. Van den Bosch. Mes chers collègues, excusez-moi de prendre la parole. Il convient qu’un secrétaire général-observateur soit discret. Je sors de cette discrétion à la suite d’un échange de vues que je viens d’avoir avec le Président Lilar au sujet du point qui est en discussion et qui va être mis aux voix. Ce point se rapporte à la question de savoir si le bénéfice de limitation et des exonérations légales que nous accordons aux transporteurs doit être étendu non seulement à ses préposés, à ses “agents”, mais également à des entrepreneurs indépendants.

Le Président m’a prié de vous mettre en garde contre le danger que pourrait présenter une solution excessive dans ce domaine. J’entends par “excessif” qu’il ne serait probablement pas de bonne politique d’étendre le bénéfice des avantages accordés par les Règles de La Haye aux transporteurs à des catégories de personnes ou des bénéficiaires qui, somme toute, prennent dans l’économie une place et jouent dans l’économie un rôle entièrement distant de celui de l’armateur ou du transporteur maritime.

La discussion que vous menez en ce moment met en jeu tout le principe du problème de la limitation de responsabilité en matière maritime. Je n’ai pas besoin de vous dire que si nous, maritimistes, nous considérons ce principe comme fondamental, essentiel et je dirais presque comme allant de soi, basé sur des fondements historiques très anciens, notamment sur la distinction fondamentale et transitionnelle entre la fortune de mer et la fortune de terre, il n’en est pas du tout ainsi lorsque, au lieu de viser les transporteurs, nous entendons légiférer à propos d’entrepreneurs dont l’activité se poursuit à terre et qui ne sont pas le moins du monde affectés par des risques maritimes qui pèsent sur l’entreprise des transports par mer.

C’est dans cette optique, compte tenu de ce que les activités autres que maritimes considèrent les avantages faits à l’activité maritime comme une sorte de privilège qui a de moins en moins audience au Parlement, que nous devons être prudents si nous voulons faire passer au stade diplomatique et gouvernemental les réformes que nous souhaitons faire prévaloir. Il faut que nous le fassions avec prudence, que nous le fassions dans les limites strictement nécessaires au but que nous poursuivons.


La proposition qui vient d’être formulée d’une manière implicite par M. Van den Bosch, consisterait à déterminer comme suit le groupe de personnes qui bénéficieraient des restrictions et des limitations de la convention: “le capitaine, l’équipage, le pilote et les arri- [293/300] meurs (signe de dénégation des délégations française et canadienne).
Il y a un point qui n’est pas élucidé. Le représentant de la délégation canadienne a fait remarquer que les arrimeurs pouvaient être des préposés aux stevedores. Je propose de laisser cette question de côté et de voter sur une énumération concrète plutôt que de voter sur des mots généraux comme “servant” et “agent” sans quoi je serais obligé de demander qu’on veuille bien préciser, à l’intention du comité de rédaction, quels sont ces services qui entrent dans ces deux catégories. En effet, il n’y a pas de traduction française pour ces mots. Le mot “agent” est souvent traduit en français d’une manière approximative par “mandataire” ce qui, dans le cas qui nous occupe, n’aurait pas beaucoup de sens. Je crois donc qu’il est préférable de définir d’une manière concrète les personnes appelées à bénéficier de cette disposition.

Si vous n’y voyez pas d’objection, je propose de mettre aux voix la proposition consistant à faire bénéficier de la disposition de l’art. 2: “le capitaine, l’équipage et le pilote”. Nous aurons ensuite à nous prononcer s’il y a lieu sur des adjonctions éventuelles à cette liste qui constitue un minimum.

L’Association britannique a-t-elle une objection à ce que nous énumérisons d’une façon concrète le groupe de personnes qui doivent bénéficier de l’art. 2.

La parole est à Monsieur Miller de la délégation britannique.

Mr. C. Miller (Great Britain). Gentlemen, I am only troubling you again at the invitation of our President.

The manner in which this arises is this. The Canadian delegation has proposed that we suppress the words “servant or agent”. I am not talking about independent contractors at all, that is a different point. The suggestion is that we suppress the words “servant or agent” and instead of them substitute a list of the servants or agents whom we mean by that. I am very much afraid that if this is put to the vote we shall have to be opposed to it. The phrase “servants and agents” has been used in many, many conventions. It has been used in the Limitation of Liability Convention, it is used, if I remember rightly, in the Nuclear Ship Convention. It is the way we designate persons who are employed by the shipowner, distinguishing persons employed regularly by the shipowner in contradistinction to those employed as independent contractors to do one particular job. No-one could possibly argue that your servants or domestic staff are not your préposés, but when you come to build a house you employ in the loose sense of the word a contractor to build it and you pay him for it. No-one could say that he is a servant, he is an independent contractor. Like the elephant it is very difficult to define, but you know it when you see it. And the worst possible thing we could do, gentlemen, would be to start to put into this Convention a list of people who would be included under servants or agents. I should hand over one of our textbooks on the law of agency and say write the whole thing out in the Convention, and I would say many other lawyers would say I shall have to do the same thing. Therefore we cannot appreciate the objections raised against these hallowed words which have served us so well in the past and which [392/310] we all understand though we have difficulty in defining them.

And now I will go into the question whether there shall be a long enumeration of the type of persons who are servants and agents. Against that proposition I am afraid we feel strong and we shall have most violently to vote against it. And we do equally violently support the proposition that the words “against an independent contractor” should be suppressed.

I trust I have made myself clear, Mr. President.

The last observation I have to make is a suggestion about the pilot. The pilot is neither a servant nor an independent contractor and the relationship between pilots and shipowners whose ships they take into port and the general public is regulated by the Maritime Convention of 1910, and for heaven’s sake let us not interfere with that.
M. le Président. Messieurs. Etant donné les observations et les objections de principe qui viennent d’être faites, je crois qu’il est préférable que nous nous en tenions à notre intention première de mettre aux voix les amendements écrits tels qu’ils ont été proposés et tout d’abord l’amendement consistant à supprimer dans le texte proposé par la commission la mention des sous-traitants indépendants, quitte à nous prononcer après sur une autre proposition s’il en était fait.

Je vous propose de vous prononcer maintenant sur l’amendement des Associations britannique, yougoslave, française et polonaise dont l’objet est tout simplement de supprimer la mention des contractants indépendants à l’art. 2. C’est-à-dire ceux qui ne pourront pas bénéficier de la limitation et de la restriction prévues par la convention si une action en responsabilité est dirigée contre eux.

La parole est à Monsieur Van den Bosch.

M. le Président. Passons au vote à mains levées. Résultat: 11 voix favorables contre 6 voix négatives et 2 abstentions (les délégations indienne et allemande).

Il reste à nous prononcer s’il y a lieu sur une adjonction éventuelle. Je demande à l’Association canadienne si elle insiste pour que le texte tel qu’il vient d’être amendé soit encore complété (signes d’accord de la délégation canadienne). Vous êtes d’accord, sans plus.

La parole est à M. Taborda de la délégation du Portugal.

M. Taborda Ferreira. Monsieur le Président, Messieurs, je crois que la difficulté que nous venons de rencontrer provient du fait que le mot “agent” en anglais et “agent” en français a une signification tout à fait différente dans chacune de ces langues. Si pour les Anglais, le terme “agent” tel que l’a défini M. Miller, est très clair, il n’en est pas de même pour les délégués d’expression française. En français, le mot “agent” signifie en fait un indépendant qui peut donner des sous-contrats à d’autres travailleurs indépendants.

Il s’agit là d’un problème difficile de traduction et d’harmonisation du sens donné.

Je vous remercie.

M. le Président. Quelqu’un demande-t-il encore la parole? La parole est à M. Suc de la délégation yougoslave.

Mr. A. Suc (Yugoslavia). Mr. Chairman, it seems to me that the difficulties which seem to arise between the English and French texts are not as real as they seem to be. I should like to say that we have already these terms translated: in Article IV paragraph 2 where agent or servant appear in the English text and agent ou preposé in the French text. In the Passengers Convention we have another possibility at least, if my copy is right in Article 12, and I think that this might solve our problem: Article 12 paragraph 1 of the Passengers Convention speaks in English of servant or agent “if action were brought against a servant or agent” and in French “si une action est......”.

Now my question is whether we could not use here the French translation “préposé” and could solve it this way.

A further remark I would like to make is that in the present text, this might seem a drafting matter, but it is going to the point, to the essence, we have a text which seems to suppose that in every case there is a possibility of bringing an action against the servant or agent. It is not so. In various legislations, for instance in Yugoslavia, that would
be a question. Therefore I should like to remark that the French proposal is drafted in such a manner where the possibility exists of bringing an action against the servant or agent (the préposé), in such cases the servant or agent will be entitled to make the limitation which the carrier could make. Now the English proposal to the sub-committee seems to me to be too explicit, it supposes that in every country action against the préposé, the servant or agent, is possible. This is not so. Therefore I should like to ask you to have in mind this question and to follow the drafting which was given by the French [342/350] Association which in my opinion is drafted in such a manner that possibilities are covered on the main way the possibility exists according to legislation to bring action against a servant or agent and such servant or agent will be entitled to have a limitation.

I do not know whether I have made my point clear enough. Thank you.

[351/360]

M. le Président. Je remercie M. Suc de ses indications qui seront certainement fort utiles au comité de rédaction.

Je voudrais ajouter que la traduction française des mots “servant” ou “agent” est un problème qui s’est également posé lors de l’élaboration du protocole de La Haye modifiant la Convention de Varsovie pour les transports aériens et qu’effectivement, comme vient de le dire M. Suc l’expression anglaise “servant or agent” est traduite en français, dans le protocole de La Haye par le mot “préposés” sans plus. Je crois donc qu’il s’agit d’une terminologie que nous pouvons suivre puisqu’elle peut s’appuyer sur des précédents sérieux.

Dans ces conditions, je vous propose d’arrêter ici nos travaux pour ce matin et de reprendre nos discussions cet après midi à 14 h. 30, si cela vous convient.

La séance est levée à 12 h. 15.

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[63]

M. Loeff (Pays Bas). Je demande la parole à propos du paragraphe 2.

M. le Président. Le vote est acquis; le texte a été voté tel qu’il a été amendé, le texte avec la suppression de la mention “independent contractors”. Il a été voté ce matin par 11 voix contre 6 et 2 abstentions. Par conséquent c’est un vote acquis.

M. Loeff (Pays Bas). J’avais un mot à dire au sujet du pilote.

[64]

M. le Président. Nous en avons parlé. M. Miller nous a adjurés de ne pas revenir sur cette question qui était réglée.

Si nous revenons ainsi de façon continuelle sur les votes acquis, nous n’en finirons jamais.

M. Loeff (Pays Bas). Je voudrais dire un mot sur cette question.

M. le Président. Cela ne pourrait servir à rien. Nous n’allons pas remettre la question aux voix. Le texte est adopté; il est tout à fait impossible d’y revenir.

M. Prodromidès (France). Monsieur le Président, je crois qu’il y a un petit malentendu entre vous-même et M. Loeff. Le vote est acquis sur le paragraphe 2 en ce qui concerne la question des “independent contractors”, mais il y a encore quelque chose à régler dans le paragraphe 2, c’est la question des “préposés” ou “agents” et on a fait observer que le mot “agent” en anglais et en français n’avait pas le même sens.
M. le Président. Je crois qu’il n’y a pas eu de malentendu; c’est une erreur de votre part. Cette question a été discutée amplement ce matin, à savoir comment il faudrait traduire en français “servant” et “agent”. Il est bien entendu que le texte anglais resterait “servant” et “agent” et que le texte français serait traduit, comme dans le Protocole de La Haye par le mot “préposé” sans plus. Tout cela a été discuté et voté.

[65/70]

En ce qui concerne le pilote, la question a été posée et il a été entendu que personne n’a suggéré d’ajouter le mot “pilote”.

Je crois donc ne pas me tromper en disant qu’il y a un vote acquis sur le texte du paragraphe 2.

M. Prodromides (France). Dans ces conditions, il me reste à m’excuser. Sur la question du mot “pilote”, tout à fait d’accord, personne n’en parle mais sur le fait que l’on a décidé de ne parler que de “préposé” - ce en quoi je suis tout à fait d’accord - et en anglais de laisser “servant” et “agent”, cela m’avait échappé. Je vous prie de m’excuser.

[81]

M. le Président. En ce qui concerne le paragraphe 3, il n’y a pas d’amendement. Par conséquent, je puis me borner à demander à la Commission si elle est d’accord de voter le texte du paragraphe 3, sous réserve de la forme définitive qui lui sera donnée par le Comité de rédaction.

Je mets donc aux voix le texte du paragraphe 3 de la recommandation n° 5.

M. Taborda Ferreira (Portugal). Je ne comprends pas qu’on puisse voter le paragraphe 3 dans ces conditions.

En effet, on a décidé au paragraphe 2 de supprimer les sous-traitants indépendants. Il va donc sans dire qu’on considère comme supprimé aussi les sous-traitants indépendants dans le paragraphe 3.

En outre, la question des agents est encore en suspens. Il faut encore décider comment on va traduire l’expression “servants” or “agents”.

M. M. Prodromides ne s’est pas trompé en disant qu’on n’a pas voté sur cette question, personnellement je n’ai pas voté et la question reste ouverte par conséquent.

J’aime aller de l’avant rapidement, comme tous les gens du Sud, mais je suis bien d’accord avec mes amis néerlandais qui ne veulent pas risquer d’aller trop vite, de crainte de tout démolir.

C’est pourquoi je propose de voter sur la question de la traduction en français des mots “servants” et “agents” comme cela a été fait dans la Convention de Varsovie, au paragraphe 2 et de voter sur le paragraphe 3, en attendant de supprimer les sous-traitants indépendants, si vraiment on a voté le paragraphe 2, dans ce sens.

Je vous remercie, M. le Président.

M. le Président. Il n’est pas question de mettre aux voix ici, des questions de pure rédaction.

Il est évident que le paragraphe 3 doit être mis en concordance [82/90] avec le texte adopté au paragraphe 2. C’est à cela que sert le comité de rédaction. Nous n’allons pas voter ici sur des questions de rédaction.

En ce qui concerne la traduction des mots “servants” et “agents”, c’est la même chose.

Dans les autres conventions internationales, les mêmes termes sont employés, il y a des termes équivalents en français, c’est une question de rédaction qui est particulièrement simple, en ce qui concerne ce point.

Ce serait perdre le temps de la commission et lui manquer d’égards que de lui demander de procéder à des délibérations sur une telle question.
Mr. C. Miller (Great Britain). Now, Mr. President, you have just said what I got up to intervene for. May I just add this: the official text of any Convention which emerges from this Conference, plus the Diplomatic Conference will be the French text. Our President is quite right in saying that formally we have decided by a vote to use the French word “préposé”. You cannot dictate to the various government draftsmen how they shall translate that into their own language because if you do they won’t take the slightest notice of it. All I can assure you is that if we did indicate how we considered the word “préposé” in the French text ought to be translated, our government draftsmen will translate it as they have ever translated “servants or agents”. We do not quite know what “servant or agent” means, but it has not caused much trouble in the past. We suppose your having voted in this Sub-Commission for the suppression of the word “ou agent” which my French friends tell me is not very good French anyway, how that is translated into the final German, Portuguese, American or English is not for us at all to decide. Thank you. (Applause).

Mr. J. Loeff (Netherlands). Mr. Chairman, ladies and gentlemen, perhaps I am raising a lot of difficulties, but I consider it a peculiar way of proceeding when we have to decide on paragraph 3 of point 5 of the report and we are just asked at once for a vote. I wish to say something on that but was not allowed to say anything before the vote was taken. It boils down to this, the President and when I asked to say a word I was refused and the voting was immediately commenced with the result that you may know. The only reason for my asking to take the floor was that in paragraph 3 in my opinion there is a very serious difficulty and I should like this meeting and the drafting committee to give serious consideration to it.

Mr. President, may I proceed? Thank you.

The difficulty is this. Here in paragraph 3 it is clearly shown that an amount up to the maximum provided for in the Convention may be claimed against the carrier, his servants, agents and independent contractors, in all against three or four classes of persons and it may be ten, fifteen or twenty persons. Now the only question I want to put before this Committee is would it not be equitable to have provisions allowing a man who under these provisions has to pay the full maximum to ask for contributions from
the other people who are liable to the same maximum? Would it not be a good thing if either in this meeting or in the Maritime Committee something was said on that question?

Thank you.

M. le Président. M. Loeff propose un amendement à l’article 3, qui jusqu’à présent n’avait pas été porté à notre connaissance par l’Association néerlandaise.

Je regrette qu’à titre subsidiaire l’Association néerlandaise n’ait pas fait comme d’autres Associations, et tout en marquant sa profonde hostilité de principe à la recommandation no 5, n’ait pas, à titre subsidiaire, proposé un amendement éventuel.

Il n’est pas possible que nous examinions après le vote, un amendement improvisé dont le texte ne nous a même pas été remis, M. Loeff, ce n’est pas une simple question de rédaction, vous voulez faire trancher par le paragraphe 3 la question des contributions entre diverses personnes. C’est une question compliquée dont on peut se demander si elle trouve sa place dans la Convention. Il n’est pas possible que nous révions sur le vote et que nous improvisions un texte à cet égard.

M. J.A.L.M. Loeff (Pays-Bas). C’est une question sérieuse. Vous êtes d’accord?

M. le Président. Oui, d’accord, c’est une question sérieuse.

Nous passons au paragraphe 4.

Le paragraphe 4, je le rappelle à l’Assemblée a pour objet de déroger au paragraphe 2, dans le cas où il est établi que la perte ou dommage résulte d’un acte ou d’une négligence du préposé, accompli témérairement et avec l’intention de causer le dommage ou la perte ou avec la connaissance que le dommage ou cette perte en résulterait probablement.

Il y a sur ce point diverses propositions.

Il y a tout d’abord une proposition radicale qui émane de l’Association danoise et de l’Association norvégienne et qui est aussi appuyée par le rapport de la minorité de l’Association des Etats-Unis, qui constitue à rejeter le texte du paragraphe 4.

Il y a une proposition subsidiaire qui est faite par l’Association norvégienne et qui consiste en ceci: si le paragraphe 4 est adopté, il faudrait en tout cas faire une exception pour le cas où la faute est commise dans la navigation ou dans l’administration du navire.

Nous pouvons traiter deux questions simultanément.

Nous avons à nous prononcer d’abord sur l’adoption éventuelle du paragraphe 4 et ensuite, à supposer que le paragraphe 4 soit adopté, nous aurons à nous prononcer sur l’utilité qu’il y aurait à y apporter la restriction proposée par l’Association norvégienne.

Je vais donner la parole aux représentants des Associations hostiles, en principe, à cette dérogation, les Associations danoise et norvégienne.

Mr. P. Gram (Norway). Mr. Chairman, gentlemen, we of the Norwegian delegation have never taken a stand against Article 4 here, any particular difficulty we feel is on the question of the gross negligence part of it. As I understand, Mr. Chairman, that question was going to be postponed, but we should first question whether we should include Article 4 at all, but our standpoint is merely limited to the gross negligence part of it. We don’t feel this very strongly, but we feel there is a grave risk that the whole idea of the Himalaya clause will be washed overboard by the question of gross negligence being raised much too often. We think that will be a source of unnecessary liti-
gation, and we feel especially in the field of nautical faults and management that it is always easy if a fault can be found that it can also be said that it is a grave fault.

Thank you.

[141/150]

Mr. J. C. Moore (United States). Mr. President, thank you for making that correction. It seems to us that Article 4 is unnecessary and approximately the result intended in Article 4 would ensue in its absence. However we are afraid Article 4 will be interpreted as being intended to carry the liability beyond what it would be in the absence of 4. We feel that Article 4 is unnecessary and furthermore that it would just give rise to confusion, lack of clarity and litigation.

[151/160]

Mr. le Doyen P. Chauveau. La question qui vous est soumise, avec ce paragraphe 4 est une question délicate et qui mérite beaucoup de réflexion.

A tel point que la délégation française, après avoir, dans ses écrits, soutenu cette proposition et après des discussions avec d'autres collègues et après avoir entendu les explications de MM. Hecht et Moore, et de la délégation norvégienne, est aujourd'hui plutôt favorable aux thèses qui viennent d'être exposées, c'est-à-dire que ce paragraphe 4 pourrait sans doute faire plus de mal que de bien.

Chez nous, nos tribunaux ont été appelés à se prononcer sur un point, celui de savoir si, en cas de faute lourde, la limitation de responsabilité pouvait ou non être invoquée, sous l'empire de la convention.

Nos tribunaux ont estimé, étant donné la rédaction du texte qui dit qu'en aucun cas, la limite ne peut dépasser une somme déterminée qu'on pouvait invoquer cette limite, même en cas de faute lourde.

Evidemment, nous ne parlons pas ici de dol. Le dol est autre chose. La Cour de Cassation française, en réalité, n'a pas été appelée à se prononcer sur ce point, mais tous les juristes français sont d'accord pour dire que s'il y avait dol, il n'y aurait plus de limite de responsabilité.

Si nous allons étendre, par conséquent, du dol à la faute lourde, la responsabilité de l'armateur, nous vous demandons de faire attention, parce que nous touchons ici, en somme, à l'une des assises fondamentales de la convention, à un des points sur lesquels l'équilibre de la convention a été établi.

[162]

On avait admis, en 1924, qu'il y aurait une limitation de responsabilité, dans l'état que je viens d'indiquer, mais si sur ce point extrêmement important, vous voulez étendre la responsabilité, il est bien évident que vous rompez l'équilibre qui avait été admis, en 1924 et vous touchez à l'un des principes essentiels de la convention de 1924.
C’est la première considération qui nous a fait réfléchir, puisque nous avions convenu que nous ne voulions pas toucher à l’équilibre de cette convention. Il y a ensuite un autre point.

Je vous avoue que quand j’ai vu la Cour de Cassation dire que même en cas de faute lourde, on pourrait invoquer la limitation, j’en ai été extrêmement satisfait, parce que la faute lourde est quelque chose qui est bien difficile à déterminer. Nous n’avons pas de balance pour la peser et il suffit qu’un juge mette le qualificatif de “lourde” à côté de la faute, pour qu’immédiatement la limitation soit supprimée.

De telle sorte qu’il y a là un facteur plus ou moins arbitraire qui se trouve être laissé entre les mains du juge.

Alors, si vous l’admettiez, il est bien évident, comme l’ont dit MM. Hecht et Moore, que vous iriez multiplier les procès, sans doute pour le plus grand bien des avocats, mais peut-être pas pour le plus grand bien du fonctionnement général de cette convention.

Car au lieu d’avoir des règlements amiables, vous auriez toujours quelqu’un qui viendrait plaider avec l’espoir que le juge voudrait bien lui dire que la faute est lourde, ce qui lui permettrait d’obtenir alors une responsabilité absolument illimitée.

Voilà, Messieurs, les raisons pour lesquelles, en fin de compte, nous croyons que la sagesse est de ne pas toucher le texte sur ce point [163] et de laisser la règle telle qu’elle est.

Je sais que l’on va peut-être me faire certaines objections, en me disant que la formule qu’on vous propose, la règle de la faute lourde, se trouve incluse dans d’autres conventions, qu’elle se trouve incluse notamment dans la Convention sur les passagers, qu’elle se trouve également incluse dans la Convention de Varsovie, et je ne cite que ces deux conventions.

Mais je voudrais alors, tout de suite attirer votre attention sur ce point, c’est que dans la Convention sur les passagers, et je puis en dire de même dans la Convention de Varsovie, le dommage que l’on envisage est un dommage corporel, un dommage à l’intégrité physique des passagers et pour cette intégrité physique et pour ces dommages corporels, on se montre un peu plus sévère et l’on adopte éventuellement d’autres principes, c’est tout à fait normal.

Il y a beaucoup d’autres points sur lesquels votre Convention sur les passagers s’est écartée de la Convention de 1924. Pour n’être pas trop long, je ne veux pas y insister.

Ici, dans la Convention de 1924, à la différence de la Convention de Varsovie, il n’est question que de dommages pouvant être éventuellement occasionnés à des marchandises.

Quand nous en arrivons là, qu’est-ce que nous voyons en fin de compte se profiler derrière tout cela, une simple question d’assurance.

Si vous changez quelque chose, il va se trouver que ce ne seront plus les mêmes assureurs qui vont garantir le risque de dommage et vous allez être obligés d’adapter vos pratiques d’assurances à une nouvelle situation.

C’est encore un point sur lequel vous allez singulièrement compliquer la question et en fin de compte, en votant cette modification, [164] vous ouvrez la porte à des difficultés que nous ne sommes pas très capables de mesurer à l’heure actuelle et qui peuvent peut-être mener très loin.

Tandis qu’avec le texte que nous connaissons, nous avons l’application jurisprudentielle, nous nous sommes habitués à lui, restons avec nos bons amis tels que nous les connaissons, de crainte d’être trahis par des nouveaux que nous connaissons moins bien.

**M. le Président.** Avant de poursuivre la discussion, je voudrais rectifier une petite erreur.
M. le Doyen Chauveau a fait la comparaison avec la Convention de Varsovie. J’ai noté au passage, qu’il avait dit que dans la Convention de Varsovie, la question de la faute lourde n’était prévue comme faisant obstacle à la limitation de la responsabilité que pour les dommages corporels. Je crois que c’est une petite erreur.

L’article 22 qui prévoit les limites de la responsabilité, vise simultanément, si je puis dire, dans ses paragraphes successifs, les dommages corporels et les dommages aux biens. L’article 29 du Protocole de La Haye dit que les limites de responsabilité prévues par l’article 22 ne s’appliquent pas s’il est prouvé que le dommage résulte d’un acte fait avec l’intention de provoquer un dommage.

A l’article 22, tel qu’il est rédigé par l’article 11, il est question, au paragraphe 1, de transport de personnes, au paragraphe 2, de transport de choses.

[165/170]

M. le Doyen Chauveau. Monsieur le Président vient d’attirer mon attention sur le fait que la Convention de Varsovie traite à la fois du transport des bagages et du transport de marchandises, et pas simplement du transport de personnes.

Si j’ai donné l’impression contraire, c’est que je me suis mal exprimé. Mais il demeure que dans la Convention de Varsovie, on traite du transport de personnes et qu’en matière de transports aériens, il est bien certain que, si j’ose employer cette expression, le frêt essentiel est constitué par les passagers, beaucoup plus que par des marchandises.

C’est principalement ce que l’on a eu en vue lorsqu’on a traité des problèmes de responsabilité.

Par conséquent, je crois, Monsieur le Président, que mon observation demeure valable néanmoins sur le fond.

M. le Président. Quelqu’un demande-t-il encore la parole?

[171/180]

Mr. J. Loeff (Netherlands). Mr. Chairman, Ladies and Gentlemen, we are going very quickly now and I only want to make a small observation, about paragraph 4. If you leave a member of the crew who causes damage with intent to cause loss or damage recklessly and a small loss or damage will probably result then you are going to protect members of the crew who are guilty of sabotage, is that really possible?

The second point is that there is a big difference in my opinion between the English text and the French text. The English text was “done with intent to cause loss or damage”. The next part of the clause says in English “recklessly and with knowledge that loss or damage would probably result”, and the French text “avec l’intention de causer la perte ou le dommage”, and the next says “avec négligence”. I think we must be sure what we mean. The next point is this, I think in many systems of law, always because of public policy you cannot allow a man to plead his own.

Knowing that I think it is merely an observation and that this is probably a matter for the Drafting Committee. I think that even if you leave Clause 4 out it is quite possible that the clause unfortunately will apply to the principle underlying it.

Now clause 4 is very intricate and we have to read it in connection with the rest of the Convention and it would take hours and hours to discuss the actual influence clause 4 would have on the Convention, and therefore my general opinion is that for the moment we ought to leave it as a draft for the Committee or to consider it very carefully, and that we want the members present here to reserve the right to discuss it again fully as soon as we have a text proposed by the Drafting Committee.

Thank you.
M. le Président. Si personne ne désire la parole, je vais mettre aux voix l’adoption éventuelle du paragraphe 4 de la Recommandation n° 5.

M. Tetley (Canada). Le principe ou le paragraphe tel qu’il est rédigé?

M. le Président. Le principe.

La question du principe mise aux voix est rejetée par 12 voix contre, 1 pour et 5 abstentions.

Le paragraphe 4 est donc rejeté.

C’est un très piètre résultat pour la Commission internationale.

No. 10 - 12 June 1963 P.M.

Le Président (M. J. van Ryn):

La question n° 5 est relative au problème de l’Himalaya. En ce qui concerne le paragraphe 1er de la recommendation de la Commission internationale nous proposons la rédaction que vous avez sous les yeux.

À la demande de nos collègues anglo-saxons qui désirent éviter l’emploi du mot “les restrictions” qui est difficilement traduisible pour eux, ce mot pourrait être remplacé par un autre qui figure déjà dans la convention: les exonérations et limitations.

Le reste du texte ne change pas.

M. Suc (Yougoslavie). Monsieur le Président, Messieurs, je voudrais suggérer une petite correction.

Au lieu de “quasi délictuelle” ne pourrait-on pas dire “extra-contractuelle” parce que dans plusieurs législations, vous n’avez pas la notion du “quasi-délictuel”.

M. le Président. Cette question a été discutée longuement. Je vais donner la parole à M. Berlingieri.

Mr. F. Berlingieri (Italy). Mr. Chairman, I could not be more glad about this proposal, because this was my proposal but there was some uncertainty in the translation into English of the words “extra contractuel”. It was my opinion that “extra contractuel” corresponded in English to a tort action. This is my personal submission. Mr. Prodromidès had some doubt about the correspondence between “in tort” in English and “extra contractuel” in French and submitted that “quasi-delictuel” was perhaps better.

I personally think it is just the same, but I would be very glad to accept Mr. Suc’s proposal unless there is some objection from the French delegation.

M. le Président. Nous remplaçons donc les mots “quasi délictuelle” par “extra-contractuelle”.

S’il n’y a pas d’objection je considère que la commission est d’accord sur cette question. (Assentiment).

Pour la suite de la même question il n’y a pas de difficulté de rédaction, puisqu’il s’agit simplement de supprimer dans les textes proposés par la Commission internationale les mots “sous-traitant indépendant employé par lui dans le transport des
marchandises” et de traduire désormais “servant or agent” par un seul mot français “préposé”.

Ce sont des modifications de pure forme, le comité de rédaction y a été attentif, nous ne devons pas nous y attarder ici.

Séance Plénière - 14 Juin 1963

M. le Président (Albert Lilar): . . .

5e Recommandation

Quant à la recommandation positive suivante, elle concerne la “Responsabilité quasi-déllictuelle, le problème du Himalaya”.

La commission de l’Assemblée propose à cet égard un texte qui figure à la page 2 du document Sto/5.

[511]

Je viens de recevoir un projet d’amendement émanant de la délégation canadienne, relatif à l’art. 3. C’est le document Sto/7. Cet amendement, libellé seulement en anglais, est le suivant: “The Canadian Delegation proposes:

(1) that reference to “agent” and “agents” be deleted from the English translation of Art. 4bis (being document Conn. Sto-5 English) so that from Art. 4bis (2) will be deleted the words “or agent” and from art. 4bis (3) will be deleted the words “and agents”;

(2) no change in the French text.”

La délégation canadienne demande donc une modification au texte anglais par la suppression, aux endroits indiqués, des mots “agent” et “agents”.

Quelqu’un demande-t-il la parole au sujet de la proposition de la délégation canadienne?

M. K. Grönfors, Suède (traduction): Monsieur le Président, permettez-moi de vous rappeler que dans la Convention de Varsovie de 1929 l’expression française “préposés” est traduite par “servants or agents”.

Je crains qu’une autre traduction ne cause beaucoup de confusion dans l’avenir.
M. P. Wright, Canada (traduction): Monsieur le Président, quoique le présent amendement proposé par la délégation canadienne semble de pure forme en ce qui nous concerne nous pensons qu’il s’agit d’une question de fond et cette question de fond a été traitée par l’amendement des États-Unis (Sto/8). Je suis heureux de pouvoir discuter de cet amendement et je désire déclarer que la délégation canadienne votera en faveur de l’amendement américain. Toutefois, je désire, avec votre permission puisque je suis à la tribune, déclarer que nous sommes en faveur de l’élimination du mot “agent” ou “agents” repris dans la proposition de la commission.

La délégation suédoise vient de rappeler ce qui est mentionné dans la Convention de Varsovie mais je propose à l’Assemblée d’accorder son attention à ce qui est mentionné dans les Règles de La Haye de 1924 qui sont imprimées à la fin du rapport de la Commission internationale et j’attire votre attention sur les pages 8 et 9 du texte des Règles de La Haye où vous remarquerez que ce même point a été traduit et vous verrez que les Règles de La Haye sous le n° 2 qui accorde des exonérations, mentionnent en français “des actes, négligence ou défaut du capitaine, marin, pilote ou des préposés du transporteur...” et en anglais “act, neglect, or default of the master, mariner, pilot, or the servants of the carrier” et “of the agents or servants of the carrier”. Cette même traduction est employée dans la Règle 2 (q) au bas des pages 8 et 9. Il me semble donc que c’est un amendement valable que nous proposons aux Règles de La Haye, amendement qui consiste à se conformer aux traductions des Règles de La Haye et non pas à celles de la Convention de Varsovie qui traite d’une autre question. Je soumets cela à votre réflexion.

Messieurs, la question de fond posée par la Délégation canadienne en est une qui a déjà été discutée et qui concerne le principe de savoir si un sous-traitant indépendant ou si les sous-traitants indépendants sont couverts. Il a été convenu, M. P. Wright, Canada: Mr. President, although this amendment proposed by the Canadian delegation appears to be a matter of form, as far as we are concerned we think it is a matter of substance and it is a matter of substance that was referred to and dealt with in the United States amendment Sto/8, and while I am only too happy to discuss our amendment, I would like to say that the Canadian delegation would vote for the American amendment. I would like, however, if I may - as I am on my feet - to say why we advocate the elimination of the word “agent” or “agents” from the proposal that has come from the Subcommittee.

We have just heard from the Swedish Delegation of what appears in the Warsaw Convention but I suggest to the Assembly that we should pay some attention to what appears in the Hague Rules of 1924 which are printed at the back of the Report of the International Subcommittee and I direct your attention there to pages 8 and 9 of the text of the Hague Rules where you will find this very matter dealt with in translation and you will see that in the version of the Hague Rules giving the exemptions under (2), you have “des actes, négligence ou défaut du capitaine, marin, pilote ou des préposés du transporteur...” in the French version and in the English version you have: “Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier” and “of the agents or servants of the carrier”. That same translation appears in rule or clause 2 (q) at the bottom of pages 8 and 9. It seems to me a strong proposition that we are putting forward that the amendments to the Hague Rules and the translations in them should conform to the Hague Rules rather than to the Warsaw Convention on another matter and I leave that with you for your consideration.

Now, Gentlemen, the point of substance that concerns the Canadian delegation is the one that has already been discussed and that is whether independent contractors are covered. It was
si j’ai bien compris M. Van Ryn, au sein de la Commission que les sous-traitants indépendants sont sensés être couverts dans l’article 3 mais je comprends que suivant le texte français les sous-traitants indépendants ne sont pas couverts.

Nous estimons, d’après la loi canadienne, que le mot “agent” peut et doit couvrir une série de sous-traitants indépendants et à notre avis une traduction appropriée dans le cadre de la Convention devrait aboutir à une limitation aux “servants”. En effet, nous nous basons sur deux motifs principaux: l’un est purement canadien; en effet, le Canada est un pays fédéral et il n’est pas certain du tout que notre Gouvernement Fédéral représenté à la Conférence Diplomatique puisse souscrire à une législation portant sur la navigation et le transport, qui admet qu’une sous-traitant indépendant s’occupant du commerce maritime, n’est pas engagé directement dans une entreprise de navigation et de transport. Nous ne demandons pas aux autres de changer leur proposition ou leur point de vue mais nous ne pouvons pas modifier notre attitude.

Le second point est celui qui a été soulevé par le Secrétaire-Général, à savoir que, lorsque la discussion porte sur des matières de ce genre, il appartient au Comité Maritime International de trancher des questions relatives à ce qui se passe en mer et qui concerne le commerce maritime. Par ailleurs nos réunions font toujours montrer d’un grand effort pour arriver à une extension du champ d’application et pour couvrir des choses qui se passent à terre ainsi que d’autres sujets comme les actions récursoires et comme les sujets qui ne touchent pas directement à un sujet qui est spécifiquement le nôtre. Je soumets ce point à votre réflexion.

Mr. W. Hecht, Etats-Unis (traduction): Monsieur le Président, permettez-moi de prendre la parole au sujet de l’amendement proposé. Je n’ai pas très bien compris si M. Wright a retiré l’amendement canadien.

M. P. Wright, Canada (traduction): agreed, as I understood from Mr. Van Ryn, in the Commission, that independent contractors were intended to be covered by Article 3 and Clause (2) but in the French version I understand that independent contractors are not covered.

It is our view in the law of Canada that the word “agent” can and does include a variety of independent contractors and in our view a proper translation under the Convention of the French, should be limited to servants. Now, we think this for two basic reasons: one is purely a Canadian one and though it may not affect other countries, we are a federal country and our Federal Government represented at the Diplomatic Conference can only enact legislation in this matter with regard to navigation and shipping if we admit that independent contractors who may be connected with the shipping trade are not engaged directly in the business of navigation and shipping. We do not ask others to change their position or views but we cannot change our position.

A second part of that is one which was referred to by the Secretary General when matters of this kind were being discussed and that it is the business of a Comité Maritime International to concern itself with shipping and with what happens on the seas with regard to maritime commerce and we are always seeing in our meetings great attempts to extend the jurisdiction and interest of the Comité to matters ashore and other matters, such as we have them, of recourse and matters which do not directly deal with the subject matter which is specifically our own and I do commend that point of view to the meeting.

Mr. W. Hecht, United States: Mr. President, may I speak to our proposed amendment, I was not entirely clear as to whether Mr. Wright withdrew the Canadian amendment.

Mr. P. Wright, Canada: We are not withdrawing our amendment but if your
Nous ne retirons pas notre amendement mais si votre amendement est soumis au vote en premier lieu nous voterons en sa faveur.

M. W. Hecht, Etats-Unis: Je désire défendre notre amendement et je pense que l’intention de la Commission était d’étendre les exonérations aux sous-traitants indépendants tels qu’une compagnie de manutention. Lorsque nous employons le mot “servant” ou “agent” nous avons probablement l’intention d’accorder pareille extension mais suivant notre loi “servant” ou “agent” comprend les manutentionnaires ou autres sous-traitants indépendants et c’est la raison pour laquelle nous précisons que ces sous-traitants indépendants ne bénéficieront pas des exonérations proposées. Pour les besoins de la clarté et de la rédaction nous sommes d’avis qu’au deuxième paragraphe de notre amendement, il faudrait une virgule ou une parenthèse après le mot “carrier” et avant les mots “such servants” et que la parenthèse devrait se terminer après les mots “independent contractor”. Il devrait probablement y avoir une virgule après cette parenthèse et au paragraphe 3 il ne devrait pas y avoir de virgule après le mot “carrier” à la deuxième ligne.

Le Président. Nous sommes en train d’examiner conjointement les documents Sto/7 et Sto/8 puisqu’ils se rapportent en réalité à la même disposition et qu’ils ont une connexion étroite, l’un étant un amendement canadien, l’autre un amendement proposé par la délégation des États-Unis.

M. J.P. Kruseman, Pays-Bas (traduction): Monsieur le Président, hier au sein de la Commission il y a eu une longue discussion concernant la question de la traduction. La délégation Britannique avait proposé de mentionner “agents and servants” ou “servants and agents” et le texte français se lisait “agents et préposés”. Hier il a été clairement démontré, je pense par la délégation française, que la
traduction exacte serait uniquement “agents” sans le mot “préposés”. A présent on nous soumet un amendement tendant à biffer dans le texte anglais le mot “agent”. Un de mes collègues a consacré la journée d’hier à pointer les expressions “agents” et “préposés” dans la Convention originale de 1924; elles sont mentionnées neuf fois.

Je vous suggère de faire attention lorsque vous ajoutez quelque chose à la Convention afin de ne pas vous écarter par la voie d’un amendement, des notions que nous avons dans la Convention. Si je comprends bien il y a en Grande-Bretagne deux significations du mot “agent”; d’une part l’agent du navire dans le sens de quelqu’un qui [514] signe les connaissements, remet les marchandises, etc., et d’autre part l’agent qui fait un autre travail et qui est également appelé agent. Je crains que nous ne nous heurtions à toutes sortes de difficultés si nous traduisons l’un par “agent” et l’autre par “préposé”; dans ce cas je préférerais une traduction hollandaise de toute la Convention.

Monsieur le Président, je ne plaisante pas; je pense que si nous ne faisons pas très attention, la Conférence Diplomatique dira que nous n’avons pas très bien travaillé à Stockholm et que plus tard nous aurons des difficultés interminables devant les tribunaux ou même avant que nous ne nous présentions devant les tribunaux. C’est la raison pour laquelle je propose respectueusement que nous essayons de sortir de cette impasse. Vous, Monsieur le Président, vous connaissez peut-être la solution; quant à nous, nous proposons la constitution d’une commission. Merci, Monsieur le Président.

M. J.P. Honour, Grande-Bretagne (traduction): Je serai très bref. La délégation britannique a toujours eu l’intention d’inclure le mot “agent” dans l’amendement. À titre d’exemple nous citons les procès qui peuvent être intentés contre les membres de l’équipage afin d’éviter l’application des Règles de La Haye. Nous suggérons d’ajouter également “agents” (in French). But now we are seized with the amendment to strike out in the English text on that last proposal the word “agent” (English). Now one of my colleagues has taken yesterday the whole day and I have controlled his work, to find out in the original Convention of 1924 what about “agent” (English and French) and about “préposé”, and I think if I am not mistaken they are mentioned nine times.

I am making a suggestion: let us be careful that in the text of a new article to be added to the Convention, we don’t throw away something we have in the Convention in this connection. It is my understanding that in English (in Great-Britain) there are two ways of using the word “agent”, one is a shipping agent in the sense of someone who [514] signs Bs/L, delivers cargo etc., and there is another kind of “agent” who does other work and who is also called “agent”. I am afraid we will get into all kinds of difficulties if we translate one kind of (English) “agent” by (French) “agent”, and the other kind in “préposé”, then I would prefer to have a Dutch version of the whole Convention.

Mr. Chairman, I am not joking; I think that if we are not very careful, the Diplomatic Conference will say that the work has not been done very well in Stockholm, or that afterwards we will have no end of trouble with courts, or even before we come to the courts, and so on and so on. So I would respectfully suggest that we try and get out of this muddle - how Mr. Chairman, perhaps you can best advise and we propose a committee of one - being yourself. Thank you, Mr. Chairman.

Mr. J.P. Honour, Great Britain: I will be extremely brief. It was always the intention of the British delegation to include in this amendment agents. To give you one example we are referring to actions which may be brought against members of the crew, in order to get round the Hague Rules we should propose also adding all cases of ship’s managers who may also be sued for this rea-
tous les cas des gestionnaires de navires qui peuvent également être assignés pour cette raison et qui, suivant la loi anglaise, sont en fait des “agents” et pas des “servants” et c’est la raison pour laquelle, si l’amendement canadien était accepté, ces personnes ne bénéficieraient pas de la Convention.

A propos de l’amendement américain je désire préciser que son propos principal semble d’exclure expressément les sous-traitants indépendants. Nous ne sommes pas opposés à cela mais nous suggérons, si cela est vraiment la seule raison de l’amendement, de biffer les mots “stevedoring company or” et dans ce cas l’amendement serait libellé comme suit: “other such servant or agent not being an independent contractor”. Nous ne serons pas opposés à un amendement libellé de la sorte mais nous ne voyons pas pourquoi les mots “stevedoring company” devraient être ajoutés étant donné que cela pourrait viser indiretement “agents”.

Le Président. Quelqu’un demande-t-il encore la parole? Si personne ne demande plus la parole, nous allons successivement voter sur chacun des deux amendements soumis à l’Assemblée. Le premier amendement fait l’objet du document Sto/7, amendement canadien, qui tend à supprimer les mots “agent” et “agents” dans le texte anglais...


The President: Does anyone else wish to come to the platform? If nobody requests leave to speak, we shall successively put to your votes the two amendments submitted to the consideration of the Assembly. The first amendment forms the subject of document Sto/7, a Canadian amendment which tends to delete the words “agent” and “agents” from the English text...

Mr. P. Wright, Canada: Mr. Chairman, would it be possible to have the American amendment first? It would be a great deal easier for the meeting and would certainly carry the judgment of our delegation.

Le Président. Je crois qu’il y a des raisons valables pour procéder comme le demande la délégation canadienne. Je retire donc la proposition que je viens de faire et nous commencerons par un vote concernant l’amendement faisant l’objet du document Sto/8, introduit par la délégation des États-Unis.

La délégation des États-Unis marque son accord pour que son amendement soit modifié ainsi que le souhaite la délégation des États-Unis.

Le Président. Je crois qu’il y a des raisons valables pour procéder comme le demande la délégation canadienne. Je retire donc la proposition que je viens de faire et nous commencerons par un vote concernant l’amendement faisant l’objet du document Sto/8, introduit par la délégation des États-Unis.

La délégation des États-Unis marque son accord pour que son amendement soit modifié ainsi que le souhaite la délégation des États-Unis.
Delegation, i.e. that the amendment should read on page 2 as follows: “such servant or agent not being an independent contractor”, the words “the stevedores companies” being deleted.

We shall therefore put to your votes the amendment moved by the American delegation, being document Sto/8.

*Voted in favour*: Belgium, Canada, Denmark, Finland, France, Great Britain, India, Ireland, Italy, Netherlands, Norway, Portugal, Sweden, United States, Yugoslavia.

*Abstained from voting*: Germany, Greece, Japan, Poland, Spain, Switzerland.

The amendment is adopted.

Mr. P. Wright, Canada: The Canadian amendment Sto/7 is withdrawn.

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**Diplomatic Conference - May 1967**

**Text adopted by the CMI Stockholm Conference**

[674]

**Article 3.**

Between articles 4 and 5 of the Convention shall be inserted the following article 4bis:

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

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

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**Procès-Verbal de la Commission**

[701]

**Article 3.**

Entre les articles 4 et 5 de la Convention est inséré un article 4bis libellé comme suit:

“1. Les exonérations et limitations prévues par la présente convention sont applicables à toute action contre le transporteur relativement à la réparation de
Article 4 bis - Liability in tort

pertes ou dommages à des marchandises faisant l’objet d’un contrat de transport, que l’action soit fondée sur la responsabilité contractuelle ou sur une responsabilité extra-contractuelle”.

“2. Si une telle action est intentée contre un préposé du transporteur (pourvu que ce préposé ne soit pas un contratant indépendant), [702] ce préposé sera autorisé à se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la convention”.

“3. L’ensemble des montants récupérables à charge du transporteur et de ses préposés ne dépassera pas dans ce cas la limite prévue par la présente convention”.

Cinq amendements avaient été introduits:

1° CONN 3, par les Pays scandinaves.
Vote: pour: 18;
contre: 8;
abstentions: 3;
Total: 29.

L’amendement a été adopté. Le paragraphe 4 ci-dessous est ajouté au texte de l’article 3:

“4. Néanmoins un employé ou agent du transporteur n’aura pas le droit de se prévaloir des clauses stipulées dans cet article s’il est prouvé que le dommage résulte d’un acte ou d’une omission de ce préposé ou agent, fait soit avec l’intention de provoquer un dommage, soit avec imprudence et avec conscience d’un dommage en résulterait probablement”.

2° CONN 3, page 1, par les Pays scandinaves.
Vote: pour: 24;
contre: 5;
abstentions: 2;
Total: 31.

L’amendement a été adopté. Un alinéa 5 est ajouté à l’article 5 § 5 de la Convention de 1924:

“Le transporteur n’aura pas le droit de bénéficier de la limitation de responsabilité stipulée au § 5, s’il est prouvé que le dommage résultant d’un acte ou omission du transporteur a été perpétré avec l’intention de causer un dommage ou d’une whether the action be founded in contract or in tort”.

“2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), [702] such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention”.

“3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention”.

Five amendments were submitted:
1st CONN 3, by the Scandinavian countries.
Vote: for: 18;
against: 8;
abstentions: 3;
Total: 29.

The amendment was adopted. The following paragraph 4 is added to the text of article 3:

“4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with the knowledge that damage would probably result”.

2nd CONN 3, page 1, by the Scandinavian countries.
Vote: for: 24;
against: 5;
abstentions: 2;
Total: 31.

The amendment was adopted. A fifth paragraph shall be added to article 4(5) of the 1924 Convention:

“The carrier shall not be entitled to the benefit of the limitation of liability provided for in this paragraph 5 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”.

PART II - VISBY RULES

631
Le texte de l’article 3, tel que modifié par deux amendements scandinaves est adopté par la commission.

Vote: pour: 24;
contre: 1;
abstentions: néant;
Total: 25.

The text of article 3, as modified by the two Scandinavian amendments, was adopted by the Commission.

Vote: for 24;
against: 1;
abstentions: none;
Total: 25.
ARTICLE 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

ILA 1921 Hague Conference
Text submitted to the Conference

Article 7.
A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under this Article, provided such surrender shall be embodied in the bill of lading issued to the shipper.

Second day’s proceedings - 31 August 1921

[168]

Is that agreed? (Agreed).

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

Article 5.
A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under these Rules, provided such surrender shall be embodied in the bill of lading issued to the shipper.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[382]
No change.
M. le Président trouve aussi que le texte aurait été plus élegant s’il avait été fait par des juristes. Quant à la seconde partie de l’observation de M. Ripert, elle serait à considérer si la convention avait la portée qu’il lui donne. Mais l’article 5 ne permet pas du tout au transporteur de modifier les droits, obligations et exonérations figurant dans les dispositions antérieures; il permet simplement à l’armateur d’accepter des charges plus lourdes que celles déterminées dans ces articles. Il peut donc accepter d’être responsable du cas fortuit, mais il ne peut jamais se décharger d’autres responsabilités. Par conséquent l’article 4 est parfaitement obligatoire pour le chargeur. L’économie de la Convention est que l’article 3 (8) proclame que les règles qui précèdent sont d’ordre public, toute clause ou convention ou accord contraire étant de nul effet. Il faut ensuite un autre article restreignant cette règle générale et par lequel on prévoit que certaines clauses d’exonération sont licites. C’est ce que fait l’article 4 notamment dans le paragraphe 2, il énumère toute une série de cas, qui en droit commun ne sont pas en dehors des règles.

Sir Leslie Scott
Il comprend l’article 5 comme le Président. Peut-être y aurait-il moyen de préciser en disant qu’un transporteur pourra abandonner tout ou partie de ses droits et exonérations (art. 4) ou augmenter ses responsabilités et obligations (art. 3).

M. le Président demande que Sir Leslie Scott rédige un texte en ce sens.

Sir Leslie Scott est d’accord sur cette interprétation de l’article 5 mais quant au texte de la convention, il partage le point de vue de M. Alten.

The Chairman also found that the text would have been more elegant had it been written by jurists. As to the second part of Mr. Ripert’s comment, it was a matter for consideration whether the Convention had quite the scope attributed to it. But article 5 did not in any way allow the carrier to modify the rights, obligations, and immunities that featured in the preceding clauses. It simply allowed the carrier to accept heavier responsibilities than those established in these articles. He could therefore accept responsibility for unforeseen events but he could never release himself from other responsibilities. Consequently, article 4 was completely binding on the shipper. The economy of the Convention was that article 3(8) proclaimed that the rules that preceded it were matters of public policy, any contrary clause, treaty, or agreement being null and void. It was necessary, therefore, to have another article restricting this general rule, and in which it would be provided that certain immunity clauses were permitted. This was the purpose of article 4, notably paragraph (2), where a whole series of cases were listed that in general law were within these rules.

Sir Leslie Scott understood article 5 in the same way as the Chairman. Perhaps there might be a way of making the text more precise by stating that a carrier could abandon all or part of his rights and immunities (article 4) or increase his liability and obligations (article 3).

The Chairman asked Sir Leslie Scott to draft an appropriate text.
vue de M. Ripert. Sans doute, les États auront la faculté de modifier le texte même de ces dispositions dans leur loi nationale, mais à cette fin il est indispensable que ces dispositions soient claires, ce qui n’est pas le cas. La dernière Conférence a recommandé ce projet uniquement comme une base pour des négociations ultérieures; rien ne s’oppose à ce que le fond et la forme en soient modifiés.

Troisième Séance Plénière - 7 Octobre 1923

[71]

M. le Président aborde l’examen de l’article 5.

Sir Leslie Scott croit qu’en vertu de cet article, et avec référence à l’article 1(b), un connaissement doit dans tous les cas être conforme aux stipulations de la convention. Mais lorsqu’un connaissement est émis en vertu d’une charte-party il ne constitue pas un nouveau contrat à moins que 1°) l’affréteur ne le négocie ou que 2°) l’affréteur et l’armateur n’aient l’intention de conclure un nouveau contrat qui prenne la place de la charte-party. Par conséquent lorsque ni l’un ni l’autre de ces cas ne se présente, l’insertion des stipulations de la convention dans le connaissement ne peut affecter la charte-party d’aucune façon. Les stipulations de la convention pourraient parfaitement être imprimées sur le dos d’un connaissement émis en vertu d’une charte-party et l’on pourrait apposer au recto du connaissement une clause marginale portant: “les clauses figurant au dos devront s’appliquer lorsque le présent connaissement est négocié, et en pareil cas toutes clauses du présent connaissement, non conciliables avec les conditions imprimées au dos, seront considérées comme annulées”. Il a été dit que dans certains commerces, par exemple le commerce des bois, les chartes-parties et les connaissements scandinaves contiennent tous de pareilles clauses. En effet, l’article 5 qui permet au transporteur d’abandonner
ses droits et exonérations ne permet pas cependant de considérer le connaissement comme faisant foi absolue et non seulement comme une présomption sauf preuve contraire selon l’article 3 (4). Il faudrait ajouter après le mot exonération les mots “ou d’augmenter les responsabilités et obligations dont il est traité à l’article 3”, de façon à donner satisfaction aux pays scandinaves.

M. le Président constate que la commission est d’accord sur cette addition.

M. Beecher désire cependant provisoirement réserver son opinion. Il a pour instructions de proposer un amendement à l’article 5 de façon à exprimer clairement que [72] l’abandon des droits et exonérations devra se faire conformément à la loi du pays où le connaissement a été émis et à condition que cette loi permette abandon. Aux Etats-Unis on ne veut pas avoir une disposition permettant à l’armateur de faire une distinction entre chargeurs et de fournir à certains d’entre eux des connaissements plus favorables que ne l’exigent les Règles de la Haye. L’on desire que si le transporteur se prévaut de la liberté que lui laisse cette disposition, il le fasse pour tous les chargeurs et partout. M. Beecher propose donc d’ajouter les mots “si les lois du pays où le connaissement est émis le permettent”.

M. Bagge constate que la proposition faite précédemment par les intéressés américains était: “que cet abandon soit inséré dans le connaissement délivré au chargeur”.

M. le Président estime qu’une déclaration de sa part constatant que chaque pays est parfaitement libre d’adopter une pareille loi suffira à donner satisfaction à M. Beecher. Si en introduisant ces Règles dans leur loi, les Etats-Unis veulent ajouter une disposition de ce genre ils en ont le droit; le procès-verbal constatera que rien dans la convention n’empêchera pareilles dispositions dans la loi nationale.

M. Ripert demande quelle est la signification des mots “pourvu que cet abandon soit inséré dans le connaissement”.

article 3(4). It would be necessary to add after the word immunity the words “or to increase the liabilities and duties dealt with under article 3”, in a way to give satisfaction to Scandinavian countries.

The Chairman confirmed that the Commission agreed to this addition.

Mr. Beecher, however, wished to reserve his opinion provisionally. He had been instructed to propose an amendment to article 5 that would clearly express that [72] the surrender of rights and immunities would have to be made in conformity with the law of the country where the bill of lading had been issued and on condition that this law permitted such a surrender. In the United States there was no desire for a provision that allowed the shipowner to make a distinction between shippers and to provide certain of them with bills of lading more favourable than required by the Hague Rules. What was wanted was that if the carrier took advantage of the freedom that this provision afforded him, he should do so for all shippers everywhere. Mr. Beecher proposed, therefore, adding the words “if the laws of the country where the bill of lading was issued so allow”.

Mr. Bagge confirmed that the proposal previously made by the American interests was: “that this surrender should be included in the bill of lading issued to the shipper”.

The Chairman felt that a declaration from him confirming that each country was perfectly at liberty to adopt such a law would be enough to satisfy Mr. Beecher. If, in introducing these rules into their law, the United States wanted to add such a provision it was their right so to do. The proceedings would confirm that nothing in the Convention would prevent such provisions in national law.

Mr. Ripert asked what was the meaning of the words “provided that such a surrender shall be embodied in the bill of lading”.

Sir Leslie Scott felt that these words had been inserted to indicate quite clearly that the surrender must be contractual, that is, agreed at the time when the
**Sir Leslie Scott** estime que ces mots ont été insérés pour indiquer bien clairement que l’abandon doit être contractuel, c’est-à-dire agréé au moment ou l’on fait le contrat de transport, mais non pas simplement un abandon consenti après exécution du contrat.

**M. Ripert** demande quel inconvénient il y aurait à pareil arrangement: on peut toujours accepter une responsabilité plus étendue que celle imposée par la loi.

**Sir Leslie Scott** pense que le contrat de transport qu’est le connaissement doit contenir dans tous les cas les clauses et conditions de la convention. Si l’on désire changer quelque chose aux conditions de la convention, l’article 5 prévoit que le changement doit être inséré dans le connaissement.

**M. Ripert** demande pour quelle raison? Si un transporteur assume une responsabilité plus étendue au moyen d’une lettre de garantie, en vertu de quelle règle ce contrat serait-il annulé? On semble exiger ici comme condition *sine qua non* que cet accord soit expressément indiqué dans le connaissement.

**M. le Président** déclare que le procès-verbal pourra constater que l’on n’a pas voulu faire du connaissement un contrat solennel; on a simplement voulu souligner que cette augmentation de responsabilité ne pouvait être imposée au transporteur.

**Septième Séance Plénière - 9 Octobre 1923**

**M. le Président (Louis Franck)** . . .

A l’article 5 on a pu insérer la formule que le transporteur sera libre non seulement d’abandonner tout ou partie de ses droits et exonérations, mais aussi d’augmenter ses responsabilités et obligations tels que les uns et les autres sont prévus par la convention. C’est là une simple modification de rédaction, car c’était évidemment le sens de la convention.

**Seventh Plenary Session - 9 October 1923**

**Mr. Louis Franck (Chairman)** . . .

In article 5, one was able to insert the formula that the carrier would be free not only to abandon all or part of his rights and immunities but also to increase his duties and responsibilities as they were provided for by the Convention. That meant a simple change in drafting because it was evidently the meaning of the Convention.
Now, Sir, the last point arises on Article 5 and we are back again on bulk cargoes and chartered vessels which has been the subject of so much discussion, and the proposal is that we should add at the end of that Article the following words.

The Chairman: It is the Article 5.

Sir Norman Hill: Yes, at the foot of page 7 of the red and black: “Nothing in these Rules shall prevent or control the making of any charter party or the issuance of bills of lading thereunder but no provision in such bills of lading shall violate the terms of these Rules”.

A Delegate: Is that in substitution for Article 5 or an addition?

Sir Norman Hill: No, an addition.

Mr. W. W. Paine: As a separate paragraph.

Sir Norman Hill: A separate paragraph in Article 5.

The Chairman: Then we proceed to Article 5. It is proposed to add to Article 5 this clause or paragraph: “Nothing in these Rules shall prevent or control the making of any charter party or the issuance of bills of lading thereunder, but no provision in such bills of lading shall violate the terms of these Rules”. Is that the will of the Conference? (Agreed).
The Chairman: Now upon the question which Mr. Miller raised, is it sufficient that it shall appear upon the shorthand note that, in the presence of Sir Leslie Scott, the learned Judge, Signor Berlingieri and other delegates to the Diplomatic Conference, it has been agreed that the intention of the Conference, is not to construe the terms which are expressed here, so as to interfere in any way with the law of general average, where there is no such express reference to the law of general average. Is that sufficient? (Agreed).

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

NOTHING IN [383] THESE RULES SHALL PREVENT OR CONTROL THE MAKING OF ANY CHARTERPARTY OR THE ISSUING OF BILLS OF LADING THEREUNDER, BUT NO PROVISION IN SUCH BILLS OF LADING SHALL VIOLATE THE TERMS OF THESE RULES.

Conférence Diplomatique -
Octobre 1922
Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

M. le Président.
- Le but de la seconde phrase est d’établir que l’armateur garde sa parfaite liberté de conclure des chartes-parties aux conditions qu’il voudra et qu’il pourra y insérer toutes les clauses qu’il désire comme dans le passé, mais que si l’armateur s’engage à émettre des connaissements, il ne peut dans ces derniers documents violer la convention. Il peut bien ne pas émettre de connaissement, mais s’il le fait il doit se conformer à ces règles.

M. de Rousiers, délégué de la France, est d’avis que cette stipulation est inopportune.

M. le Président.
- Lorsque la cargaison est chargée, le chargeur demande un connaissement et le capitaine lui signe ce document, dans lequel il dit simplement qu’il a reçu telle marchandise à délivrer à tel endroit et pour le reste il stipule que toutes autres conditions seront celles de la charte-partie. Si ce connaissement reste entre les mains du chargeur, tout est bien et d’après le droit américain c’est la
charte-partie qui régit le contrat. Mais si le contrat est passé à un tiers porteur de bonne foi le navire est tenu vis-à-vis de lui.

M. de Rousiers, délégué de la France, demande si le connaissement émis dans ces conditions tomberait sous l’application de la convention. Il estime, au contraire, qu’il devrait ne pas y être soumis.

M. le Président exprime l’avis que ce point est parfaitement clair. D’après l’article 3(3), le transporteur doit délivrer un connaissement; mais la charte-partie peut stipuler qu’il ne doit pas le faire. Le capitaine peut donc par contrat se libérer de l’obligation de l’article 3(3). Mais s’il émet le connaissement, ce connaissement est soumis à la convention. M. le Président assistait à la Conférence de Londres et il est certain que c’était là l’intention de l’assemblée.

M. Bagge, délégué de la Suède, demande si le transporteur est tenu ou non d’indiquer dans le connaissement le nombre de colis même s’il n’a pas eu les moyens raisonnables de vérifier, naturellement avec la réserve “quantity unknown”.

M. le Président déclare que, si le transporteur accepte une cargaison de bois de mine, par exemple, et qu’il n’a pas de moyens raisonnables de contrôler le nombre de props embarqués, il doit dire au chargeur qu’il n’accepte sa marchandise qu’avec la stipulation “plus ou moins”. Il peut insérer cette clause dans la charte-partie. S’il ne le fait pas il abandonne son droit et il est tenu pour le nombre indiqué au connaissement.

M. de Rousiers, délégué de la France, propose, en conclusion, le texte suivant:

“Aucune disposition de la présente convention ne s’applique aux chartes-parties; mais, si des connaissements sont émis dans le cas d’un navire sous l’empire d’une charte-partie, ces connaissements sont soumis aux termes de la présente convention”.

MM. Ramcke, délégué de l’Allemagne, et van Slooten, délégué des Pays-

the contract. But if the contract is passed to a bona fide third-party holder, the ship is liable to him.

Mr. de Rousiers, French delegate, asked if the bill of lading issued under such conditions would fall within the scope of the convention. He felt, to the contrary, that it should not be subject to it.

The Chairman expressed the opinion that this point was extremely clear. According to article 3(3), the carrier must issue a bill of lading, but the charter party could provide that he did not have to. The captain was able, therefore, by contract to free himself from the obligation of article 3(3). But if he issued a bill of lading, this bill of lading was subject to the convention. The Chairman had taken part in the London Conference and was sure that this had been the intent of the assembly.

Mr. Bagge, Swedish delegate, asked whether the carrier was or was not bound to show in the bill of lading the number of packages even if he had no reasonable means for checking this, naturally with the proviso “quantity unknown”.

The Chairman declared that if the carrier accepted a cargo of mining timber, for example, and was without reasonable means for verifying the number of props taken on board, he ought to inform the shipper that he would not accept the goods without the specification “more or less”. He could insert this clause in the charter party. If he did not do so, he forfeited his right and was liable for the number shown in the bill of lading.

Mr. de Rousiers, French delegate, proposed, in conclusion, the following text:

The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention.

Messrs. Ramcke, German delegate, and van Slooten, delegate from the
Bas, se rallient à la proposition de M. de Rousiers, qui est acceptée ensuite par l’assemblée.

M. le Président propose d’ajouter que: “Aucune disposition de ces règles ne sera considérée comme empêchant l’insertion dans un connaississement d’une disposition licite quelconque relative aux avaries communes”. En se rapportant à l’article 4 (7) on remarque qu’il n’y a qu’une seule référence à l’avarie commune dans la convention. Elle a été jugée nécessaire parce qu’on estimait à Londres qu’en l’absence de pareil texte on aurait pu interpréter l’article comme constituant une défense de stipuler au sujet de l’avarie commune.

M. de Rousiers et M. le Président proposent de remplacer la seconde phrase de l’article par: “Aucune disposition de la présente convention ne s’applique aux chartes-parties; mais si des connaissements sont émis dans le cas d’un navire sous l’empire d’une charte-party, ils sont soumis aux termes de la présente convention”.

M. Langton propose d’y ajouter: “Aucune disposition dans ces règles ne sera considérée comme empêchant l’insertion dans un connaissement d’une disposition licite quelconque au sujet d’avaries communes”.

La Commission se rallie unaniment à ces amendements.

Mr. de Rousiers and the Chairman proposed replacing the second sentence of the article with:

The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention.

Mr. Langton proposed an addition:

Nothing in this Convention shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

The Commission agreed unanimously to these amendments.

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Mr. Beecher. - Vous aviez dit qu’à propos de l’article 5, nous nous occupions de la définition du contrat de l’alinéa 1 (b).

M. le Président. - Le mot “charter-party” dans l’article 5 doit être interprété dans ce sens qu’il se réfère seulement à...
des contrats d’affrètement relatifs au navire entier ou à une partie du navire, mais pas à un contrat de transport en cueillette.

**M. de Rousiers.** - Ou contrat de transport de marchandises, comme en France.

**M. Bagge.** - Devons-nous comprendre que, lorsque quelqu’un envoie un petit lot de marchandises, l’armateur peut lui dire: je vais vous remettre un connaissément, mais je pourrai recouvrer à vos frais ce que j’aurai éventuellement à payer à l’acheteur de ce connaissément! Quelle sera la valeur d’une pareille convention? Il ne s’agit pas évidemment là d’une charte-partie, mais d’un accord préalable avec celui qui charge le petit lot.

**M. le Président.** - Je pense qu’il ne serait pas possible de conclure un pareil arrangement dans le cas où il y aurait un connaissément.

**M. le Judge Hough.** - Je suis d’accord ici avec M. Bagge et à moins que l’on ait l’intention d’établir des stipulations moins sévères que celles contenues dans les règles, les parties doivent s’en rapporter à l’article 6 “Conditions spéciales”. Si le cas ne rentre pas dans les termes de l’article 6 (j’exprime ici mon opinion personnelle), je suis d’accord que les parties doivent se conformer aux règles, et telle a bien été l’intention de leurs rédacteurs. Je pense au sujet de la définition du connaissément, que s’il y a une charte-partie et si aucun connaissement n’est émis, l’article 5 est applicable et l’on peut faire tout arrangement qui semble convenable. Mais, lorsqu’un connaissement est émis, pareille convention ne serait pas permise, à moins qu’elle ne soit comprise dans les termes de l’article 6 “Conditions spéciales”.

**M. le Président.** - Au sujet de la question posée par M. Bagge, je répondrai que si un armateur émet un connaissément, mais stipule que le chargeur le garantira contre tout ce qui en résultera, pareille convention n’est pas valable. Ce serait, en effet, [149] éluider la convention. Lorsqu’il n’y contracts for an entire ship or part of the ship, and not to a contract of carriage* en cueillette* (i.e., with such cargo as the captain may pick up).

**Mr. de Rousiers.** - Or contract for the carriage of goods, as in France.

**Mr. Bagge.** - Are we to understand that when someone ships a small amount of goods the shipowner may say to him, I am going to give you a bill of lading but I may well recover at your expense what I shall eventually have to pay the buyer of the bill of lading! What will be the value of such an agreement? Clearly, we are not dealing here with a charter party but with an agreement lawful for the person who ships in small amounts.

**The Chairman.** - I think it would not be possible to conclude such an arrangement where there was a bill of lading.

**Judge Hough.** - I am in agreement here with Mr. Bagge and so far as we are intending to create provisions that are less severe than these in the rules, the parties should look at article 6 “Special Conditions”. If the case does not fit within the terms of article 6 (here I am expressing a personal opinion), I agree that the parties should conform to the rules and such was indeed the intention of the framers. My feeling concerning the definition of the bill of lading is that if a charter party exists and if no bill of lading is issued, then article 5 is applicable and whatever arrangement as seems convenient should be made. But, when a bill of lading is issued such an agreement should not be allowed unless understood under the terms of article 6 “Special Conditions”.

**The Chairman.** - Regarding the question posed by Mr. Bagge, I shall respond by saying that if a shipowner issues a bill of lading but stipulates that the shipper will indemnify it for the consignee against any thing that might occur, such an agreement is not valid. It would be, in effect, [149] to evade the Convention. When there is no hiring of a ship in total or in part, but there is a contract for the carriage by sea of specified goods, from the moment when you issue a bill of lad-
a pas une location de navire en tout ou en partie, mais bien un contrat de transport maritime pour des marchandises déterminées, du moment où vous délivrez un connaissement, vous ne pouvez faire un arrangement d’après lequel, quand même, on échappera à la convention pour l’exécution du transport. (Adopté).

M. le Président. - Il n’y a plus d’observations? Les deux clauses proposées par la commission viendront donc s’ajouter à l’article 5.

M. Bagge croit devoir reprendre ici la question qu’il a soulevée à l’article 3 concernant les lettres de garantie. L’article 5 stipule qu’aucune disposition de la convention ne s’appliquera à certains documents comme les chartes-parties et l’article 1(b) dispose que le contrat de transport s’applique uniquement au contrat constaté par un connaissement ou un document similaire. Or, il peut y avoir un accord qui n’est, ni une charte-party ni un connaissement ou document similaire, par exemple une convention par laquelle le transporteur demande au chargeur de prendre à son compte l’indemnité que le transporteur pourrait avoir à payer au porteur du connaissement. Afin de n’avoir qu’une seule définition concernant l’application de la convention, on devrait comme cela a été proposé, transférer la seconde phrase de l’article 5 à l’article 1 (b), faute de quoi on ne saura pas comment interpréter la convention lorsqu’il s’agit de tels accords conclus en dehors du connaissement.

M. le Président croit que la portée de la convention ne dépend pas de cette modification; il a examiné les articles 5 et 6 au point de vue des craintes exprimées you cannot make an arrangement in which, all the same, one will escape from the agreement for the carrying out of such a carriage. (Carried).

The Chairman. - Are there any more comments? The two clauses proposed by the commission will be added therefore to article 5.

Mr. Bagge believed that it was now time to re-examine the question he had raised in article 3 concerning letters of guarantee. Article 5 stipulated that no provision in the Convention would apply to specific documents like charter parties and article 1(b) provided that the contract of carriage applied solely to a contract confirmed by a bill of lading or similar document. Thus one might have an agreement that is neither a charter party nor a bill of lading or similar document - for example, an agreement by which the carrier asked the shipper to indemnify the carrier for damages paid to the holder of the bill of lading. So as to have only one definition concerning the application of the Convention, one should, as had been proposed, transfer the second sentence of article 5 to article 1(b). Without this, one would not know how to interpret the Convention when dealing with such agreements concluded outside the bill of lading.

The Chairman believed that the scope of the Convention did not depend on this amendment. He had examined articles 5 and 6 from the point of view of the fears expressed by Mr. Bagge, who
mées par M. Bagge: celui-ci redoute que lorsque la convention entrera en vigueur les armateur ne se disent: “Nous allons être liés envers les tiers-porteurs, mais nous allons nous faire garantir en faisant une charte-partie et en disant aux chargers qu’ils doivent se protéger contre notre propre négligence”. Le Président estime que cela ne serait pas valable [73] et que l’article 6 l’empêche, car il dit expressément qu’on ne peut faire des contrats dérogatoires, qu’à la condition qu’aucun connaissement soit émis et que l’accord intervenu soit inséré dans un récépissé qui sera non négociable; cette disposition spéciale ne peut être appliquée pour les cargaisons ordinaires.

M. Bagge objecte qu’à l’article 3 (8) on parle de “toutes clauses, conventions ou accords dans un contrat de transport”, c’est-à-dire dans un connaissement. Or, l’accord dont il vient de parler n’est pas un contrat de transport; par conséquent, la disposition de l’article 3 (8) n’est pas applicable à pareil accord.

M. le Président dit que l’article 1 (b) parle de documents similaires formant titre pour le transport de marchandises.

M. Bagge répond qu’un accord comme celui auquel il fait allusion n’est ni un connaissement, ni un document similaire formant titre ni une charte-partie. Pour des envois de petits lots on émet un connaissement mais on fait en même temps un accord spécial par lequel le chargeur s’engage à rembourser à l’armateur ce que celui-ci aurait à payer au porteur du connaissement et cela parce que l’armateur n’a pu insérer une “négligence clause” dans le connaissement.

M. Sindballe ajoute qu’un accord qui a été fait avant l’embarquement des marchandises ne peut pas être un document formant titre.

Sir Leslie Scott répond qu’il n’y a que deux hypothèses possibles: ou bien il y a un document représentant les marchandises, ou il n’y en a pas. Dans le premier cas pareil accord se rapportera aussi au contrat de transport et en pareil cas c’est un document similaire. Si au was afraid that when the convention entered into force the shipowners would say “we are going to be bound to the holders, but we are going to protect ourselves by making a charter party and by telling the shippers to protect themselves against our negligence”. The Chairman felt that that would not be valid [73] and that article 6 prevented it, because it expressly said that one should not make derogatory contracts, except on the condition that no bill of lading be issued and that the agreement reached be embodied in an acknowledgment, which would be non-negotiable. This special provision could not be applied for ordinary cargoes.

Mr. Bagge objected that in article 3(8) one spoke of “any clause, covenant, or agreement in a contract of carriage”, that is, in a bill of lading. The agreement that had just been spoken of was not a contract of carriage. As a result, the provision in article 3(8) was not applicable to such an agreement.

The Chairman said that article 1(b) spoke of similar documents of title for the carriage of goods.

Mr. Bagge replied that an agreement like the one to which he alluded was not a bill of lading or a similar document of title, and not a charter party. For sending small lots, the practice was to issue a bill of lading while at the same time making a special agreement by which the shipper undertook to reimburse the shipowner for what he had to pay to the holder of the bill of lading. That was done because the shipowner had not been able to insert a “negligence clause” in the bill of lading.

Mr. Sindballe added that an agreement that had been made before the shipment of the goods could not be a document of title.

Sir Leslie Scott replied that only two hypotheses were possible: either there was a document representing the goods, or there was not. In the first case, such an agreement would be relevant to the contract of carriage as well and, in such a case, it was a similar document. If, on the other hand, there were no documents
contraire il n’y a pas de documents représentant les marchandises, la convention ne s’applique pas du tout.

Mr. Bagge dit que l’article 3(8) ne s’appliquerait pas puisqu’il n’y aurait pas un document formant titre.

Mr. le Président répond que si l’accord des parties résulte de plusieurs documents différents qui se complètent, cela ne constitue cependant qu’un accord unique et le juge annulera une convention de ce genre parce qu’elle n’a été faite qu’en vue du transport.

Mr. Ripert objecte que cet accord pourrait avoir pour objet une série de transports. Il demande la suppression dans l’article 3(8) des mots “dans un contrat de transport”.

Sir Leslie Scott s’y oppose.

Mr. Sindballe comprend que l’on veut dire par document formant titre que tous les contrats de transport doivent être soumis à ces règles.

C’est l’avis de Sir Leslie Scott: tous les contrats de n’importe quel genre qui sont aussi “documents of title” sont réglementés par la convention. Si on rédige un contrat sur un morceau de papier et le “document of title” sur un autre avec l’intention que le premier papier réglera les conditions du second, le juge considère les deux écrits comme formant une seule convention.

Mr. Bagge objecte qu’il est permis de faire de la sorte des contrats distincts pour des chartes-parties.

Sir Leslie Scott répond que la charte-partie n’est pas réellement un “document of title”.

Mr. Bagge signale que le transporteur peut mettre dans une charte-partie une stipulation d’après laquelle l’affréteur remboursera ce que le transporteur aurait à payer à raison du connaissement. L’article 3 (8) ne parle que du contrat de transport. Si des connaissements sont émis, ils sont soumis à la convention; mais la charte-partie n’est pas.

Sir Leslie Scott répète que si les parties mettent sur un morceau de papier séparé des conditions modifiant celles du connaissement, pareil écrit est absolument representing the goods, the Convention would not apply at all.

Mr. Bagge said that article 3(8) would not apply because there would be no similar document of title.

The Chairman replied that if the agreement of the parties was the result of several different documents that were complementary, that that still only constituted one agreement and the judge would annul such an agreement because it had only been made for the purpose of carriage.

Mr. Ripert objected that this agreement could have a series of voyages as its subject. He asked for the deletion in article 3(8) of the words “in a contract of carriage”.

Sir Leslie Scott opposed this.

Mr. Sindballe understood that what was meant by a document of title was that all contracts of carriage must be subject to these rules.

That was the opinion of Sir Leslie Scott: all contracts, no matter what type, that were also “documents of title” were regulated by the Convention. If one drafted a contract on one slip of paper and the “document of title” on another, with the intention that the first paper would regulate the conditions of the second, the judge would deem the two written items to form a single agreement.

Mr. Bagge objected that it was permitted to make differing contracts for charter parties in this way.

Sir Leslie Scott replied that the charter party was not really a “document of title”.

Mr. Bagge indicated that the carrier could include in a charter party a stipulation in which the charterer would reimburse what the carrier would have to pay by reason of the bill of lading. Article 3(8) spoke only of the contract of carriage. If bills of lading were issued, they were subject to the Convention, but the charter party was not.

Sir Leslie Scott repeated that if the parties were to put conditions altering those in the bill of lading on a separate slip of paper, such a written claim was
ment nul et sans valeur d’après la convention.

M. le Président constate que là-dessus il n’y a aucune doute.

completely null and without value under the Convention.

The Chairman confirmed that there was no doubt in the matter.
ARTICLE 6

Nonobstant les dispositions des articles précédents, un transporteur, capitaine ou agent du transporteur et un chargeur seront libres, pour les marchandises déterminées quelles qu’elles soient, de passer un contrat quelconque avec des conditions quelconques concernant la responsabilité et les obligations du transporteur pour ces marchandises, ainsi que les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou concernant ses obligations quant à l’état de navigabilité du navire dans la mesure où cette stipulation n’est pas contraire à l’ordre public ou concernant les soins ou diligences de ses préposés ou agents quant au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées par mer, pourvu qu’en ce cas aucun connaissance n’ait été ou ne soit émis et que les conditions de l’accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.

Toute convention ainsi conclue aura plein effet légal.

Il est toutefois convenu que cet article ne s’appliquera pas aux cargaisons commerciales ordinaires, faites en cours d’opérations commerciales ordinaires, mais seulement à d’autres chargements où le caractère et la condition des biens à transporter et les circonstances, les termes et les conditions auxquels le transport doit se faire sont de nature à justifier une convention spéciale.

ARTICLE 6

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.
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Text submitted to the Conference

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Article 5 - SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the handling, loading, stowing, custody, care and unloading of the goods carried by sea, provided that in this case the terms agreed are embodied in a ship's receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

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[78]

The Chairman: I (c). “‘Goods’ includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo carried on deck”. May those words stand part of the draft?

[79]

Mr. De Rousiers: The paragraph mentions “live animals and cargo carried on deck”. I feel that it would be advisable to mention also perishable goods. We know there is a danger in the transportation of perishable goods, and I think it would be wise to provide for shipowners to have liberty to make special conditions for the transportation of those special goods.

Mr. Rudolf: I think, Mr. Chairman, that the point raised by Mr. De Rousiers would be covered by the provisions in Article 5.

Mr. Dor: If we exclude everything except bricks and iron bars there is not much use in having such rules. If we exclude all the goods which may be damaged, then the rules are not of much good.

Mr. De Rousiers: I think “perishable goods” has a meaning which can be defined. It would be the duty of the Committee to make a definition of “perishable goods”. I think that some perishable goods can be carried under the same conditions.

Sir Norman Hill: Is not the answer the one that Mr. Rudolf has given: that we must deal with those classes of cargo under Article 5? If we want to get anything like agreement, we must have in mind the great produce in the United States. There is no difference under their contracts. Australia has put in special obligations on the shipowner in regard to refrigerating space, and I am afraid it would be perfectly hopeless, at least if we want to get a general agreement, if we excluded perishable goods. But if we get Article 5 in every case if traffic offered is extraordinary, or novel, or of an unconscionable kind, we can make our own bargain, and we can let our friends the underwriters and the bankers know that it is a special bargain, by issuing a special and appropriate form. I think really it would imperil all our work if we sought to exclude the perishable cargo.

Dr. Bisschop: When this article was drafted, the various classes of goods which might be excluded were considered, but we thought it was better in a definition not to enumerate all the exceptions, which under certain circumstances might be desirable,
Second day's proceedings - 1 September 1921

The Chairman: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Now Article 5. Is there any amendment now proposed to Article 5? I had notice of an amendment by Sir Norman Hill to omit the word “ship’s” where it says “ship’s” receipt, to make the words in the last two lines read thus: “embodied in a receipt which shall be a non-negotiable document”. That is mere drafting; if the clause is otherwise concurred in, I dare say the Committee would consent to that drafting alteration. Is that agreed?

Sir James Hope Simpson: I understood Mr. McConechy had an amendment prior to this one, but I want to move an amendment in the seventh line.

The Chairman: Where does Mr. McConechy's amendment come?

Sir James Hope Simpson: In the second line.

The Chairman: Mr. McConechy’s had better move it, then.

Mr. McConechy: The only reason I bring this forward is, so as not to have any complications afterwards. My Committees wish to get these words in the second line. They say that “in regard to any particular goods” is not quite clear, because you might at some future time say that goods at present shipped in accordance with the accepted usage of trade are particular goods for some particular reason or another.

The Chairman: I did not follow. What were the goods that you said might be brought within it?

Mr. McConechy: I will just quote the words which were put to our Committee. They said: At some time you might come and say that piece goods are particular goods, and therefore they will come under this clause, although we know, and we who have drafted it quite understand this is a clause for something unobjectionable altogether; but two or three years hence people reading this would not know what we had in our mind; and it is something to make it clear what we really intend by these words, and I was proposing that you might add the words after that “which owing to their special nature or to the special circumstances attending their shipment, cannot equitably be made subject to the foregoing rules”. I want something to make it clear what we really intend in this Article 5.

The Chairman: I may point out that that makes a judge the deciding person in a business transaction instead of a man of business.

Sir Norman Hill: After the event.

The Chairman: After the event. When the business has been done a judge is to decide whether it ought to have been done. Business men may desire that. If I were engaged in commerce I should pause. I may say to the Committee that I considered that Article, and I thought on the whole, though, of course, there are loopholes for dis-
honest evasion, that, as honest trade is intended, and as the Courts sooner or later con-
trive to get hold of dishonesty and discourage it, this Article would probably secure
the desired result as well as any form of words I could think of. (Hear, hear). That was
the impression I came to. I offer that observation to the Committee.

Mr. W. W. Paine: I venture to think Mr. McConhey, if he would only hear the
amendment that Sir James Hope Simpson was going to propose, would be able to
drop the words which he is proposing to add, because the object of this clause is that
these special contracts shall not be the subject of ordinary finance. If we can exclude
that possibility you need not worry about the nature of the particular goods.

Mr. McConhey: That is what I wish to do.

The Chairman: Mr. McConhey, by leave, withdraws his amendment.

Sir James Hope Simpson: Mr. Chairman. This clause states that in case a special
arrangement is made between the carrier and the shipper of the goods, there is a pro-
viso that the terms agreed are embodied in a receipt which shall be a non-negotiable
document, and shall be marked as such. And then it goes on to say: “Any agreement
so entered into shall have full legal effect”. I am always rather frightened of two doc-
uments representing the same transaction, or connected with the same transaction, but
each expressing different conditions and separate from one another. In this case I pre-
sume that the intention would be that the shipper would be entitled to a bill of lading,
but in addition to that-

Sir Norman Hill: No; no bill of lading.

Sir James Hope Simpson: Then I want to make that clear. All I want to do is to
make that clear; and I should like to suggest this, and I move this amendment, that the
last four lines shall read in this way: “Provided that in this case no bill of lading shall
be issued, and that the terms agreed shall be embodied in a receipt which shall be a
non-negotiable document”.

Mr. W. W. Paine: “A non-transferable document”.

Sir Norman Hill: Very well: “a non-transferable document and shall be marked as
such”. I want to make that clear, because you do not want a new form of bill of lading
to be brought into use just in the course of practice.

Sir Norman Hill: Not even if commerce wants it?

Sir James Hope Simpson: Then it will have to be made the subject of fresh con-
sideration.

The Chairman: Might I suggest, Sir James, and Mr. Paine will observe what I am
saying, that when you have got this receipt in existence, at any rate under English law,
a buyer of it would be entitled to maintain the rights of the original recipient of it, the
shipper, by an action in the name of the shipper. I think you would agree, Mr. Paine,
that that would be so. So that there is really no materiality in the distinction, under
English law as it is now administered, between non-negotiable and non-transferable.

Mr. W. W. Paine: Except that as a banker I have in mind the special meaning at-
tached to the word “non-negotiable”.

The Chairman: I quite agree. I think you will agree that these documents of title
become negotiable either by statute or by custom. There is no custom. But no language
which could be used here to-day, or at any other time, could exclude the coming into
being of a custom, and no words we put into these draft rules would prevent a thing
becoming negotiable, as so many securities did in the early part of the last century, if

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the course of business were such that the parties were estopped from treating them as otherwise than negotiable. Is it not better to leave it?

Mr. W. W. Paine: I quite agree. I think Sir James may put the word “non-negotiable” and leave out the word “non-transferable”.

The Chairman: Otherwise it seems to me that this carries out the very intention of the parties, that it merely emphasises the distinction which the Conference desires to make. (Agreed).

Sir James Hope Simpson: then may I take it that the Committee will be agreeable to my inserting the words: “in this case no bill of lading shall be issued and the terms”?

The Chairman: Yes, I understand that the Committee assents to that.

Sir James Hope Simpson: That is the main thing I wanted.

The Chairman: I will read the Article as it will now stand. It stands as it stood for the first six lines. In the seventh line it would read thus: “and unloading of the goods carried by sea, provided that in this case no bill of lading shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable instrument and shall be market as such”. I understand that the Committee unanimously assents to that amendment? (Agreed).

“Any agreement so entered into shall have full legal effect”.

Text adopted by the Conference

Article 5 - SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the handling, loading, stowing, custody, care and unloading of the goods carried by sea, provided that in this case no bill of lading shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable instrument and shall be marked as such.

Any agreement so entered into shall have full legal effect.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Göteborg Conference)

Article 6. SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the receipt, handling, loading, stowage, carriage, custody, care, unloading and delivery of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.
PROVIDED THAT THIS ARTICLE SHALL NOT APPLY TO ORDINARY COMMERCIAL SHIPMENTS MADE IN THE ORDINARY COURSE OF TRADE, BUT ONLY TO OTHER SHIPMENTS WHERE THE CHARACTER OR CONDITION OF THE PROPERTY TO BE CARRIED OR THE CIRCUMSTANCES, TERMS AND CONDITIONS UNDER WHICH THE CARRIAGE IS TO BE PERFORMED ARE SUCH AS REASONABLY TO JUSTIFY A SPECIAL AGREEMENT.

Afternoon sitting of 10 October 1922

Mr. F. Berlingieri (Genoa): .................................................................

Je trouve qu’à l'article 5, - qui vise les documents non négociables - on a eu plus d’égard pour les intérêts des banquiers que pour ceux de la navigation; car il y est dit que les parties peuvent exonérer l’armateur de la responsabilité concernant même la navigabilité du navire. Or, à mon avis, la question de navigabilité est d’ordre public et intéresse la collectivité et, comme il est dit dans le Harter Act, aucun document, aucun accord ne peut exonérer l’armateur de l’obligation de présenter un navire en bon état de navigabilité à tous les points de vue. En pareille question, les intérêts des parties doivent être mis de côté, car ils sont primés par l’intérêt général. J’admets qu’on puisse exonérer [403] l’armateur pour tout ce qui a trait à la cargaison, à l’arrimage, etc., car ce sont là des intérêts privés; mais lorsqu’il s’agit de la navigabilité du navire, c’est une question d’intérêt public qui concerne la collectivité et en pareil cas, une exonération n’est pas admissible.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

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Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.
M. le Président. - On a remplacé “réception” par “embarquement” et “livraison” par “déchargement”, conformément à l’article 2 dans lequel il est stipulé que l’application des règles commence avec le chargement et finit avec le déchargement. Comme cet article est le résultat d’un compromis entre les hommes de la pratique, il paraît recommandable d’adopter cette modification.

La commission se déclare d’accord à ce sujet.

M. Berlingieri. - Je propose de supprimer dans l’article les mots “ou son obligation quant à l’état de navigabilité sur navire”. Je crois que dans aucun contrat le transporteur ne peut renoncer à la condition de navigabilité. Cela serait contraire à l’ordre public et pareille convention serait nulle sous l’empire de toutes les législations.

M. le Président. - Dans notre droit, vous armement, donc vous conseil d’une société d’armement, vous ne pouvez envoyer en mer délibérément, en connaissance de cause, un navire non navigable. Mais vous pouvez parfaitement stipuler qu’en dehors de votre “dol” personnel vous ne répondez pas de la navigabilité, ni à aucun titre de votre propre faute légère ou des fautes de vos préposés.

M. Berlingieri. - Je ne suis pas d’accord avec vous à ce sujet. La navigabilité est un intérêt non seulement pour le navire, mais pour les personnes se trouvant à bord: l’équipage et les passagers. L’obligation de navigabilité est donc un principe d’ordre public. Comment voulez-vous stipuler dans une convention Détails de la Conférence Diplomatique - Octobre 1922

Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

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M. Berlingieri. - I propose deleting the words “or his obligation as to seaworthiness”. I think that in no contract can the carrier renounce a ship’s seaworthiness. That would be against public policy and such an agreement would be null under any legislation.

The Chairman. - Under our law, you, representing shipowning interests, as counsel for shipowners’ associations, cannot deliberately send an unseaworthy ship to sea, being aware of its state. But you can perfectly well stipulate that, other than for your own personal “dol” (fraudulent conduct), you are not responsible for seaworthiness, nor for any charge of ordinary negligence or the faults of your agents.

M. Berlingieri. - I am not in agreement with you on this matter. Seaworthiness is an interest not only for the ship, but also for those people who find themselves aboard: the crew and the passengers. The obligation as to seaworthiness is therefore a principle of public policy. How could you wish to make a provision Détails de la Conférence Diplomatique - Octobre 1922

Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

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in any worthwhile convention that turned its back on the condition that the ship should be seaworthy?

The Chairman. - This matter was decided by our Court of Appeal. Under Belgian law you can provide for financial exoneration for consequences of your own faults, even when your fault causes death or bodily injuries, it being understood, however, that your fault cannot be such that it is ranked with “dol” (fraud). The only stipulation that you cannot alter is your liability for “dol”.

Mr. Berlingieri. - Under our law we have no such clause. We do not allow one shipowner to make a shipper renounce the condition of seaworthiness.

Mr. Ripert. - He does not renounce it, but he does renounce his claim to indemnity in the case of unseaworthiness.

Mr. Berlingieri. - No, in article 6 it says “his obligation as to seaworthiness”.

The Chairman. - We all know that we must respect irrevocably the rules concerning public law in each State, and here when we talk of obligations as to seaworthiness I believe it is clear that we cannot include any derogatory clauses except within the limits the law allows.

Mr. Berlingieri. - I propose deleting the words “as to seaworthiness”.

The Chairman. - Then I must consult the assembly.

Mr. Langton. - As far as England is concerned, I can say that our law is exactly that stated for Belgian law.

Judge Hough. - It is the same in the United States.

The Chairman. - We agree that that does not allow him to exonerate himself from his fraudulent act, his gross fault; but with this reservation and within the limits where no rule of public policy intervenes, the shipowner can exonerate himself as I have just said.
Article 6 - Freedom of contract (type of cargo)

Mr. Berlingieri. - With that provision you are inciting the shipowner not to keep a seaworthy ship, which is contrary to public policy. I do not know what the Anglo-Saxon doctrine is, but I am astonished that in the United States such a proposal should be acceptable.

Mr. Ripert. - Wouldn’t it be simpler to say that the clauses of the preceding articles will not apply, without listing them. If we list them we shall get into all sorts of difficulties.

The Chairman. - I see nothing inconvenient in that.

Sir Leslie Scott. - I would beg these gentlemen to leave the text as it is.

Mr. Berlingieri. - Even if I am a lone voice I am asking for the proposal to be put to the vote.

Judge Hough. - I declared myself in agreement with Mr. Langton on the French text: “as to seaworthiness”. I call the delegates’ attention to the fact that this phrase is found in article 3(1) and is reproduced in article 4(1).

I understand, it is true, that to allow the shipowner to exonerate himself by contract from the necessity of furnishing a seaworthy vessel goes against public policy - is immoral, as Mr. Berlingieri says. But, I think that there was agreement between Messrs. Berlingieri and Langton when it came to the deletion of the word “seaworthiness”.

The Chairman. - I shall propose, therefore, adding after the above “so long as this obligation is not one of public policy”.

Sir Leslie Scott. - I cannot accept this proposal. For several centuries we have had the right in various countries to release ourselves by contract from this liability for seaworthiness. I agree with Mr. Berlingieri that if a shipowner who by contract releases himself from this liability sends his ship to sea in an unseaworthy condition he is committing an infringement on an obligatory law and can be punished. But the freedom to contract as understood has been widespread in Great Britain and in other countries.
contracter comme on l’entend a été générale en Grande-Bretagne et dans d’autres pays. Cet article se limite à des conditions tout à fait spéciales. On m’a dit en Angleterre que les armateurs ont vivement insisté pour avoir cette liberté de contracter pour des cas particuliers.

M. Berlingieri. - Mais il me semble que la formule suggérée par M. le Président vous donne toute satisfaction. Les armateurs anglais veulent-ils donc aller à l’encontre de l’ordre public?

M. le Président. - Après les observations de M. le Juge Hough, j’ai proposé d’ajouter les mots “pour autant que cette obligation ne soit pas d’ordre public”. Vous ne courez pas de risques en acceptant cette addition, car ou bien l’ordre public le permet en Angleterre et alors vous ferez toutes les clauses que vous voudrez, ou bien l’ordre public le défend et on invalidera pareille clause.

M. Struckmann. - J’attire l’attention de Sir Leslie Scott sur le fait que si l’on n’accepte pas ces mots on rencontrera beaucoup de difficultés au sein des différents parlements pour faire admettre l’article VI.

M. Langton. - Je me rallie à votre proposition, Monsieur le Président, parce que, si j’ai bien compris, le droit belge distingue deux choses: d’une part, l’obligation de navigabilité, qui est absolue, d’autre part, les questions pécuniaires résultant de cette obligation pour laquelle existe la liberté de contracter.

M. le Président. - Oui, sauf le cas de dol.

M. Langton. - La responsabilité du propriétaire de navires envers le public est évidemment d’ordre public. Mais ici le cas est tout différent! Je laisse au propriétaire de navire, dans des cas spéciaux, liberté de faire un contrat dans lequel il stipule qu’il n’assume aucune responsabilité pécuniaire. Cela ne touche en rien à l’ordre public et ce n’est pas encourager le propriétaire de navire à faire quelque chose qui soit contraire à cet ordre public: ses devoirs, sous ce rapport, restent les mêmes.

This article is limited to very specific circumstances. I was told in England that the shipowners have vigorously insisted upon this freedom to contract for particular cases.

Mr. Berlingieri. - But it seems to me that the formula suggested by the Chairman should give you absolute satisfaction. Or am I to understand that the English shipowners wish to go against public policy?

The Chairman. - After Judge Hough’s comments, I proposed adding the words: “so long as this obligation is not one of public policy”. You run no risk in accepting this addition - because either public policy permits it in England and you will make whatever clauses you wish or public policy forbids it and such a clause will be rendered meaningless.

Mr. Struckmann. - I would draw Sir Leslie Scott’s attention to the fact that if we don’t accept this wording we shall run into plenty of problems within the various parliaments over the acceptance of article 6.

Mr. Langton. - I support your proposal, Mr. Chairman, because if I have understood correctly, the Belgian law distinguishes two things: on one hand, the obligation as to seaworthiness, which is absolute, and, on the other hand, the financial questions resulting from this obligation, for which the freedom to contract exists.

The Chairman. - Yes, except in the case of “dol” (fraud).

Mr. Langton. - The liability of the shipowner to the public is clearly one of public policy. But here the case is quite different! I would leave to the shipowner, in special cases, the freedom to make a contract in which he stipulates that he does not assume any financial liability. This has no bearing on public policy and does not encourage the shipowner to do anything contrary to public policy: his duties, under this agreement, remain the same.
Sir Leslie Scott. - A la suite de l'échange de vues que nous avons eu, je crois que nous devons céder et consentir à l'insertion des mots proposés par M. le Président.

M. le Président. - J'ajouterais donc à la phrase les mots: “pour autant que cette obligation ne soit pas d’ordre public”.

Sir Leslie Scott. - Je croyais que vous aviez suggéré de dire que la liberté de contracter existerait pour autant que cela soit conforme à l’ordre public.

M. de Rousiers. - Dans la mesure où cette stipulation n’est pas contraire à l’ordre public.

Sir Leslie Scott. - J’accepte les mots suggérés par M. de Rousiers.

M. Beecher. - Cela se limite-t-il à l’obligation ne navigabilité comme elle est exprimée ici, ou bien cette stipulation couvre-t-elle toutes les obligations?

M. Bagge. - Je désirerais poser une question afin d’éclaircir la signification de cette clause. Il est dit dans l’article 6: “Nonobstant les dispositions des articles précédents, un transporteur ... sera libre de passer un contrat quelconque à des conditions quelconques ... pourvu qu’en ce cas aucun connaissement n’ait été ou ne soit émis”.

Je voudrais savoir si d’après l’art. 3(3), lorsque les marchandises sont reçues, l’armateur est tenu d’émettre un connaissement? Le transporteur aurait-il, en général, le devoir d’émettre un connaissement? Par suite de cet article 6, il serait libéré de cette obligation. Est-ce que alors le but de cet article serait de donner à l’armateur plus de droits qu’il n’en avait auparavant?

M. le Président. - À mon sens, la portée de l’article 6 est exactement celle que l’on avait en vue: il se rapporte à certains contrats spéciaux dans lesquels il n’y a pas de connexion, mais simplement un reçu non négociable, et dans ce cas les parties ont le droit de faire toutes les conventions qui leur plaisent. Il n’est pas indiqué très clairement jusqu’où cela va. Dans une large mesure, c’est le juge qui

[151] Sir Leslie Scott. - Following the exchange of views we have just had, I think we can relent and agree to the insertion of those words proposed by the Chairman.

The Chairman. - I shall therefore add to the phrase the following words: “so far as this stipulation is not contrary to public policy”.

Sir Leslie Scott. - I thought that you had suggested saying that the freedom to contract existed only in so far as it conformed with public policy.

Mr. de Rousiers. - In so far as this stipulation does not run contrary to public policy.

Sir Leslie Scott. - I accept the wording suggested by Mr. de Rousiers.

Mr. Beecher. - Is this limited to the obligation as to seaworthiness, as expressed here, or does the stipulation cover all obligations?

Mr. Bagge. - I would like to ask a question in order to clear up the meaning of this clause. It says in article 6: Notwithstanding the provisions of the preceding articles, a carrier ... shall ... be at liberty to enter into any agreement in any terms ... provided that in this case no bill of lading has been or shall be issued ...

I should like to know whether, as in article 3(3), when goods have been received, the shipowner must issue a bill of lading? Should the carrier, as a general rule, have the duty to issue a bill of lading? As a consequence of article 6, he would be freed from this obligation. Is it then the aim of this article to give the shipowner more rights than he had up until now?

The Chairman. - In my opinion the scope of article 6 is exactly that which we had in mind. It deals with certain special contracts in which there is no bill of lading but simply a non-negotiable receipt, and in this case the parties have the right to make whatever terms they please. It is not very clearly indicated how far this goes. To a large extent it is the judge who will decide. I believe, however, that the
décidera. Je crois cependant que la disposition a une grande utilité. Un grand diplomate, Talleyrand, a dit un jour que les choses qui vont sans dire, vont encore mieux en les disant. Laissons donc cela à la décision des juges. Les armateurs ont insisté sur cette disposition et les chargeurs l’ont acceptée. N’en faisons pas un “argument a contrario”. Cela ne peut faire aucun mal et cela servirait tout au moins à éclaircir certains cas spéciaux.

M. Bagge. - Ainsi donc vous pensez que cela ne signifie rien?

M. le Président. - Non, mais si cet article n’était pas dans la convention, vous pourriez avoir des difficultés dans certains cas spéciaux.

Je remercie d’ailleurs M. Bagge d’avoir soulevé la question: cela est toujours utile!

M. Ripert fait remarquer que les articles 5 et 6 parlent à la fois de chartes-parties et de connaissements. Dans la pratique commerciale ce sont deux choses différentes; mais dans la législation continentale le mot charte-partie désigne de façon générale tous les contrats de transport par mer et même dans des cas où l’on fait un connaissement, on peut faire une charte-partie. D’autre part, dans l’article 6 il est prévu que les règles ne s’appliquent pas aux contrats de transport lorsqu’aucun connaissement n’est délivré. Or, d’après la législation française, il n’est pas possible de faire un contrat de transport par mer sans émettre un connaissement; celui-ci doit-être émis même lorsqu’on a conclu une provision has a great utility. A great diplomat, Talleyrand, once said that things that go without saying go all the better for their saying. Let us leave that up to the judges to decide. Owners have registered this provision and shippers have accepted it. Let us not put up an argument *a contrario*. It can do no harm and will serve at least to illuminate certain special cases.

Mr. Bagge. - So you think that it has no significance?

The Chairman. - No, but if this article was not in the Convention you would have difficulties in certain special cases.

I thank Mr. Bagge anyway for having raised the question. That is always useful!

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Fourth Plenary Session - 8 October 1923

The session opened at 10:00 a.m. under the Chairmanship of Mr. Loder, who took the place of Mr. Louis Franck, who was unable to be present.

Mr. Ripert pointed out that articles 5 and 6 spoke at one and the same time of charter parties and bills of lading. In commercial practice they were two different things, but in Continental legislation the word charter party broadly defined all contracts of carriage by sea, and even in those cases where there was a bill of lading one could create a charter party. On the other hand, article 6 stipulated that the rules did not apply to contracts of carriage when no bill of lading was issued. Under French legislation, it was not possible to have a contract of carriage by sea without issuing a bill of lading. A bill of lading had to be issued even when a charter party had been con-
Article 6 - Freedom of contract (type of cargo)

Part II - Hague Rules

Charte-partie. Seulement le connaissément peut ne pas être négociable; il peut être à personne dénommée, sans clause à ordre; ainsi un industriel peut envoyer lui-même à sa succursale des machines; ce connaissément n'est pas négocié; je suppose que les Règles ne s'appliquent pas à cette hypothèse parce que primitivement elles ont été faites uniquement pour les connaissements négociables. Mais la limite exacte ne résulte pas du texte des articles 5 et 6; or, c'est cette limite qu'il faudrait préciser. Les mots "pourvu qu'en ce cas aucun connaissément n'ait été ou ne soit émis" pourraient être supprimés ou modifiés.

M. Bagge est d'avis qu'il est difficile de comprendre la portée de l'article 6. Ceux qui connaissent l'histoire de cet article savent que c'est en vue des cargaisons exceptionnelles qu'on l'a introduit. En règle générale, cette convention ne s'applique pas lorsqu'il n'est émis ni un connaissément ni un document similaire formant titre. En faisant allusion à un récépissé qui n'est pas négociable il faut qu'on ait eu en vue un document similaire formant titre; l'on a donné ainsi au chargeur et à l'armateur la faculté de conclure un contrat quelconque qui ne soit pas soumis à la convention bien qu'un document similaire soit émis. Si ce récépissé n'est pas un document similaire dont il s'agit dans l'article 1 (b), l'article 6 est tout à fait sans signification, car alors la règle qu'il donne est déjà exprimée à l'article 1 (b).

M. le Président rappelle que dans la Convention on a réglé tout ce qui concerne le connaissément et qu'ensuite on a inséré l'article 6 pour marquer que dans ce cas il y a liberté de contrat: du moment où il y a un connaissement négociable la convention s'applique; mais s'il n'y a pas de connaissement, elle ne s'applique pas et la liberté du contrat subsiste.

Sir Leslie Scott confirme que la portée de la Convention est bien celle indiquée par M. Loder: la possibilité d'émettre un document non négociable. Ici le mot connaissement signifie un connaissement ordinaire c'est-à-dire négociable. The bill of lading alone might not be negotiable. It could be a straight bill of lading, without the clause "to order" , so an industrialist could personally send machines to one of his branch factories. Such a bill of lading was not negotiated. I suppose that the rules would not apply in this hypothesis because originally they had been created solely for negotiable bills of lading. But the precise dividing line was not obvious from the text of articles 5 and 6. Therefore, this dividing line ought to be defined. The words “provided that in this case no bill of lading has been or shall be issued”, might be deleted or amended.

Mr. Bagge felt that it was difficult to understand the scope of article 6. Those who were aware of the history of this article knew that it had been introduced with exceptional cargoes in mind. As a general rule, this Convention did not apply when neither a bill of lading nor a similar document of title had been issued. By alluding to a receipt that was not negotiable, it was necessary to have in mind a similar document of title. In this way the shipper and shipowner had been given the power to conclude whatever contract they wished, and would thus not be subject to the Convention even though a similar document had been issued. If this receipt were not a similar document as described in article 2(b), article 6 was completely meaningless, because in such a case the rule it provided had already been expressed in article 1(b).

The Chairman noted that in the Convention everything concerning the bill of lading had been regulated and that article 6 had been inserted later to show that in this case there was freedom of contract. But if there was no bill of lading, it did not apply and freedom of contract still existed.

Sir Leslie Scott attested that the scope of the Convention was just that indicated by Mr. Loder. The possibility existed of issuing a non-negotiable document. Here the term “bill of lading” meant an ordinary bill of lading, that is to say, negotiable.
M. Berlingieri voulait qu’on s’entende sur le sens du mot négociable; il préférerait les mots “non transférable” au lieu de “non négociable”, car un connaissement à personne dénommée peut être un connaissement négociable pourvu qu’on accomplit la [75] formalité du transfert. On pourrait donc éviter la convention en faisant toutes les fois un connaissement à personne dénommée et en accomplissant ensuite les formalités requises pour le transfert.

M. Franck croit que l’idée de la première conférence était bien que le connaissement devait être “au porteur” ou “à ordre”. Si c’est un connaissement à personne dénommée on peut tolérer la cession par un acte régulier de transfert. Il n’est pas à craindre qu’au moyen de la cession de droit commun on puisse éviter cette disposition.

M. Berlingieri demande que cette déclaration soit actée au procès-verbal.

M. Struckmann ne veut pas exprimer d’avis sur le vrai sens de l’article 6; mais si l’interprétation donnée par M. le Président est exacte, il se demande quel est le sens de l’alinéa 3, article 6, portant que cet article ne s’applique pas aux cargaisons commerciales ordinaires, mais seulement à d’autres chargements où le caractère et la condition des biens à transporter, les circonstances, les termes et les conditions auxquels le transport doit se faire, sont de nature à justifier une convention spéciale. D’après l’interprétation de M. le Président, les parties seraient libres dans tous les cas de rendre inapplicable la convention en ne servant pas d’un connaissement même lorsqu’il s’agit d’un transport commercial ordinaire. Dans ces conditions l’article 6, alinéa 3 n’aurait plus de sens.

M. le Président croit que la formule générale reste applicable. C’est seulement dans le cas prévu dans le paragraphe 3 qu’on peut faire usage du premier paragraphe.

M. Sohr rappelle que le but même de l’article 3 a été d’empêcher des fraudes et des arrangements comme ceux indiqués par M. Berlingieri. Il est évident qu’on ne
pouvoir éviter la convention en créant un connaissement à personne dénommée et en ayant recours à la cession civile. Il faut encore que cela ne s’applique pas à des cargaisons commerciales ordinaires car le dernier alinéa l’empêche précisément.

M. Bagge répète que le “récépissé” doit être un document visé à l’article 1. S’il pouvait être seulement un “Mate’s receipt” par exemple il ne s’agirait plus d’un connaissement ou d’un autre document similaire tombant sous les règles et alors il faudrait supprimer la limitation dans le paragr. 3 pour être conforme à l’art. 1 (b).

M. Franck répond que le mot “récépissé” veut dire simple reçu; la forme que l’on donne à ce reçu n’a aucune importance. L’idée est que dans le nombre infini des combinaisons commerciales, les deux parties peuvent avoir à un moment donné des raisons de faire une convention spéciale et on n’a pas voulu que l’on puisse trouver dans ce texte quelque chose qui puisse gêner la liberté des parties à cet égard. Par exemple, dans le cas d’une grande entreprise pour la construction d’un port, l’entrepreneur traite avec un armement pour des transports tout-à-fait spéciaux, comprenant un matériel compliqué et avec obligation d’en déposer une partie à un endroit et une autre partie ailleurs. On a voulu en pareil cas laisser ces parties faire librement leur contrat. Mais pour éviter que cela ne puisse ouvrir la porte à la fraude et pour empêcher d’écluder la convention, il faut que l’on ne donne qu’un simple reçu de la marchandise. On pourrait parfaitement mettre sur ce reçu “non transférable”. Mais ce qui reste acquis c’est qu’il n’y a pas moyen d’écluder par ce texte l’objet principal de la convention qui est de protéger les connaissements négociables “à ordre”.

M. le Président confirme encore ce point de vue. La convention ne règle que la question des connaissements. Si l’on n’en émet pas, la liberté entière des parties subsiste; mais si l’on fait un connaissement, il faut que ce soit d’après les règles édictées par la convention. Could not evade the Convention by creating a straight bill of lading and by having recourse to civil transfer. It was still necessary that it should not apply to ordinary commercial cargoes since the last paragraph expressly prevented it.

Mr. Bagge repeated that the “receipt” had to be a document provided for in article 1. If it were only, for example, a “mate’s receipt”, it was no longer a matter of a bill of lading or a similar document falling under the rules. Therefore we should delete the limitation in paragraph 3 to ensure conformity with article 1(b).

Mr. Franck replied that the word “receipt” meant simply received. The form given to this receipt was of no importance. The idea was that in the infinite number of commercial combinations, the two parties could have at one time given grounds for a special agreement and one did not want something to be found in the text that might restrict the freedom of parties in this respect. For example, in the case of a large undertaking for the construction of a port, the contractor dealt with shipping interests for rather special forms of carriage, comprising complicated material and with an obligation to deliver one part to one place and another elsewhere. In such a case, there had been a desire to let these parties make their contract freely. But to make sure this would not open the door to fraud and to prevent evasion of the Convention, one should give only a simple receipt of the goods. One might perfectly well put on the receipt “non-transferable”. But what was established was that there was no way of evading, by means of this text, the chief object of the Convention, which was to protect negotiable bills of lading “to order”.

The Chairman re-affirmed this point of view. The Convention only regulated the question of bills of lading. If one was not issued, the absolute freedom of the parties remained. But if one created a bill of lading, it was necessary to do so according to the rules decreed by the Convention.
M. Ripert voudrait une déclaration précise sur deux points. Il y a en France un commerce important avec les Etats-Unis, relatif à l’importation des machines à écrire, des machines industrielles, etc. Ce commerce est fait par des sociétés qui s’expédient ces machines à elles-mêmes ou à leurs succursales sans intention de transférer les connaissances à des tiers.

Il doit être entendu qu’il est permis de délivrer pour ces machines un connaissement nominatif ne contenant pas la clause “à ordre” et auquel les règles ne s’appliquent pas.

Sir Leslie Scott fait observer que les règles s’appliquent toujours aux cargaisons commerciales ordinaires.

M. Ripert demande ce qu’il faut entendre par cargaisons exceptionnelles.

Sir Leslie Scott cite des exemples: un navire s’échoue; il à bord une cargaison de coton qui est endommagée par l’eau de mer; on désire faire réexpédier ce qui reste de cette cargaison endommagée. Ou bien encore on expédie un produit avec un matériau nouveau, et l’on ignore si cette cargaison conviendra au navire pour lequel elle pourrait être dangereuse; il s’agit d’une expédition d’essai; c’est le commencement de ce qui deviendra peut-être plus tard un commerce ordinaire, mais pour le moment c’est encore une cargaison exceptionnelle.

M. Ripert fait remarquer que ces exemples montrent qu’il y a deux hypothèses différentes, dans la première la cargaison est exceptionnelle; dans la seconde c’est l’expédition qui est exceptionnelle.

Sir Leslie Scott signale que les deux cas sont couverts par le mot “shipment”.

Mr. Ripert wanted a clear statement on two points. In France there was an important trade with the United States, which imported typewriters, industrial machines, etc. This trade was carried out by firms that shipped these machines to themselves or their branch offices with no intention of transferring the bills of lading to third parties.

It should be understood that it was permissible to issue a nominal bill of lading for these machines that did not include the clause “to order” and to which the rules did not apply.

Sir Leslie Scott pointed out that the rules always applied to ordinary commercial cargoes.

Mr. Ripert asked what should be understood by exceptional cargoes.

Sir Leslie Scott cited some examples. Aboard was a cargo of cotton damaged by seawater and there was a desire to re-ship what remained of this damaged cargo. Another example might be the shipment of a product containing some new material when it was not known whether this cargo would suit the ship, for which it might be dangerous. That was an experimental shipment. It was the beginning of what would perhaps later become an ordinary trade, but for the time being it was still an exceptional cargo.

Mr. Ripert noted that these examples demonstrated that there were two different hypotheses. In the first, the cargo was exceptional. In the second, it was the shipment that was exceptional.

Sir Leslie Scott indicated that the two cases were covered by the word “shipment”.

Mr. Franck felt that in the case cited by Mr. Ripert the Convention marked the distinction very well. If the Remington Company, for example, wishes to ship to itself it could do so.

Mr. Ripert pointed out that what was called in article 6 “non-negotiable bill of lading” was called “bill of lading” in France.
non négociable”, s’appelle “connaissai-
ment” en France.

Sir Leslie Scott ne doute pas qu’il
soit possible de préciser dans la législa-
tion française l’espèce de connaissance
dont on pourra faire usage en vertu de
l’article 6.

M. Franck remplace M. Loder à la
présidence.

M. Ripert croit qu’il n’est pas pos-
sible de changer les termes dans la légis-
lation française: tout reçu de marchan-
dises est un connaissance.

Dès lors on ne peut dire: “le cas où
aucun connaissance n’a été émis”, car
les armateurs français ne pourraient
échapper aux règles alors que ceux des
autres pays y échapperaient.

M. Loder estime qu’il s’agit en l’es-
pèce d’une question de forme. On doit
avoir un document pour recevoir la car-
gaison: le nom qu’on lui donne importe
peu; le point principal c’est qu’il ne soit
pas négociable dans le sens de la conven-
tion.

M. Ripert croit que cela ne suffit pas
car le connaissance nominatif en Fran-
ce peut être cédé. Faudra-t-il que le
connaissance ne soit pas transférable
du tout?

Sir Leslie Scott déclare qu’un
connaissance nominatif tombe autant
sous l’empire de la convention que tout
autre connaissance, même s’il n’est pas
transféré.

M. Ripert, reprenant l’exemple de
Sir Leslie Scott demande comment on fé-
ra pour expédier la cargaison de coton
dans les conditions de l’article 6? En
France, ce sera en vertu d’un connaissance.

M. le Président dit qu’on l’appellera
un récépissé ou un reçu. Il rappelle qu’en
France comme en Belgique des carga-
sions sont transportées sur le vu d’un
simple récépissé, il arrive des cargaisons
d’engrais avec un document portant “re-
çu un plein chargement; free in, free
out”. Ce sont notamment des cargaisons
venant de Sfax en Tunisie pour des so-
ciétés qui les transforment elles-mêmes.

Sir Leslie Scott voudrait présenter

Sir Leslie Scott did not doubt that it
was possible in French legislation to de-
fine the type of bill of lading used in arti-
cle 6.

Mr. Franck replaced Mr. Loder as
Chairman.

Mr. Ripert believed that it was not
possible to alter the terms in French leg-
islation. Every receipt of goods was a bill
of lading.

Therefore one could not say “the
case where no bill of lading had been is-
sued”, because the French shipowners
would not be able to evade the rules
whereas those from other countries
would do so.

Mr. Loder felt that it was basically a
question of format. One had to have a
document to receive a cargo. The name
one gave to the document was of little
importance. The main issue was that it
should not be negotiable in the sense of
the Convention.

Mr. Ripert felt that that was not
enough because the nominal bill of lad-
ing in France could be transferred.
Would it be necessary to make the bill of
lading completely non-transferable?

Sir Leslie Scott stated that a nominal
bill of lading fell just as much under the
Convention as any other bill of lading,
even if it had not been transferred.

Mr. Ripert, returning to Sir Leslie
Scott’s example, asked how one would
ship the cargo of cotton under the con-
tion of article 6? In France, it would be
by means of a bill of lading.

The Chairman said that it would be
called an “acknowledgment” or a re-
cipient. He noted that in France, as in Bel-
gium, cargoes were carried on the basis
of a simple acknowledgment. Cargoes of
fertilizer arrived under documents say-
ing “full load received: free in, free out”.
These were notably cargoes that came
from Sfax in Tunisia for companies that
carried them themselves.

Sir Leslie Scott wanted to express a
reservation concerning article 6. In Eng-
land the conclusion had been reached
that it was necessary to apply article 6 in
a rather broader way to coastal traffic, to
une réserve au sujet de l’article 6. En Angleterre on est arrivé à la conclusion qu’il est nécessaire d’appliquer l’article 6 d’une manière un peu plus large au trafic côtier, au cabotage national. Dans le projet de loi soumis à la législature il [78] est dit que l’article 6 des Règles, lorsqu’il s’agit de transport de marchandises entre la Grande-Bretagne et l’Irlande, s’applique comme si l’article avait en vue les marchandises de toutes classes au lieu de cargaisons spéciales, c’est-à-dire donc que les documents sur lesquels ces marchandises sont transportées seront non négociables et seront conformes aux obligations du premier alinéa.

M. le Président ne voit aucun inconvénient à admettre cette réserve si tout le monde est d’accord à ce sujet, puisque l’on vise uniquement le trafic côtier national.

M. Struckmann signale qu’à l’article 9 il est dit que la convention s’applique à tous connaissements créés dans un Etat contractant.

M. Ripert fait observer que la proposition anglaise ne vise qu’une exception à l’article 6. Il voudrait savoir si le projet de loi exige que l’on mette sur le connaissement “non transférable”.

M. le Président déclare qu’on met “not negotiable”.

Sir Leslie Scott croit qu’il est nécessaire que le document soit transférable parce que le chargement pourrait très bien désirer l’envoyer à son agent.

M. le Président fait observer que cela n’est pas à proprement parler un transfert.

M. Ripert demande si l’on ne pourrait mettre qu’il est toutefois convenu que dans ce cas cet article ne s’appliquera pas aux cargaisons ordinaires.

M. van Slooten fait ressortir que l’idée des Anglais est que même au cabotage national on applique l’exception du dernier alinéa de l’article 6, mais les pays scandinaves demandent que la convention ne s’applique pas du tout dans ce cas.

Il semble qu’il n’y ait pas de grands inconvénients à admettre la proposition anglaise puisque cela se passe dans les li-

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national coastal trade. In the draft law submitted to Parliament it [78] stated that article 6 of the rules, when dealing with the carriage of goods between Great Britain and Ireland, applied as if the article had in mind goods of all classes instead of special cargoes. That is to say, therefore, that the documents under which these goods were carried would be non-negotiable and would conform with the obligations in the first paragraph.

The Chairman saw no problem in permitting this reservation if everyone was in agreement on the matter because it only referred to national coastal traffic.

Mr. Struckmann indicated that it was stated in article 9 that the Convention applied to all bills of lading drawn up in a contracting State.

Mr. Ripert pointed out that the English proposal only envisaged one exception to article 6. He wished to know if the draft law demanded that “non-transferable” should be put on the bills of lading.

The Chairman stated that one said “not negotiable”.

Sir Leslie Scott believed it necessary for the document to be transferable because the shipper might very well want to send it to his agent.

The Chairman pointed out that that was not strictly speaking a transfer.

Mr. Ripert asked whether one might not say that it was quite agreed that, in that case, this article would not apply to ordinary cargoes.

Mr. van Slooten emphasized that the English idea was that even in national coastal traffic the exception from the last paragraph of article 6 applied, but the Scandinavian countries asked for the Convention not to apply at all in that case.

It seemed that there were no great obstacles to allowing the English proposal because it involved State sovereignty. It was, moreover, traffic of little importance.

Mr. Ripert suggested adding to the article “except that in the case of national coastal trade this article will not apply”.

M. Ripert suggère d’ajouter à l’article “sauf que dans le cas de cabotage national cet article ne s’appliquera pas”.

**Sir Leslie Scott** croit qu’il faut y ajouter “dans le cas de marchandises générales”.

M. le Président fait observer qu’alors on en fait une règle générale. Il serait plutôt d’avis de changer le moins possible à la convention et de dire simplement que les législations nationales pourront contenir cette clause.

M. Alten reconnaît que la proposition anglaise correspond quelque peu à la proposition norvégienne, mais il existe cependant une différence. Dans le cas où le transport côtier fait partie du trafic d’un pays à un autre, il sera nécessaire d’appliquer la convention à cette partie du trafic côtier.

M. le Président déclare qu’il est entendu que par cabotage on comprend la navigation dans les eaux nationales, entre les ports d’un même pays. Si un navire trafique sur la côte de Suède, mais fait escale dans un port du Danemark, la convention s’applique à tout le voyage.

M. Alten croit qu’on pourrait résoudre la question en faisant un ajout à l’article 9.

M. le Président estime qu’il vaut mieux que la disposition nouvelle soit une simple faculté et non une règle de la convention. Ainsi la Belgique n’insérera pas une disposition de ce genre. Le trafic côtier en Amérique est si important que dans ce pays la règle ne sera pas insérée non plus.

M. Ripert signale qu’en France le trafic avec l’Algérie est considéré comme trafic national, comme en Angleterre le trafic entre l’Angleterre et l’Irlande.

M. Richter propose pour rendre le sens de l’article 6 tout à fait clair de mettre “si un document formant titre n’est pas émis”, au lieu de “si un connaissément n’est pas émis”.

**Sir Leslie Scott** felt the following addition was necessary: “in the case of general goods”.

The Chairman pointed out that a general rule had been made. He was rather of the opinion that as few changes as possible should be made to the Convention and was for saying simply that national legislations might contain this clause.

Mr. Alten appreciated that the English proposal corresponded somewhat to the Norwegian proposal. However, one difference did exist. In the case where coastal trade was part of the traffic from one country to another, it would be necessary to apply the Convention to that part of the coastal traffic.

The Chairman declared that it was understood that by coastal trade one meant navigation in national waters between ports of the same country. If a ship traded on the coast of Sweden, but stopped at a port in Denmark, the convention applied to the whole voyage.

Mr. Alten believed that one could resolve the question by making an addition to article 9.

The Chairman felt that it was better for the new provision to be a simple facility and not a rule of the Convention. Otherwise Belgium would not insert such a provision. The coastal traffic in America was so important that in that country the rule would not be inserted either.

Mr. Ripert indicated that in France trade with Algeria was considered as national trade, as in England the trade between England and Ireland.

Mr. Richter proposed, in order to render the sense of article 6 clearer, putting “if a document of title had not been issued” instead of “if a bill of lading had not been issued”.
M. le Président ne croit pas que cela changerait beaucoup. On a mis ces mots pour empêcher qu’il ne soit fait abus des premières dispositions de l’article: le fait qu’on ne puisse pas se servir d’un connaissement est la meilleure des protections. Tel que le commerce moderne est organisé, on ne pourra dans l’immense majorité des cas se passer d’un connaissement négociable.

M. Bagge croit aussi qu’il faut s’opposer à l’amendement de M. Richter car s’il est inséré, l’article 6 n’aura pas de sens et en outre ne sera pas exact. S’il n’est pas émis de connaissement ou de document similaire formant titre d’après la règle générale dans l’article 1 (b), la convention ne s’applique pas. Avec l’amendement de M. Richter, l’article 6 n’aurait donc pas de signification et serait en outre inexact. Dans le paragraphe 3 il y a une restriction qui dit que l’article 6 est seulement applicable à des cargaisons exceptionnelles. Il serait incompréhensible d’insérer dans le paragraphe 3 une telle restriction dans la liberté de contracter stipulée à l’art. 1 (b), dans le cas où ni un connaissement, ni un document similaire n’est émis. Il vaudrait mieux mettre “pourvu qu’en ce cas aucun connaissement ne soit émis et que les conditions convenues soient insérées dans un autre document similaire formant titre, qui sera non négociable et portera mention de ce caractère”.

M. le Président demande à M. Richter de ne pas insister.

M. Struckmann présente une observation de rédaction: dans le texte anglais il est dit: “in regard to any particular risk” et la traduction française porte “pour des marchandises déterminées quelles qu’elles soient”. Ne faudrait-il pas supprimer les mots “quelques qu’elles soient” qui ne se trouvent pas dans le texte anglais.

M. le Président estime que les textes couvrent la même chose.

Sir Leslie Scott fait observer qu’on a voulu dire: “une telle cargaison”, “un tel colis”.

The Chairman did not believe that that would change much. These words had been included to prevent abuse of the article’s first provisions. The fact that one could not use a bill of lading was the best of protections. As modern trade was organized, one could not, in the vast majority of cases, do without a negotiable bill of lading.

Mr. Bagge also believed that it was necessary to oppose Mr. Richter’s amendment because, if it were inserted, article 6 would have no meaning and, moreover, would not be correct. If no bill of lading or similar document of title were issued according to the general rule in article 1(b), the Convention did not apply. With Mr. Richter’s amendment, article 6 would not have any meaning and would, moreover, be incorrect. In paragraph 3 there was a restriction that said that article 6 was only applicable to exceptional cargoes. It would be incomprehensible to insert in paragraph 3 such a restriction in the freedom to contract stipulated in article 1(b) in the case where neither a bill of lading nor a similar document was issued. It would be better to include “provided that in this case no bill of lading would be issued and that the agreed conditions would be inserted in another similar document of title that would be non-negotiable and carry a description to this effect”.

The Chairman asked Mr. Richter not to insist.

Mr. Struckmann made a comment on drafting. In the English text it said “in regard to any particular risk”, and the French translation said “pour des marchandises déterminées quelles qu’elles soient” (for specific goods whatever they might be). Wouldn’t it be necessary to delete the words “quelques qu’elles soient” (whatever they might be), which were not found in the English text?

The Chairman felt that the texts covered the same thing.

Sir Leslie Scott pointed out that one had meant: “such a cargo”, “such a package”.

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M. Beecher demands if it’s necessary to interpret Article 6 in the sense that any bill of lading would be subject to the rules of the Convention, except when dealing with a shipment within the definition of an exceptional commercial cargo or a document that would simply be a receipt without being negotiable?

Sir Leslie Scott also wanted to determine the scope of the Convention. He wanted the proceedings to mention the interpretation of the English delegation that had been recorded in a written note.

The Chairman declared that he intended making a report on the whole question of how to emphasize that which was truly essential in their discussions. As to the comments Sir Leslie Scott had submitted in writing, they would be embodied in the proceedings as constituting the opinion of the English delegation.

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Sir Leslie Scott also wanted to determine the scope of the Convention. He wanted the proceedings to mention the interpretation of the English delegation that had been recorded in a written note.

The Chairman declared that he intended making a report on the whole question of how to emphasize that which was truly essential in their discussions. As to the comments Sir Leslie Scott had submitted in writing, they would be embodied in the proceedings as constituting the opinion of the English delegation.

In article 6, we had the opportunity to state more precisely the meaning of texts previously adopted by saying that in the receipts or acknowledgments, the parties were free to enter into whatever contracts they wished, provided that the derogatory conditions agreed to were inserted in the receipt, which would not be negotiable and would say so. That was a question of exceptional cargoes for which the terms and conditions of carriage were of the sort to justify a special agreement, always in such a way as not to make a rule out of these exceptions.
ARTICLE 7

Aucune disposition de la présente convention ne défend à un transporteur ou à un chargeur d’insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou les dommages provenant aux marchandises, ou concernant leur garde, soin et manutention, antérieurement au chargement et postérieurement au déchargement du navire sur lequel les marchandises seront transportées par mer.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea.

ILA 1921 Hague Conference
Text submitted to the Conference

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care of goods prior to the loading on and subsequent to the unloading from the ship on which the goods are carried by sea.

Third day’s proceedings - 1 September 1921

The Chairman: Sir Norman Hill has given notice of an amendment in the fourth line, to insert, after [206] the word “care”, the words “and handling”. Is that agreed? (Agreed).

Mr. Rudolf: There is one thing I might ask. Do you really think this clause is necessary at all? In the definition the whole spirit of this Code is dealing with carriage of goods from the time when the goods are received on the ship’s tackle till the time they leave the tackle. It seems that in putting this clause in you are rather implying that there should be put in special restrictions prior to actual shipment and subsequent to actual unloading.

The Chairman: I dare say Sir Norman Hill we consider whether it is necessary to fix the points of time more than once. The points of time are fixed definitely in an earlier part of the rules - coming to the tackle, and leaving the tackle. What does Sir Norman Hill say?

Sir Norman Hill: Our difficulty is this. We do not want, and this Conference has
emphasised the necessity for it, to maintain the through bills of lading and such like documents. This Code contains very positive prohibitions against the insertion of clauses in the contract of carriage. We have a mixed contract. We want to make it perfectly clear that the same document, the same bit of paper, will serve two purposes. One covers a contract of carriage, the whole of which comes under this Code. Other clauses in that same bit of paper cover operations which are entirely outside the Code, and, I do not think that it is merely repetition, I think it is necessary for the safety of the rest of the document. (Hear, hear). It is a composite document.

The Chairman: I am inclined to think myself that there is reason for that. We are embarking on an uncharted sea, and it is better to get such certainty as can be secured. Does the Committee consent to Article 6? (Agreed).

Text adopted by the Conference

Art. 7. Limitations on the Application of the Rules.
Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care AND HANDLING of goods prior to the loading on and subsequent to the DELIVERY from the ship on which the goods are carried by sea.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[370]

Art. 7. Limitations on the Application of the Rules.
Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the delivery from the ship on which the goods are carried by sea.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[384]

Art. 7. Limitations on the Application of the Rules.
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Conférence Diplomatique - Octobre 1922
Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

[196]

M. le Président fait remarquer qu’ici encore le mot “livraison” est remplacé par “déchargement”. Tout ce qui se passe entre la réception et le chargement et entre le déchargement et la livraison reste en dehors de la convention.

Septième Séance Plénière - 25 Octobre 1922

[152]

M. Beecher. - Au sujet de l’article 7, je ne désire pas proposer une modification, mais je crois nécessaire de faire une déclaration (que je désirerais voir reproduite à propos-verbal), au nom des délégués des Etats-Unis. Les délégués des Etats-Unis déclarent qu’il doit être clairement entendu que la mention relative à la liberté de contrat, accordée par l’article 7 se réfère uniquement à une restriction de cette liberté contenue dans les Règles et que les diverses nations restent libres de restreindre cette liberté de contrat pour toute période autre que celle pendant laquelle la marchandise se trouve à bord du navire. Ils déclarent tout spécialement qu’il doit être clairement entendu qu’en donnant un accord à ces Règles, les Etats-Unis ne seront pas obligés de modifier en aucune façon le Harter Act, sauf en ce qui concerne le temps pendant lequel les marchandises se trouvent effectivement à bord du navire.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Quatrième Séance Plénière - 8 Octobre 1923

[79]

M. Sindballe voudrait qu’il soit clai-
Article 7 - Freedom of contract (when admissible)

remont indiqué si les Règles s’appliquent
au connaissement direct ou non. Celui
qui émet un connaissement direct est-il
soumis aux dispositions de la convention
pour toutes les parties d’un voyage com-biné ou seulement pour la partie du tra-jet accompli sur son propre navire?

Sir Leslie Scott signale que dans le
cas des États-Unis, où beaucoup de
connaissements directs sont émis, c’est la
compagnie du chemin de fer qui les
émet; elle n’est pas propriétaire du navi-re; elle n’est pas soumise à la convention.

M. Sindballe fait observer que d’après l’article 1(a), le transporteur
s’entend non seulement du propriétaire
de navires, mais également de l’affréteur.
Par conséquent, si une compagnie de
chemins de fer américaine émet un
connaissement direct pour un voyage qui
doit s’accompagner pour partie par mer, el-le peut être considérée comme l’affréteur
pour ce qui concerne le trajet maritime.
Il y a donc ici un doute et l’on pourrait en
présence de la rédaction de l’article 1, §
a considérer que les Règles s’appli-
quen dans ce cas.

M. le Président est d’avis qu’on ne
peut résoudre ici la question de savoir,
lorsqu’un connaissement direct est émis,
quel est celui des transporteurs succes-sifs qui est responsable, [80] ni l’étendue
de sa responsabilité. Le texte de l’article
dit simplement que pour la partie du
transport maritime commençant au
chargement et allant jusqu’à la fin du dé-
chargement du navire, la convention
s’applique.

M. Sindballe craint que le texte ne
solutionne pas le cas envisagé. La seule
personne qui conclut un contrat est celle
qui émet le connaissement direct. Il est
possible que la personne qui exécute la
seconde partie du voyage devienne respon-sable en vertu de cette convention.
Est-ce certain en vertu du texte?

Sir Leslie Scott croit qu’en matière
de connaissements directs américains, la
compagnie de chemin de fer contracte
pour le transport par terre et le stipule
expressément; elle ne contracte pas au
nom de l’armateur; lorsque les marchan-
cated whether the rules applied to the
through bill of lading or not. Was the
person who issued a through bill of lad-
ing subject to the provisions of the bill
of lading for all parts of the combined
journey or only for the part of the jour-
ney accomplished in his own ship?

Sir Leslie Scott indicated that in the
case of the United States, where many
through bills of lading were issued, it
was the railway company that issued
them. It was not the owner of the ship.
It was not subject to the Convention.

Mr. Sindballe pointed out that un-
der article 1(a), the carrier included not
only the owner of the ship but also the
charterer. As a result, if an American
railway company issued a through bill
of lading for a journey that had to be
conducted partly by sea, it could be
considered like the charterer in so far as
concerned the maritime journey. There
was some confusion here and one
might, with the drafting of article 1(a),
believe that the rules applied in this
case.

The Chairman believed that one
could not resolve at this point the ques-
tion of knowing when a through bill of
lading was issued, which of the succes-
sive carriers would be liable, [80] or
what the scope of his liability would be.
The text of the article simply said that
for the portion of the journey done by
sea, beginning with loading and extend-
ing until unloading was complete, the
Convention applied.

Mr. Sindballe feared that the text
would not provide a solution for the
case envisaged. The only person to con-
clude a contract was the one who issued
the through bill of lading. It was possi-
ble that the person who executed the
second part of the journey would be-
come liable by virtue of the Convention.
Was this certain under the text?

Sir Leslie Scott believed that as far
as American through bills of lading
were concerned, the railway company
contracted for the carriage by land and
stipulated it expressly. It did not con-
tract in the name of the shipowner.
dises arrivent au port d’embarquement, un “Ocean Bill of Lading” est émis.

M. Sindballe fait observer que ce connaissement est remis à la compagnie de chemin de fer, mais non pas au porteur du connaissement direct.

Sir Leslie Scott répond que la compagnie de chemin de fer reçoit ce connaissement comme agent.

M. Beecher explique que le connaissement direct ordinaire est souvent en trois parties séparées. La première partie est la lettre de voiture pour les marchandises jusqu’au port d’embarquement. Ensuite, il y a le connaissement pour le transport transocéanique et enfin il peut y avoir une troisième partie couvrant le transport du port de débarquement jusqu’au point de destination. Il se peut aussi que le connaissement direct stipule que le transport par mer sera soumis à la formule usuelle de connaissement maritime.

M. le Président signale que d’après le droit belge celui qui, sur le vu d’un reçu d’une compagnie de chemin de fer, effectue un transport par mer, est responsable de ce transport quand même il n’aurait pas signé un connaissement. Il y a même une jurisprudence qui dit que celui qui accepte en dernier lieu de délivrer le chargement est responsable de tout le transport. Sous ce rapport les législations nationales peuvent décider ce qu’elles veulent; mais pour la partie maritime, depuis le commencement de l’embarquement jusqu’à la fin du débarquement du navire, celui qui fait le transport est tenu, quand même ce serait une compagnie de chemin de fer.

M. Sindballe est d’avis que la convention ne peut s’appliquer qu’à celui qui a émis le connaissement; or, il se fait qu’en matière de connaissement direct ce n’est pas l’affréteur.

M. le Président estime qu’il ne faut pas examiner la question de savoir contre qui le destinataire à une action en justice: c’est à la loi nationale de le dire. Mais celui contre lequel l’action peut être légitimement intentée est tenu par la convention.

When the goods arrived at the port of shipment, an ocean bill of lading was issued.

Mr. Sindballe pointed out that this bill of lading was remitted to the railway company, but not to the holder of the through bill of lading.

Sir Leslie Scott replied that the railway company received this bill of lading as an agent.

Mr. Beecher explained that the ordinary bill of lading was often in three separate parts. The first part was the letter of carriage for the goods up to the port of embarkation. Then there was the bill of lading for transoceanic carriage. Finally, there could be a third part covering the carriage from the port of discharge to the final point of destination. The through bill of lading might also stipulate that the carriage by sea should be subject to the usual formula of the maritime bill of lading.

The Chairman indicated that according to Belgian law the person who, on the basis of a receipt from a railway company, carried out carriage by sea, was liable for this carriage even when he had not signed a bill of lading. There was even case law that said that the person who undertook final delivery of the load was liable for the whole journey. As far as this went, the national legislatures could decide what they wanted. But for the maritime part, from the beginning of loading until the end of unloading from the ship, the person who carried out the carriage was responsible, even when it was a railway company.

Mr. Sindballe was of the opinion that the Convention could only apply to the person who issued the bill of lading. So far as the through bill of lading was concerned, it happened not to be the charterer.

The Chairman felt that there was no need to look at the question of against whom the receiver had a suit in law. It was up to national law to decide that. But it was the person against whom suit could legitimately be brought who was liable under the Convention.
M. Langton déclare qu’il y a toujours quelqu’un qui est responsable: d’après une loi, cela peut être le chemin de fer; d’après une autre loi, c’est la compagnie de navigation; d’après une troisième loi, c’est la personne qui délivre effective-ment les marchandises au consignataire. Mais il est dans tous les cas certain que quelqu’un a conclu un contrat, de sorte qu’il y aura quelqu’un aussi qui sera le transporteur en vertu de la convention; c’est à cette personne que la convention s’appliquera. Peu importe quelle est cette personne, cela sera réglement par la loi nationale.

M. le Président confirme que qui-conque transporte des marchandises par mer en vertu d’un connaissement tombe sous l’empire de cette convention.

M. Bagge suppose le cas d’un connaissement émis à Londres pour des marchandises destinées à la Finlande; le navire va de Londres à Hambourg où les marchandises sont chargées sur un autre navire pour la Finlande. L’armateur de Londres qui a émis le connaissement direct pour la Finlande peut-il dire qu’il n’est responsable que pour le trajet de Londres à Hambourg, et qu’il n’assume aucune responsabilité pour le trajet Hambourg-Finlande?

M. le Président répond affirmativa-ment mais déclare que cette question n’est pas traitée dans la convention. Il n’est d’ailleurs pas possible de donner des consultations sur toutes les discus-sions possibles à propos des connaissements directs.

M. Loder signale que d’après la loi hollandaise, on peut poursuivre dans ce cas chacun des transporteurs.

M. Beecher voudrait entendre dire que l’article 7 n’empêche pas les Etats-Unis de maintenir le Harter Act ou des dispositions similaires pour régler les opérations antérieures au chargement ou postérieures au déchargement, qui peuvent dans certaines hypothèses engager la responsabilité du propriétaire.

M. le Président donne acte de cette déclaration. Il est évident que ce droit existe pour toutes les parties contrac-
Si les États-Unis pensent qu’il est utile d’en faire une mention expressive, on pourrait ajouter celle-ci parmi les formules à la fin de la convention. (Assenti-ment).

Septième Séance Plénière -
9 Octobre 1923

M. le Président (Louis Franck) . . . .

[122]

L’article suivant, 7, est relatif à la limitation de la responsabilité pour les marchandises avant leur embarquement et après leur déchargement. Il est précisé que par “chargement” on entend l’ensemble de l’opération et pour le “déchargement” l’ensemble de cette opération là aussi. Dès le commencement donc du chargement jusqu’à la fin du déchargement, la convention s’applique, mais pas au delà. Par conséquent, rien n’empêche les législations nationales de régler comme il leur convient tout ce qui se fait avant ou après, et si par exemple, comme aux États-Unis, il existe une loi imposant certaines restrictions aux droits contractuels, il n’y a pas lieu d’intervenir.

En ce qui concerne le connaissement direct, il n’y a pas à s’occuper du point de savoir qui est responsable des obligations imposées par un connaissement direct, si notamment chaque transporteur sera responsable pour la section du trajet qu’il accomplit, ou si un transporteur répondra pour tous, ou si c’est le dernier transporteur qui répondra de tous les autres. Pour toute la partie qui constitue le transport par mer, depuis le chargement jusqu’au déchargement des marchandises, les dispositions de la convention doivent s’appliquer.

[122]

The following article, 7, related to the limitation of liability for the goods before shipment and after unloading. It was clearly defined that by “loading” was understood the complete operation and by “unloading” was understood the complete operation also. From the beginning of loading, therefore, to the end of unloading, the Convention applied, but not beyond that. Consequently, nothing prevented national laws from regulating, as they pleased, everything done before or after. If, for example, as in the United States, there was already a law imposing certain restrictions on contractual rights, there was no good reason to intervene.

So far as the through bill of lading is concerned, there is no need to worry over knowing now who is liable for the obligations imposed by a through bill of lading, notably, whether each carrier would be liable for the particular section of the voyage he undertook, whether one carrier would be liable for all sections, or whether it was the final carrier who was liable for the others. For the whole part that constituted carriage by sea, from loading until unloading the goods, the provisions of the Convention had to apply.
ARTICLE 8

Les dispositions de la présente Convention ne modifient ni les droits ni les obligations du transporteur tels qu’ils résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

ARTICLE 8

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ILA 1921 Hague Conference
Text submitted to the Conference

[1]

Article 7. Limitation of Liability.
The provision of this Code shall not affect the rights and obligations of the carrier under the Convention relating to the limitation of the liability of owners of sea-going vessels.

Third day’s proceedings - 1 September 1921

[206]

The Chairman: ..........................................................
That is common form. I take it that is agreed? (Agreed).
It is pointed out to me that the use of the word “Code” there in the first line is a slip. It is “The provisions of these rules”, really.
Sir Norman Hill: It is in the heading, too, of Article 6.
The Chairman: The Drafting Committee will attend to that, but the spirit of the thing is agreed.

Text adopted by the Conference
No change.

CMI 1922 London Conference
Text submitted to the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[370]

Art. 8. Limitation of Liability.
The provisions of these Rules shall not affect the rights and obligations of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)

[384]

No change.
Conférence Diplomatique - Octobre 1922
Séances de la Sous-Commission
Troisième Séance - 21 Octobre 1922

[196]

M. le Président. - Limitation of liability signifie simplement la procédure à suivre, conformément à la loi générale de limitation de responsabilité en vue de faire abandon du navire. Je doute que les mots du texte français “limitation de la responsabilité des propriétaires de navires de mer” aient le même sens.

M. Langton, délégué de la Grande-Bretagne, ne comprend pas bien. A-t-on jamais entendu par là une limitation à un chiffre spécial?

M. de Rousiers, délégué de la France, comprendrait cette stipulation comme constituant une référence à l’article 216 du Code français relatif à l’abandon, par exemple.

M. le Président. - La signification du terme est claire: il signifie exactement ce que dit M. de Rousiers.

Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Quatrième Séance Plénière - 8 Octobre 1923

[81]

Il met en discussion l’article 8.

M. Beecher craint que la rédaction de cet article ne soit pas suffisamment claire. Il constate que dans le nouvel “Act” anglais, on a cru nécessaire d’expliquer ce qu’on entend par “droits et obligations du transporteur tels qu’ils résultent de la loi en vigueur en ce moment relativement à la limitation de la responsabilité”, par une référence à l’article spécial du “Merchant Shipping Act” relatif à la limitation de la responsabilité. Il ne faut pas qu’on puisse considérer ce texte comme s’appliquant au Harter Act qui limite dans une certaine mesure la responsabilité des propriétaires de navires de mer.

Diplomatic Conference - October 1922
Meetings of the Sous - Commission
Third Session - 21 October 1922

[196]

The Chairman. - Limitation of liability simply signifies the procedure to be followed, in conformity with the general law for the limitation of liability concerning the abandonment of the ship. I doubt whether the words of the French text “limitation de la responsabilité des propriétaires de navires de mer”, have the same meaning.

Mr. Langton, British delegate, did not quite understand. Had the meaning never included limitation to a specific figure?

Mr. de Rousiers, French delegate, understood this provision as constituting a reference, for example, to article 216 of the French Code concerning abandonment.

The Chairman. - The meaning of the term is clear. It means precisely what Mr. de Rousiers said.

Diplomatic Conference - October 1923
Meetings of the Sous-Commission
Fourth Plenary Session - 8 October 1923

[81]

Article 8 then came under discussion.

Mr. Beecher feared that the drafting of this article was not sufficiently clear. He affirmed that in the new English “Act”, it had been thought necessary to explain what was intended by “rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability” by reference to a special article in the “Merchant Shipping Act” concerning the limitation of liability. It was not necessary for the text to be considered as applying to the Harter Act, which to a certain extent limited the liability of the owners of sea-going vessels.
**M. le Président** confirmed that it was indeed so. The text applied to the statutory legal limitation. Before the arrival of Mr. Beecher, and with the aim of meeting certain difficulties in drafting, it had been agreed that the parties to the convention would have the facility to retain the part of their national legislation that conformed to the Convention and to amend what did not conform. This latter procedure would give them facilities concerning questions of drafting.

**Mr. Beecher** supported the text under these conditions.
ARTICLE 9

Les unités monétaires dont il s’agit dans la présente Convention s’entendent valeur or.

Ceux des Etats contractants où la livre sterling n’est pas employée comme unité monétaire se réser-vent le droit de convertir en chiffres ronds, d’après leur système moné-taire, les sommes indiquées en livres sterling dans la présente Convention.

Les lois nationales peuvent ré-server au débiteur la faculté de se li-bé-rer dans la monnaie nationale, d’après le cours du change au jour de l’arrivée du navire au port de dé-chargement de la marchandise dont il s’agit.

ARTICLE 9

The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to them-selves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency ac-cording to the rate of exchange pre-vailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

M. Godley dit qu’une question fort importante pour la Grande-Bretagne est celle des £ 100 or; dans l’article 4 du tex-te revisé, il est dit qu’il s’agit de £ 100 or.

M. le Président constate à ce sujet que dans le paragr. 5 de l’art. 4, le mot £ 100 “or” peut disparaître, parce qu’il existe une clause spéciale qui figure dans les différentes conventions: de même le paragraphe final de l’article 9 n’est plus nécessaire.

M. Alten propose de transférer à l’ar-ticle 9 les mots “Le cours du change sera pris au jour de l’arrivée du navire au port de déchageement de la marchandise dont il s’agit; le dernier alinéa de l’art. 9 serait donc libellé comme suit:

“Les lois nationales peuvent réserver...”
au débiteur la faculté de se libérer dans la monnaie nationale, d’après le cours du change à l’arrivée du navire au port de déchargement de la marchandise dont il s’agit”.

M. Godley demande si cela veut dire que les armateurs britanniques auront à payer non pas £ 100 mais £ 100 or, qui équivalent en réalité à £ 105? Ce point de vue ne pourrait être adopté.

M. le Président répond que Sir Leslie Scott a dit que si l’on mettait £ 100 en chiffres ronds, cela suffirait pour tourner cette difficulté. Il n’y a pas lieu de faire des difficultés pour 5%. Si les autres pays doivent convertir la £ en francs et en florins, il est évident que cela doit être sur la base de la valeur or.

M. Loder fait observer qu’on ne peut créer une situation spéciale pour l’Angleterre seule.

M. Bagge rappelle qu’on était d’accord que pour obtenir l’uniformité, il faut que ce soit la valeur or.

M. Beecher était sous l’impression que £ 100 signifiait des billet de banque.

M. Godley craint des difficultés pour le cas où la £ subirait une dépréciation plus grande.

M. le Président pense que cela n’est pas à craindre et qu’il est bien possible que d’ici à la date de mise en vigueur de la convention, la £ soit au pair. Il n’y a aucune difficulté d’ailleurs si on dit “en chiffres ronds”.

debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

Mr. Godley asked if this meant that the British shipowner would have to pay not £100 but £100 gold, which was equivalent in reality to £105? This point of view could not be adopted.

The Chairman replied that Sir Leslie Scott had said that if one put £100 in round figures, that would be enough to side-step this difficulty. There was no good reason to create problems for 5%. If other countries had to turn pounds into francs and florins, it was clear that that should be on the basis of the gold value.

Mr. Loder remarked that one could not create a special situation for England alone.

Mr. Bagge recalled that there had been agreement for uniformity; it had to be gold value.

Mr. Beecher was under the impression that £100 meant bank notes.

Mr. Godley feared the problems inherent in the case where the pound underwent a greater depreciation.

The Chairman thought that that was not to be feared and that it was quite possible that, from now until the date of the entry into force of the Convention, the pound would be at par. There would be no difficulty, moreover, if one said “in round figures”.
ARTICLE 9

Article 9 of the 1924 Convention has been deleted by the 1968 Protocol and the following new article has been adopted in its place:

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

“This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.”

CMI 1963 Stockholm Conference
Committee on Bills of Lading Clauses
Verbatim Reports No. 7 - 12 June 1963 A.M.

[1]

La séance est ouverte à 10h. 15.

Mr. le Président (J. Van Ryn). La séance est ouverte. Je vous propose de continuer l’examen entamé hier de la recommandation n° 6. Cela ne nous prendra d’ailleurs pas longtemps. La recommandation n° 6 concerne le dommage nucléaire.

La commission propose d’ajouter dans la convention une nouvelle disposition conforme à celle qui figure à l’art. 14 de la convention sur les passagers, et rédigée comme suit:

“La présente convention ne portera pas préjudice aux dispositions d’une quelconque convention ou d’une loi nationale qui régit la responsabilité pour les dommages nucléaires”.

D’après les commentaires écrits des associations nationales, il n’y a eu aucune objection ni aucune observation à cette proposition et je suppose que nous n’aurons aucune difficulté à l’approuver à notre tour. Si quelqu’un désirait cependant faire une observation à ce sujet, je lui donnerais volontiers la parole.

[2]

Si personne ne demande la parole, je considère que la recommandation de la commission internationale sur ce point est approuvée.

Séance Plénière - 14 Juin 1963

Le Président (M. Lilar): . . . . . . . . .

Plenary Session - 14 June 1963

The President (Mr. Lilar): . . . . . . . . .

[509]

4e Recommandation
La quatrième recommandation positive de la commission internationale est

Fourth Recommendation
The fourth recommendation of the International Subcommittee concerns
relative à l’art. 4(5) et 9: “clause or, taux de conversion, unité de limite”.

La commission de cette Assemblée propose de remplacer l’art. 4(5), premier alinéa par la disposition qui fait l’objet dans le document Sto/5 de l’art. 2 paragraphe premier, et d’ajouter une disposition dans le même document, qui fait l’objet de l’art. 2(2).

M. J. P. Kruseman, Pays-Bas: Monsieur le Président, il ne s’agit que d’une remarque très courte: n’est-il pas nécessaire, par rapport à cette clause or, de mentionner de quelque manière que ce soit, que l’article 9 de la Convention de 1924 est supprimé? Cela est dit d’une manière indirecte par la nouvelle disposition concernant les navires atomiques. La nouvelle disposition concernant les navires atomiques précise qu’il y aura une nouvelle version de l’article 9.

A mon avis il est préférable - et ce sera ma première remarque positive - de préciser dans le protocole que l’article 9 de la Convention est supprimé sinon il pourrait y avoir un doute sur la question de savoir si l’article 9 est supprimé par rapport à la clause or.

Je propose donc de déclarer clairement que l’article 9 est supprimé.

[510]

Avec votre permission, Monsieur le Président, j’ajouterai que je désire faire une autre proposition à savoir de ne pas donner le numéro 9 à l’article concernant les navires atomiques mais de faire un article nouveau pour la simple raison que cela prendra quelques années avant que le nouveau protocole, s’il était accepté par la Conférence Diplomatique, n’entre en vigueur. Vous devrez attendre pour connaître le nom et le nombre des pays qui ratifieront le protocole et il y aura toujours un risque plus ou moins substantiel que tous les pays qui l’ont adopté la Convention de 1924 n’adoptent pas en même temps le nouveau protocole si bien qu’il y aura une série de pays qui auront uniquement l’ancienne Convention comprenant l’article 9 avec une clause or inopérante alors que d’autres pays qui Article 4(5) and 9: “Gold clause, rate of exchange, unit limitation”.

The Subcommittee of the Assembly recommends to supersede Article 4(5), first sub-paragraph, by the provision which forms the subject in document Sto/5 of Article 2(1), and to add a provision in the same document, which forms the subject of Article 2(2).

Mr. J. P. Kruseman, Netherlands: Mr. Chairman, it is only a very short remark: is it not necessary in connection with this Gold Clause to mention in some way that Article 9 of the 1924 Convention is deleted? This is said in an indirect way in connection with a new clause regarding nuclear ships that there will be a new version of Article 9.

I would suggest it is much better - and that is the first remark I have to make in a positive way - that in the Protocol of today, Article 9 of the Convention of 1924 is cancelled because, otherwise, there might be some doubt as to whether Article 9 which is in connection with the Gold Clause has been withdrawn or not.

I suggest to put a positive statement that Article 9 is withdrawn, cancelled, whatever the word maybe.

[510]

If you will allow me, Mr. Chairman, another word. I would like to make another proposition and that is not to give the article regarding atomic ships, N° 9 but rather make it a new Article and for this particular reason that it will take a few years before the new Protocol, if it is adopted at the Diplomatic Conference, will become effective. Then you will have to wait and see what countries and how many countries will ratify it and there is always a chance, and rather a large chance, that all the countries that adopted the Convention of 1924 will not adopt and, all at the same time, the new Protocol with the result that there will be a lot of countries that have only the old Convention of 1924 including Article 9 of the Gold Clause which does not operate and there will be other countries who have
auront adopté le nouveau protocole auront le même article traitant d'un sujet bien différent. Cela créera la confusion et ce ne seront pas seulement les tribunaux et les juges qui se serviront du protocole mais avant tout, dans leur travail journalier, les compagnies de navigation, les compagnies d'assurance, les chargers, les destinataires ainsi que leurs agents, qui sont parfois des gens moins érudits à qui nous devons éviter des confusions possibles. C'est la raison pour laquelle je propose formellement de préciser dans le protocole que l'article 9 est supprimé.

Deuxièmement, je propose que le nouvel article concernant les navires atomiques, porte le numéro suivant.

Le Président: Mesdames et Messieurs, nous sommes saisis d'une proposition de la délégation des Pays-Bas, qui consiste à ajouter à l'art. 2 tel qu'il est proposé par la commission de cette Assemblée, un troisième paragraphe conçu comme suit: “L'article 9 de la Convention est abrogé”.

Quelqu'un demande-t-il la parole au sujet de l'amendement proposé par la délégation néerlandaise?

Si l'Assemblée est d'accord pour inclure cet amendement dans l'article 2, il est inutile de procéder à un vote par délégation. Y a-t-il des objections?

Je crois pouvoir considérer l'amendement comme adopté.

L'article 2, proposé par la commission de cette Assemblée, et se composant de 3 paragraphes dont le dernier est conçu comme suit: “L'article 9 de la Convention est abrogé”, est adopté.

The President: Ladies and Gentlemen. We have before us a suggestion of the Dutch delegation which consists in adding to Article 2 as recommended by the Sub-Committee of the Assembly, a third paragraph as follows: “Article 9 of the Convention is abrogated”.

Does anyone wish to make a statement on the amendment moved by the Dutch delegation?

If the Assembly agrees to insert the above amendment in Article 2, there is no need to take a vote by calling over the names of each delegation. Are there any objections?

I believe I may consider this amendment as adopted.

Article 2 recommended by the Sub-Committee of the Assembly, which comprises 3 paragraphs whereof the last one is worded as follows: “Article 9 of the Convention is abrogated”, is adopted.

Conférence Diplomatique - Mai 1967
Texte adopté par la Conférence de Stockholm du CMI

[675]

Article 4.
L'article 9 de la Convention est remplacé par la disposition suivante: “La présente Convention ne portera

Diplomatic Conference - May 1967
Text adopted by the CMI Stockholm Conference

[675]

Article 4.
Article 9 of the Convention shall be deleted and replaced by the following: “This Convention shall not affect the
pas préjudice aux dispositions d’une quelconque Convention ou d’une loi nationale qui régit la responsabilité pour les dommages nucléaires”.

L’article 4 est adopté tel quel par la Commission.

Vote:  pour: 22;
contre: néant;
abstentions: néant;
Total: 22.

provisions of any international Convention or national law which governs liability for nuclear damage”.

Article 5 is adopted without any change by the Commission.

Voting: 22 yes;
none against;
none abstained;
Total: 22.
ARTICLE 10

Les dispositions de la présente Convention s’appliqueront à tout connaissement créé dans un des États contractants.

The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.

Sir Leslie Scott. - Il y a une autre question générale. Je ne sais pas si nous devons la régler en ce moment ou si elle doit être tranchée après par les représentants diplomatiques. Il nous faut décider de l’étendue de ces règles: à quels navires s’appliqueront-elles?

Nous avons rédigé une proposition que je voudrais bien vous soumettre: “Les présentes règles auront effet pour et à raison du transport de marchandises par des navires de mer transportant des marchandises d’un port situé dans un État contractant à tout autre port situé sur le territoire de ce pays ou ailleurs, chaque fois que l’une des parties intéressées est sujet ou citoyen d’un autre État contractant”.

M. le Président. - C’est la formule de la Convention sur la limitation.

Sir Leslie Scott. - A peu près!

M. le Président. - Nous pourrons l’examiner.

M. Ripert signale que la convention sur l’abordage et l’assistance a été rendue

Mr. Ripert indicated that the Conventions on collision and salvage had
dès sa conclusion obligatoire pour les tribunaux mais que si, par suite, des lois internes ont été modifiées c’est de par la libre détermination du législateur. Par contre, il est certain que quand la convention sur les Règles de La Haye aura été signée et ratifiée par le Parlement français, elle deviendra obligatoire pour les tribunaux français même à l’égard de nationaux français. En effet l’article 9 dit que la Convention s’appliquera à tout connaissance créé dans un des États contractants. Ensuite on a fait valoir que le langage doit être clair pour tous les armateurs; mais on oublie qu’il doit être clair surtout pour les tribunaux qui vont appliquer la Convention; or dans 8/10 des procès il y a des étrangers en cause et il va falloir appliquer les Règles de La Haye. M. Ripert fait observer qu’il y a dans cette convention des dispositions qui ne sont obligatoires pour personne. Ce sont de simples indications données aux armateurs et aux chargeurs; c’est notamment le cas de l’article 4.

**Quatrième Séance Plénière -**

**8 Octobre 1923**

La commission aborde l’examen de l’Article 9.

**M. Ripert** croit qu’il y a un doute sur l’application de cet article. D’après sa rédaction, il s’appliquerait même aux rapports entre nationaux de l’un des États contractants, et il paraît bien difficile qu’il en soit autrement. Seulement cela n’est plus une disposition de convention internationale, mais bien de législation interne.

**Sir Leslie Scott** propose d’ajouter “sauf les réserves qui ont été formulées”.

**M. Ripert** demande s’il faut admettre que pour un connaissance émis par un Français au profit d’un autre Français, la convention internationale s’applique.

**M. le Président** est de cet avis. Au fond, dès le début de l’œuvre d’unification de droit maritime, les conférences ont fait de la législation nationale. Dans

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**Fourth Plenary Session -**

**8 October 1923**

The Commission began examination of Article 9.

**Mr. Ripert** believed there to be doubt on the application of this article. According to the drafting, it would apply even to relations between nationals of one of the contracting States. It seemed problematic that it should be otherwise, except that it was no longer a provision of international convention, but rather of internal legislation.

**Sir Leslie Scott** proposed adding “except for those reservations that had been formulated”.

**Mr. Ripert** asked whether one had to agree that the international convention would apply in the case of a bill of lading issued by a Frenchman for the benefit of another Frenchman.

**The Chairman** was of that opinion. Fundamentally, from the beginning of
certain cas on a commencé par se montrer très inquiet, mais finalement on a fini par accepter, et si l’on considère l’évolution qui s’est produite dans un domaine voisin, c’est-à-dire en matière de transfert de brevets, de marques de fabrique, etc. on remarquera que cette pratique est entrée dans les usages sans difficultés. En théorie on pourrait exempter le cas cité par M. Ripert, mais le connaissement est essentiellement un document international et du moment où on peut régler spécifiquement le trafic côtier suivant la position anglaise, le conflit n’est pas à redouter. Il faut rendre la convention aussi générale que possible.

this work of unification of maritime law, conferences were given effect through national law. In certain instances, we began by being very concerned, but finally we ended up accepting them. If we consider progress in a neighbouring domain, that is to say, the transfer of certificates, factory stamps, etc., we would notice that this practice had become customary without difficulty. In theory one might exempt the case cited by Mr. Ripert, but the bill of lading was essentially an international document, and from the moment when one could regulate coastal traffic specifically, following the English position, conflict was not to be feared. It was necessary to render the agreement as general as possible.
ARTICLE 10

Nouveau texte adopté par le Protocole de 1968

Les dispositions de la présente Convention s’appliqueront à tout connaissement relatif à un transport de marchandises entre ports relevant de deux États différents quand:

a) le connaissement est émis dans un État Contractant ou
b) le transport a lieu au départ d’un port d’un État Contractant ou
c) le connaissement prévoit que les dispositions de la présente Convention ou de toute autre législation les applicant ou leur donnant effet régiront le contrat, quelle que soit la nationalité du navire, du transporteur, du chargeur, du destinataire ou de toute autre personne intéressée.

Chaque État Contractant appliquera les dispositions de la présente Convention aux connaissements mentionnés ci-dessus.

Le présent article ne porte pas atteinte au droit d’un État Contractant d’appliquer les dispositions de la présente Convention aux connaissements non visés par les alinéas précédents.

ARTICLE 10

New text adopted by the 1968 Protocol

The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

a) the bill of lading is issued in a Contracting State, or
b) the carriage is from a port in a Contracting State, or
c) the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.

This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs.

CMI 1959 Rijeka Conference
Report of the International Sub-Committee

[136]

Solutions

La commission a dû trancher d’abord une question préliminaire, celle de savoir si les précisions à donner devraient avoir tendance à étendre ou à restreindre le champ d’application de la Convention. La commission est unanimément partisane d’une interprétation extensive du texte actuel de l’article 10. Elle estime devoir innover en cet-
te matière en préconisant de donner à la Convention sur les connaissements le champ d’application le plus large possible, dépassant donc celui posé par l’article 10 actuel.

**Port d’embarquement et port de débarquement**

Les auteurs de la Convention de 1924 sont partis de l’idée que, puisque tous les États ratifieraient la Convention, il ne fallait déterminer que le lieu d’émission du connaissement - qui suivant les règles généralement appliquées en matière de conflits de lois déterminait la loi applicable - pour délimiter le champ d’application de la Convention.

Ces espérances se sont malheureusement avérées trop optimistes, si bien qu’il a fallu envisager un système assurant le champ d’application le plus vaste possible.

L’article 10 fait état du lieu d’émission du connaissement et n’envisage pas le lieu d’embarquement. La commission n’a pas trouvé de justification permettant d’exclure les cas où le lieu d’émission n’est pas situé dans un État contractant, alors que le lieu d’embarquement l’est.

Bref, la décision a été prise de prendre en considération tant le lieu d’embarquement que le lieu d’émission comme élément déterminant l’application de la Convention.

Les mêmes considérations ont prévalu lorsqu’il s’agit d’examiner l’opportunité de faire appliquer la Convention dès que le port de déchargement est situé dans un État contractant.

Finalement la commission a admis qu’au cas où pour une raison ou une autre les marchandises n’arriveraient pas au port de déchargement initialement envisagé, la Convention serait d’application tant au cas où la destination initiale serait située dans un État contractant qu’au cas où le port de déchargement effectif répondrait à cette condition.

**Nationalité des parties**

Plusieurs Associations nationales avaient fait valoir qu’on ne pouvait pas appliquer une convention internationale au cas où toutes les parties en cause seraient des ressortissants de l’État où était situé le tribunal.

Toutefois, la commission s’est ralliée à l’opinion de ceux qui estiment que la Convention est d’application dès que le lieu d’émission ou de destination ou le lieu d’embarquement ou de débarquement sont situés dans un État contractant. Aucune autre condition ne devrait y être ajoutée.

C’est ainsi que toute idée de différenciation de traitement suivant la nationalité des navires ou des parties intéressées a été formellement écartée.

Pour ces raisons la commission propose que l’article 10 soit conçu comme suit:

“Les dispositions de la présente Convention s’appliqueront, quelle que soit la nationalité du navire, du chargeur, du transporteur ou de la personne ayant droit à la livraison

a) à tout connaissement constatant un transport de marchandises dont le lieu de départ ou le lieu de destination est situé dans un des États contractants; le lieu de destination à considérer est celui qui est indiqué dans le connaissement ou, à défaut, le lieu où les marchandises sont effectivement déchargées;

b) à tout connaissement créé dans un État contractant même lorsque ni le lieu de départ ni le lieu de destination des marchandises ne sont situés dans un des États contractants.”

La commission se rend compte du fait que l’extension proposée aura pour effet de réduire le champ d’application de certaines lois nationales mais elle estime que le sys-
tème proposé constitue le meilleur moyen de mettre fin à un certain nombre de conflits de lois.

[140]

Conclusions

Compte tenu de ce qui a été précisé ci-dessus la Commission se permet de demander à la Conférence plénière du C.M.I. de se prononcer sur les points que voici:

1° le C.M.I. doit-il inviter la Conférence diplomatique de droit maritime à remplacer l’ancien texte de l’article 10 par le suivant:

“Les dispositions de la présente Convention s’appliqueront, quelque soit la nationalité du navire, du chargement, du transporteur ou de la personne ayant droit à la délivrance:

a) à tout connaissement constatant un transport de marchandises dont le lieu de départ ou le lieu de destination est situé dans un des Etats contractants; le lieu de destination à considérer est celui qui est indiqué dans le connaissement où, à défaut, le lieu ou les marchandises sont effectivement déchargées;

b) à tout connaissement créé dans un Etat contractant même lorsque ni le lieu de départ ni le lieu de destination des marchandises sont situés dans un des Etats contractants”.

Plenary Session - 25 September 1959

M. Kaj Pineus, Suède (traduction): Comme vous le savez la Convention de 1924 sur les Connaissements contient, dans son Article 10, une règle qui stipule que la Convention s’appliquera aux connaissements émis dans un Etat contractant.

Quelle est la situation aujourd’hui? La Convention de 1924 a été adoptée par le monde de langue anglaise, par la plupart des pays européens et par le Japon. D’autre part, il y a des pays maritimes qui ne sont pas encore membres de ce club distingué, entre autres les Etats sud-américains.

Ces pays, qui ont adopté la Convention, ont fait usage d’une des méthodes d’application prévues par le protocole de signature, c’est-à-dire que certains ont donné force de loi à la Convention telle qu’elle a été rédigée tandis que d’autres l’ont incorporée dans leur législation nationale dans la forme la mieux appropriée à cette législation.

En ce qui concerne le champ d’application de la Convention, plusieurs solutions ont été adoptées. Certaines lois basées sur la Convention de 1924 sont allées plus loin que l’Article 10 ne semble le justifier. La Convention, ou plus exactement la loi basée sur la Convention, a été rendue applicable aussi bien aux cargaisons à l’entrée qu’aux cargaisons à la sortie dans le cadre du trafic international. En d’autres mots, on n’a attaché aucune importance à la question de savoir si les connaissements ont été émis dans un Etat contractant ou dans un Etat non-contractant.

Une fois de plus, certaines lois basées sur la Convention de 1924 n’ont pas réalisé le minimum de l’article 10, puisqu’elles ont été rendues applicables uniquement aux cargaisons à la sortie dans le trafic international. Il y a d’autres variations dans la méthode employée pour la détermination du champ d’application de la Convention mais je ferai mieux de ne pas entrer dans les détails à présent.

Vous réaliserez évidemment que, dans les circonstances que je viens d’esquisser brièvement, la question de savoir quelle loi basée sur la Convention de 1924, doit être
appliquée, peut mener à de sérieuses complications. Lorsque, pour cette raison, on sug-
gère d’éclairer l’intention de l’article 10 par une révision ou une modification du texte,
il est tout à fait naturel que cette tâche ait été confiée à la Sous-Commission du C.M.I.
s’occupant des conflits de lois et c’est cette Commission qui présente maintenant son
rapport au C.M.I. Ce rapport est basé sur les réponses données au questionnaire de
1958 et - dans une mesure non moindre - sur les délibérations subséquentes de la Com-
misión.

Je m’imagine que tout le monde s’accorde à reconnaître qu’il est hautement dési-
rable que la Convention de 1924 soit adoptée et mise en vigueur par le plus d’Etats pos-
sibles. Toutefois, je pense que la Sous-Commission du C.M.I. peut faire très peu de
choses pour arriver à ce but par une action directe. Toutefois, le désir d’étendre le
champ d’application de la Convention est un sujet que votre Commission Internatio-
nale a trouvé imprégné d’unité internationale et auquel elle s’est attachée. A cette fin le
sentiment a prévalu que la Convention de 1924 devrait être rendue applicable indé-
pendantamment du stade initial ou final du transport, par rapport à un Etat contractant.
La nationalité de la partie impliquée dans un transport devrait être également écartée
et ignorée. Le sentiment a prévalu que la géographie de l’affaire devrait constituer le
seul critère pour savoir si la Convention de 1924 est applicable. Un nouvel article 10 in-
corporant ces principes a été rédigé par votre Commission, est soumis à votre discus-
sion et j’espère que vous l’approuverez.

Toutefois, il est apparu rapidement que l’entièreté du problème est beaucoup plus
compliquée. Vous vous rendrez compte du fait que la question du champ d’application
de la Convention est intimement liée à la question de l’application uniforme de la
Convention dans les différents pays. Si un cas tombe sous la Convention de 1924 il de-
vrait évidemment être dénué d’importance de savoir s’il doit être tranché de la maniè-
re dont la Convention a été mise en vigueur dans le port de chargement, dans le port de
déchargement ou dans un autre port. En outre, il est vrai - comme vous le savez - que
l’adoption de la Convention de 1924 a en fait aplanie plusieurs divergences entre les lois
des différents pays maritimes. Néanmoins, plusieurs différences subsistent encore. Per-
mettez-moi d’en mentionner deux:

- premièrement les règles du fardeau de la preuve peuvent être plus strictes,
moins flexibles, dans un pays que dans un autre;
- deuxièmement, le montant de la limitation que les auteurs de la Convention de
1924 avaient à résoudre - à savoir 100 £ or stipulées dans l’article 9 (2) de la Convention
- a permis des variations extrêmement remarquables. Certaines de ces variations sont
illustrées [374] dans le rapport imprimé de votre Commission. Certaines divergences
n’ont pas été reprises mais les chiffres tels qu’ils sont présentés actuellement sont inté-
ressants.

La Commission a eu le sentiment qu’il serait déplacé de ne pas faire face à ces diffi-
cultés, cela n’eut pas été conforme au courage traditionnellement attribué au C.M.I. si
votre Commission avait mis un emplâtre sur une jambe de bois. À notre avis il convient
de vous rappeler qu’aussi bien la Convention de Varsovie de 1929/1955 que la Conven-
tion sur la limitation de 1957 a résolu le problème de l’uniformité internationale en ma-
tière de montants de limitation en faisant usage du franc Poincaré.

[375]

L’article 10, dans sa forme actuelle, doit définir les limites de l’application de la
Convention. Quels sont les connaissances soumis à la Convention de 1924? C’est ce-
la que l’article 10 essaie d’élucider. Il ne concerne aucune réglementation intérieure. Un
règlement des intérêts en conflit concernant l’application de la Convention n’existe pas
dans la Convention de 1924, même si elle contient des règles sur d’autres matières dont
la Convention s’occupe. Au contraire, comme je le vois, ceux qui ont rédigé la Convention ont espéré que la formule de l’article 10 assurera l’application la plus large de cette Convention de 1924. Ils ont eu, pour ainsi dire, la même intention qui guide votre Commission en proposant le nouvel article 10 rédigé sur base d’une expérience acquise durant les 35 dernières années et les États qui ont adopté l’article 10, plus ou moins dans la forme proposée par la Commission, adopteront de cette manière la même position que les États-Unis et la Belgique. Ces deux États ont rendu la Convention de 1924 applicable tant à des connaissances à l’importation qu’à des connaissances à l’exportation. Et personne ne peut prétendre sérieusement que les États-Unis et la Belgique, en faisant cela, ont échoué.

Mr. John C. Moore, États-Unis (traduction):

Le point de vue des États-Unis a été donné dans notre rapport. Selon cet avis, les Règles de La Haye devraient être simplement rendues applicables à l’entrée et à la sortie aux envois concernant un État contractant. Notre délégation s’oppose avec force à l’examen d’une quelconque des autres questions. Il résulte des documents soumis à la Commission que les Français et les Italiens ont des problèmes spéciaux par suite du fait que leurs tribunaux ont interprété leurs lois incorporant les Règles de La Haye de manière à ce que la nationalité des parties crée une difficulté. Nous sommes prêts à assister les Français et les Italiens pour trouver une solution à leurs problèmes. Très récemment nous avons appris que les Anglais ont à faire face à un problème spécial qui pourrait peut-être être expliqué par le délégué anglais et qui résulte du fait que leurs tribunaux n’acceptent pas les Règles de La Haye du port d’embarquement si la marchandise destinée au Royaume-Uni est soumise à la loi anglaise. Nous sommes prêts à aider les Anglais à trouver une solution à ce problème.

Nous avons rédigé une résolution en coopération avec quelques autres délégations; la voici:

“Décide que le Comité Maritime International invite la Conférence Diplomate de Droit Maritime à remplacer le texte actuel de [378] l’article 10 de la Convention Internationale pour l’unification de certaines règles en matière de connaissances signée à Bruxelles le 25 août 1924, par la disposition que voici:

“Les dispositions de la présente Convention s’appliqueront à tout connaissage émis pour tout chargement à destination ou en provenance de tout État contractant indépendamment de la loi régissant le connaissage et indépendamment de la nationalité du navire, du transporteur, du chargeur, du destinataire ou de toute autre personne intéressée aux marchandises.””

Cette résolution apporterait les changements suivants au texte actuel de la Convention de Bruxelles:

Tout d’abord elle rendra la Convention applicable à tout chargement à destination ou en provenance d’un État contractant.

Deuxièmement, elle rendra la Convention applicable indépendamment de la loi régissant le contrat, le connaississement. Cela résoud le problème britannique.

Troisièmement, la Convention sera appliquée indépendamment de la nationalité des parties. Cela résoud le problème français et italien.

Finalement, la Convention sera applicable indépendamment du lieu d’émission du connaississement.

Actuellement, l’article 10 des Règles de La Haye prévoit que les dispositions de cette Convention s’appliqueront uniquement aux connaissances émis dans un État contractant. Cela pourrait soulever une question, qui, je pense, est uniquement théorique mais qui pourrait rendre les Règles de La Haye non-applicables à des envois en provenance d’un pays contractant lorsque le connaissement a été émis dans un État
non-contractant. Et, inversement, cela soumettra aux Règles de La Haye des connaissances émis dans un État non-contractant. Il nous semble qu’il est pour le moins inutile et indésirable de faire dépendre l’application d’une loi du lieu où un connaissément est émis, puisqu’il y a des cas où, pour des raisons commerciales importantes, il est désirable d’émettre des connaissances dans un État contractant pour des envois à destination ou en provenance d’un autre État et inversement cela permettra au bénéficiaire du contrat, normalement le destinataire, d’exercer une influence sur la loi applicable – je dois l’avouer, au moyen d’une déclaration légèrement faussée – en émettant un connaissément en dehors d’un État contractant.

Il y a une chose que je désire dire au sujet des remarques de M. Pineus. Il a fait remarquer, à juste titre, que nous pouvons difficilement demander de convoquer une Conférence Diplomatique uniquement pour un changement relativement simple des Règles de La Haye; toutefois, je pense qu’il ne serait pas difficile de faire préconiser pareil changement à la prochaine Conférence Diplomatique qui aura à trancher une ou deux autres questions.

M. A. Loeff, Pays-Bas (traduction): Au nom de la délégation néerlandaise je désire soulever deux points.

Le premier point est qu’il faut s’assurer de l’adhésion du plus grand nombre d’États possibles; le second que nous devons amender la clause elle-même. Je pense que nous devons prendre soin de ne pas mélanger ces deux questions. Je pense que l’objectif principal de la délégation néerlandaise est d’obtenir l’accord du plus grand nombre d’États possibles, mais si nous désirons suivre cette direction, je pense qu’il faut garder la Convention aussi simple que possible. C’est la raison pour laquelle la délégation néerlandaise ne pense pas que le moment soit venu - cela peut être souhaitable plus tard, mais pas pour le moment - d’amender la Convention à l’exception de l’article 10.

Or, nous sommes en possession d’un rapport de la Commission Internationale et cette Commission a proposé une modification à l’article 10 qui, en fait, étend son champ d’application. Nous sommes complètement d’accord avec l’idée générale d’étendre le champ d’application de l’article 10, mais nous devons garder cet Article aussi simple que possible et nous devons avoir à l’esprit qu’aucune injustice ne peut évidemment être faite à un propriétaire d’un navire, si, par exemple, à un moment donné il se rend compte que le transport des marchandises en question est soumis aux Règles de La Haye alors qu’il n’aurait pas pu le présumer lors de l’embarquement.

Nous acceptons tout à fait l’idée que la Convention doit être appliquée tant aux cargaisons à l’entrée qu’aux cargaisons à la sortie, mais si, le port d’embarquement ni le port de déchargement n’est situé dans un État contractant, il serait gravement injuste qu’en cas d’accident au navire, les marchandises soient déchargées dans un port d’un État contractant et que tout d’un coup le propriétaire ait à faire face au fait que sa cargaison est soumise post factum aux Règles de La Haye. Nous préconisons une autre extension du champ d’application de la Convention en matière de ports à option. Il peut arriver en effet que - et cela arrive très souvent - un connaissément ne donne pas le nom du port de débarquement mais indique une option. Partant de l’idée que nous désirons étendre le champ d’application de la Convention autant que possible, notre idée est d’appliquer la Convention dès qu’un des ports à option est situé dans un État contractant.

Nous proposons un dernier amendement; la Convention prévoit actuellement qu’elle s’applique au connaissément émis dans un État contractant. Nous pensons que nous devons ajouter que la Convention s’appliquera également si, en fait, le chargement a lieu dans un État contractant. Nous sommes d’accord qu’il est plutôt rare qu’un connaissément soit émis dans un lieu autre que celui où a lieu l’embarquement mais,
néanmoins, à la suite de l'idée suivant laquelle il faut étendre le champ d’application de la Convention autant que possible, nous pensons que nous devons insérer ce point.

M. J. Gorski, Pologne: Compte tenu du fait que la Convention concernant les connaissements, dans son ensemble, rend de bons services au commerce international, nous donnons notre entier appui aux travaux du Comité Maritime International ayant pour but l’extension du champ d’application de cette Convention ainsi que la modification de ces dispositions dont l’interprétation est actuellement divergente.

Il nous semble que la solution du problème, trouvée par la Commission, peut être considérée comme la plus heureuse.

M. Einar Ploystad, Norvège (traduction): Pendant les 35 années qui se sont écoulées depuis la rédaction des Règles de La Haye, les parties intéressées ont eu amplement le temps d’acquérir suffisamment d’expérience pour juger si et dans quelle mesure les remèdes espérés ont atteint leur but et de déterminer, en même temps, quels sont les défauts dont souffrent les règles et ce qui les a empêché de réaliser l’unité désirée.

Dans ses réponses au questionnaire l’Association Norvégienne de Droit Maritime a résolument soutenu la révision de l’article 10 et, comme vous pouvez le lire dans les conclusions des réponses, nous désirons, également, aller un peu plus loin que ne l’a proposé la Commission. Toutefois, nous sommes disposés à accepter la proposition de la Sous-Commission.

Le premier objectif devrait être d’obtenir que le plus grand nombre de transports océaniques possibles soient couverts par des dispositions pratiquement identiques et le second objectif devrait être de déterminer quelle loi nationale issue des Règles de La Haye devrait être appliquée à chaque cas particulier. Il est sans doute important de se mettre d’accord sur un choix obligatoire de la loi applicable et, à notre avis, les Règles de La Haye appliquées dans le port de déchargement conventionnel devraient être appliquées en premier lieu.

Si le port de déchargement est situé dans un pays non contractant, les Règles de La Haye promulguées dans le pays de chargement peuvent être appliquées. Les Règles de La Haye promulguées dans le pays où le transporteur a son domicile devraient régir le transport entre deux pays non-contractants. Le système d’application impérative qui a été proposé nécessiterait une révision correspondante des Règles de La Haye actuelles en supprimant en même temps les exigences nationales relatives à une référence spécifique de la loi nationale.

Quoique, d’une manière générale, les Règles de La Haye aient réussi à répondre aux espérances qu’elles ont suscitées on admet néanmoins le fait qu’elles souffrent d’une faiblesse inhérente de technique juridique et qu’elles présentent un manque de précision et de définition. C’est la raison pour laquelle la délégation norvégienne est d’avis que le désir d’amender l’article 10 présente une occasion heureuse, si le temps est venu de procéder à une révision, de prendre en considération les problèmes principaux qui ont constamment été une source de procès ou d’interprétation incertaine.

Afin de gagner du temps je me contenterai de me référer aux réponses que nous avons données au questionnaire et où nous avons énuméré les points principaux qui, à notre avis, nécessitent une révision ou des éclaircissements. Nous sommes d’avis que l’uniformité devrait surtout être recherchée dans l’unité de limitation.

Nous ne partageons pas l’avis selon lequel un revirement de cette Convention augmenterait les difficultés d’obtenir l’adhésion à la Convention d’États non contractants. Au contraire, nous sommes convaincus que nos suggestions, si elles sont adoptées, aboutiront à une amélioration évidente dont la tendance sera de faire faire un grand pas
à la Convention sur le chemin de la perfection de manière à la rendre beaucoup plus attrayante pour les Etats non contractants.

**M. R. Sandiford**, Italie: Nous nous trouvons en présence de deux problèmes. Le premier est relatif à l’interprétation de l’article 10. Ce sont les tribunaux de quelques pays, notamment ceux d’Italie, qui ont mis en discussion la portée d’un article qui, dans la logique de son interprétation n’aurait pas dû donner lieu à discussion. Il est vrai que des règles de droit interne ont influencé les décisions. Mais dans certains pays la législation et la jurisprudence n’ont pas donné lieu à différentes interprétations. Toutefois, il semble logique de fixer dans un document diplomatique une interprétation qui évite toute discussion en la matière. À cet effet, l’élargissement du champ d’application de la Convention, si nous pouvons l’obtenir, semble très utile.

**M. F. Nordborg**, Suède (traduction): La Commission qui s’est occupée de ce problème propose de modifier la rédaction de l’article 10 des Règles de La Haye de manière à rendre ces règles applicables sans tenir compte de la nationalité du navire, du chargement, du transporteur ou de ceux qui ont droit à la délivrance des marchandises. Les règles devraient s’appliquer aux envois dont le port de chargement ou de déchargement est situé dans un pays contractant. Si le connaissement ne mentionne pas de port de destination, le port de déchargement, qui est situé dans un pays contractant, prend les règles applicables. En outre, les règles s’appliqueront au cas où le connaissement est émis dans un Etat contractant sans tenir compte du fait que ni le port de chargement ni le port de déchargement est situé dans un tel Etat. La délégation suédoise est disposée à accepter cette extension du champ d’application de l’article 10.

**M. J. P. Govare**, France: Le rêve du Comité Maritime International est d’aboutir à l’unification du droit maritime dans le monde entier. Malheureusement, même si tous les pays avaient purement et simplement introduit dans leurs législations les termes de la Convention du 25 août 1924, des divergences d’interprétation se seraient révélées dans l’application de certaines clauses, comme par exemple celle de la livre-or. Ce que nous avons à résoudre aujourd’hui, ce sont les difficultés nées du fait que l’article 10 de la Convention stipule que les dispositions s’appliqueront à tout connaissement créé dans un des Etats contractants. Or, dans certain pays il a paru assez anormal que le transport d’un port de ce pays dans un autre port de ce même pays soit réglé par la Convention Internationale. Il se comprend difficilement, quand toutes les parties sont françaises, qu’un transport effectué de Dunkerque à Bordeaux soit réglé par la Convention simplement parce que la France a ratifié celle-ci. En France, la Convention a été incorporée dans la législation par la loi du 2 avril 1936, qui s’apparente beaucoup à la Convention, mais n’est pas identique en tous points.

Ce qui importe pour les intéressés au trafic maritime, ce n’est pas tant de savoir quelle est la loi applicable pour un transport d’un port d’un pays dans un autre port de ce même pays. On peut en exclure, en effet, le cabotage - comme la Convention l’a prévu - la loi nationale pouvant régir la situation entre les nationaux. Mais ce qui importe le plus tant pour l’armateur que pour le chargement et l’assureur, c’est de savoir quelle est la législation applicable en cas de transport international. C’est à cet égard que l’article 10 a pré-té à confusion parce qu’il a permis d’écarter l’application de la Convention.

Nous estimons qu’il suffirait d’une simple addition à l’article 10. C’est ce à quoi a conclu l’Association française. Il serait ajouté à l’article: “à condition qu’il s’agisse d’un transport pour un autre État, contractant ou non, sans tenir aucun compte de la nationalité des parties”.
En ce qui la concerne, l’Association française s’en tient aux conclusions de son rapport. Toutefois, elle se déclarerait d’accord sur la proposition des États-Unis, étant bien entendu que le mot “shipment” s’entend chargement effectif et non pas l’émission du connaissement. Il ne faudrait pas, par exemple, qu’un connaissement émis à Paris pour chargement à Anvers puisse arriver à tourner la difficulté alors qu’il s’agit d’un chargement effectif pour le transport.

Autre point, déjà soulevé par la délégation néerlandaise: le cas où le connaissement prévoit des ports à option. Vous pouvez charger une marchandise dans un continent éloigné avec comme destination Bordeaux-Hamburg-range, c’est-à-dire qu’on peut décharger en France, en Belgique, en Hollande et en Allemagne. Je pense qu’il faut approuver la proposition néerlandaise, selon laquelle il suffit que parmi les ports à option il s’en trouve un qui soit dans un pays ayant ratifié la Convention pour que ce soit la loi de la Convention qui s’applique.

Comme je le disais, ce qui importe au commerce et au transport maritimes au point de vue international, c’est d’avoir dès le départ la certitude de savoir par quelle législation est régi le transport. Par conséquent, il faut connaître le port de charge ou éventuellement, comme le disent les Américains, le port de destination. Mais comme celui-ci peut être quelquefois à option, il faut que dans toute la mesure possible ce soit la Convention qui s’applique, car c’est ainsi que nous aboutirons le plus sûrement et en tout cas le plus rapidement à l’unification du droit maritime que nous souhaitons. (Applaudissements).

M. J. Honour, Grande-Bretagne (traduction): Je parle au nom de la délégation britannique et je désire vous dire que nous sommes en faveur de l’amendement fait par la délégation des États-Unis concernant l’article 10. Nous sommes en faveur de cet amendement qui est celui de la délégation néerlandaise en déclarant que nous ne pensons pas que d’autres révisions doivent être faites ici.

Avant de faire des propositions effectives, je voudrais souligner une ou deux questions générales. Je pense qu’on a déjà dit, mais je suis d’avis qu’il faut le dire à nouveau, que ce qui est parfois le plus important est d’essayer d’obtenir plus de signatures de la Convention plutôt que d’essayer d’arriver à une uniformité des législations qui ont déjà incorporé la Convention. Toutefois, il n’y a pas de doute qu’il y ait ici une possibilité d’application uniforme de la Convention. C’est la raison pour laquelle, si un amendement quelconque doit être fait, nous sommes d’accord de le limiter à l’article 10. Toutefois, je pense que nous devons avoir à l’esprit que tout amendement à une Convention qui a été appliquée d’une manière qu’on peut qualifier de satisfaisante pendant quelque 35 ans, doit être envisagé avec énormément de soin puisque nous pourrions bien prendre une voie qui pourrait conduire les Parlements des États contractants à s’immiscer dans certain aspects de la Convention dans lesquels personne ici n’a l’intention de s’immiscer.

Par ces remarques préliminaires j’en arrive aux conclusions réelles de la Commission et à la proposition alternative proposée par les autres délégations. M. Moore a eu l’amabilité de suggérer que je pourrais donner un peu plus de détails que lui au sujet des difficultés particulières que nous rencontrons dans le droit anglais. Cela peut être exact, mais je dois avouer qu’il a cité le problème d’une manière admirable et avec une concision que je n’ai jamais rencontrée auparavant.

Toutefois, reprenons brièvement notre difficulté dans la loi anglaise; la première question que le tribunal doit trancher est de savoir quelle est la loi du contrat, ou en d’autres mots quelle est la loi à laquelle le contrat est soumis. Une fois cette question résolue, le tribunal doit examiner si, en vertu de la loi du contrat, les Règles de La Haye sont appliquées d’une manière impérative; ainsi, si un connaissement est émis dans un pays étranger pour un transport à destination de l’Angleterre et que ce pays applique les Règles de La Haye mais que le connaissement stipule, néanmoins, qu’il est régi par...
la loi anglaise, le tribunal anglais n’appliquera pas les Règles de La Haye puisque, en vertu de notre loi, les Règles de La Haye sont uniquement d’application d’une manière impérative à des expéditions en provenance du Royaume-Uni.

C’est la raison pour laquelle la délégation des États-Unis a inséré dans sa proposition les mots: “whatever may be the law governing such Bill of Lading” et, d’après moi, si jamais nous acceptons d’amender l’article 10, nous devrons y insérer ces mots.

Je suis entièrement d’accord sur la critique du projet actuel de la Commission, faite par M. Moore. Je suis d’accord avec ce qu’il a dit au sujet de l’inconséquence du lieu d’émission du connaissement. Il y a une autre inconscience, à mon avis, à laquelle on n’a pas fait allusion: c’est l’inconséquence du port de destination. Comme la plupart d’entre nous le savent, le port de destination peut, en fait, être un port d’intérieur ou un port qui n’a rien à voir avec le transport maritime principal du port d’embarquement au port de déchargement. Cela peut se présenter dans le cas d’un connaissement direct ou, d’une manière plus générale, dans le cas d’un full bill of lading. Le port de destination peut être un port vers lequel les marchandises sont, éventuellement, acheminées après le déchargement du navire et je pense qu’il serait illogique qu’à cause du fait que ce port se trouve dans un pays appliquant les Règles de La Haye, les Règles de La Haye s’appliquent nécessairement.

C’est la raison pour laquelle, en plus des autres raisons données par M. Moore, nous ne pensons pas que la proposition de la Commission convienne.

M. Govare a souligné qu’il pourrait y avoir des difficultés dans les cas où il y a des ports de déchargement à option. A mon point de vue, il n’est pas nécessaire d’introduire un amendement comme celui suggéré par la Commission, même amendé, puisque si l’amendement proposé par les États-Unis est adopté, pareille difficulté ne surgira plus.

C’est la raison pour laquelle la délégation britannique est disposée à appuyer les États-Unis dans leur proposition d’amender l’article 10, mais nous nous opposons énergiquement à toute autre révision.


L’histoire des Règles de La Haye démontre que les auteurs de la Convention ont basé leurs conclusions sur trois suppositions qui se sont avérées inexactes. Premièrement, tous les pays maritimes n’ont pas souscrit à la Convention. Deuxièmement, dans les pays qui ont adopté les Règles de La Haye il n’y a pas d’interprétation uniforme de leur contenu. Dans certains pays qui ont adopté les Règles de La Haye le texte intégral de ces règles est devenu une partie de la législation nationale alors que dans d’autres pays la loi nationale a été amendée conformément à la signification des Règles; on n’a pas pensé à cette situation à l’époque où la Convention a été signée.

C’est ainsi que les auteurs de la Convention n’ont jamais eu l’intention de faire de l’article 10 une disposition devant régler des conflits de lois, autrement l’adoption du protocole additionnel aurait eu pour effet de changer l’article 10. C’est la raison pour laquelle nous sommes résolument d’avis que l’article 10 a été conçu comme une règle destinée à inciter les États contractants à faire des Règles de La Haye une question d’ordre public.

Sur ce point, la question se pose de savoir s’il est nécessaire d’avoir une règle de conflits de lois. Le problème doit-il être résolu par l’ajout de nouvelles règles ou par un
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et changer les anciennes dispositions des Règles de La Haye? Malheureusement, nous pensons que pareille procédure ne présentera aucune utilité puisqu'il paraît impossible d'arrêter les différentes interprétations des règles, interprétations qui subissent l'influence des divers systèmes juridiques nationaux. C'est la raison pour laquelle il paraît évident que la seule solution est de résoudre les conflits de lois et d'amender les Règles. C'est la raison pour laquelle, si nous l'estimons nécessaire, nous devons amender les Règles des deux manières.

Une nouvelle règle doit répondre à deux conditions: elle doit être praticable; elle doit assurer un champ d'application des Règles aussi large que possible.

La délégation allemande a participé aux travaux préparatoires de la Commission. La proposition de la Commission l'oblige à une règle claire pour le champ d'application. Toutefois, la proposition reste ouverte quant à la loi nationale contenant les Règles de La Haye qui seront appliquées aux cas individuels. En ce qui concerne les différentes interprétations, une règle de conflits de lois doit donc être rédigée. À notre avis, une telle règle devrait être basée sur la lex fori et c'est la raison pour laquelle nous suggérons respectueusement d'ajouter à la proposition de la Commission la règle suivante qui a déjà été mentionnée dans notre rapport national:

"The International Convention on Bills of Lading is to be applied in the Court of the place where the dispute is to be decided. The Courts of the Contracting States have to apply contractual agreements only where they are meant to imply the interpretation of the Convention. The Courts applied to by the parties are deemed to have extreme jurisdiction".

Cet article présentera les avantages suivants. D'abord elle dispensera les tribunaux d'appliquer l'interprétation données aux Règles de La Haye dans d'autres pays. Deuxièmement, elle permettra aux pays contractants de choisir la loi à appliquer par le choix du lieu de juridiction. On comprendra ici que des accords sur la juridiction ne peuvent pas être autorisés.

En ce qui concerne l'avantage mentionné en dernier lieu, il est admis que les tribunaux de tous les pays contractants reconnaîtront la validité des clauses de juridiction établies de bonne foi. En principe, nous serions même d'accord avec la résolution présentée par la délégation américaine mais nous pensons toujours que la question des conflits de lois n'a pas été résolue.

En outre, le champ d'application de la Convention établi par la proposition américaine ne serait pas aussi large que celui de la nouvelle proposition de la Commission.

En conséquence, nous ne serions pas d'accord sur le paragraphe 2 (d) de la proposition avancée par la Commission.

M. F. Normen, Finlande (traduction): En Finlande une loi de 1939 a mis en vigueur les Règles de La Haye et cette loi stipule que les Règles de La Haye s'appliqueront à tout transport en provenance de la Finlande à destination d'un autre pays et à destination de la Finlande en provenance de tout pays où la Convention est en vigueur. Nous pensons que l'article 10 ne doit pas donner lieu à des difficultés en matière de connaissances émises habituellement dans des ports de chargement et il n'y aura aucun problème que le port d'embarquement soit situé ou non dans un État contractant. S'il est émis dans un autre État, cette pratique pourrait être modifiée et, en tout état de cause, je pense que c'est une exception. Par conséquent, je ne pense pas qu'une nouvelle rédaction de l'article 10 de la Convention sur les connaissances constitue une amélioration quelconque.

M. A. Suc, Yougoslavie (traduction): ...........................................

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Le premier problème concerne la situation étrange qui aboutit au fait que les tribunaux des États contractants n'appliquent pas la Convention à un transport en prove-
La délégation belge est entièrement favorable à la substitution au texte ancien de l’article 10 de la Convention, d’une disposition nouvelle qui assurera aux Règles adoptées en 1924 une application beaucoup plus large. Cette position favorable n’a d’ailleurs rien d’étonnant puisque dès 1928, quand le Parlement belge a été invité à ratifier cette Convention, il s’est efforcé, dans la limite de ses pouvoirs, de lui donner une extension aussi grande que possible. Il a décidé d’incorporer dans la loi belge, mettant en vigueur les règles de [392] la Convention, une disposition rendant, dès ce moment, applicables les Règles de 1924, aussi bien au transport à destination d’un port belge qu’au transport au départ d’un port belge.

Nous ne pouvons que nous réjouir si, aujourd’hui, votre Conférence consent à universaliser une règle qui nous avait paru utile dès ce moment. Nous pensons que le texte, proposé ce matin par la délégation américaine, présente, par rapport au projet présenté par la Sous-Commission, un avantage, dans la mesure où il prévoit que les Règles s’appliqueront, quelle que soit la loi applicable au contrat.

Il nous paraît que cette précision qui ne figurait pas dans le projet de la Sous-Commission est de nature à éliminer, d’une manière plus complète encore, toute difficulté. Si ce texte est adopté, les tribunaux n’auront plus à se demander préalablement, comme ils le font encore souvent dans différents pays, si les Règles de 1924 sont bien applicables, étant donné la nationalité du navire, étant donné aussi le lieu où le contrat a été conclu.

Je crois, qu’en affirmant que les Règles doivent s’appliquer, quelle que soit la loi qui serait applicable au contrat, la Conférence affirmerait d’une manière particulièrement nette que les règles de droit qu’elle élabore et qu’elle entend voir appliquer aux connaissements doivent l’emporter sur toute autre disposition des lois nationales. Ce résultat est assurément un résultat très heureux.

Nous pensons cependant que la proposition de la délégation américaine laisse de côté un point, à vrai dire de détail mais qui, cependant, ne devrait pas être négligé, qui fait l’objet d’un amendement proposé par la délégation néerlandaise: c’est le cas parti-
M. Peter Wright, Canada (traduction): L'association canadienne est très fortement intéressée à la présente Convention. Les quatre dernières années nous nous sommes forçés au Canada à amener notre Parlement national à promulguer une loi conforme aux principes qui sont discutés actuellement. C'est la raison pour laquelle nous sommes très enclins à appuyer ces principes et plus particulièrement le texte américain qui répond exactement aux problèmes qui se posent au Canada.

En ce qui concerne les autres points qui ont été soulevés par la commission nous pensons que ceux-ci ne doivent pas être retenus. En ce qui nous concerne, au Canada, nous pensons que si le texte actuel de l'article 10 était amendé, un grand nombre de difficultés en matière de conflits de lois, qui nous agacent actuellement, disparaîtraient. Nos conflits de lois sont peut-être quelque peu différents de ceux que vous rencontrez en Europe, étant donné que dans pratiquement tous les cas où la Convention entre en jeu chez nous, nous sommes très éloignés, non seulement géographiquement mais également au point de vue langue, du texte qui doit être interprété par la loi canadienne. C'est la raison pour laquelle nous sommes très enclins à appuyer l'amendement de l'article 10, tel qu'il a été libellé par la délégation américaine.

M. Potamiachos, Grèce: La délégation hellénique est d'accord quant à l'extension du champ d'application de la Convention internationale de 1924, mais dans le sens proposé par la délégation américaine.

M. Kaj Pineus, Suède (traduction): A la suite de la décision de l’Assemblée Plénière nous avons élaboré un projet d’article 10.

Le texte qui est devant vous a subi quelques améliorations de sorte que je vous prie de bien vouloir prendre note du texte anglais de l’article 10. Je le lirai très lentement: “The provisions of this Convention shall apply to every bill of lading for carriage of goods (from one State to another) when the port of loading, the port of discharge or one of the optional ports of discharge is in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person”.

Vous aurez remarqué que quelques mots sont mis entre parenthèses; par ce procédé nous avons désiré attirer votre attention sur le problème qui se pose. Si nous maintenons les mots entre parenthèses dans le texte, la Convention ne s’appliquera pas au cabotage; si au contraire nous ne les y maintenons pas, la Convention sera applicable au cabotage. Vous savez évidemment que la Convention permet aux États de réserver le cabotage à la législation nationale et que certains États ont fait usage de cette possibilité et ont instauré un régime différent pour ce genre de transport.

M. J. Van Ryn, Belgique: La seule question qui reste à examiner à cette Conférence à propos de l’article 10 est, je pense, celle des mots qui figurent entre parenthèses dans le texte que vous avez sous les yeux.

En réalité, ces mots sont, je crois, l’expression d’un amendement de la délégation française, de ce que j’appellerai un amendement qui n’avait pas osé dire son nom, ce matin, mais qui avait été incidemment proposé par M. Govare.

Je dois dire que, personnellement, c’est avec un sentiment de surprise - que nos amis
français me permettent de l'ajouter - de découragement, que je les vois tenter d'apporter cette restriction au champ d'application de la Convention.

Pour vous l'expliquer, en peu de mots, je voudrais me permettre de vous rappeler d'où nous partons.

La commission internationale qui avait été désignée pour examiner cette question, a travaillé longtemps pour résoudre une difficulté très sérieuse qui était apparue au cours de l'application de la Convention. L'article 10 - tout le monde était d'accord pour le dire - était mal rédigé, et cette mauvaise rédaction avait eu pour conséquence que, suivant les pays, des régimes différents étaient applicables aux connaissances négociables que, cependant, la Convention de 1924 avait voulu soumettre à un régime uniforme. Vous vous rappelez que le rapport extrêmement complet que M. Pineus vous a commenté ce matin, résume fort bien quels étaient les inconvénients de cette situation.

L'origine des différences de régime entre les États contractants doit être trouvée dans l'usage que les États ont fait de la possibilité offerte par le protocole de signature, qui permet de mettre la Convention en vigueur sous une forme appropriée aux particularités du système juridique de chaque pays signataire. Or, la rédaction de cette forme appropriée a entraîné l'introduction de divergences de fond dont le régime de la preuve en matière d'avaries relevées au port de déchargement est le cas le plus fréquent.

Le fait que certains États contractants appliquent leur loi nationale aux différends qui surgissent, en matière de transports internationaux, entre leurs nationaux alors que d'autres États contractants appliquent aux mêmes cas la Convention, résulte de la circonstance que la Convention en général, et l'article 10 en particulier, ne définissent pas avec précision le champ d'application de la Convention. Il y avait donc là un défaillant dont les effets s'étaient fait sentir dans la manière qu'exprime le rapport.

La Commission, après une étude très attentive des solutions possibles, est arrivée unanimement à la conclusion que la solution devait être trouvée dans l'extension du champ d'application de la Convention. Il fallait, en d'autres termes, remplacer l'article 10 par une disposition qui étendrait, et non pas qui restreindrait, le champ d'application de la Convention. C'est ce que nous nous sommes efforcés de faire.

Et voici que maintenant l'on vous propose d'insérer dans le nouveau texte de l'article 10 une disposition qui ne figure pas dans le texte ancien et qui apporterait une nouvelle restriction au champ d'application de la Convention, puisque si l'amendement français était adopté, les dispositions de la Convention s'appliqueraient seulement à tout connaissement relatif à un transport de marchandises d'un État à un autre.

On nous dit: mais il faut que l'on puisse écarter l'application de la Convention pour le cabotage, et c'est pour cela qu'il faut prévoir que la Convention ne s'appliquera pas s'il s'agit d'un transport d'un port d'un État à un autre port du même État.

Je crois, que c'est une erreur. La question du cabotage, comme M. Pineus l'a rappelé tout à l'heure, est réglée par la Convention de 1924 qui réserve expressément aux États le droit de soustraire à l'application du régime uniforme le cabotage.

Mais ce que l'on veut, en réalité, c'est bien autre chose. C'est pouvoir établir, en droit, un régime différent de celui de la Convention. C'est ce qui existe dans certains pays. C'est une situation fâcheuse qui est une source de confusion, c'est la situation qui était décrite dans le rapport. L'amendement qui vous est proposé tend, dans une large mesure, à revenir à cette situation que l'on voulait désormais faire disparaître.

Je crois donc que cet amendement va directement à l'encontre du sens des travaux de la commission. La commission a conçu sa mission comme consistant à étendre, le plus possible, le champ d'application de la Convention. Elle vous proposait une formule de l'article 10 qui avait cet objet et qui a donné ces résultats. On vous propose aujourd'hui d'introduire, dans la formule nouvelle, une restriction qui, non seulement diminuerait la portée de la proposition qui vous est faite, mais qui marquerait un retour en arrière par rapport au texte de 1924.
Messieurs, excusez-moi de terminer par une comparaison. Il y a dans un pays voisin du nôtre, au Grand Duché de Luxembourg, une procession célèbre, c’est la procession d’Echternach, où les pèlerins font trois pas en avant et deux pas en arrière, si je ne me trompe. Je ne crois pas que l’on puisse sérieusement inviter votre Conférence à se comporter comme les pèlerins de cette procession.

M. J. P. Govaere, France: La surprise de notre ami belge nous surprend énormément, puisque le rapport français date du 7 juin 1957 et que la proposition concrète, mentionnée dans ce rapport, était de maintenir l’article 10 et d’y ajouter: à condition qu’il s’agisse d’un transport pour un autre Etat.

Je me permets, en m’en excusant, de revenir sur ce que je disais ce matin: ce qui importe dans le commerce international maritime, aussi bien pour l’armateur que pour les clubs, les assureurs, les banquiers, c’est de savoir quelle est la législation qui régira ce transport. Or, cela est d’une importance capitale lorsqu’il s’agit d’un transport international; cela ne présente guère d’intérêt et je n’ose dire que cela n’en présente aucun lorsqu’il s’agit d’un transport national d’un port d’un pays dans un autre port de ce pays.

Par conséquent, la disposition que nous allons prendre n’a d’importance que si nous parlons du commerce international, car, ce n’est que là que notre Convention joue pleinement son rôle et j’ajoute que si nous voulons, par cette Convention, empêcher les États de régler comme ils l’entendent le transport entre leurs propres nationaux dans leurs propres ports, nous risquons fort alors de trouver l’opposition des gouvernements lorsque nous irons à Bruxelles, parce que nous nous immisçons là dans un terrain qui n’est pas le nôtre. Nous devons nous occuper des questions internationales: elles ne présentent un intérêt vivant, actif, primordial, que quand c’est international, et par conséquent, je demande à l’Assemblée de ratifier ce qui a été proposé dans le projet français et admis par la Commission de Rédaction, c’est-à-dire, d’ajouter les mots: relatif à un transport de marchandises d’un Etat à un autre.

M. John C. Moore, États-Unis (traduction): Si je comprends bien les remarques belges, la délégation belge n’approuve pas la proposition suivant laquelle l’application de la Convention serait limitée au trafic international en faisant valoir que la Convention devrait avoir un champ d’application aussi large que possible. Plusieurs pays, y compris les États-Unis et un nombre appréciable d’autres pays, excluent le cabotage du champ d’application de la Convention. Nous ne serions pas à même d’accepter une extension de la Convention à notre commerce côtier et sans aucun doute, notre Gouvernement fera une réserve. Le texte proposé, comprenant les mots mis entre parenthèses, permettra à tout État d’appliquer la Convention à son propre commerce et de cette manière nous aurons une Convention qui pourra être acceptée par tout le monde sans réserves.

M. A. Loeff, Pays-Bas (traduction): Je désire faire deux remarques au nom de la délégation néerlandaise.

Tout d’abord nous sommes tout à fait d’accord avec ce qui a été dit par M. Van Rijn concernant le fait que dans le projet actuellement soumis à la Conférence, il est fait une restriction du champ d’application de la Convention. La Convention telle qu’elle se présente actuellement depuis 1924 s’applique au cabotage. Le protocole permet aux États contractants d’exclure ce trafic. Actuellement nous faisons exactement le contraire. Nous excluons le principe du cabotage de la Convention et je pense, comme une question de principe, que c’est le meilleur procédé de rédaction.

Le second point qui a été soulevé ce matin par mon discours concerne notre objection d’appliquer la Convention sans restriction chaque fois que le port de chargement est situé dans un État contractant même en cas de port de refuge si ce port est situé dans un État contractant alors que le port de chargement et le port de déchargement sont tous les deux situés dans un État non-contractant. Si vous remplacez les mots
“under which (bill of lading)” par le texte “when”, il est parfaitement possible de comprendre le texte comme suit: que le port de déchargement mentionné ici est le port où les marchandises ont été déchargées et cela n’a pas été l’intention du comité de rédaction.

Je ne vois pas la raison pour laquelle nous ne maintiendrions pas les mots “under which (bill of lading) the port of loading, the port of discharge…”, ainsi il est clair que nous visons uniquement le port de déchargement où le déchargement a effectivement eu lieu et qui dès le début a été envisagé comme port de déchargement.

Ainsi la proposition de la délégation néerlandaise a pour objet de biffer les mots entre parenthèses “for transportation of goods from one State to another”. Je me permets de soulever à ce propos que les mots “one State to another” peuvent soulever des grandes difficultés, par exemple, le Royaume des Pays-Bas comprend la Hollande en Europe, Surinam et les Antilles Néerlandaise. Ainsi un transport de Hollande vers un des autres territoires ne pourra pas être considéré comme un transport d’un État à un autre si bien qu’il tombera hors du champ d’application de la Convention; or, ce n’est pas cela que nous désirons. En ce qui concerne les États-Unis je ne comprends pas exactement pourquoi, par exemple, un transport de l’État de New York à l’État de Floride ou de Californie ne serait pas un transport d’un État à un autre. Je pense qu’il eut mieux valu laisser ces mots de côté mais de stipuler néanmoins expressément que la possibilité de faire une réserve insérée dans le protocole s’applique également aux nouveaux textes de l’article 10.

La seconde proposition est de conserver le texte et de garder les mots “under which (bill of lading)” et de ne pas les remplacer par “when”.

M. J. Honour, Grande-Bretagne (traduction): Je désire déclarer au nom de la délégation britannique que nous n’avons pas d’objection à ce que certains pays désirent ajouter les mots “from one State to another”. En ce qui concerne la Grande-Bretagne il s’agit d’un point académique parce que, en vertu de notre loi, les Règles de La Haye s’appliquent à un connaissement dès qu’il est émis; s’il n’y a pas de connaissement la Convention ne s’applique pas mais s’il est émis, les Règles de La Haye s’appliquent qu’il y ait cabotage ou non. C’est la raison pour laquelle les mots entre parenthèses, s’ils étaient mis dans la Convention, n’affecteraient aucunement notre loi.

Comme je le comprends, si ces mots sont retenus, certains pays qui ont des difficultés actuellement seront aidés et c’est la raison pour [399] laquelle nous approuvons, à notre point de vue, l’amendement si nécessaire.

Il y a encore un autre point que je désire mentionner. M. Loeff vient de soulever et je lui en suis extrêmement reconnaissant, qu’il préfère les mots “under which”. Lorsque M. Govare a suggéré le mot “when” qui à son avis était un peu plus approprié à la traduction française, je n’ai pas réalisé que la différence soulignée par M. Loeff pourrait en résulter. En fait je pense que cela fait une différence plutôt subtile puisque la notion que nous voulons rendre c’est celle du port de déchargement mentionné dans le connaissement et pas le port de déchargement effectif qui pourrait bien être celui où le navire est amené à décharger en vertu d’une “Caspiana Clause”.

Le Président: Quelqu’un demande-t-il encore la parole au sujet de l’article 10?
Si personne ne demande plus la parole, je mets aux voix le texte proposé par la Commission.

Je vous propose de voter d’abord sur le texte sans l’addition demandée par la délégation française et, ensuite, sur cette addition.

M. Kaj Pineus, Suède (traduction): Le texte sans les mots controversés - si je puis m’exprimer ainsi au sujet des mots que M. Govare désire inclure ainsi que quelques autres mots - serait libellé comme suit; c’est donc le texte sans l’amendement français et avec l’amendement de M. Loeff:

“The provision of this Convention shall apply to every bill of lading under which
the port of loading, the port of discharge or one of the optional ports of discharge is in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person”.

Sommes-nous d’accord que tel sera le premier texte sur lequel vous serez invités à voter.

Le second texte sur lequel le Président vous invitera probablement à voter est celui qui comprend les mots soumis par les délégations française, américaine et britannique. S’il était accepté, il serait libellé comme suit:

“The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading...”

Le Président: Messieurs, nous allons voter sur le texte qui vient d’être lu par M. Pineus. Pour éviter tout malentendu je vous donne lecture du même texte en langue française: “Les dispositions de la présente Convention s’appliqueront à tout connaissement sous l’empire duquel le port de chargement, le port de déchargement, ou l’un des ports à option de déchargement se trouve dans un Etat contractant quelle que soit la loi régissant ce connaissement et quelle que soit la nationalité du navire du transporteur, du chargeur, du destinataire et de tout autre intéressé”.

Le premier vote portera sur ce texte. Immédiatement après ce vote je vous demanderai d’émettre un autre vote qui décidera s’il faut ajouter au texte dont je viens de vous donner lecture, les mots: “relatif à un transport de marchandises d’un Etat à un autre”, en anglais: “for carriage of goods from one State to another”. Ceci est donc l’amendement français.

Le nouveau texte de l’article 10 est adopté par 19 voix.


Se sont abstenues: Finlande, Grèce.

Le Président: Nous allons maintenant passer au vote sur l’amendement de la délégation française, qui consiste à ajouter au texte que nous venons d’adopter les mots: “relatif à un transport de marchandises d’un Etat à un autre”. En anglais: “for carriage of goods from one State to another”.

L’amendement, mis aux voix, est adopté par 13 voix contre 6, moins 2 abstentions.


Ont voté contre: Belgique, Pays-Bas, Yougoslavie, Turquie, Suisse, Pologne.

Abstentions: Finlande, Israël.

[430]

REVISION

OF ARTICLE 10 OF THE INTERNATIONAL CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES OF LAW RELATING TO
BILLS OF LADING

Signed at Brussels on August 25th, 1924

A. Draft of new article 10.

“The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, the port of discharge, or one of the optional ports of discharge, is situated in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person”.

[400]
M. C. Moore, Etats-Unis:

En ce qui concerne l’article 10 qui a été réglé à Rijeka, l’Association de Droit Maritime des Etats-Unis est en faveur de l’amendement proposé.

En ce qui concerne les remarques de certaines Associations qui auraient préféré éliminer la référence à des ports à option, je me permets de vous faire remarquer que ce point spécifique a été pris en considération à Rijeka - sans nul doute au sein du comité de rédaction - et si ma mémoire m’est fidèle aussi à la séance plénière.

Si, pour un navire, on a prévu un ou deux ports à option de déchargement dont un n’est pas situé dans un Etat contractant et que le navire sombre ou est obligé de faire escale dans un port de refuge où il est mis fin au voyage, il n’y aura pas de port de déchargement convenu. Si pareil voyage a commencé dans un Etat non contractant nous aurons un procès sur mesure, avec une instance d’appel en garantie et c’est la raison pour laquelle j’insiste pour que les ports à option ne soient pas exclus.

Bien sûr, les risques de rencontrer pareille situation sont très minimes mais nous nous sommes occupés de la question et nous estimons que nous devons pas insister davantage.

Mr. C. Moore, United States:

On Article 10 which was settled at Rijeka, the Maritime Law Association of the United States approves and favours the revision of Art. 10 as proposed.

It was recognised that if a ship bound for one or more of two State, were sunk or forced to go into a port of refuge where the voyage might be frustrated, there would be no agreed port of discharge. If such a voyage commenced in a non-contracting State, we would have a tailor-made law suit, with appeals guaranteed, and with that consideration, I would urge that the optional ports be not excluded.

The chance of such facts occurring is, of course very small but we have dealt with the question and we felt that we should not tinker with it further.

M. le Président.

Je ne suis pas en possession de tous les textes adoptés par le comité de rédaction, nous allons donc commencer par ceux qui ont déjà été distribués. Nous ne possédons malheureusement que les textes rédigés en français. La traduction en a été faite, mais elle n’a pas encore pu être distribuée.

Nous avons d’abord le texte de la révision de l’article 10.
Le comité de rédaction vous propose de très légères modifications de pure forme au texte français.
La modification consiste à ajouter les mot “et” pour que le texte soit plus clair.
Ce texte est donc ainsi libellé: “Les dispositions de la présente Convention s’appliqueront à tout connaissement relativement à un transport de marchandises d’un état à un autre et sous l’empire duquel le port de chargement...”

**Plenary Session - 14 June 1963**

*Article X*

Avant d’abandonner les sujets proposés, il nous reste encore à examiner la proposition formulée à l’article 10 de la Convention.

**M. H. Andersson,** Finlande (traduction): Monsieur le Président, uniquement par un souci de clarté, si un navire charge dans un port qui n’est pas situé dans un Etat contractant et décharge dans un autre port qui n’est pas situé dans un Etat contractant mais si le connaissement mentionne un port à option qui pourrait être situé dans un Etat contractant, la Convention sera-t-elle d’application?

Plusieurs voix: oui.

**Le Président:** Si personne ne demande plus la parole au sujet de l’article 10, je considère que l’Assemblée suit la Commission et adopte le texte proposé.

**Diplomatic Conference - May 1967**

*Text adopted by the CMI Stockholm Conference*

*Article 10 of the Convention is deleted and replaced by the following:*

“The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, of discharge or one of the optional ports of discharge, is situated in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person”.

**Procès-Verbal de la Commission**

*Article 5*

L’article 10 de la Convention est remplacé par la disposition suivante:

“Les dispositions de la présente Convention s’appliqueront à tout connaissement relatif à un transport de marchandises d’un Etat à un autre sous l’empire duquel le port de chargement, le port de déchargement ou l’un des ports à option de déchargement se trou-
law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person”.

The amendment CONN. 13, purely formal, was submitted by France. It will be submitted to the drafting committee.

The text of article 5 is adopted as it stood by the Commission.

Vote: for: 21;  against: 4;  abstentions: 5;  Total: 30.

Summary of the debates.

Sir K. Diplock, the delegate of the U.K., criticized the text of article 5, which could create legal conflicts between the countries applying the 1924 Convention and those that will adopt the Convention modified by the Visby Rule.

Mr. Schmeltzer, the U.S. delegate, and the Danish delegate, also criticized the text of article 5.

However, Mr. Govare, the French delegate, and Mr. Schaeffer, the delegate of the Netherlands, and Mr. Ray, the delegate of Argentina, approved the text of article 5 because it extended the application of the 1924 Convention in the broadest manner possible and thus increased the security of maritime transactions.

Conférence Diplomatique -  
Février 1968  
Première Séance Plénière -  
19 Février 1968

M. le Président (Albert Lilar). Mesdames, Messieurs, qu’il me soit permis au moment d’ouvrir cette deuxième phase de la douzième session de la Conférence Diplomatique de vous souhaiter une nouvelle fois la bienvenue parmi nous.

Il restait à mettre au point certaines dispositions du projet de protocole ou de convention portant modification de la Convention [36] internationale pour
l’unification de certaines règles en matière de connaissement. Votre Conférence a estimé que pour certaines dispositions, dont elle a précisé la portée et l’objet, il convenait que les délégations puissent se concerter et aussi prendre contact avec les intérêts respectifs dans leur pays.

Certains articles de ce projet de convention ont été adoptés par la Conférence tel que cela résulte de l’Acte final de la douzième session, première phase. Ces articles, dit l’Acte final, seront insérés tels quels dans le protocole ou la convention internationale après l’adoption des articles dont l’examen a été adjourné.

Sur proposition de plusieurs délégations, et plus spécialement de la délégation du Royaume-Uni, il a été entendu que serait adjournée la discussion sur l’article 2, § 1er, sur l’article 5 et sur les clauses finales du projet de protocole.

Il a été convenu également que tous les amendements aux articles et clauses tenus en suspens et introduits pendant la douzième session demeureront en discussion, sauf retrait. Il avait été décidé que tout nouvel amendement à ces articles ou Clauses finales devrait être soumis au gouvernement belge avant le 15 octobre 1967.

En résumé, la Conférence aura à l’ordre du jour de sa session actuelle trois sujets: l’article 2, § 1er, l’article 5 et les clauses finales.

[37]

En ce qui concerne le deuxième sujet de nos travaux, l’article 5, je me propose avec votre accord, de procéder de la même façon: il y aurait donc lieu de m’informer des amendements anciens et nouveaux qui sont maintenus avant d’ouvrir la discussion générale.

[39]

Art. 5.
Amendements introduits pendant la première phase de la Session.
- Amendement CONN 13 introduit lating to bills of lading. Your Conference felt that for certain provisions, for which it had defined the scope and goal, it was preferable for the delegations to consult with and contact the respective interested parties in their countries.

Certain articles of this draft Convention were adopted by the Conference in the way that they stood in the Final Act of the twelfth session, first phase. These articles, known as the Final Act, will be inserted without any modification into the Protocol or the International Convention after the adoption of the articles for which the examination was adjourned.

Following a number of proposals put forth by several delegations, and particularly by the United Kingdom delegation, the discussion on article 2(1), article 5, and the final clauses was adjourned.

It was also agreed that all the amendments to articles and clauses held in abeyance and introduced during the twelfth session will remain in discussion, unless they are withdrawn. It was decided that any new amendments to these articles or final clauses should be submitted to the government of Belgium before October 15, 1967.

In summary, the Conference will have on the agenda of the present session three subjects: article 2(1), article 5, and the final clauses.

[37]

As to the second subject of our work, article 5, I recommend, with your agreement, that we proceed in the same way. You would then have to inform yourselves of the old and new amendments that have been maintained before we open the discussion.

[39]

Art. 5.
Amendments submitted during the first phase of the Session.
- Amendment CONN 13 submitted
Amendments introduits selon la procédure à l’Acte final.
- Document n° 8, amendement introduit par la délégation des Pays-Bas et ne constituant qu’un appui au projet original de Stockholm: maintenu.

[691]

CONN 13
Translation

Amendment submitted by the Delegation of France
Article 5 (Art. 10 of the Convention)
Modify the beginning of the paragraph as follows:
“The provisions of this Convention shall apply to all carriage of goods covered by a bill of lading or other similar document under which...”

[706]

CONN. 18
Original: English

Amendment submitted by the Delegation of United Kingdom
Article 5 of the Stockholm Draft
Article 5 should read as follows:
Article 10 of the Convention is deleted and replaced by the following:
The provisions of these Convention shall apply to every bill of lading for carriage of goods by sea from one State to another whatever may be the nationality of the carrier, the shipper, the consignee or any other interested person if such bill of lading is issued in a Contracting State or relates to goods loaded in a contracting State or relates to goods loaded in a Contracting State or relates to goods carried in a ship registered in a Contracting State.

Explanation
The United Kingdom delegation shares the desire manifested by article 5 to give to the Hague Rules as world-wide an application as is consistent with the general rules of
PART II - VISBY RULES

Article 10 - Scope of application

comity of Nations which are recognised in its legislation, and applied in its Courts. With regret, however, it cannot accept the Stockholm Draft which in its view conflicts with these principles in so far as it binds Contracting States to disregard the law of the countries having real connection with the bill of lading if the port of discharge happens to be situated in a Contracting State. This involves an assertion on the part of Contracting States of the right to dictate the terms upon which persons who are not their nationals may enter into contracts in a non-Contracting State for the carriage of goods from such State in ships which are under the flag of a non-Contracting State notwithstanding that the terms so dictated are contrary to the law of the non-Contracting State in which the contract is made.

[707]

The United Kingdom delegation considers that the amendment to Article 5 which it now proposes, and which does not offend against the general rules of comity which its Courts apply, would in practice cover as large a proportion of the maritime commerce of the world, as is covered by the Stockholm Draft although that small part which escaped the application of the Hague Rules would not be identical with that which would escape under the Stockholm Draft.

[727]

CONN. 25

Amendment submitted by the Delegations of Denmark, Finland, Norway, Japan, Sweden, United Kingdom and the United States of America
(In substitution of Amendment CONN. 24)

Article 5

Each Contracting State shall apply the provisions of this Convention to every bill of lading relating to:
a) carriage between ports in two contracting States;
b) carriage from a port in a Contracting State to a port in a non-Contracting State, and
c) any other carriage if the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

[732]

CONN. 27

Amendment submitted by the delegation of Belgium

In substitution of Article 5 of the draft protocol now under discussion:

“Each Contracting State shall apply the provisions of this Convention to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, of discharge or one of the optional ports of discharge, is situated in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

The national legislation may however decide that the provisions of the Convention shall not apply to the bill of lading for goods whose port of loading is not situated in a Contracting State.

In any event, each Contracting State shall apply the provisions of this Convention
to any bill of lading if the contract contained in or evidenced by the bill of lading pro-
vides that the Rules of this Convention or legislation giving effect to them are to gov-
ern the contract”.

Amendment submitted by the delegation of Belgium
In substitution of Article 5 of the Draft protocol.
“Each Contracting State shall apply the provisions of this Convention to every
bill of lading issued in any of the Contracting [735] States whatever may be the na-
tionality of the ship, the carrier, the consignee or any other interested person.
In any event, each Contracting State shall apply the provisions of this Convention
to any bill of lading if the contract contained in or evidenced by the bill of lading pro-
vides that the rules of this Convention or legislation giving effect to them are to gov-
ern the contract.”
is presented to us in article 5, in other words, article 10 of the Convention, and the project that has been established in Stockholm. Several amendments have been introduced to article 5, but before a working group examines these amendments in detail, I suggest that the delegations, in a general way, let us know their opinions on this matter. I will then give the floor to those who request it for a general discussion.

The French delegation has the floor.

Mr. de Bresson (France). As we indicated for article 2, the French delegation would like in a few words to explain according to what general idea it sees the drafting of article 5, which is article 10 of the Convention.

This general idea, because we are dealing with the scope of application of the Convention, is to end up with a system that allows for a broader application of the Convention as long as we are within the criteria of reasonable relationship and as long as we are dealing only with international carriage.

Consequently, the French delegation thinks that the Convention should apply, on the one hand, to shipments undertaken either in accordance with a bill of lading issued in a Contracting State or to a shipment from a port of a contracting State.

Furthermore, this Convention could also be applied to any carriage between two States as long as the bill of lading provides that the contract would be governed by the Convention or a national law that has incorporated the provisions of the Convention.

This is the system, as a whole, according to which the French delegation conceives the raw application of article 10 or at least article 5 of the Protocol.

The Chairman. The delegation of the United Kingdom has the floor.
Mr. Kerry (United Kingdom). Mr. Chairman, as delegates will recall, the United Kingdom delegation was opposed to the Article, Article 5, as it was originally tabled before the Conference. There were two reasons for this, firstly the new Article purported to apply to bills of lading if the only connection with our Convention country was that a port of discharge, or an optional port of discharge, was in a Convention country. We considered that on jurisdiction grounds this was too wide.

Secondly we also considered that such a wide application of law would lead to more conflict of law difficulties than it would solve.

Consequently as a result of discussions last May, a number of amendments were put down. We have been considering the subject in the intervening period. We still feel that our objections to the original text are valid, and we would be prepared to support one or other of the amendments which are now on the table, either, for instance, CONN 31 which is I think the Belgian amendment or CONN 25 which is the joint amendment in our own name and that of the Scandinavians and other delegations. Thank you.

Mr. Scheffer (Netherlands). Mr. Chairman, ladies and gentlemen, I should like to explain with a few words why the Netherlands delegation takes the view that the text of Article 5 of the Protocol, that is to say the amendment of Article 10 of the Convention as it was originally proposed by the Comité Maritime International, should be adopted.

I may remind you of the reasons why at the Rijeka Conference it was adopted by the CMI. The actual text of the Convention in Article 10 saying that the Convention shall apply to all bills of lading issued in any of the contracting States was considered unsatisfactory. Why? Because there has never been any uniform interpretation of this provision. Some States gave a wide scope of application to the Convention, others a narrow scope and it was experienced that the place of issue or a bill of lading was not of such a primary importance; it was generally held that endeavours should be made to draft a provision which was clearer in its wording than it was in the actual text of the Convention, and that this new wording should guarantee a wide application of the Convention in the interests of world trade and world shipping. Therefore a text was made as proposed by the Comité Maritime International, which would make the Convention immune from the rules of international private law, as it is the mission of uniform law, which is to be considered as being of higher value than national law and therefore should not be subordinated to rules of conflicts of law. It is in conformity with this mission that when there is jurisdiction in a contracting State the uniform law shall always be applicable. This means concerning international carriage by sea, that uniform law should apply as well if the port of loading is situated in a contracting State as if the port of discharge is situated in a contracting State. The port of discharge is by far the most important port, because disputes take place mostly and claims for damage are mostly lodged at the place of the port of discharge and not at the port of loading. So if you really want to give a wide application to the Convention it should in any case include the port of discharge, if situated in a contracting State. By making such a provision, there can in our view be no question of any infringement of the jurisdiction of a non-contracting State, because the provision will only be applicable within the jurisdiction of a contracting State.

Now, we have before us a combined proposal of a number of delegations aiming at restricting the scope of application of the Convention by reintroducing the rules of conflicts of law, with all the complications, uncertainties and difficulties involved in these rules. We deplore this proposal, which we consider to be contrary to the intention of the Comité Maritime International and contrary to the real interests of world
Mr. A. I. Mendelsohn (U.S.A.). Thank you, Mr. Chairman. Our comments will be very short. On balance I think we would prefer the document CONN 25; that was the joint proposal of several countries.

We note, however, that the distinguished delegation from Germany has submitted a document No. 3, with which we wholeheartedly concur.

As for the original text 1, we could live with this text and we could probably vote for this text as well, provided that there is some clarifying language on the problem of exercising the optional port of discharge.

In short, both proposals would probably be acceptable to us, though without the clarification of the provision of the original text we would probably prefer the document CONN 25. Thank you very much.

Mr. Lorente (Espagne). Monsieur le Président, la délégation espagnole considère qu’en ce qui concerne l’article 5, la proposition faite par différents pays, entre autres le Danemark, les Pays-Bas, la Norvège, la Suède et les Etats-Unis est assez ample et que nous pouvons l’adopter parce qu’elle prévoit à peu près toutes les possibilités qui peuvent se présenter.

M. le Président. Plus personne ne demandant la parole dans la discussion générale, je propose de la déclarer close et de passer immédiatement à la constitution d’un groupe de travail qui examinera les amendements présentés au texte initial.

Comme toujours il s’agit d’abord de désigner la personne qui voudra bien accepter de diriger les travaux de ce groupe de travail. L’Assemblée a-t-elle à cet égard des propositions à présenter?

Mr. Lorente (Spain). Mr. Chairman, the Spanish delegation thinks, as far as article 5 is concerned, that the proposal submitted by various countries, among which are Denmark, the Netherlands, Norway, Sweden, and the United States, is ample enough and that we could adopt it because it provides for almost every possibility that may arise.

The Chairman. Because nobody is asking for the floor in this general discussion, I propose to declare it closed and move immediately to the formation of a working group that will study the amendments submitted to the original text.

As usual, we must first appoint the person who will take on the responsibility of presiding over the work of this group. Does the assembly have any suggestions?

Mr. Muller (Suisse). Je propose que ce soit Monsieur Pineus qui dirige ces travaux, Monsieur le Président.

M. le Président. L’Assemblée est-elle d’accord sur la désignation de Monsieur Pineus de la délégation suédoise pour diriger les travaux du groupe de travail

[53]

Mr. Muller (Switzerland). I recommend Mr. Pineus to preside over this work, Mr. Chairman.

The Chairman. Does the assembly agree on the appointment of Mr. Pineus of the Swedish delegation to be in charge of the working group whose task is to

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1 Preliminary Documents 1st phase 1967, page 675.
chargé d’examiner les amendements à l’article 5? (Assentiment). Puis-je demander à Monsieur Pineus s’il accepte cette mission?

M. Pineus (Suède). Je ferai de mon mieux, Monsieur le Président.

Mr. Pineus (Sweden). I will do my best, Mr. Chairman.

Quatrième Séance Plénière - 20 Février 1968

Présidence de Monsieur Albert Lilar, Président.

M. le Président. Si vous le voulez bien, nous consacrerons cette séance plénière à l’examen des conclusions de la Commission chargée d’examiner l’article 5, sous la présidence de M. Pineus. Je donne immédiatement la parole au Président de la commission pour faire rapport sur ses travaux.

Mr. Pineus (Sweden). Mr. Chairman, ladies and gentlemen: I have the pleasure to report on the result achieved by your Committee on Article 5. You all know that one of the reasons we had the great pleasure of coming back to Brussels is that it proved impossible in May last year to reach an agreement on this Article on the application of the Convention. I will not go through the somewhat painful history of it all and the difficulties that faced us in May. You will find that in the printed report of the proceedings of the May conference. The difficulties still remain with us, at any rate to a certain extent.

I think the situation can briefly be summed up as follows. Everybody is agreed that we should try to enlarge the scope of application of the Convention. Everybody is agreed that we could improve on Article 10 of the Hague Rules as it now stands. The difference is that it remains to be settled how large a step we shall take in this direction. The Stockholm text when it came out for your examination in May proved too large a step. By including ports of discharge or optional ports of discharge in a contracting State among the other criteria that will make the Convention applicable grave misgivings were expressed. It was said that by doing so we made difficulties and would create unwanted repercussions which were not in our mind when the Stockholm text was elaborated by a working group I was happy to preside over at a meeting in Antwerp some ten years ago.

In the circumstances a compromise had to be sought for. The text presented to you which appeared in Document 16 and is now submitted for your consideration, and I hope approval, is a slightly redrafted version of what was put before the Conference in May on behalf of the delegations of Denmark, Finland, Japan, Sweden, United Kingdom and the United States; CONN 25 it was called then.

We had a very lively discussion in the Committee on the original version of it. Yesterday twenty delegations were represented in your Committee, today sixteen. I give the names in the order they were mentioned in the list that went round from right to
left: had the list gone the other way round the names would have been in the inverse order. Having given this excuse, I hope nobody will take offence because of the order in which I read out the names: Greece, Norway, China, Denmark, Japan, The Federal Republic of Germany, The Netherlands, Finland, France, The United States, the U.S.S.R., Spain, South Africa, Ghana, United Kingdom, Yugoslavia, Poland, Italy, Belgium and Sweden.

I should like to thank the members of the delegation for their attention and eager interest. I should like to thank the Secretary, Mr. Radisic, who was able to put in brief and clear prose the gist of the interventions made on that difficult subject. And I should particularly like to thank the members of the two drafting groups for their efficient work in the short time available.

The delegations voted on the proposal I referred to and which is now before you and voted on another, which was a revised version of the proposition made by the Belgian delegation and which stood in the name of the Netherlands delegation.

The vote gave as a result a small majority in favour of the proposal, which I will now read out to you in English and in French, first of all in English:

“Article 5.
1. Article 10 of the Convention is replaced by the following:
2. The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

[a) the bill of lading is issued in a contracting State, or
b) the carriage is from a port in a contracting State, or
c) the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract
whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each contracting State shall apply the provisions of this Convention to the bills of lading mentioned above”.

I will now read out the text in French:

Article 5.
1. L’Article 10 de la Convention est remplacé par le texte suivant:
2. Les dispositions de la présente Convention s’appliqueront à tout connaissement relatif à un transport de marchandises entre ports relevant de deux Etats différents quand:
[a) le connaissement est émis dans un Etat contractant ou
b) le transport a lieu au départ d’un port d’un Etat contractant ou
c) le connaissement prévoit que les dispositions de la présente Convention ou de toute autre législation les appliquant ou leur donnant effet régiront le contrat, quelle que soit la nationalité du navire, du transporteur, du chargeur, du destinataire ou de toute autre personne intéressée.

Chaque Etat contractant appliquera les dispositions de la présente Convention aux connaissements mentionnés ci-dessus.

However, as I said, we had a vote on it, and there was a majority for the text I read out to you, but it was not that large. In the circumstances I promised to read out for you the text of the minority vote. That was the revised draft which was based on the Belgian proposal made to the Article 5 which figured in the printed report from the main meeting.

The minority vote was in favour of the following:
Article 5.
1. Article 10 of the Convention is replaced by the following:

“Article 10.
The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, of discharge or one of the optional ports of discharge, is situated in a State party to the Convention, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person.

2. However, a party to this Protocol may reserve the right not to apply the provisions of the Convention as amended by this Protocol to bills of lading issued in a State which is not a party to this Protocol.”

The French text has not had the benefit of the sharp eye of Mr. Rodière, so it might be more beautiful, but I think it is only correct I should read out the French version.

Article 5.
1. L’Article 10 de la Convention est remplacé par le suivant:

Article 10.

“Les disposition de cette Convention s’appliqueront à tout connaissement pour le transport de marchandises d’un Etat à un autre, connaissement aux termes duquel le port du chargement, du déchargement ou un des ports facultatifs de déchargement, est situé dans un Etat Partie à la Convention, quelle que puisse être la loi régissant un tel connaissement et quelle que puisse être la nationalité du navire, du transporteur, du chargeur, du consignataire de marchandises ou de n’importe quelle autre personne intéressée.

2. Cependant, une Partie à ce Protocole peut se réserver le droit de ne pas appliquer les dispositions de la Convention telle qu’elle est modifiée par ce Protocole aux connaissements délivrés dans un Etat qui n’est pas Partie à ce Protocol.”

That, Mr. Chairman and ladies and gentlemen, is what emerged from the debates which we had in your committee. And you have now listened to what the majority thought was a proper solution.

I recommend to you that you accept the report I have given you and the text that appears in Document 16. Thank you, Mr. Chairman.

[67]

M. le Président. La parole est au délégué de la Belgique.

M. Koelman (Belgique). La délégation belge, la délégation néerlandaise et d’autres délégations encore, je crois, ne peuvent pas se rallier à l’amendement Conn. 25, même modifié tel qu’il l’a été légèrement aujourd’hui.

Si je fais un petit retour en arrière, qui ne sera pas long: qu’est-ce que nous avons fait en 1924? Qu’est-ce que nous faisons à toutes nos réunions? Nous es-[67]

The Chairman. The delegate from Belgium has the floor.

Mr. Koelman (Belgium). The Belgian delegation, the Dutch delegation, and other delegations, I think, cannot rally to the amendment CONN. 25, even if it were lightly modified as it has been today.

If I may go back in time a little, which will not take long, what did we do in 1924? What do we do during all these meetings? We try to unify maritime law.
We should, evidently, always opt for compromise solution. In 1924, we had the text of article 10 that you know, which was voted in the version as it stood and concerned only bills of lading when a ship left a port of a contracting State and did not concern its return. In Belgium, we went even further and, by our national law of 1928, in which we incorporated the Hague Rules, we said that the Rules apply to all bills of lading at the arrival of a ship in a Belgian port, even when this ship was coming from a non-contracting State and whatever law governed the bill of lading. That was going further and we set off alone like a shot. Maybe not alone because the Americans have a law similar to ours.

In Rijeka, already before Rijeka, in order to unify and to arrive at something really concrete, it was decided to study once more not only the question of the limits of liability for bills of lading but also the application of the Convention to all bills of lading for all ships arriving in a port of a contracting State or departing from that contracting State. And we had the pleasure in Stockholm to see this article drafted as it stands now and approved practically unanimously. We saw the Scandinavian and British delegations accepting it.

Everything seemed to be accomplished as I have described it. There was no difficulty and then, the last day of the session of last May, there arrived like a bomb amendment CONN. 25 which questions everything, considering you would then not need to amend article 10, or only slightly, and that is what we cannot accept. We asked ourselves what could be in the causes behind this change of attitude and yesterday, in the committee chaired by Mr. Pineus, I awaited with great interest what our colleagues from the States that introduced this amendment CONN. 25 were going to say, and I must say that I was very disappointed. I was ready to rally to the amendment if there had been reasons, good motives, but there was nothing. We were very surprised to hear Profes-
prêt à me rallier à cet amendement s’il y avait des raisons, des bons motifs, mais il n’y en avait pas. Nous avons été très étonnés d’entendre le Professeur [68] Selvig, de Norvège, et le délégué de la Grande-Bretagne aussi. Je crois comprendre parfaitement la langue anglaise et je la parle couramment, mais je n’ai pas compris ces interventions, cela semblait confus, ils ont parlé de difficultés qui auraient pu naître au point de vue du droit public, nous ne légiférons pas pour le droit public, de difficultés avec certains États, mais nous qui avons la pratique - et le Président ne me contredira pas - et tous mes distingués confrères du barreau qui pratiquent les affaires maritimes, n’avons jamais eu de difficultés sous ce rapport-là avec aucun État, pas même avec les États-Unis. Alors nous nous sommes trouvés là sans avoir la moindre explication réelle de cet amendement, et alors ce qui m’étonne beaucoup, je dois dire, c’est que les distingués représentants des États-Unis ont contresigné cet amendement. Or, si les États-Unis n’ont pas ratifié la Convention de 1924 - ils n’en ont ratifié je crains malheureusement aucune - ils appliquent leur loi, leur Harter Act, peut-être modifiée mais toujours sur la base du Harter Act, auquel on a fait beaucoup d’emprunts lorsqu’on a rédigé les Règles de La Haye. Et nous les voyons alors, eux, alors que chez eux ils appliquent le Harter Act et qu’arrivant aux États-Unis on nous applique le Harter Act, nous les voyons venir signer cet amendement qui, au fond, le détruit, détruit du moins ce que nous voulions faire pour l’unification du droit maritime.

Nous nous trouvons donc dans une situation où, depuis la bombe que nous avons eue ici à la dernière séance du mois de mai, nous allons en arrière, ce n’est pas pour cela que nous sommes réunis; nous nous sommes réunis pour faire du travail constructif et on n’en fait pas, on aurait aussi bien pu laisser l’article 10 tel quel.

Mais néanmoins, comme nous voulons tâcher de rallier toutes les délégations à ce point de vue, en comprenant les difficultés que les uns et les autres peu-sor [68] Selvig, from Norway, and the representative of Great Britain, also. I think I can perfectly understand English and I speak it fluently, but I did not understand these statements. It seemed confusing, they spoke of difficulties that could have arisen in terms of public law. We do not legislate for public law, concerning difficulties with certain States, but those of us who practise - and the chairman will not contradict me - and all my distinguished colleagues from the bar who practise in the field of maritime law, have not had any difficulty concerning this question with any State, not even with the United States. And there we found ourselves, without any real explanation for this amendment. And what surprises me the most, I must say, is that the distinguished representatives of the United States have endorsed this amendment. When in fact, if the United States had not ratified the 1924 Convention - I am afraid they have unfortunately ratified none - they apply their law: their Harter Act, which may be modified but always on the basis of the Harter Act, from which we borrowed a great deal when we drafted the Hague Rules. And then we see them who in their country apply the Harter Act and who apply the Harter Act to those of us who arrive in the United States, we see them come and sign this amendment, which basically destroys it, destroys at least what we set out to do for the unification of maritime law.

We now find ourselves in a situation where, since the bomb that we had during the last session of the month of May here, we are going backwards. This is not why we are here. We are meeting here to accomplish constructive work and we are not doing that. We might as well have left article 10 the way it stood.

But in any case, as we are endeavouring to rally all the delegations to this point of view, with the understanding of the difficulties that some of the delegations might have, we have made with the agreement of the Dutch delegation a
vent avoir, nous avons fait, d’accord avec la délégations des Pays-Bas, une nouvelle mouture de l’article 10 qui reprend - je ne vais pas vous le relire - le paragraphe premier tel qu’on l’avait rédigé et qui ajoute cette clause-ci, qui doit donner satisfaction, me semble-t-il, à tout le monde:

“Cependant, une partie à ce Protocole peut se réserver le droit de ne pas appliquer les dispositions de la Convention telle qu’elle est modifié par ce Protocole aux connaissements délivrés dans un Etat qui n’est pas partie à ce Protocole”.

Cela réserve tous les droits de ceux qui ont rédigé l’amendement Conn. 25. Nous posons le principe qui était à l’origine des discussions des Règles de La Haye. Peut-être suis-je le seul ici qui se souvienne encore de ces discussions; je n’étais pas encore membre d’une délégation mais, comme tout jeune avocat, je suivais avec passion, parce que j’ai toujours aimé le droit maritime, cette conférence diplomatique de 1924. Son but était d’unifier; on n’avait pas pu le faire en une fois et on s’était borné à accepter la convention pour les connaissances des navires partant d’Etats contractants, mais on sentait bien que c’était dans l’idée qu’on devrait arriver à l’unification complète.

C’est pour cela que nous nous sommes permis, la délégation néerlandaise - qui est vraiment l’auteur du texte - et nous-mêmes, de vous proposer ce nouveau texte. Ce n’est pas un nouvel amendement; c’est le produit des discussions en commission afin de rallier les délégations à ce point de vue, puisque chacun peut se réserver de ne pas appliquer la convention au connaissement de marchandises partant d’un Etat non-contractant. Je pense que cela doit donner satisfaction à tout le monde.

Nos amis français nous ont dit que notre texte serait très bon si nous y avions joint la “clause Paramount”. Je crois que ce n’est pas nécessaire. Nous sommes tout prêts à le faire. Si nos amis français veulent ajouter un paragraphe concernant la “clause Paramount”, nous l’accepterons; nous n’avons d’ailleurs aucun new rehash of article 10 which uses - I am not going to read it again - the first paragraph the way we had drafted it and adds the following clause, which should satisfy, it seems to me, everyone:

“However, a party to this Protocol may reserve the right not to apply the provisions of the Convention as amended by this Protocol to bills of lading issued in a State which is not a party to this Protocol”.

This reserves all the rights of those who had drafted the amendment CONN. 25. We set down the principle that was at the origin of the discussions of the Hague Rules. I am maybe the only one here who still remembers these discussions. I was not yet a member of the delegation but, as a young lawyer, I followed with [69] passion, because I always loved maritime law, that diplomatic conference of 1924. Its goal was to unify. It was not possible to do it all at once and we focused on accepting the convention for bills of lading of vessels departing from Contracting States, but we could tell that it was done with the idea that we should attain complete unification.

This is why we took the liberty, the Dutch delegation - the real authors of this text - and ourselves, to propose this new text to you. This is not a new amendment; it is the product of committee discussions in order to rally delegations to this point of view. And because everyone may reserve the right not to apply the Convention to bills of lading for goods departing from a non-contracting State, I think this will satisfy everyone.

Our French friends have told us that our text would be very good if we included a “Paramount clause”. I think it is not necessary. We are all ready to do that. If our French friends would like to add a paragraph concerning the “Paramount clause”, we will accept it. We have no “pride of authorship” in this matter.

In addition, I would invite the con-
amour-propre d’auteur en cette matière.

Aussi j’invite le conférence à rejeter l’amendement Conn. 25, même modifié tel qu’il l’est aujourd’hui, car cela n’apporte pas grand-chose, à le rejeter parce qu’il n’est pas motivé: personne ne nous ayant dit quelle était la vraie raison de l’amendement. Je suppose qu’il s’agit d’intérêts maritimes différents, mais pourquoi ne pas le dire? En commission, nous espérions avoir des éclaircissements, nous n’en avons pas obtenu. Par conséquent, nous estimons que ce retour en arrière est une erreur.

Nous demandons à la conférence plénière de voter le texte que nous avons proposé avec, éventuellement, l’amendement français pour la “clause Paramount” - qui peut le plus peut le moins - quoique nous estimions que ce n’est pas nécessaire.

M. Suchorzewski (Pologne). Monsieur le Président, Messieurs, qu’il me soit permis tout d’abord, au nom de la délégation polonaise, de faire brièvement l’analyse du texte soumis à notre examen par la majorité de la Commission.

Les points a) et b) pris ensemble ne forment à vrai dire qu’une seule disposition qui peut être à peu près comprimée dans une phrase, par exemple: “La Convention s’applique quand le connaissement est délivré au port de chargement”.

Le point c) qui dit que la Convention sera applicable si les deux parties stipulent dans leur contrat de transport la “Paramount clause” n’apporte à vrai dire rien de neuf. Cette disposition confirme seulement la liberté des parties d’arranger leurs relations selon leur volonté, ce qui ne peut pas du tout être mis en doute et ce qui n’exige aucune permission ou acceptation particulière de la part du législateur. Cette stipulation est donc superflue et inutile.

Par conséquent si les deux premiers points, a) et b), basent l’application de la Convention sur la délivrance de connaissement au port de chargement et si le point c) n’apporte rien de neuf, la conclusion to reject amendment CONN. 25, even in the way it is modified now, because this will not amount to much, to reject it because it has no basis. Nobody has explained to us the real reason behind the amendment. I suppose that it is for different maritime interests, but why not say so? In Committee, we were hoping to have some explanations but we had none. Consequently, we believe that this step backwards is a mistake.

We ask the plenary session to vote on the text that we have submitted with eventually, the French amendment for the “Paramount clause” - one takes what one can get - even though we do not think it is necessary.

Mr. Suchorzewski (Poland). Mr. Chairman, Gentlemen, allow me first, in the name of the Polish delegation, briefly to analyze the text submitted to us by the majority of the Committee.

Points (a) and (b) taken together actually form the single provision that can be more or less compressed in one sentence, for instance “The Convention shall apply when the bill of lading is issued in the port of loading”.

Point (c), which says that the Convention shall apply if the two parties include the “Paramount clause” in their contract of carriage, really adds nothing new. This provision is only there to confirm the freedom of the parties to arrange their relations in accordance with their will, which cannot be questioned at all and which requires no permission or particular approval on the part of the legislator. This stipulation is then superfluous and useless.

Consequently, if the two first points, (a) and (b), base the application of the Convention on the issuance of bills of lading in the port of loading and if point (c) brings nothing new, the conclusion is
sion est simple: nous répétons tout simplement, mais à l'aide de plusieurs mots, ce qui est déjà dit dans la Convention de 1924.

Disons très brièvement que nous ne faisons donc aucun pas en avant. Nous en restons au même point.

Lorsque j'ai demandé aux auteurs de cet amendement d'en donner les motifs juridiques, je me suis entendu dire que l'exclusion du port de déchargement était nécessaire pour ne pas forcer la loi nationale d'un État qui ne participerait pas à la Convention. Mais je me permets de faire observer que le point c) de cet amendement conduit aussi à forcer la législature par la volonté même des parties exprimée dans le contrat de transport par la “Paramount clause”.

D'autre part, on comprend difficilement pourquoi une des deux parties doit être favorisée du fait de l’exclusion de l’application de la Convention dans le cas où la cargaison est transportée dans un pays non contractant, alors qu’il est évident que la plupart des litiges se produisent précisément dans le port de déchargement.

Il faut donc conclure que si nous voulons élargir le champ d’application de la présente convention, nous ne pouvons pas exclure le port de déchargement. A cet égard nous pouvons citer à titre d’exemple la loi belge qui depuis des années prévoit également le port de déchargement; jusqu’à présent elle n’a donné lieu à aucune catastrophe dans les relations internationales.

Je désire encore soulever une question au sujet de la rédaction même du projet d’amendement présenté par la majorité des membres de la commission. Au début du texte français, nous lisons: “Les dispositions de la présente Convention s’appliqueront à tout connaissement...”; à la fin du même article nous lisons: “Chaque État contractant appliquera les dispositions de la présente Convention”. Du point de vue juridique il ne me semble pas nécessaire de dire deux fois la même chose. Si nous disons objectivement que les dispositions de la présente simple; we are simply repeating, with the help of several words, that which has been said in the 1924 Convention.

Let us say briefly that we are not making any step forward. We are at the same level.

When I asked the authors of this amendment to give me the legal reasons, I was told that the exclusion of the port of unloading was necessary so as not to impose the Convention on the national law of a State that did not participate in the Convention. But I would like to add that point (c) of this amendment will also lead to forcing the legislature by the very will expressed by the parties in the contract of carriage through the “Paramount clause”.

Further, we have a problem understanding why one of the two parties should be favoured over the other by the exclusion of the application of the Convention in the case of cargo carried to a non-contracting State, when in fact it is clear that most disputes take place in the port of unloading.

It follows then that if we want to broaden the scope of application of the present Convention, we cannot exclude the port of unloading. With regard to this point, we can cite as an example the Belgian law, which for a number of years has provided also for the port of unloading. Up to now it has never created a catastrophe in international relations.

I would also like to raise a question concerning the drafting of the proposed amendment submitted by the majority of the Committee. At the beginning of the French text, it says: “Les dispositions de la présente Convention s’appliqueront à tout connaissement...” (The provisions of the present Convention shall apply to every bill of lading...). At the end of the same article we read: “Chaque État contractant appliquera les dispositions de la présente Convention” (Each Contracting State shall apply the provisions of the present Convention). From the legal point of view, it is not necessary in my mind to say the same thing twice. If we say objectively that the provisions of the
The present Convention will apply to every bill of lading, I do not see why we have to say that each [71] contracting State shall apply the provisions of this Convention. I would also like to register my agreement with the drafting of the last sentence, but it seems to me sufficient to say at the beginning of the article: “Chaque Etat contractant appliquera les dispositions de la présente Convention à tout connaissement relatif à un transport...”

La délégation polonaise est d’avis qu’il serait utile d’élargir autant que possible le champ d’application de notre Convention. C’est pourquoi elle ne peut pas voter l’amendement qui nous est soumis. Je vous remercie.

Mr. Kerry (United Kingdom). I am sorry we have not been able to get across to a number of delegates the reasons we cannot support the amendment put down in the names of the Belgian and Netherlands delegations. I do not think I can repeat at length what I have already said, but there is a very deep division of opinion.

The leader of our delegation last May explained at considerable length why we consider the mandatory application of the rules to inbound bills of lading objectionable from a jurisdictional point of view. I will very briefly repeat what he said.

In applying these rules States are performing a governmental act, they are exercising governmental powers, and in my view they must have a scrupulous regard for the jurisdiction of other countries in so doing. The rules regulate the terms on which seaborne traffic is carried. It is true they do not cover such matters as the price or the rate at which those goods may be carried but the principle is very much the same.

I think that every delegation here would object if a single country or a group of countries purported to control the terms on which, the rates at which goods arrive in its ports, disregarding the rules applicable in the port of departure. That is the simplest explanation of our jurisdictional difficulty.

That difficulty is becoming more and more emphasised today by the fact that a number of countries are beginning more and more to attempt to control the terms on which seaborne traffic is carried, and we consider this Conference should set an example in being scrupulously careful not to infringe the jurisdiction of other countries.

The second reason why we asked the Conference to reject the original Stockholm proposal was that in applying the new rules to inward bills of lading, the difficulties of conflict of laws would be [72] increased rather than minimised. The difficulty that the rules on which you carried goods would depend on the court in which you brought your action, rather than the terms which the shipper and the shipowner agreed, would be increased.

For those two reasons we would ask the conference to support the proposal which is in the name of the majority of the Committee.

Mr. A. I. Mendelsohn (United States). I hardly know where to begin in this fairly complex discussion, but I would like to thank our good friend from Belgium for hav-
ing said that his country has had no trouble with my country for the past several years. It seems to us that all things considered we would prefer, if we were starting out anew, to have a convention applicable and in effect, if the carriage is from a port in a Contracting State or to a port in a Contracting State.

Our good friend from the United Kingdom suggests two reasons why we would not wish this “to or from” concept to be incorporated in the Convention. His two reasons are first, that we should observe a scrupulous regard for the jurisdiction of other countries. But it seems to us that if we were really to observe a scrupulous regard for the jurisdiction of other countries, we would not enter into international conventions at all. After all, an international convention is an attempt on the part of each of us to cede a certain degree of our sovereignty to other States. If we were only to observe this scrupulous regard, we would not surrender any of our sovereignty to other States, and hence we would not be writing international treaties.

In a word, the purpose of a treaty is to cede sovereignty. We avoid difficulties if we can say that the Convention is applicable “to or from”, that is, that the Convention is applicable to the carriage of cargo to or from a Contracting State.

The second significant reason which the delegate from the United Kingdom delegation has given is that it would produce conflicts in law. We in the United States have existed under this system of “to or from” a port in a contracting State for 25 years. Our good friend from Belgium has indicated that he has existed under this system for 40 years. I have a feeling that there are other countries which have a similar system, and I have not noticed any major conflict of laws problems arising; moreover, it is likely, as the British delegation understands, that we in the United States will again enact the “to or from” concept into our law, and they have no objection to this. The delegate says “Let every State enact it in their own law, but don’t put it into a treaty”. In other words “You may do it, but we don’t wish to be a party to your doing it”. This is something which I have a great deal of difficulty in understanding, and if I had an option here, and if we were not at this late stage in the conference, I would, without any question, support the addition of the words “to or from”, so that Article 5 of Document No. 16, paragraph b) would read: “the carriage is to or from a port in a Contracting State”.

However, and this is a significant “however”, the British delegation had advised us that this treaty may be unacceptable if the “to” concept, namely the port of unloading concept, is incorporated into the treaty. On that basis, and on that basis alone, and despite the fact that this will cause us and the Belgian delegation, as well as other delegations, considerable difficulty in having to enact additional legislation rather than simply ratifying the treaty, we are prepared in the interests of ensuring that the British Government can join this Convention, to adopt the compromise in document CONN. 25 and to eliminate the “to” portion.

I am perfectly aware that this type of compromise has been reached in many other situations, indeed last May, on behalf of the United States, when we had certain difficulties, and in the light of that fact we are more than prepared at least to understand the British difficulties and go along with the provision that is in Document 16.

Mr. de Bresson (France). Monsieur le Président, la délégation française désire appuyer très brièvement les observations qui ont été formulées il y a quelques instants par le délégué du Royaume-Uni.

Il nous semble en effet que le texte
qui a été élaboré par le groupe de travail et qui nous a été présenté par Monsieur Pineus constitue un équilibre satisfaisant entre des préoccupations divergentes dont le délégué du Royaume-Uni nous a rappelé tout à l’heure la motivation. Le texte nous paraît avoir pour caractéristique de poser en principe que la Convention s’appliquera aux connaissances relatifs à des transports qui ont lieu au départ du port d’un Etat contractant. Ceci est le principe légal.

Mais le paragraphe c) permet aux parties, si elles estiment un autre système préférable, d’étendre la Convention et de lui faire viser les transports aboutissant au port de débarquement d’un Etat contractant. Par conséquent, à côté du principe nous pensons disposer de la souplesse nécessaire au cas où telle serait la volonté des parties.

Le système préconisé par l’amendement belgo-néerlandais nous paraît plus rigide, en ce sens qu’en principe il prévoit que le port de débarquement se trouve également visé, mais qu’il permet aux États d’exclure ce système; c’est là l’objet de la réserve figurant au paragraphe 2. Mais cet amendement ne prévoit pas pour le moment la “Paramount clause”. Je dois dire que si on ajoutait la “Paramount clause” on échapperait peut-être à cet inconvénient de rigidité. Mais n’aboutirait-on pas à un système un peu paradoxal à savoir qu’un État pourrait se prononcer formellement contre l’extension du système au port de débarquement alors que les parties auraient malgré tout le droit d’y recourir.

Dans ces conditions nous avons le sentiment, compte tenu des thèses en présence, que c’est bien l’amendement proposé par la majorité des membres du groupe de travail qui réalise, comme je le disais il y a quelques instants, le meilleur équilibre. C’est pour cette raison que la Délégation française appuie cet amendement.

Je vous remercie, Monsieur le Président.

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Je vous remercie, Monsieur le Président.
Prof. Manca (Italy). Mr. Chairman, Ladies and Gentlemen. In his synthetic but exhaustive report, Mr. Pineus has stressed that some years ago, i.e. before the Rijeka Conference of 1959, the need was felt of enlarging the field of efficiency and applicability of the Convention and that, in order to further this general need, article 10 of the Hague Rules was radically modified and substituted by article 5 of the so-called Visby Rules.

In the course of the following works, which lasted for eight years, no subsequent proposal of modifying the new article 5 was laid down. It was only last year, at the fist phase of this Diplomatic Conference, that an upsetting modification was proposed by an amendment submitted by the delegations of the United States, United Kingdom, the Scandinavian countries and Japan.

In our opinion, this amendment does not represent amplification and therefore an improvement of the original article 10 of the Convention. Only the wording of article 5 in the new edition seems to be wider than the old article 10, but the contents of the latter do not appear to have been substantially modified.

First of all, two cases are contemplated as quite distinct between them: the place in which the bill of lading is issued and the place of loading.

But these two places are normally the same in as much as, according to article 3, paragraph 3, of the Convention, the carrier is duty bound to issue the bill of lading. I do not remember to have seen a single case in which a bill of lading was issued in a place different from the port of loading. In other words, the two cases under (a) and (b) represent, in final analysis, a single case and, more particularly, the single case which is provided in the original article 10 of the Hague Rules.

Neither the provision under (c) brings to an enlargement of this article. According to it, the Convention covers any other carriage if the contract contained in or evidenced by the bill of lading provides that the rules of the Convention or legislation of any State giving effect to them are to govern the contract.

This provision does not embody, in the opinion of the Italian Delegation, a real innovation. Nobody has ever raised the slightest doubt that the parties are fully free to stipulate that the contracts agreed upon between them are governed by a given international convention or by a domestic law chosen by them.

In this connection, it is a truism to say that the will of the parties is sovereign within the ambit of private law unless their agreements clash against rules of public police or public order and this conflict is inconceivable when the parties subject the contract to an international convention of maritime law.

It follows that the provision under (c) has only the appearance of an amplification of the old article 10 whilst the reality is that it might be deleted without a change whatsoever in the present situation.

Similar observations can be opposed to the last paragraph of the amendment providing that each Contracting State shall apply the provisions of this Convention to the bills of lading... This concept is the same expressed in the first paragraph stating that the provisions of this Convention shall apply to bills of lading...

Only one of the Contracting States is entitled, of course, to promulgate and enact the provisions of an international convention and therefore the identity is evident between the two rules.

This objection has been already raised, if I am not mistaken, by the Polish delegate whose opinion deserves full approval.

Only the recent amendment presented by the delegations of the Netherlands and of Belgium embodies an enlargement and an improvement of article 10 on conflict of laws. This provision [76] considers only the loading ports as a determinant factor for
the application of the Hague Rules. On the contrary, the amendment proposed by the
above delegations widens the ambit of efficiency of the Convention which ought to be
applied also when the port of discharge, or one of the optional unloading ports, lies in
the territory of a contracting State.

A final consideration supports the subject amendment. It has been said that the
1924 Convention is good and satisfactory as is proved by the great number of ratifica-
tions and accessions as well as by the many domestic laws moulded on its pattern.

Now, it is improved by all the modifications which have been already decided and
therefore it is evident the opportuneness of enlarging its field of application, thus
achieving our aim consisting of the uniformity of maritime law. Thank you.

Mr. H. E. Scheffer (Netherlands). Mr. Chairman, Ladies and Gentlemen, I fully
share the regret expressed by the distinguished delegate of the United Kingdom that
we did not come to a complete agreement on this point. However, we agree on two
points: we agree on the wish that we should give a large scope of application to the uni-
form law on bills of lading; and the second point on which we agree is that we should
like to adopt a text acceptable to all maritime nations that are interested in this mat-
ter; therefore, if we cannot agree on everything, we should at least make it possible for
those who have another point of view to follow their own system. It is in this respect
that we are lead by a spirit of conciliation.

The reason why we still stick to the formulation of the scope of application of the
Convention as it was worded in the so-called Stockholm protocol is that in our view if
we want to have a large application, we should say so in plain words.

Now the other method which is advocated by the delegations who are in favour of
the other text which is before us, Document Conn. 25, means that what is wanted is
not said in the text of the Convention but is left to the parties to stipulate amongst
themselves. What in our view should be the duty of the Legislature is left to private
parties in business. I have the feeling that here is a lack of courage on the side of the
Legislature. If we really want to give a wide application to the uniform rules, we should
not hesitate to say so in plain words.

The arguments that were put forward by the distinguished delegate of the United
Kingdom were, firstly, that this attitude was [77] based on a scrupulous regard for the
jurisdiction of other States - he meant non-contracting States. Now, I want to give the
assurance that the Netherlands do not fail in respect for the jurisdiction of other States.
There is however no question of respect or non-respect with regard to non-contract-
ing States, whose jurisdiction remains intact, because what we are aiming at is that we
want, in the States who are parties to the Protocol and to the Convention as amended,
the application of a unique system and not a manifold system, which may vary from
case to case according to various doctrines on the points of connection.

The second argument by the distinguished delegate of the United Kingdom was
that the text, as it was proposed in Stockholm, was leading to all sorts of conflicts of
law. Mr. Chairman, I think it is just the other way round. It is the other text that gives
rise to difficulties of conflicts of law because it subordinates the application of inter-
nationally agreed uniform rules of law to rules of international private law, that is to
say, to rules of conflicts of law, whereas the object and aim of the unification of law is
to avoid the application of these rules which are written for cases in which an interna-
tional uniform rule is lacking. There is a contradiction in the system of Document
CONN 25, because on the one hand it is restrictive, on the other hand it recognizes
the validity of Paramount clauses which emanate from another idea and give a broad-
er application to the Convention without giving an assurance that no conflicts of law
would arise. The Stockholm text gives this assurance because it guarantees that within
in any contracting State only one unique regime will apply.

I am very sorry that I cannot follow the remark made by the distinguished delegate
of France who said that the combined proposal of the Belgian and Netherlands delegations was more rigid than the other one because it gives, in the second paragraph, the right to parties to the protocol to reserve the right not to apply the provisions of the Convention to bills of lading issued in a non-contracting State, but does not leave room to recognize the Paramount clause. There must be a misunderstanding because there is no question of not recognizing the “Paramount clause”. It is completely left to every State to do as it wants. If a State does not want to make a reservation, then the wide application is already in the wording of the first paragraph. If a State makes a reservation, the reservation can be worded in the way this State considers appropriate, and that can, of course, be done in such a way that the Paramount clause is fully recognized. Therefore I do not think the Belgian/Netherlands proposal is rigid with regard to Paramount clause.

[78]

Mr. Chairman, I do not think at this stage we should again go over all the arguments which were discussed yesterday and today in the committee presided over by Mr. Pineus. I only want to amplify again that, for the sake of the international unification of maritime law, we should be aware that future commentators will give their opinion on our work and on a clause, as contained in Document CONN 25 - which is not clear in its aim because it is ambiguous in combining things that are, in themselves, contradictory. We have to take a decision that will last for years and years as it would be very difficult to change the text again. We should therefore be conscious of our responsibility in taking a decision and be aware of the consequences. Thank you, Mr. Chairman.

Mr. Selvig (Norway): Norway and the other Scandinavian countries are among those countries which proposed the amendment in CONN 25, which now appears, slightly revised, in document 16.

We have heard here various objections to that amendment from the delegates of Poland, Belgium, Italy and the Netherlands. We also heard these objections in the discussions in the committee, but the majority decided in favour of the amendment in document 16. The French delegate expressed very clearly the reason we adopted this amendment, and for the reason he gave I urge you to support this amendment.
crois d’ailleurs que M. Koelman a fait allusion à cette difficulté - d’inclure dans leur proposition la “Paramount clause”. Cette clause serait fort utile aux pays dépourvus de littoral maritime parce qu’elle pourrait être une des conditions de vente des importations et exportations de ces pays et être incluse dans les contrats de transports soumis aux règles de la Convention. De plus, les assureurs aimerait savoir sous quel régime ces transports pourraient se faire de manière à éviter un bradage des conditions de transport entre ports de départ. Il ne faudrait pas qu’une marchandise soit exportée par le port d’Anvers au lieu d’un autre port par exemple parce que les conditions juridiques seraient préférentielles.

En principe, la délégation suisse préférerait s’en tenir aux textes de Rijeka, mais la formule du document n° 16 incluant la “Paramount Clause” ainsi que celle autorisant l’émission du connaissement dans un Etat contractant y inclus l’émission d’un connaissement reçu pour embarquement dans un pays dépourvu de littoral maritime, pourrait donner satisfaction aux vœux de la délégation suisse.

Ce point de vue est partagé, je pense, par tous les pays dépourvus de littoral.

Mr. Hazama (Japan). The remarks made by the United Kingdom delegation and by the French delegation several minutes ago expressed exactly what I wanted to say at this meeting, so I strongly endorse their remarks and say that the Japanese delegation is prepared to support the revised text of CONN 25 which is now before us as document No. 16.

The Chairman. The Belgian delegation has the floor.

M. Koelman (Belgique). Monsieur le Président, Messieurs, je me permets de prendre à nouveau la parole pour répondre brièvement à M. Kerry.

Les arguments juridiques qu’il est venue défendre à cette tribune me paraissent n’être que des difficultés d’ordre purement hypothétique. Au cours de nos has alluded to this difficulty - to include in their proposal the “Paramount clause”. This clause would be very useful to countries without a maritime coast because it could be one of the conditions of sale for imports and exports of these countries and could be included in contracts of carriage governed by the rules of the Convention. Moreover, the insurers would like to know under what regime these shipments would be made in order to avoid haggling over the conditions of carriage among ports of departure. Goods should not, for instance, be exported through the port of Antwerp instead of another port just because the legal conditions would be preferential.

In principle, the Swiss delegation would favour following the texts of Rijeka, but the formula of document no. 16, including the “Paramount clause”, as well as the one allowing the issuance of a bill of lading in a contracting State, including the issuance of a received for shipment bill of lading in a country without a maritime coast, could satisfy the Swiss delegation.

This point of view is shared, I think, by all the countries without a coastline.

The Chairman. The Japanese delegation has the floor.
40 années d’expérience, de telles difficultés ne nous sont jamais apparues. Si la Belgique ne dispose pas d’une flotte marchande importante, son port d’Anvers reçoit néanmoins des navires de toutes nationalités soumis aux règles de La Haye. Le respect de ces règles ne diminue pas pour autant notre trafic maritime.

Je voudrais d’ailleurs observer que depuis la session de la conférence diplomatique tenue à Rijeka les experts juridiques de la délégation britannique n’ont jamais fait aucun reproche à l’application de ces règles. À Stockholm d’ailleurs, la délégation britannique défendait l’article 10 nouveau.

[Aujourd’hui, elle y fait objection. Sans doute a-t-elle ses raisons mais il me semble que nous ne devons pas nous y attarder. Sans vouloir prophétiser, je crois pouvoir affirmer que d’ici quelques années nous nous trouverons réunis pour entendre la délégation britannique demander l’application stricte de l’article 10 nouveau. En réponse à l’intervention de M. Müller, je me permets de douter de la nécessité de la “Paramount Clause”. Toute fois, si M. Müller désire déposer un amendement en ce sens, M. Scheffer et moi-même l’examinerons avec la plus grande bienveillance.

Peut-être nos collègues britanniques n’ont-ils pas prêté suffisamment d’attention au deuxième paragraphe de l’amendement déposé par la délégation belge rédigé comme suit: “However, a Party to this Protocol may reserve the right not to apply the provisions of the Convention as amended by this Protocol to bills of lading issued in a State which is not a Party to this Protocol”.

Celui-ci me paraît devoir leur donner satisfaction. Il suffira de dire, soit au cours de la présente session, soit plus tard, que nous appliquons ce paragraphe 2 et que nous nous réservons d’apporter la Convention comme telle. Ce principe,
s’il ne triomphe pas aujourd’hui, sera ac-
cepté un jour, soyez-en convaincus.

M. le Président. Si plus personne ne
demande la parole, je considère la dis-
cussion générale close au sujet de l’article
5.

Je vous propose de mettre au vote de-
main matin les textes qui nous seront
soumis.

L’assemblée plénière pourra en-
tendre le rapport de la commission de
de l’article 2 paragraphe 1er demain après-
midi.

La prochaine séance aura lieu de-
main mercredi à 11 heures.

Cinquième Séance Plénière -
21 Février 1968

[81]

Présidence de M. Albert Lilar, Prési-
dent.

M. le Président. Je m’excuse de ce
que cette séance commence avec un cer-
tain retard. Ce retard est dû au désir
qu’un grand nombre de délégués ont de
rapprocher leurs points de vue, ce qui, je
crois est infiniment souhaitable.

Je vais donner immédiatement la pa-
role à M. Pineus qui m’a demandé de
pouvoir s’expliquer sur ce point.

The Chairman. If nobody is asking
for the floor, I will consider the general
discussion closed on the subject of article
5.

I suggest to put to a vote, tomorrow
morning, the texts that have been sub-
mitted to us.

The assembly will then hear the re-
port of the Committee on article 2(1) to-
morrow afternoon.

The next session will take place to-
morrow, Wednesday, at 11:00 a.m.

Fifth Plenary Session -
21 February 1968

[81]

Mr. Albert Lilar, Chairman.

The Chairman. I am sorry that this
session is starting a little late. This is be-
cause of the wish of a great number of
delegates to bring their points of view to-
gether, which I think is infinitely desir-
able.

I will give the floor immediately to
Mr. Pineus.

Mr. K. Pineus (Sweden). Mr. Chairman, Ladies and Gentlemen, I am sorry to have
been responsible for having held you up and I ask for your forgiveness.

You will remember that yesterday when we had the discussion on Article 5 it
emerged that there were different views. We have worked this morning to see if a com-
promise solution can be found, and I will not promise you that it will be possible, but
we are trying to find something which might make things easier for the different views
to come together.

When we have the text before us we will have a new meeting of the Committee at
3 o’clock, when we have clarified the issue sufficiently, and provided the text, if it is
acceptable we will not have to be very long about our discussions.

I would very much like to ask our Chairman if he would be kind enough to post-
pone the vote on Article 5 as it was presented to you yesterday until we know if and
what compromise can be reached within the Committee. I will come back to you this
afternoon and [82] report on whether we have found such a formula. For this reason,
I would like the vote to be postponed until we have had that discussion.
M. le Président. Vous venez d’en-tendre la proposition formulée par le Président de la commission. Je crois que dans la mesure où il est possible de trouver une solution qui rencontre l’agrément de la majorité des délégués, nous devons tendre vers ce but. Je voudrais demander à l’assemblée de donner suite à la proposition formulée par M. Pineus et reporter à cet après-midi, 15 h. 30, le vote de ce matin. De cette façon, nous ne risquons pas d’avoir un vote de majorité contre minorité, mais nous espérons avoir une majorité importante.

Si l’assemblée est d’accord, il en sera ainsi, et je vous fixe rendez-vous à 15 h. 30.

Sixième Séance Plénière - 21 Février 1968

Présidence de M. Albert Lilar, Président.

M. le Président. La séance plénière est reprise.

Avant d’aborder l’examen des travaux de la commission présidée par Monsieur Pineus, je voudrais vous faire une communication. La commission chargée de la vérification des pouvoirs s’est réunie ce matin. Les pouvoirs des déléguations présentes étant réguliers, elles seront appelées tout à l’heure à prendre part au vote.

Le rapport concernant les travaux de la commission chargée de la vérification des pouvoirs sera distribué demain matin aux différents membres qui participaient à nos travaux.

Nous abordons maintenant le sujet qui a été traité par la commission présidée par Monsieur Pineus à qui je donne immédiatement la parole pour qu’il puisse nous présenter son rapport.

The Chairman. You have just heard the proposal formulated by the chairman of the committee. I think that if it is possible to find a solution with which the majority of the delegates can agree, we should strive for this goal. I would like to ask the assembly to respond to Mr. Pineus’s proposal and postpone to this afternoon, 3:30 p.m., the vote of this morning. In this way, we should not have a majority vote against a minority vote, but we hope to have a large majority.

If the assembly agrees, it will be so, and I will see you at 3:30 p.m.

Sixth Plenary Session - 21 February 1968

Mr. Albert Lilar, Chairman.

The Chairman. The plenary session is resumed.

Before we get on to the work of the Committee chaired by Mr. Pineus, I would like to inform you that the credentials committee met this morning. And because the credentials of the delegations here present are in order, they will be called upon later to take part in the vote.

The report of the credentials committee will be distributed tomorrow morning to the members participating in our work.

We start now with the subject that has been studied by the Committee chaired by Mr. Pineus, to whom I give the floor immediately so that he can give us a presentation of his report.
Mr. Pineus (Sweden). Mr. Chairman, thank you. Ladies and gentlemen, when I presented to you yesterday the Report on the field of application of the Convention, I believe I indicated that we had a majority and minority, and that appeared in the debates afterwards. It was not I would say a very happy situation and I believe one or other text would have been adopted perhaps with a small majority which I think is a thing that should be avoided if that can be done.

In the spirit of compromise which has prevailed throughout this Conference, the suggestion was made that perhaps we could find a common denominator on which we could all agree, and we met this morning and discussed the proposal that came from various directions, and as it is before you now it stands as an amendment presented by the United Kingdom. It was very much in the air, but it so happened that the text was produced by the United Kingdom. It appears in the document that has been distributed to you that we should add to the Article we had yesterday the proposed amendment to Article 10 in the Hague Rules, which stands as Article 5 here. It says to add a new paragraph to the text that was presented to you yesterday and reads “This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs”. That is to say a Contracting State shall be at liberty to extend the scope of the Convention. It is a clarification some of you may not think is essential, or at all needed. In some quarters it is felt that it might well be necessary to have such a clarification.

“Le présent article n’empêche pas un Etat contractant d’appliquer les règles de la présente Convention aux connaissements non visés par les paragraphes précédents.”

It is this text that will replace the initial text and I hope that it will more easily permit the majority and the minority to come to an agreement. I also hope that, thanks to the efforts we made in the committee to reach a compromise, the vote that will take place later will be unanimous, as we had hoped yesterday.

M. le Président. Je remercie Monsieur Pineus de l’exposé qu’il nous a fait au sujet des travaux de la commission qu’il a présidée. Je rappelle qu’il s’agit du document no 16 auquel s’ajoute un paragraphe dont il vient de nous donner lecture.

Je me propose donc de demander à l’Assemblée d’émettre un vote sur le texte qui lui est soumis et qui est issu des travaux de la commission présidée par Monsieur Pineus.

M. Scheffer (Netherlands). Mr. Chairman, I should like to suggest a very small change in the drafting of this text to read “This Article does not affect the right of a Contracting State to apply the rules of this Convention to bills of lading not included in the preceding paragraph.”

“Le présent article ne porte pas atteinte au droit d’un Etat contractant d’appliquer les règles de la présente Convention aux connaissements non visés par les paragraphes précédents.”

The Chairman. I thank Mr. Pineus for the presentation he gave on the work of the committee he chaired. I remind you that it is document no. 16 to which you add the paragraph that he has just read to us.

I will then propose to the assembly to vote on the text that has been submitted and that resulted from the work of the committee chaired by Mr. Pineus.
M. le Président. Y a-t-il une objection à ce que la rédaction de ce dernier alinéa soit modifiée suivant la proposition de la délégation des Pays-Bas. En fait cette modification de rédaction ne change rien au texte mais je désire demander l’avis de l’Assemblée.
La parole est à la délégation du Royaume-Uni.

The Chairman. Are there any objections to the modification of the last paragraph in accordance with the proposal made by the Dutch delegation? In fact this does not change the text much, but I would like to look to the opinion of the assembly.
The British delegation has the floor.

Right Hon. Sir Kenneth Diplock (Great Britain). Mr. Chairman, the text which has been produced by the Commission was after a great deal of work and discussion. And I would like to express on behalf of the delegation of the United Kingdom our appreciation of the attempts which have been made to meet our point of view. But it is this text which has been proposed by the Commission which we are prepared to accept.
The difference between the two texts is that the one by the Commission is completely neutral in leaving each country to decide what its own rules of private international law permit it to apply to. The amendment which is proposed is not neutral. It assumes that there is a right to do so. That is true in some countries’ systems of private international law, it is untrue in others. And I do earnestly beg the assembly to keep to the neutral text which has been hammered out with so much work and effort in the Commission.

Prof. Manca (Italy). Mr. Chairman, Ladies, Gentlemen, I have perused the amendment presented by the United Kingdom and clearly illustrated by Mr. Pineus in his brilliant speech. According to such amendment each contracting State is free of applying the Rules of the Convention to bills of lading which are not included in the preceding paragraphs of article 5.
It has been already said that it is a clarification some of us may not think is essential, or at all needed.
I would dare to stress that, in our firm opinion, the amendment is superfluous because it confirms a cardinal principle of international law which was never contested: that is, that each State has full freedom to promulgate in its domestic legislation rules which are different from those contained in an international convention.
It follows that also without the proposed amendment each State would be entitled to enlarge in its legislation the ambit of efficiency of the Convention.

I wish to recall a shining example of this truth. The 1924 Convention does not embody, as you know very well, a rule like this which has been suggested by the distinguished delegation of the United Kingdom.
This notwithstanding, when in 1936 the United States introduced the Hague Rules in their legislation, they enlarged the field of application of these Rules, which was circumscribed by article 10, and provided for in the preamble to the Carriage of Goods by Sea Act of April 16, 1936, that every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of the said Act.
At the moment I cannot say whether also in other domestic laws this enlargement
of the field of application of the Hague Rules has been realized, but this single example is very eloquent and confirms the correctness of our observations. The Italian delegation must therefore rivet the motives, which have been explained yesterday, for which it refrains from approving the subject amendment.

M. Suchorzewski (Pologne). Monsieur le Président, Mesdames, Messieurs, j’ai eu l’occasion hier de vous faire part du sentiment général de la délégation polonaise qui estime qu’il faut élargir autant que possible le champ d’application de cette Convention.

L’amendement que nous avons sous les yeux constitue un demi-pas en avant dans ce sens, ce qui peut évidemment nous satisfaire. Mais je désire vous faire part brièvement de notre inquiétude quant à la rédaction de la dernière disposition reprise dans cet amendement. Cette rédaction nous semble un peu bizarre parce qu’elle tend en quelque sorte à consentir aux États contractants l’autorisation d’utiliser les dispositions de la convention dans leur législation interne. Il nous semble que tous les États, qu’ils soient contractants ou non, décident soverainement de leur législation interne. Il paraît inutile de dire dans une Convention que les États contractants sont autorisés à faire telle ou telle chose dans leur législation. Chaque État, je le souligne, qu’il soit contractant ou non, est libre d’utiliser dans sa législation les dispositions de la convention, s’il désire le faire. Il existe déjà de nombreuses conventions où nous trouvons l’exemple en sens contraire: la convention établit des règles générales et autorise un État à faire une exception si telle est sa volonté. Mais il s’agit là d’une restriction et non d’une extension du champ d’application. Or, étendre le champ d’application d’une convention, chaque état peut toujours le faire, même s’il n’est pas contractant.

Mr. Suchorzewski (Poland). Mr. Chairman, gentlemen, I had the occasion yesterday to share with you the general feeling of the Polish delegation that we should expand as far as possible the scope of application of this Convention. The amendment that we have before our eyes is only a half step forward in this direction, which can certainly be acceptable to us. But I would like to share with you briefly our worries concerning the drafting of the last provision taken up in this amendment. This drafting seems a little bizarre because it tends in a way to give to contracting States the permission to use the provisions of the Convention in their internal legislation. It seems to us that all States, be they contracting or non-contracting, have sovereignty over internal legislation. It appears useless to say in a convention that the contracting States are permitted to do this or that in their legislation. Every State, I emphasize, be it contracting or non-contracting, is free to use the provisions of the Convention in its legislation if it wishes to do so. There are already numerous conventions where we can find examples that go in the opposite direction; the convention establishes general rules and authorizes a State to make an exception if it wishes to. But what we have here is a restriction rather than an extension of the scope of application. But as far as broadening the scope of application of a convention, every State can always do that, even if it is not a contracting one.

Etant donné que jusqu’à présent nous ne voyons dans les conventions existantes que des stipulations tendant à restreindre leur champ d’application, si nous intro-

[87]

Given the fact that until now we see in existing conventions only stipulations that tend to restrict their scope of application, if we now introduce a provision
Nous ne sommes évidemment pas opposé à cet amendement d’une manière générale, puisque, comme je l’ai dit au début de mon intervention, il constitue un demi-pas en avant. Mais je tenais à faire ces brèves observations qui concernent sa rédaction, de manière à éviter si possible de créer un précédent pour l’avenir.

Je vais faire une dernière petite remarque: dans le dernier alinéa on utilise les mots “rules” et “règles” alors que dans les autres dispositions de la Convention on utilise l’expression “dispositions de la présente Convention”. Il s’agit en effet de dispositions ou d’articles et non pas de règles.

Je vous remercie, Monsieur le Président.

M. le Président. Avant de donner la parole à la délégation française, qui l’a demandée, je voudrais porter à la connaissance de l’assemblée que la délégation des Pays-Bas m’a autorisé à vous faire savoir que, compte tenu de l’opposition que pourrait susciter son amendement, elle retire celui-ci et se rallie au texte tel qu’il vous est proposé.

La parole est à la délégation française.

M. de Bresson (France). Monsieur le Président, Mesdames, Messieurs, la délégation française a indiqué hier qu’à son avis le texte qui nous a été soumis par le groupe de travail constituait un équilibre satisfaisant entre l’application de la Convention selon des normes légales et la possibilité d’étendre cette application par la volonté des parties.

Le texte qui nous est soumis aujourd’hui va un peu plus loin en ce sens qu’il permet aux États d’étendre le champ d’application de la Convention aux ports de débarquement. Cette extension n’appelle pas d’objections de la part de la délégation française qui considère en effet que cette précision peut être utile. Par conséquent la délégation française sou-

The Chairman. Before giving the floor to the French delegation, I would like to draw the attention of the assembly to the fact that the Dutch delegation has authorized me to let you know that, considering the opposition that its amendment could create, it is withdrawing its amendment and rallies to the text as it is submitted to you.

The French delegation has the floor.

Mr. de Bresson (France). Mr. Chairman, ladies, gentlemen. The French delegation indicated yesterday that, in its opinion, this text that has been submitted by the working group constitutes a satisfactory equilibrium between the application of the Convention according to legal norms and the possibility of broadening this application by the will of the parties.

The text that has been submitted today goes a little too far in that it authorizes States to broaden the scope of application of the Convention to the ports of unloading. This extension is not objected to by the French delegation which considers that this precision could be useful. Consequently the French delegation supports the substance of the amendment submitted by the delegation.
tient quant au fond l’amendement présenté par la délégation du Royaume-Uni. En ce qui concerne la forme, deux observations avaient été faites. La première émanait de la délégation des Pays-Bas qui, si j’ai bien compris ce que vient de dire Monsieur le Président, a retiré son amendement. Je dois dire que pour sa part la délégation française le regrette quelque [88] peu. Je pense en effet que, sans altérer en quoi que ce soit, le sens de l’article, l’expression “ne porte pas atteinte aux droits” eut été juridiquement plus correcte que l’expression “n’empêche pas”. 

J’aurais donc préféré que le texte français tout au moins fut libellé de cette façon.

La deuxième observation de forme a été faite par la délégation polonaise qui, si j’ai bien compris, propose de remplacer le mot “règles” par le mot “dispositions”. Je préfère également cette formulation.

Je vous remercie, Monsieur le Président.

M. le Président. La parole est à la délégation belge.

M. Vaes (Belgique). Monsieur le Président, Mesdames, Messieurs, les débats qui ont eu lieu au sein de la Commission présidée, comme d’habitude avec tact et autorité, par Monsieur Pineus, ont révélé dès l’abord que deux points de vue opposés étaient en présence.

Le premier, partagé par les délégations des Pays-Bas et de la Belgique, tendait à proposer que les règles de la Convention, ou comme l’a fait très exactement observer Monsieur de Bresson de la délégation française, les dispositions de la Convention, s’appliquent également lorsque le port de destination est situé dans un pays contractant. Le deuxième point de vue, qui a fait l’objet de l’amendement CONN 25 intitulé, depuis lors, amendement n° 16, était partagé par les délégations du Danemark, de la Finlande, de la Norvège, du Japon, de la Suède, du Royaume-Uni et des Etats-Unis d’Amérique, qui proposaient que les dispositions de la Convention ne fussent applicables que lorsqu’il s’agissait d’un of the United Kingdom. As to the form, two remarks have been made. The first emanated from the Dutch delegation which, if I am not mistaken, has withdrawn its amendment according to what the chairman has just said. I must say that the French delegation is a little [88] sorry. I think, in fact, without altering in any way the meaning of the article, that the expression “does not affect the right” would have been legally more correct than the expression “shall not prevent”.

I would have then liked at least the French text to have been drafted in this way.

The second remark concerning the form has been made by the Polish delegation which, if I understand well, suggests replacing the word “rules” by the word “provisions”. I would also prefer this formulation.

Thank you, Mr. Chairman.

The Chairman. The Belgian delegation has the floor.

Mr. Vaes (Belgium). Mr. Chairman, ladies, and gentlemen, the debates that took place in the committee chaired, as usual, with tact and authority by Mr Pineus have revealed from the start the presence of two opposing points of view.

The first, shared by the delegations of the Netherlands and Belgium, tends to suggest that the rules of the Convention, or as correctly alluded to by Mr Bresson of the French delegation, the provisions of the Convention, apply also when the port of arrival is located in a contracting State. The second point of view, which was the subject of amendment CONN 25, which is now called amendment no. 16, was shared by the delegations of Denmark, Finland, Norway, Japan, Sweden, the United Kingdom, and the United States of America. These delegations proposed that the provisions of the Convention should only apply when we are dealing with a shipment taking place from a port located in a contracting State or taking place between two ports both located in con-
Article 10 - Scope of application

transport au départ d’un port situé dans un pays contractant ou s’effectuant entre deux ports situés tous deux dans des Etats contractants.

Nous avons, Monsieur Scheffer de la délégation Néerlandaise et moi-même, fait un effort substantiel pour faire prévaloir notre point de vue. Je me suis permis de rappeler le dramatique appel qu’avait lancé Monsieur Van Ryn lors de la première phase de cette Session et qui est reproduit aux pages 313 à 318 du procès-verbal de ces travaux.

Nous nous sommes rapidement aperçus que nous étions minoritaires et la Belgique comme les Pays-Bas, qui ont toujours eu dans ces réunions internationales pour principal souci de ne pas s’obstiner sur un point de vue qui paraisse ne pas emporter d’adhésion de la majorité, se sont inclinés. Je tiens à le dire ici: nous sommes inclinés non parce que nous étions convaincus que l’autre point de vue était plus défendable, mais parce que nous avons voulu aboutir à un compromis.

Pour la bonne compréhension du vote qui va intervenir incessament je tiens à préciser que ce compromis se présentait sous deux formes, ayant fait l’objet d’un amendement de la délégation française et d’un amendement de la délégation du Royaume-Uni prévoyant tous deux la possibilité pour un Etat contractant d’étendre le champ d’application des dispositions de la Convention au-delà de ce qui sera dit de façon expresse dans le nouvel article 10. L’amendement français prévoyait l’expansion possible des dispositions de la Convention à un transport se terminant dans un port situé dans un Etat contractant. L’amendement britannique allait plus loin puisqu’il prévoyait qu’un pays peut décider de l’application des dispositions de la Convention dans tous les cas que ne sont pas spécifiquement prévus au futur article 10 nouveau.

Pour éviter tout malentendu je tiens à souligner que si l’amendement de la délégation du Royaume-Uni est adopté, amendement auquel la Belgique entend se rallier pour des raisons de compromis, tracting States.

We have, Mr. Scheffer of the Dutch delegation and myself, made a great effort in order for one point of view to prevail. I took the liberty to point to the dramatic appeal made by Mr. Van Ryn during the first stage of this session and which appears at pages 313 to 318 of the minutes of this work.

It did not take us much time to realize that we were in the minority. Belgium and the Netherlands, which have always made it a point of principle in these international meetings not to cling stubbornly to a position that does not seem to carry the adhesion of the majority, have bowed to the majority. I must say it here, we have not bowed because we are convinced that the other point of view is more tenable, but because we want to reach a compromise.

For a better understanding of the vote that will take place very shortly, I have to specify that this compromise was submitted in two forms, having been the subject of one amendment by the French delegation and one by the British delegation. Both provided the possibility for a contracting State to extend the scope of application of the provisions of the Convention beyond what will be said expressly in the new article 10. The French amendment allowed for the possible broadening of the provisions of the Convention to a shipment ending in a port located in a contracting State. The British amendment went even further because it stated that a country could decide about the application of the provisions of a Convention in all cases that have not been defined in the new article 10.

To avoid any misunderstanding, I have to emphasize that if the British amendment were to be adopted, an amendment to which Belgium would rally in order for a compromise to be reached, this would mean that a contracting State could decide that the provisions of the 1924 Convention will apply even in the case of a shipment from a contracting State to a port of arrival.
cela signifie qu’un pays contractant pourra décider que les dispositions de la Convention de 1924 s’appliqueront même lorsqu’il s’agit d’un transport au départ d’un pays contractant vers un port de destination situé dans un pays non-contractant. La proposition de la délégation du Royaume-Uni a donc pour but de permettre à tout État contractant qui le déciderait d’appliquer les dispositions de la Convention à tous les transports, quels qu’ils soient, y compris ceux qui s’effectuent entre des ports situés, au départ et à l’arrivée, dans des pays non-contractants.

Je fais une deuxième observation en réponse aux objections formulées par les honorables délégués italien et polonais. Ils nous ont dit que cette disposition supplémentaire que l’on propose d’ajouter au texte initial est en réalité inutile puisque chaque pays peut toujours, sur son territoire, légiférer comme il l’entend et appliquer les Règles de La Haye de la façon la plus étendue s’il le juge utile. Je crois qu’il y a là une légère confusion. Nous Belges, nous sommes bien placés pour faire la distinction qui s’impose. En Belgique, les Règles de La Haye s’appliquent depuis 1922 pour tout transport au départ ou à destination d’un port belge, non pas en vertu de la Convention, mais en vertu de notre législation nationale. Il est exact, comme l’ont dit les délégués italien et polonais, qu’il n’est pas utile qu’il y ait dans la Convention que vous aller voter une disposition autorisant un État à légiférer comme il l’entend dans sa propre pays. Mais ce que nous voulons - c’est là que nous nous rallions à ce que j’appellerai la généreuse proposition de compromis du Royaume-Uni - c’est qu’il soit dit dans la Convention qu’un État contractant peut étendre les dispositions de la Convention, non pas en tant que Convention dans sa législation nationale, mais en tant que “ranch” c’est-à-dire qu’il peut lui donner un champ d’application plus étendu que celui spécifiquement prévu dans l’article qui vous est soumis.

C’est pourquoi, dans l’esprit de compromis qui nous a tous animé, je vous suggère de voter à l’unanimité la proposition de la délégation du Royaume-Uni qui, si elle ne rencontre pas l’acclamation de tous, nous permettra néanmoins d’atteindre nos objectifs.

Thank you, Mr. Chairman.

The Chairman. Gentlemen, the text prepared by the committee, that is doc-
tion de la délégation britannique qui, si elle ne rencontre pas tout à fait nos désirs, nous permet cependant de les atteindre par une voie indirecte.

Je vous remercie, Monsieur le Président.

M. le Président. Messieurs, le texte mis au point par la commission, c'est-à-dire le document n° 16 et l'ajouté communiqué par la délégation de Grande-Bretagne, est mise au vote.

Il est procédé au vote.

42 délégations ont pris part au vote.
28 ont répondu "oui".
14 se sont abstenues.
En conséquence, le texte de l'article 5 est adopté.

M. le Président. Messieurs, au moment de l'adoption de ce vote, il me plaît de rendre hommage à la commission et à son Président, M. Pineus. Une fois de plus, ceux qui ont pris l'initiative de ré-

ument no. 16 and the communiqué added by the British delegation, is put to the vote.

The vote proceeded as follows.

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Monaco: yes;
Morocco: abstains;
Nicaragua: absent;
Nigeria: yes;
Norway: yes;
Paraguay: absent;
Peru: yes;
Philippines: abstains;
Poland: abstains;
Republic of China [Taiwan]:yes;
South Africa: yes;
Spain: yes;
Sweden: yes;
Switzerland: yes;
Thailand: abstains;
The Netherlands: yes;
Togo: abstains;
U.S.S.R.: yes;
United States of America: yes;
Uruguay: yes;
Vatican City: yes;
Yugoslavia: abstains;
diger le texte, comme d’ailleurs ceux qui l’ont adopté, ont fait preuve d’un esprit de bonne compréhension.

La parole est à la délégation des Pays-Bas.

Mr. Scheffer (Netherlands). I should like to give an explanation of the vote of the Netherlands delegation in favour of the text that has been submitted to this assembly. We voted in favour of this text not because we admired the beauty or the elegance of it; we did not vote for it because we adhere to the basic conception at the root of this text, because we realise there is a fundamental difference of opinion on the character of international uniform law which in our view supersedes and puts aside rules of conflicts of law, but we know from the long discussions we have had that we have not been able to convince those who do not adhere to this conception; they maintain another conception, and in these circumstances we have to accept the realities of the situation.

Therefore, the only reason we have voted for this text is because the Convention on Bills of Lading and the Protocol we are trying to make now are of such importance for maritime navigation that we should not take the risk of a text being adopted which does not have the approval of all maritime nations. If the Belgian-Netherlands amendment, which in our view is a much better one, had been put to the vote, there was a risk that this text would not have been approved by important maritime nations, and then we would have had to face a difficult and unpleasant situation. Because we wanted to be realistic and to face all possibilities, we thought it was better not to press the point any further and to accept matters as they stand today.

We still think the text which has now been adopted is open to severe criticism, and commentators in the future will not fail to point this out, but practical wisdom has led us to accept the compromise that has just been reached.

M. de Bresson (France). Monsieur le Président, mon intention n’est pas de motiver le vote de la délégation française mais bien de vous demander quelques précisions concernant la traduction française.

Tout en ayant voté le texte, je ne suis pas sûr de son libellé. C’est la raison de mon interrogation.

Je rappelle que les améliorations rédactionnelles que j’évoquais il y a un instant, portaient sur deux points. Je ne pensais pas changer le sens du texte français en remplaçant “n’empêche” par “ne porte pas atteinte au droit d’un Etat contractant...”, et, d’autre part, les mots “les règles” par “les dispositions”.

En suggérant ces deux améliorations qui d’ailleurs ont été soufflées par

Mr. de Bresson (France). Mr. Chairman, my intention is not to explain the vote of the French delegation but to ask you for further explanation on the French translation.

Even if we voted for the text, I am not sure about its wording. This is the reason for my question.

I would like to mention that the drafting improvements that I evoked earlier dealt with two points. I did not think I was changing the meaning of the French text by replacing “n’empêche” (shall not prevent) by “ne porte pas atteinte au droit d’un État contractant...” (shall not affect the right of a contracting State...) and the words “les règles” (the rules) by “les dispositions” (the provisions).
d’autres délégations à la nôtre, nous n’avons pas le sentiment de modifier en quoi que ce soit le sens du texte adopté. Nous préfériérons que la rédaction française comporte ces corrections.

M. le Président. Messieurs, vous venez d’entendre la communication de la délégation française. Comme elle l’a bien exprimé, il ne s’agit pas d’apporter la moindre modification au texte que vous venez de voter, mais d’y apporter des corrections rendant la rédaction meilleure dans sa forme.

Le texte anglais restant inchangé. L’assemblée est-elle d’accord pour que le libellé du texte français soit conforme à la proposition que vient de nous faire la délégation française, étant entendu que cela ne change en rien la portée du vote que vous venez d’émettre?

L’assemblée est-elle d’accord? (assentiment unanime).

By suggesting these two improvements which, by the way, were brought to our attention by other delegations, we do not wish to modify in any way the meaning of the adopted text. We would like these corrections to appear in the French text.

The Chairman. Gentlemen, you have just heard the French delegate. As he precisely said, we do not have to modify in any way the text that you have just voted, but to correct it in order to improve the drafting.

The English text will remain intact. Does the assembly agree that the wording of the French text conforms to the proposal made by the French delegation, with the understanding of course that it does not change the scope of the vote you have just cast?

Does the assembly agree? (unanimous approval).
Il voudrait aussi que le texte anglais soit joint à la convention.

M. le Président admet que le langage du connaissement est l’anglais presque dans le monde entier et par conséquent il comprend très bien qu’une version autorisée anglaise soit jointe au procès-verbal.

M. Berlingieri précise que l’instrument diplomatique devrait être signé en une langue qui est le français.

M. Ripert observe que c’est d’ailleurs la tradition des conférences de Bruxelles.

M. le Président croit qu’il serait désirable cette fois d’ajouter au procès-verbal de la Convention une traduction officielle anglaise du texte français. Il ne voit pas qu’il puisse y avoir une objection à cette manière de faire puisque pratiquement l’anglais est le langage [95] de tous les connaissements du monde. Mais l’instrument diplomatique de la XConvention sera rédigé en français comme cela a été le cas pour les codes sur l’abordage et l’assistance.

M. Beecher demande qu’il y ait un texte officiel anglais également.

M. Berlingieri déclare que dans ce cas il demandera aussi un texte italien.

M. Ripert fait observer qu’en commission cette question ne peut être décidée.

M. le Président croit que l’on pourrait joindre au procès-verbal une version anglaise authentique. Cela serait dans l’intérêt de tous, puisque la plupart des connaissements sont rédigés en anglais.

M. Struckmann observe que le texte
à appliquer par les juges sera le texte français.

M. le Président croit inutile de prolonger cette discussion qui ne peut conduire à un résultat pratique. Il ne voit aucune difficulté à ce qu’une version anglaise, certifiée conforme par le Bureau, soit jointe au procès-verbal. Par contre, l’instrument diplomatique à signer, devrait être rédigé comme l’ont été la convention sur l’Abordage et la convention sur l’Assistance. La question présente peu d’intérêt du fait que ces textes diplomatiques devront être introduits par les divers pays contractants, dans leur législation nationale. Chaque pays traduirait ce texte dans sa langue à lui. Toutefois, étant donné la pratique presque mondiale de rédiger la plupart des connaissances en anglais, il y a de bonnes raisons pour donner satisfaction aux délégués anglais et américains, qui ne compromet l’amour-propre d’aucune nation et permettra de préciser dans bien des cas la portée du texte original.

M. Struckmann se rallie à cette proposition du fait que le texte sera certifié conforme par le Bureau et parce que la langue anglaise est d’usage dans le commerce maritime.

Sir Leslie Scott demande formellement la rédaction d’un texte authentique en anglais. Il n’insiste cependant pas momentanément puisque la sous-commission n’a pas le droit de régler cette question, mais il désire que sa demande soit mentionnée au procès-verbal, ce sera l’affaire des diplomates d’arriver à une solution de cette question.

M. le Président conclut qu’au sujet d’une traduction certifiée par le Bureau, il ne peut y avoir d’objection.

Mr. Struckmann commented that the text that the judges would apply would be the French text.

The Chairman felt it pointless to prolong this discussion, which would not lead to any practical result. He saw no problem in an English version, certified as in conformity by the Bureau, being added to the proceedings. In contrast, the diplomatic instrument to be signed ought to be drafted in the same way as the Convention on collision and the Convention on assistance. The question was of little interest because these diplomatic texts would have to be introduced by the various contracting countries into their national legislations. Each country would translate this text into its own language. Anyway, given the practically universal practice of drafting the majority of bills of lading in English, there were good reasons for satisfying the English and American delegates, which would not compromise the self-respect of any nation, and would allow clarification of the scope of the original text in many cases.

Mr. Struckmann supported this proposal as long as the text would be certified in conformity by the Bureau and because the English language was customary in maritime commerce.

Sir Leslie Scott formally requested the drafting of an authenticated text in English. However, he did not insist this should be done immediately because the Commission did not have the right to settle this matter, but he wanted his request to be mentioned in the proceedings. It would be for the diplomats to find a solution.

The Chairman concluded that he would have no objection to the matter of a translation certified by the Bureau.
PROTOCOLE DE SIGNATURE

En procédant à la signature de la Convention internationale pour l’unification de certaines règles en matière de connaissance, les Plénipotentiaires soussignés ont adopté le présent Protocole qui aura la même force et la même valeur que si ces dispositions étaient insérées dans le texte même de la Convention à laquelle il se rapporte.

Les Hautes Parties Contractantes pourront donner effet à cette Convention soit en lui donnant force de loi, soit en introduisant dans leur législation nationale les règles adoptées par la Convention sous une forme appropriée à cette législation.

Elles se réservent expressément le droit:

1. de préciser que dans les cas prévus par l’article 4, alinéa 2, de c à p, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a.

2. d’appliquer en ce qui concerne le cabotage national l’article 6 à toutes catégories de marchandises, sans tenir compte de la restriction figurant au dernier alinéa dudit article.

Fait à Bruxelles, en un seul exemplaire, le 25 août 1924.

PROTOCOL OF SIGNATURE

At the time of signing the International Convention for the unification of certain rules of law relating to bills of lading the Plenipotentiaires whose signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.

The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.

They may reserve the right:

1. To prescribe that in the cases referred to in paragraph 2 c to p of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph a.

2. To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account the restriction set out in the last paragraph of that Article.

Done at Brussels, in a single copy, August 25th, 1924.
Mr. Ripert revealed that the welcome given in France to the draft Convention drawn up in Brussels in October 1922 had shown that there was complete agreement on the fundamentals underlying its clauses. However, a national law would be necessary to incorporate them into French legislation because it was not conceived that different rules should be applied in France depending on whether it was a matter of Frenchmen or foreigners. In order to produce this uniformity, it would be desirable for the national law to be as close as possible to the text of the International Convention. It seemed impossible that so long a document containing principally rules where application was discretionary should be introduced into internal legislation. In France the convention was considered as flawed because it originated from a prototype bill of lading drawn up at The Hague with the aim of producing a compromise between shipowners and shippers and of regulating completely the liability of one and the rights of the other. But the transformation of the prototype bill of lading into an international convention comprising clauses such as those in article 4, which have no binding force since in article 5 the carrier is free to abandon all or some of the rights and immunities provided for by the Convention, would certainly come up against difficulties. Mr. Ripert would like the Commission to limit itself to conceding a few principles and to grouping them into five or six articles that would form an international convention binding in all its parts. This Convention would determine the types of carriage to which the rules would apply and their obligatory character. Each State would be free, moreover, to reproduce in its internal law the precise text of the Hague Rules. He judged that the
Convention telle qu’elle est rédigée actuellement rencontrerait une grande opposition au sein du parlement français s’il fallait en faire une loi.

M. van Slooten déclare qu’il a pris des renseignements à ce sujet au Ministère de la Justice des Pays-Bas et qu’il est arrivé à la même conclusion que M. Ripert. En Hollande on s’occupe de préparer une nouvelle loi maritime et il semble impossible d’insérer un document comme celui-ci dans la législation interne alors qu’il serait très facile d’y insérer quelques articles établissant des principes généraux et obligatoires. M. Van Slooten exprimant en cela le sentiment des jurisconsultes qui s’occupent de la révision du droit maritime néerlandais se rallie aux suggestion de M. Ripert.

Sir Leslie Scott regrette que M. Ripert et M. Van Slooten défendent ce point de vue. Le projet de Convention est le résultat de longues discussions et de négociations ardues. En 1922, la Conférence a été d’accord pour adopter ces règles comme base d’une convention. Il est vrai que le mot “base” a été employé mais on s’attendait néanmoins à ce que la Convention soit signée à bref délai sous la forme établie par la Conférence, à la suite du rapport de la sous-commission présidée par M. le Juge Hough. Les Parlements des États-Unis et de Grande Bretagne ont voté en première lecture un projet de loi qui consacre le texte même adopté à Bruxelles. De plus les instructions de son Gouvernement ne permettent pas à Sir Leslie Scott de consentir à une modification du texte recommandé par la Conférence. Il ne lui resterait qu’à se retirer si ce texte n’était pas pris comme base des discussions. Comme M. Ripert, il estime que cette rédaction n’est pas très juridique et il eût préféré voir ce projet conçu depuis le début sous une autre forme. Mais ce langage est celui de la pratique et on peut dire que ce mauvais mélange d’anglais et de français sera cependant compris parfaitement par les armateurs et les chargeurs Convention, as presently drafted, would meet with considerable opposition in the French legislature if a law had to be made of it.

Mr. van Slooten declared that he had taken soundings on the matter in the Dutch Ministry of Justice and had reached the same conclusion as Mr. Ripert. In Holland they were busy preparing a new maritime law and the embodiment of such a document as this in internal legislation seemed impossible, although it would be very easy to embody some articles establishing general and binding principles. Mr. van Slooten, expressing the feelings of the jurists at work on the revision of the Dutch maritime law, supported Mr. Ripert’s suggestion.

[37]

Sir Leslie Scott regretted that Messrs. Ripert and van Slooten were defending this point of view. The draft Convention was the result of long debate and arduous negotiation.

In 1922 the Conference had agreed to adopt these rules as the basis for an agreement. It was true that the word “basis” was used, but it was expected, nevertheless, that the Convention would be signed soon afterwards in the format created by the Conference as a result of the report of the commission under Judge Hough. The British Parliament and the United States Congress had voted on a first reading of a draft law that sanctioned the precise text adopted in Brussels. In addition, his government’s instructions did not allow Sir Leslie Scott to consent to a change in the text recommended by the Conference. The only option open to him if this text were not taken as the basis for discussion was to withdraw. Like Mr. Ripert, he felt that this draft was not very judicial and he might well have preferred to see the draft conceived from the start in another form. The language used was one of practicality but it could be said that this mishmash of French and English would, nonetheless, be perfectly understood by shipowners and shippers who grasped the mean-
qui conçoivent exactement la significa-
tion de ce texte. Dans ces condition Sir
Leslie Scott se permet de faire un appel à
M. Ripert pour qu’il se rallie au projet tel
est établi. Les Parlements des pays, où le
Code Napoléon est en vigueur, lorsqu’ils
auront à introduire cette Convention
sous forme de loi trouveront sans doute
nécessaire d’un langage plus ou
moins différent. Mais en Angleterre com-
me en Amérique rien ne s’oppose à ce
que ce texte soit adopté tel quel.

M. Struckmann signale que le parle-
ment allemand pourra difficilement faire
de la Convention elle-même un texte de
loi, mais il espère que la Commission
améliorera les Règles qu’il convient de
prendre comme base de discussion.

M. Berlingieri d’accord avec le pro-
fesseur Ripert trouve que le texte ne s’ac-
corde pas avec les idées et le principes
des codes italiens et français. Par
exemple: l’expression “document formant
titre pour le transport de marchan-
dises” est la traduction de “document of
title”. Mais quelle différence y a-t-il entre
la charte-partie et le document formant
titre pour le transport de marchandises
par mer? L’expression française ne le dit
pas. Ce ne sont pas simplement des ques-
tions de rédaction, mais bien des ques-
tions qui affectent le fond car les lois na-
tionales devront traduire les principes
adoptés dans un langage juridique et il
est certain qu’une modification de la for-
me a fatalement pour effet de changer en
une certaine mesure le fond, et cepen-
dant si une convention est conclue, c’est
afin qu’elle soit exécutée intégralement
dans chaque pays.

M. Bagge croit qu’il sera également
difficile d’incorporer le texte de la
Convention dans une loi suédoise, mais
il pense qu’il ne sera pas nécessaire de
l’adopter littéralement et qu’il suffira de
traduire loyalement le sens des Règles
de La Haye. Par exemple: la longue
énumération de l’article 4 à laquelle les
Anglais tiennent beaucoup ne devra pas
être reproduite dans les lois nationales,
il suffira que l’idée sur laquelle l’accord
se réalisera soit exprimée sous la forme
ing of the text precisely. In these circum-
stances, Sir Leslie Scott allowed himself
to appeal to Mr. Ripert to support the
draft in its present form. The legislatures
in those countries where the Code
Napoléon was in force, faced with having
to introduce this Convention as law,
would undoubtedly find it necessary to
use more or less different language. But
in England as in the United States there
was nothing against the text as it was.

Mr. Struckmann indicated that the
German legislature would, with difficul-
ty, be able to make a legal text of the
Convention, but he hoped that the Com-
misson would improve the rules which
he agreed to take as the basis for discus-
sion.

Mr. Berlingieri, in agreement with
Prof. Ripert, found that the text did not
agree with the concepts and principles of
the Italian and French codes. For exam-
ple, the expression: “document formant
titre pour le transport de marchan-
dises” (document giving title for the carriage
of goods) and its translation as “document
title”. But what difference was there
between the charter party and the docu-
ment of title for the carriage of goods by
sea? The French expression does not say.
These were not simply questions of
drafting but questions that went to the
heart of the matter because national laws
will have to translate the principles
adopted into a judicial language and
clearly a change in format had the in-
evitable effect of changing to some ex-
tent the fundamentals. However, the
purpose of concluding a convention was
to have it enacted in full in each country.

Mr. Bagge believed that it would be
equally difficult to incorporate the text
of the Convention into a Swedish law,
but he thought that it would not be ne-
cessary to adopt it to the letter. It would
be sufficient to translate faithfully the
sense of the Hague Rules. For example,
the long enumeration in article 4 to
which the English attached such impor-
tance ought not to be reproduced in na-
tional law. It would be enough if the idea
on which the agreement was founded
qui conviendra dans chaque pays.

**M. le Président** croit qu’un malentendu pèse sur les délibérations. L’engagement que prendront les Etats sera de soumettre à ces règles les contestations visées par l’article final de la Convention. Mais il appartient aux Etats de déterminer la façon dont ils se conforment à l’engagement pris. Il est certain que si une législation existant actuellement était dès à présent conforme à ces règles, sauf en ce qui concerne l’un ou l’autre point il suffirait d’y apporter les quelques modifications nécessaires, c’est le cas aux Etats-Unis pour le Harter Act. Au surplus, les armateurs de tous les pays du monde, en France, en Belgique et en Allemagne comme partout ailleurs trouvent ce texte parfaitement clair. En France, notamment, M. de Rousiers, qui a pris une part considérable à l’élaboration de ces règles, a trouvé le texte satisfaisant à ce point de vue. Les armateurs belges n’ont fait aucune objection à ce sujet. La plupart des connaissements sont d’ailleurs rédigés en anglais et c’est cette terminologie qui se trouve reproduite dans la Convention. Il serait inadmissible de clôturer ces travaux entrepris, après avoir réalisé un accord sur le fond uniquement pour le motif que le langage de la Convention n’est pas assez élégant au point de vue juridique.

**Mr. Ripert** signale que la Convention sur l’abordage et l’assistance a été rendue dès sa [38] conclusion obligatoire pour les tribunaux mais que si par la suite les lois internes ont été modifiées c’est de par la libre détermination du législateur. Par contre, il est certain que quand la convention sur les Règles de La Haye aura été signée et ratifiée par le Parlement français, elle deviendra obligatoire pour les tribunaux français même à l’égard de nationaux français. En effet l’article 9 dit que la Convention s’appliquera à tout connaissement créé dans un des Etats contractants. Ensuite on a fait valoir que le langage est clair pour tous les armateurs; mais on oublie qu’il doit être clair surtout pour les tribunaux qui vont appliquer la Convention, or dans 8/10 des were expressed in a form that suited each country.

**The Chairman** believed that a misunderstanding lay heavy upon these deliberations. The States were to commit themselves to submit the disputes provided for in the final article of the Convention to these rules. But it was for the States to determine the way in which they would carry out the commitment they had made. It was certain that if a presently existing piece of legislation already conformed to these rules, except for one or two points, it would be sufficient simply to make a few requisite alterations. Such was the case in the United States with the Harter Act. In addition, shipowners from every country in the world - in France, in Belgium, and in Germany as everywhere else - would find the text perfectly clear. In France, notably, Mr. de Rousiers, who had played a considerable role in the drawing up of these rules, found the text satisfactory from this point of view. The Belgian shipowners have no objection to this. The majority of bills of lading were, in any event, drafted in English and this was the terminology reproduced in the Convention. It would be inadvisable to wind up the work undertaken, having produced a basic agreement, solely because the language was not elegant enough from a legal point of view.

**Mr. Ripert** indicated that the conventions on collision and salvage had been obligatory for the courts since their [38] conclusion, but that if, as a result, internal laws had been altered, it was by the free choice of the legislator. In contrast, it was certain that once the convention on the Hague Rules was signed and ratified by the French legislature, it would become binding on the French courts even when dealing with French nationals. In effect, article 9 said that the Convention would apply to all bills of lading drawn up in one of the contracting States. As a result, it had been asserted that the language should be clear for all shipowners, but it had been forgotten that it should be clear, above all, for the
procès il y a des étrangers en cause et il va falloir appliquer les Règles de La Haye. M. Ripert fait observer qu’il y a dans cette Convention des dispositions qui ne sont obligatoires pour personne. Ce sont de simples indications données aux armateurs et aux chargeurs; c’est notamment le cas de l’article 4.

M. Ripert se demande l’utilité qu’il y a à faire une convention pour dire que telle responsabilité n’existera pas mais qu’on pourra l’assumer. En fait toute la Convention de La Haye tient dans l’article 3, ce que l’on a voulu, c’est interdire certaines clauses d’exonération. Il faudrait extraire ces principes des Règles de La Haye, pour en faire l’objet d’une convention internationale. Quel inconvenient y a-t-il à ce que la législation anglaise reproduise textuellement les Règles, tandis que la convention internationale n’en prenne que le substratum, la partie obligatoire?

M. Asser a suivi avec grande attention ce qui a été dit au sujet de la liberté pour les différents États de mettre en application des règles de la Convention sous une forme différente.

Il signale que dans la convention sur la lettre de change il a été convenu que certaines clauses seraient obligatoires, mais qu’en ce qui concerne d’autres dispositions, les États resteraient libres de les appliquer ou non. Il croit que l’idée de prendre dans les Règles de La Haye quelques dispositions obligatoires, mais de laisser le texte arrêté comme il est, est pratique. On pourra voter sur l’ensemble, mais en ce qui concerne les dispositions non obligatoires, on pourrait dire que chaque État reste libre de ne pas les introduire dans sa législation nationale.

M. le Président fait observer que tel n’est pas l’intention de la commission. On doit prendre les Règles comme base, chaque État signataire s’engage à introduire les règles dans sa législation nationale. Il doit appliquer la Convention intégralement, mais le “modus operandi” c’est à dire la manière d’atteindre ce résultat est un point sur lequel on peut s’en court qui étaient allant appliquer les Règles de La Haye. M. Ripert a observé qu’il y avait dans cette Convention des dispositions qui ne sont obligatoires pour personne. Ce sont de simples indications données aux armateurs et aux chargeurs; c’est notamment le cas de l’article 4.

M. Ripert se demandait l’utilité qui il y a à créer une convention pour dire que telle responsabilité n’existera pas mais qu’on pourra l’assumer. En fait, toute la Convention de La Haye tient dans l’article 3, ce que l’on a voulu, c’est interdire certaines clauses d’exonération. Il faudrait extraire ces principes des Règles de La Haye, pour en faire l’objet d’une convention internationale. Quel inconvenien peut y avoir à ce que la législation anglaise reproduise textuellement les Règles, tandis que la convention internationale n’en prenne que le substratum, la partie obligatoire?

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remettre à la bonne foi de chaque État. Tout le monde comprend qu’il est préférable de prendre le texte de la Convention intégralement, car cela simplifie tout. Mais si certaines des dispositions législatives déjà existantes sont conformes à la Convention, il suffira de procéder par modification d’un certain nombre de dispositions de la loi nationale - rien ne s’y oppose.

Mr. van Slooten demande s’il peut déclarer à son Gouvernement que si le projet de loi actuel est mis en rapport avec les principes de la présente Convention, sans toutefois en donner une reproduction textuelle il sera en règle.

M. le Président lui en donne l’assurance.

Mr. Ripert estime qu’il y a confusion. On semble dire qu’il y a des pays où l’on appliquera à la fois les Règles de La Haye et la loi nationale. Théoriquement cela est possible, mais pratiquement c’est impossible. Il est inadmissible que si un connaissement créé en France passe entre les mains d’un étranger, les Règles de La Haye soient applicables tandis que si un connaissement tombe entre les mains d’un Français ce soit le code de commerce français. Il y a une nécessité qui s’imposera d’appliquer les Règles de La Haye à tout le monde.

M. le Président est persuadé que M. Ripert chargé de rédiger un projet de loi nationale établira un texte clair et lumineux. La Convention ratifiée servira de guide pour l’application de la loi nationale et en fait il n’y aura pas de différence dans son application dans les différents pays.

Mr. Ripert demande l’avis des autres délégués à ce sujet.

M. Straznichy est du même avis que M. Ripert. Dans son pays on élabore un code nouveau et on devra se contenter d’adopter les règles tout ou moins quant au fond s’il n’est pas possible d’en accepter la forme.

Mr. van Slooten asked whether he could tell his government that if the present draft law were made to conform to the principles of the present Convention, without, however, giving a textual reproduction, it would be in order.

Mr. Ripert felt there was some confusion. One seemed to be saying that there were countries where the Hague Rules and national law would be applied together. Theoretically that was possible, but in practice it was impossible. It was inadmissible that if a bill of lading drawn up in France passed into a foreigner’s hands, the Hague Rules would be applicable while if such a bill of lading fell into French hands the French Commercial Code would apply. There was a need for the Hague Rules to apply across the board.

Mr. Ripert was persuaded that Mr. Ripert, if responsible for preparing a national draft law, would create a plain and clear text. The ratified Convention would serve as a guide for the application of national law and, in fact, there would be no difference in its application in different countries.

Mr. Ripert asked the opinion of the other delegates on this matter.

Mr. Straznichy was of the same opinion as Mr. Ripert. In his country a new code was being drawn up, and they might be happy to adopt the rules more or less along their main lines if it were not possible to accept the format.
M. le Président souligne que les objections de M. Ripert avaient une portée plus considérable que de demander des précisions au sens de la Convention et si l’on doit comme [40] il le demande modifier complètement le texte adopté, autant dire qu’il n’y a pas possibilité d’aboutir. Les pays qui ont déjà passé un “act of parliament” ne modifieront évidemment plus leur loi.

M. Ripert n’est pas d’avis qu’ils doivent le faire. Dans sa loi sur l’abordage, l’Angleterre n’a pas reproduit le texte même de la Convention de Bruxelles.

M. le Président demande si la déclaration à laquelle tout le monde semble avoir adhéré ne donne pas satisfaction à M. Ripert du moment où un Etat adopte fidèlement les principes de la Convention dans sa loi nationale, il remplit les obligations qu’il a souscrites quelque soit la forme admise par lui.

Il pourra se contenter après avoir ratifié la Convention de faire une loi modifiant les dispositions législatives existantes qui n’y seraient pas conformes. Ce seront alors les dispositions de cette loi qui lieront ses tribunaux.

M. Ripert voudrait qu’un article final de la Convention admette la faculté pour les Etats contractants de traduire comme ils l’entendront les dispositions de la Convention.

M. le Président estime que cela est aller trop loin.

M. Bagge est d’avis qu’on ne devrait être lié que suivant les dispositions de la loi nationale qui reproduira loyalement le sens de la Convention.

M. Loder estime que la ratification a pour objet la Convention elle-même qui sera alors transposée dans les lois nationales.

M. le Président conclut que l’introduction dans le protocole de clôture d’un paragraphe portant que les pays dont les lois nationales renferment déjà des dispositions concordantes, pourront procéder par simple modification des autres dispositions de ces lois, donnera satisfaction à tous les délégués. La discussion générale étant close, il propose The Chairman emphasized that Mr. Ripert’s objection had a greater scope than just asking for greater precision in the meaning of the Convention and if, as [40] he asked, we were to alter completely the adopted text one might as well say that there was no possibility of ever reaching a conclusion. Those countries that had already passed an Act of Parliament would clearly not be willing to alter their law again.

Mr. Ripert did not think they should do so. In the law on collision, England had not reproduced the same text as the Brussels Convention.

The Chairman asked whether the declaration to which everyone seemed to have adhered was unsatisfactory as far as Mr. Ripert was concerned. As soon as a State faithfully embodied the principles of the Convention in its national law, it fulfilled its agreed obligations, whatever the form it selected.

It might be happy having ratified the Convention to create a law modifying the existing legislative clauses that did not conform. It would be the clauses of this law that would be binding on the courts.

Mr. Ripert wanted a final article of the Convention to permit contracting States to translate the clauses of the Convention as they understood them.

The Chairman felt that was going too far.

Mr. Bagge was of the opinion that one should not be bound except according to the clauses of national law that would faithfully reproduce the meaning of the Convention.

Mr. Loder felt that the purpose of ratification was that the Convention should be transposed into national law.

The Chairman concluded that it would satisfy all the delegates to introduce in the closing protocol a paragraph providing that countries whose national laws already included concordant clauses could proceed by simple modifications to the other clauses of these laws. General discussion being over, he proposed to begin examination of article 1.
d’aborder l’examen de l’article 1.

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M. Ripert rappelle que les délégations française et italienne ont proposé un article additionnel dont une partie vient d’être discutée mais dont l’autre partie est également très importante. Cet article est rédigé comme suit:

“Les hautes parties contractantes pourront donner effet à la présente convention soit en lui donnant force de loi, soit en introduisant les règles dans leur législation nationale sous une forme appropriée à cette législation.

Dans ce dernier cas, elles se réservent expressément le droit:

1. - de fixer la limite de responsabilité prévue à l’article 4, alinéa 5 en monnaie nationale en calculant l’équivalence, soit sur le cours actuel de la livre, soit sur le cours moyen des 5 dernières années, et de modifier notamment cette limite au cas de variations du cours;

2. - de préciser que dans les cas prévus par l’article 4, alinéa 2 (c) a (p) le porteur du connaissement peut toujours établir la faute personnelle du transporteur ou les fautes de ses préposés non couvertes par le paragraphe (a);

3. - de préciser que l’article 4, alinéa 5, dernier paragraphe ne s’applique pas au cas où le chargeur a déclaré une valeur inférieure à la valeur réelle;

4. - d’appliquer l’article 6, même dans le cas où un connaissement est émis, pourvu que ce connaissement soit à personne dénommée et ne contienne pas la clause à ordre”.

M. le Président marque son accord sur cette proposition mais il préférait ajouter au premier paragraphe “dans un sens conforme à leurs dispositions”.

M. Ripert objecte que cette expression pourrait impliquer qu’on a l’obligation d’insérer les règles “in extenso”.

M. le Président reconnaît que la for-

The Chairman noted his agreement on this proposal but preferred to add to the first paragraph “in a sense that conforms with their provisions”.

Mr. Ripert said that that expression could imply that one was obliged to insert the rules verbatim.

The Chairman recognized that the proposed formula was more precise. It
included the obligation to introduce these provisions into national legislation with the freedom to adopt a preferred format while respecting their meaning.

Mr. Beecher asked whether in the United States the Harter Act could be left as it was when it conformed to the Convention, using the new law where it differed.

The Chairman felt it could.

Mr. Ripert stated that the conference was in agreement on this matter, but that there was still an enormous problem: the limit of liability was fixed in gold pounds. It was not possible to include in a national law a figure expressed in any currency other than the national currency.

Sir Leslie Scott pointed out that he had understood it would be £100 in round figures.

Mr. Ripert admitted that in Great Britain the limitation being £100 and the currency being more or less at par, there would be no difficulty if the pound fell. It would be £100 in note form, although for other contracting States it would be the equivalent in gold pounds.

Sir Leslie Scott proposed adding to the end of the Convention an article that would correspond to article 15 in the Convention on the limitation of liability (page 261 of the proceedings of the plenary session).

Mr. Ripert read the third reservation “to state that article 4(5), last paragraph, should not apply in the case where the shipper has declared a value inferior to the actual value”.

The Chairman pointed out that everyone agreed to countenance only the case where the shipper had, without fraud, declared a value inferior to the real value.

Mr. Beecher stated that it might be that by such a declaration of inferior value the shipowner would only receive a freight charge that was less than the one he had the right to.
La déclaration est faite avec l’intention de priver l’armateur du fret lui revenant, les règles s’appliqueront, que si l’erreur est commise de bonne foi, elles ne s’appliqueront pas.

**M. Beecher** craint que cela ne prête à des abus. Ne pourrait-on dire “sans aviser le transporteur de la véritable valeur”.

**M. Struckmann** n’admet pas l’insertion des mots “sans fraude”.

**M. le Président** rappelle qu’il s’agit de régler simplement ce qui concerne le connaissement et non de protéger l’armateur au sujet de son fret. Tout ce que l’on a voulu empêcher, c’est que par des déclarations exagérées, on puisse se réserver le droit de réclamer des dommages-intérêts excessifs. Il propose de supprimer les mots “sans fraude”.

**M. Ripert** déclare que la dernière disposition de sa proposition demande “d’appliquer l’article 6 même dans le cas où un connaissement est émis pourvu que ce connaissement soit à personne dénommée et ne contienne pas la clause ‘à ordre’”. Il modifie ces derniers mots et les remplace par “non-transférable”. Il explique que ce que à l’article 6 les Anglais comprennent sous la dénomination de “récépissé” peut être un connaissement en France à la condition d’être non transférable, c’est-à-dire non négociable. Or il y aurait avantage à se prévaloir de l’article 6 quand, au point de vue des lois douanières, il faut qu’un pareil connaissement soit émis.

**M. Beecher** croit que la proposition de M. Ripert annihilerait l’effet des règles aux États-Unis. Les règles ne seraient donc pas applicables dans tous le cas où l’on émet un connaissement. Il a déjà été bien difficile de faire accepter par l’opinion publique et par les autorités compétentes l’article 6 actuel. On y a déjà vu une exception aux dispositions du Harter Act. Mais il y a aux États-Unis des intérêts considérables, par exemple les “packers” ou fabricants de viande conservée, qui peuvent parfaitement se passer de connaissements transférables. Ils seront sûrement hostiles à la modification proposée.

**The Chairman** replied that if the declaration was made with the intention of depriving the shipowner of freight charges due to him, the rules would apply, but that if the error was committed in good faith, they would not apply.

**Mr. Beecher** feared that that would lead to abuse. Could not one say “without informing the carrier of the true value”.

**Mr. Struckmann** would not allow the insertion of the words “without fraud”.

**The Chairman** recalled that it was a question simply of regulating what concerned the bill of lading and not protecting the shipowner in the matter of his freight charges. All that one had wanted to prevent was that by exaggerated statements one might reserve the right of claiming excessive damages. He proposed deleting the words “without fraud”.

**Mr. Ripert** stated that the last provision of the proposal demanded “the application of article 6 even in the case where a bill of lading has been issued, provided that it was a straight bill of lading and did not contain the clause ‘to order’”. He amended these last words and replaced them with “non-transferable”. He explained that what the English understood in article 6 by the word “receipt” could be a bill of lading in France on condition that it was non-transferable, that was to say, non-negotiable. There would be some advantage in availng oneself of article 6 when, from the point of view of customs laws, it was necessary to issue such a bill of lading.

**Mr. Beecher** believed that Mr. Ripert’s proposal would annihilate the effect of the rules in the United States. The rules would not be applicable, therefore, in all cases when a bill of lading was issued. It had already been very difficult to have the present article 6 accepted by public opinion and by the relevant authorities. One had already seen an exception to the provisions of the Harter Act. But there were in the United States considerable interests, for example, the meat packers, who could per-
M. le Président croit qu’en présence de cette objection, l’intérêt du point de vue signalé par M. Ripert n’est que de second ordre. La loi douanière française pourrait dire que pareil document vaudra connaissance au point de vue de la douane. En Belgique, il en sera fait ainsi.

M. Ripert, en considération de l’objection de M. Beecher, se borne à demander qu’il soit constaté qu’en France, un récépissé, et un document non négociable rentrent dans la catégorie des connaissances.

M. le Président déclare qu’il sera inscrit au procès-verbal que tout reçu ou récépissé pourra porter le nom de connaissance en France.

Sir Leslie Scott reprend l’amendement N° 3 de M. Ripert, il ne comprend pas exactement la raison pour laquelle celui-ci désire distinguer entre la valeur supérieure et la valeur inférieure.

M. Ripert explique qu’il veut qu’un transporteur expédiant une marchandise valant 10,000 francs puisse la déclarer au transporteur pour 5000 francs s’il veut se contenter de 5000 francs en cas de perte.

Sir Leslie Scott n’admet pas que l’amendement se réfère à un tel cas, car si le chargeur déclare une valeur inférieure afin d’éviter que le transporteur demande un frêt plus élevé c’est une fraude envers le transporteur.

M. Ripert n’y voit pas de difficulté puisque le transporteur ne sera pas tenu de payer un chiffre plus élevé en cas de perte.

Sir Leslie Scott objecte que le transporteur compterait un taux de fret différent selon qu’il s’agit d’un envoi de toile ou de soie par exemple.

M. Ripert répond que cela n’est pas pertinent puisque la marchandise peut être expédiée sans déclaration de valeur. Il comprendrait l’objection si la déclaration de valeur était obligatoire; mais elle ne l’est pas.

Sir Leslie Scott se déclare d’accord pour adopter la formule de M. Ripert.

M. le Président remarque que la mis-
M. Beecher désire voir insérer dans la Convention une disposition disant que les différents pays contractants passeront ou proposeront à leurs législatures les lois nécessaires pour donner effet aux règles et que celles-ci ne seront applicables que lorsque ces lois auront été adoptées par les pays respectifs. Cela diffère un peu de la procédure précédemment adoptée mais il s’agit ici d’une matière tellement spéciale qu’il y aura beaucoup plus de chances de faire passer rapidement dans les différents pays les lois nécessaires en procédant de cette façon.

Sir Leslie Scott se rallie à cette proposition.

Sir Leslie Scott declared himself in agreement with the adoption of Mr. Ripert’s formula.

The Chairman commented that the Conference’s mission was not to scrutinize the freight rate.

Mr. Beecher wanted to see inserted in the convention a provision that said that the various contracting countries would pass or propose to their legislatures the necessary laws for giving effect to these rules, and that these would only apply when such laws had been adopted by the respective countries. That would differ somewhat from the previous procedure adopted, but this was such a special matter that there would be many more opportunities to have the necessary laws passed quickly in the various countries by proceeding in this way.

Sir Leslie Scott supported this proposal.
aucune différence, sauf sur la question qui a surgì au sujet de la force probante du connaissement et qui porte simplement sur ce que certains États veulent avoir le droit de donner au connaissement dans leur législation nationale une valeur plus grande encore.

Le but de la Convention a été clairement révélé: ce qu’on veut, c’est donner au connaissement une base stable au point de vue législatif. On est arrivé, pour les transports maritimes, au même point ou, presque dans tous les pays, on est pour les transports par chemin de fer. Le nombre des affaires traitées par la voie du connaissement est tellement considérable, les intérêts engagés sont si grands, qu’il importe que le droit applicable au connaissement soit le même partout; qu’il ne dépende pas entièrement de la volonté des parties, mais qu’il soit contrôlé par des lois qui auront un caractère obligatoire, un caractère d’ordre public.

Pour atteindre ce but, il fallait arriver à un compromis entre les deux grands intérêts en cause, la cargaison et le navire. Et quand on appliquera la Convention il faudra s’inspirer de ce qui a été son origine, puisque cela seul expliquera la forme de certaines clauses qu’un rédacteur ordinaire n’aurait pas insérées dans un texte de loi.

Dans les travaux auxquels la commission s’est livrée, elle a parcouru les divers articles et a tenu compte des observations qui y ont été faites.

Quant à l’article 1, il a été précisé tout d’abord que les puissances contractantes auraient le droit, ou bien d’insérer le texte de la Convention tel quel dans leur loi nationale, ou bien de modifier leur législation nationale conformément à ce texte. Le but est de ne pas obliger les États à prendre des mesures législatives lorsque déjà leur droit commun est conforme à ces principes et aussi de permettre au point de vue de la forme, que les États adoptent ces dispositions conformément aux habitudes et aux méthodes de rédaction de leur législation nationale. Mais s’il est permis ainsi de

bill of lading, where some States wanted the right to give the bill of lading a still greater value in their own national legislations.

The purpose of the Convention had been clearly demonstrated. What was wanted was to give the bill of lading a stable basis from a legislative point of view. In almost all countries, the same position had been reached with regard to maritime transport as for rail transport. The number of transactions carried out by means of a bill of lading was so considerable, that it was important for the law governing the bill of lading to be the same everywhere. It should not depend entirely on the good will of the parties, but should be governed by laws that would have an obligatory nature, a character of public policy.

To achieve this purpose, it had been necessary to reach a compromise between the two great interests involved - the cargoes and the vessels. And when the Convention was applied, it would be necessary to take inspiration from its origins because they alone would explain the form of certain clauses that a normal drafter would not have inserted in a legal text.

In the work to which the commission had devoted itself, it had run through the various articles and had taken account of the comments made.

As to article 1, it had, first of all, stated clearly that the contracting powers would have the right either to insert the text of the Convention in whatever way possible into their national law, or to amend their national legislation in accordance with the text. The goal was not to force States to take legislative measures when their law was already in agreement with these principles. Further, from the point of view of format, the States would be allowed to adopt these provisions according to the customs and methods of drafting their national laws. But if, in this way, it was permitted to make the format more appropriate, to [119] adapt it to national legislation, it was a question of
rendre la forme plus appropriée, de l’adapter aux législations nationales, dans les deux cas ce sont les principes mêmes, consacrés par la Convention, qui doivent être maintenus. C’est là une question de bonne foi. Il ne peut y avoir de doute à cet égard.

On s’est demandé dans le même ordre d’idées s’il était à craindre que des parties pussent dans certaines conditions, écluser le principe essentiel de la Convention d’après lequel cette Convention doit régir tous les connaissements. Il a été répondu qu’il ne suffit pas d’adopter des instruments différents pour changer le fond du droit conventionnel international qui s’appliquera à tous les connaissements si c’est le seul titre; même formulé en un ou en plusieurs documents ou écrits, cette loi devait s’appliquer. Le droit conventionnel international s’applique à tous les connaissements si c’est le seul titre; quant aux chartes-parties, la Convention ne s’applique pas, mais elle s’appliquera aux connaissements émis en vertu d’une charte-party dès que ce titre régit les rapports du transporteur et du porteur du connaissement.

A cette question générale d’application se rattachait la question de savoir s’il fallait ne limiter la Convention qu’à certaines catégories de transports par lignes régulières en excluant les autres, ou tout au moins certains transports spécialisés. Finalement, après avoir entendu avec beaucoup d’attention les arguments mis en avant dans ce sens, la commission a été unanime, à exprimer l’avis qu’il était impossible de faire cette distinction, et aucun amendement n’a été présenté dans ce sens.

Elle a de même pensé que puisque le principe avait été écarté, il n’était pas opportun d’admettre des réserves et qu’il était nécessaire d’avoir un droit général s’appliquant à tous les navires, pour que la Convention produise tout son effet.

Mr. Richter est d’avis que dans le procès-verbal de clôture on devrait suppri-
mer le n° 3, qui rentre dans les termes du dernier paragraphe de cet article, en tant qu’il s’agit de cabotage. Le second alinéa de l’art. 10 dit: “Nonobstant les stipulations de l’art. 6, chaqueÉtat se réserve en ce qui concerne son cabotage national d’appliquer cet article à toutes catégories de marchandises”.

M. Ripert croit qu’il faut supprimer ce dernier alinéa.

M. Ripert demande à faire une déclaration dont il donne le texte et qui est re-

should be deleted as it fell within the terms of the last paragraph of this article, so far as it dealt with cabotage. The second paragraph of article 10 said “Notwithstanding the provisions of article 6, each State reserves its right in so far as concerns its national coasting trade, to apply this article to all categories of goods”.

M. Ripert felt that this last paragraph should be deleted.

M. Alten déclare que dans le protocole de clôture il faudrait insérer une phrase selon laquelle les États contractants se réservent le pouvoir de prescrire que le transporteur sera absolument tenu pour les indications mentionnées au connaissement conformément à l’article 3 litt. (a), (b) et (c), à l’égard du porteur de connaissement de bonne foi.

M. le Président est d’accord pour insérer dans le procès-verbal les réponses données par les représentants des États scandinaves, de l’Allemagne, de l’Italie et de la Serbie, déclarant qu’ils sont d’avis que ces réserves devraient être insérées dans la Convention. Mais il n’a pas été décidé que cette réserve figure dans le texte proposé par la conférence, car cela impliquerait un accord unanime sur cette réserve. Il faut distinguer le protocole de clôture sur lequel tout le monde est d’accord, des réserves sur lesquelles on ne l’est pas.

M. Alten considère qu’il est nécessaire de l’insérer dans le protocole de clôture, faute de quoi il craint ne pouvoir signer la Convention.

M. le Président déclare qu’après le texte de son rapport il sera ajouté: les délégués de tel et tel pays ont déclaré qu’ils estiment nécessaire que la réserve suivante figure également au protocole de clôture.

M. Ripert rappelle que la réserve n’a pas été votée; c’est une simple déclaration.

Mr. Alten stated that in the closing protocol it would be necessary to include a sentence stating that the contracting States reserved the right to stipulate that the carrier would be absolutely liable for the information in the bill of lading as under article 3(a), (b), and (c) in respect of the bona fide holder of the bill of lading.

The Chairman agreed to embody in the proceedings the responses of the representatives from the Scandinavian States, Germany, Italy, and Serbia stating that they felt these reservations ought to be embodied in the convention. But it had not been decided that this reservation would feature in the text proposed by the Conference because that would imply unanimous agreement on this reservation. It was necessary to distinguish the closing protocol on which everyone agreed from the reservations on which they did not.

Mr. Ripert recalled that the reservation had not been passed: it was merely a statement.

Mr. Alten deemed it necessary to include it in the closing protocol; without it he feared he could not sign the Convention.

The Chairman declared that, according to the text of his report, the following addition would be made: delegates from such and such countries had declared that they felt it necessary for the following reservation to feature in the closing protocol as well.

Mr. Ripert asked to be able to make a
relative à l’application de l’article 6: “Le délégué du Gouvernement français déclare que tout récépissé d’une marchandise transportée par mer portant dans la législation française le nom de connaissément, il n’y aura pas violation des règles de la Convention, si dans le cas prévu par l’article 6 et l’extension de cet article au cabotage, le transporteur délivre au chargeur un titre nominatif, portant la mention ‘non négociable’ alors même que ce titre serait dénommé connaissément”.

Mr. Alten pense qu’il faut ajouter l’alinéa (b) à la fin de la première réserve du Protocole de clôture parce que le transporteur n’est pas responsable d’un incendie causé par la faute de ses préposés.

Mr. le Président est d’avis qu’il ne faut pas le mettre. D’après le texte actuel si l’incendie est causé par la faute de ses préposés l’armateur n’est pas responsable.

Mr. Alten croit que c’est pour cela qu’il faut ajouter l’alinéa (b).

Mr. Bagge dit que c’est la même stipulation pour l’alinéa (a) où l’armateur n’est pas responsable s’il démontre que c’est par la faute de ses préposés. Il n’est tenu que de ses fautes personnelles. Voilà pourquoi les alinéas (a) et (b) vont ensemble et que d’autre part les alinéas (c) à (p) vont ensemble également.

Mr. le Président constate qu’il faut donc laisser le texte tel qu’il est rédigé. Pour l’article 4 (a) et le (b) l’existence de la faute est réglée.

Mr. le Président explique que dans les cas des alinéas (a) et (b) on ne peut assigner en responsabilité que s’il y a faute du transporteur lui-même. (Assentiment).

statement, the text of which he provided, relevant to the application of article 6: “The delegate of the French Government declares that any receipt for goods carried by sea with the name ‘bill of lading’ under French legislation would be no violation of the rules of the convention if, as provided for under article 6 and the extension of this article to national coastal traffic, the carrier issued the shipper with a nominal document of title marked non-negotiable, even though this document of title would be designated a bill of lading”.

Mr. Alten thought that article 4(2)(b) should be added to the end of the first reservation in the closing Protocol because the carrier was not liable for a fire caused by the fault of his agents.

The Chairman felt it unnecessary to do so. According to the present text, if the fire was caused by the fault of his agents the shipowner was not liable.

Mr. Alten believed that that was why it was necessary to add item (b).

Mr. Bagge said that the same went for article 4(2)(a), where the shipowner was not liable if he demonstrated it was because of the fault of his agents. He was only liable for his own personal faults, that was why items (a) and (b) went together and why items (c) to (p) also went together.

The Chairman stated that the text should therefore be left as drafted. For article 4(2)(a) and (b), the existence of actual fault was regulated.

The Chairman explained that in the case of items (a) and (b), one could only assign liability where there was a fault of the carrier himself. (Agreed).
PART II - VISBY RULES

Final clauses

Protocol of 1968
Final Clauses and Final Vote on the Protocol

Article 6.
As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

A Party to this Protocol shall have no duty to apply the provisions of this Protocol to Bills of Lading issued in a State which is Party to the Convention but which n’est pas Party au présent Protocole.

Article 7.
As between the Parties to this Protocol, the denunciation of the Convention by any of them in accordance with Article 15 thereof, shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 11.
1. This Protocol shall be ratified.
2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention.
3. The instruments of ratification shall be deposited with the Belgian Government.

Article 12.
1. States, Members of the United Nations or Members of the specialized agencies of the United Nations, not represented at the twelfth session of the Diplomatic Conference on Maritime

 Protocole de 1968
Clauses finales et vote final sur le Protocole

Article 6.
Entre les Parties au présent Protocole, la Convention et le Protocole seront considérés et interprétés comme un seul et même instrument.

Une Partie au présent Protocole ne se verra pas obligée d’appliquer les dispositions du présent Protocole aux connaissements délivrés dans un Etat Partie à la Convention mais n’étant pas Partie au présent Protocole.

Article 7.
Entre les Parties au présent Protocole, la dénonciation de la Convention par l’une d’elles en vertu de l’article 15 de celle-ci ne doit pas être interprétée comme une dénonciation de la Convention amendée par le présent Protocole.

Article 11.
(1) Le présent Protocole sera ratifié.
(2) La ratification du présent Protocole par un Etat qui n’est pas Partie à la Convention emporte adhésion à la Convention.
(3) Les instruments de ratification seront déposés auprès du Gouvernement belge.

Article 12.
(1) Les Etats membres de l’Organisation des Nations Unies ou des institutions spécialisées des Nations Unies, non représentés à la douzième session de la Conférence diplomatique
Law, may accede to this Protocol.

(2) Accession to this Protocol shall have the effect of accession to the Convention.

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

Article 13.

(1) This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.

(2) For each State which ratifies this Protocol or accedes thereto after the date of deposit of the instrument of ratification or accession determining the coming into force such as is stipulated in paragraph (1) of this Article, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Diplomatic Conference - February 1968

[223]

Chairman: Mr. H. E. Scheffer (The Netherlands).

President’s report

1. The Commission for the final clauses has examined first of all the amendment introduced by the Scandinavian countries (Misc. 11) in view of specifying explicitly:

1) the relationship between the Parties to the Protocol in question and,

2) the relationship between the Parties to the Protocol on the one hand, and the Parties to the Convention of 1924, not being Parties to the Protocol, on the other.

As far as the first point is concerned, the Commission was of the opinion that it would be useful, in order to avoid any ambiguity, to commence the final clauses by a provision that “between the Parties to the present Protocol, the Convention and the Protocol shall be read and interpreted as one single instrument”.

It should be pointed out that this same clause figures in the 1955 Protocol of the Hague, amending the 1929 Warsaw Convention on international air transport.

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As far as the second point is concerned, the Commission judged it necessary to emphasise that a Party to the Protocol shall not find itself obliged to apply the provisions of this Protocol to bills of lading issued in a State, party to the Convention but non-party to the Protocol.

2. The Commission then examined the question of the number of ratifications necessary for the Protocol to come into force.

The number of five ratifications included in the Conventions drawn up in 1967, which has the advantage of allowing the said Conventions to come into force rapidly, has been considered insufficient owing to the character of the Protocol which makes a wider participation desirable.

On the other hand, the number of twenty-five ratifications, as urged by the United Kingdom delegation, has not been given the support of the Commission either, experience in what concerns other Conventions and more especially the 1957 Convention on the limitation of liability of shipowners having proved that it is necessary to wait a good number of years before the signatory States lay down their instruments of ratification.

Finally, the members of the Commission agreed almost unanimously on the suggestion to the Conference in accordance with the Scandinavian proposal in Doc. No. 5 to fix the number of ratifications at ten, on condition, as was the case for the 1957 Convention, that among these ten ratifications there be at least five coming from States in possession of a global tonnage equal or superior to one million gross tons.

The Commission wondered if it would not be necessary to include also the accessions in order to attain the number of Contracting States required for the Protocol to come into force.

The Commission has made a proposal to this effect.

3. Not only would it be necessary to fix the number of ratifications required for this Convention to come into force, but it should also be specified whether this coming into force shall be effected at the very moment of the tenth deposit of instruments of ratification or of accession, or three months, six months or a year after this deposit.

The United Kingdom Delegation reckons that a waiting period of one year would be desirable for the following reasons:

This delegation is of the firm opinion that it is undesirable that the drawing up of and putting into force of a Protocol should end up by having two international instruments aiming at the [225] unification of laws in force concurrently, in this case, the 1924 Convention on the one hand, and the Convention amended by the 1968 Protocol on the other hand. For this reason, the United Kingdom delegation, suggests that the States party to the Protocol should be able, if they so wished to denounce the 1924 Convention with regard to the States party to the Convention but not to the Protocol.

Seeing that Article 15 of the Convention of 1924 stipulates that the denunciation shall produce its effects one year after having been received by the Belgian Government, this delegation proposes fixing the waiting period of the coming into force of the Protocol also one year after the tenth deposit of instruments of ratification or of accession.

However, the Commission judged that such a waiting period will put off the coming into force of the Convention too long and proposes fixing the waiting period at three months in order to conform to the decisions taken at the first phase of the twelfth Session (Luggage/ships under construction/liens and mortgages).

4. The Commission likewise examined an amendment submitted by the United Kingdom delegation which suggested adding the following to the final clauses:
“As between the parties to this Protocol denunciation by any of them of the Convention in accordance with Article 15 thereof, shall not be construed in any way as a denunciation of the Convention as amended by this Protocol”.

This amendment must be understood, taking into account the fact that the United Kingdom delegation expressed the desire to arrive as soon as possible at the application of one single system.

The provision has the effect of, despite the denunciation, staying party to the Convention as amended by the Protocol.

The Commission realised that such a procedure is likely to cause a gap as soon as the States attached only by the Convention see their number of co-contractors decrease. However, the Commission thought such a clause should not be rejected as this denunciation is not obligatory. The same text figures in the 1955 Protocol of The Hague, amending the 1929 Convention on International Air Transport, although it should be noted that no State seems to have taken advantage of this possibility so far.

5. As far as the other final clauses are concerned, the Commission proposes taking up the final clauses adopted at the 1967 Conference for the Protocol amending the Convention for assistance and salvage at sea.

These provisions have not been subjected to any comment on the part of the Commission.

However, considering the importance of the content of the Protocol on Bills of Lading, the Commission judges it desirable to include the two articles in the ruling of differences concerning interpretation and application, which figure in the three 1967 Conventions.

The Conference may find the draft of final clauses attached to the present report.

(Annex)

Protocol to amend the international Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels, on 23rd August 1924

The Contracting Parties,

Considering that it is desirable to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25th August 1924,

Have agreed as follows:

Article 1.
Article 2.
Article 3.
Article 4.
Article 5.
Article 6.

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

A Party to this Protocol shall have no duty to apply the provisions of this Protocol to bills of lading issued in a State which is a Party to the Convention but which is not a Party to this Protocol.

Article 7.

As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 15 thereof, shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.
PART II - VISBY RULES

Final clauses

1. This Protocol shall be ratified.

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention.

3. The instruments of ratification shall be deposited with the Belgian Government.

1. States, Members of the United Nations or Members of the specialized agencies of the United Nations, not represented at the twelfth session of the Diplomatic Conference on Maritime Law, may accede to this Protocol.

2. Accession to this Protocol shall have the effect of accession to the Convention.

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

1. This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.

2. For each State which ratifies this Protocol or accedes thereto after the date of deposit of the instrument of ratification or accession determining the coming into force such as is stipulated in § 1 of this Article, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Troisième Séance Plénière - 20 Février 1968

Présidence de Monsieur Albert Lilar, Président

M. le Président. Messieurs, à l’ordre du jour de la réunion de ce matin figure la question des Causes finales.

Lors de la réunion de l’an dernier, la commission, présidée par M. Scheffer (Pays-Bas), avait déjà accompli un travail important. Celui-ci a fait l’objet d’un nombre fort limité d’amendements, notamment un amendement introduit au cours de la première session par la délégation scandinave (doc. MISC 11), et deux amendements et sous-amendements présentés après la première session, selon la procédure prévue par l’Acte final de ladite session. Il s’agit du document n° 5, présenté par la Finlande, la Norvège et la Suède, et du document n° 9 présenté par les Pays-Bas.

Third Plenary Session - 20 February 1968

Mr. Albert Lilar, Chairman

(This session opened at 10:15 a.m.)

The Chairman. Gentlemen, on the agenda of this morning’s meeting we have the subject of the final clauses.

During last year’s meeting, the committee, chaired by Mr. Scheffer (The Netherlands), already accomplished an important task, which has been the subject of a very limited number of amendments: specifically, an amendment submitted during the first session by the Scandinavian delegation (doc. MISC 11), and two amendments and sub-amendments introduced after the first session according to the procedure provided by the final act of the session. These are document no. 5, submitted by Finland, Norway, and Sweden, and document no. 9, submitted by The Netherlands.
Je propose de consacrer la présente réunion aux observations générales que les délégations souhaiteraient émettre au sujet des clauses finales.

Puis-je demander à M. Scheffer, Président de la commission des clauses finales de la première phase de faire le point de la question.

M. Scheffer (Netherlands). As far as I know, on the question of the final clauses that are left open for the proposed amendment of the Convention on Bills of Lading, two proposals have been made. One is on the question of how many ratifications are necessary before the Protocol shall come into force. For the other Conventions which were adopted in May last year five ratifications were required. Then the Scandinavian countries proposed that the number be raised from five to fifteen.

The second proposal was that a clause should be inserted, that “As between the parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument. However, a party to this Protocol shall have no duty to apply the provisions of this Protocol in relation to carriage from a State which is a party to the Convention but which is not a party to this Protocol”.

As far as I am aware, these are the only two points we have to deal with. If there are any other points they should be raised now so that they can be taken care of, but at the moment only these two proposals have been submitted to the Conference.

M. le Président. La parole est à la délégation française.

M. de Bresson (France). Monsieur le Président, la délégation française estime que, dans les clauses finales, seul un point reste à discuter. Il s’agit de la mise en vigueur du Protocole.

La délégation française souhaite que le système adopté soit simple, c’est-à-dire qu’il permette la mise en vigueur après cinq ratifications.

Nous pensons également qu’il faut un système significatif, c’est-à-dire qu’il faut, pour que la Convention soit mise en vigueur, que les États qui l’auront ratifié représentent au moins un million de tonnes de jauge brute.

Enfin, nous pensons également que la mise en vigueur devrait intervenir six mois après le dépôt des instruments de ratification.

M. le Président. La parole est à la délégation norvégienne.

The Chairman. The French delegation has the floor.

Mr. de Bresson (France). Mr. Chairman, the French delegation is of the opinion that, in the final clauses, there remains only one point to be discussed. It is the coming into force of the Protocol.

The French delegation would prefer that the adopted system be simple, in other words, that it allows its coming into force after five ratifications.

We also think a significant system is required, namely that it is necessary for the Convention to come into force, that the States will have ratified it should represent at least one million gross register tons.

Lastly, we also think that the coming into force would take place six months after the deposit of the instruments of ratification.

The Chairman. The Norwegian delegation has the floor.
Mr. Rein (Norway). Mr. Chairman, the French delegation has referred to Article 8, but there is also an amendment to Article 7. Is that to be discussed later or is it to come first?

The Chairman. As we are having general discussion you are free to speak to both Articles.

Mr. Rein (Norway). Then I would like to say a few words about the Scandinavian amendment to Article 7. We propose the following wording: “As between the parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument”, and we go on to say “However, a party to this Protocol shall have no duty to apply the provisions of this Protocol in relation to carriage from a State which is a party to the Convention, but which is not a party to this Protocol”. We feel this addition is necessary because we do not renounce the old Hague Rules Convention and we may be bound to apply that Convention to States which do not ratify the present Protocol.

With regard to Article 8, the Scandinavian delegations have proposed that the Protocol shall come into force six months after the deposit of ten instruments of ratification. The original Scandinavian proposal contained in CONN 28 for fifteen instruments has been withdrawn, and so the present proposal is for ten instruments. We feel that five would be too few; the Scandinavian countries alone are four in number and they all have more than a million tons, so when the Scandinavian countries have ratified only one more country would be required to ratify for the Convention to come into force. We would prefer more countries to ratify it before the new rules are applied, and therefore we think ten should be the minimum required.

At the same time may I add that in Article 9 para. 4, as a consequence of what we have suggested in Article 7 and 8, we should say “six months” and not “one month”. There is no formal proposal to this effect but we think this is a necessary consequence.


Nous considérons que la limitation du droit des Etats non membres de l’Organisation des Nations Unies et des institutions spécialisées d’adhérer au Protocole est contraire à la nature et au but des Conventions de Bruxelles qui réglementent principalement la navigation marchande.

La tendance générale dans le commerce et la navigation maritime est d’inclure le plus grand nombre possible d’Etats dans le groupe des participants à ces Conventions.

Je vous rappelle que la tentative d’introduire des restrictions à l’adhésion des États à une convention internationale s’oppose à la pratique précédente de l’élaboration des Conventions de Bruxelles.

Mr. Joudro (U.S.S.R.). Mr. Chairman, gentlemen, the Soviet delegation deems it indispensable to express its opinion on the subject of the signatories to the Protocol.

We think that limiting the number of non-member States of the United Nations and the specialized institutions to join in the Protocol is contrary to the nature and goal of the Brussels Conventions, which govern particularly commercial navigation.

The general tendency in trade and ocean navigation is to include the largest possible number of States in the group of participants in these Conventions.

I would remind you that to attempt to restrict the countries that would like to join in an international convention goes against the previous practice in the development of the Brussels Conventions.
During the first session of this Conference, we already alluded to this fact. I draw the attention of the delegates to the objections of principle that we formulated against the insertion in the Protocol of any clauses of colonial significance, no matter how these clauses are drafted.

Mr. M. J. Kerry (United Kingdom). Mr. Chairman, I would like to state very briefly the attitude of the United Kingdom towards the number of members or the number of States whose ratification will bring the Protocol into force.

We consider that it is most important, from a commercial point of view, that we should avoid the position in which there are two sets of Hague Rules in operation simultaneously. We consider that a low number of ratifications for the Protocol will be bound to produce that effect.

Consequently, in line with the attitude adopted when the Hague Protocol to the Warsaw Convention on carriage by air was agreed, we consider that the number of accessions and ratifications to the Protocol before it comes into force should be at least 50 per cent of the number of States which are parties to the existing rules. Consequently, we hope to be able to put down an amendment suggesting that at least 25 States should have to accede to the Protocol before it comes into operation, of which at least ten will be countries with one million tons of shipping.

Furthermore, we consider that it should be made clear that States will be able to renounce the existing Convention so that they are not compelled to be in treaty relations both with old Hague Rule states and with Protocol states. We think that States should be given time to give effect to this.

Consequently, we feel that a period of one year will be the appropriate one from the date of the delivery of the necessary number of ratifications to the coming into force of the Protocol.

Mr. H. E. Scheffer (Netherlands). Mr. Chairman, I would like to make clear the views of the Netherlands delegation on the points that are made with regard to the final clauses.

Firstly, in regard to the number of ratifications necessary for the coming into force of the Protocol, I fully appreciate the reasons why various delegations want to increase the number, because they think we should not have a double regime, and we should try to have a large group of nations who switch over to the new regime.

However, I would like to remind you that ratifications take a very long time. We have just had the experience concerning the Convention of 1957 on the limitation of shipowners’ liability. This Convention has now been ratified by ten States, and after 11 years, in the course of 1968 this Convention will come into force. So it took 11 years to bring about this result.

As the United Kingdom now proposes 25 nations, if history develops in the same way we shall have to wait for 25 years before the Protocol come into force. I am wondering whether we are being realistic in making provisions which delay for a very long time the new system which at this moment we think is already necessary to be brought into force.
As to the reasons why it is necessary to prescribe a large group and not a small group, I have some doubt whether these are so very pertinent. After all, we cannot avoid there being two systems, whatever we provide; to amend an existing convention is one of the most difficult things in international law because you can never force a party to a convention to adopt the amendment. As the world is not united by one world government, we have to accept it, so we cannot avoid the existence of a twofold regime.

Moreover, we think that it is not so necessary that many countries adopt the new system before it comes into force, because, coming back to another problem which we are discussing in this Conference, much depends on the measure of jurisdiction, which is given to a Contracting State by the scope of the Convention.

As to the Protocol and the condition that among the States who have ratified there should be at least a number of States that have a fleet equal or superior to one million gross tons of tonnage, this system was inserted into the Convention of 1957, but I would like to draw your attention to the fact that the bills of lading Convention is not purely a Convention for the benefit of shipowners, but is a Convention that is of equal importance to carriers and shippers. It might be that States with a large international trade, but a small fleet, are more important for the application of his Convention than a large shipowning country which has no large international trade; so I think that the criterion of tonnage is not the only factor that should be taken into consideration.

As to the other point, the Scandinavian proposal to insert the provision that as between the parties to the Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument, we are in full agreement with this proposal.

The second sentence in this proposal deals with a separate point, so the word “however” in my view is not correct, it refers more or less to the question of the scope of application of the Convention, so that this point should be dealt with in connection with our discussion on the scope of application.
de bien vouloir réunir votre commission immédiatement de façon que nous puissions décider l’ordre des travaux de nos prochaines séances en fin de matinée. Celui-ci dépendra, bien entendu, de l’état d’avancement des travaux de commissions.

**Huitième Séance Plénière -** 22 Février 1968

**Présidence de Monsieur Albert Lilar, Président**

**M. le Président.**

Nous abordons les Clauses finales. La parole est au Président de cette commission pour qu’ils puisse commenter son rapport.

**M. Scheffer** (Pays-Bas). M. le Président, Mesdames, Messieurs, la commission des clauses finales était composée de représentants de dix États et a tenu quatre réunions. À première vue, on aurait pu croire qu’il n’y avait pas beaucoup à discuter, mais il s’est révélé qu’il y avait tout de même pas mal de questions, qui émanent du fait que le but du Protocole est d’amender une convention existante. En droit international, l’amendement d’une convention suscite bon nombre de difficultés.

Il faudra distinguer deux instruments qui, après l’entrée en vigueur du Protocole, devraient-être considérés comme un seul et même instrument. Il faudra aussi envisager la relation vis-à-vis ceux qui restent partie à la Convention de 1924 mais pas partie au Protocole. Pour éviter des situations complexes il était nécessaire [132] de trouver des formulations qui écarteraient toute difficulté d’interprétation. La commission espère avoir réussi à vous présenter des textes clairs et sans ambiguïté.

La commission des clauses finales a examiné en premier lieu l’amendement introduit par les pays scandinaves au cours de la première phase (MISC 11) visant à préciser explicitement:

1) les rapports entre les parties au can decide on the order of work for our future sessions at the end of the morning. This will, of course, depend on the progress of the work of all the committees.

**Eighth Plenary Session -** 22 February 1968

**Mr. Albert Lilar, President.**

**Mr. President.**

Let us now work on the final clauses. The chairman of this Committee has the floor to comment upon his report.

**Mr. Scheffer** (The Netherlands). Mr. Chairman, ladies and gentlemen, the Committee on the final clauses was composed of representatives from ten countries and held four meetings. At first, we thought there would not be much to discuss, but as it turned out we had a number of questions emanating from the fact that the goal of this Protocol is to amend the already existing Convention. In international law, the amendment of a convention gives rise to numerous difficulties.

We must distinguish between two instruments which, after the coming into force of the Protocol, should be considered as one and the same instrument. We also have to envision the relationship among those who remain parties to the 1924 Convention but not parties to the Protocol. To avoid complex situations, it was necessary [132] to find formulations that would eliminate any problem of interpretation. The Committee hopes to have been successful in presenting clear texts without ambiguities.

The Committee first examined the amendment submitted by the Scandinavian countries during the first phase (MISC 11) aiming to specify explicitly:

1) the relationships among parties to the Protocol for the modifications in question, and

2) the relationships among the par-
Final clauses

Protocole de modifications en question et
2) les rapports entre les parties au Protocole d’une part et les parties à la Convention, non parties au Protocole, d’autre part.

En ce qui concerne le premier point, la commission était d’avis qu’il serait utile, pour éviter toute équivoque à ce sujet, de commencer les clauses finales par une disposition disant qu’entre les parties au présent Protocole, la Convention et le Protocole seront considérés et interprétés comme un seul et même instrument.

Il y a lieu de signaler que cette même clause figure dans le Protocole de La Haye de 1955, qui modifie la Convention de Varsovie de 1929 sur le transport aérien international.

En ce qui concerne le deuxième point, la commission estimait qu’il faudrait faire ressortir qu’une Partie au Protocole ne se verra pas obligée d’appliquer les dispositions de ce Protocole aux connassements délivrés dans un État partie à la Convention, mais non Partie au Protocole.

La commission a ensuite examiné la question du nombre de ratifications nécessaires pour l’entrée en vigueur du Protocole.

Le nombre de cinq ratifications inscrit dans les Conventions établies en 1967, qui présente l’avantage d’une entrée en vigueur rapide a été considéré comme insuffisant en raison de la nature du Protocole qui rend une participation plus large souhaitable.

D’autre part, le nombre de 25 ratifications, comme préconisé par la délégation du Royaume-Uni, n’a pas non plus obtenu l’appui de la commission, l’expérience en ce qui concerne d’autres convention et plus spécialement la Convention de 1957 sur la limitation de la responsabilité des propriétaires de navires de mer ayant démontré qu’il faut attendre bon nombre d’années avant que les États signataires déposent leurs instruments de ratification.

Finalement, un large accord a été réalisé parmi les Membres de la commission ties to the Protocol, on the one hand, and the parties to the Convention, not parties to the Protocol, on the other hand.

Concerning the first point, the Committee was of the opinion that in order to avoid any misunderstanding it would be useful to introduce, at the beginning of the final clauses, a provision stating that, as between the parties to the present Protocol, the Convention and the Protocol will be considered and interpreted as one single instrument.

We must note that the same clause appears in the Hague Protocol of 1955, which amends the 1929 Warsaw Convention on international air transport.

As to the second point, the Committee thought that it would be better to specify that a party to the Protocol will not be obliged to apply the provisions of this Protocol to bills of lading issues in a State that is a party to the Convention, but not a party to the Protocol.

The Committee also examined the question of the number of ratifications necessary for the coming into effect of the Protocol.

The number of five ratifications used in the Conventions established in 1967, which has the advantage of a swifter coming into force, was considered to be insufficient because the nature of the Protocol makes a larger participation desirable.

On the other hand, the number of 25 ratifications, as suggested by the British delegation, also did not win the approval of the Committee. The experience with regard to other conventions, especially that of 1957 in the limitation of the liability of the owners of ships, has shown that we have to wait for a number of years before the signatory States file their instrument of ratification.

Finally, a large agreement was reached among the members of the Committee to suggest to the Conference, in conformity with [133] the Scandinavian proposal in document no. 5, to fix the number of ten ratifications, provided, as was the case for the 1957 Convention, that among these ten ratifications
pour suggérer à la Conférence en conformité avec la proposition scandinave dans le document n° 5 de fixer le nombre à dix ratifications, à condition, comme ce fut le cas pour la Convention de 1957, que parmi ces dix ratifications il y en ait au moins cinq qui émanent d’États qui possèdent chacun un tonnage global égal ou supérieur à 1 million de tonnes de jauge brut.

La commission s’est demandée s’il n’y aurait pas lieu de compter aussi les adhésions pour arriver au nombre de dix États contractants exigé pour la mise en vigueur du Protocole.

La commission a fait une proposition à cet effet.

Non seulement il y aurait lieu de fixer le nombre de ratifications requises pour l’entrée en vigueur, mais il faut également spécifier si cette entrée en vigueur s’effectuera au moment même du 10ème dépôt d’instruments de ratification ou d’adhésion ou 3 mois, 6 mois, 1 an après ce dépôt.

La délégation du Royaume-Uni estime qu’un délai d’un an est souhaitable pour les raisons suivantes:

Cette délégation croit fermement qu’il est inopportun que l’établissement et la mise en vigueur d’un Protocole ait pour conséquence que deux instruments internationaux visant l’unification du droit, soient simultanément en vigueur, c’est-à-dire la Convention de 1924 d’une part, et la Convention amendée par le Protocole de 1968, d’autre part.

Pour cette raison la délégation du Royaume-Uni suggère que les États parties au Protocole auront la possibilité s’il le désirent, de dénoncer la Convention de 1924 à l’égard des États parties à la Convention mais pas parties au Protocole.

Etant donné que l’article 15 de la Convention de 1924 prescrit que la dénunciation produira ses effets un an après sa réception par le Gouvernement belge, cette délégation propose de fixer le délai de l’entrée en vigueur du Protocole aussi un an après le 10ème dépôt d’instruments de ratification et d’adhésion.

Toutefois, la commission a estimé there will be at least five emanating from States that have each a tonnage equal or superior to one million gross tons of tonnage.

The Committee asked itself whether it should count accessions to reach the number of ten contracting States required for the Protocol to come into effect.

The Committee made a proposal with regard to this question.

Not only should we fix the number of ratifications required for the coming into force of the Protocol, but we also have to specify if this coming into force will take place at the same time as the deposit of the tenth instrument of ratification or accession, or three months, six months, or one year after this filing.

The British delegation thinks that a delay of one year is desirable for the following reasons:

This delegation firmly believes that it would be unfortunate that the establishment and the coming into force of a Protocol would make two international instruments for the unification of the law come into force simultaneously, that is, the 1924 Convention on the one hand and the Convention as amended by the 1968 Protocol on the other hand.

For this reason, the British delegation suggests that the States that are parties to the Protocol will have the option, if they wish, to denounce the 1924 Convention with respect to States that are parties to the Convention but nor parties to the Protocol.

Considering that article 15 of the 1924 Convention prescribes that the denunciation will only have an effect one year after its receipt by the Belgian government, this delegation proposes also to fix the coming into force of the Protocol at one year after the tenth deposit of instruments of ratification or accession.

However, the Committee felt that such a deadline will unduly delay the coming into force of the Protocol and proposes to set the period at three months to be in conformity with the decisions taken during the first phase of the
qu’un tel délai retardera trop l’entrée en vigueur et propose de fixer le délai à 3 mois pour rester conforme aux décisions prises lors de la première phase de la douzième Session (Bagages/Navires en construction/Privilèges et Hypothèques).

Après, la commission a également examiné un amendement introduit par la délégation du Royaume-Uni et qui consiste à compléter les clauses finales par le texte suivant:

[134]

“Entre les Parties au présent Protocole, la dénonciation de la Convention par l’une d’elles en vertu de l’article 15 ne doit pas être interprétée comme une dénonciation de la Convention amendée par le présent Protocole”.

Cet amendement doit être compris en tenant compte du désir exprimé par la délégation du Royaume-Uni d’aboutir le plus tôt possible à l’application d’un seul régime. La disposition a pour effet, malgré la dénonciation, de rester partie à la Convention telle que modifiée par le Protocole.

La commission a réalisé qu’une telle procédure risque de créer un vide, les États liés uniquement par la Convention voyant ainsi diminuer le nombre de cocontractants. Toutefois la commission a cru ne pas devoir rejeter un tel texte, cette dénonciation n’étant pas obligatoire.

Le même texte figure d’ailleurs dans le Protocole de La Haye de 1955, modifiant la Convention de 1929 sur le transport aérien international, quoiqu’il faut noter qu’aucun État ne semble avoir fait usage de cette possibilité jusqu’à ce jour.

En ce qui concerne les autres clauses finales, la commission propose de reprendre celles qui ont été adoptées lors de la Conférence de 1967, pour le Protocole portant modification de la Convention en matière d’assistance et de sauvetage maritimes de 1910.

Ces clauses n’ont pas fait l’objet d’observations de la part de la commission.

Toutefois, considérant l’importance du contenu du Protocole sur les connais-
sments, la commission estime opportun d’y inclure les deux articles sur le règlement des différends concernant l’interprétation et l’application, qui figurent dans les 3 Conventions de 1967.

La Conférence trouvera annexé au rapport de la commission le texte du projet de clauses finales.

Qu’il me soit permis d’exprimer ma reconnaissance à tous les membres de la commission pour leur assistance et spécialement M. De Troyer et les membres du secrétariat. J’ai hautement apprécié leur concours. Je vous remercie.

M. le Président. La parole est à délégation de la Pologne.

M. Matysik (Pologne). M. le Président, Messieurs, je me permets de vous rappeler que la délégation polonaise a déjà fait, au cours de la première phase de cette Conférence, certaines observations générales et certaines propositions en ce qui concerne l’article 12 et l’article 15 des clauses finales, que nous avons aujourd’hui en notre possession.

Appuyant ce que nous avons dit à ce moment-là et qui est imprimé dans le volume contenant les procès-verbaux de la première phase de nos travaux, je voudrais souligner qu’à notre avis, la rédaction de l’article 12 de la Convention de 1924 était plus favorable du point de vue de l’universalité du droit maritime.

Si vous le permettez, je soumettrai à cet assemblée les dispositions de l’article 12 de la Convention de 1924: “Les États non signataires pourront adhérer à la présente Convention qu’ils aient été ou non représentés à la Conférence internationale de Bruxelles”.

Ce qui signifie: tous les États sans aucune discrimination, et aujourd’hui on nous propose: seuls les États membres des Nations-Unies, etc..., pourront adhérer au présent Protocole.

Notre délégation ne veut pas insister car nous savons que les clauses finales ont déjà été votées à l’époque, c’est-à-dire au cours de la première phase de la Conférence.

Je tenais à faire cette observation two articles on the settlement of disputes concerning interpretation and application that appear in the three Conventions of 1967.

The Conference will find the draft of the final clauses annexed to the report of the Committee.

Please allow me to express my gratitude to all the members of the Committee for their help and especially Mr. De Troyer and the secretariat members. I highly appreciated their assistance. Thank you.

The Chairman. The Polish delegation has the floor.

Mr. Matysik (Poland). Mr. Chairman, gentlemen, allow me to remind you that the Polish delegation has already made, during the first phase of this Conference, certain [135] general observations and certain proposals concerning article 12 and article 15 of the final clauses, which we have before us today.

Supporting what we had said at the time and which is published in the volume that includes the minutes of the first phase of our work, I would like to emphasize that in our opinion, the drafting of article 12 of the 1924 Convention was more favourable from the point of view of the universality of maritime law.

If you allow me. I will submit to this assembly the provisions of article 12 of the 1924 Convention: “Non-signatory States may accede to the present Convention whether or not they have been represented at the International Conference at Brussels”.

That meant every State without any discrimination. Today some are suggesting only the member States of the United Nations, etc., may accede to the present Protocol.

Our delegation does not want to insist on this because we know that the final clauses were already voted upon earlier, that is, during the first phase of the Conference.

I insisted in making this observation in order to clarify our vote concerning the final clauses. Thank you.

The Chairman. May I ask the Polish
pour éclaircir notre vote concernant les clauses finales. Je vous remercie.

**M. le Président.** Puis-je demander à la délégation de Pologne si elle dépose un amendement au texte proposé à la commission?

**M. Matysik (Pologne).** Non.

**M. le Président.** La parole est à la délégation des États-Unis.

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**Mr. Mendelsohn** (U.S.A.). Thank you, Mr. Chairman. First I should like to thank the Chairman of our small commission for his patience and endurance on the many arguments and interesting point of public international law that were raised during our commission meetings. Second, I should like to speak for just a few moments on the problem of denunciation which became something of a major issue in the course of our discussions.

It seemed to the delegation of the United States that there were three possible alternatives. One was to say nothing about denunciation of the 1924 Convention. Two was to say something about it, perhaps in the form of a recommendation that States do denounce the 1924 Convention when they ratify the Convention as amended by the Protocol. And the third system was to have incorporated [136] in the Convention a mandatory requirement that States “denounce the 1924 Convention at the time they ratify the Protocol”.

I think it was largely due to the fact that we just have not had sufficient time to study the public international law ramifications of a denunciation that we did not incorporate either of the last two systems, and we preferred to leave the draft relatively open on the question of denunciation.

The only clause that really is directed to the issue is Article 10 and that is neither a recommendation nor a requirement.

The point that I wish to make is that if a State or if several States decide that it is in their interests both from a public international law point of view and a private international law point of view to denounce the 1924 Convention when they ratify the Protocol, I hope that this would not be considered an unfriendly act. Denunciation in this kind of a circumstance - and I may be saying this only for the record - should be considered as anything but an unfriendly act. Indeed, it may turn out to be a step forward in the direction of uniformity of law. Thank you very much.

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**M. le Président.** La parole est à la délégation française.

**M. de Bresson.** Je vous remercie, M. le Président. Je voudrais, tout d’abord, rendre hommage au groupe de travail sur les clauses finales qui me paraît avoir réalisé une œuvre tout à fait remarquable dans un temps limité. Je dois dire que la délégation française, pour sa part, adhère tout-à-fait au projet qui nous est soumis aujourd’hui.

Je voudrais me permettre simplement deux brèves remarques.

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**The Chairman.** The French delegation has the floor.

**Mr. de Bresson.** Thank you, Mr. Chairman. First, I would like to pay homage to the working group on the final clauses, which has done a remarkable job in such a short time. I must say that the French delegation, for its part, fully adheres to the draft that has been submitted to us today.

I would like to make two brief observations.

The first one, I think, from a drafting
La première est, je crois, d’ordre purement rédactionnel, et porte sur le texte français de l’article 7 du projet. Cet article 7 se réfère à l’article 15 de la Convention originelle. Je pense que pour éviter toute ambiguïté et pour que l’on ne puisse croire que l’article 15 visé est celui du Protocole, il conviendrait, dans le texte français, d’ajouter après les mots “en vertu de l’article 15”, les termes “de celle-ci” de façon qu’il n’y ait aucun doute sur le fait que l’on ne vise pas le Protocole qui contient lui aussi des clauses de dénonciation, mais que l’on vise bien la Convention originelle.

Ma deuxième remarque est pour exprimer un regret. Je crois savoir qu’à un moment donné, dans les travaux du groupe de travail, figurait un projet d’article 7 qui a disparu dans le texte définitif et qui précisait que lorsqu’on parlait des États contractants, on parlait des États contractants au Protocole.

Ce texte a disparu. Je pense qu’il était utile et j’estime que le Président du groupe de travail devrait peut-être nous dire pourquoi, en définitive, ce texte qui précisait un point sur lequel peut subsister une certaine ambiguïté, a disparu. Je vous remercie, M. le Président.

M. le Président. La parole est à M. Scheffer.

M. Scheffer (Pays-Bas). M. le Président, en ce qui concerne la première observation du distingué délégué de la France, il me semble que c’est une amélioration du texte. Je suis très reconnaissant qu’il ait attiré notre attention sur ce point qui d’ailleurs figure dans le texte anglais, où il est dit : “Article 15 thereof....”. Je présente les excuses de la commission pour avoir oublié cette correction.

En ce qui concerne l’autre observation, il s’agit d’une proposition du délégué du Royaume-Uni disant que, sauf lorsque le contexte indique clairement le contraire, toute référence dans le présent Protocole à la Convention et à l’État contractant sera respectivement considérée comme référence à la Convention tellement comme à son amendement.

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As to the second observation, it was a proposal of the British delegate that stated that, except when the context clearly indicates the contrary, all references in the present Protocol to the Convention and to the contracting States will be respectively considered as references to the Convention as amended by the present Protocol.
le qu’amendée par le présent Protocole et à l’État Partie au présent Protocole.

Nous avons longuement discuté cette disposition; hier soir, nous étions d’accord de l’insérer mais - comme M. le Président de notre Conférence l’a souvent fait remarquer - la nuit porte conseil, et ce matin nous étions d’un autre avis.

Nous avons pensé que même cette disposition ne pourrait prêter qu’à confusion parce qu’on avait dit “lorsque le contexte indique clairement le contraire”; si tout le monde est d’accord que le contexte indique clairement le contraire, il n’y a pas de difficultés, mais la difficulté surgit s’il y a des Etats qui pensent que le contexte indique clairement le contraire et d’autres pas, car alors nous restons dans l’ambiguïté et le texte n’apporte aucune aide pour l’interprétation. C’est la raison pour laquelle nous avons estimé qu’il vaudrait mieux supprimer cet article.

M. le Président. La parole est à M. de Bresson.

M. de Bresson (France). Je remercie Monsieur le Professeur Scheffer des indications complémentaires qu’il a bien voulu nous donner.

Je reconnais volontiers que dès l’instant où le texte qui était en discussion commençait par les mots “Sauf lorsque le contexte indique clairement le contraire”, le projet d’article n’aurait pas réglé le problème. Par conséquent je n’insisterai pas pour demander le rétablissement de cet article.

Tout au plus me permettrais-je de faire observer que la difficulté subsiste et qu’il faut que nous en soyons conscients lorsqu’on parle dans le Protocole d’États contractants ou de parties contractantes, on ne saura pas toujours si l’on vise les parties contractantes à la Convention initiale ou les parties contractantes au Protocole.

Je pense que cette difficulté ne peut être évitée si nous ne voulons pas reprendre tout le texte de la Convention et le texte du Protocole, pour s’assurer des cas dans lesquels cette disposition s’ap-

Protocol and to the States that are parties to the present Protocol.

We discussed this provision at length. Last evening, we agreed to include it but - as the Chairman of our Conference has often indicated - the night is good counsel, and this morning we feel differently about it.

We thought this provision could only lead to confusion because we had said “when the context clearly indicates the contrary”. If everybody agrees that the context clearly indicates the contrary, there is no difficulty. But the difficulty arises if there are States that think that the context clearly indicates the contrary and others think not. Then we remain in confusion and the text does not make the interpretation any easier. This is the reason for which we felt that it would be better to eliminate this article.

The Chairman. Mr. de Bresson has the floor.

Mr. de Bresson (France). Thank you, Professor Scheffer, for the additional explanation that he has given us.

I readily agree that as soon as the text begins with the words “Except when the text clearly indicates the contrary”, the proposed article would not have resolved the problem. Consequently, I will not insist on the re-establishment of this article.

The most I would say is that the difficulty is still there and we should be aware of it when we refer to contracting States or contracting parties in the Protocol. It is not always easy to know whether we are referring to the contracting parties to the initial Convention or the contracting parties to the Protocol.

I do not think we can avoid this difficulty unless we incorporate the whole text of the Convention and the text of the Protocol, to cover all the cases to which this provision will apply. This way
plique; cette façon de procéder est sans doute impossible dans le court laps de temps dont nous disposons.
Par conséquent je pense que nous laisserons aux exégèses le soin de résoudre ce problème dans la suite des temps, lorsque ce Protocole se trouvera en application.
Je vous remercie, Monsieur le Président.

M. le Président. Si personne ne demande encore la parole dans la discussion générale, je porte à la connaissance de l'Assemblée qu'un amendement a été proposé au texte présenté par la commission des clauses finales.
Il s'agit d'un amendement présenté par la délégation de la République Fédérale d'Allemagne (Document n° 22). Il se rapporte à l'insertion dans le texte proposé par la commission d'un article 15bis après l'article 15. Le texte de cet amendement a été distribué aux différentes délégations.
La parole est à la délégation de la République Fédérale d'Allemagne.

Dr. Herber (Fed. Rep. of Germany). As far as the subject is concerned I can be very brief. The German delegation is very well aware that there are different points of view regarding the necessity for the proposed clause which permits contracting States to introduce the rules we have decided on in the Protocol by incorporating them into their national law. Apart from the arguments in favour of the clause, including the fact that such a clause has recently been included in other conventions, we would like to point out that the original Hague Rules contained such a clause. We all know that great use has been made of the opportunities afforded by it. Even if one is inclined to regret this, one must admit, to my mind, [139] that there should at least be uniformity in this respect in all the aspects covered by the Convention and the Protocol.
Thus, for this reason also we propose the inclusion of this clause, not, as in other conventions, in the form of a reservation, but, as in the original Hague Rules, as an objective rule. Such a clause would facilitate the ratification of our Protocol, at least as far as Germany is concerned, and also I think for other countries, and therefore I recommend its adoption.

Mr. Scheffer (Netherlands). Mr. Chairman, the amendment proposed by the delegation of the Federal Republic of Germany has been discussed by the Commission on Final Clauses this morning, and the Commission took the view that it should not adopt this proposal and should not insert it in the Final Clauses.
There were two arguments, the first argument is that as it has been made very clear in the text of the Protocol that the Protocol and the Convention of 1924 should be read and interpreted as one single instrument, it is not necessary to repeat the provision which figures in the Convention of 1924. What is inserted in the Convention of 1924 and is not amended by the Protocol still remains in force. For that reason it was, in the view of the Committee on Final Clauses, completely superfluous to repeat it.
The second argument is that last year, in the first phase of the Twelfth Session of the Diplomatic Conference, it was deliberately decided that such a clause should not figure in the new instruments which were made, because, and I quote the report which was made on this question and it said: “The legal significance of such a declaration which figures only in some Conventions of Brussels is not clear and may cause confusion and doubt as to the obligatory character of the provisions of the Conventions from the point of view of international law”.

I think this is not the moment to go into all these complications of interpretation and of the consequences which may derive from the obligatory character of the provisions of the Brussels Convention. I would only remind the assembly that it is not wise to come back on a decision which was deliberately taken a year ago at this session of May, 1967.

M. de Bresson (France). Monsieur le Président, je me permets de demander à nos amis de la délégation allemande s’ils sont convaincus que leur amendement est indispensable.

Mr. de Bresson (France). Mr. Chairman, I would like to ask our friends from the German delegation if they are convinced that their amendment is indispensable.

Nous savons tous que, suivant les Etats, les conventions internationales sont incorporées dans le droit interne de manière différente. Pour certains d’entre nous il suffit qu’une convention internationale soit régulièrement ratifiée pour être du fait même incorporée au droit interne, pour d’autres Etats, la convention doit se trouver reproduite sous forme de dispositions de droit interne. Mais j’ai le sentiment que tout ceci est précisément une affaire de droit interne. Nous n’avons pas l’habitude de trancher ce genre de problème dans la Convention internationale elle-même.

Je ne suis donc pas convaincu pour ma part que l’amendement qui nous est soumis soit indispensable. J’ai plutôt tendance à penser que si nous ne disons rien sur ce sujet dans la Convention, chaque Etat procédera pour la mise en application de la Convention suivant les exigences de son droit interne à cet égard. Je demande donc une fois de plus s’il est réellement indispensable que nous délibérons sur cet amendement et que nous tranchions ce problème dans le cadre de la présente Conférence.

C’est donc plutôt un point d’interrogation que je pose à la Conférence avec votre permission, Monsieur le Président.

We all know that, depending on the States, international conventions are incorporated into internal law in different ways. For some of us, an international convention need only be properly ratified to be, by this very fact, incorporated into internal law. For other States, the convention will be reproduced in the form of provisions of internal law. But I have the feeling that all this is a matter of internal law. We are not in the habit of deciding upon this kind of problem in the international Convention itself.

For my part, I am not very convinced that the amendment that has been submitted is indispensable. I rather have the tendency to think that if we do not say anything on this subject in the Convention, each State will proceed to apply the Convention according to the requirements of internal law. Once again ask if it is really indispensable that we deliberate on this amendment and that we decide on this problem in the framework of this present Convention.

It is then rather a question that I ask the Conference, with your permission, Mr. Chairman.
The Right Hon. Sir Kenneth Diplock (United Kingdom). Mr. Chairman, our object is to make a convention which as many States as possible will ratify. If the provision recommended by the German delegation will make it easier for some States to ratify, then I am in favour of putting it in.

I do not, for my part, think that it is indispensable, but I do not think putting it in can do any harm.

The one thing seems to me to be of primary importance is that we should make it as easy as possible for all States in the world to ratify this new Protocol. I shall accordingly vote in favour of the German proposal, although it will have no effect whatever on the United Kingdom.

M. le Président. Personne ne demandant la parole, je demande à la délégation de la République Fédérale d’Allemagne si elle maintient son amendement.

M. Herber (République Fédérale d’Allemagne). Oui, Monsieur le Président.

M. le Président. Dans ces conditions je vais le mettre aux voix.

Il est procédé au vote sur l’amendement présenté par la délégation de la République Fédérale d’Allemagne.

The Chairman. Because nobody is asking for the floor, I ask the German delegation if they maintain their amendment.

Mr. Herber (Federal Republic of Germany). Yes, Mr. Chairman.

The Chairman. Under these conditions, I will put the amendment to the vote.

We proceed to the vote on the amendment submitted by the Federal Republic of Germany.
44 délégations ont pris part au vote.
13 ont répondu “oui”.
6 ont répondu “non”.
25 se sont abstenues.
En conséquence l’amendement est adopté.

M. le Président. L’amendement étant adopté, son texte sera inséré après l’article 15 proposé par la commission des clauses finales.

Aucun autre amendement n’a été proposé. Nous allons donc voter maintenant sur le texte tel qu’il est issu des délibérations de la commission des clauses finales.

Je ne crois pas qu’il soit utile de voter article par article et que je peux vous proposer un vote sur l’ensemble du texte.

La parole est à la délégation du Congo.

M. B. Kalonji (République Démocratique du Congo). Monsieur le Président, la délégation congolaise estime qu’il serait souhaitable d’émettre un vote article par article, afin de permettre à chaque délégation de se prononcer d’une façon claire et nette sur chaque article.

D’accord avec la délégation polonaise, la délégation congolaise a de nettes réserves à formuler à l’endroit de l’article 15 et votera contre cet article. Mais elle est disposée à donner son assentiment sur l’ensemble du Protocole. La délégation congolaise estime donc qu’il serait préférable de voter article par article afin de faire apparaître l’avis de chaque délégation.

J’ai demandé la parole uniquement à propos de cet article 15 qui va contre les principes que nous avons toujours affirmés. Il est inutile que la Conférence Diplomatique de Droit Maritime puisse faire perpétuer dans ses Conventions une notion périmée et accréditer ainsi une réalité qui appartient au passé en apportant de l’eau au moulin des nations qui sont mises au banc de la société internationale.

44 delegations took part in the vote.
13 voted “yes”.
6 voted “no”.
25 abstained.
As a result, the amendment was adopted.

The Chairman. The amendment having been adopted, the text will be inserted after article 15 submitted by the Committee on Final Clauses.

No other amendment has been presented. We will then vote on the text as it stood after the deliberations of the Committee on final clauses.

I do not think it is useful to vote one article at a time. I propose one vote on the whole text.

The Congolese delegation has the floor.

Mr. B. Kalonji (Democratic Republic of Congo). Mr. Chairman, the Congolese delegation feels that it would be desirable to hold a vote article by article, in order to enable each delegation to decide in a clear fashion on each article.

In agreement with the Polish delegation, the Congolese delegation has clear reservations with respect to article 15 and will vote against this article. But it is ready to give its assent to the whole Protocol. The Congolese delegation feels that it would be preferable to vote on one article at a time to show each delegation’s opinion.

I have asked for the floor only with regard to article 15, which goes against the principles that we have always affirmed. It is useless for the Diplomatic Conference on Maritime Law to perpetuate in its Convention an archaic notion and to give substance to a reality that belongs to the past by supporting those nations that have been elevated in international society.

I ask than that the vote be on one article at a time, so that we can vote against article 15.

The Chairman. In order to facilitate the progress of our work, I would ask the
Je demande donc le vote article par article, afin que nous puissions voter contre l’article 15.

**M. le Président.** Dans le but de faciliter le déroulement de nos travaux je voudrais demander à la délégation congolaise si sa proposition ne pourrait pas se limiter au vote séparé sur l’article 15, plutôt qu’à un vote par appel nominal sur chacun des 16 autres articles. Il est probable en effet que tous les autres articles ne donneront pas lieu à contestation.


**Mr. Bykov** (U.S.S.R.). Mr. Chairman, as the previous speaker as well as the Polish delegation stated here, there are some Articles in these final clauses which receive some comments on our [143] part and even objections. That is why I suggest to vote not only on Article 15 but also on Article 12 which limits the possibility of accession to this Protocol and which is contrary to modern international law.

**Mr. Matysik** (Pologne). La délégation polonaise appuie cette motion Monsieur le Président.

**M. le Président.** Je puis évidemment, si l’Assemblée le souhaite faire procéder à un vote de chaque article, mais, comme les deux délégations qui viennent de prendre la parole l’ont confirmé, la plupart des articles ne justifie pas cette procédure qui allongerait inutilement nos travaux.


**Mr. Kalonji** (Democratic Republic of Congo). If this is the opinion of the assembly, we will accept your proposal. It is true, in fact, that we only wish to hold a vote on article 15. If all the delegations feel that it would be preferable to vote separately on article 15 and to hold one vote on the other articles, then we agree.

**Mr. Matysik** (Poland). The Polish delegation supports this motion, Mr. Chairman.

**The Chairman.** I can, of course, if the assembly wishes, proceed to a vote on each article, but, as the two delegations that have just taken the floor have confirmed, most of these articles do not justify this procedure which will take a long time for no reason.

Two articles seem to raise objections: the Congolese delegation has reservations about article 15 and the Soviet delegation has reservations about articles 12 and 15. I do not see any objection to consulting the assembly on these two articles by a separate vote. I will then put to the vote the whole text submitted by the Committee. (Assent).
Je mets donc aux voix le premier article en contestation, si je puis m’exprimer ainsi.
Il est procédé au vote sur l’article 12.

Algeria: no; Mauritania: no; 
Argentina: abstains; Monaco: yes; 
Belgium: yes; Morocco: abstains; 
Bulgaria: absent; Nicaragua: yes; 
Cameroon: abstains; Nigeria: yes; 
Canada: yes; Norway: yes; 
Congo: no; Paraguay: absent; 
Denmark: yes; Peru: yes; 
Ecuador: yes; Philippines: abstains; 
Federal Republic of Germany: yes; Poland: no; 
Finland: abstains; Republic of China [Taiwan]: yes; 
France: yes; South Africa: yes; 
Ghana: yes; Spain: yes; 
Great Britain and Northern Ireland: yes; Sweden: abstains; 
India: abstains; Switzerland: yes; 
Iraq: absent; Thailand: yes; 
Ireland: yes; The Netherlands: yes; 
Italy: yes; Togo: abstains; 
Japan: yes; U.S.S.R.: no; 
Korea: yes; United Arab Republic [Egypt]: abstains; 
Lebanon: abstains; United States of America: yes; 
Liberia: yes; Uruguay: yes; 

44 délégations ont pris part au vote. 
27 ont répondu “oui”. 
6 ont répondu “non”. 
11 se sont abstenues. 
En conséquence l’article 12 est adopté. 

M. le Président. Nous passons maintenant au vote de l’article 15.

I put then the first contested article to the vote, if I may say so.
We proceed to the vote on article 12.

Mauritania: no; 
Monaco: yes; 
Morocco: abstains; 
Nicaragua: yes; 
Nigeria: yes; 
Norway: yes; 
Paraguay: absent; [144] 
Peru: yes; 
Phillippines: abstains; 
Poland: no; 
Republic of China [Taiwan]: yes; 
South Africa: yes; 
Spain: yes; 
Sweden: abstains; 
Switzerland: yes; 
Thailand: yes; 
The Netherlands: yes; 
Togo: abstains; 
U.S.S.R.: no; 
United Arab Republic [Egypt]: abstains; 
United States of America: yes; 
Uruguay: yes; 
Vatican City: abstains; 
Yugoslavia: no; 

44 delegations took part in the vote. 
27 voted “yes”. 
6 voted “no”. 
11 abstained. 
As a result, article 12 was adopted. 

The Chairman. We proceed now to the vote on article 15.
Algeria: no; 
Argentina: abstains; 
Belgium: yes; 
Bulgaria: absent; 
Cameroon: abstains; 
Canada: yes; 
Congo: no; 
Denmark: yes; 
Ecuador: abstains; 
Federal Republic of Germany: yes; 
Finland: abstains; 
France: yes; 
Ghana: yes; 
Great Britain and Northern Ireland: yes; 
Greece: yes; 
India: abstains; 
Iraq: absent; 
Ireland: abstains; 
Italy: abstains; 
Japan: yes; 
Korea: abstains; 
Lebanon: abstains; 
Liberia: yes; 

Mauritania: no; 
Monaco: yes; 
Morocco: abstains; 
Nicaragua: abstains; 
Nigeria: yes; 
Norway: yes; 
Paraguay: absent; 
Peru: abstains; 
Philippines: yes; 
Poland: no; 
Republic of China [Taiwan]: abstains; 
South Africa: yes; 
Spain: yes; 
Sweden: yes; 
Switzerland: yes; 
Thailand: abstains; 
The Netherlands: yes; 
Togo: abstains; 
U.S.S.R.: no; 
United Arab Republic [Egypt]: abstains; 
United States of America: yes; 
Uruguay: abstains; 
Vatican City: abstains; 
Yugoslavia: no; 

M. le Président. Nous allons maintenant passer au vote sur l’ensemble des clauses finales, telles qu’elles sont proposées par la commission.

44 délégations ont pris part au vote. 
20 ont répondu “oui”. 
6 ont répondu “non”. 
18 se sont abstenues. 
En conséquence l’article 15 est adopté.

The Chairman. We will vote now on the whole of the final clauses as they were submitted by the Committee.

44 delegations took part in the vote. 
20 voted “yes”. 
6 voted “no”. 
18 abstained.

As a result, article 15 was adopted.
Final clauses

Algeria: abstains; Argentina: yes; Belgium: yes; Bulgaria: absent; Cameroon: yes; Canada: yes; Congo: abstains; Denmark: yes; Ecuador: yes; Federal Republic of Germany: yes; Finland: yes; France: yes; Ghana: yes; Great Britain and Northern Ireland: yes; Greece: yes; India: abstains; Iraq: absent; Ireland: yes; Italy: yes; Japan: yes; Korea: yes; Lebanon: abstains; Liberia: yes; Mauritania: abstains; Monaco: yes; Morocco: yes; Nicaragua: yes; Nigeria: yes; Norway: yes; Paraguay: absent; Peru: yes; Philippines: yes; Poland: abstains; Republic of China [Taiwan]: yes; South Africa: abstains; Spain: yes; Sweden: yes; Switzerland: yes; Thailand: yes; The Netherlands: yes; Togo: abstains; U.S.S.R.: abstains; United Arab Republic [Egypt]: abstains; United States of America: yes; Uruguay: yes; Vatican City: yes; Yugoslavia: yes;

44 délégations ont pris part au vote. 34 ont répondu “oui”. 10 se sont abstenues. En conséquence les clauses finales sont adoptées.

44 delegations took part in the vote. 34 voted “yes”. 10 abstained. As a result, the final clauses were adopted.

M. le Président. Messieurs, il nous reste à émettre un vote sur l’ensemble de nos travaux, c’est-à-dire sur le Protocole portant modification de la Convention Internationale pour l’unification de certaines règles en matière de connaissance, signée à Bruxelles en 1924. Ce vote couvre:
1° les articles adoptés par la conférence au cours de la douzième Session (1ère phase);
2° le texte de l’article 2, § 1er, que la Conférence a adopté ce matin;
3° l’article 5 tel qu’il a été adopté par la Conférence hier après-midi;
4° les clauses finales qui viennent d’être adoptées.
La parole est à la délégation norvégienne.

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The Chairman. Gentlemen, we will now cast a vote on our work as a whole, that is, on the Protocol amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed in Brussels in 1924.

This vote will cover:
(1) the articles adopted by the Conference during the twelfth session (first phase);
(2) the text of article 2(1), which the Conference adopted this morning;
(3) article 5 as it was adopted by the Conference yesterday afternoon;
(4) the final clauses which have just been adopted.
The Norwegian delegation has the floor.
Mr. Rein (Norway). Mr. Chairman, I understand you now to propose that the assembly should vote on the whole Convention, but we have not yet received in print the text of Article 2. I think that the assembly should have the benefit of looking at that text before we vote because it is necessary to make certain amendments in order to fit together those parts of the old Article 4, paragraph 5, which remain unchanged from the original Hague Rules 1924, those provisions which were adopted here in May, and finally those which were adopted at this Session. It was not difficult to piece them together as far as reality goes, but certain formal amendments have to be done in order to make it readable. Therefore, the text of the present - as we propose it - Article 4, paragraph 5, is not identical with all the pieces from which it has been put together.

The Chairman. Would you propose postponing the vote?

Mr. Rein (Norway). I have got a copy of the final text but it has not been delivered to the assembly. The points are so minor that we could do it orally.

The Chairman. Gentlemen, two delegations are asking for the floor with regard to the proposal that has just been formulated, the Soviet delegation and the French delegation.

The Soviet delegation has the floor.

The Chairman. The French delegation has the floor.

Mr. de Bresson (France). Mr. Chairman, I would like to associate the French delegation with the wish that has been expressed by certain delegations. We are all aware of the text that we have to vote on, but it would be appropriate to have some time of reflection before we take a final decision.

Perhaps by reading the text in its entirety, it will seem more attractive than it appeared in its various parts!

The Chairman. What kind of time for reflection are we talking about?

Mr. de Bresson (France). As far as I am concerned, I am very modest. A quarter of an hour would be enough.

The Chairman. Gentlemen, I suggest we adjourn the session.
me concerne, je suis très modeste. Un quart d’heure me paraîtrait suffisant.

**M. le Président.** Messieurs, je vous propose de suspendre la séance.

(La séance est suspendue à 16 h. 30).

(La séance est reprise à 17 h. 20).

**M. le Président.** Nous allons procéder maintenant au vote sur l’ensemble du Protocole dans les termes que je vous ai indiqués tout à l’heure. Je répète que ce Protocole couvre les dispositions adoptées l’an dernier et les trois votes que vous avez émis hier et aujourd’hui: l’article 2, § 1er, l’article 5 et les Clauses finales.

Personne ne demandant la parole, il sera procédé maintenant au vote sur l’ensemble du Protocole.

Algeria: abstains; Argentina: yes; Belgium: yes; Bulgaria: absent; Cameroon: yes; Canada: yes; Congo: yes; Denmark: abstains; Ecuador: yes; Federal Republic of Germany: yes; Finland: yes; France: abstains; Ghana: yes; Great Britain and Northern Ireland: yes; Greece: yes; India: absent; Iraq: absent; Ireland: abstains; Italy: yes; Japan: abstains; Korea: yes; Lebanon: absent; Liberia: yes; Mauritania: abstains; Monaco: abstains; Morocco: abstains; Nicaragua: abstains; Nigeria: yes; Noray: yes; Paraguay: abstains; Peru: yes; Philippines: abstains; Poland: yes; Republic of China [Taiwan]: yes; South Africa: abstains; Spain: abstains; Sweden: yes; Switzerland: yes; Thailand: abstains; The Netherlands: yes; Togo: abstains; U.S.S.R.: abstains; United Arab Republic [Egypt]: abstains; United States of America: yes; Uruguay: abstains; Vatican City: yes; Yugoslavia: abstains;

42 délégations ont pris part au vote. 24 ont répondu “oui”. 18 se sont abstenues.

En conséquence, le texte est adopté. (Applaudissements).
M. le Président. Certaines délégations ont exprimé le désir de motiver le vote qu’elles ont émis.
La parole est à la délégation française.

M. de Bresson (France). Monsieur le Président, avant la suspension de séance, la délégation française avait exprimé le désir de relire une dernière fois et avec la plus grande attention le texte du Protocole afin de voir si, à la relecture il était encore plus séduisant qu’il n’était apparu au cours du débat article par article.
Après cet examen, la délégation française est arrivée à la conclusion que le Protocole que nous venons d’adopter globalement comportait beaucoup d’excellentes choses et que ce texte lui paraissait satisfaisant en ce qui concerne le champ d’application de la [149] Convention ainsi qu’en ce qui concerne le nouveau système mixte pour les limitations de responsabilité. Par conséquent, il n’y a qu’un point sur lequel la délégation française continue à s’interroger et qui est celui de la clause relative aux containers.
La délégation française a écouté avec la plus grande attention les explications données à ce sujet par Lord Diplock et elle estime qu’elle lui a été donné par le président du comité de rédaction, afin d’être tout à fait certaine que le texte correspond à l’interprétation qui lui a été soumise.
C’est pour se ménager ce temps de réflexion que nous avons cru préférable de s’abstenir. Je vous remercie, Monsieur le Président.

M. de Bresson (France). Mr. Chairman, before the session was adjourned, the French delegation expressed the wish to read once more, for the last time and with great attention, the text of the Protocol to see if, when reading it, more alternatives would appear than when we debated it article by article.
Following this examination, the French delegation has come to the conclusion that the Protocol that we have just adopted taken as a whole includes a number of excellent things and that this text appears satisfactory concerning the scope of application of the [149] Convention as well as concerning the new mixed system for the limitation of liability. Consequently, there is only one point that the French delegation continues to question and that is the container clause.
The French delegation listened with the greatest attention to the explanation furnished by Lord Diplock and we feel that we need to reflect some more on the complicated exegesis of this text that has been given to us by the chairman of the Drafting Committee, in order to make sure that the text corresponds to the interpretation that he has submitted to us.
It is in order to give ourselves some reflection time that we decided to abstain. Thank you, Mr. Chairman.

M. García Terán (République d’Argentine). Monsieur le Président, avant la suspension de séance, la délégation d’Argentine avait exprimé le désir de relire une dernière fois et avec la plus grande attention le texte du Protocole afin de voir si, à la relecture il était encore plus séduisant qu’il n’était apparu au cours du débat article par article.
Après cet examen, la délégation argentine a eu la possibilité de manifester sa position lors des débats qui ont eu lieu au mois de mai 1967. A l’époque, la délégation argentine avait pour but, comme toujours, de donner son approbation aux réformes visant à faciliter la compréhension du texte de la Conven-

The Chairman. Mr. Garcia Terán (Republic of Argentina). Mr. Chairman, ladies and gentlemen, the Argentine delegation had the chance to manifest its position during the debates that took place in May of 1967. At the time, the Argentine delegation was aiming, as always, to give its approval to reforms whose goal was to facilitate the comprehension of the text of the 1924 Convention. This Conven-
tion de 1924. Cette Convention fut ratifiée par notre pays et est fondée sur un équilibre raisonnable des différents intérêts en cause dans le domaine du transport maritime.

Le Gouvernement de mon pays a pu faire valoir son point de vue dans le document n° 12, qui vous a été soumis. La position adoptée par le Gouvernement argentin quant au système de responsabilité qu’il veut adopter, est expliquée dans ce document.

Au moment de se prononcer sur les accords définitifs auxquels on est parvenu, la délégation argentine donne son approbation compte tenu des explications et des éclaircissements qui ont été émis lors des débats. Ceci tout en suivant sa politique traditionnelle qui consiste à rechercher l’unification du droit maritime.

Elle voudrait néanmoins, laisser entendre que son vote positif a été émis en considérant que l’équilibre des intérêts de la Convention de 1924 serait maintenu dans le présent Protocole.

Merci Monsieur le Président.

[150]

M. le Président. Etant donné que personne ne demande plus la parole, nous allons pouvoir terminer nos travaux d’aujourd’hui. Je vous proposerais de nous réunir demain matin à 11 heures pour la signature de l’Acte Final de nos travaux et pour la signature du Protocole qui en est l’aboutissement.

[150]

The Chairman. Considering that nobody is asking for the floor, we will be able to end our work today. I suggest that we meet tomorrow morning at 11:00 a.m. for the signing of the Final Act of our work and for the signing of the Protocol, which constitutes the outcome of it.
INTERNATIONAL LAW ASSOCIATION
MARITIME LAW COMMITTEE

DRAFT OF A SUGGESTED INTERNATIONAL CODE
DEFINING THE RISKS TO BE ASSUMED BY SEA CARRIERS UNDER A CONTRACT OF AFFREIGHTMENT.*

Article I. - Definitions.

In this Code-
(a) “Carrier” includes the owner and the charterer, who enters into a contract of
   carriage with a shipper.
(b) “Contract of carriage” means a bill of lading or any similar document of title
   relating to the carriage of goods by sea.
(c) “Goods” includes goods, wares, merchandise, and articles of every kind what-
    soever except live animals and cargo carried on deck.
(d) “Ship” includes any vessel used for the carriage of goods by sea.
(e) “Carriage of goods” includes the period from the time when the goods are re-
    ceived on the ship’s tackle to the time of unloading from the ship’s tackle.

Article II. - Risks.

Subject to the provisions of Article V, under every contract of carriage of goods by
sea, the carrier, in regard to the handling, loading, stowage, carriage, custody, care and
unloading of such goods, shall be subject to the responsibilities and liabilities, and ent-
titled to the rights and immunities, hereinafter set forth.

Article III. - Responsibilities and Liabilities.

1. The carrier shall be bound before and at the beginning of the voyage to exer-
cise due diligence to-
   (a) Make the ship seaworthy.
   (b) Properly man, equip and supply the ship.
   (c) Make the holds, refrigerating and cool chambers, and all other parts of the
       ship in which goods are carried, fit and safe for their reception, carriage and preserva-
       tion.
2. The carrier shall be bound to provide for the proper and careful handling,
   loading, stowage, carriage, custody, care, and unloading of the goods carried.
3. The carrier, master or agent of the carrier shall on the demand of the shipper
   issue a bill of lading showing, amongst other things-
   (a) The marks necessary for identification of the goods as the same are furnished
       in writing by the shipper, provided such marks are stamped or otherwise shown clearly
       upon the goods, or on the cases or coverings in which such goods are contained, in
       such a manner as will remain legible until the end of the voyage.
   (b) The number of packages or pieces.

* This text is published in English only in ILA 1921 Hague Conference, p. xlvi-l.
The quantity, weight, or measurement, as the case may be, as furnished in writing by the shipper.

The apparent order and condition of the goods.

Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described.

The shipper shall be deemed to have guaranteed to the carrier the accuracy of the description, marks, number, quantity, weight and measurement as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies.

The bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if any “received for shipment” bill of lading or other document of title shall have been previously issued in respect of the goods, the shipper shall at the request of the carrier, master or agent be bound to surrender the same to the carrier, master or agent before the issue to him of the “shipped” bill of lading.

A “received for shipment” bill of lading which has subsequently been noted by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, shall for the purpose of this Code be deemed to constitute a “shipped” bill of lading.

Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article shall be illegal, null and void, and of no effect.

Article IV. - Rights and Immunities.

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence to make the ship in all respects seaworthy, and to secure that the ship is properly manned, equipped and supplied.

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-

(a) Faults or errors in the navigation or in the management of the ship.
(b) Fire.
(c) Dangers of the sea or other navigable waters.
(d) Acts of God.
(e) Acts of public enemies.
(f) Arrest or restraint of princes, rulers or people, or seizure under legal process.
(g) Act or omission of the shipper or owner of the goods, his agent or representative.
(h) Strikes or lockouts.
(i) Saving or attempting to save life or property at sea.
(j) Inherent defect or vice of the goods.
(k) Insufficiency of packing.
(l) Any other cause whatsoever arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier.
3. Any deviation in saving or attempting to save life or property at sea, or any deviation authorised by the contract of carriage shall not be deemed to be a breach of or departure from the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

4. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods for an amount greater than £ per package, or £ per cubic foot, or £ per cwt. (as declared by the shipper and inserted in the contract of carriage, whichever shall be the least) of the goods carried unless the nature and value of such goods have been declared by the shipper and inserted in the bill of lading. The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named.

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error.

6. Goods of an inflammable or explosive nature, or of a dangerous nature, unless the carrier, master or agent of the carrier has consented to their shipment, may at any time before delivery be destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damages directly or indirectly arising out of or resulting from such shipment.

7. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under this Article, provided such surrender shall be embodied in the bill of lading issued to the shipper.

Article V. - Special Conditions.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the handling, loading, stowing, custody, care and unloading of the goods carried by sea, provided that in this case the terms agreed are embodied in a ship’s receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Article VI. - Limitations on the application of the Code.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier for the loss or damage to or in connection with the custody and care of goods prior to the loading on and subsequent to the unloading from the ship on which the goods are carried by sea.

Article VII. - Limitation of Liability.

The provision of this Code shall not affect the rights and obligations of the carrier under the Convention relating to the limitation of the liability of owners of sea-going vessels.
Article VIII. - Vessels in Public Service.

This Code shall not apply to Government vessels appropriated exclusively to the naval or military service.

Article IX. - Procedure.

Nothing in this Code shall be deemed to affect in any way the competence of tribunals, mode of procedure, or methods of execution authorised by national laws.

ASSOCIATION DE DROIT INTERNATIONAL
COMITE DE DROIT MARITIME

Les Règles de La Haye, 1921*
Définissant les risques assumés par des transporteurs maritimes en vertu d’un connaissement.

INTERNATIONAL LAW ASSOCIATION
MARITIME LAW COMMITTEE

The Hague Rules, 1921*
Defining the risks to be assumed by sea carriers under a bill of lading.

Article I. - Définitions.

Dans ces Règles les mots-
(a) “Transporteur” comprend le propriétaire ou l’affréteur, partie à un contrat de transport avec un chargeur.
(b) “Contrat de transport” signifie un connaissement ou tout document similaire faisant titre, tout et autant que ce document se rapporte au transport de marchandises par mer.
(c) “Marchandises” comprend biens, objets, marchandises et articles de nature quelconque, à l’exception des animaux vivants et de la cargaison transportée sur le pont.
(d) “Navire” comprend tout bâtiment employé pour le transport des marchandises par mer.

IN THESE RULES
(a) “Carrier” includes the owner or the charterer, who enters into a contract of carriage with a shipper.
(b) “Contract of carriage” means a bill of lading or any similar document of title relating to the carriage of goods by sea.
(c) “Goods” includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo carried on deck.
(d) “Ship” includes any vessel used for the carriage of goods by sea.

* This text is published in ILA 1921 Hague Conference, p. 254-266. The changes as respects the draft submitted to the Conference are printed in capital letters. The only text approved by the ILA Hague Conference is the English text. Even though it was resolved that the Rules be published in English and French (see page 31), the French text is a translation. When the Hague Rules 1921 were published in the CMI Bulletin No. 65 the following footnote was appended to the title (at p. 321):

(e) “Transport de marchandises” couvre le temps écoulé depuis la réception des marchandises au palan du navire jusqu’à leur déchargement du palan du navire.

Article II. - Risques.
Sous réserve des stipulations de l’article V, le transporteur pour tous contrats de transport de marchandises par mer, sera, quant à la manutention, chargement, arrimage, transport, garde, soin et déchargement desdites marchandises, soumis aux responsabilités et obligations, comme il bénéficiera des droits et exonérations ci-dessous énoncés.

Article III. - Responsabilités et obligations.
1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour
(a) mettre le navire en état de navigabilité;
(b) convenablement armer, équiper et approvisionner le navire;
(c) approprier et mettre en état sain pour la réception, le transport et la préservation des marchandises les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées.
2. Le transporteur sera tenu de pourvoir à la manutention, chargement, arrimage, transport, garde, soin et déchargement appropriés et soigneux des marchandises transportées.
3. Après avoir reçu et pris en charge les marchandises, le transporteur, ou le capitaine ou agent du transporteur, devra, à la demande du chargeur émettre un connaissement portant entre autres choses-
(a) les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement ne commence, pourvu que ces marques soient imprimées ou apparaissent clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquelles les

(e) “Carriage of goods” covers the period from the time when the goods are received on the ship’s tackle to the time when they are unloaded from the ship’s tackle.

Article II. - Risks.
Subject to the provisions of Article V, under every contract of carriage of goods by sea the carrier, in regard to the handling, loading, stowage, carriage, custody, care and unloading of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, hereinafter set forth.

Article III. - Responsibilities and Liabilities.
1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to
(a) make the ship seaworthy;
(b) properly man, equip and supply the ship;
(c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. The carrier shall be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care, and unloading of the goods carried.
3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue a bill of lading showing amongst other things
(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as will remain legible until the end of the voyage;
marchandises sont contenues, de telle sorte qu’elles restent lisibles jusqu’à la fin du voyage;

(b) le nombre de colis ou de pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur avant que le chargement ne commence;

(c) l’état et le conditionnement apparents des marchandises.

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu d’émettre un connaissement portant la description, les marques, le nombre, la quantité ou le poids, dont il a une raison sérieuse de soupçonner qu’ils ne représentent pas exactement les marchandises actuellement reçues par lui.

4. Un tel connaissement émis pour des marchandises autres que des marchandises transportées en grenier et des cargaisons complètes de bois, constituera, sauf preuve contraire, la présomption que le transporteur a reçu les marchandises telles qu’elles y sont décrites conformément au paragraphes 3 (a), (b) et (c).

Pour toute réclamation contre le transporteur au cas de marchandises transportées en grenier et des cargaisons complètes de bois, le plaignant sera tenu, nonobstant le connaissement, de prouver le nombre, la quantité ou le poids actuellement délivrés au transporteur.

5. Le chargeur sera considéré avoir garanti au transporteur l’exactitude de la description, des marques, du nombre, de la quantité et du poids tels qu’ils sont fournis par lui, et le chargeur indemnisera le transporteur de toutes pertes, dommages et dépenses provenant ou résultant d’inexactitudes sur ces points.

6. A moins qu’une notification écrite d’une réclamation pour perte ou dommage, et la nature générale de cette réclamation ne soit signifiée par écrit au transporteur ou à son agent au port de décharge avant l’enlèvement des marchandises, cet enlèvement constituera, sauf preuve contraire, la présomption de la délivrance par le transporteur des marchandises telles qu’elles sont décrites au connaissement et en tous cas le transpor-
teur et le navire seront déchargés de tou-
tte responsabilité pour perte ou dommage à
moins qu’une action ne soit initiée
dans les 12 mois de la délivrance des mar-
chandises.

7. Lorsque les marchandises au-
ront été chargées, le connaissement que
délivrera le transporteur, capitaine ou
agent du transporteur au chargeur, sera,
si le chargeur le demande, un connaisse-
ment libellé “Embarqué”, pourvu qu’au-
cun connaissement libellé “Reçu pour
Embarquement” ou autre document fa-
sant titre, n’ait été précédemment délivré
pour ces marchandises.

En échange et contre remise d’un
connaissement libellé “Reçu pour Em-
barquement” le chargeur sera en droit,
après l’embarquement des marchandises,
d’obtenir un connaissement libellé “Em-
barqué”.

Un connaissement libellé “Reçu pour
Embarquement” dans lequel ultérieure-
ment sont insérés par le transporteur, le
capitaine ou l’agent du transporteur le
nom ou les noms du navire ou des navires
sur lesquels les marchandises ont été em-
barquées et la date ou les dates de l’em-
barquement, sera considéré aux fins de
ces Règles, comme constituant un
connaissement libellé “Embarqué”.

8. Toute clause, convention ou ac-
cord dans un contrat de transport exoné-
rant le transporteur ou le navire de res-
ponsabilité pour perte ou dommage
concernant des marchandises, provenant
de négligence, faute ou manquement aux
devoirs et obligations édictées dans cet ar-
ticle, ou atténuant cette responsabilité au-
trément que ne le prescrivent ces Règles,
sera nulle, non avenue et sans effet.

Article IV. - Droits et exonérations.

1. Ni le transporteur ni le navire ne
seront responsables des pertes ou dom-
mage provenant ou résultant de l’état
d’innavigabilité à moins qu’il ne soit im-
putable à un manque de diligence raison-
nable de la part du transporteur à mettre
le navire en état de navigabilité ou à assu-
rer au navire un armement, équipement
ou approvisionnement convenables.

brought within 12 months after the de-
ivery of the goods.

7. After the goods are loaded
the bill of lading to be issued by the car-
rrier, master or agent of the carrier to the
shipper shall, if the shipper so demands,
be a “shipped” bill of lading, provided
that no “received for shipment” bill of
lading or other document of title shall
have been previously issued in respect of
the goods.

In exchange for and upon surren-
der of a “received for shipment” bill
of lading the shipper shall be en-
titled when the goods have been
loaded to receive a “shipped” bill of
lading.

A “received for shipment” bill of lad-
ing which has subsequently been noted
by the carrier, master or agent with the
name or names of the ship or ships upon
which the goods have been shipped and
the date or dates of shipment shall for
the purpose of these Rules be deemed to
constitute a “shipped” bill of lading.

8. Any clause, covenant or agree-
ment in a contract of carriage relieving
the carrier or the ship from liability for
loss or damage to or in connection with
goods arising from negligence, fault or
failure in the duties and obligations pro-
vided in this Article or lessening such
liability otherwise than as provided
in this Rules shall be null and void and
of no effect.

Article IV. - Rights and Immunities.

1. Neither the carrier nor the ship
shall be liable for loss or damage arising
or resulting from unseaworthiness unless
caused by want of due diligence on the
part of the carrier to make the ship
seaworthy, and to secure that the ship is
properly manned, equipped and sup-
plied.
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
(a) act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
(b) fire;
(c) perils, dangers and accidents of the sea or other navigable waters;
(d) act of God;
(e) act of war;
(f) act of public enemies;
(g) arrest or restraint of princes, rulers or people, or seizure under legal process;
(h) quarantine restrictions;
(i) act or omission of the shipper or owner of the goods, his agent or representative;
(j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
(k) riots and civil commotions;
(l) saving or attempting to save life or property at sea;
(m) inherent defect, quality or vice of the goods;
(n) insufficiency of packing;
(o) insufficiency or inadequacy of marks;
(p) latent defects not discoverable by due diligence;
(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier.

3. Any deviation in saving or attempting to save life or property at sea or any deviation authorised by the contract of carriage shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

4. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods in an amount beyond £100 per package or unit, or the equivalent...
l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et n’aient été insérées au connaissement.

Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur une somme maximum différente de celle inscrite dans ce paragraphe peut être déterminée, pourvu que ce maximum conventionnel ne soit pas inférieur au chiffre ci-dessous fixé.

La déclaration du chargeur quant à la nature et la valeur des marchandises déclarées constituera, sauf preuve contraire, une présomption, mais ne liera pas le transporteur qui pourra la contester.

5. Si le transporteur ni le navire ne seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant, si le chargeur a fait une déclaration sciemment erronée de leur nature ou leur valeur.

6. Les marchandises de nature inflammable ou explosive, ou de nature dangereuse, à moins que cette nature et ces caractères n’aient été déclarés par écrit par le chargeur au transporteur avant l’embarquement, et que le transporteur, capitaine ou agent du transporteur n’ait consenti à leur embarquement, pourront à tout moment, avant leur délivrance être détruites ou rendues inoffensives par le transporteur sans indemnité pour le chargeur, et le chargeur de ces marchandises sera responsable de tout dommage et dépenses provenant ou résultant directement ou indirectement de leur embarquement. Si de telles marchandises embarquées avec le consentement du transporteur devenaient un danger pour le navire ou la cargaison, elles pourraient de même façon être détruites ou rendues inoffensives par le transporteur, sans indemnité pour le chargeur.

7. Un transporteur sera libre d’abandonner tout ou partie de tous ou de l’un quelconque de ses droits et exonérations prévus par cet article, pourvu que cet abandon soit inséré dans le connaissement délivré au chargeur.

OF THAT SUM IN OTHER CURRENCY, unless the nature and value of such goods have been declared by the shipper BEFORE THE GOODS ARE SHIPPED and have been inserted in the bill of lading.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named.

The declaration by the shipper as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been WILFULLY misstated by the shipper.

6. Goods of an inflammable or explosive nature or of a dangerous nature, unless THE NATURE AND CHARACTER THEREOF HAVE BEEN DECLARED IN WRITING BY THE SHIPPER TO THE CARRIER BEFORE SHIPMENT AND the carrier, master or agent of the carrier has consented to their shipment, may at any time before delivery be destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damages AND EXPENSES directly or indirectly arising out of or resulting from such shipment. IF ANY SUCH GOODS SHIPPED WITH SUCH CONSENT SHALL BECOME A DANGER TO THE SHIP OR CARGO THEY MAY IN LIKE MANNER BE DESTROYED OR RENDERED INNOCUOUS BY THE CARRIER WITHOUT COMPENSATION TO THE SHIPPER.

7. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under this Article, provided such surrender shall be embodied in the bill of lading issued to the shipper.
**Article V. - Conditions spéciales.**
Nonobstant les dispositions des articles précédents, un transporteur, capitaine ou agent du transporteur et un chargeur seront libres, pour des marchandises déterminées quelles qu'elles soient, de passer un contrat quelconque avec des conditions quelconques concernant la responsabilité et les obligations du transporteur pour ces marchandises, ainsi que les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou son obligation quant à l'état de navigabilité du navire, ou le soin ou diligence de ses préposés ou agents quant aux manutention, chargement, arrimage, garde, soin et déchargement des marchandises transportées par mer, pourvu qu'en ce cas aucun connaissement ne soit émis et que les conditions de l'accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.
Toute convention ainsi conclue aura plein effet légal.

**Article VI. - Limites d'application de ces Règles.**
Aucune disposition de ces Règles ne défend à un transporteur ou à un chargeur d'insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou le dommage survenant aux marchandises, ou concernant leur garde, soin et manutention antérieurement à l'embarquement et postérieurement au débarquement du navire sur lequel les marchandises sont transportées par mer.

**Article VII. - Limitation de responsabilité.**
Les dispositions de ces Règles ne modifient ni les droits ni les obligations du transporteur tels qu'ils résultent de la convention sur la limitation de la responsabilité des propriétaires de navires de mer.

**Article V. - Special Conditions.**
Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the handling, loading, stowing, custody, care and unloading of the goods carried by sea, provided that in this case the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.
Any agreement so entered into shall have full legal effect.

**Article VI. - Limitations on the application of the Rules.**
Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care AND HANDLING of goods prior to the loading on and subsequent to the unloading from the ship on which the goods are carried by sea.

**Article VII. - Limitation of Liability.**
The provision of these Rules shall not affect the rights and obligations of the carrier under the convention relating to the limitation of the liability of owners of sea-going vessels.
Projet de Convention pour l’Unification de Certaines Règles en Matière de Transport de Marchandises par Mer.

Article I. - Définitions
Dans la présente Convention les mots:
(a) “Transporteur” comprend le propriétaire ou l’affréteur, partie à un contrat de transport avec un chargeur.
(b) “Contrat de transport” signifie un connaissement ou tout document similaire faisant titre, tant et autant que ce document se rapporte au transport de marchandises par mer.
(c) “Marchandises” comprend les biens, objets, marchandises et articles de nature quelconque, à l’exception des animaux vivants et de la cargaison qui, par le contrat de transport est déclarée comme mise sur le pont et, en fait, est ainsi transportée.
(d) “Navire” comprend tout bâti ment employé pour le transport des marchandises par mer.
(e) “Transport de marchandises” couvre le temps écoulé depuis le chargement des marchandises à bord du navire jusqu’à leur déchargement du navire.

Article II. - Risques.
Sous réserve des stipulations de l’article VI, le transporteur pour tous contrats de transport de marchandises par mer, sera, quant à la réception, la manutention, chargement, arrimage, transport, garde, soin, déchargement et délivraison des dites marchandises, soumis aux responsabilités et obligations, comme il bénéficiera des droits et exonéra tions ci-dessous énoncés.

Article III. - Responsabilités et obligations.
1. Le transporteur sera tenu avant

Text of the Hague Rules 1921, as amended by the representatives of the Liverpool Steam Ship Owners’ Association and of the British Federation of Traders’ Association.*

Rules for the Carriage of Goods by Sea1

Article I. - Definitions.
In these Rules
(a) “Carrier” includes the owner or the charterer, who enters into a contract of carriage with a shipper.
(b) “Contract of Carriage” means a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by sea.
(c) “Goods” includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo WHICH BY THE CONTRACT OF CARRIAGE IS STATED AS BEING carried on deck, AND IS SO CARRIED.
(d) “Ship” includes any vessel used for the carriage of goods by sea.
(e) “Carriage of goods” covers the period from the time when the goods are LOADED ON received on the ship’s tackle to the time when they are DELIVERED unloaded from the ship’s tackle.

Article II. - Risks.
Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in regard to the RECEIPT, handling, loading, stowage, carriage, custody, care, and unloading AND DELIVERY of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, hereinafter set forth.

Article III. - Responsibilities and Liabilities.
1. The carrier shall be bound be-

* This text is published in CMI Bulletin no. 65, p. 339. The changes are shown in capitals.
1 The French translation is published in CMI Bulletin n. 65 at p. 349.
et au début du voyage d’exercer une diligence raisonnable pour:

(a) mettre le navire en état de navigabilité.
(b) convenablement armer, équiper et approvisionner le navire.
(c) approprier et mettre en état sain les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées pour leur réception, transport et préservation.

2. Le transporteur, sous réserve des stipulations de l’article IV procédera de façon appropriée et soigneuse à la manipulation, au chargement, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées.

3. Après avoir reçu et pris en charge les marchandises, le transporteur, ou le capitaine ou agent du transporteur, devra, sur demande, délivrer au chargeur un connaissement portant entre autres choses:

(a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence, pourvu que ces marques soient imprimées ou apparaissent clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquelles les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisibles jusqu’à la fin du voyage.
(b) Le nombre de colis ou de pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur.
(c) L’état et le conditionnement apparent des marchandises.

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu d’émeter un connaissement portant une description, des marques, un nombre, une quantité ou un poids, dont il a raison sérieuse de soupçonner qu’ils ne représentent pas exactement les marchandises actuellement reçues par lui.

4. Un tel connaissement sera une preuve de prima facie de la réception par
le transporteur des marchandises telles qu’elles y sont décrites conformément au paragraphe 3 (a), (b) et (c).

5. Le chargeur sera considéré avoir garanti au transporteur au moment du chargement, l’exactitude de la description, des marques, du nombre, de la quantité et du poids tels qu’ils sont fournis par lui, et le chargeur indemnisera le transporteur de toutes pertes, dommages et dépenses provenant ou résultant d’inexactitudes sur ces points. Le droit du transporteur à pareille indemnité ne limitera d’aucune façon sa responsabilité et ses engagements sous l’empire du contrat de transport vis-à-vis de toute personne autre que le chargeur.

6. A moins qu’une notification de réclamation pour perte ou dommage, et la nature générale de cette réclamation ne soit signifiée par écrit au transporteur ou à son agent au port de décharge avant ou au moment de l’enlèvement des marchandises, et leur remise sous la garde de la personne ayant droit à la délivrance sous l’empire du contrat de transport, cet enlèvement constituera une preuve de *prima facie* de la délivrance par le transporteur des marchandises telles qu’elles sont décrites au connaissement et en tout cas le transporteur et le navire seront déchargés de toute responsabilité pour perte ou dommage à moins qu’une action ne soit intentée dans les 2 ans de la délivrance des marchandises ou de la date à laquelle les marchandises eussent dû être délivrées.

En cas de perte ou dommage certains ou présumés le transporteur et le réceptionnaire se donneront réciproquement toutes les facilités possibles pour l’inspection et le comptage de la marchandise.

7. Lorsque les marchandises auront été chargées, le connaissement que délivrera le transporteur, capitaine ou agent du transporteur au chargeur, sera, si le chargeur le demande, un connaissement libellé “Embarqué” pourvu que, si le chargeur a auparavant levé quelque

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Upon any claim against the carrier in the case of goods carried in bulk or whole cargoes of timber, the claimant shall be bound notwithstanding the bill of lading to prove the number, quantity or weight actually delivered to the carrier.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the description, marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless written notice of a claim for loss or damage and the general nature of such claim be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading, and in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within 2 years after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all possible facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that no “received for shipment” bill of lading or other document of title shall have been previously issued in respect of the goods. If the shipper shall have previously taken up any document of title to such goods he shall surren-
Article IV. - Droits et exonérations.

1. Ni le transporteur ni le navire ne seront responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables. Toutes les fois qu’une perte ou un dommage aura résulté de l’innavigabilité, le fardeau de la preuve en ce qui concerne l’exercice de la diligence raisonnable tombera sur le transporteur ou toute autre personne se prévalant de l’exonération prévue au présent article.

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant de:
   (a) Acte, négligence ou défaut du capitaine, marin, pilote, ou des préposées du transporteur dans la navigation

3. Der same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be

In exchange for and upon surrender of a “received for shipment” bill of lading the shipper shall be entitled when the goods have been loaded to receive a “shipped” bill of lading.

A “received for shipment” bill of lading which has subsequently been noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment and when so noted the same shall for the purpose of these Rules this rule be deemed to constitute a “shipped” bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules shall be null and void, and of no effect.

Article IV. - Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-
   (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
   (b) Fire.
   (c) Perils, dangers and accidents of
ou dans l’administration (management) du navire.

(b) Feu.

(c) Périls, dangers ou accidents de la mer ou d’autres eaux navigables.

(d) Acte de Dieu.

(e) Fait de guerre.

(f) Fait d’ennemis publics.

(g) Arrêts ou contraintes de princes, autorités ou peuple ou saisie judiciaire.

(h) Restrictions de quarantaine.

(i) Acte ou omission du chargeur ou propriétaire des marchandises, son agent ou représentant.

(j) Grèves ou lockouts ou arrêts ou entraves apportés au travail, pour quelque cause que ce soit, partiellement ou complètement.

(k) Émeutes ou troubles civils.

(l) Sauvetage ou tentative de sauvetage de vies ou de biens en mer.

(m) Freinte de route ordinaire sur la quantité ou le poids ou défaut, qualité ou vice propre des marchandises.

(n) Insuffisance d’emballage.

(o) Insuffisance ou imperfection de marques.

(p) Vices cachés échappant à une diligence raisonnable.

(q) Toute autre cause ne provenant pas d’une faute actuelle ou de la participation du transporteur ou de la faute ou négligence des agents, prêposés ou employés du transporteur, mais le fardeau de la preuve tombera sur la personne réclamant le bénéfice de cette exception et il lui incombera de montrer que ni la faute personnelle ni la complicité du transporteur ni la faute ou la négligence des agents, préposés ou employés du transporteur n’ont contribué à la perte ou au dommage.

3. Le chargeur dans la même mesure que le transporteur ne sera pas responsable des pertes ou dommages subis par le transporteur ou le navire et qui proviendraient ou résulteraient de l’une quelconque des causes spécifiées au paragraphe 2 ci-dessus, aux litters (b), (c), (d), (e), (f), (g), (h), (j), (k), (p) et (q).

4. Aucun déroutement pour sauver ou tenter de sauver des vies ou des biens en the sea or other navigable waters.

(d) Act of God.

(e) Act of war.

(f) Act of public enemies.

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

(h) Quarantine restrictions.

(i) Act or omission of the shipper or owner of the goods, his agent or representative.

(j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.

(k) Riots and civil commotions.

(l) Saving or attempting to save life or property at sea.

(m) Inherent LIABILITY FOR WASTAGE IN BULK OR WEIGHT OR INHERENT defect, quality or vice of the goods.

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, servants or employees of the carrier but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents, servants, or employees of the carrier contributed to the loss or damage.
mer, ou aucun déroutement autorisé par le contrat de transport (à condition que ce déroutement soit raisonnable eu égard au service auquel le navire est affecté) ne sera considéré comme une infraction ou violation de la présente convention ou du contrat de transport, et le transporteur ne sera responsable d’aucun perte ou dommage en résultant.

5. Ni le transporteur ni le navire ne seront responsables en aucun cas pour perte ou dommage causés aux marchandises ou les concernant, d’une somme dépassant £100 par colis ou unité, ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et n’aient été insérées au connaissement.

Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, une somme maximum différente de celle inscrite dans ce paragraphe peut être déterminée, pourvu que ce maximum conventionnel ne soit pas inférieur au chiffre ci-dessus fixé.

La déclaration du chargeur quant à la nature et à la valeur des marchandises déclarées constituera une preuve de *prima facie*, mais ne liera pas le transporteur à qui la preuve contraire est réservée.

6. Ni le transporteur ni le navire ne seront en aucun cas responsables pour perte ou dommage causés aux marchandises ou les concernant, si dans le connaissement le chargeur a fait une déclaration sciemment erronée de leur nature ou leur valeur.

7. Les marchandises de nature inflammable ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse ou explosive, ou de nature dangereuse or explosive, or of a dangerous nature, unless the nature and character thereof have been declared in writing by the shipper WHEREOF ARE UNKNOWN to the carrier before shipment and TO THE SHIPMENT WHEREOF the carrier, master or agent of the carrier has NOT consented to their shipment, may at any time before delivery be destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with
de leur embarquement. Si pareilles marchandises embarquées avec la connaissance et le consentement du transporteur devenaient un danger pour le navire ou la cargaison, elles pourraient de même façon être détruites ou rendues inoffensives par le transporteur si ce n’est du chef d’avaries communes s’il y a lieu.

ARTICLE V

Un transporteur sera libre d’abandonner tout ou partie de tous ou de quelques-uns de ses droits et exonérations prévus par la présente convention pourvu que cet abandon soit inséré dans le connaissement délivré au chargeur.

Article VI. - Conditions spéciales.

Nonobstant les dispositions des articles précédents, un transporteur, capitaine ou agent du transporteur et un chargeur seront libres, pour des marchandises déterminées quelles qu’elles soient, de passer un contrat quelconque avec des conditions quelconques concernant la responsabilité et les obligations du transporteur pour ces marchandises, ainsi que les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou son obligation quant à l’état de navigabilité du navire, ou le soin ou diligence de ses préposés ou agents quant à la réception, la manutention, au chargement, à l’arrimage, au transport, à la garde, aux soins, au déchargement et à la délivrance des marchandises transportées par mer, pourvu qu’en ce cas aucun connaissement n’ait été ou ne soit émis et que les conditions de l’accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.

Toute convention ainsi conclue aura plein effet légal.

Il est toutefois convenu que cet article ne s’appliquera pas aux cargaisons commerciales ordinaires, faites au cours d’opérations commerciales ordinaires mais seulement à d’autres chargements où le caractère et la condition des biens à transporter et les circonstances, les termes et les conditions auxquels le

such KNOWLEDGE AND consent shall become a danger to the ship or cargo, they may in like manner be destroyed or rendered innocuous by the carrier without compensation to the shipper.

ARTICLE V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under these RULES, provided such surrender shall be embodied in the bill of lading issued to the shipper.

Article V–VI. - Special Conditions.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, or the care or diligence of his servants or agents in regard to the RECEIPT, handling, loading, stowing, CARRIAGE, custody, care, and unloading AND DELIVERY of the goods carried by sea, provided that in this case no bill of lading HAS BEEN OR shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

PROVIDED THAT THIS ARTICLE SHALL NOT APPLY TO ORDINARY COMMERCIAL SHIPMENTS MADE IN THE ORDINARY COURSE OF TRADE, BUT ONLY TO OTHER SHIPMENTS WHERE THE CHARACTER OR CONDITION OF THE PROPERTY TO BE CARRIED OR THE CIRCUMSTANCES, TERMS AND CONDITIONS UNDER WHICH THE CARRIAGE IS TO BE PERFORMED ARE SUCH AS REASONABLY TO JUSTIFY A SPECIAL AGREEMENT.
transport doit se faire sont de nature à justifier une convention spéciale.

**Article VII. - Limites d’application de ces Règles.**

Aucune disposition de la présente Convention ne défend à un transporteur ou à un chargeur d’insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou le dommage survenant aux marchandises, ou concernant leur garde, soin et manutention antérieurement à l’embarquement et postérieurement à la délivraison hors du navire sur lequel les marchandises sont transportées par mer.

**Article VIII. - Limitation de responsabilité.**

Les dispositions de la présente Convention ne modifient ni les droits ni les obligations du transporteur tels qu’ils résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

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**CONFERENCE DIPLOMATIQUE DE BRUXELLES**

(1922)

**Base d’une Convention internationale pour l’unification de certaines règles en matière de connaissement.**

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**Art. I. - Définitions.**

Dans la présente convention les mots suivants sont employés dans le sens précis indiqué ci-dessus:

(a) “Transporteur” comprend le propriétaire ou l’affréteur, partie à un contrat de transport avec un chargeur.

(b) “Contrat de transport” s’applique uniquement au contrat de transport constaté par un connaissement ou par tout document similaire formant titre pour le transport

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* This text is published only in French in CMI Bulletin no. 65, p. 385, in Conférence Internationale etc. - Documents et Procès-Verbaux des Séances tenues du 17 au 26 Octobre 1922, p. 267 and in Conférence Internationale etc. - Procès-Verbaux des Séances tenues du 6 au 9 Octobre 1923, p. 14.
des marchandises par mer; il comprend également le connaissement ou document similaire émis en vertu de la charte-partie à partir du moment où ce connaissement régit les rapports du transporteur et d’un porteur du connaissement.

(c) “Marchandises” comprend biens, objets, marchandises et articles de nature quelconque, à l’exception des animaux vivants et de la cargaison qui, par le contrat de transport, est déclarée comme mise sur le pont et, en fait, est ainsi transportée.

(d) “Navire” signifie tout bâtiment employé pour le transport des marchandises par mer.

(e) “Transport de marchandises” couvre le temps écoulé depuis le chargement des marchandises à bord du navire jusqu’à leur déchargement du navire.

Art. II. - Risques.

Sous réserve des stipulations de l’article 4, le transporteur dans tous les contrats de transport de marchandises par mer, sera, quant aux chargement, manutention, arrimage, transport, garde, soin et déchargement des dites marchandises, soumis aux responsabilités et obligations, comme il bénéficiera des droits et exonérations ci-dessous énoncés.

Art. III. - Responsabilités et Obligations.

1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:

(a) Mettre le navire en état de navigabilité;

(b) Convenablement armer, équiper et approvisionner le navire;

(c) Approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées pour leur réception, transport et préservation.

2. Le transporteur, sous réserve des stipulations de l’article 4, procédera de façon appropriée et soigneuse au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées.

3. Après avoir reçu et pris en charge les marchandises, le transporteur, ou le capitaine ou agent du transporteur, devra, sur demande du chargeur, délivrer au chargeur un connaissement portant entre autres choses:

(a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence, pourvu que ces marques soient imprimées ou apparaissent clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquelles les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisibles jusqu’à la fin du voyage;

(b) Ou le nombre de colis ou de pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur;

(c) L’état et le conditionnement apparent des marchandises.

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu de déclarer ou de mentionner, dans le connaissement des marques, un nombre, une quantité ou un poids, dont il a une raison sérieuse de soupçonner qu’ils ne représentent pas exactement les marchandises actuellement reçues par lui, ou qu’il n’a pas eu des moyens raisonnables de vérifier.

4. Un tel connaissement vaudra présomption, sauf preuve contraire, de la réception, par le transporteur des marchandises telles qu’elles y sont décrites conformément au paragraphe 3 a), b) et c).

5. Le chargeur sera considéré avoir garanti au transporteur, au moment du chargement, l’exactitude des marques, du nombre, de la quantité et du poids tels qu’ils sont fournis par lui, et le chargeur indemnifiera le transporteur de toutes pertes, dom-
mages et dépenses provenant ou résultant d’inexactitudes sur ces points. Le droit du transporteur à pareille indemnité ne limitera d’aucune façon sa responsabilité et ses engagements sous l’empire du contrat de transport vis-à-vis de toute personne autre que le chargeur.

6. A moins qu’un avis des pertes ou dommages, et de la nature générale de ces pertes ou dommages ne soit donné par écrit au transporteur ou à son agent au port de déchargement, avant ou au moment de l’enlèvement des marchandises, et de leur remise sous la garde de la personne ayant droit à la délivrance sous l’empire du contrat de transport, cet enlèvement constituera jusqu’à preuve contraire une présomption que les marchandises ont été délivrées par le transporteur telles qu’elles sont décrites au connaissement.

Si les pertes ou dommages ne sont pas apparents, l’avis doit être donné dans les trois jours de la délivrance.

Les réserves écrites sont inutiles si l’état de la marchandise a été contradictoirement constaté au moment de la réception.

En tout cas le transporteur et le navire seront déchargés de toute responsabilité pour pertes ou dommages à moins qu’une action ne soit intentée dans l’année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées.

En cas de perte ou dommage certains ou présumés, le transporteur et le réceptionnaire se donneront réciproquement toutes les facilités raisonnables pour l’inspection de la marchandise et la vérification du nombre de colis.

7. Lorsque les marchandises auront été chargées, le connaissement que délivrera le transporteur, capitaine ou agent du transporteur au chargeur, sera, si le chargeur le demande, un connaissement libellé “Embarqué”, pourvu que, si le chargeur a auparavant reçu quelque document donnant droit (document of title) à ces marchandises, il restitue ce document contre remise d’un connaissement “Embarqué”, mais le transporteur, le capitaine ou l’agent aura la faculté d’annoter sur ce document au port d’embarquement, le ou les noms du ou des navires sur lesquels les marchandises ont été embarquées et la date ou les dates de l’embarquement, et lorsque ce document sera ainsi annoté, il sera considéré aux fins de cet article comme constituant un connaissement libellé “Embarqué”.

8. Toute clause, convention ou accord dans un contrat de transport exonérant le transporteur ou le navire de responsabilité pour perte ou dommage concernant des marchandises, provenant de négligence, faute ou manquement aux devoirs et obligations édictées dans cet article, ou atténuant cette responsabilité autrement que ne le prescrit la présente convention, sera nulle, non avenue et sans effet. Une clause semblable sera considérée comme exonérant le transporteur de sa responsabilité.

Art. IV . - Droits et Exonérations.

1. Ni le transporteur ni le navire ne seront responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables, ou à approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées, de façon qu’elles soient aptes à la réception, au transport et à la préservation des marchandises, le tout conformément aux prescriptions de l’article 3, paragraphe 1. Toutes les fois qu’une perte ou un dommage aura résulté de l’innavigabilité, le fardeau de la preuve en ce qui concerne l’exercice de la diligence raisonnable tombera sur le transporteur ou sur toute autre personne se prévalant de l’exonération prévue au présent article.

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant de:
(a) Acte, négligence ou défaut du capitaine, marin, pilote, ou des préposés du transporteur dans la navigation ou dans l’administration (management) du navire;
(b) Incendie, à moins qu’il ne soit causé par le fait ou la faute du transporteur;
(c) Périls, dangers ou accidents de la mer ou d’autres eaux navigables;
(d) Acte de Dieu;
(e) Fait de guerre;
(f) Fait d’ennemis publics;
(g) Arrêt ou contrainte de prince, autorités ou peuple ou saisie judiciaire;
(h) Restrictions de quarantaine;
(i) Acte ou omission du chargeur ou propriétaires des marchandises, de son agent ou représentant;
(j) Grèves ou lockouts ou arrêts ou entraves apportés au travail, pour quelque cause que ce soit, partiellement ou complètement;
(k) Emeutes ou troubles civils;
(l) Sauvetage ou tentative de sauvetage de vies ou de biens en mer;
(m) Freinte en volume ou en poids ou toute autre perte ou dommage résultant de vice caché, nature spéciale ou vice propre des la marchandise;
(n) Insuffisance d’emballage;
(o) Insuffisance ou imperfection de marques;
(p) Vices cachés échappant à une diligence raisonnable;
(q) Toute autre cause ne provenant pas du fait ou de la faute du transporteur ou du fait ou de la faute des agents ou préposés du transporteur, mais le fardeau de la preuve incombera à la personne réclamant le bénéfice de cette exception et il lui appartiendra de montrer que ni la faute personelle ni le fait du transporteur ni la faute ou le fait des agent ou préposés du transporteur n’ont contribué à la perte ou au dommage.
3. Le chargeur ne sera pas responsable des pertes ou dommages subis par le transporteur ou le navire et qui proviendraient ou résulteraient de toute cause quelconque sans qu’il y ait acte, faute ou négligence du chargeur, de ses agents ou de ses préposés.
4. Aucun déroutement pour sauver ou tenter de sauver des vies ou des biens en mer, ni aucun déroutement raisonnable ne sera considéré comme une infraction à la présente convention ou au contrat de transport, et le transporteur ne sera responsable d’aucune perte ou dommage en résultant.
5. Le transporteur comme le navire ne seront tenus en aucun cas des pertes ou dommages causés aux marchandises ou les concernant, pour une somme dépassant 100 liv. sterl. par colis ou unité, ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’ait été déclarée par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissement.
Cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la tester.
Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, une somme maximum différente de celle inscrite dans ce paragraphe peut être déterminée, pourvu que ce maximum conventionnel ne soit pas inférieur au chiffre ci-dessous fixé.
Le cours du change sera pris au jour de l’arrivée du navire au port de déchargement de la marchandise dont il s’agit.
6. Ni le transporteur ni le navire ne seront en aucun cas responsables pour perte
ou dommage causé aux marchandises ou les concernant, si dans le connaissement le chargeur a fait une déclaration sciemment erronée de leur nature ou de leur valeur.

7. Les marchandises de nature inflammable, explosive ou dangereuse à l’embarquement desquelles le transporteur, le capitaine ou l’agent du transporteur n’aurait pas consenti, en connaissant leur nature ou leur caractère pourront à tout moment avant déchargement être débarquées à tout endroit ou détruites ou rendues inoffensives par le transporteur sans indemnité pour le chargeur, et le chargeur de ces marchandises sera responsable de tout dommage et dépenses provenant ou résultant directement ou indirectement de leur embarquement. Si quelqu’une de ces marchandises embarquées avec la connaissance du transporteur devenait un danger pour le navire ou la cargaison, elle pourrait de même façon être débarquée ou détruite ou rendue inoffensive par le transporteur, sans responsabilité de la part du transporteur si ce n’est du chef d’avaries communes s’il y a lieu.

Art. V.  
Un transporteur sera libre d’abandonner tout ou partie de tous ou de quelques-uns de ses droits et exonérations prévus par la présente convention pourvu que cet abandon soit inséré dans le connaissement délivré au chargeur. Aucune disposition de la présente convention ne s’applique aux chartes-parties; mais si des connaissements sont émis dans le cas d’un navire sous l’empire d’une charte-partie, ils sont soumis aux termes de la présente convention. Aucune disposition dans ces règles ne sera considérée comme empêchant l’insertion dans un connaissement d’une disposition licite quelconque au sujet d’avaries communes.

Art. VI. - Conditions Spéciales.
Nonobstant les dispositions des articles précédents, un transporteur, capitaine ou agent du transporteur et un chargeur seront libres, pour des marchandises déterminées quelles qu’elles soient, de passer un contrat quelconque avec des conditions quelconques concernant la responsabilité et les obligations du transporteur pour ces marchandises, ainsi que les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou son obligation quant à l’état de navigabilité du navire, ou son obligation quant à l’état de navigabilité du navire dans la mesure où cette stipulation n’est pas contraire à l’ordre public, ou le soin ou diligence de ses préposés ou agents quant au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées par mer, pourvu qu’en ce cas aucun connaissement n’ait été ou ne soit émis et que les conditions de l’accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.
Toute convention ainsi conclue aura plein effet légal.
Il est toutefois convenu que cet article ne s’appliquera pas aux cargaisons commerciales ordinaires, faites au cours d’opérations commerciales ordinaires mais seulement à d’autres chargement où le caractère et la condition des biens à transporter et les circonstances, les termes et les conditions auxquels le transport doit se faire sont de nature à justifier une convention spéciale.

Art. VII. - Limites d’Application de ces Règles.
Aucune disposition de la présente convention ne défend à un transporteur ou à un chargeur d’insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou le dommage survenant aux marchandises, ou concernant leur garde, soin et manutention antérieurement au chargement et postérieurement au déchargement du navire sur lequel les marchandises sont transportées par mer.
Art. VIII. - Limitation de responsabilité.
Les dispositions de la présente convention ne modifient ni les droits ni les obligations du transporteur tels qu’ils résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

Art. IX - Application de la Convention.
Les dispositions de la présente Convention s’appliqueront à tout connaissement créé dans un des États contractants.
Fait à Bruxelles, le 26 octobre 1922.

DRAFT INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO BILLS OF LADING

As passed by the Diplomatic International Conference held at Brussels, 17-26 October, 1922, showing in green ink* the amendments proposed and carried in

THE RULES FOR THE CARRIAGE OF GOODS BY SEA

As amended in red** in the London Conference of the Comité Maritime International 9-11 October 1922.***

Article I. - Definitions.
In these Rules this Convention the following words are employed with the meanings set out below:

(a) “Carrier” includes the owner or the charterer, who enters into a contract of carriage with a shipper.

(b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading is negotiated.

(c) “Goods” includes goods, wares, merchandises, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) “Ship” includes any vessel used for the carriage of goods by sea.

(e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are delivered discharged from the ship.

Article II. - Risks.
Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in regard to the receipt, loading, handling, stowage, car-
Article III. - Responsibilities and Liabilities.

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to-
   (a) Make the ship seaworthy;
   (b) Properly man, equip and supply the ship;
   (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV the carrier shall properly and carefully load, handle, stow, carry, keep, care for, unload and deliver the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue to a shipper a bill of lading showing amongst other things-
   (a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
   (b) the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
   (c) the apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to issue or show in the bill of lading showing any description, marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with section Rule 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the description, marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless written notice of a claim for loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods. The notice in writing will not be admissible if the state of the goods has at the time of their receipt been agreed to be otherwise than as stated in the notice. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within two years after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all possible reasonable facilities to each other for inspecting and tallying the goods.
7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment and when so noted the same shall for the purpose of this Rule be deemed to constitute a “shipped” bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules this Convention shall be null and void, and of no effect. A BENEFIT OF INSURANCE OR SIMILAR CLAUSE SHALL BE DEEMED TO BE A CLAUSE RELIEVING THE CARRIER FROM LIABILITY.

Article IV. - Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied AND TO MAKE THE HOLDS, REFRIGERATING AND COOL CHAMBERS AND ALL OTHER PARTS OF THE SHIP IN WHICH GOODS ARE CARRIED, FIT AND SAFE FOR THEIR RECEPTION, CARRIAGE AND PRESERVATION in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
(b) Fire, unless caused by the actual fault or privity of the carrier.
(c) Perils, dangers and accidents of the sea or other navigable waters.
(d) Act of God.
(e) Act of war.
(f) Act of public enemies.
(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
(h) Quarantine restrictions.
(i) Act or omission of the shipper or owner of the goods, his agent or representative.
(j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
(k) Riots and civil commotions.
(l) Saving or attempting to save life or property at sea.
(m) Inherent liability for Wastage in bulk or weight or inherent defect, quality or vice of the goods.
(n) Insufficiency of packing.
(o) Insufficiency or inadequacy of marks.
(p) Latent defects not discoverable by due diligence.
(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents, OR servants or employees of the carrier, but
the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants or employees of the carrier contributed to the loss or damage.

3. The shipper to the same extent as the carrier shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any of the causes particularised in the above section 2 under the headings (b), (c), (d), (e), (f), (g), (h), (j), (k), (p) and (q), without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation authorised by the contract of carriage (provided that such deviation shall be reasonable having regard to the service in which the ship is engaged) shall not be deemed to be an infringement or breach of these rules this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods in an amount beyond £100 per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before the goods are shipped and have been inserted in the bill of lading.

The declaration by the shipper if embodied in the bill of lading as to the nature and value of any goods declared shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named.

The rate of exchange shall be taken to be the rate ruling on the day of the arrival of the ship at the port of discharge of the goods concerned.

6. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with, goods if the nature or value thereof as shown in the bill of lading has been wilfully misstated by the shipper in the bill of lading.

7. Goods of an inflammable or explosive nature or of a dangerous nature, the nature and character whereof are unknown to the carrier before shipment and to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character may at any time before delivery discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation to the shipper, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

Article V.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities under these rules this Convention, provided such surrender shall be embodied in the bill of lading issued to the shipper. The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention. Nothing in these rules this Convention shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average or control the making of any charter party or the issuing of bills of lading thereunder, but no provision in such bills of lading shall violate the terms of these Rules.
Article VI. - Special Conditions.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the receipt, handling, stowage, carriage, custody, care unloading and delivery of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII. - Limitations on the application of these Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the delivery of the ship on which the goods are carried by sea.

Article VIII. - Limitation of Liability.

The provision of these Rules this Convention shall not affect the rights and obligations of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX - Application of the Convention.

The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.
Article Premier.
Dans la présente convention les mots suivants sont employés dans le sens précis indiqué ci-dessus:

a) “Transporteur” comprend le propriétaire ou l’affréteur, partie à un contrat de transport avec un chargeur.

b) “Contrat de transport” s’applique uniquement au contrat de transport constaté par un connaissement ou par tout document similaire formant titre pour le transport des marchandises par mer; il s’APPLIQUE également AU connaissement ou document similaire émis en vertu d’une charte-partie à partir du moment où ce TITRE régite les rapports du transporteur et du porteur du connaissement.

c) “Marchandises” comprend biens, objets, marchandises et articles de nature quelconque, à l’exception des animaux vivants et de la cargaison qui, par le contrat de transport, est déclarée comme mise sur le pont et, en fait, est ainsi transportée.

d) “Navire” signifie tout bâtiment employé pour le transport des marchandises par mer.

e) “Transport de marchandises” couvre le temps écoulé depuis le chargement des marchandises à bord du navire jusqu’à leur déchargement du navire.

* This text is published in CMI Bulletin no. 65, p. 407. The changes are printed in capital letters. This text is also published in Conférence Internationale etc. - Procès-Verbaux des séances tenues du 6 au 9 Octobre 1923, p. 143.
Art. 2.
Sous réserve des dispositions de l’article 6, le transporteur dans tous les contrats de transport de marchandises par mer, sera, quant au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des dites marchandises, soumis aux responsabilités et obligations, comme il bénéficiera des droits et exonérations ci-dessous énoncés.

Art. 3.
1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:
   a) Mettre le navire en état de navigabilité;
   b) Convenablement armer, équiper et approvisionner le navire;
   c) Approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées pour leur réception, transport et conservation.

2. Le transporteur, sous réserve des dispositions de l’article 4, procédera de façon appropriée et soigneuse au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées.

3. Après avoir reçu et pris en charge les marchandises, le transporteur, ou le capitaine ou agent du transporteur, devra, sur demande du chargeur, délivrer au chargeur un connaissement portant entre autres choses:
   a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence, pourvu que ces marques soient imprimées ou apposées clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquels les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisibles jusqu’à la fin du voyage;
   b) Ou le nombre de colis, ou de...
pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur;

c) L’état et le conditionnement apparent des marchandises.

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu de déclarer ou de mentionner dans le connaissement des marques, un nombre, une quantité ou un poids, dont il a une raison sérieuse de soupçonner qu’ils ne représentent pas exactement les marchandises actuellement reçues par lui, ou qu’il n’a pas eu des moyens raisonnables de vérifier.

4. Un tel connaissement vaudra présomption, sauf preuve contraire, de la réception par le transporteur des marchandises telles qu’elles y sont décrites conformément au § 3 a), b) et c).

5. Le chargeur sera considéré avoir garanti au transporteur, au moment du chargement, l’exactitude des marques, du nombre, de la quantité et du poids tels qu’ils sont fournis par lui, et le chargeur indemnisera le transporteur de toutes pertes, dommages et dépenses provenant ou résultant d’inexactitudes sur ces points. Le droit du transporteur à pareille indemnité ne limitera d’aucune façon sa responsabilité et ses engagements sous l’empire du contrat de transport vis-à-vis de toute personne autre que le chargeur.

6. A moins qu’un avis des pertes ou dommages, et de la nature générale de ces pertes ou dommages ne soit donné par écrit au transporteur ou à son agent au port de déchargement, avant ou au moment de l’enlèvement des marchandises, et de leur remise sous la garde de la personne ayant droit à la délivrance sous l’empire du contrat de transport, cet enlèvement constituera jusqu’à preuve contraire une présomption que les marchandises ont été délivrées par le transporteur telles qu’elles sont décrites au connaissement.

Si les pertes ou dommages ne sont pas apparents, l’avis doit être donné dans les trois jours de la délivrance.

Les réserves écrites sont inutiles si l’état de la marchandise a été contradic-

or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

c) the apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 a), b) and c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

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

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is
toirement constaté au moment de la réception.
En tout cas le transporteur et le navire seront déchargés de toute responsabilité pour pertes ou dommages à moins qu’une action ne soit intentée dans l’année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées.
En cas de perte ou dommage certains ou présumés, le transporteur et le réceptionnaire se donneront réciproquement toutes les facilités raisonnables pour l’inspection de la marchandise et la vérification du nombre de colis.
7. Lorsque les marchandises auront été chargées, le connaissement que délivrera le transporteur, capitaine ou agent du transporteur au chargeur, sera, si le chargeur le demande, un connaissement libellé “Embarqué”, pourvu que, si le chargeur a auparavant reçu quelque document donnant droit à ces marchandises, il restitue ce document contre remise d’un connaissement “Embarqué”. Le transporteur, le capitaine ou l’agent aura ÉGALEMENT la faculté d’annoter au port d’embarquement, sur le document REMIS EN PREMIER LIEU, le ou les noms du ou des navires sur lesquels les marchandises ont été embarquées et la date ou les dates de l’embarquement, et lorsque ce document sera ainsi annoté, il sera, S’IL CONTIENT LES MENITIONS DE L’ARTICLE 3 § 3, considéré aux fins de cet article comme constituant un connaissement libellé “Embarqué”.
8. Toute clause, convention ou accord dans un contrat de transport exonérant le transporteur ou le navire de responsabilité pour perte ou dommage concernant des marchandises, provenant de négligence, faute ou manquement aux devoirs ou obligations édictées dans cet article ou atténuant cette responsabilité autrement que ne le prescrit la présente convention, sera nulle, non avenue et sans effet. Une clause cédant le bénéfice de l’assurance au transporteur ou toute clause semblable sera considérée comme exonérant le transporteur de sa responsabilité.

Art. 4.
1. Ni le transporteur ni le navire ne

brought within one year after delivery of the goods or the date when the goods should have been delivered.
In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, IF IT SHOWS THE PARTICULARS MENTIONED IN PARAGRAPHS 3 OF ARTICLE 3, shall for the purpose of this article be deemed to constitute a “shipped” bill of lading.

8) Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Art. 4.
1. Neither the carrier nor the ship
seront responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables, ou à approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées, de façon qu’elles soient aptes à la réception, au transport et à la préservation des marchandises, le tout conformément aux prescriptions de l’article 3, par. 1. Toutes les fois qu’une perte ou un dommage aura résulté de l’innavigabilité, le fardeau de la preuve en ce qui concerne l’exercice de la diligence raisonnable, tombera sur le transporteur ou sur toute autre personne se prévalant de l’exonération prévue à l’article précédent.

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:
   a) des actes, négligence ou défaut du capitaine, marin, pilote, ou des préposés du transporteur dans la navigation ou dans l’administration du navire;
   b) d’un incendie, à moins qu’il ne soit causé par le fait ou la faute du transporteur;
   c) des périls, dangers ou accidents de la mer ou d’autres eaux navigables;
   d) d’un “acte de Dieu”;
   e) de faits de guerre;
   f) du fait d’ennemis publics;
   g) d’un arrêt ou contrainte de principe, autorités ou peuple ou d’une saisie judiciaire;
   h) d’une restriction de quarantaine;
   i) d’un acte ou d’une omission du chargeur ou propriétaire des marchandises, de son agent ou représentant;
   j) de grèves ou lockouts ou d’arrêts ou entraînes apportés au travail, pour quelque cause que ce soit, partiellement ou complètement;
   k) d’émeutes ou de troubles civils;
   l) d’un sauvetage ou tentative de sauvetage de vies ou de biens en mer;
   m) de la freinée en volume ou en

shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
   a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
   b) fire, unless caused by the actual fault or privity of the carrier;
   c) perils, dangers and accidents of the sea or other navigable waters;
   d) act of God;
   e) act of war;
   f) act of public enemies;
   g) arrest or restraint of princes, rulers or people, or seizure under legal process;
   h) quarantine restrictions;
   i) act or omission of the shipper or owner of the goods, his agent or representative;
   j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
   k) riots and civil commotions;
   l) saving or attempting to save life or property at sea;
   m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
poids ou de toute autre perte ou dommage résultant de vice caché, nature spéciale ou vice propre des la marchandise;

n) d’une insuffisance d’emballage;

o) d’une insuffisance ou imperfection de marques;

p) de vices cachés échappant à une diligence raisonnable;

q) de toute autre cause ne provenant pas du fait ou de la faute du transporteur ou du fait ou de la faute des agents ou préposés du transporteur, mais le fardeau de la preuve incombera à la personne réclamant le bénéfice de cette exception et il lui appartiendra de montrer que ni la faute personnelle ni le fait du transporteur ni la faute ou le fait des agents ou préposés du transporteur n’ont contribué à la perte ou au dommage.

3. Le chargeur ne sera pas responsable des pertes ou dommages subis par le transporteur ou le navire et qui proviendraient ou résulteraient de toute cause quelconque sans qu’il y ait acte, faute ou négligence du chargeur, de ses agents ou de ses préposés.

4. Aucun déroutement pour sauver ou tenter de sauver des vies ou des biens en mer, ni aucun déroutement raisonnable ne sera considéré comme une infraction à la présente convention ou au contrat de transport, et le transporteur ne sera responsable d’aucune perte ou dommage en résultant.

5. Le transporteur comme le navire ne seront tenus en aucun cas des pertes ou dommages causés aux marchandises ou les concernant, pour une somme dépassant 100 liv. sterl. par colis ou unité, ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissement.

Cette déclaration ainsi insérée dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester.

Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, une somme maximum différen-
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not be less than the figures above named.
Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

Art. 5.
A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Art. 5.
A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Un transporteur sera libre d’abandonner tout ou partie de ses droits et exonérations ou d’augmenter ses responsabilités et obligations TELS QUE LES UNS ET LES AUTRES SONT prévus par la présente convention pourvu que cet abandon AU CETTE AUGMENTATION soit inséré dans le connaissement délivré au chargeur.

Aucune disposition de la présente convention ne s’applique aux chartes-parties; mais si des connaissements sont émis dans le cas d’un navire sous l’empire d’une charte-partie, ils sont soumis aux termes de la présente convention. Aucune disposition dans ces règles ne sera considérée comme empêchant l’insertion dans un connaissement d’une disposition licite quelconque au sujet d’avaries communes.
Art. 6.
Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Art. 7.
Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.
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Art. 8.
Les dispositions de la présente convention ne modifient ni les droits ni les obligations du transporteur tels qu’ils résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

Art. 9.
Les unités monétaires dont il s’agit dans la présente convention s’entendent valeur or.
Cèux des États contractants où la livre sterling n’est pas employée comme unité monétaire se réservent le droit de convertir en chiffres ronds, d’après leur système monétaire, les sommes indiquées en livres sterling dans la présente convention.
Les lois nationales peuvent réservar au débiteur la faculté de se libérer dans la monnaie nationale, d’après le cours du change au jour de l’arrivée du navire au port de déchargement de la marchandise dont il s’agit.

Art. 10.
Les dispositions de la présente convention s’appliqueront à tout connaissement créé dans un des États contractants.

Art. 11.
A l’expiration du délai de deux ans au plus tard à compter du jour de la signature de la convention, le Gouvernement belge entrera en rapport avec les Gouvernements des Hautes Parties contractantes qui se seront déclarées prêtes à la ratifier, à l’effet de faire décider s’il y a lieu de la mettre en vigueur. Les ratifications seront déposées à Bruxelles à la date qui sera fixée de commun accord entre lesdits Gouvernements. Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des États qui y prendront part et par le Ministre des
AFFAIRES ÉTRANGÈRES DE BELGIQUE.

Les dépôts ultérieurs se feront au moyen d’une notification écrite, adressée au Gouvernement belge et accompagnée de l’instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, de notifications mentionnées à l’alinéa précédent, ainsi que des instruments de ratification qui les accompagnent sera immédiatement, par les soins du Gouvernement belge et par la voie diplomatique, remise aux États qui ont signé la présente convention ou qui y auront adhéré. Dans les cas visés à l’alinéa précédent, ledit Gouvernement fera connaître, en même temps, la date à laquelle il a reçu la notification.

Art. 12.

Les États non signataires pourront adhérer à la présente convention, qu’ils aient été ou non représentés à la Conférence Internationale de Bruxelles.

L’État qui désire adhérer notifie par écrit son intention au Gouvernement belge, en lui transmettant l’acte d’adhésion, qui sera déposé dans les archives du dit Gouvernement.

Le Gouvernement belge transmettra immédiatement à tous les États signataires ou adhérents copie certifiée conforme de la notification ainsi que de l’acte d’adhésion en indiquant la date à laquelle il a reçu la notification.

Art. 13.

Les Hautes Parties contractantes peuvent au moment de la signature du dépôt des ratifications ou lors de leur adhésion déclarer que l’accep- of the powers which take part there-in and by the Belgian Minister for Foreign Affairs.

The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel, to the powers who have signed this convention or who have acceded to it. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

Art. 12.

Non-signatory States may accede to the present convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Art. 13.

The High Contracting Parties may at the time of signature, ratification or accession, declare that their acceptance of the present con-
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TATION QU’ELLES DONNENT À LA PRÉSENTE CONVENTION NE S’APPLIQUER PAS SOIT À CERTAINS SOIT À AUCUN DES DOMINIONS AUTONOMES, COLONIES, POSSESSIONS, PROTECTORATS OU TERRITOIRES D’OUTRE-MER, SE TROUvant SOUS LEUR SOVEREIGNETÉ OU AUTORITÉ. EN CONSÉQUENCE, ELLES PEUVENT ULTRÉRIEUREMENT ADHÉRER SÉPARÉMENT AU NOM DE L’UN OU DE L’AUTRE DE CES DOMINIONS AUTONOMES, COLONIES, POSSESSIONS, PROTECTORATS OU TERRITOIRES D’OUTRE-MER, AINSI EXCLUS DANS LEUR DÉCLARATION ORIGINALE. ELLES PEUVENT AUSSI, EN SE CONFORMANT À CES DISPOSITIONS, DÉNONCER LA PRÉSENTE CONVENTION SÉPARÉMENT POUR L’UN OU PLUSIEURS DES DOMINIONS AUTONOMES, COLONIES, POSSESSIONS, PROTECTORATS OU TERRITOIRES D’OUTRE-MER SE TROUVANT SOUS LEUR SOVEREIGNETÉ OU AUTORITÉ.

ART. 14.

S’IL ARRIVAIT QU’UN DES ÉTATS CONTRACTANTS VOULût DÉNONCER LA PRÉSENTE CONVENTION, LA DÉNONCIA-TION SERA NOTIFIÉE PAR ÉCRIT AU GOUVERNEMENT BELGE, QUI COMMUNIQUERA IMMÉDIATEMENT COPIE CERTIFIÉE CONFORME DE LA NOTIFICATION À TOUS LES AUTRES ÉTATS, EN LEUR FAISANT SAVOIR LA DATE À LAQUELLE IL L’À REçUE.

LA DÉNONCIA-TION PRODUIRA SES EFFETS À L’ÉGARD DE L’ÉTAT SEUL QUI L’ÀURA NOTIFIÉE ET UN AN APRÈS QUE LA NOTIFI-

ANTION DOES NOT INCLUDE ANY OR ALL OF THE SELF-GOVERNING DOMINIONS, OR OF THE COLONIES, OVERSEAS POSSESSIONS, PROTECTORATES OR TERRITORIES UNDER THEIR SOVEREIGNTY OR AUTHORITY, AND THEY MAY SUBSEQUENTLY ACCEDE SEPARATELY ON BEHALF OF ANY SELF-GOVERNING DOMINION, COLONY, OVERSEAS POSSESSION, PROTECTORATE OR TERRITORY EXCLUDED IN THEIR DECLARATION. THEY MAY ALSO DENOUNCE THE CONVENTION SEPARATELY IN ACCORDANCE WITH ITS PROVISIONS IN RESPECT OF ANY SELF-GOVERNING DOMINION, OR ANY COLONY, OVERSEAS POSSESSION, PROTECTORATE OR TERRITORY UNDER THEIR SOVEREIGNTY OR AUTHORITY.

ART. 14.

THE PRESENT CONVENTION SHALL TAKE EFFECT, IN THE CASE OF THE STATES WHICH HAVE TAKEN PART IN THE FIRST DEPOSIT OF RATIFICATIONS, ONE YEAR AFTER THE DATE OF THE PROTOCOL RECORDING SUCH DEPOSIT. AS RESPECTS THE STATES WHICH RATIFY SUBSEQUENTLY OR WHICH ACCEDE, AND ALSO IN CASES IN WHICH THE CONVENTION IS SUBSEQUENTLY PUT INTO EFFECT IN ACCORDANCE WITH ARTICLE 12, IT SHALL TAKE EFFECT SIX MONTHS AFTER THE NOTIFICATIONS SPECIFIED IN PARAGRAPH 2 OF ARTICLE 11 AND PARAGRAPH 3 OF ARTICLE 12 HAVE BEEN RECEIVED BY THE BELGIAN GOVERNMENT.

ART. 15.

IN THE EVENT OF ONE OF THE CONTRACTING STATES WISHING TO DENOUNCE THE PRESENT CONVENTION, THE DENONCIA-TION SHALL BE NOTIFIED IN WRITING TO THE BELGIAN GOVERNMENT, WHICH SHALL IMMEDIATELY COMMUNICATE A DULY CERTIFIED COPY OF THE NOTIFICATION TO ALL THE OTHER STATES INFORMING THEM OF THE DATE ON WHICH IT WAS RECEIVED.

THE DENONCIA-TION SHALL ONLY OPERATE IN RESPECT OF THE STATE WHICH
Art. 16.
Chaque État contractant aura la faculté de provoquer la réunion d’une nouvelle conférence, dans le but de rechercher les améliorations qui pourraient être apportées à la présente convention.
Celui des États qui ferait usage de cette faculté aurait à notifier un an à l’avance son intention aux autres États, par l’intermédiaire du Gouvernement belge, qui se chargerait de convoquer la conférence.

Protocolle de signature de la Convention internationale pour l’unification de certaines règles en matière de connaississement.

Les Hautes Parties contractantes pourront donner effet à la présente convention soit en lui donnant force de loi, soit en introduisant dans leur législation nationale les règles adoptées par la convention sous une forme appropriée à cette législation.
Elles se réservent expressément le droit:
1. - de préciser que dans les cas prévus par l’art. 4 alinéa 2 de c) à p) le porteur du connaississement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).
2. - d’appliquer, en ce qui concerne le cabotage national, l’article 6 à toutes catégories de marchandises sans tenir compte de la restriction figurant au dernier alinéa du dit article.

Art. 16.
Any one of the contracting States shall have the right to call for a fresh conference with a view to considering possible amendments.
A State which would exercise this right should notify its intention to the other States through the Belgian Government, which would make arrangements for convening the Conference.


The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation, the Rules adopted under this Convention.
They may reserve the right:
1) to prescribe that in the cases referred to in paragraph 2 c) to p) of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph a);
2) to apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.
Article 1.

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

a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.

b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

c) “Goods” includes goods, wares, merchandises, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

d) “Ship” means any vessel used for the carriage of goods by sea.

e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2.

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.
Article 3.

1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:
   a) Mettre le navire en état de navigabilité;
   b) Convenablement armer, équiper et approvisionner le navire;
   c) Approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées pour leur réception, transport et conservation.

2. Le transporteur, sous réserve des dispositions de l’article 4, procédera de façon appropriée et soignée au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées.

3. Après avoir reçu et pris en charge les marchandises, le transporteur ou le capitaine ou agent du transporteur devra, sur demande du chargeur, délivrer au chargeur un connaissement portant entre autres choses:
   a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence pourvu que ces marques soient imprimées ou apposées clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquels les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisible jusqu’à la fin du voyage;
   b) Ou le nombre de colis, ou de pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur;
   c) L’état et le conditionnement apparent des marchandises.

Cependant aucun transporteur, capitaine ou agent du transporteur ne sera tenu de déclarer ou de mentionner dans le connaissement des marques, un nombre, une quantité ou un poids, dont il a une raison sérieuse de soupçonner qu’ils ne représentent pas exactement les marchandises actuellement reçues par lui, ou qu’il n’a pas
eu des moyens raisonnables de vérifier.

4. Un tel connaissement vaudra pré-somption, sauf preuve contraire, de la réception par le transporteur des marchandises telles qu’elles y sont décrites conformément au § 3 a), b) et c).

5. Le chargeur sera considéré avoir garanti au transporteur, au moment du chargement, l’exactitude des marques, du nombre, de la quantité et du poids tels qu’ils sont fournis par lui, et le chargeur indemnisera le transporteur de toutes pertes, dommages et dépenses provenant ou résultant d’inexactitudes sur ces points. Le droit du transporteur à pareille indemnité ne limitera d’aucune façon sa responsabilité et ses engagements sous l’empire du contrat de transport vis-à-vis de toute personne autre que le chargeur.

6. A moins qu’un avis des pertes ou dommages et de la nature générale de ces pertes ou dommages ne soit donné par écrit au transporteur ou à son agent au port de déchargement, avant ou au moment de l’enlèvement des marchandises, et de leur remise sous la garde de la personne ayant droit à la délivrance sous l’empire du contrat de transport vis-à-vis de toute personne autre que le chargeur.

Si les pertes ou dommages ne sont pas apparents, l’avis doit être donné dans les trois jours de la délivrance.

Les réserves écrites sont inutiles si l’état de la marchandise a été contradic- toirement constaté au moment de la réception.

En tout cas le transporteur et le navire seront déchargés de toute responsabilité pour pertes ou dommages à moins qu’une action ne soit intentée dans l’année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées.

En cas de perte ou dommage certains ou présumés, le transporteur et le réceptionnaire se donneront réciproquement toutes les facilités raisonnables pour l’inspection de la marchandise et la vérification du nombre de colis.

the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

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

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

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of ship-
7. Lorsque les marchandises auront été chargées, le connaissement que délivrera le transporteur, capitaine ou agent du transporteur au chargeur sera, si le chargeur le demande, un connaissement libellé “Embarqué”, pourvu que, si le chargeur a auparavant reçu quelque document donnant droit à ces marchandises, il restitue ce document contre remise d’un connaissement “Embarqué”. Le transporteur, le capitaine ou l’agent aura également la faculté d’annoter au port d’embarquement, sur le document remis en premier lieu, le ou les noms du ou des navires sur lesquels les marchandises ont été embarquées et la date ou les dates de l’embarquement, et lorsque ce document sera ainsi annoté, il sera, s’il contient les mentions de l’article 3 § 3, considéré aux fins de cet article comme constituant un connaissement libellé “Embarqué”.

8. Toute clause, convention ou accord dans un contrat de transport exonérant le transporteur ou le navire de responsabilité pour perte ou dommage concernant des marchandises provenant de négligence, faute ou manquement aux devoirs ou obligations édictées dans cet article ou atténuant cette responsabilité autrement que ne le prescrit la présente Convention, sera nulle, non avenue et sans effet. Une clause cédant le bénéfice de l’assurance au transporteur ou toute clause semblable sera considérée comme exonérant le transporteur de sa responsabilité.

**Article 4.**

1. Ni le transporteur ni le navire ne seront responsables des pertes ou dommages provenant ou résultant de l’état d’innavigabilité à moins qu’il ne soit imputable à un manque de diligence raisonnable de la part du transporteur à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables, ou à apprêter et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées, de façon qu’elles soient aptes à la réception, au transport et à la préservation des marchandises, le tout
conformément aux prescriptions de l’article 3, § 1. Toutes les fois qu’une perte ou un dommage aura résulté de l’innavigabilité, le fardeau de la preuve en ce qui concerne l’exercice de la diligence raisonnable tombera sur le transporteur ou sur toute autre personne se prévalant de l’exonération prévue au présent article.

2. Ni le transporteur ni le navire ne seront responsables pour perte ou dommage résultant ou provenant:
   a) des actes, négligence ou défaut du capitaine, marin, pilote ou des préposés du transporteur dans la navigation ou dans l’administration du navire;
   b) d’un incendie, à moins qu’il ne soit causé par le fait ou la faute du transporteur;
   c) des périls, dangers ou accidents de la mer ou d’autres eaux navigables;
   d) d’un “acte de Dieu”;
   e) de faits de guerre;
   f) du fait d’ennemis publics;
   g) d’un arrêté ou contrainte de prince, autorités ou peuple, ou d’une saisie judiciaire;
   h) d’une restriction de quarantaine;
   i) d’un acte ou d’une omission du chargeur ou propriétaire des marchandises, de son agent ou représentant;
   j) de grèves ou lockouts ou d’arrêts ou entraves apportés au travail, pour quelque cause que ce soit, partiellement ou complètement;
   k) d’émeutes ou de troubles civils;
   l) d’un sauvetage ou tentative de sauvetage de vies ou de biens en mer;
   m) de la freinte en volume ou en poids ou de toute autre perte ou dommage résultant de vice caché, nature spéciale ou vice propre des marchandises;
   n) d’une insuffisance d’emballage;
   o) d’une insuffisance ou imperfection de marques;
   p) de vices cachés échappant à une diligence raisonnable;
   q) de toute autre cause ne provenant pas du fait ou de la faute du transporteur ou du fait ou de la faute des agents ou préposés du transporteur, mais le fardeau de la preuve incombera à la personne réclamant le bénéfice de cette exception et il

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
   a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
   b) Fire, unless caused by the actual fault or privity of the carrier.
   c) Perils, dangers and accidents of the sea or other navigable waters.
   d) Act of God.
   e) Act of war.
   f) Act of public enemies.
   g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
   h) Quarantine restrictions.
   i) Act or omission of the shipper or owner of the goods, his agent or representative.
   j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
   k) Riots and civil commotion.
   l) Saving or attempting to save life or property at sea.
   m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
   n) Insufficiency of packing.
   o) Insufficiency or inadequacy of marks.
   p) Latent defects not discoverable by due diligence.
   q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the car-
lui appartiendra de montrer que ni la faute personnelle ni le fait du transporteur ni la faute ou le fait des agents ou préposés du transporteur n’ont contribué à la perte ou au dommage.

3. Le chargeur ne sera pas responsable des pertes ou dommages subis par le transporteur ou le navire et qui proviendraient ou résulteraient de toute cause quelconque sans qu’il y ait acte, faute ou négligence du chargeur, de ses agents ou de ses préposés.

4. Aucun déroutement pour sauver ou tenter de sauver des vies ou des biens en mer, ni aucun déroutement raisonnable ne sera considéré comme une infraction à la présente convention ou au contrat de transport, et le transporteur ne sera responsable d’aucune perte ou dommage en résultant.

5. Le transporteur comme le navire ne seront tenus en aucun cas des pertes ou dommages causés aux marchandises ou les concernant, pour une somme dépassant 100 livres sterling par colis ou unité, ou l’équivalent de cette somme en une autre monnaie, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été inscrite dans le connaissement.

Cette déclaration ainsi inscrite dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra la contester.

Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, une somme maximum différente de celle inscrite dans ce paragraphe peut être déterminée, pourvu que ce maximum conventionnel ne soit pas inférieur au chiffre ci-dessous fixé.

Ni le transporteur ni le navire ne seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant, si dans le connaissement le chargeur a fait sciemment une déclaration fausse de leur nature ou de leur valeur.

6. Les marchandises de nature inflammable, explosive ou dangereuse, à l’em-

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figures above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or ren-
Article 5.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article 6.

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obliga-
les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou concernant ses obligations quant à l’état de navigabilité du navire dans la mesure où cette stipulation n’est pas contraire à l’ordre public, ou concernant les soins ou diligence de ses préposés ou agents quant au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées par mer, pourvu qu’en ce cas aucun connaissement n’ait été ou ne soit émis et que les conditions de l’accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.

Toute convention ainsi conclue aura plein effet légal.

Il est toutefois convenu que cet article ne s’appliquera pas aux cargaisons commerciales ordinaires, faites au cours d’opérations commerciales ordinaires, mais seulement à d’autres chargements où le caractère et la condition des biens à transporter et les circonstances, les termes et les conditions auxquels le transport doit se faire sont de nature à justifier une convention spéciale.

Article 7.

Aucune disposition de la présente convention ne défend à un transporteur ou à un chargeur d’insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou les dommages survenant aux marchandises, ou concernant leur garde, soin et manutention, antérieurement au chargement et postérieurement au déchargement du navire sur lequel les marchandises sont transportées par mer.

Article 8.

Les dispositions de la présente convention ne modifient ni les droits ni les obligations du transporteur tels qu’ils résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

**The Travaux Préparatoires of the Hague and Hague-Visby Rules**

Article 7.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

Article 8.

The provisions of this convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.
**Article 9.**

The monetary units mentioned in this convention are to be taken to be gold value.

Those Contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

**Article 10.**

The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.

**Article 11.**

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratification shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratification shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relating to the first deposit of ratification, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompa-
nement belge et par la voie diplomatique, remise aux Etats qui ont signé la présente Convention ou qui y auront adhéré. Dans les cas visés à l’alinéa précédent, ledit Gouvernement fera connaître, en même temps, la date à laquelle il a reçu la notification.

**Article 12.**

Les Etats non signataires pourront adhérer à la présente Convention, qu’ils aient été ou non représentés à la Conférence Internationale de Bruxelles.

L’Etat qui désire adhérer notifie par écrit son intention au Gouvernement belge en lui transmettant l’acte d’adhésion, qui sera déposé dans les archives du dit Gouvernement.

Le Gouvernement belge transmettra immédiatement à tous les Etats signataires ou adhérents copie certifiée conforme de la notification ainsi que de l’acte d’adhésion en indiquant la date à laquelle il a reçu la notification.

**Article 13.**

Les Hautes Parties Contractantes peuvent au moment de la signature, du dépôt des ratifications ou lors de leur adhésion déclarer que l’acceptation qu’elles donnent à la présente Convention ne s’applique pas soit à certains soit à aucun des Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer, se trouvant sous leur souveraineté ou autorité. En conséquence, elles peuvent ultérieurement adhérer séparément au nom de l’un ou de l’autre de ces Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer, ainsi exclus dans leur déclaration originale. Elles peuvent aussi, en se conformant à ces dispositions, dénoncer la présente Convention séparément pour l’un ou plusieurs des Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer se trouvant sous leur souveraineté ou autorité.

**Article 12.**

Non-signatory States may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

**Article 13.**

The High Contracting Parties may at the time of signature, ratification or accession, declare that their acceptance of the present Convention does not include any or all of the self-governing Dominions, or of the colonies, overseas possessions, protectorates or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing Dominion, colony, overseas possession, protectorate or territory excluded in their declaration.

They may also denounce the Convention separately in accordance with its provisions in respect of any self-governing Dominion, or any colony, overseas possession, protectorate or territory under their sovereignty or authority.
Article 14.

A l’égard des États qui auront participé au premier dépôt de ratifications, la présente Convention produira effet un an après la date du procès-verbal de ce dépôt. Quant aux États qui la ratifieront ultérieurement ou qui y adhéreront, ainsi que dans les cas où la mise en vigueur se fera ultérieurement et selon l’article 13, elle produira effet six mois après que les notifications prévues à l’article 11, alinéa 2, et à l’article 12, alinéa 2, auront été reçues par le Gouvernement belge.

Article 15.

S’il arrivait qu’un des États Contractants voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement belge, qui communiquera immédiatement copie certifiée conforme de la notification à tous les autres États, en leur faisant savoir la date à laquelle il l’a reçue.

La dénonciation produira ses effets à l’égard de l’État seul qui l’auroit notifiée et un an après que la notification en sera parvenue au Gouvernement belge.

Article 16.

Chaque État Contractant aura la faculté de provoquer la réunion d’une nouvelle conférence, dans le but de rechercher les améliorations qui pourraient être apportées à la présente Convention.

Celui des États qui ferait usage de cette faculté aurait à notifier son intention aux autres États, par l’intermédiaire du Gouvernement belge, qui se chargerait de convoquer la conférence.

Fait à Bruxelles, en un seul exemplaire.
Le 25 août 1924.
PROTOCOLE DE SIGNATURE

En procédant à la signature de la Convention Internationale pour l’unification de certaines règles en matière de connaissance, les Plénipotentiaires soussignés ont adopté le présent Protocole qui aura la même force et la même valeur que si ces dispositions étaient insérées dans le texte même de la Convention à laquelle il se rapporte.

Les Hautes Parties contractantes pourront donner effet à cette Convention soit en lui donnant force de loi, soit en introduisant dans leur législation nationale les règles adoptées par la Convention sous une forme appropriée à cette législation.

Elles se réservent expressément le droit:
1. de préciser que dans les cas prévus par l’article 4, alinéa 2, de c) à p), le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).
2. d’appliquer en ce qui concerne le cabotage national l’article 6 à toutes catégories de marchandises, sans tenir compte de la restriction figurant au dernier alinéa dudit article.

Fait à Bruxelles, en un seul exemplaire, le 25 août 1924.

PROTOCOL OF SIGNATURE

At the time of signing the International Convention for the Unification of certain Rules of Law relating to Bills of Lading the Plenipotentiaries whose signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.

The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.

They may reserve the right:
1. To prescribe that in the cases referred to in paragraph 2 (c) to (p) of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a).
2. To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account the restriction set out in the last paragraph of that Article.

Done at Brussels, in a single copy, August 25th, 1924.
Projet de Protocole ou Convention Internationale*

PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE POUR L’UNIFICATION DE CERTAINES RÈGLES EN MATIERE DE CONNAISSEMENT SIGNÉE À BRUXELLES, LE 25 AOÛT 1924

Article 1
§ 1. A l’article 3 § 1 de la Convention de 1924, il y a lieu d’ajouter:

“Dans les cas où il est normal de recourir à un contractant indépendant (y compris un bureau de classification), si le transporteur a pris soin de s’adresser à un contractant d’une compétence reconnue, il ne sera pas considéré comme ayant manqué d’exercer une diligence raisonnable par le seul fait d’un acte ou d’une omission imputable à ce contractant indépendant, à ses préposés, à ses sous-traitants ou aux préposés de ces derniers et concernant la construction, la réparation ou l’entretien du navire, d’une partie de navire ou de son équipement. Cette disposition ne dispense aucunement le transporteur de prendre toutes les précautions raisonnables pas voie de surveillance et de contrôle en ce qui concerne tout travail effectué par ce contractant indépendant comme il est dit ci-dessus”.

§ 2. A l’article 3, § 4, il y a lieu d’ajouter le texte suivant:

“Toutefois, la preuve contraire n’est pas admise lorsque le connaissement a été transféré à un tiers porteur de bonne foi”.

Draft Protocol of International Convention*

TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING SIGNED IN BRUSSELS ON THE 25TH AUGUST, 1924

Article 1
§ 1. In Article 3, § 1 of the 1924 Convention shall be added:

“Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the Carrier has taken care to appoint one of repute as regards competence, the Carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent sub-contractor and his servants or agents) in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this proviso shall absolve the Carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid”.

§ 2. In Article 3, § 4 shall be added:

“However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith”.

* Draft Protocol adopted by the CMI Stockholm Conference. This text is published in Conférence de Stockholm, p. 546.
§ 3 A l’article 3, § 6, le 4e alinéa est remplacé par la disposition suivante:
“En tout cas le transporteur et le navire seront déchargés de toute responsabilité quelconque relativement aux marchandises à moins qu’une action ne soit intentée dans l’année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées. Ce délai peut toutefois être prolongé moyennant l’accord des parties intéressées”.

§ 4. A l’article 3, il y a lieu d’ajouter après le § 6, un § 6 bis libellé comme suit:
“Les actions récursoires pourront être exercées même après l’expiration du délai prévu au paragraphe précédent, si elles le sont dans le délai déterminé par la loi du Tribunal saisi de l’affaire. Toutefois, ce délai ne pourra pas être inférieur à trois mois à partir du jour où la personne qui exerce l’action récursoire a réglé la réclamation ou a elle-même reçu signification de l’assignation”.

Article 2
§ 1. A l’article 4, le premier alinéa du § 5 est remplacé par la disposition suivante:
“Le transporteur comme le navire ne seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant pour perte ou dommage causé aux marchandises ou les concernant pour une somme supérieure à l’équivalent de Francs 10.000 par colis ou unité, chaque franc étant constitué par 65,5 milligrammes d’or au titre de 900 millièmes de fin, à moins que la nature et la valeur de ces marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissance”.

§ 2. A l’article 4, § 5, il y a lieu d’ajouter la disposition suivante:
“La date de conversion de la somme accordée en monnaie nationale sera déterminée conformément aux dispositions de la loi nationale de la juridiction saisie du litige”.

§ 3. In Article 3, § 6, paragraph 4 is deleted and replaced by:
“In any event the carrier and the ship shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Such a period may, however, be extended should the parties concerned so agree”.

§ 4. In Article 3, after paragraph 6 shall be added the following paragraph 6bis:
“Recourse actions may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has settled the claim or has been served with process in the action against himself”.

Article 2
§ 1. In Article 4 of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following:
“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading”.

§ 2. In Article 4, paragraph 5, shall be added the following:
“The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case”.
**Article 3**

Entre les articles 4 et 5 de la Convention est inséré un article 4 bis libellé comme suit:

“1. Les exonérations et limitations prévues par la présente Convention sont applicables à toute action contre le transporteur relativement à la réparation de pertes ou dommages à des marchandises faisant l’objet d’un contrat de transport, que l’action soit fondée sur la responsabilité contractuelle ou sur une responsabilité extra-contractuelle”.

“2. Si une telle action est intentée contre un préposé du transporteur (pourvu que ce préposé ne soit pas un contractant indépendant), ce préposé sera autorisé à se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la Convention”.

“3. L’ensemble des montants récupérables à charge du transporteur et de ses préposés ne dépassera pas dans ce cas la limite prévue par la présente Convention”.

**Article 4**

L’article 9 de la Convention est remplacé par la disposition suivante:

“La présente Convention ne portera pas préjudice aux dispositions d’une quelconque Convention ou d’une loi nationale qui régit la responsabilité pour les dommages nucléaires”.

**Article 5**

L’article 10 de la Convention est remplacé par la disposition suivante:

“Les dispositions de la présente Convention s’appliqueront à tout connaississement relatif à un transport de marchandises d’un Etat à un autre et sous l’empire duquel le port de chargement, le port de déchargement ou l’un des ports à option de déchargement se trouve dans un Etat contractant, quelle que soit la loi régissant le connaississement et quelle que soit la nationalité du navire, du chargeur, du destinataire et de tout autre intéressé”.

**Article 3**

Between Articles 4 and 5 of the Convention shall be inserted the following Article 4bis:

“1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort”.

“2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention”.

“3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention”.

**Article 4**

Article 9 of the Convention shall be deleted and replaced by the following:

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

**Article 5**

Article 10 of the Convention is deleted and replaced by the following:

“The provisions of this Convention shall apply to every bill of lading for carriage of goods from one State to another, under which bill of lading the port of loading, of discharge or one of the optional ports of discharge, is situated in a Contracting State, whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person”.

Acte final de la douzième session (2e phase)
de la Conférence diplomatique de Droit Maritime
(Bruxelles, 19-23 février 1968)*

A l’invitation du Gouvernement belge et conformément au vœu exprimé par la
Conférence diplomatique de Droit maritime lors de la première phase de la douzième
session (Bruxelles le 16-27 mai 1967), la deuxième phase de cette douzième session s’est tenue à Bruxelles du 19 au 23 février 1968, en vue d’établir un Protocole portant
modification de la Convention internationale pour l’unification de certaines règles en
matière de connaissement, signée à Bruxelles le 25 août 1924.

Les États suivants ont été représentés par des Délégations à cette Conférence: (list
omitted).

La Conférence a pris comme documents de travail les textes issus de la première
phase de la douzième session de la Conférence diplomatique de Droit maritime ainsi
que les observations et amendements présentés par divers Gouvernements.

A la suite de ses délibérations, la Conférence a voté le texte du Protocole portant
modification de la Convention internationale pour l’unification de certaines règles en
matière de connaissement, signée à Bruxelles le 25 août 1924, qui a été ouvert à la si-
gnature des États représentés à la douzième session (1967/1968) de la Conférence di-
plomatique de Droit maritime, à partir du 23 février 1968.

EN FOI DE QUOI, les délégués ont apposé leur signature au bas du présent Ac-
te final.

FAIT à Bruxelles, le 23 février 1968, en un seul exemplaire, en langue française.

Le texte original sera déposé auprès du Gouvernement belge, qui en délivrera des
copis certifiées conformes, ainsi que des traductions en langue anglaise.

Protocole
fait à Bruxelles le 23 février 1968
portant modification de la
Convention Internationale pour
l’unification de certaines règles
en matière de connaissement, signée à
Bruxelles le 25 août 1925**

Les Parties Contractantes,
Considérant qu’il est souhaitable
d’amender la Convention internationale
pour l’unification de certaines règles en
matière de connaissement, signée à
Bruxelles le 25 août 1924.

Sont convenues des dispositions sui-
vantes:

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* Conférence Diplomatique de Droit Maritime - Douzième Session (2e phase) - Bruxelles 1968, p.
159. The “Acte final” is only in the French language.
** Conférence Diplomatique de Droit Maritime -Douzième Session (2e phase) - Bruxelles 1969, p.
177. The “Acte final” is only in the French language.
Article 1.
1. A l’article 3, paragraphe 4, il y a lieu d’ajouter le texte suivant:
   “Toutefois, la preuve contraire n’est pas admise lorsque le connaissement a été transféré à un tiers porteur de bonne foi”.
2. A l’article 3, paragraphe 6, le quatrième alinéa sera supprimé et remplacé par la disposition suivante:
   “Sous réserve des dispositions du paragraphe 6bis, le transporteur et le navire seront en tout cas déchargés de toute responsabilité quelconque relativement aux marchandises, à moins qu’une action ne soit intentée dans l’année de leur délivrance ou de la date à laquelle elles eussent dû être délivrées. Ce délai peut toutefois être prolongé par un accord conclu entre les parties postérieurement à l’événement qui a donné lieu à l’action”.
3. A l’article 3 il y a lieu d’ajouter après le paragraphe 6 un paragraphe 6bis, libellé comme suit:
   “Les actions récursoires pourront être exercées même après l’expiration du délai prévu au paragraphe précédent, si elles le sont dans le délai déterminé par la loi du Tribunal saisi de l’affaire. Toutefois, ce délai ne pourra être inférieur à trois mois à partir du jour où la personne que exerce l’action récursoire a réglé la réclamation ou a elle-même reçu signification de l’assignation”.

Article 2.
L’article 4, paragraphe 5, sera supprimé et remplacé par le texte suivant:
“a) À moins que la nature et la valeur des marchandises n’aient été déclarées par le chargement avant leur embarquement et que cette déclaration ait été insérée dans le connaissement, le transporteur, comme le navire, ne seront en aucun cas responsables des pertes ou dommages des marchandises ou concernant celles-ci pour une somme supérieure à l’équivalent de 10.000 francs par colis ou unité ou 30 francs par kilogramme de poids brut des marchandises perdues ou endommagées, la limite la plus élevée étant applicable.

Article 1.
1. In Article 3, paragraph 4, shall be added:
   “However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith”.
2. In Article 3, paragraph 6, sub-paragraph 4 shall be deleted and replaced by:
   “Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen”.
3. In Article 3, after paragraph 6 shall be added the following paragraph 6bis:
   “An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself”.

Article 2.
Article 4, paragraph 5, shall be deleted and replaced by the following:
“a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilogramme of goods lost or damaged, whichever is the higher.
b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at
b) La somme totale due sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au jour et au lieu où elles auraient du être déchargées.

La valeur de la marchandise est déterminée d’après le cours en Bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes nature et qualité.

c) Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour grouper des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré comme un colis ou unité au sens de ce paragraphe. En dehors du cas prévu ci-dessus, cet engin sera considéré comme colis ou unité.

d) Par franc, il faut entendre une unité consistant en 65,5 milligrammes d’or, au titre de 900 millièmes de fin. La date de conversion de la somme accordée en monnaie nationale sera déterminée par la loi de la juridiction saisie du litige.

e) Ni le transporteur, ni le navire n’auront le droit de bénéficier de la limitation de responsabilité établie par ce paragraphe s’il est prouvé que le dommage résulte d’un acte ou d’une omission du transporteur qui a eu lieu, soit avec l’intention de provoquer un dommage, soit témérairement et avec conscience qu’un dommage en résulterait probablement.

f) La déclaration mentionnée à l’alinéa (a) de ce paragraphe, insérée dans le connaissement constituera une présomption sauf preuve contraire, mais elle ne liera pas le transporteur qui pourra le contester.

g) Par convention entre le transporteur, capitaine ou agent du transporteur et le chargeur, d’autres sommes maxima que celles mentionnées à l’alinéa (a) de ce paragraphe peuvent être déterminées, pourvu que ce montant maximum conventionnel ne soit pas inférieur au montant maximum correspondant mentionné dans cet alinéa.

h) Ni le transporteur, ni le navire ne se-

which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

d) A franc means a unit consisting of 65.5 milligagrams of gold of millesimal fineness 900’. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.

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

f) The declaration mentioned in sub-
paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods
ront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant, si dans le connaissément le chargeur a fait sciemment une fausse déclaration de leur nature ou de leur valeur."

**Article 3.**
Entre les articles 4 et 5 de la Convention est inséré un article 4bis libellé comme suit:

“1. Les exonérations et limitations prévues par la présente Convention sont applicables à toute action contre le transporteur en réparation de pertes ou dommages à des marchandises faisant l’objet d’un contrat de transport, que l’action soit fondée sur la responsabilité contractuelle ou sur une responsabilité extracontractuelle.

2. Si une telle action est intentée contre un préposé du transporteur, ce préposé pourra se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la Convention.

3. L’ensemble des montants mis à charge du transporteur et des ses préposés ne dépassera pas dans ce cas la limite prévue par la présente Convention.

4. Toutefois le préposé ne pourra se prévaloir des dispositions du présent article, s’il est prouvé que le dommage résulte d’un acte ou d’une omission de ce préposé qui a eu lieu soit avec l’intention de provoquer un dommage, soit témérairement et avec conscience qu’un dommage en résulterait probablement.”

**Article 4.**
L’article 9 de la Convention sera supprimé et remplacé par la disposition suivante:

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

**Article 4.**
Article 9 of the Convention shall be deleted and replaced by the following:

“This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.”

**Article 5.**
L’article 10 de la Convention sera

if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.”

**Article 5.**
Article 10 of the Convention shall be
supprimé et remplacé par la disposition suivante :

"Les dispositions de la présente Convention s’appliqueront à tout connaissement relatif à un transport de marchandises entre ports relevant de deux États différents quand :

(a) le connaissement est émis dans un État Contractant ou
(b) le transport a lieu au départ d’un port d’un État Contractant ou
(c) le connaissement prévoit que les dispositions de la présente Convention ou de toute autre législation les appliquant ou leur donnant effet régiront le contrat, quelle que soit la nationalité du navire, du transporteur, du chargeur, du destinataire ou de toute autre personne intéressée.

Chaque État Contractant appliquera les dispositions de la présente Convention aux connaissements mentionnés ci-dessus.

Le présent article ne porte pas atteinte au droit d’un État Contractant d’appliquer les dispositions de la présente Convention aux connaissements non visés par les alinéas précédents.

Article 6.
Entre les Parties au présent Protocole, la Convention et le Protocole seront considérés et interprétés comme un seul et même instrument.

Une Partie au présent Protocole ne se verra pas obligée d’appliquer les dispositions du présent Protocole aux connaissements délivrés dans un État Partie à la Convention mais n’étant pas Partie au présent Protocole.

Article 7.
Entre les Parties au présent Protocole, la dénonciation de la Convention par l’une d’elles en vertu de l’article 15 de celle-ci ne doit pas être interprétée comme une dénonciation de la Convention amendée par le présent Protocole.

Article 8.
Tout différend entre des Parties
Contractantes concernant l’interprétation ou l’application de la Convention, qui ne peut pas être réglé par voie de négociation, est soumis à l’arbitrage, à la demande de l’une d’entre elles. Si dans les six mois qui suivent la date de la demande d’arbitrage, les Parties ne parviennent pas à se mettre d’accord sur l’organisation de l’arbitrage, l’une quelconque d’entre elles peut soumettre le différend à la Cour Internationale de Justice, en déposant une requête conformément au Statut de la Cour.

Article 9.
1. Chaque Partie Contractante pourra, au moment où elle signera ou ratifiera le présent Protocole ou y adhérera, déclarer qu’elle ne se considère pas liée par l’article 8 du présent Protocole. Les autres Parties Contractantes ne seront pas liées par cet article envers toute Partie Contractante qui aura formulé une telle réserve.
2. Toute Partie Contractante qui aura formulée une réserve conformément au paragraphe précédent pourra à tout moment lever cette réserve par une notification adressée au Gouvernement belge.

Article 10.
Le présent Protocole sera ouvert à la signature des États qui, avant le 23 février 1968, ont ratifié la Convention ou qui y ont adhéré ainsi qu’à tout État représenté à la douzième session (1967-1968) de la Conférence diplomatique de Droit maritime.

Article 11.
1. Le présent Protocole sera ratifié.
2. La ratification du présent Protocole par un État qui n’est pas Partie à la Convention emporte adhésion à la Convention.
3. Les instruments de ratification seront déposés auprès du Gouvernement belge.

Article 12.
1. Les États membres de l’Organisation des Nations Unies ou des institutions Contractantes concernant l’interprétation ou application of the Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by a request in conformity with the Statute of the Court.

Article 9.
1. Each Contracting Party may at the time of signature or ratification of this Protocol or accession thereto, declare that it does not consider itself bound by Article 8 of this Protocol. The other Contracting Parties shall not be bound by this Article with respect to any Contracting Party having made such a reservation.
2. Any Contracting Party having made a reservation in accordance with paragraph 1 may at any time withdraw this reservation by notification to the Belgian Government.

Article 10.
This Protocol shall be open for signature by the States which have ratified the Convention or which have adhered thereto before the 23rd February 1968, and by any State represented at the twelfth session (1967-1968) of the Diplomatic Conference on Maritime Law.

Article 11.
1. This Protocol shall be ratified.
2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention.
3. The instruments of ratification shall be deposited with the Belgian Government.

Article 12.
1. States, Members of the United Nations or Members of the specialized
spécialisées des Nations Unies, non représentées à la douzième session de la Conférence diplomatique de Droit maritime, pourront adhérer au présent Protocole.
2. L’adhésion au présent Protocole entrera en vigueur à la Convention.

Article 13.
1. Le présent Protocole entrera en vigueur trois mois après la date du dépôt de dix instruments de ratification ou d’adhésion, dont au moins cinq émanant d’États qui possèdent chacun un tonnage global égal ou supérieur à un million de tonneaux de jauge brute.
2. Pour chaque État ratifiant le présent Protocole ou y adhérant après la date du dépôt de l’instrument de ratification ou d’adhésion déterminant l’entrée en vigueur telle qu’elle est fixée au paragraphe (1) du présent article, le présent Protocole entrera en vigueur trois mois après le dépôt de son instrument de ratification ou d’adhésion.

Article 14.
1. Chacun des États Contractants pourra dénoncer le présent Protocole par notification au Gouvernement belge.
2. Cette dénonciation emportera dénonciation de la Convention.
3. La dénonciation prendra effet un an après la date de réception de la notification par le Gouvernement belge.

Article 15.
1. Tout État Contractant pourra, au moment de la signature, de la ratification, ou à tout moment ultérieur, notifier par écrit au Gouvernement belge quels sont parmi les territoires qui sont soumis à sa souveraineté ou dont il assure les relations internationales ceux auxquels s’applique le présent Protocole.

Le Protocole sera applicable aux dits territoires.

Article 13.
1. This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.
2. For each State which ratifies this Protocol or accedes thereto after the date of deposit of the instrument of ratification or accession determining the coming into force such as is stipulated in paragraph (1) of this Article, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article 14.
1. Any Contracting State may denounce this Protocol by notification to the Belgian Government.
2. This denunciation shall have the effect of denunciation of the Convention.
3. The denunciation shall take effect one year after the date on which the notification has been received by the Belgian Government.

Article 15.
1. Any Contracting State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories under its sovereignty or for whose international relations it is responsible are those to which the present Protocol applies.

The Protocol shall three months after the date of the receipt of such notifica-
territoires trois mois après la date de réception de cette notification par le Gouvernement belge, mais pas avant la date d’entrée en vigueur du présent Protocole à l’égard de cet État.
2. Cette extension vaudra également pour la Convention si celle-ci n’est pas encore applicable à ces territoires.
3. Tout État Contractant qui a souscrit une déclaration au titre du paragraphe (1) du présent article, pourra, à tout moment, aviser le Gouvernement belge que le Protocole cesse de s’appliquer aux territoires en question. Cette dénonciation prendra effet un an après la date de réception par le Gouvernement belge de la notification de dénonciation; elle vaudra également pour la Convention.

Article 16.
Les Parties Contractantes peuvent mettre le présent Protocole en vigueur soit en lui donnant force de loi, soit en incorporant dans leur législation de la manière propre à celle-ci les règles adoptées aux termes du présent Protocole.

Article 17.
Le Gouvernement belge notifiera aux États représentés à la douzième session (1967-1968) de la Conférence diplomatique de Droit maritime, aux États qui adhèrent au présent Protocole, ainsi qu’aux États liés par la Convention :
1. Les signatures, ratifications et adhésions reçues en application des articles 10, 11 et 12.
2. La date à laquelle le présent Protocole entrera en vigueur en application de l’article 13.

The Contracting Parties may give effect to this Protocol either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Protocol.

The Belgian Government shall notify the States represented at the twelfth session (1967-1968) of the Diplomatic Conference on Maritime Law, the acceding States to this Protocol, and the States Parties to the Convention, of the following:
1. The signatures, ratifications and accessions received in accordance with Articles 10, 11 and 12.
2. The date on which the present Protocol will come into force in accordance with Article 13.
3. The notifications with regard to the territorial application in accordance with Article 15.
4. The denunciations received in accordance with Article 14.
EN FOI DE QUOI, les Plénipotentiaires soussignée, dûment autorisés, ont signé le présent Protocole.

FAIT à Bruxelles, le 23 février 1968 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.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorized, have signed this Protocol.

DONE at Brussels, this 23rd day of February 1968, in the French and English languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.
Final Act of the Thirteenth Session of the Diplomatic Conference on Maritime Law
(Brussels, 19-21 December 1979)

The Thirteenth Session of the Diplomatic Conference on Maritime Law was held in Brussels from 19 to 21 December, 1979 at the invitation of the Belgian Government with a view to revising the provisions concerning the units of account with respect to:

- The International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, which was adopted in Brussels on 10 October, 1957;


The following States were represented by delegations at this Conference:

The Conference used the texts prepared by the Belgian Government as its working documents.


IN WITNESS WHEREOF, the delegates have set their signatures to this final document.

DONE at Brussels on this 21st day of December, 1979, in one copy, in the English and French languages.
Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement du 25 août 1924, telle qu'amendée par le Protocole de modification du 23 février 1968

LES PARTIES CONTRACTANTES AU PRÉSENT PROTOCOLE,
etant parties à la Convention internationale pour l'unification de certaines règles en matière de connaissement faite à Bruxelles le 25 août 1924, telle qu'amendée par le Protocole portant modification ce dette Convention, fait à Bruxelles le 23 février 1968,
sont convenues de ce qui suit:

Article I

Aux fins du présent Protocole il faut entendre par “Convention”, la Convention internationale pour l'unification de certaines règles en matière de connaissement et son Protocole de signature faits à Bruxelles le 25 août 1924, telle qu'amendée par le Protocole fait à Bruxelles le 23 février 1968.

Article II

1. L’alinéa a) du paragraphe 5 de l'article 4 de la Convention est remplacé par le texte suivant:
   “a) A moins que la nature et la valeur des marchandises n’aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée dans le connaissement, le transporteur, comme le navire, ne seront en aucun cas responsables des pertes ou dommages des marchandises ou concernant celles-ci pour une somme supérieure à 666,67 unités de compte par colis ou unité, ou 2 unités de compte par kilogramme de poids brut des marchandises perdues ou endommagées, la limite la plus élevée étant applicable.”
2. L’alinéa d) du paragraphe 5 de l’article 4 de la Convention est remplacé par le texte suivant:
   “d) L’unité de compte mentionnée dans le présent article est le Droit de Ti
rage Spécial tel que défini par le Fonds Monétaire International. La somme mentionnée à l’alinéa a) de ce paragraphe sera convertie dans la monnaie nationale suivant la valeur de cette monnaie à une date qui sera déterminée par la loi de la juridiction saisie de l’affaire. La valeur en Droit de Tirage Spécial d’une monnaie nationale d’un Etat qui est membre du Fonds Monétaire International est calculée selon la méthode d’évaluation appliquée par le Fonds Monétaire International, à la date en question pour ses propres opérations et transactions. La valeur en Droit de Tirage Spécial d’une monnaie nationale d’un Etat non membre du Fonds Monétaire International est calculée de la façon déterminée par cet Etat.

Toutefois, un Etat qui n’est pas membre du Fonds Monétaire International et dont la législation ne permet pas l’application des dispositions prévues aux phrases précédentes peut, au moment de la ratification du Protocole de 1979 ou de l’adhésion à celui-ci ou encore à tout moment par la suite, déclarer que les limites de la responsabilité prévues dans cette Convention et applicables sur son territoire, sont fixées de la manière suivante:

(i) en ce qui concerne la somme de 666,67 unités de compte mentionnée à l’alinéa a) du paragraphe 5 du présent article, 10,000 unités monétaires;

(ii) en ce qui concerne la somme de 2 unités de compte mentionnée à l’alinéa a) du paragraphe 5 du présent article, 30 unités monétaires.

L’unité monétaire à laquelle il est fait référence à la phrase précédente correspond à 65,5 milligrammes d’or au titre de 900 millièmes de fin. La conversion en monnaie nationale des sommes mentionnées dans cette phrase, s’effectuera conformément à la législation de l’État en cause.

Le calcul et la conversion mentionnés aux phrases précédentes seront faits de manière à exprimer en monnaie nationale de l’État, dans la mesure du possible, la même valeur réelle pour les sommes currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph a) of paragraph 5 of this Article, 10,000 monetary units;

ii) in respect of the amount of 2 units of account mentioned in sub-paragraph a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900’. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned. The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of that State as far as possible the same real value for the amounts in sub-paragraph a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the
mentionnées à l’alinéa a) du paragraphe 5 du présent article, que celle exprimée en unités de compte.
Les États communiqueront au dépositaire leur méthode de calcul, ou les résultats de la conversion selon les cas, au moment du dépôt de l’instrument de ratification ou d’adhésion et chaque fois qu’un changement se produit dans leur méthode de calcul ou dans la valeur de leur monnaie nationale par rapport à l’unité de compte ou à l’unité monétaire.”

Article III
Tout différend entre les Parties concernant l’interprétation ou l’application du présent Protocole qui ne peut pas être réglé par voie de négociation, est soumis à l’arbitrage, à la requête de l’une d’entre elles. Si dans les six mois qui suivent la date de la demande d’arbitrage, les Parties ne parviennent pas à se mettre d’accord sur l’organisation de l’arbitrage, l’une quelconque d’entre elles peut soumettre le différend à la Cour Internationale de Justice, en déposant une requête conformément au Statut de la Cour.

Article IV
1. Chaque Partie Contractante pourra, au moment de la signature ou de la ratification du présent Protocole ou au moment de l’adhésion, déclarer qu’elle ne se considère pas liée par l’article III.
2. Toute Partie Contractante qui aura formulé une réserve conformément au paragraphe précédent pourra à tout moment lever cette réserve par une notification adressée au Gouvernement belge.

Article V
Le présent Protocole est ouvert à la signature des États qui ont signé la Convention du 24 août 1924 ou le Protocole du 23 février 1968 ou qui sont Parties à la Convention.

Article VI
1. Le présent Protocole sera ratifié.
2. La ratification du présent Protocole result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

Article III
Any dispute between two or more Contracting Parties concerning the interpretation or application of the present Protocol, which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organisation of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article IV
1. Each Contracting Party may at the time of signature or ratification of this Protocol or of accession thereto, declare that it does not consider itself bound by Article III.
2. Any Contracting Party having made a reservation in accordance with paragraph (1) may at any time withdraw this reservation by notification to the Belgian Government.

Article V
This Protocol shall be open for signature by the States which have signed the Convention of 25 August 1924 or the Protocol of 23 February 1968 or which are Parties to the Convention.

Article VI
1. This Protocol shall be ratified.
2. Ratification of this Protocol by any
par un Etat qui n’est pas Partie à la Convention vaut également pour la Convention.
3. Les instruments de ratification seront déposés auprès du Gouvernement belge.

Article VII
1. Les États non visés à l’article V pourront adhérer au présent Protocole.
2. L’adhésion au présent Protocole vaut également pour la Convention.

Article VIII
1. Le présent Protocole entrera en vigueur trois mois après la date du dépôt de cinq instruments de ratification ou d’adhésion.
2. Pour chaque État ratifiant le présent Protocole ou y adhérant après le cinquième dépôt, le présent Protocole entrera en vigueur trois mois après le dépôt de son instrument de ratification ou d’adhésion.

Article IX
1. Les Parties Contractantes pourront dénoncer le présent Protocole par notification au Gouvernement belge.
2. La dénonciation prendra effet un an après la date de réception de la notification par le Gouvernement belge.

Article X
1. Tout État pourra, au moment de la signature, de la ratification, de l’adhésion, ou à tout moment ultérieur, notifier par écrit au Gouvernement belge quels sont parmi les territoires dont il assure les relations internationales ceux auxquels s’applique le présent Protocole. Le Protocole sera applicable aux dits territoires trois mois après la date de réception de cette notification par le Gouvernement belge, mais pas avant la date d’entrée en vigueur du présent Protocole à l’égard de cet État.
2. Cette extension vaudra également State which is not a Party to the Convention shall have the effect of ratification of the Convention.
3. The instruments of ratification shall be deposited with the Belgian Government.

Article VII
1. States not referred to in Article V may accede to this Protocol.
2. Accession to this Protocol shall have the effect of accession to the Convention.
3. The instruments of accession shall be deposited with the Belgian Government.

Article VIII
1. This Protocol shall come into force three months after the date of the deposit of five instruments of ratification or accession.
2. For each State which ratifies this Protocol or accedes thereto after the fifth deposit, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article IX
1. Any Contracting Party may denounce this Protocol by notification to the Belgian Government.
2. The denunciation shall take effect one year after the date on which the notification has been received by the Belgian Government.

Article X
1. Each State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories for whose international relations it is responsible, are those to which the present Protocol applies. The Protocol shall three months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Protocol in respect of such State.
2. This extension also shall apply to the
pour la Convention si celle-ci n’est pas encore applicable à ces territoires.
3. Les Parties Contractantes qui ont souscrit une déclaration au titre du paragraphe (1) du présent article, pourront à tout moment, aviser le Gouvernement belge que le Protocole cesse de s’appliquer aux territoires en question. Cette dénonciation prendra effet un an après la date de réception par le Gouvernement belge de la notification de dénonciation.

Article XI
Le Gouvernement belge notifiera aux États signataires et adhérents:
1. Les signatures, ratifications et adhésions reçues en application des articles V, VI et VII.
2. La date à laquelle le présent Protocole entrera en vigueur en application de l’article VIII.
3. Les notifications au sujet de l’application territoriale faites en exécution de l’article X.
4. Les déclarations et communications faites en application de l’article II.
5. Les déclarations faites en application de l’article IV.
6. Les dénonciations reçues en application de l’article IX.

Convention if the latter is not yet applicable to these territories.
3. Any 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 Protocol shall cease to extend to such territories. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

Article XI
The Belgian Government shall notify the signatory and acceding States of the following:
1. the signatures, ratifications and accessions received in accordance with Articles V, VI and VII.
2. the date on which the present Protocol will come into force in accordance with Article VIII.
3. the notifications with regard to the territorial application in accordance with Article X.
4. the declarations and communications made in accordance with Article II.
5. the declarations made in accordance with Article IV.
6. the denunications received in accordance with Article IX.
RÈGLES DE LA HAYE-Visby

Convention Internationale pour l’unification de certaines règles en matière de connaissement et protocole de signature
telle qu’amendée par les Protocoles de 1968 et 1979

Article 1.
Dans la présente Convention les mots suivants sont employés dans le sens précis indiqué ci-dessous:

a) “Transporteur” comprend le propriétaire du navire ou l’affréteur, partie à un contrat de transport avec un chargement.

b) “Contrat de transport” s’applique uniquement au contrat de transport constaté par un connaissement ou pour tout document similaire formant titre pour le transport des marchandises par mer; il s’applique également au connaissement ou document similaire émis en vertu d’une charte-partie à partir du moment où ce titre régît les rapports du transporteur et du porteur du connaissement.

c) “Marchandises” comprend marchandises, marchandises et articles de nature quelconque, à l’exception des animaux vivants et de la cargaison qui, par le contrat de transport, est déclarée comme mise sur le pont et, en fait, est ainsi transportée.

d) “Navire” signifie tout bâtiment employé pour le transport des marchandises en mer.

e) “Transport de marchandises” couvre le temps écoulé depuis le chargement des marchandises à bord du navire jusqu’à leur déchargement du navire.

Article 2.
Sous réserve des dispositions de l’article 6, le transporteur dans tous les contrats de transport des marchandises par mer sera, quant au chargement, à la manutention, à l’arrimage, au transport, care and discharge of such goods, shall

HAGUE-Visby Rules

International Convention for the unification of certain rules of law relating to bills of lading and protocol of signature

as amended by the 1968 and the 1979 Protocols

Article 1.
In this Convention the following words are employed with the meanings set out below:

a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.

b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

c) “Goods” includes goods, wares, merchandises, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

d) “Ship” means any vessel used for the carriage of goods by sea.

e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2.
Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall
à la garde, aux soins et au déchargement des dites marchandises, soumis aux responsabilités et obligations, comme il bénéficiera des droits et exonérations ci-dessous énoncés.

**Article 3.**

1. Le transporteur sera tenu avant et au début du voyage d’exercer une diligence raisonnable pour:

   a) Mettre le navire en état de navigabilité.

   b) Convenablement armer, équiper et approvisionner le navire.

   c) Approprier et mettre en bon état les cales, chambres froides et frigorifiques et toutes autres parties du navire où des marchandises sont chargées pour leur réception, transport et conservation.

2. Le transporteur, sous réserve des dispositions de l’article 4, procédera de façon appropriée et soigneuse au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées.

3. Après avoir reçu et pris en charge les marchandises, le transporteur ou le capitaine ou agent du transporteur devra, sur demande du chargeur, délivrer au chargeur, un connaissement portant entre autres choses:

   a) Les marques principales nécessaires à l’identification des marchandises telles qu’elles sont fournies par écrit par le chargeur avant que le chargement de ces marchandises ne commence pourvu que ces marques soient imprimées ou apposées clairement de toute autre façon sur les marchandises non emballées ou sur les caisses ou emballages dans lesquelles les marchandises sont contenues, de telle sorte qu’elles devraient normalement rester lisibles jusqu’à la fin du voyage.

   b) Ou le nombre de colis, ou de pièces, ou la quantité ou le poids, suivant les cas, tels qu’ils sont fournis par écrit par le chargeur.

   c) L’état et le conditionnement apparent des marchandises.

Cependant aucun transporteur, capi-

be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

**Article 3.**

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

   a) Make the ship seaworthy.

   b) Properly man, equip and supply the ship.

   c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

   a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

   b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

   c) The apparent order and conditions of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for sus-
taine ou agent du transporteur ne sera te-
nu de déclarer ou de mentionner dans le
connaissement des marques, un nombre,
une quantité ou un poids, dont il a une
raison sérieuse de soupçonner qu’ils ne
représentent pas exactement, les mar-
chandises actuellement reçues par lui, ou
qu’il n’a pas eu des moyens raisonnables
de vérifier.

4. Un tel connaissement vaudra pré-
somption, sauf preuve contraire, de la ré-
ception par le transporteur des marchan-
dises telles qu’elles y sont décrites conform-
mément au § 3, a, b et c. Toutefois, la
preuve contraire n’est pas admise lorsque
le connaissement a été transféré à un tiers
porteur de bonne foi.

5. Le chargeur sera considéré avoir ga-
rantie au transporteur, au moment du
chargement, l’exactitude des marques,
du nombre, de la quantité et du poids tels
qu’ils sont fournis par lui, et le chargeur
indemnisera le transporteur de toutes
pertes, dommages et dépenses provenant
ou résultant d’inexactitudes sur ces
points. Le droit du transporteur à pareille
indemnité ne limitera d’aucune façon sa
responsabilité et ses engagements sous
l’empire du contrat de transport vis-à-vis
de toute personne autre que le chargeur.

6. A moins qu’un avis des pertes ou
dommages et de la nature générale de ces
pertes ou dommages ne soit donné par
écrit au transporteur ou à son agent au
port de déchargement, avant ou au mo-
ment de l’enlèvement des marchandises,
et de leur remise sous la garde de la per-
sonne ayant droit à la délivrance sous
l’empire du contrat de transport, cet en-
lèvement constituera, jusqu’à preuve
contraire, une présomption que les mar-
chandises ont été délivrées par le trans-
porteur telles qu’elles sont décrites au
connaissement.

Si les pertes ou dommages ne sont pas
apparents, l’avis doit être donné dans les
trois jours de la délivrance.

Les réserves écrites sont inutiles si
l’état de la marchandise a été contradic-
toirement constaté au moment de la ré-
ception.

Sous réserve des dispositions du para-

4. Such a bill of lading shall be prima
facie evidence of the receipt by the car-
rrier of the goods as therein described in
accordance with paragraph 3 (a), (b) and
(c). However, proof to the contrary shall
not be admissible when the bill of lading
has been transferred to a third party act-
ing in good faith.

5. The shipper shall be deemed to have
guaranteed to the carrier the accuracy at
the time of shipment of the marks, num-
ber, quantity and weight, as furnished by
him, and the shipper shall indemnify the
carrier against all loss, damages and ex-
penses arising or resulting from inaccur-
cacies in such particulars. The right of the
carrier to such indemnity shall in no way
limit his responsibility and liability under
the contract of carriage to any person
other than the shipper.

6. Unless notice of loss or damage and
the general nature of such loss or damage
be given in writing to the carrier or his
agent at the port of discharge before or at
the time of the removal of the goods into
the custody of the person entitled to de-
livery thereof under the contract of car-
rriage, or, if the loss or damage be not ap-
parent, within three days, such removal
shall be prima facie evidence of the de-
livery by the carrier of the goods as de-
scribed in the bill of lading.

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

Subject to paragraph 6bis the carrier
and the ship shall in any event be dis-
charged from all liability whatsoever in
respect of the goods, unless suit is
brought within one year of their delivery
or of the date when they should have
graphe 6bis, le transporteur et le navire
seront en tous cas déchargés de toute res-
sponsabilité quelconque relativement aux
marchandises, à moins qu’une action ne
soit intentée dans l’année de leur déli-
vrance ou de la date à laquelle elles eus-
sent dû être livrées. Ce délai peut tou-
tefois être prolongé par un accord conclu
entre les parties postérieurement à l’évé-
nement qui a donné lieu à l’action.

En cas de perte ou dommage certains
ou présumés, le transporteur et le récep-
tionnaire se donneront réciproquement
toutes les facilités raisonnables pour l’ins-
pection de la marchandise et la vérifica-
tion du nombre de colis.

6 bis. Les actions récursoires pourront
être exercées même après l’expiration
du délai prévu au paragraphe précédent, si
elles le sont dans le délai déterminé par la
loi du Tribunal saisi de l’affaire. Toutefois,
ce délai ne pourra être inférieur à
trois mois à partir du jour où la personne
qui exerce l’action récursoire a réglé la ré-
clamation ou a elle-même reçu significa-
tion de l’assignation.

7. Lorsque les marchandises auront été
chargées, le connaissement que délivra
le transporteur, capitaine ou agent du
transporteur au chargeur sera, si le char-
geur le demande, un connaissement libel-
lé “embarqué” pourvu que, si le chargeur
a auparavant reçu quelque document
donnant droit à ces marchandises, il res-
titue ce document contre remise d’un
connaissement “embarqué”. Le trans-
porteur, le capitaine ou l’agent aura éga-
lement la faculté d’annoter au port d’em-
barquement, sur le document remis en
premier lieu, le ou les noms du ou des na-
vires sur lesquels les marchandises ont été
embarquées et la date ou les dates de
l’embarquement, et lorsque ce document
sera ainsi annoté, il sera, s’il contient les
mentions de l’article 3, § 3, considéré aux
fins de cet article comme constituant un
connaissement libellé “embarqué”.

8. Toute clause, convention ou accord
dans un contrat de transport exonérant le
transporteur ou le navire de responsabili-
té pour perte ou dommage concernant
des marchandises provenant de négligen-
been delivered. This period may, how-
ever, be extended if the parties so agree
after the cause of action has arisen.

In the case of any actual or appre-
hended loss or damage the carrier and
the receiver shall give all reasonable fa-
cilities to each other for inspecting and
tallying the goods.

6bis. An action for indemnity against a
third person may be brought even after
the expiration of the year provided for in
the preceding paragraph if brought with-
in the time allowed by the law of the
Court seized of the case. However, the
time allowed shall be not less than three
months, commencing from the day when
the person bringing such action for in-
demnity has settled the claim or has been
served with process in the action against
himself.

7. After the goods are loaded the bill of
lading to be issued by the carrier, master,
or agent of the carrier to the shipper
shall, if the shipper so demands, be a
“shipped” bill of lading, provided that if
the shipper shall have previously taken
up any document of title to such goods,
he shall surrender the same as against the
issue of the “shipped” bill of lading, but
at the option of the carrier such docu-
ment of title may be noted at the port of
shipment by the carrier, master or agent
with the name or names of the ship or
ships upon which the goods have been
shipped and the date or dates of ship-
ment, and when so noted, if it shows the
particulars mentioned in paragraph 3 of
Article 3, shall for the purpose of this
Article be deemed to constitute a
“shipped” bill of lading.

8. Any clause, covenant, or agreement
in a contract of carriage relieving the car-
rrier or the ship from liability for loss or
damage to, or in connection with, goods
arising from negligence, fault, or failure
Article 4.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
   a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
   b) Fire, unless caused by the actual fault or privity of the carrier.
   c) Perils, dangers and accidents of the sea or other navigable waters.
   d) Act of God.
   e) Act of war.
   f) Act of public enemies.
   g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
   h) Quarantine restrictions.
   i) Act or omission of the shipper or owner of the goods, his agent or representative.
   j) Strikes or lockouts or stoppage or restraint of labour from whatever cause,
h) d’une restriction de quarantaine;
i) d’un acte ou d’une omission du
chargeur ou propriétaire des marchan-
dises, de son agent ou représentant;
j) de grèves ou lockouts ou d’arrêts
ou entraves apportés au travail, pour
quelque cause que ce soit, partiellement
ou complètement;
k) d’émeutes ou de troubles civils;
l) d’un sauvetage ou tentative de
sauvetage de vies ou de biens en mer;
m) de la freinte en volume ou en
poids ou de toute autre perte ou domma-
gement résultant de vice caché, nature spécia-
le ou vice propre de la marchandise;
n) d’une insuffisance d’emballage;
o) d’une insuffisance ou imperfec-
tion de marques;
p) de vices cachés échappant à une
diligence raisonnable;
q) de toute autre cause ne provenant
pas du fait ou de la faute du transporteur
ou du fait ou de la faute des agents ou
préposés du transporteur, mais le fardeau
de la preuve incombera à la personne ré-
clamant le bénéfice de cette exception et
il lui appartiendra de montrer que ni la
faute personnelle ni le fait du transpor-
teur ni la faute ou le fait des agents ou
préposés du transporteur n’ont contribu-
é à la perte ou au dommage.

3. Le chargeur ne sera pas responsable
 des pertes ou dommages subis par le
transporteur ou le navire et qui provien-
draient ou résulteraient de toute cause
quelconque sans qu’il y ait acte, faute ou
négligence du chargeur, de ces agents ou
de ces préposés.

4. Aucun déroutement pour sauver ou
tenter de sauver des vies ou des biens en
mer, ni aucun déroutement raisonnable
ne sera considéré comme une infraction à
la présente Convention ou au contrat de
transport, et le transporteur ne sera res-
ponsable d’aucune perte ou dommage en
résultant.

5. a) A moins que la nature et la valeur
des marchandises n’aient été déclarées
par le chargeur avant leur embarquement
et que cette déclaration ait été insérée
dans le connaississement, le transporteur,
comme le navire, ne seront en aucun cas

whether partial or general.
k) Riots and civil commotion.
l) Saving or attempting to save life
or property at sea.
m) Wastage in bulk or weight or any
other loss or damage arising from inher-
ent defect, quality or vice of the goods.
n) Insufficiency of packing.
o) Insufficiency or inadequacy of
marks.
p) Latent defects not discoverable
by due diligence.
q) Any other cause arising without
the actual fault or privity of the carrier, or
without the fault or neglect of the agents
or servants of the carrier, but the burden
of proof shall be on the person claiming
the benefit of this exception to show that
neither the actual fault or privity of the
carrier nor the fault or neglect of the
agents or servants of the carrier con-
tributed to the loss or damage.

3. The shipper shall not be responsible
for loss or damage sustained by the car-
rrier or the ship arising or resulting from
any cause without the act, fault or ne-
glect of the shipper, his agents or his ser-
vants.

4. Any deviation in saving or attempt-
ing to save life or property at sea or any
reasonable deviation shall not be
deemed to be an infringement or breach
of this convention or of the contract of
carriage, and the carrier shall not be li-
able for any loss or damage resulting
therefrom.

5. a) Unless the nature and value of
such goods have been declared by the
shipper before shipment and inserted in
the bill of lading, neither the carrier nor
the ship shall in any event be or become
liable for any loss or damage to or in con-
responsables des pertes ou dommages des marchandises ou concernant celle-ci pour une somme supérieure à 666,67 unités de compte par colis ou unité, ou 2 unités de compte par kilogramme de poids brut des marchandises perdues ou endommagées, la limite la plus élevée étant applicable.

b) La somme totale due sera calculée par référence à la valeur des marchandises au lieu et au jour où elles sont déchargées conformément au contrat, ou au jour et au lieu où elles auraient dû être déchargées.

La valeur de la marchandise est déterminée d’après le cours en bourse, ou, à défaut, d’après le prix courant sur le marché ou, à défaut de l’un et de l’autre, d’après la valeur usuelle de marchandises de mêmes nature et qualité.

c) Lorsqu’un cadre, une palette ou tout engin similaire est utilisé pour grouper des marchandises, tout colis ou unité énuméré au connaissement comme étant inclus dans cet engin sera considéré comme un colis ou unité au sens de ce paragraphe. En dehors du cas prévu ci-dessus, cet engin sera considéré comme colis ou unité.

d) L’unité de compte mentionnée dans le présent article est le Droit de Tirage Spécial tel que défini par le Fonds Monétaire International. La somme mentionnée à l’alinéa a) de ce paragraphe sera convertie dans la monnaie nationale suivant la valeur de cette monnaie à une date qui sera déterminée par la loi de la juridiction saisie de l’affaire.

La valeur en Droit de Tirage Spécial d’une monnaie nationale d’un État qui est membre du Fonds Monétaire International est calculée selon la méthode d’évaluation appliquée par le Fonds Monétaire International, à la date en question pour ses propres opérations et transactions. La valeur en Droit de Tirage Spécial d’une monnaie nationale d’un État non membre du Fonds Monétaire International est calculée de la façon déterminée par cet État.

Toutefois, un État qui n’est pas membre du Fonds Monétaire Internatio-
nal et dont la législation ne permet pas l’application des dispositions prévues aux phrases précédentes peut, au moment de la ratification du Protocole de 1979 ou de l’adhésion à celui-ci ou encore à tout moment par la suite, déclarer que les limites de la responsabilité prévues dans cette Convention et applicables sur son territoire sont fixées de la manière suivante:

i) en ce qui concerne la somme de 666,67 unités de compte mentionnée à l’alinéa (a) du paragraphe 5 du présent article, 10.000 unités monétaires;

ii) en ce qui concerne la somme de 2 unités de compte mentionnée à l’alinéa (a) du paragraphe 5 du présent article, 30 unités monétaires.

L’unité monétaire à laquelle il est fait référence à la phrase précédente correspond à 65,5 milligrammes d’or au titre de 900 millièmes de fin. La conversion en monnaie nationale des sommes mentionnées dans cette phrase s’effectuera conformément à la législation de l’État en cause.

Le calcul et la conversion mentionnés aux phrases précédentes seront faits de manière à exprimer en monnaie nationale de l’État, dans la mesure du possible, la même valeur réelle pour les sommes mentionnées à l’alinéa (a) du paragraphe 5 du présent article, que celle exprimée en unités de compte.

Les États communiqueront au dépositaire leur méthode de calcul, ou les résultats de la conversion selon les cas, au moment du dépôt de l’instrument de ratification ou d’adhésion et chaque fois qu’un changement se produit dans leur méthode de calcul ou dans la valeur de leur monnaie nationale par rapport à l’unité de compte ou à l’unité monétaire.

e) Ni le transporteur, ni le navire n’auront le droit de bénéficier de la limitation de responsabilité établie par ce paragraphe s’il est prouvé que le dommage résulte d’un acte ou d’une omission du transporteur qui a eu lieu, soit avec l’intention de provoquer un dommage, soit témérairement, et avec conscience qu’un dommage en résulterait probablement.

f) La déclaration mentionnée à l’ali-

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph a) of paragraph 5 of this Article, 10,000 monetary units;

ii) in respect of the amount of 2 units of account mentioned in sub-paragraph a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrams of gold of millesimal fineness 900’. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of that State as far as possible the same real value for the amounts in sub-paragraph a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

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

f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be
PART III - TEXTS

Hague Rules as amended by the 1968 and 1979 Protocols

néra a) de ce paragraphe, insérée dans le
connaissément constituerait une présomp-
tion sauf preuve contraire, mais elle ne
lierait pas le transporteur qui pourra la
contester.
g) Par convention entre le transpor-
teur, capitaine ou agent du transporteur
et le chargeur, d’autres sommes maxima
que celles mentionnées à l’alinéa a) de ce
paragraphe peuvent être déterminées,
pourvu que ce montant maximum
conventionnel ne soit pas inférieur au
montant maximum correspondant men-
tionné dans cet alinéa.
h) Ni le transporteur, ni le navire ne
seront en aucun cas responsables, pour
perte ou dommage causé aux marchan-
dises ou les concernant, si dans le
connaissément le chargeur a fait sciem-
ment une fausse déclaration de leur natu-
re ou de leur valeur.

6. Goods of an inflammable, explosive
or dangerous nature to the shipment
whereof the carrier, master or agent of
the carrier has not consented with
knowledge of their nature and character,
may at any time before discharge be
landed at any place, or destroyed or ren-
dered innocuous by the carrier without
compensation and the shipper of such
goods shall be liable for all damage and
expenses directly or indirectly arising
out of or resulting from such shipment.
If any such goods shipped with such
knowledge and consent shall become a
danger to the ship or cargo, they may in
like manner be landed at any place, or
destroyed or rendered innocuous by the
carrier without liability on the part of the
carrier except to general average if any.

Article 4 bis.

1. The defences and limits of liability
provided for in this Convention shall ap-
ply in any action against the carrier in re-
spect of loss or damage to goods covered
by a contract of carriage whether the ac-
tion be founded in contract or in tort.

2. If such an action is brought against a
tuelle ou sur une responsabilité extra-
contractuelle.
2. Si une telle action est intentée contre un préposé du transporteur, ce préposé pourra se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la Convention.
3. L’ensemble des montants mis à char-
ge du transporteur et des ses préposés ne dépassera pas dans ce cas la limite prévue par la présente Convention.
4. Toutefois le préposé ne pourra se pré-
valoir des dispositions du présent article, s’il est prouvé que le dommage résulte d’un acte ou d’une omission de ce prépo-
sé qui a eu lieu soit avec l’intention de provoquer un dommage, soit téméraire-
ment et avec conscience qu’un dommage en résulterait probablement.

Article 5.
Un transporteur sera libre d’aban-
donner tout ou partie de ses droits et exo-
nérations ou d’augmenter ses responsabi-
lités et obligations tels que les uns et les autres sont prévus par la présente Convention pourvu que cet abandon ou cette augmentation soit inséré dans le
connaissement délivré au chargeur.
Aucune disposition de la présente Convention ne s’applique aux chartes-
parties; mais si des connaissements sont émis dans le cas d’un navire sous l’empi-
rie d’une charte-partie, ils sont soumis aux termes de la présente Convention. Aucu-
e disposition dans ces règles ne sera considérée comme empêchant l’insertion dans un connaissement d’une disposition licite quelconque au sujet d’avaries com-
munes.

Article 6.
Nonobstant les dispositions des ar-
ticles précédents, un transporteur, capi-
taine ou agent du transporteur et un char-
geur seront libres, pour des marchandises déterminées quelles qu’elles soient, de passer un contrat quelconque avec des conditions quelconques concernant la
responsabilité et les obligations du trans-
porteur pour ces marchandises, ainsi que

servant or agent of the carrier (such ser-
vant or agent not being an independent
contractor), such servant or agent shall be entitled to avail himself of the de-
fences and limits of liability which the
carrier is entitled to invoke under this
Convention.

3. The aggregate of the amounts recov-
erable from the carrier, and such servants
and agents, shall in no case exceed the
limit provided for in this Convention.
4. Nevertheless, a servant or agent of
the carrier shall not be entitled to avail
himself of the provisions of this Article, if it is proved that the damage resulted
from an act or omission of the servant or
agent done with intent to cause damage
or recklessly and with knowledge that
damage would probably result.

Article 5.
A carrier shall be at liberty to surren-
der in whole or in part all or any of his
rights and immunities or to increase any
of his responsibilities and obligations un-
der this Convention, provided such sur-
render or increase shall be embodied in
the bill of lading issued to the shipper.
The provisions of this Convention shall
not be applicable to charter parties, but
if bills of lading are issued in the case of
a ship under a charter party they shall
comply with the terms of this Conven-
tion. Nothing in these rules shall be held
to prevent the insertion in a bill of lading
of any lawful provision regarding gener-
al average.

Article 6.
Notwithstanding the provisions of
the preceding articles, a carrier, master
or agent of the carrier and a shipper shall
in regard to any particular goods be at
liberty to enter into any agreement in any
terms as to the responsibility and liability
of the carrier for such goods, and as to
the rights and immunities of the carrier
in respect of such goods, or his obliga-
Hague Rules as amended by the 1968 and 1979 Protocols

Les droits et exonérations du transporteur au sujet de ces mêmes marchandises, ou concernant ses obligations quant à l’état de navigabilité du navire dans la mesure où cette stipulation n’est pas contraire à l’ordre public ou concernant les soins ou diligences de ses préposés ou agents quant au chargement, à la manutention, à l’arrimage, au transport, à la garde, aux soins et au déchargement des marchandises transportées par mer, pourvu qu’en ce cas aucun connaissement n’ait été ou ne soit émis et que les conditions de l’accord intervenu soient insérées dans un récépissé qui sera un document non négociable et portera mention de ce caractère.

Toute convention ainsi conclue aura plein effet légal.

Il est toutefois convenu que cet article ne s’appliquera pas aux cargaisons commerciales ordinaires, faites en cours d’opérations commerciales ordinaires, mais seulement à d’autres chargements où le caractère et la condition des biens à transporter et les circonstances, les termes et les conditions auxquels le transport doit se faire sont de nature à justifier une convention spéciale.

**Article 7.**

Aucune disposition de la présente Convention ne défend à un transporteur ou à un chargeur d’insérer dans un contrat des stipulations, conditions, réserves ou exonérations relatives aux obligations et responsabilités du transporteur ou du navire pour la perte ou les dommages provenant aux marchandises, ou concernant leur garde, soin et manutention, antérieurement au chargement et postérieurement au déchargement du navire sur lequel les marchandises seront transportées par mer.

**Article 8.**

Les dispositions de la présente Convention ne modifient ni les droits ni les obligations du transporteur tels quels résultent de toute loi en vigueur en ce moment relativement à la limitation de la responsabilité des propriétaires de navires de mer.

Clause as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

**Article 7.**

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

**Article 8.**

The provisions of this convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.
Article 9.
La présente Convention ne porte pas atteinte aux dispositions des conventions internationales ou des lois nationales régissant la responsabilité pour dommages nucléaires.

Article 10.
Les dispositions de la présente Convention s’appliqueront à tout connaissement relatif à un transport de marchandises entre ports relevant de deux États différents quand:
(a) le connaissement est émis dans un État Contractant ou
(b) le transport a lieu au départ d’un port d’un État Contractant ou
(c) le connaissement prévoit que les dispositions de la présente Convention ou de toute autre législation les appliquant ou leur donnant effet régiront le contrat, quelle que soit la nationalité du navire, du transporteur, du chargeur, du destinataire ou de toute autre personne intéressée.

Chaque État Contractant appliquera les dispositions de la présente Convention aux connaissements mentionnés ci-dessus.
Le présent article ne porte pas atteinte au droit d’un État Contractant d’appliquer les dispositions de la présente Convention aux connaissements non visés par les alinéas précédents.

Article 11.
À l’expiration du délai de deux ans au plus tard à compter du jour de la signature de la convention, le Gouvernement belge entrera en rapport avec les Gouvernements des Hautes Parties Contractantes qui se seront déclarées prêtes à la ratifier, à l’effet de faire décider s’il y a lieu de la mettre en vigueur. Les ratifications seront déposées à Bruxelles à la date qui sera fixée de commun accord entre lesdits Gouvernements. Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des États qui y prendront part et par le Ministre des Affaires Etrangères de Belgique.

Article 9.
This Convention shall not affect the provisions of any international convention or national law governing liability for nuclear damage.

Article 10.
The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:
(a) the bill of lading is issued in a Contracting State, or
(b) the carriage is from a port in a Contracting State, or
(c) the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.
This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs.

Article 11.
After an interval of not more than two years from the day on which the convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratification shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratification shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Belgian Minister for Foreign Affairs.
Les dépôts ultérieurs se feront au moyen d’une notification écrite, adressée au Gouvernement belge et accompagnée de l’instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, de notifications mentionnées à l’alinéa précédent, ainsi que des instruments de ratification qui les accompagnent sera immédiatement, par les soins du Gouvernement belge et par la voie diplomatique, remise aux États qui ont signé la présente convention ou qui y auront adhéré. Dans les cas visés à l’alinéa précédent, ledit Gouvernement fera connaître, en même temps, la date à laquelle il a reçu la notification.

Article 12.

Les États non signataires pourront adhérer à la présente Convention, qu’ils aient été ou non représentés à la Conférence Internationale de Bruxelles.

L’État qui désire adhérer notifie par écrit son intention au Gouvernement belge, en lui transmettant l’acte d’adhésion, qui sera déposé dans les archives du dit Gouvernement.

Le Gouvernement belge transmettra immédiatement à tous les États signataires ou adhérents copie certifiée conforme de la notification ainsi que de l’acte d’adhésion en indiquant la date à laquelle il a reçu la notification.

Article 13.

Les Hautes Parties contractantes peuvent au moment de la signature du dépôt des ratifications ou lors de leur adhésion déclarer que l’acceptation qu’elles donnent à la présente Convention ne s’applique pas soit à certains soit à aucun des Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer, se trouvant sous leur souveraineté ou autorité. En conséquence, elles peuvent ultérieurement adhérer séparément au nom de l’un ou de l’autre de ces

The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relating to the first deposit of ratification, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel, to the Powers who have signed this convention or who have acceded to it. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

Article 12.

Non-signatory States may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article 13.

The High contracting Parties may at the time of signature, ratification or accession, declare that their acceptance of the present convention does not include any or all of the self-governing Dominions, or of the colonies, overseas possessions, protectorates or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing Dominion, colony, overseas possession, protectorate or territory excluded in their declaration.
Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer, ainsi exclus dans leur déclaration originale. Elles peuvent aussi, en se conformant à ces dispositions, dénoncer la présente Convention séparément pour l’un ou plusieurs des Dominions autonomes, colonies, possessions, protectorats ou territoires d’outre-mer se trouvant sous leur souveraineté ou autorité.

**Article 14.**
A l’égard des États qui auront participé au premier dépôt de ratifications, la présente Convention produira effet un an après la date du procès-verbal de ce dépôt. Quant aux États qui la ratifieront ultérieurement ou qui y adhéreront, ainsi que dans les cas où la mise en vigueur se fera ultérieurement et selon l’article 12, alinéa 2, elle produira effet six mois après que les notifications prévues à l’article 11, alinéa 2, et à l’article 12, alinéa 2, auront été reçues par le Gouvernement belge.

**Article 15.**
S’il arrivait qu’un des États Contractants voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement belge, qui communiquera immédiatement copie certifiée conforme de la notification à tous les autres États, en leur faisant savoir la date à laquelle il l’a reçue.
La dénonciation produira ses effets à l’égard de l’état seul qui l’auroit notifiée et un an après que la notification en sera parvenue au Gouvernement belge.

**Article 16.**
Chaque État Contractant aura la faculté de provoquer la réunion d’une nouvelle conférence, dans le but de rechercher les améliorations qui pourraient être apportées à la présente Convention.
Celui des États qui ferait usage de cette faculté aurait à notifier un an à l’avance son intention aux autres États, par l’intermédiaire du Gouvernement belge.

They may also denounce the convention separately in accordance with its provisions in respect of any self-governing Dominion, or any colony, overseas possession, protectorate or territory under their sovereignty or authority.

**Article 14.**
The present Convention shall take effect, in the case of the States which have taken part in the first deposit of ratification, one year after the date of the protocol recording such deposit. As respects the States which ratify subsequently or which accede, and also in cases in which the Convention is subsequently put into effect in accordance with Article 13, it shall take effect six months after the notifications specified in paragraph 2 of Article 11 and paragraph 2 of Article 12 have been received by the Belgian Government.

**Article 15.**
In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other States, informing them of the date on which it was received.

The denunciation shall only operate in respect of the State which made the notification, and on the expiry of one year after the notification has reached the Belgian Government.

**Article 16.**
Any one of the Contracting States shall have the right to call for a fresh conference with a view to considering possible amendments.

A State which would exercise this right should notify its intention to the other States through the Belgian Government, which would make arrange-
termédiare du Gouvernement belge, qui se chargerait de convoquer la conférence.

**PROTOCOLE DE SIGNATURE***

En procédant à la signature de la Convention Internationale pour l’unification de certaines règles en matière de connaissance, les Plénipotentiaires soussignés ont adopté le présent Protocole qui aura la même force et la même valeur que si ces dispositions étaient insérées dans le texte même de la Convention à laquelle il se rapporte.

Les Hautes Parties contractantes pourront donner effet à cette Convention soit en lui donnant force de loi, soit en introduisant dans leur législation nationale les règles adoptées par la Convention sous une forme appropriée à cette législation.

Elles se réservent expressément le droit:
1. de préciser que dans les cas prévus par l’article 4, alinéa 2, de c) à p), le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).
2. d’appliquer en ce qui concerne le cabotage national l’article 6 à toutes catégories de marchandises, sans tenir compte de la restriction figurant au dernier alinéa dudit article.

**PROTOCOL OF SIGNATURE***

At the time of signing the International Convention for the Unification of certain Rules of Law relating to Bills of Lading the Plenipotentiaries whose signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.

The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.

They may reserve the right:
1. To prescribe that in the cases referred to in paragraph 2 (c) to (p) of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a).
2. To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account the restriction set out in the last paragraph of that Article.

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* Fait à Bruxelles le 25 août 1924.

* Done at Brussels August 25th, 1924.