

# **CMI's International Working Group on Security Interests over Shipping Containers**

**Report to the Assembly, Gothenburg, 24 May 2024**

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**(chair)**

**50 million shipping containers (Twenty-foot Equivalent Units TEU) are being used worldwide in the sea trade. The total value thereof is probably in the same range as the value of the ships carrying them. But, as opposed to what is true for those ships, the protection of the property and security rights over those containers against third parties is very weak, if at all existing.**

**Can the CMI help to cure this?**

## **1. Ownership and financing**

- 1.1. Approximately half of those 50M shipping containers are “owned” by the ship operators. This ownership is however often conditional or deferred by virtue of instruments providing for a retention of title in favour of a financing entity, as the ship operator will use as little equity as possible for the purchase of this equipment.
- 1.2. The ship operators, on average, lease the other half. Their lessors in turn also rely on external financing. The lessors, who lease the containers to the ship operators,
  - a. either own the containers and finance them with a loan agreement along with a variety of security instruments; or
  - b. lease them from an owner-investor, such as a pension fund, (so that the lease to the ship operator is in fact a sub lease);
  - c. or any other type of arrangements or combinations thereof.
- 1.3. The lessor may also just appear as a lessor but acts in fact as a manager for and as agent of an undisclosed principal: the owner-investor.
- 1.4. Further, containers, by their nature, are under ever changing physical control : on the ship, on the port terminal, on the inland barge, on the truck, on the train, at shipper's or consignee's yard, etc. As a result, the title holder has seldom or never physical control over his asset. Add, to this that, as a part of its purpose, a container crosses many national frontiers and is exposed to a variety of national laws and legal cultures.

## **2. Issues and questionnaire**

- 2.1. A variety of issues arise in practice:
  - a. an investment manager may attract savings to allegedly invest in shipping containers which simply do not exist and are not intended to exist; there is, for the individual saver, no realistic control as to the existence of a shipping container;
  - b. propriety, pledge or mortgage on a shipping container is ineffective towards third parties;
  - c. creditors exercises possessory liens for claims totally unrelated to owner of the container.
- 2.2. And, you can find more issues in the questionnaire addressed to the national maritime law associations. The questionnaire and answers thereto are available on <https://comitemaritime.org/work/security-interests-over-shipping-containers/> and please find attached hereto a summary of the answers.

### 3. Tentative remedy

#### Is the application of the 2001 Cape Town convention to shipping containers recommendable?

- 3.1. The very question the IWG seeks an answer to is whether the application to shipping containers of the 2001 Cape Town Convention on International Interests in Mobile Equipment would be appropriate or not. The Cape Town convention is a frame treaty for the registration of contracts of sale (conditional or not), security interests and leases of any mobile equipment. It also provides for legal remedies for default in financial agreements, including repossession and the effect of particular states' bankruptcy laws. As mentioned it is a frame treaty: it does not apply to any mobile equipment, unless a protocol makes it applicable to a particular type of mobile equipment.<sup>1</sup> Would a regulated international registration of rights in containers and regulatory protection thereof make sense and benefit to the sea trade at large, to all those involved in the operation and owning of containers, to (managing) lessors, to financial institutions, to pension funds and other investors, etc.?
- 3.2. From a legal perspective it looks like the answer is affirmative.
- 3.3. From a practical point of view, the set up of an international register may seem complex and the effective registration of each and every container burdensome, but the reality is that it already exists: the register of the Bureau International du Conteneur (BIC). And really all containers in the sea trade are effectively BIC-registered. This register serves its goals but, as a private instrument, with no ruling power, it is not, or only partly, effective to address the above issues (2.1 and 2.2.). The BIC-reality suggests that there is no significant practical obstacle in an international registration of shipping containers. It is already there.
- 3.4. However, any further in depth exploration of such tentative remedy, and any preparation of a protocol to that end would make no sense if not supported by the industries and organisations concerned.

### 4. Next step

- 4.1. A very succinct and informal check with a small part of the industry suggests there would be a support. But this is insufficient to be conclusive, so that a systematic and formal approach of the market is required, including a consultation with the industry's organisations, such as the BIC and the Institute of International Container Lessors (IICL).
- 4.2. The Cape Town convention is a Unidroit instrument, so that it would be inappropriate for the CMI to approach the industries without the consent of Unidroit. In fact, earlier, Unidroit approached the CMI to explore the desirability of a protocol applying the Cape Town convention to the registration of sea going ships. The answer of the CMI was negative, whereas the system of the national registers of sea going ships were serving their goals, so that a Cape Town type international ships register would only be an attempt to replace a widespread and well performing system.
- 4.3. In line with this question and answer, the CMI will, in the near future, approach Unidroit to ask for its consent for the CMI to consult with the concerned industries to find out whether there is any interest in applying to shipping containers a Cape Town registration system and protection for shipping containers.

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Attached: interim report on responses to the questionnaire

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<sup>1</sup> Existing Cape Town protocols are: Aircraft (16 November 2001, entered into force 1 March 2006, 80 ratifications), Railway Rolling Stock (23 February 2007, not yet in force); Space Assets (9 March 2012, not yet in force); Mining, Agricultural and Construction Equipment (22 November 2019, not yet in force).