

THE HAGUE RULES IN THE ERA OF COMBINED TRANSPORT

by

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1. INTRODUCTION

Some fifty odd years have passed since the Hague Rules, as we now know them, were created, and needless to say, there have been numerous technological developments in the transport industry in that time which could not have been readily foreseen in the early 1920's. Whilst "through transport" is a concept which has been well known for years, a more recent development has been the creation of the concept of "combined transport" and it is therefore of some interest to consider the application of the Hague Rules to the common combined transport situation. This paper is not intended as an in depth analysis of the operation of the Rules in the combined transport situation but rather to demonstrate a number of practical problems that may confront practitioners in the field.

2. WHAT IS "COMBINED TRANSPORT"?

The International Chamber of Commerce, in showing a lead to governments the world over has drafted uniform rules for a combined transport document and whilst these rules are not relevant to the present discussion it is worth noting the definition of "combined transport" in Rule 2(a). This rule, which is well accepted, provides that "combined transport means the carriage of goods by at least two different modes of transport from a place at which the goods are taken in charge situated in one country to a place designated for delivery situated in a different country." It is, of course, not essential that one of the modes of transport should be by sea but in the context of this Association's activities and for the purpose of this discussion, we shall assume sea

transport as an integral part of the transaction.

It will be noted that the above definition of combined transport makes no reference to the package, unit, receptacle or container in which goods are carried, and it is therefore possible to contemplate the situation where goods are carried in different receptacles for different portions of the journey. In practice, however, goods carried by combined transport remain in the same receptacle throughout, and the term "combined transport" is therefore virtually synonymous with container transport. Indeed, the major problems with combined transport vis-a-vis the Hague Rules, arise from the very fact that combined transport means container transport, whether the container be a standard 20' or 40' box, a reefer container, an open topped container, a trailer, flat or transportable tank.

3. THE COMBINED TRANSPORT BILL OF LADING

The traditional ocean bill of lading acknowledges shipment of the goods enumerated therein upon a named ocean vessel at a named port, for delivery at another named port. It is of course, correct that numerous variations of this practice occur but the fundamental notion has been the acceptance of responsibility by the carrier from the time of loading until the time of discharge. The combined transport bill of lading is, however, a "received for shipment" bill in every case, but unlike the traditional "received for shipment" bill, which nevertheless envisages a port to port shipment, the modern combined transport bill envisages acceptance of responsibility for the goods prior to shipment and a continuation of such responsibility until delivery of the goods at a time sometime after discharge. The Hague Rules, however, regulate the rights and duties of the parties

only in the period between loading and discharge, and here the problem begins.

I had contemplated setting out at this point extracts from various forms of bills of lading commonly employed in the combined transport situation but rather than clutter up this paper with lengthy extracts, I propose simply to deal with one common form of bill of lading and to refer, if necessary, to appropriate parts of other forms. For this purpose I have taken the standard form "combined transport bill of lading" commonly used in the United Kingdom/Europe/Australia trade and I set out below some of the conditions contained therein.

It is first worth noting the definitions contained in Clause 1 of the bill of lading which, so far as relevant, are as follows:-

"A "Port to Port Shipment" arises only where (i) both the Place of Acceptance and the Place of Delivery named on the face hereof are ports and (ii) the Bill of Lading does not, in the nomination of the Place of Acceptance or the Place of Delivery on the face hereof, specify any place or spot within the area of the port so nominated.

"Combined Transport" arises when the description of the Place of Acceptance and Place of Delivery on the face hereof is such that the shipment is not a Port to Port Shipment."

The only other portion of the bill to which I wish to refer is Clause 5 headed "Carrier's Responsibility" which provides as follows:-

"(a) Port to Port Shipment

Where the carriage called for by this Bill of Lading is a Port to Port Shipment, then subject to (c), (d) and (e) below and Clause 17:

(1) The liability (if any) of the Carrier for loss of or damage to the Goods occurring from and during loading onto any sea-going vessel up to and during discharge from that vessel or from another sea-going vessel into which the Goods

shall have been transhipped shall be determined in accordance with any national law making the Hague Rules compulsorily applicable to this Bill of Lading (including the U.K. Carriage of Goods by Sea Act, 1924 and the Australian Sea Carriage of Goods Act, 1924), or, if there be no such national law, in accordance with the Hague Rules contained in the international Convention for the unification of certain rules relating to Bills of Lading dated 25th August 1924. Notwithstanding the above the Carrier's liability, if any, shall be limited to loss of or damage to the goods occurring from and during loading on to any seagoing vessel up to and during discharge from that vessel.

(2) For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods is agreed to be the invoice value plus freight and insurance if paid.

(b) Combined Transport

(1) Where the carriage called for by this Bill of Lading is Combined Transport, then subject to (b)(2), (c), (d) and (e) below and Clause 17:

- (a) The Carrier shall be liable for loss of or damage to the Goods occurring between the time that the Goods are accepted for transportation at the Place of Acceptance until the time that the Goods are delivered at the Place of Delivery. The Carrier shall, however, not be liable for loss or damage arising or resulting from,
- (i) the wrongful act or neglect of the Merchant;
 - (ii) compliance with the instructions of the person entitled to give them;
 - (iii) the lack or insufficiency of, or the defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - (iv) handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant;
 - (v) inherent vice of the Goods;
 - (vi) insufficiency or inadequacy of marks or number on the Goods, containers, transportable tanks, flats, pallets, cases or coverings;
 - (vii) strikes or lockouts or stoppage or restraint of labour from whatever cause whether partial or general;
 - (viii) any cause or event which the Carrier could not avoid, and the consequence whereof he could not prevent, by the exercise of reasonable diligence.

(b) Where under (a) the Carrier is not liable in respect of some of the factors causing the loss or damage, he shall only be liable to the extent that those factors for which he is liable have contributed to the loss or damage.

(c) The burden of proving that the loss or damage was due to one or more of the causes or events specified in (i), (ii) and (viii) of (a) shall

rest upon the Carrier. Where the Carrier establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in (ii) to (vii) of (a), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

- (d) For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods shall be deemed to be their sound value at the place and time of their delivery to the receiver in accordance with this Bill of Lading or if not so delivered, at the place and time when they ought to have been so delivered. The sound 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.
 - (e) The Carrier's liability for loss of or damage to the Goods shall not in any event exceed US\$2 per kilo of gross weight of the Goods lost or damaged.
 - (f) The Carrier shall not be entitled to the benefit of the limitation of liability in (e) if it is proved that the loss or damage resulted from an act or omission of the Carrier done with intent to cause loss or damage and with knowledge that loss or damage would probably result.
 - (g) Unless notice of loss of or damage to the Goods and the general nature of it be given in writing to the Carrier at the Place of Delivery before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under this Bill of Lading if the loss or damage be not apparent, within six consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described in this Bill of Lading.
- (2) Subject to (c), (d) and (e) below and Clause 17, if it can be proved during which stage of transport the loss or damage occurred the Carrier and the Merchant shall, as to the liability of the Carrier, be entitled to require such liability to be determined by -

- (a) the provisions contained in any international convention or national law, which provisions cannot be departed from by private contract, to the detriment of the Merchant and would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

An international convention or national law shall be applied as aforesaid only if it would have been applicable

- (i) by the law of the State in which the loss or damage occurred, or
- (ii) where the loss or damage occurred between the time of acceptance and the time at which the Goods were discharged at the final port of discharge, by the law of the State of the Place of Acceptance, or
- (iii) where the loss or damage occurred between the time at which the Goods were discharged at the final port of discharge and the time of delivery by the law of the State of the Place of Delivery.

The Merchant's choice of the relevant international convention or national law shall prevail over that of the Carrier, or

- (b) the Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading dated 25th August 1924 in respect of loss or damage occurring during carriage by sea or during carriage by inland waterways (as if such carriage were carriage by sea) if no international convention or national law should be applied by virtue of (a) above.

(c) General

(1) Subject to (a) below, whenever Hague Rules are applicable otherwise than by national law, in determining the liability of the Carrier, the liability shall in no event exceed £Stg 100 per package or unit.

(2) Save as provided in this Clause 5,

- (a) the Carrier shall be under no liability in any capacity whatsoever for loss of or damage to the Goods howsoever caused or for any direct or indirect loss or damage caused by delay, or for any indirect or consequential loss or damage.
- (b) all liability whatsoever of the Carrier shall in any event cease unless suit is brought within eleven months after delivery of the Goods or the date when the Goods should have been delivered.

(d) Supply of Containers, etc. by the Carrier

Where any container, transportable tank, flat or pallet accepted for transportation has been supplied by or on behalf of the Carrier (as indicated on the face hereof) the Carrier shall be liable for loss of or damage to the Goods arising out of the unsuitability or defective condition of the container, transportable tank, flat or pallet or of any equipment supplied in connection therewith, provided always that -

- (a) where the same has not been filled, packed or stowed by or on behalf of the Carrier, the Carrier shall be under no liability as aforesaid if the

unsuitability or defective condition of the container, transportable tank, flat, pallet or equipment would have been apparent upon reasonable inspection at or prior to the time of such filling, packing or stowing;

(b) subject to (e) below, the liability of the Carrier as aforesaid shall not exceed the amount specified in Clause 5(b)(1)(e).

(e) Ad Valorem Cargo

Where the nature and value of the Goods has, with the consent of the Carrier, been declared in this Bill of Lading and extra freight paid if required the declared value is agreed to be the sound value of the Goods, and the Carrier's liability, if any, for loss of or damage to the Goods shall be limited solely to the declared value."

To a reader of Clause 5 probably the first matter that comes to mind is the problem of ascertaining when and where damage to the goods has occurred. This problem is one which faces both carrier and consignee although if any one is to have any knowledge in this regard it is likely to be the carrier. In some respects of course, it matters not to the consignee whether the damage occurred on land or at sea but in others, particularly in regard to the operation of the time bar and in regard to the carrier's limitation of liability, the time when and the place where the goods were damaged may be of real significance.

4. TIME LIMITATION

By Clause 5(c)(2)(b) of the conditions, suit must be brought against the carrier within eleven months after delivery of the goods or the date when the goods should have been delivered. This provision is a provision which commonly appears in various forms of combined transport bills of lading and there are other bills in existence which provide for an even shorter limitation period, e.g. nine months under the bill of lading of the Far East Container Service. Whilst

it is clear that a provision in a bill of lading which is subject to the Hague Rules, which reduces the time bar period from twelve months will be struck out by the Rules (Article 3 Rule 8), it will be seen that if it is not clear when and where the damage occurred, then under the terms of the combined transport bill the Hague Rules are not applicable. As the Courts will generally recognise the right of parties to contract according to their wishes, it is submitted that in many circumstances, the eleven months time bar created by the combined transport bill of lading will be regarded by the Courts as effective. The eleven months time bar can therefore be regarded as a trap for young players of the cargo damage recovery game.

5. LIMITATION OF LIABILITY

The major problem causing difficulty today is the question of limitation of liability. The first aspect of the problem is similar to the problem concerning the time bar provisions. Consider the situation where the cargo concerned is ten cartons of little weight (say 10 kilos each) but of considerable value (say Aust.\$100.00 each). All arrive totally damaged and the consignee's loss is therefore \$1000.00. If the Hague Rules apply and each carton is the "package", the consignee has no problems and can recover his full damage. If, however, the consignee's right of recovery is limited to US\$2 per kilo, his total recovery is limited to US\$200.00, i.e. less than one-fifth of the amount he might have expected to recover having regard to the operation of the Hague Rules. The consignee's rights are dependent upon an investigation into the time when and place where the damage occurred and he may find himself with a limited recovery right if no one knows

the answer. In any event if the position be for instance that the damage occurred as the result of the entry of rain water into the container through a hole in the roof, it seems somewhat incongruous that there should be any relevance in the stage of transport at which it rains.

The second aspect of the limitation of liability problem represents probably the major debate in maritime law today. This aspect assumes the application of the Hague Rules and the question posed is whether, in the case of container cargo, the container is the "package" for the purpose of Article 4 Rule 5 of the Rules, or whether each of the individual items packed within the container is the "package".

A container is a cargo handling device which can improve the speed of transit, and the safety of the goods stowed therein, and can result in cheaper costs by eliminating manual operations. The container is usually packed by the shipper to whom the empty container has been delivered by the carrier. This means, of course, that container shipments are vastly different to shipments by conventional methods as very often, the carrier has no way of ascertaining the nature and quantity of the goods actually within the container, nor has he any method of ensuring that the container has been properly stuffed. Indeed, because of the very fact that the goods are being shipped in a container they will most likely be not as expensively packed as if they were to be shipped by conventional means. Article 4 Rule 5 of the Hague Rules refers of course to the "package or unit", but not to the word "container" .

The Visby Rules, designed in 1968 to up-date the Hague Rules, have remained neatly pigeon-holed for eight years, insufficient

interest being shown to bring them into operation. For instance, while the Rules have been incorporated into the United Kingdom Carriage of Goods by Sea Act 1971, the Act has not yet been proclaimed. It is however, of interest to note that Article 4 Rule 5(c) of the Visby Rules provides that "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."

There is little point in considering the effect of this Rule in view of its non-operation but it is sufficient to say that the absence of such an explanatory rule in the Hague Rules as they presently exist has brought much scope for legal argument on the container/package question, particularly in the Courts of the United States, Canada and Western Europe.

In a paper delivered at a Seminar in Antwerp in November 1975 and reprinted in Vol.10 of European Transport Law at page 169, Dr. H.G. Rohreke has dealt with the decided cases under three different tests, these being the "course of dealings" test, the "functional economics" test and the "single shipper package" test. He concludes (at page 631) that "an evaluation of the judgments reveals that the various tests applied by the Courts are not conclusive in themselves but should rather give a guide as to how the intent of the parties should be ascertained." He suggests that both the "functional economics" and "single shipper package" tests

should be understood to be a simplification of the "course of dealings" test for the purpose of more clarity and predictability. Without repeating the contents of his paper in full, I commend it to the reader's attention. For the purpose of the present paper, I propose to deal rather briefly with some of the cases which have come before the Courts.

One of the earlier relevant cases is the case of Standard Elekrika S.A. -v- Hamburg Sud etc. (1967) 2 Lloyds Rep. 193 which concerned damage to cartons of television sets contained on pallets. There were a total of 54 sets, there being six on each of the nine pallets. The Court, in finding that each pallet constituted the package, considered two basic questions, i.e. did the shipper choose the receptacle and did the bill of lading describe the receptacle as the package.

In Leather's Best Inc. -v- "Mormaclynx" (1971) 2 Lloyds Rep. 476 a container was delivered to the shipper under the supervision of the carrier's agent, a truck driver. The driver gave the shipper a receipt indicating the number of bales loaded into the container and the bill of lading itself bore the typed notation "one container s.t.c. 99 bales of leather". The Court held that the individual bales were the packages and not the metal container which was used for the carrier's convenience in handling and stowing the cargo. In reaching this decision, the Court relied upon the precise description of the goods in the bill of lading (notwithstanding the use of the expression "said to contain"), and the fact that there had been an actual count by the carrier, so that

the carrier could not deny the knowledge of both the nature of the cargo and the number of packages employed to ship it.

In Rosenbruch -v- American Export Isbrandtsen Lines Inc. (1974) 1 Lloyds Rep. 199 the bill of lading stated under the column entitled "Number of containers or other packages" the figure "1" and the cargo was described as "said to contain household goods". The Court in applying the "single shipper package" test, suggested that predictability should obtain and that because the shipper chose the container, packed it for his own use only and because the carrier was not directly involved in these operations, the carrier could limit its liability to US\$500 on the basis that the container was the package.

In Royal Typewriter Co. -v- "Kulmerland" (1973) 2 Lloyds Rep. 428 the bill of lading stated "1 container said to contain machinery" without any reference to the fact that the machinery consisted of adding machines or to the number of cartons of adding machines. These machines were in fact packed in 350 cartons but the Court of Appeals held that the container in which the cartons were packed constituted a single package. In giving judgment, the Court discussed and distinguished the Leather's Best Inc. case on the grounds that the bales there could have been shipped individually rather than in the container. The Court said that in the case before it, the container was said to contain merely "machinery" and the applicable freight rate was the same whether or not the bill of lading referred to the number of bales or cartons in the containers.

In "American Legion" (1975) 1 Lloyds Rep. 295 the bill of lading stated "1 container said to contain (so many) cartons containing (so many) tins of ham". The Court of Appeals held that the cases of hams met the "functional package" test applied in the "Kulmerland" and that the burden of proof was on the carrier to show that the parties intended to treat the container as a "package". The Court held further that the carrier had not overcome the burden because the use of the container was as much for the carrier's benefit as for the shipper's, that the vessel was a container ship, that the goods could not have been shipped on that ship except in a refrigerated container, that the driver who carried the shipper's container was the carrier's agent and was present at the tallying and count of the goods, and finally on the basis that the bill of lading specifically set out the number of cartons of tins of ham and the number of tins and weight per tin in each carton.

In Insurance Company of North America -v- "Brooklyn Maru" (1974) A.M.C. 2443 the bill of lading listed 636 separate cartons and boxes which were packed into a 40' container. The container was however, chosen, packed and sealed by the shipper on its own premises without any supervision or participation by the ocean carrier and it was held that the container was the "package" and the carrier entitled to limit liability accordingly.

In the Canadian case of International Factory Sales and Service Ltd. -v- The ship "Alexander Serafimovich" (1975) 2 Lloyds Rep. the Court was concerned with damage to 50 cartons of sewing machine heads forming part of a total consignment of 150 cartons. The total consignment was strapped to three pallets each containing 50 cartons, and

the cartons were each numbered 151 to 300. The bills of lading included a heading "packages" containing the words and figures "3 pallets (150 cartons)". During discharge of the cargo at Vancouver, one pallet containing 50 cartons was dropped over the side of the vessel and the owners of the goods claimed the full amount of their damage. The Defendants admitted liability but contended that they could limit their liability to Can.\$500 per pallet for each pallet was a "package" within the meaning of Article 4 Rule 5 of the Canadian Hague Rules. Walsh J., of the Canadian Federal Court, held that the Plaintiffs were entitled to their full damages and that the decision whether a pallet was a package within the meaning of Article 4 Rule 5 depended upon the facts and circumstances of each case and in particular on the intention of the parties as indicated by what was stated in the shipping documents, things said and done by the parties, and the course of dealing between them. The description of the goods in the bill of lading, the numbering of the cartons and their visibility from outside the pallet indicated the governing factor in the minds of the parties to have been 150 sewing machine heads each packed in a separate protective carton, rather than the pallet on which 50 of them were stacked.

It will be seen that despite the logical suggestion of the Court in Rosenbruch's case and in many other cases, that predictability should obtain, such has not been the case, and that there is no golden rule that can be applied in every case. Until such time as the Hague Rules are amended to provide clarity in the case of unitised or containerised cargo, each case must necessarily depend upon its own facts.

The best that can be said at present is that each of the so

called tests which have been created in fact involve an examination of the same issue, i.e. the intention of the parties. Unfortunately, whilst Courts the world over are often engaged in seeking to determine with hindsight what the intention of the parties to a contract was, the true position in a great many cases is of course that the parties or at least one of them, had no particular intention, simply wishing to complete the commercial transaction in a speedy and efficient manner. It seems somewhat artificial therefore to attempt to ascertain say in a Court in Melbourne what the intention of a shipper of goods in France was at the time when he prepared the shipping documents and despatched the goods. Artificial or not, it appears that for the time being this sort of approach is the only approach that can be used and that in considering whether in any particular case the container was the "package" it is necessary to give consideration to at least the following matters.

1. The terms of the bill of lading.
2. The nature of the goods and their immediate packing.
3. The choice and provision of the container.
4. The carrier's opportunity of ascertaining the contents of the container.

At one end of the spectrum, it can be said quite firmly that in a case such as Rosenbruch where the bill of lading does not specify the number of packages in the container, the container is chosen or provided by the shipper, the goods could not be shipped loose without some form of outside protection and the carrier is not given the opportunity of tallying the goods, the container must be the "package".

At the other end of the spectrum we have the situation where the bill of lading clearly specifies the number of packages within the container, the container is supplied by the carrier, the carrier's agent has the opportunity of ascertaining the number of packages being loaded into the container, and the goods could have been shipped loose had no container been provided, the container will not constitute the "package" within the meaning of Article 4 Rule 5. What the position is in intermediate cases, must be left for further resolution by the Courts.

6. SEA TERMINALS

The era of containerisation has led to the establishment around the world of container terminals, usually, but not always, situated adjacent to the wharves. These terminals are in some instances operated by port authorities, in others by carriers themselves and in yet other cases by independent terminal operators. Damage to goods may often occur whilst the goods are at a terminal before loading or after discharge and it is relevant therefore to consider briefly the question of liability for loss or damage occurring at terminals.

It is interesting to note that by Clause 5(b)(i)(a) of the conditions of carriage contained in the combined transport bill of lading referred to above, the carrier accepts liability for loss or damage occurring at container terminals, and this liability is governed by the other provisions of the bill. In the above case, liability for loss or damage is limited to US\$2 per kilo of gross weight of the goods lost or damaged, but this method of ascertaining the extent of liability is not the only one. Some bills of lading e.g. that used by the Columbus Line on the North American/

Australian trade, provide for the application of the Hague Rules during the period in which the goods are at a terminal. The Hague Rules of course, were created bearing in mind the risks of sea transport, and in many ways the provisions thereof are not appropriate to govern liability for loss or damage occurring before loading or after discharge. For instance, Article 4 Rule 2(a) providing an exception for loss or damage arising from error in navigation or management of the ship is hardly appropriate to govern loss or damage occurring when the goods are not on board a ship. Nonetheless, I see no reason why as a matter of contract law, the Hague Rules should not be agreed to by the parties as governing their rights and obligations even when the goods are not upon the ship, and we therefore have the curious situation where the Hague Rules are today being applied to situations not contemplated when the Rules were prepared.

It must, of course, be remembered that as the Hague Rules are mandatorily applicable only to the stage of transport between loading and discharge, there is in fact no legislation governing the question of liability at sea terminals in Australia. We have already seen that in the typical combined transport situation, the carrier accepts liability for loss or damage occurring at a sea terminal, which liability is limited in some way, but this is not to say that this position prevails under all combined transport contracts. One often sees the situation where the carrier accepts liability only to the extent that he is able to recover from his sub-contractors, and of course, there are plenty of cases where the carrier exempts himself from all liability except as provided by the Hague Rules. Thus, as with so many other

matters, it is not possible to say more in relation to the liability of a carrier for loss or damage at terminals than to say that each case depends upon its own facts.

Of more interest is perhaps the question of liability of the independent terminal operator in respect of loss of or damage to the goods whilst they are within his custody at his terminal. As mentioned above there is no legislation governing the question of liability at sea terminals in Australia and indeed as I understand the position, only in a few Western European countries and in the United States does any legislation exist. In Australia the terminal operator accepts the goods as sub-contractor to the carrier and his liability is therefore determined by ordinary principles of the law of contract and the law of bailment. Thus the terminal operator is free to drastically limit his liability and in practice at least attempts to do so. Most terminal operators work under standard conditions which purport to relieve them from all liability even where the loss or damage is caused by their negligence or that of their servants and agents but whether the standard conditions avail them in any particular case must depend upon the circumstances of that case. Certainly most consignors and consignees do not enter into direct contracts with terminal operators nor are they given notice of the application of any standard conditions. In these circumstances it seems that in most cases terminal operators are hard pressed to argue as against consignors or consignees that their standard conditions will avail them.

Most bills of lading these days contain a "Himalaya" clause which has in recent years been given respectability by the

Privy Council in New Zealand Shipping Co. Ltd. -v- A.M. Satterthwaite & Co. Ltd. ("The Eurymedon") (1974) 2 W.L.R.

865 and as such the position now appears to be that terminal operators in appropriate cases will be held entitled to rely upon the terms and conditions contained in the bills of lading covering the particular goods. In saying this I think I should point out that in not all cases have terminal operators adjusted their contractual dealings with carriers in such a way as will necessarily entitle them to rely upon the bill of lading conditions, for it seems that despite the decision in the "Eurymedon" it may still be open to a goods owner to argue that a sub-contractor of the carrier is not entitled to rely upon the bill of lading conditions where the contract between the carrier and the sub-contractor is such as to be inconsistent with the notion of ratification by the sub-contractor of the contract contained in the bill of lading.

7. CONCLUSION

In conclusion it can be fairly said that in this era of combined transport there is quite clearly a need for a Convention to deal exclusively with combined transport under which the Hague Rules are excluded. This need is generally recognised and steps have been taken in the right direction although even the most optimistic would not expect early finalisation, there being as many views as to what a new set of Rules should provide as there are members of the United Nations. One could cynically say that by the time a unified code is in existence relating to combined transport the concept of combined transport will have been superseded in favour of something not presently contemplated but such an approach is surely a negative one. The more discussion, dialogue and interest generated on the subject therefore, the greater the possibility that a workable solution will be found in the not too distant future.