

**UNIFORMITY OF THE LAW  
OF THE  
CARRIAGE OF GOODS BY SEA IN THE 1990s**

By David Roylance

The major working session of the CMI Paris Conference considered the question of Uniformity of the law of the Carriage of Goods by Sea in the 1990s.

This working session was under the chairmanship of Professor Francesco Berlingieri. A total of 41 national maritime law associations attended this session.

Predictably, but unfortunately, there was not clear consensus on the question of law to achieve acceptable "uniformity". As may have been anticipated those Association's supporting Hague-Visby regiemes adopted approaches based upon a further Protocol to amend the Hague-Visby Rules whereas those Associations supporting the Hamburg Rules (although fewer in number) advanced the cause of those Rules.

It was generally acknowledged that an amendment to present regiemes would have to be based on a formal Protocol. It was accepted for practical and legal purposes that voluntary extensions to the carrier's rights and obligations would present substantial problems in international implementation.

It was also generally accepted - perhaps on more pragmatic grounds - that there was no real pressure or demand for the drafting of a further set of Rules in an endeavour to try find common accommodation between the Hague Visby provisions and those of Hamburg.

The working session was based upon a draft study prepared by Professor

Berlingieri. That draft was amended during the course of the sessions to reflect the views of the Associations and the final document was circulated as a basis for further study. The final document is annexed.

It will be seen that eight topics within the Hague-Visby Rules were brought forward for discussion. They were:

- Identity of Carrier
- Contracts and Documents
- Deck Cargoes
- Period of Application
- Exemptions from Liability
- Limits of Liability
- Deviation
- Damage including Damages from Delay

Whilst the full text of the revised study is enclosed the following major points emerged from the discussions on each of these points.

■ Identity of Carrier

It appeared to be generally accepted that the identity of the carrier [and, perhaps its domicile or address] should be identified. Comparison with other International Conventions indicated that disclosure of the identity of the carrier was not impractical.

However, it was acknowledged that questions of application could arise in situations where the performing carrier (i.e. the shipowner) was not also the

Secondly, regarding to the salvage exemption, the question of whether the phrase "at sea" needed to be extended to cover all navigable waters was raised as was the question of whether the avoidance of environmental damage should be added to the provision. It seemed generally accepted these extensions were desirable.

The final aspect that arose (putting to one side nautical fault and fire) was whether there was in any event need for the extended list of exemptions set out in Article IV, Rule 2. The argument put forward was that frequently the carrier had the same protection under the "catch-all" provisions of Article IV Rule 2(q) as it would have if it relied on some of the more specified exemptions and that a more simplified list of exemptions would promote clarity and uniformity.

#### ■ Limits of Liability

This topic was fairly limited. It was acknowledged that many of the difficulties of the past had been resolved by the "container" formula contained in Article IV Rule 5(c) of the Hague-Visby Rules. There were discussions on the phrase "package or unit" and the alternate usage in different kinds of "shipping unit" or "freight unit". It was agreed by the session not to discuss the monetary limits of limitation.

#### ■ Deviation

It was acknowledged that much of this area was covered by national law (in the case of common law countries) and by the Hague Visby Rules. Some deviation is permitted by those Rules in Article IV Rule 4, in the case of "*deviation*"

*in saving or attempting to save life or property at sea or any other reasonable deviation ...".* It was felt that only relatively minor changes were needed, including the extension of the scope of the provision of salvage to all navigable waters referred to under Exemptions from Liability.

■ Damages, Including Damages Resulting from Delay

There was much discussion on the present position under the Hague (or Hague-Visby) Rules and as to which the present position was satisfactory in any event.

The two major issues under this heading were whether the carrier should be liable in any event for unjustified delay and whether the carrier should be entitled to recover damages for pure financial loss from the carrier.

It was generally acknowledged that the position was unclear but the general view of the Conference was that the Rules should be extended to cover such delay and all types of liability resulting from such delay. This view was qualified to the extent that there should be a limit of liability for pure financial loss arising from delay, although the way in which such limits should be calculated was agreed to require further study.

(Bill of Lading) contracting carrier. On this aspect, it seemed agreed that rights of action against the performing carrier should be the subject of uniform regulations and that the contracting carrier and the performing carrier should be jointly and severally liable for loss or damage to goods. It was also accepted that there remained a need to identify and solve the problems of joint and several liability.

#### ■ Contracts and Documents

Much of the discussions on this aspect centred on the development of various types of Sea Waybills and whether the Hague (or Hague-Visby) Rules had application to those documents. It was acknowledged that a separate CMI session was considering the position of the Sea Waybill. A difficulty that was identified related to textual differences between the original French text and the English translation as enacted in many Commonwealth countries, including the 1924 Act of the Commonwealth of Australia and the 1940 Act of New Zealand.

It was generally thought that a uniform legal regime should apply to all contracts of sea carriage irrespective of the type of document issued. It was also acknowledged, however, that the final position on this topic would be dependent upon the final outcome of the CMI deliberation on Sea Waybills and E.D.I.

#### ■ Deck Cargo

Containers were the principal issue for discussion on this topic as, of course, the modern shipping container was unknown when the 1924 Rules were

drafted. The session deliberated on the effect of liability clauses. The generally agreed position seemed to be that authorized deck storage should be subject to the same liability regime as for underdeck cargoes; that deck carriage of containers on ships designed or adapted for deck carriage should be regarded as "authorized" and that containers could be carried on deck on such a ship without the Bill of Lading having to contain a reference to deck stowage.

#### ■ Period of Application

This aspect was introduced as "Period of Application" rather than "Period of Responsibility" to reflect problems of multimodal transport. It was suggested that application of the Rules should coincide with the period of responsibility of the carrier, provided that it does not extend beyond port limits at the loading port of the discharging port. It was acknowledged that the solution provided in Article 4(2) of the Hamburg Rules had some merit.

#### ■ Exemptions from Liability

There was much debate of this topic, that debate concentrating on the exemptions contained in Article IV Rule 2 of the Hague (or Hague Visby Rules). Three particular main themes emerged.

First, the question of "nautical fault" evinced much discussion. That discussion concentrated on both the practical effect of this exemption and on the theoretical basis of the exemptions, namely the sharing of risk between the parties involved in a voyage. It was acknowledged that proposals for the deletion of this exemption would not promote uniformity. Similarly on the exemption relating to fire it was felt the present position should be retained.