

 IUMI GENOVA

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PARTNERS IN COMMERCE

The Maritime Law Association
of the United States Proposal to
revise U.S. COGSA and
the CMI/UNCITRAL
Efforts

Hague Rules and U.S. COGSA
Hague/Visby Rules
Hamburg Rules

MLAUS goal is uniformity through a treaty
that the United States will ratify

Uniformity through the CMI/UNCITRAL
Convention

Changes in bills of lading and other transport documents

- Third party logistics providers
- Just in time inventory
- Electronic commerce
 - Will it include electronic letters of credit?
 - Could letter of credit and transport document be the same electronic document?
- Service contracts
 - They may require freedom of contract

- Loss of Error of Navigation and Management in exchange for changes in Burden of Proof
- Restore Shipper's Load, Weight, and Count to the intent of the drafters of the Hague Rules
- Multi modal Application
- Automatic Himalaya Clause
- Negotiability of Bills of Lading and other Transport Documents
- Scope of Application
- Delay
- Responsibility of Carrier and Performing Party

- Loss of Error of Navigation and Management in exchange for changes in Burden of Proof

Schnell v. Vallescura burden

It would cause other defenses to be lost if an error of navigation or management combined with an excepted cause to cause a loss or damage

- Change is similar to collision apportionment most cases in U.S. have used an apportionment other than 50/50

Restore Shipper's Load, Weight, and Count to
the intent of the drafters of the Hague Rules

- United States courts have refused to uphold these clauses.
- A carrier should not issue a bill of lading or other transport document that includes a quantity description that the carrier cannot check.
- Permitting a carrier to clause a bill of lading will permit a consignee to trust a shipper's description without paying a carrier to tally cargo
 - Specific rules for containers and cargo not shipped in containers

Multi modal Application

- Extend tackle to tackle to entire transportation evidenced by the transportation document

- permit exceptions for transshipment when carrier does not service entire carriage, but the shipper needs one bill of lading or other transport document.

- Unified regime or the “network” system.

The MLAUS favors unified system.

The law governing inland carriage in the United States does not apply with the force of law to cargo moving from a non adjacent country to a place in the United States.

Proposed changes to COGSA or a new international carriage by sea convention will not conflict with inland transportation law.

- Network system

Many nations favor the Network system.

- Under the network system, different laws govern different modes of transportation.

- Location of loss or damage or cause of loss or damage will have to be determined before the standard of liability can be determined.

- Would the inland law of other countries be changed to bring unity between ocean and inland transportation law?

Automatic Himalaya Clause

- MLAUS suggested extension of COGSA protection to all parties that participated in performance of carriage (Performing Carriers).

Performing Carriers, ie stevedores, are liable in tort in U.S. They need protection of bill of lading and COGSA.

- “Performing Carriers” are not liable in tort in many nations. The proposed U.S. change would impose liability on “performing carriers” in other nations

- CMI draft instrument attempts to solve problem by specifying functions for which other “Performing Parties” would be liable and those for which “performing parties” would not be liable.

- Negotiability of Bills of Lading and other Transport Documents

- Uniformity in this area is needed for electronic bills of lading and other transport documents.
- This need started the CMI/UNCITRAL project.
- The new convention will have to accommodate electronic commerce.

Scope of Application

- It should apply to all Transport Documents with some possible exceptions:

- charter parties

- slot charter parties

- towage contracts

- contracts of affreightment

- service contracts

Delay

- Carrier should be liable for delay only when the parties agreed that cargo would be delivered by a certain date.
- How may the reasonable time for delivery be determined?
- How should the damages be determined or limited?

Responsibility of Carrier and Performing Party

- It should be a fault based system.
- Catalogue of defenses is necessary for U.S.
- Do the elimination of the error of navigation and management defenses may the duty to exercise due diligence a continuing duty?
- Should the convention specify that the duty to exercise due diligence is a continuing duty?

Would that increase the standard to that expected of an expert shore side repair or maintenance company?

- Should the carrier be able to delegate duties?
- If so, what duties should the carrier be allowed to delegate?