

## **MARITIME TRANSPORT COMMITTEE**

### **WORKSHOP ON CARGO LIABILITY REGIMES**

#### **BACKGROUND**

The Workshop on Cargo Liability was organised by the Maritime Transport Committee to assist in the modernisation of current regimes and to bring some additional clarity on steps that may be taken in order to bring about a new regime that may be more widely acceptable to both governments and industry. It was hoped that this effort from the OECD would not result in further proliferation of regimes, but rather that it would encourage a convergence of views to further harmonise international practices.

The approach taken in preparation for the Workshop was to commission a consultant to analyse a range of existing regimes, and identify those issues where there is still considerable disagreement amongst the various parties affected by these regimes. The consultant's document, which formed the basis of the discussion at the Workshop, is available on the Maritime Transport Committee's web site at:

<http://www.oecd.org/dsti/sti/transpor/sea/index.htm>

#### **THE WORKSHOP**

The MTC's Workshop was held on 25-26 January 2001, and brought together approximately 120 participants from governments and industry from OECD countries. A number of international intergovernmental agencies with an interest in cargo liability issues were also represented.

The Workshop was chaired by Mr. Alfred Popp, Senior General Counsel in the Canadian Department of Justice. Mr Popp is currently also the Chairman of the Legal Committee of the IMO.

Participants at the Workshop, while obviously representing their governments and organisations, were invited to participate and speak in a personal capacity. This was because the Workshop was simply an avenue for exchanging views on the issues identified by the consultant, in order to establish whether there might be some common ground or convergence that may offer an avenue to a future diplomatic conference to resolve some of these hitherto divisive issues.

The individual views of participants have not been recorded, and all statements were made on a non-attributable basis. Similarly, the outputs from the Workshop do not necessarily reflect the views of either the MTC's member governments, nor of the industry representatives present.

However, the points covered in this report on the Workshop are offered to interested parties, be they governments, industry, or international organisations that may in the future consider hosting or participating in diplomatic conferences to review cargo liability, as representing the end result of deliberations between these parties.

While these outcomes are not binding on any party, they may nevertheless offer some guidance as to the policy outcome that may be necessary to maximise the formulation of a more comprehensive, and generally acceptable form of cargo liability regime. If nothing else, they may offer guidance on alternative texts that may in the end represent acceptable compromise solutions.

## **MATTERS WHERE THE WORKSHOP FOUND GENERAL AGREEMENT:**

### **Issue A: Loss due to delay**

It was noted that this had traditionally been a divisive issue. However, there was agreement that delays should be covered by a new regime where timing of delivery is subject to special contractual conditions. In addition, thought might be given to including provisions for delays at large.

### **Issue B: Application to different transport documents**

Any new regime should cover not only traditional bills of lading, but also other non-negotiable contracts of carriage, but excluding charterparties.

### **Issue C: Application to electronic or other transactions**

A new regime should be fully compatible with modern electronic commerce, including the Internet.

### **Issue D: Recognition of performing and contracting carriers**

On balance there was support for including the notion of the performing carrier in a new regime, while at the same time not giving up the principle of making claims upon the contracting carrier, nor allowing the contracting carrier to avoid liability by virtue of having subcontracted the carriage to another carrier.

However, there were concerns that the definition of performing carrier contained in the CMI draft may be too broad, and the Hamburg Rules definition may provide a better basis.

### **Issue E: Application to live animals and deck cargoes**

#### ***Live animals***

The strong majority of speakers were against inclusion of live animals in a new regime because of the specialised nature of the cargo. However, it was recognised that there was need for further consultations with both carriers and shippers of live animals.

#### ***Deck cargo***

Deck cargo should be covered without special provision in the case of containerised cargo, thus following today's business practices. Non-containerised cargo should be covered subject to the clarification of the carriers' and shippers' duties and rights along the lines of the Hamburg Rules.

**Issue F: Application of regime to both inbound and outbound cargoes**

There was very strong support for the proposal that goods bound for a contracting state should be covered even if the port of origin is in a non-contracting state.

**Issue K: Documentation**

Participants noted that this is a technical issue for consideration by experts, and that the only relevant policy issue is that information regarding vessel and cargo contained in such documentation must be totally reliable. Some comments made under Item I may be also relevant here.

**Issue L: Period of notice to notify loss or damage**

This was recognised as a technical issue which could only be resolved through discussion with practitioners to ensure that any limitations reflect modern business practice.

However, within the general view there was considerable support for tight limitations, although some felt that the Hague-Visby 3-day limit in cases where damage was not apparent should be extended.

**Issue M: Timebar limits on initiation of legal proceedings**

Again, there was considerable support for a tight limitation period as in Hague Visby, but with appropriate provisions for recourse action and consideration of provisions covering suspension and interruption of those limitations.

**Issue N: Explicit provisions for arbitration or other forms of dispute settlement**

A new regime should make provision for parties to agree to settle disputes by arbitration or other forms of dispute resolution.

**Issue O: Forums in which proceedings can be brought**

There was very strong support for a specific list of forums, or rules for selecting a forum, to be available to the claimant, along the lines of those provided for in the Hamburg Rules, although these could be relatively tightly defined in order to minimise forum shopping.

However, any list should be carefully scrutinised to ensure it was appropriate to multimodal journeys if the new convention extends coverage to them.

## **MATTERS WHERE THE WORKSHOP FOUND CONVERGENCE BUT NOT GENERAL AGREEMENT:**

### **Issues G and H: Extent of coverage of regime, including multimodal legs**

The most general consensus was that the new regime should take as its first priority the improvement of the regime governing the maritime leg of the journey.

However, it was also generally recognised that under modern business practice multimodal journeys are becoming more important. Therefore, how the new maritime regime could be made to fit in with other modes of transport should be further studied.

Any such extensions should fully recognise and address possible conflicts that may arise with other international conventions or national laws.

The possibility of addressing this issue by providing a “default” liability regime where there is uncertainty as to which regime should apply, ought not to be ignored.

### **Issue I: Allocation of responsibilities between carriers and shippers**

There was substantial agreement that the criteria proposed by the consultant formed a useful basis on which to judge the allocation of responsibilities. These criteria were:

- a) It must be conducive to the public policy aims of member governments (e.g. on trade facilitation, maritime safety, etc).
- b) It should have the prospect of early acceptance and uniform implementation worldwide and especially by the world’s main trading and shipowning nations.
- c) It should be as clear and as certain in its interpretation as possible.
- d) It should provide for an efficient and economical distribution of insured risk. and
- e) It should make for convergence with the cargo liability regimes in force for other transport modes.

There was also substantial agreement that there should be a balanced-allocation of responsibilities which recognises the rights and obligation of both carriers and shippers.

The thrust of the discussion indicated that with this balance the removal of nautical fault and other exemptions could receive support, although some notes of strong caution were sounded about the possible effects of its removal.

There was clear recognition that a balanced allocation of rights and obligations of both carriers and shippers was important also in the light of maritime safety and sustainability, especially with respect to the prevention of accidents.

There was also substantial evidence to suggest that a more stringent allocation of responsibility along the lines of the Hamburg provisions may in the end receive support, perhaps with a listing of specific defences.

In all cases there should be counterbalancing obligations on shippers to ensure there was an adequate duty of disclosure:

- a) On special features of the goods that are relevant to their handling and carriage - in particular any dangerous qualities and any special precautions appropriate; and
- b) As required by the shipment's documentation in accordance with legal and administrative requirements, and as necessary for delivery of the cargo to consignee in accordance with the contract of carriage.

Shippers should be liable for any damage or expense caused to the carrier or others:

- By their failure to meet these obligations, or
- By the goods themselves, if due to the shippers' fault or neglect.

Some careful attention should also be given to the burden of proof.

#### **Issue J: Monetary Limits**

The matter of monetary limits is one that can only be resolved by a diplomatic conference.

Before considering new monetary limits it would be advisable for the sponsoring agency, as part of preparatory work for a diplomatic conference, to commission an independent study on the changes in the value of money since the limits were fixed in the Hague-Visby Rules.

During the course of discussion, a suggestion that "package" limits should be removed received little support, but it was recognised that this could be reconsidered if a new regime was extended to cover multimodal legs.

There was also strong support for the proposition that there should be a provision included in a new regime for the review of limits by "a tacit amendment procedure", perhaps by drawing from existing provisions in other related conventions.

#### **Additional matter**

During the course of the Workshop, the issue that freedom of contract should be a feature of any new convention received strong support from industry representatives. However, those government representatives that spoke tended to reflect the view that the unification of international transport law could only be effective in providing a minimum or basic standard if the provisions contained in these conventions were mandatory. Freedom of contract might however be restricted only in cases where general conditions were used.

Paris  
5 February 2001