

Panel discussion and its Results

Short Report by Anna Tschiltschke, Hamburg

A final panel discussion was held under the topic: »Is the new convention likely to improve the international legal situation?«. It was moderated by Dr. Beate Czerwenka, Senior Legal Officer in the Federal Ministry of Justice, and attended by Dr. Joachim Bartels, lawyer in Bremen, Johann Philippi, Kuehne and Nagel, Ludwig H. Pfeiff, Hamburg Süd, and Dr. Dieter Schwampe, lawyer in Hamburg.

Whereas the previous speakers had paid regard more to the international perspective, the panel discussion shifted in the emphasis to a more national point of view. The participants were chosen with a view to their professional activities at various maritime fields affected by the UN Convention.

At the beginning the headline question was discussed. All participants expressed more or less explicitly that the Convention's rules were too detailed and complicated. That could conspicuously be seen in the volume of 90 articles. However, it was also agreed that due to the increased importance of multimodal transports unification of legal rules on multimodal contracts of carriage covering both a sea-leg and a land-leg was desirable. A set of rules other than that now worked out by UNCITRAL are not in sight in the foreseeable future. If they should not become effective, national codifications in the U.S. and within the EU are likely. Deepening the legal fragmentation, however, could not be beneficial for maritime trade.

Therefore, the panel was inclined to conclude, that signing the Convention is advisable. Mr. Pfeiff, however, emphasized that an important condition is that a number of major maritime countries should also accept and sign the instrument.

Dr. Bartels addressed the specific concerns raised by cargo interests. He mentioned in particular the application of maritime law on the land leg according to the »maritime-plus« rule, as well as uncertainty about the limits of mandatory liability by an ambiguous definition of delivery.

Mr. Pfeiff referred to objections raised with respect to Article 80, the clause on freedom of contract for so-called »volume-contracts«. He stressed that he could not see any danger in the lack of a precise definition of that term. On the contrary he considered it unrealistic to assume that shipowners, due to the strong competition in the market, have the opportunity to force even smaller business partners to con-

clude such contracts and thereby lower carriers liability. On the question of Dr. Czerwenka, whether the vague wording of Article 80 could be seen as a risk of inconsistent application of the Convention, Dr. Schwampe drew attention to the fact that »volume-contracts« needed to be considered in a separate rule because they cover a situation of special importance in practice.

Mr. Pfeiff and Dr. Bartels compared the rule on volume contracts with those on charterparties and emphasized that the contracting parties usually are equal strong partners in terms of economical power. Prof. Debattista added from the audience that competition between shipowners is so strong that a circumvention of the statutory limits of liability at all would be unlikely.

Dr. Czerwenka then posed the question of how potential conflicts of the Convention with other multimodal regulations, including those at the national level, are to be estimated. Dr. Bartels was of the opinion that the efforts of the EU Commission to install an independent regulation of multimodal contracts are clearly too late. Dr. Schwampe underlined once again that he considered the »maritime-plus « rule of the UN Convention as not ideal, but as being the best option actually available.

On the whole, as a general tendency of the panel can be noted that the participants agreed on the fundamental criticism of the vague wording, the legislative technique and the volume of the Convention. They did, however, not reject the Convention altogether because they could not see any better options for international rules available in the near future. Despite the shortcomings of the Convention international legal uniformity, which was the ambition of the Convention, should have a higher value than potential problems with the scope of application or the practical use of the rules.

As an important condition for an acceptance of the new instrument was by all participants considered that a large number of other states, especially major shipping countries, accept it as well. Only if the Convention should really become a worldwide accepted uniform set of rules, replacing the existing conventions, it could effectively serve international maritime trade. As a consequence, it should not be ratified too rapidly.