

W.H. van Boom, review of: 'Ocean bills of lading: traditional forms, substitutes, and EDI systems', edited by A.N. Yiannopoulos [International Academy of Comparative Law; XIVth International Congress of Comparative Law], Kluwer Law International, 1995, ISBN 0-7923-3361-6, in: 5 Tilburg Foreign Law Review 262-263 (1996)

This book contains thirteen national reports and the general report submitted to the XIVth International congress of comparative law (Athens, 1995) on the subject of 'current developments concerning the form of bills of lading'.

A bill of lading is a paper document, issued by an ocean carrier in receipt of the goods he is to transport. The bill of lading serves not merely as proof of the quantity and quality of the goods received by the carrier, and as proof of the contract of carriage, but moreover as a negotiable document of title. Most legal systems allow for the transfer of ownership of the goods *in transitu* through the transfer of the bill of lading. The carrier who issues a bill of lading, promises to deliver the goods to the bearer (or endorsee), who is *prima facie* entitled to the goods. Thus, the bill of lading represents the goods. It enables merchants to trade without physical presence of the goods and – equally important – to provide their financiers with collateral.

In practice however, the bill of lading has become a millstone for trade: goods nowadays often travel faster than the bill itself, forcing the carrier to deliver without presentation of the bill. Therefore, commerce has sought for alternatives to the bill of lading. None of these alternatives are however negotiable. So, it must be admitted that nothing beats a negotiable bill of lading: its negotiability gives direct ownership to the buyer of the goods and provides collateral for the bank that finances the sale.

In an ideal world, the bill of lading would be both negotiable and speedier than the goods represented. One of the main topics dealt with in this book, is the possibility of altering the *form* of the bill of lading without changing its *substance*. Modern computer technology makes it feasible to connect all parties involved in trans-oceanic trade to a computer system that emulates all features of the traditional bill of lading. Shipper, carrier, addressee, consignee and financing banks would all enter into this technical framework. Every party would have its proper authority to issue, amend, view or alter the electronic bill of lading. Encryption technology would secure authenticity of the electronic signatures etc. So, *technologically* speaking, an electronic bill of lading can mimic all features of a conventional bill. Can it do so *legally*? Both the national reporters for the U.K. (I.M. Carr, o.c., p. 179) and New Zealand (P.A. Myburgh, o.c., p. 259) mention that their respective legislations allow for the extension of, *inter alia*, negotiability to paperless bills of lading; other reports are more reserved. Belgian reporter Bernauw (o.c., p. 115), e.g., concludes that in the present state of legislation, negotiability cannot be divorced from the physical pos-

session of the original paper document. This is why general reporter Yiannopoulos (o.c., p. 38) stresses the need for legislative reform in order to facilitate the negotiable electronic bill. The uncertainty of legal consequences that surrounds the electronic bill of lading, is of course a serious impediment for international trade. The call for drafting a treaty is imminent. This book has illustrated the need for such a treaty. However, whether a treaty will indeed be drafted and enter into force for all leading trade nations, is quite another issue. To conclude, this book offers a lot of information on various topics connected with the trans-oceanic carriage of goods. Although as a whole the book is most informative and fills an existing gap in legal literature, it must be admitted that, on the one hand, the various reports show some overlap and, on the other, a somewhat disappointing imbalance has resulted from the considerable difference in length and depth of the national reports. Although most reporters have elaborately described and analysed their domestic legal systems, abundantly supplied with footnotes, others scarcely bothered to fill in the questionnaire that was provided by the general reporter. It is here submitted that not only international trade law benefits from uniformity.