

**INTERNATIONAL MARITIME COMMITTEE**

*International Subcommittee*

*on*

**REGISTRATION OF SHIPS UNDER  
CONSTRUCTION**

**3.**

**REPLIES TO QUESTIONNAIRE**

<b>FINLAND</b>	<b>RSC 9</b>
<b>SUISSE</b>	<b>RSC 10</b>
<b>FRANCE</b>	<b>RSC 11</b>
<b>BELGIQUE</b>	<b>RSC 12</b>
<b>BELGIUM</b>	<b>RSC 13</b>
<b>CANADA</b>	<b>RSC 14</b>
<b>REPORT</b>	<b>RSC 15</b>
<b>REVISED PRELIMINARY DRAFT</b>	<b>RSC 16</b>

**APRIL 1963**

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**APRIL 1963**

## FINNISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## ANSWER TO QUESTIONNAIRE

## I. The present position in Finland is as follows.

Finland has ratified and brought into force the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (dated 10th April, 1926).

At the time of the ratification no reserves were made by the Finnish Government.

## A. REGISTRATION OF SHIPS

Our law on registration of ships and of mortgages in ships of the 29th July, 1927, was corrected to comply with the regulations of the Convention.

According to our legislation registration of Finnish merchant ships is compulsory when the ship's burden is at least 19 net reg. tons (lighters and similar craft used only within limits of harbours are excluded).

An Owner having a merchant ship of a smaller burden than 19 net reg. tons may on application have the ship registered, if of a length of at least 10 meters.

If a merchant ship is being built in Finland for account of a Finnish Owner and if the construction of the ship has proceeded so far that the ship is individualized and it can be ascertained that, when ready, she will be 19 net. reg. tons, or have a length of 10 meters respectively, then on the application of the Owner the ship can be registered, so as to enable the vessel to be mortgaged as security for a debt.

Registration of a ready merchant ship of at least 19 net reg. tons is thus compulsory, but registration of a ship under construction is optional.

The purpose of registration is to officially establish ownership of the vessel, and such registration of title shall have taken place before any other rights in the vessel can be registered.

## B. REGISTRATION OF MORTGAGES IN SHIPS

A vessel entered in the Register can on application of the Owner himself be mortgaged as security for the payment of a fixed sum of money (plus interest and costs) based on a Promissory Note. A mortgage as security for one and the same Promissory Note can be registered in several vessels, provided they all belong to the same Owner.

It is thus not possible to register any other rights than the title (= ownership) to the vessel and the mortgage in the vessel.

An application for registration of a mortgage can be made by the holder of a Promissory Note, provided the Promissory Note itself contains authorization given by the Owner of the vessel to the holder of the Promissory Note to apply for such registration.

Registration of the title to a ship and registration of a mortgage in a ship takes place in the home port of the vessel, but registration of a ship under construction has to take place in the place, where the ship is being built.

When a ship under construction has been registered, then, when the ship is ready, all particulars in the Register of the place of construction are transferred to the Register of the vessel's home port.

A ship's mortgage comprises the ship itself and its accessories, outstanding freights and outstanding average contributions. In our Law there is no special mentioning of what the mortgage of a ship under construction comprises. In shipbuilding contracts it is often stipulated that the Shipowner shall have a lien on goods and material to be built into the ship and being delivered at the shipbuilder's yard.

### II. Desirability of a Convention on security in ships under construction.

1. We think a Convention authorizing the registration of rights in ships under construction would be useful.

2. We know of cases, where risks have been involved in advancing money to shipbuilders under shipbuilding contracts.

3. It is not usual in Finland that purchasers get a bank guarantee from the yard for money advanced as instalments under the building contract. The cost of a bank guarantee would vary between 1 and 2 %.

### III. Who may apply for registration ?

a), b), c). Registration of ownership is always the business of the Shipowner. Registration of a debt can take place only after the ownership of the vessel under construction has been registered.

d) In our opinion, before replying to the question under d), it should be decided whether registration should take place in the place, where the vessel is being built, or in the place, which will be the vessel's

home port. If it is decided that the registration should take place in the place, where the vessel is being built, which in our opinion is the most practical solution, then the only way would be to allow registration irrespective of the nationality of the Shipowner. If, again registration has to take place in the home port of the vessel, then the question under d) does not arise.

#### IV. When shall registration be permissible ?

We have an open mind on this question. It is not uncommon that a building contract is agreed four or five years before the building of the vessel starts. Under legal systems, where it is possible to register a bare-boat charter or a time-charter, it might be advisable to make facilities for registering such rights at any time after the building contract has been made. Under other legal systems, as ours for instance, where it is only possible to register a mortgage for a debt, such registration serves no useful purpose before the building has proceeded so far that the ship is individualized.

#### V. What instruments may be registered ?

1. See our answer to 2. below.

2. Under a legal system as ours the first thing would be to register the title (ownership). If any change in title (ownership) takes place during the construction, this should be registered.

3. a) It is uncertain whether under our legislation a shipbuilder has a possessory lien in a ship he is building. The shipbuilder would probably have to safeguard his rights in some other way. Now, according to a building contract, the building price usually has to be paid in instalments, partly in cash and partly by credit. The credit part the shipbuilder could have secured by a mortgage in the vessel. If the cash part is not paid as agreed, then there is a breach of contract on the purchaser's side and the shipbuilder could exercise a right, which in practice is very much similar to a possessory lien.

b) Mortgages on the newbuilding should be registered.

c) We understand that if a mortgaged vessel is seized and sold compulsorily, then the authorities attending to this will *ex officio* have corresponding data made in the Register.

4. Contracts of affreightment.

a) We would favour registration of long time charters such as bare-boat-, time- or consecutive voyage charters, which, as stated above, is not at present possible under our Law.

b) We are of the opinion that practical difficulties would arise in enforcing registered rights of assignment of charter party freights. On

the other hand, we would have no objection to the registration of the transfer from one holder of a charter party to another holder of the same charter party.

5. We see no reason why parties should be required by law to register any of the aforesaid transactions.

## VI. Materials and equipment.

The question whether the registration of a ship under construction should comprise also materials and equipment would depend on the wording of the building contract. If the contract stipulates, as it often does, that the purchaser shall have security in materials, equipment, etc., then a registration of a mortgage would comprise also, these accessories.

It is, however, easy to conceive a contract with no such stipulation and then a registration could comprise these only if the Convention *expressis verbis* stipulates that the mortgage of a ship under construction shall also comprise materials and equipment to be built into the ship.

At the present stage we do not think we can express any further opinion on

1. a) - b).

2. a) - d) and

3.

In our opinion when registration of a certain right is applied for, then the building contract should be enclosed with the application and the rights to be registered should be based on the building contract.

4. a) - c). A registration comprising materials and equipment lapses, of course, when these have been built in or otherwise made part of the ship. If a ship under construction is sold, then, of course, the buyer will inquire whether any registration has been made, and he will thus become cognizant of any rights being registered.

## VII. Legal consequence of registration.

1. The registration in itself would not have as a consequence any change in the relations between the shipbuilder and the purchaser.

2. Regarding 2. a), b) and c), we would refer to what we have stated under V. 3. a).

3. Registered rights should have priority from the day registration is applied for.

4. We think that Article 5 in the Draft Convention is in accordance with the view we have expressed above.

5. In our opinion what is stipulated in Article 6 does not belong to this Convention. This Article concerns principles, which are or should be stipulated elsewhere.

#### VIII. Transfer of the newbuilding to another State.

The principles embodied in the Brussels Convention on Maritime Liens and Mortgages should be applied. As we have pointed out, in some countries including Finland only a debt, i.e. an undertaking to pay a fixed sum of money, can be registered. Rights to use a ship can at present not be registered in Finland. Conflicts could therefore arise, e.g. if in a vessel under construction a right to use the vessel on time-charter has been registered and the vessel, when ready, is sold to and registered in a country, where such right cannot be registered.

### THE DRAFT CONVENTION

In addition to what we have said above we would make the following remarks.

**Article 7** refers to maritime liens. In our opinion maritime liens refer to a ship, which is trading, and not to a ship, which is under construction. Otherwise we have no objection to this Article.

#### **Article 8.**

It is doubtful whether it will be practical to have a stipulation regarding materials as proposed. Even if the Article can be complied with, there will always be great uncertainties.

#### **Article 9.**

Would it not be more correct to say that any registration regarding rights in a ship being built or in materials or equipment should comprise the ready-made ship with its equipment, etc., as stated in the present Convention on Maritime Liens and Mortgages. This would also apply to Article 10 and 11.

*Helsinki/Helsingfors, 11th September, 1962.*

*Rudolf Beckman.*

*Bertel Appelqvist*

## ASSOCIATION SUISSE DE DROIT MARITIME

ENREGISTREMENT DE NAVIRES  
EN CONSTRUCTION

## REPONSES AU QUESTIONNAIRE

Le droit maritime suisse ne connaît pas de dispositions concernant l'enregistrement de navires en construction étant donné que par nature ce pays dépourvu de littoral maritime ne possède pas de chantiers navals. Pour ces raisons l'association suisse de droit maritime n'est pas en mesure de répondre aux questions N° 1 à VII du questionnaire, sauf en ce qui concerne l'opportunité d'une Convention Internationale en la matière. Les armements suisses placent leurs ordres de construction à l'étranger et pour le financement d'une nouvelle unité à construire sur un chantier souvent l'hypothèque sera le moyen le plus approprié. Si une telle hypothèque jouira grâce à une Convention de la reconnaissance internationale, un des buts principaux de l'unification du droit est acquis et de ce fait, la préparation d'une Convention Internationale sera considérée souhaitable.

Les intérêts d'un Etat dépourvu de littoral maritime seront touchés au moment du transfert d'une nouvelle construction navale dans ce pays. Pour ce transfert le projet de Convention prévoit dans son article 11, dernière phrase, que toutes les inscriptions sur le registre de la partie contractante, dans lequel le navire en construction a été immatriculé, seront transférées dans le registre de l'autre partie contractante, où le navire sera utilisé. Cette règle qui dépasse une simple reconnaissance des droits inscrits, mais qui impose l'enregistrement de droits constitués à l'étranger dans un registre d'un autre pays, intéressera chaque Etat maritime, ainsi que celui dépourvu de littoral, et l'association suisse de droit maritime pourra donc se permettre à formuler quelques remarques d'ordre juridique à ce sujet :

1) Les droits réels sur les navires ne sont pas unifiés. Chaque Etat détermine dans sa législation les effets et conditions de la propriété, de l'usufruit, de l'hypothèque, des privilèges ou d'autres droits susceptibles d'être inscrits sur ses registres. Il est de même en ce qui



concerne l'exécution forcée pour ces droits, la notion de droit réel diffère dans la jurisprudence des Etats. Il y a des législations où l'inscription d'un droit réel sur le registre est constitutive pour la naissance de ce droit, tandis que dans d'autres législations l'inscription ne confère que des effets envers les tiers. Aussi l'étendue du droit réel diffère de législation en législation. Par exemple l'assiette d'une hypothèque (navire, accessoires) n'est pas uniforme dans toutes les législations et encore la question à savoir, si l'hypothèque couvre outre le capital dû les intérêts échus pour plusieurs années, demanderait une unification avant qu'un Etat puisse être obligé à inscrire sur ses registres un tel droit étranger qui ne correspondra pas à son droit national.

2) Plusieurs législations prévoient expressément que les droits réels inscrits sur ses registres sont soumis à sa propre législation et il est une règle du droit international privé que le droit du lieu de l'inscription est applicable aux droits réels. Les législations exigent en outre que les sommes garanties par une hypothèque doivent être inscrites dans la monnaie nationale du pays de l'enregistrement.

3) Pour des raisons de pureté du pavillon national, les législations peuvent prévoir que le créancier d'une hypothèque doit être un citoyen national. Il est ainsi pour le pavillon suisse qui, pour des raisons de neutralité, ne sera accordé que si aucun intérêt étranger existe.

4) Un autre point mérite d'être soulevé. Les règles pour l'enregistrement des droits touchent très sensiblement à la forme, soit pour la constitution, soit pour le transfert, soit pour la tenue des registres. Il y a des législations qui exigent p.ex. pour la constitution d'une hypothèque la forme authentique, tandis que d'autres se contentent avec un acte sous seing privé. Le préposé du registre veille à ce que les formes prescrites seront respectées. Comment pourra-t-il inscrire un droit constitué à l'étranger par un acte qui ne revêt pas la forme prévue par son droit national ?

5) Il est généralement reconnu qu'un navire ne pourra être immatriculé dans un pays que si un certificat de radiation de l'immatriculation antérieure sera soumis pour éviter une double immatriculation. Ce certificat de radiation ne sera fourni au propriétaire qu'avec le consentement des bénéficiaires des droits inscrits (spécialement des créanciers hypothécaires). Par la radiation de l'inscription dans un registre les droits réels s'éteignent ipso jure, surtout dans les pays où l'inscription est constitutive. Les mêmes droits seront reconstitués lors de l'inscription dans un autre registre.

6) Un Etat pourra donc s'engager à respecter les droits inscrits sur un registre d'un autre pays lors d'une exécution forcée sur son territoire, mais il ne pourra pas prévoir l'inscription des droits réels constitués à l'étranger sur ses registres tel quel. Ce qu'il faudra prévoir

c'est une plus grande facilité pour un propriétaire de procéder au transfert de l'immatriculation d'un pays à l'autre. Le propriétaire devra plus facilement obtenir le consentement des bénéficiaires inscrits pour la radiation. Ces problèmes se sont également posés lors de l'élaboration d'une convention internationale sur l'immatriculation des bateaux de la navigation intérieure au Comité Economique pour l'Europe de l'UNO, et tenant compte des difficultés juridiques du règlement national des droits réels, ce projet de convention fluviale prévoit une procédure de transfert qui facilite l'enregistrement dans un autre pays et qui tâche à éviter un intervalle pendant lequel les droits réels ne seront plus inscrits ni dans l'un ni dans l'autre registre. La procédure de transfert prévue est la suivante :

a) Le registre qui reçoit la requête pour la nouvelle immatriculation procède aux inscriptions requises y compris celles qui sont au bénéfice de tiers, mais mentionne sur le registre que les effets de ces inscriptions sont subordonnés à la condition que l'immatriculation antérieure du navire soit radiée.

b) Le registre sur lequel le navire était immatriculé antérieurement procède à la radiation sur présentation de l'extrait du registre de la nouvelle immatriculation et délivre une attestation de radiation mentionnant la date de cette radiation.

c) Sur présentation de l'attestation de radiation, sur le registre de la nouvelle immatriculation la mention qui était apposée (concernant la condition de la radiation antérieure) sera rayée et les droits déjà inscrits prendront tous leurs effets.

Une telle procédure pourra être possible pour permettre aux intéressés d'éviter un intervalle dans l'effectivité des droits inscrits. Les droits seront transposés dans le nouveau registre, mais ils ne pourront pas être transférés d'un pays à l'autre tel quel avec les effets juridiques qui dépendront toujours du droit du pays de l'immatriculation. Les bénéficiaires de ces droits n'autoriseront la radiation sur le premier registre que s'ils ont la garantie que sur le nouveau registre les mêmes droits, quant à leur effectivité, mais en vertu de la législation nationale du nouveau registre, seront inscrits.

Voici les remarques que l'association suisse de droit maritime voudrait faire pour le projet de convention qui mérite la reconnaissance du grand travail de ses auteurs.

*Bâle, avril 1963.*

*Dr. Walter Müller.*

## ASSOCIATION FRANÇAISE DE DROIT MARITIME

ENREGISTREMENT DES NAVIRES  
EN CONSTRUCTION

L'Association a été saisie du problème par le C.M.I. sous la forme de l'envoi de trois documents :

1. le rapport général du Professeur Brækhus et de M. Per Brunvig;
2. un questionnaire;
3. un avant-projet de Convention.

Le rapport rappelle que le problème de l'inscription d'hypothèques sur un navire en construction a été discuté en 1956 à Oslo et en 1958 à Cologne, au cours des Conférences de l'International Bar Association.

La conclusion a été qu'il convenait d'unifier le régime qui, actuellement, varie d'un Etat à l'autre, et de réaliser cette unification sur les bases suivantes :

- a) permettre l'immatriculation sur un registre public des navires en construction dans un Etat pour le compte d'armateurs étrangers;
- b) que cette immatriculation soit autorisée dès que la construction est arrivée au stade où il est possible d'identifier le navire;
- c) que le régime soit le même pour les nationaux et pour les étrangers sans discrimination;
- d) que les sûretés réelles inscrites prennent rang selon leur date d'inscription;
- e) que les inscriptions soient reconnues identiquement dans tous les Etats signataires de la Convention;
- f) que le passage du pavillon d'un Etat signataire à celui d'un autre Etat signataire n'affecte en rien les inscriptions antérieures.

Le rapport général fait ensuite état des divergences actuelles entre les législations nationales et montre l'intérêt manifeste d'une harmonisation et de l'institution d'un droit de suite qui ne soit pas affecté par le changement de pavillon.

L'Association française est entièrement d'accord sur ces différents points.

## REPONSE AU QUESTIONNAIRE

Le questionnaire adressé aux diverses Associations nationales de droit maritime comporte deux interrogations :

- la première : quel est votre régime national interne actuel ?
- la seconde : quelles sont vos préférences quant aux principales dispositions de la future Convention internationale.

On trouvera ci-dessous les réponses de l'Association française, présentées dans l'ordre même du document RSC 2 (8-62) :

### I. Régime juridique actuel en France :

1. Réponse affirmative : nous avons un registre tenu aux Recettes Principales des Douanes, sur lequel on peut immatriculer les navires en construction.

2. Cette immatriculation est possible dès que le navire est identifiable, c'est-à-dire :

- pour la construction traditionnelle, quand la quille est posée sur la cale;
- pour les navires préfabriqués, quand l'assemblage est assez avancé.

Il n'y a pas en France de possibilité d'enregistrer le marché de construction.

3 et 4. Seules peuvent être inscrites les hypothèques sur le navire. Cette inscription doit être précédée d'une déclaration faite à la diligence du chantier de construction qui indique à l'Administration des Douanes (Recette Principale locale) les mensurations approximatives et les caractéristiques du navire en construction.

- 5. a) Réponse affirmative.
- b) Seulement par accord des parties.
- c) A condition que les éléments soient dans le chantier et spécialement marqués.

6. Le registre est organisé localement à la Recette Principale des Douanes dans le ressort de laquelle se trouve le chantier de construction.

### II. Utilité d'une convention internationale relative aux sûretés réelles sur les navires en construction.

1. Internationaliser le rang et le droit de suite des hypothèques constitue certainement un progrès.

2. L'hypothèse s'est présentée en cas de faillite du chantier et d'interruption des constructions.

3. Oui, cette pratique est fréquente et le coût varie de 1,20 à 2,40 % selon les garanties.

### **III. Qui devrait requérir l'inscription ?**

Le seul bénéficiaire de la sûreté.

### **IV. A partir de quand l'inscription devrait-elle être autorisée ?**

A partir du moment où la quille a été posée sur la cale et, pour les navires préfabriqués, quand l'assemblage est assez avancé.

### **V. Quels instruments devraient pouvoir être inscrits ?**

Nous estimons qu'il suffit d'inscrire les hypothèques, c'est-à-dire que nous ne répondons affirmativement qu'au point 3, b).

### **VI. Matériel et équipement :**

1. Réponse affirmative pour b).
2. Réponse affirmative pour a), b) et c).

### **VII. Conséquences juridiques de l'inscription :**

- Réponse affirmative aux points
- 1.
  2. a), b), c)
  3. a)
  - 4.

### **VIII. Changement de nationalité du navire :**

Réponse affirmative.

## AVANT-PROJET DE CONVENTION

L'Association française a établi un contre-projet que l'on trouvera en annexe et qui a été inspiré par le double souci :

- de ne pas, à propos de l'extension aux navires en construction de la constitution d'une hypothèque, mettre en cause le problème des droits, charges, privilèges, etc..., ni leur concours éventuel, ce qui introduirait des difficultés nouvelles sans présenter d'intérêt pour le crédit de l'armateur ou du chantier. C'est pourquoi, dans le texte modifié, n'apparaissent que les mots « sûretés réelles », à l'exclusion de tous autres;
- d'efficacement assurer aux créanciers ayant inscrit des hypothèques sur le navire en construction le maintien de leur droit de suite et de leur rang, quelque soit le changement de pavillon.

Les **articles 1 et 2** n'appellent pas de commentaires.

A l'**article 3**, entre les trois variantes, c'est la dernière qui a semblé préférable. En effet, les deux formules précédentes permettent l'inscription trop tôt, à un moment où le navire n'a pas encore d'existence corporelle.

**Articles 4 et 5** : pas d'observations.

**Articles 6 et 7** : nous les avons supprimés purement et simplement en raison du danger que leurs dispositions représenteraient pour l'économie générale du régime de la Convention. Il faut éviter toute incertitude et respecter rigoureusement le rang chronologique des inscriptions sans qu'aucune connaissance réelle ou présumée puisse y porter atteinte.

**Article 8** : La modification de rédaction a pour dessein de préciser davantage les conditions auxquelles les éléments non encore assemblés peuvent être l'objet de sûretés.

**Article 9** : Entre les intérêts contradictoires d'accroître le crédit dont peut bénéficier le chantier et de tenir compte de la solvabilité apparente du propriétaire du navire, nous croyons qu'il faut choisir le second. C'est pourquoi l'article 9 nous paraît pouvoir être supprimé, de manière que les équipements, tels radars, radios, etc..., incorporés au navire, suivent purement et simplement le sort de celui-ci.

**Articles 10 et 11** : Pas d'observations.

Il nous paraît enfin souhaitable d'étudier les moyens propres à réprimer la vente d'un navire hypothéqué au national d'un État non-contractant.

**AVANT-PROJET (août 1962)**  
**D'UNE CONVENTION INTERNATIONALE**  
**POUR L'UNIFICATION DE CERTAINES DISPOSITIONS**  
**LEGALES RELATIVES A L'IMMATRICULATION DE NAVIRES**  
**EN COURS DE CONSTRUCTION**

TRADUCTION FRANÇAISE  
DU TEXTE  
RSC 3 (8-62)

CONTRE-PROJET  
DE L'ASSOCIATION  
FRANÇAISE (\*)

**Article 1**

Les Hautes Parties contractantes s'engagent à introduire dans leur loi nationale les dispositions nécessaires pour permettre l'immatriculation, dans un registre officiel établi par l'Etat ou placé sous son contrôle, des navires en cours de construction sur son territoire.

L'immatriculation des navires en cours de construction peut être limitée aux navires dont les Autorités compétentes estimeront qu'ils sont d'un type et d'un tonnage permettant, d'après la loi nationale, leur immatriculation une fois la construction achevée.

**Article 2**

Les Hautes Parties contractantes peuvent limiter l'immatriculation des navires en cours de construction aux navires construits pour compte d'un acheteur étranger. Les Parties contractantes conviennent d'autori-

**Article 1**

Les Hautes Parties contractantes s'engagent à introduire dans leur loi nationale les dispositions nécessaires pour permettre l'immatriculation, dans un registre officiel établi par l'Etat ou placé sous son contrôle, des navires en cours de construction sur son territoire.

**Le régime de l'immatriculation — — de la présente Convention** sera limitée aux navires dont les Autorités compétentes estimeront qu'ils sont d'un type et d'un tonnage permettant, d'après la loi nationale, leur immatriculation une fois la construction achevée.

**Article 2**

Les Hautes Parties contractantes peuvent limiter l'immatriculation des navires en cours de construction aux navires construits pour compte d'un acheteur étranger. Les Parties contractantes conviennent d'autori-

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(\*) **modifications**  
**suppressions — —**

ser l'inscription des titres relatifs aux navires en cours de construction par tout demandeur citoyen d'un des Etats contractants sans discrimination. Cette inscription ne modifiera pas les limites imposées par la loi nationale à l'acquisition de tels droits par des étrangers, de même qu'elle ne donnera pas à l'armateur étranger le droit de battre le pavillon de l'Etat où a eu lieu l'inscription.

### Article 3

L'inscription des titres relatifs à un navire en construction sera autorisée :

**1<sup>re</sup> variante** : dès que le contrat pour la construction d'un navire, dont les spécifications sont nettement définies, est parfait.

**2<sup>me</sup> variante** : dès que la construction a été commencée à l'endroit où le nouveau bâtiment doit être lancé.

La loi nationale peut, cependant, autoriser l'inscription plus tôt ou permettre également l'inscription d'un contrat pour la construction d'un navire bien déterminé avant que le travail ne soit commencé.

**3<sup>me</sup> variante** : dès que la construction est parvenue à un stade tel que le navire peut être aisément identifié.

La loi nationale peut, cependant, autoriser l'inscription plus tôt ou permettre également l'inscription d'un navire bien déterminé avant que tout travail ne soit commencé.

ser l'inscription des sûretés sur les navires en cours de construction par tout demandeur citoyen d'un des Etats contractants sans discrimination. Cette inscription ne modifiera pas les limites imposées par la loi nationale à l'acquisition de telle sûretés par des étrangers, de même qu'elle ne donnera pas à l'armateur étranger le droit de battre le pavillon de l'Etat où a eu lieu l'inscription.

### Article 3

L'inscription des sûretés réelles sur un navire en construction sera autorisée :

dès que la construction est parvenue à un stade tel que le navire peut être aisément identifié.



#### Article 4

Les titres relatifs à la propriété ou à une sûreté réelle sur un navire immatriculé, seront, sur demande, inscrits sur le registre. La loi nationale peut autoriser l'inscription d'autres titres relatifs à un navire en cours de construction.

#### Article 5

Les titres inscrits prendront légalement rang l'un après l'autre, suivant l'ordre dans lequel les demandes d'inscription ont été déposées auprès des Autorités compétentes et primeront les droits et sûretés non inscrits, relatifs au navire en construction.

#### Article 6

Nonobstant les dispositions de l'article 5, la loi nationale peut stipuler qu'un droit précédemment acquis primera un droit postérieurement acquis sans tenir compte de l'inscription, si cette dernière a été acquise par contrat et si l'acquéreur avait ou aurait dû avoir connaissance du droit précédent, au moment où le contrat est devenu parfait.

#### Article 7

La loi nationale peut encore disposer que les privilèges maritimes, le droit de rétention du constructeur jusqu'au règlement du prix d'achat, ou les droits légaux protégeant les intérêts des travailleurs primeront les droits ou charges inscrits, nonobstant les dispositions de l'article 5.

#### Article 4

Les sûretés réelles — — sur un navire immatriculé, seront, sur demande du bénéficiaire de la sûreté, inscrites sur le registre.

#### Article 5

Les sûretés inscrites prendront légalement rang l'une après l'autre, suivant l'ordre dans lequel les demandes d'inscription ont été déposées auprès des Autorités compétentes.

#### Article 6

*Supprimer.*

#### Article 7

*Supprimer.*

### Article 8

La loi nationale peut aussi disposer que les droits ou sûretés inscrits sur un navire en cours de construction porteront sur les matériaux, les machines et l'équipement qui se trouvent dans le chantier du constructeur et distinctement marqués comme destinés à la construction de ce navire.

### Article 9

Si les droits ou sûretés sur les machines, l'équipement spécial ou autres pièces détachées du nouveau bâtiment ont été inscrits suivant la loi nationale, la protection légale acquise par cette inscriptions cessera à la livraison du navire à l'acheteur pour tous objets ou parties incorporées au navire et pour tous appareils nécessaires à sa navigation.

### Article 10

Les droits ou sûretés inscrits conformément aux clauses de la présente Convention et légalement parfaites au regard des lois applicables de l'Etat où a eu lieu l'inscription, seront reconnus valables dans tous les Etats contractants.

### Article 11

Si, à l'achèvement, les armateurs désirent faire immatriculer le navire terminé dans un autre pays signataire de la Convention, cette immatriculation ne

### Article 8

La loi nationale peut aussi disposer que les — — sûretés inscrites sur un navire en cours de construction porteront sur les matériaux, les machines et l'équipement qui se trouvent dans le chantier du constructeur —

— à condition qu'il s'agisse d'éléments affectés définitivement audit navire et que cette destination soit matérialisée par des marques distinctes et permanentes.

### Article 9

*Supprimer.*

### Article 10

Les — — sûretés inscrites conformément aux clauses de la présente Convention et légalement parfaites au regard des lois applicables de l'Etat où a eu lieu l'inscription, seront reconnus valables dans tous les Etats contractants.

### Article 11

Si, à l'achèvement, les armateurs désirent faire immatriculer le navire terminé dans un autre Etat signataire de la Convention, cette immatriculation ne

pourra être autorisée par ledit Etat que sur présentation d'un certificat émanant des autorités compétentes de l'Etat où le navire en construction a été immatriculé mentionnant toutes les énonciations inscrites relatives aux droits ou sûretés grevant le navire, dans leur rang respectif, et déclarant en outre qu'aucune inscription supplémentaire ne sera faite pour ce navire après délivrance du certificat. Lesdites énonciations seront reportées sur le registre de l'Etat sous pavillon duquel le navire est transféré, et tous droits et sûretés resteront inchangés, y compris leur rang respectif.

pourra être autorisée par ledit Etat que sur présentation d'un certificat émanant des autorités compétentes de l'Etat où le navire en construction a été immatriculé et mentionnant toutes les énonciations inscrites relatives aux — — sûretés grevant le navire, dans leurs rang respectif, et déclarant en outre qu'aucune inscription supplémentaire ne sera faite pour ce navire après délivrance du certificat. Lesdites énonciations seront reportées sur le registre de l'Etat sous pavillon duquel le navire est transféré, et toutes — — sûretés resteront inchangées, y compris leur rang respectif.

## ASSOCIATION BELGE DE DROIT MARITIME

## INSCRIPTION DES NAVIRES EN CONSTRUCTION

## REPONSE AU QUESTIONNAIRE RSC 2-8/62

*élaboré par la Commission Internationale du  
Comité Maritime International*

**Section I**

1. Oui, pourvu qu'il s'agisse d'un navire destiné à naviguer sous pavillon belge.

2. Dès la présentation du contrat de construction, même si la construction n'est pas entamée.

3. a) Le contrat de construction (qui peut contenir des stipulations quant au transfert de la propriété du matériel et des matériaux à incorporer dans le navire.)

b) Les contrats de cession du navire en construction.

c) Les constitution d'hypothèque sur le navire en construction.

d) Les demandes tendant à faire constater, ou à mettre fin à un droit réel sur le navire en construction, ainsi que les jugements tranchant ces questions.

e) Les contrats de location coque-nue et d'affrètement à temps.

4. Les contrats mentionnés sub 3 a), b) et c) ne sont pas obligatoirement inscrits; mais ils ne sont alors pas opposables aux tiers.

Les demandes en justice (3d) doivent être inscrites sous peine d'irrecevabilité. Les jugements ne peuvent être exécutés, ni même opposés aux tiers, avant d'avoir été inscrits. L'inscription des contrats mentionnés sub 3e) facultative et sans effets particuliers.

5. a) Oui.

b) Oui, dans la mesure où le contrat de construction le prévoit.

c) La liberté des conventions est, sur ce point, entière (mais encore faudra-t-il toujours, pour qu'un droit sur certains objets soit protégé, que ces objets soient identifiables).

6. Il n'existe qu'un bureau pour tout le pays.

## Section II

1. Oui.
2. Oui.
3. Oui.

## Section III

a, b, c) A notre avis, l'inscription doit pouvoir être demandée soit conjointement, soit isolément, par le chantier et l'armateur (c'est actuellement le cas en Belgique).

d) A notre avis, l'inscription d'un navire en construction en Belgique devrait pouvoir être demandée en Belgique, quelque soit le pavillon sous lequel il est destiné à naviguer (ce qui n'est pas le cas actuellement), et quelle que soit la nationalité de l'armateur.

## Section IV

L'inscription doit être admise dès que le contrat de construction est signé. Ceci dans l'intérêt évident des créanciers, des fournisseurs et des bailleurs de fonds, qui se trouveront ainsi le plus tôt possible, avant tout autre engagement, à l'abri de tout malentendu quant aux stipulations exactes du contrat. L'armateur et le chantier bénéficient eux-mêmes de cet état de choses dans leurs négociations avec les tiers.

## Section V

1. Oui.

2. a) Oui.

b) Oui, mais pareille stipulation ne sera protégée que dans la mesure où elle est compatible avec le contrat de construction, si celui-ci est déjà inscrit. Elle disparaîtra d'ailleurs lors de l'incorporation de l'équipement au navire en construction (voir VI, 4b) ci-après).

c) Oui.

3. a) Si le chantier désire une protection autre ou plus précise que celle que lui accorde le droit commun de son pays, il lui appartient de le stipuler dans le contrat de construction et de faire inscrire celui-ci. Une faculté d'inscription distincte ne paraît pas justifiée.

b) Oui.

c) Oui.

4. a) Oui. La fraude consistant à octroyer deux chartes-parties concurrentes sur le même navire en construction pour obtenir, par exemple, un double financement, est parfaitement concevable. Il faut toutefois noter qu'une charte-partie fait souvent l'objet de modifications successives importantes en cours de construction, ce qui impliquerait des déclarations modificatives peut-être onéreuses.

b) Oui. Ici, toutefois, la fraude est encore moins à craindre en pratique, car la charte-partie est normalement remise au premier cessionnaire, qui a déjà averti le cocontractant.

5. L'inscription peut être facultative. Mais dès qu'un droit révélé et protégé par une inscription est éteint ou modifié, l'inscription de pareille extinction ou modification devrait être obligatoire.

## Section VI

1. a) Non.

b) Oui.

2. a) Non.

b) Oui, dès que l'identification est possible, mais sans que les objets doivent nécessairement être marqués.

c) Non.

d) Non.

3. La réponse paraît devoir être la même que pour V, 2b) ci-dessus.

4. a) Oui.

b) Oui.

c) voir (b).

## Section VII

1. Non.

2. a) Oui.

b) Oui, dans la mesure où le contrat de construction, s'il est inscrit, le permet.

c) La question ne semble pas se poser en Belgique.

3. L'inscription devrait être immédiate, sur présentation des documents nécessaires au fonctionnaire compétent, et prendre effet dès ce moment.

4. Oui, sauf que c'est *le droit* résultant d'un acte inscrit qui est préféré au droit concurrent résultant d'un acte non-inscrit ou inscrit ultérieurement. Les articles 6 et 7 du projet sont bien clairs sur ce point.

5. Oui.

## Section VIII

Les articles 10 et 11 du projet appellent les observations suivantes :

1. Le projet n'interdit pas l'inscription d'un navire en construction dans un pays autre que celui du chantier. Ainsi selon les législations applicables, un même navire en construction pourrait faire l'objet d'inscriptions et dans le pays de construction et dans le pays de l'armateur. Ceci constituerait une source d'insécurité certaine et de conflits probables. Là où la législation du pays du chantier autorise l'inscription du navire en construction, il faudrait prévoir la primauté des inscriptions effectuées dans ce pays.

2. La procédure prévue par l'article 11 devrait également couvrir le cas où le transfert de l'inscription est demandé avant l'achèvement du navire (par exemple lorsque le navire est lancé mais doit être achevé dans un autre pays).

## BELGIAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## ANSWER TO QUESTIONNAIRE RSC 2/8-62

*prepared by the International Subcommittee*

**Section I**

1. Yes, provided the ship is intended to fly the Belgian flag.
2. Upon presentation of the shipbuilding contract, even if construction has not yet begun.
  3. a) The shipbuilding contract (which may embody stipulations concerning transfer of title in equipment or materials to be incorporated in the newbuilding).
  - b) Contracts of transfer of the ship under construction.
  - c) Mortgages on the ship under construction.
  - d) Writs tending to the recognition or termination of a right in rem on the ship under construction, and judgements passed on such actions.
  - e) Bareboat charters and time-charters.

4. Registration of contracts mentioned under 3 a, b, and c is not mandatory, but such contracts, if not registered, cannot be invoked against third parties.

Writs (3d) must be registered, otherwise the action is not admissible by the Court; and judgements cannot be enforced, or even invoked against third parties, before they are registered.

Registration of contracts mentioned under 3e is optional and has no special effects.

5. a) Yes.
- b) Yes, insofar as provided for by the shipbuilding contract.



c) Parties are, on this point, free to contract as they wish (but, for a right upon certain objects to be protected, it is always mandatory that such objects be identifiable).

6. There is only one register for the entire State.

## Section II

1. Yes.
2. Yes.
3. No.

## Section III

a, b, c) In our opinion, the right to apply for registration should be recognized to the yard and to the purchaser, acting either individually or jointly (such is now the case in Belgium).

d) In our opinion, one should have the right to apply in Belgium for registration of a ship under construction in Belgium, irrespective of the flag which it is intended to fly (which is not now the case), and irrespective of the purchaser's nationality.

## Section IV

Registration must be accepted as soon as the shipbuilding contract is signed. This is to the obvious interest of creditors, suppliers and purveyors of credit who, before any further commitment, will thus be protected as early as possible against any misunderstanding as to the exact provisions of the contract. The purchaser and the yard are themselves advantaged by this state of things in their negotiations with third parties.

## Section V

1. Yes.
2. a) Yes.  
b) Yes, but such stipulation shall be protected only insofar as compatible with the shipbuilding contract, if the latter is already registered. Such stipulation shall in any case disappear upon incorporation of the equipment into the newbuilding (see VI, 4, b hereunder).  
c) Yes.
3. a) If the yard desires a protection differing from, or more precise than, that afforded by the normal rules of law in its country, it only has to stipulate to that effect in the shipbuilding contract and have the contract registered. There does not appear to be any justification for allowing separate registration.  
b) Yes.  
c) Yes.

4. a) One can well conceive the type of fraud consisting in granting two concurrent charterparties on the same ship under construction, for instance in order to secure two credit lines. One should, however, note that a charter-party is often substantially modified more than once in the course of construction, involving amendments to the registration which might prove burdensome.

b) Yes. This type of fraud is, however, even less of a menace in practice, because the instrument of the charter-party is normally handed over to the first assignee, who has already notified the other party to the contract.

5. Registration may be left optional. But as soon as a right, which is revealed and protected by registration, is terminated or modified, *then* the registration of such termination or modification should be mandatory.

### Section VI

1. a) No.

b) Yes.

2. a) No.

b) Yes, as soon as identification is possible, but the objects need not necessarily be marked.

c) No.

d) No.

3. The answer must surely be the same as under V, 2, b, here-above.

4. a) Yes.

b) Yes.

c) See b.

### Section VII

1. No.

2. a) Yes.

b) Yes, insofar as the shipbuilding contract, if registered, allows it.

c) The question does not appear to arise in Belgium.

3. Registration should be immediate, upon presentation of the appropriate documents to the Registrar, and take effect from that moment.

4. Yes, except that it is *the right* resulting from a registered instrument which takes precedence over the concurrent right resulting from an unregistered instrument or an instrument registered later. Articles 6 and 7 of the draft are quite clear on that point.

5. Yes.

## Section VIII

Articles 10 and 11 of the draft call for the following remarks :

1. The draft fails to prohibit the registration of a ship under construction in a country other than the yard's. Thus, according to the law which may apply, the same ship under construction might give rise to registrations both in the yard's country and in the owner's country. This would involve undoubted insecurity and probable conflicts. Where the law of the yard's country allows registration of the ship under construction, it should be provided that registration effected in that country take precedence over all others.

2. The procedure organized by Article 11 should also be applicable where the transfer of registration is requested before the newbuilding is completed (as for instance when the ship has been launched but must be completed in another country).

## THE CANADIAN MARITIME LAW ASSOCIATION

REPORT ON REGISTRATION OF SHIPS  
UNDER CONSTRUCTION

## REPLIES TO QUESTIONNAIRE

Note : Section numbers refer to the Canada Shipping Act Chapter 29 of the Revised Statutes of Canada 1952 as amended to date.

**I. Present legal situation in Canada.**

1. A vessel under construction which when completed will be a vessel registerable in Canada may be recorded, pending registration, under an assigned number and a temporary name. (Sec. 3 (1)).
2. Such a vessel may be recorded as soon as it is « about to be built » and is defined as a « recorded vessel ». (Sec. 3 (1)).
3. (a) A written and signed description of such vessel and a statement of the port in Canada at which it is intended to be registered (Sec. 3 (2)).  
(b) A Bill of Sale (Sec. 5 (1)).  
(c) A Builder's Mortgage defined to be a mortgage of a « recorded vessel » (Sec. 45 (2)).
4. (a) Delivery of a written and signed description of such vessel is required before such vessel can be recorded (Sec. 3 (2)).  
(b) Filing of a Bill of Sale is mandatory and the ownership of such vessel is deemed to be unchanged until the Bill of Sale is registered (Sec. 5 (1)).  
(c) Filing of a Builders' Mortgage is permissive only. (Sec. 45 (2)). Where there are more mortgages than one registered in respect of such vessel, the mortgages are, notwithstanding any express implied or constructive notice, entitled in priority one over the other according to the date at which each mortgage is recorded in the register book and not according to the date of each mortgage itself. (Sec. 49).

5. (a) A Builders' Mortgage binds the « recorded vessel » from the commencement of building until its registration in Canada (Sec. 46).
- (b) A charge on the material and/or equipment intended for such vessel would arise only by agreement between the parties.
- (c) The material and/or equipment would have to be « appropriated » to the « recorded vessel ».

6. Such vessel may be recorded in the office of the Registrar of Ships at the port in Canada at or nearest to which such vessel is to be built.

## **II. Desirability of a Convention on security in ships under construction.**

1. Many of the provisions of the draft convention are incorporated in the Canada Shipping Act. Certain amendments to this statute as noted below would be desirable.

2. No.
3. No.

## **III. Who may apply for registration ?**

Under the existing statutory provisions referred to, the owner of a vessel about to be constructed may record such vessel upon delivery to the Registrar of a description of such vessel signed by the Ship-builder. No amendment would appear to be required.

The recording of a vessel under construction is presently restricted to a vessel which when completed will be owned by British subjects and thus registerable in Canada. It is felt that these provisions should be extended to include vessels ordered by a foreign purchaser.

## **IV. When shall registration be permissible ?**

Under the existing statutory provisions referred to, a vessel that is « about to be built » may be recorded. It is felt that this provision should be amended to provide that such a vessel may be recorded when the shipbuilding contract has been duly executed. This would permit the registration of builders' mortgages entered into at the time.

## **V. What instruments may be registered ?**

Under the existing statutory provisions referred to, the only documents that may be filed are the Description of a Vessel Proposed to be Built, Bills of Sale and Builders' Mortgages. No reason can be seen for the filing of any additional documents.

## **VI. Materials and equipment.**

1. A Mortgage of a vessel under construction should comprise materials and equipment intended for such vessel as a matter of law.
2. Such materials and equipment must be distinctly marked as intended for such vessel.
3. No.
4. Special rights in materials and equipment acquired according to the National law should lapse on delivery of the completed vessel.

## **VII. Legal consequences of registration.**

1. Under the statutory provisions referred to, the recording of a vessel under construction has no effect on the relations between the parties.
2. Priority rights and charges recorded on the vessel under construction in relation to the shipbuilder its creditors and its trustee in bankruptcy would depend on the contract between the shipbuilder and the purchaser insofar as it relates to the transfer of property in the recorded vessel.
3. Registered instruments should obtain priority from the day and hour that they are registered.
4. It is felt that the Article should specify that priority should date from the day and hour that such instruments are actually registered.
5. Registration should give protection notwithstanding any express implied or constructive notice of unregistered instruments.

## **VIII. Transfer of the newbuilding to another State.**

The wording of Articles 10 and 11 would appear to be sufficient to establish such protection.

Submitted by the Committee on Registration of Ships under Construction :

*John J. Mahoney (Chairman)*  
*J. A. Geller*  
*L. Kaake*  
*Colin I. Mason*

*April 17 1963.*

# REGISTRATION OF SHIPS UNDER CONSTRUCTION

## REPORT

*prepared by Dr. jur. Sjur Brækhus, Professor at the University of Oslo,  
and Mr. Per Brunsvig, Advocate at the Supreme Court of Norway.  
(20<sup>th</sup> April 1963)*

## INTRODUCTION

The International Bar Association IBA at two Conferences — Oslo 1956, and Cologne 1958 — has discussed legal problems relating to security in ships under construction.

Rapporteur to the Oslo Conference was Professor Sjur Brækhus. His report was later published by IBA in a book under the title « INTERNATIONAL SHIPBUILDING CONTRACTS, Particularly legal problems in connection with finance and security », which also contained papers submitted to the Conference by E. Behrendt-Poulsen, Denmark, H. B. Lawson and J. E. Norton, England, James P. Govare, France, W. G. Wieringa and F. H. F. Oldewelt, Netherlands, Eskil Weibull, Sweden, and Churchill Rodgers, U.S.A.

Professor Brækhus concluded his report with the observation that « this state of affairs » — meaning the variations in national legislation relating to security in ships under construction — « creates difficulties and uncertainty for the lawyers and the business world ». He suggested that this be remedied. « It would be a great advantage », he said, « for the international shipbuilding community, for bankers and shipbuilders, if a certain degree of uniformity could be achieved ».

The Council of the International Bar Association met this challenge by appointing a Committee on International Shipbuilding Contracts « to the end that uniform rules may be promulgated which, it is hoped, will be of assistance to all interested in this field ». The Committee was set up with members from 14 countries and with Advocate Per Brunsvig, Norway as Chairman. Based on papers submitted to the

Chairman by the Committee members L. S. Reycraft, Canada, E. Behrendt-Poulsen, Denmark, Henry B. Lawson, England, Jean Warot, France, Kurt Ehlers, Germany, Arturo A. Alafriz, Phillipines, Thomas F. Whitewright, Scotland, Ragnar Heden and Eskil Weibull, Sweden, and Alan B. Aldwell, U.S.A., Mr. Brunsvig presented a printed report to the IBA Conference at Cologne under the title « INTERNATIONAL SHIPBUILDING CONTRACTS, Unification of National laws relating to registration of ships under construction ». Annexed to the report was a Preliminary Draft Convention.

The Draft Convention was approved by the Cologne Conference and the IBA Council decided to forward the Report and the Draft Convention to Comité Maritime International, the Inter-Governmental Maritime Consultative Organization (IMCO) in London and the International Law Commission, United Nations.

After the Bureau Permanent of the CMI had decided to place registration of ships under construction on the Agenda of the Stockholm Conference an International Subcommittee was appointed under the Chairmanship of Professor Brækhus and with Mr. Brunsvig as secretary. A Questionnaire and a Preliminary Draft Convention (RSC 1 - 3) was prepared by the Chairman and Secretary and sent to all member associations. Replies to the Questionnaire were received from the Belgian, Danish, Finnish, French, German, Italian, Netherlands, Swedish and the United Kingdom associations. The matter was discussed in a meeting of the International Subcommittee in Oslo in February 1963. In this report and in the annexed Draft Convention due consideration has been given to the observations made and the opinions expressed in the replies to the Questionnaire and at the Oslo meeting of the International Subcommittee. However, the responsibility for the report and the Draft Convention rests with the Rapporteurs only.

## THE NEED FOR REFORM

Modern Shipbuilding requires extensive financial resources. The price of one single vessel may run into millions — in any currency — and a multitude of contracts are being performed simultaneously in the greater shipbuilding countries.

The builder may finance the building out of his own funds or by the taking up of loans, but more often the purchase money will be advanced by instalments from the purchaser as the work proceeds. The main burden of raising money during the construction period will thus rest with the purchaser. He, in turn, may finance his instalments out of his own ready money or by selling other tonnage, but most purchasers are dependant upon loans — from bankers, insurance companies etc. As security for such loans the purchaser may i.a. put up



his other ships, the newbuilding — as far as this procedure is possible — and his expected freight earnings under long term charter-parties. In some countries the Government may provide credits, but the need for private financing is still vast.

In most countries we find a well organized system for the registration of title to and securities in real estate. In most — if not all — maritime countries a similar system has been applied to completed vessels. But ships under construction are still in many countries considered as chattels — unworthy of registration for credit purposes.

Registration of a waterborne vessel is possible, because the ship may be identified by its name, place of building, type and measures. Great values are involved and registration may be a necessity in order to regulate priorities between parties having interests in the ship. Further, registration is necessary as the nationality of ships trading is a public concern.. For all these reasons waterborne vessels, although classified as moveable goods, have been released from the national legal conceptions pertaining to other chattels. Vessels in commission are also subject to maritime law which is international in character. It is not easy to compete on the international maritime market without access to the facilities which other maritime countries provide for their shipping.

But shipbuilding is also, and increasingly so, an international trade. It is no rarity that a ship is being built in one country for the account of a shipowner in a second country who has borrowed money from a banker in a third country on the strength of time charter party with charterers in a fourth country. Some countries do provide facilities for the registration and mortgaging of ships under construction, others do not.

Even a slight degree of uncertainty with regard to the legal position is a great evil where such vast sums of money are involved as in modern shipbuilding. If the uncertainty is due to the inadequacy of the law, this may have a bearing not on one, but on many shipbuilding contracts.

It would be a great benefit to builders and purchasers alike if the capital which is being built into the ship could be utilized more extensively and in a legally safer way than now possible as security for the loans necessary for its construction. In view of the international character of the shipbuilding industry an internationally uniform system of rules seems to be called for. It can only be achieved by an international convention.

One obstacle to a reform may be the traditional reluctance in many countries to allow moveable goods on shore to be mortgaged. However, a ship under construction bears little resemblance to other chattels. When launched and completed it will automatically be eligible for registration and mortgaging. Whilst on the stocks or in the building

dock it is more closely related to a ship in commission than to any other kind of goods.

It will be necessary, however, as a practical matter to include for registration certain material and equipment not actually built into the ship provided it is earmarked for it.

During the discussions in the Subcommittee the point was made that registration is traditionally a domestic matter. This may be true, but the effects of domestic registration are felt in the international trade. The registration has, indeed, an international function. The Draft Convention does not purport to interfere with purely domestic matters. Its intention is to bind the contracting States to provide facilities for registration when the purchaser is of foreign nationality.

The reform should be beneficial also to countries which already have an arrangement for the registration of ships under construction. Title, right and encumbrances registered on the ship will be recognized as valid by all contracting States and will remain in force after the transfer of the vessel to the registry in another country.

The cost of introducing the new system will in all probability be moderate. Most countries in which ships are being built have already an organization handling the registration of ships in commission and it would be natural to entrust the registration of ships under construction to the same organization.

The great international trade which we have had in this field during the last decade may support the observation that the variations in national laws do not present too great an obstacle to the international community of builders, shipowners and financiers. However, this may partly be due to the fact that some of the more important shipbuilding countries (i.a. Denmark, France, Germany, Italy, Netherlands and Norway) already have to a certain extent established a system for registration of ships under construction.

Further, the difficulties in accomplishing a reform of this complexity through international cooperation should not be underestimated. Revision and unification of national laws relative to security in ships under construction is a tall order, and efforts in a great many quarters will be necessary if the contemplated international reform is finally to be achieved.

The need for reform may be felt more in some countries than in others. It is likely to be felt more in countries which import foreign built tonnage and in exporter countries than in countries chiefly supplying their own tonnage from domestic yards. The Rapporteurs, naturally, have based their opinion upon experience gathered in Norway which is typically an importing country. In Norway there is a strong feeling that a reform is really called for.

## BASIC PRINCIPLES OF THE DRAFT CONVENTION

The annexed preliminary Draft Convention is based on the following principles which are considered fundamental to the contemplated reform :

1. That all contracting States shall permit registration in a register established by or under the control of the State, of ships under construction for foreign purchasers at yards within their territory.

2. That such registration shall be permitted, when a contract for the building of a properly specified ship has been executed, with the exception, however, that national law may make it a condition for registration that constructional work has been commenced in the place from which the ship is supposed to be launched.

3. That no discriminatory rules or practices shall be applied against nationals of other contracting States, in so far as registration of rights in or charges on the vessel is concerned.

4. That registered rights or charges shall have legal priority from the time of registration. National law may provide, however, that priority shall originate from the time, when an application for registration was produced to the registrar.

5. That such registration shall be recognized as valid in all contracting States.

6. That on transfer of the ship to another contracting State, all registered rights and charges shall remain in force retaining the order of priority of the original registration.

## COMMENTS ON THE ARTICLES OF THE DRAFT CONVENTION

### Article 1

The contracting States will be bound to provide facilities for registration of ships under construction in their territory, but the rules of procedure governing the registration are left to national legislation.

The Article does not expressly forbid registration of vessels under construction outside the territory of the State in question, but it is understood that vessels under construction in another contracting State may not be accepted for registration.

It is, of course, necessary to have a minimum tonnage requirement as referred to in the second paragraph. For practical reasons the national

rules of the country of registry must prevail even if they are stricter than the corresponding rules in the purchaser's own country. The question is of minor importance because ships of such a small size rarely are built for export.

## Article 2

The primary aim of the Convention is to facilitate international shipbuilding transactions and its rules, therefore, are mandatory only with respect to foreign purchasers. The contracting States will have a free hand with regard to purely domestic affairs.

Ships in commission may be registered only if they fly the flag of the country of registry. This condition cannot be maintained for the registration of ships under construction. But the registration shall not in itself confer rights of nationality. In the Netherlands the present law declares all ships under construction in the country to be Dutch irrespective of the nationality of the purchaser and owner of the newbuilding. This rule leads to the same result as the Draft Convention but seems to be unnecessary complicated.

It goes without saying, but for the sake of clarification it has been expressly stated, that the registration does not interfere with export and import regulations, currency provisions etc.

## Article 3

This Article has been the subject of some discussion and there is still differences of opinion in the Subcommittee.

Whilst, under Italian law, registration may take place as soon as the building contract has been duly executed other countries (France, Germany, the Netherlands) require that certain construction work has been commenced. Some countries require that the work has reached a certain stage. In Norway the vessel must have been framed.

From the purchaser's and the lender's point of view the Italian system will be preferable. It has been questioned, however, whether the Italian system is consistent with traditional legal theory. The problem may be a double one : Firstly, whether the subject matter will be sufficiently identified to allow registration and mortgaging, and secondly whether mortgaging should be permitted in respect of « future goods ».

In the opinion of the Rapporteurs the yard's name and the building number is sufficient to identify the vessel to be constructed. The laying of the keel, the framing etc. or other criteria at the initial stages of construction do not materially contribute to the identification. No real identification can be secured until the vessel is ready for measurement — and that would be much too late.

As the second question, this may be more a matter of degree than of substance. Even those countries which permit registration and mortgaging of a newbuilding as soon as some constructional work has been commenced, do in fact permit registration and mortgaging of « future goods » as the keel etc. at the time of registration only will represent an insignificant part of the value of the ship to be built, while the registration and mortgaging automatically will cover the newbuilding at all stages as the works proceeds. It is difficult to see that it can be of any real significance whether some physical object, however small, does exist or not at the time of registration.

Thus, in the opinion of the Rapporteurs, the Italian system is the more rational. However, as some countries have expressed strong objections to the system the second paragraph of Article 3 is a compromise. It has been left to the national legislation to deny facilities for registration until « constructional work has been commenced in the place from which the newbuilding is to be launched ». This affords a certain leeway, but it is not the intention that the said facilities may be denied until the vessel is near completion.

#### **Article 4**

The States are only bound to provide facilities for the registration of certain rights and encumbrances : title, mortgages, seizure and acts of execution. Charter parties — including charters by demise — have been left out in order not to complicate the Convention. Under the second paragraph, however, the contracting States are free to widen the scope of registration.

The registration of Charter-parties is presently under discussion in the CMI. If a system is devised for the registration of charters on ships in commission it will be a simple matter to extend the system to ships under construction.

Registration will take place only if applied for. It is an entirely voluntary system.

#### **Article 5**

The basic principle of priority set out in this Article is universally recognized. There may be differences, however, with regard to the exact moment when priority is obtained. The Draft gives the possibility of choosing between two systems, taking the registrar's receipt of the application or the registration itself as the decisive moments. The Draft, however, gives preference to the latter solution.

#### **Article 6**

Some members of the Subcommittee have proposed to delete this Article in order not to complicate the Convention. The principle con-

tained in this Article is, however, in some countries considered to be a fundamental legal principle which cannot be dispensed with. As the principle represents an exception from the main rule of Article 5 a contracting State will only be free to maintain it if expressly permitted in the Convention to do so.

### **Article 7**

It is not the intention to let the Draft Convention interfere with maritime or possessory liens or similar statutory rights. The question of priority between such rights and the rights mentioned in Articles 4 and 5 must be governed by the applicable national law. Whether this law be the law of the flag, the *lex fori* of the place of enforced sale or any other law must be decided in accordance with the rules on Conflict of Laws. The Convention does not intend to regulate this problem.

### **Article 8**

The greater part of the purchase-price for a modern ship goes toward payment for materials, machinery and other equipment for its construction. All this will be provided by the builder and built into or installed in the ship as the structural work proceeds. During the better part of the building period the hull will not offer sufficient security for the instalments usually advanced by the purchaser. This is particularly so in modern shipbuilding where plates and profiles outside the berth are welded into big sections which at a later stage are joined together forming a ship. Even though such sections may represent a large part of the ship in size as well as in value, it is not « a ship under construction ». If the purchaser could also get security in material and equipment as they arrive at the builder's yard the purchaser would obtain earlier and better protection.

However, as there are differences of opinion on this point the Draft do not oblige the Contracting States to introduce rules to this effect, but offers the option to do so. If the option is taken, it must be made a condition for registration that the material, machinery and equipment are located in the builder's yard and distinctly marked for the construction of the ship. An inventory of such articles may be useful as evidence, but is not a formal requirement under Convention.

### **Article 9**

In some countries rights in separate parts of a newbuilding are sometimes considered valid even if not registered, e.g. reservation of title to auxiliary machinery or electronic equipment. In other states such arrangements are not accepted, because they may represent a

danger to bona fide purchasers and mortgagees of the vessel. The Draft does not interfere with the national law in this respect, but provides that such rights in separate parts of the ship shall lapse on delivery of the ship to a foreign purchaser. The purpose of this rule is strengthen the reliability of the register.

### Articles 10 and 11

These two Articles deal with the international validity of registrations executed pursuant to the uniform system established under Articles 1 to 9.

Article 10 provides that all Contracting States shall recognize the validity of registered titles, mortgages, seizure and acts of execution executed according to the national law of the country where the registration has taken place. If e.g. the newbuilding is moved to another country without transfer of registration, the authorities of the country where the ship is located must acknowledge title etc. as registered in the country of building.

Article 11 deal with the transfer of registration to another country, e.g. when the completed ship is delivered to a foreign purchaser. Registration in the purchaser's home country shall take place only on presentation of a certificate from the competent registrar in the country of building, setting out all registered particulars and their order of priority.

Title, mortgages and acts of execution registered on the vessel in the country of building shall after the transfer of registration to another country, remain rights registered on the ship, retaining their priority according to the dates of the original registrations.

As it is left to national law to regulate administrative details and rules of procedure there may be different requirements for the registration of e.g. mortgages in different countries. Article 11 provides that on transfer of the registration to a new country which is a party to the Convention all legal effects of the original registrations shall remain in force for at least 60 days in order to give the interested parties time to amend documents in the way necessary to have them accepted for registration in the new country. Also a substitution of documents, e.g. where a country makes it a condition for registration that the document is written in the native tongue, must be considered an « amendment » within the meaning of Article 11.

Some members of the Subcommittee have suggested that in the first place the Convention should be limited to these two Articles. However, international recognition of registered rights in ships under construction has to be based on some uniform system of basic principles for registration. Thus Articles 10 and 11 are based on the principles set out in the preceding Articles.

Articles 10 and 11 represent an important feature of the proposed reform. If registration of ships under construction is to give the intended protection to foreign purchasers and their financiers as well as to yards extending credit to a purchaser after delivery of the completed ship registration undertaken in one country during the period of construction must be recognized as valid in all Contracting States. The provisions of Articles 10 and 11 may be a cardinal point, if the suggested reform is to furnish the international community of shipbuilders, purchasers and lenders with a practical and reasonably safe instrument for obtaining legal security for the money advanced to pay for the construction of the vessel.



# REGISTRATION OF SHIPS UNDER CONSTRUCTION

## REVISED PRELIMINARY DRAFT

*(February 1963)*

### Article 1

The High Contracting Parties undertake to introduce in their national law regulations necessary to permit registration in an official register established by or under control of the State of ships under construction within the State's territory.

The registration of ships under construction may be restricted to such ship, which the competent registrar is satisfied will be of the nature and size required by the national law to be registered in the national ship register when completed.

### Article 2

The High Contracting Parties may restrict registration of ships under construction to ships ordered by a foreign purchaser. The Contracting Parties agree to allow registration of rights relating to ships under construction without discriminating against any applicant who is a national of one of the contracting States. Such registration shall not affect any restrictions imposed by national law of the country where the yard is situated on the acquisition of such rights by aliens, neither does the registration give a foreign owner of the ship the right to let the ship fly the colours of the registering country.

### Article 3

Registration of rights relating to a ship to be constructed or which is under construction shall be permitted, when a contract for the building of a properly specified ship has been executed or the yard declares that it has decided to build such a ship for its own account.

The national law, however, may make it a condition for registration that constructional work has been commenced in the place from which the newbuilding is to be launched.

#### **Article 4**

Titles to and mortgages (or hypothecs) on and seizure and acts of execution regarding a registered ship under construction shall on application be entered in the register.

The national law may allow registration of other rights relating to a ship under construction.

#### **Article 5**

Registered rights shall have legal priority, one before another, in the same order as they have been registered. The national law of the registering country, however, may provide that priority shall originate from the time, when an application for registration was produced to the registrar.

Registered rights shall take precedence over unregistered rights in the newbuilding.

#### **Article 6**

Notwithstanding the provisions of Article 5 the national law may provide that a previously acquired right shall take precedence over a subsequently acquired right regardless of registration, if the latter has been acquired by contract and the acquirer was or ought to have been cognizant of the former right at the time, when the contract was executed.

#### **Article 7**

Notwithstanding the provisions of Article 5 priority between rights registered according to this convention and maritime or possessory liens or similar statutory rights shall be governed by the applicable national law.

#### **Article 8**

The national law may also provide that registered rights in or charges on a ship under construction shall comprise materials, machinery and equipment that are located in the builder's yard and distinctly marked as intended for the construction of the ship.

#### **Article 9**

If rights in machinery, special equipment or other separate parts of the newbuilding have been acquired in compliance with the national law where the yard is situated, such rights shall lapse on delivery of the ship to a foreign purchaser.

## Article 10

Titles and mortgages (or hypothecs), and seizure and acts of execution registered pursuant to the provisions of this Convention and lawfully executed according to the national law of the State where the registration has taken place, shall be recognized as valid in all the contracting States.

## Article 11

When the purchaser wishes to register the ship in another State, which is a Party to this Convention, such registration shall only be allowed by the State to which an application is made on presentation of a certificate from the competent registrar in the State where the newbuilding has been registered, setting out all registered particulars relating to rights in the ship and their order of priority and further stating that no more particulars will be registered on the ship after the issue of the certificate.

Title, mortgages (or hypothecs) and acts of execution registered on the newbuilding shall after transfer of the ship to another country, be registered in the registry of that country retaining their priority from the date of the original registration. If these registered rights do not comply with the statutory requirements for registration according to the national law of the new country, the interested parties should be given at least 60 days in which to make the required amendments of the documents, all legal effects of registration being in force during this period.

If the ship was not registered in the country of building a registration of the ship in the country to which it is transferred, shall only be allowed on presentation of a certificate from the registrar stating that the ship was not registered in the country of building.

**Registration of Ships  
under construction**

already printed

**Enregistrement de navires  
en construction**

déjà imprimé

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August 1962

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