

INTERNATIONAL MARITIME COMMITTEE

International Subcommittee

on

**REGISTRATION OF SHIPS UNDER
CONSTRUCTION**

4.

REPLIES TO QUESTIONNAIRE

UNITED KINGDOM RSC 17

YUGOSLAVIA RSC 18

JUNE 1963

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UNITED KINGDOM RSC 17

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BRITISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLY TO QUESTIONNAIRE (R.S.C. 2)

I. Present legal situation in your country.

1. *Answer* : Registration of ships under construction cannot be effected in the United Kingdom and, for this reason, questions 2 to 6 must also be answered in the negative.

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

1. *Answer* : From the point of view of shipowners, we are of the view that there is no need for a Convention on the lines suggested. On the other hand, we think that shipbuilders may possibly obtain some benefit from such a Convention.
2. *Answer* : We have no knowledge of such cases.
3. *Answer* : Such a procedure is unknown in the United Kingdom.

III. Who may apply for registration ?

Answer : Subject always to the acceptance of the principle of registration in the United Kingdom (see reply to Question II (1) above), we think that the purchaser should be entitled to apply for registration (as in paragraph (b)) and that the nationality of the purchaser should be irrelevant to his right to register (as in paragraph (c)).

IV. When shall registration be permissible ?

Answer : We believe that the most appropriate time would be that set out in paragraph (c), i.e. at commencement of construction. It is, however, suggested that, in order to cover Prefabrication Shops, the words « in a place » should be replaced by the words « in the yard ».

We prefer paragraph (c) because we think that paragraphs (a) and (b) refer to times which are too early in the development of the building project and that paragraphs (d), (e) and (f) are too late.

V. What instruments may be registered ?

1. *Answer* : It is our view that the shipbuilding contract may well contain information of a highly confidential nature which would render its registration undesirable.
2. *Answer* : We think that declarations of ownership (as in (a)) and transfers of title (as in (c)) should be registered. On the other hand, we are opposed to reservations of title being registered on the ground that registration of sub-contractors' rights would complicate the issue.
3. *Answer* : We are of the view that only mortgages on the newbuilding should be capable of registration, and that the rights set out in paragraphs a) and c) should be reserved as a provision in the Convention.
4. *Answer* : Contracts of affreightment are not considered matters appropriate for registration in any Convention dealing with Construction of Ships. It is understood that a Convention dealing with Registration of Charterparties is already under active consideration within the C.M.I.
5. *Answer* : The question of registration should be left to the discretion of the parties, but, once the decision to register has been taken, *all* the rights which are capable of registration should be registered.

VI. Materials and equipment.

1. *Answer* : We think that the agreement of the parties should govern this question i.e. as set out in alternative (b).
2. *Answer* : We prefer paragraph (b).
3. *Answer* : Not applicable.
4. *Answer* : Not applicable.

VII. Legal consequences of registration.

1. *Answer* : We do not anticipate that registration would in any way alter the relationship between the parties.
2. *Answer* : We think that registered rights and charges should rank in priority to the Yard's possessory lien (paragraph (b)) but after the Yard's ordinary creditors (paragraph (a)) and trustee in bankruptcy (paragraph (c)).

3. *Answer* : The date and time of registry (paragraph (b)).
4. *Answer* : We think that the text of Article 5 is sufficiently wide for the purpose mentioned.
5. *Answer* : The question of good faith should not, in our opinion, be mentioned.

VIII. Transfer of the newbuilding to another State.

Our answer is in the affirmative.

YUGOSLAV MARITIME LAW ASSOCIATION

REGISTRATION
OF SHIPS UNDER CONSTRUCTIONCOMMENTS ON INTRODUCTORY REPORT
AND DRAFT CONVENTION

The Yugoslav Maritime Law Association has carefully examined the Introductory Report and the Draft Convention for the unification of certain rules of law relating to registration of ships under construction, as well as the relative questionnaire and wishes to give the following answers :

I. Present legal situation in our country.

1. Registration of ships under construction is in our country not only permissible but even mandatory from the moment when the keel of the newbuilding has been laid down.

2. From laying the keel.

3. All kinds of instruments which may be registered on a ship, may also be registered on a ship under construction (title, property rights, securities etc), if consistent with her nature.

4. Registration of ships under construction is mandatory from the moment when the keel has been laid down (see answer to n° 1), which, of course, implies, that the title of ownership will have to be registered at the same time when registering the ship under construction. The registration of all other rights (property rights, security, etc.) is facultative, but such rights will have their full legal effect only if registered — for some of them erga omnes and for some, erga tertios.

5. The registered rights or charges comprise only the newbuilding.

6. The register is organized locally.

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

1. As the legislation of our country is on the line suggested in the Draft Convention, there would probably be no need for substantial reforms of the same.

2. No cases are known to us.

3. The purchasers sometime require from our yards bank guarantees from money advanced as instalments. The costs are the normal costs of bank guarantees.

III. Who may apply for registration ?

a) b) c) According to our existing law, it is the purchaser who has to apply for registration of a ship under construction. If he fails to do so, the yard has to do it.

d) The registration of ships under construction should be permitted irrespectively of the nationality of the purchaser.

IV. When shall registration be permissible ?

Being aware of the actual importance of the reasons set forth in the Introductory Report, page 7, we would be inclined to support the possibility that the registration of ships under construction should be permitted as early as the relative shipbuilding contract has been duly executed. Of course, only one solution should be adopted in the Convention.

V. What instruments may be registered ?

In our opinion the right question would be « what instruments related to such ships should » and not « what instruments could be registered ». The main legal effect of registration being a) to give to the registered instruments (rights) a publicity which can be oposed to everybody, and b) to give to such registered rights a priority over the rights which have been registered later or not registered at all — we do not see the need to make their registration compulsory because if unregistered — they would have not the effects mentioned under a) and b).

In accordance with the previously said we think :

1. The shipbuilding contract can be registered.

2. a) The ownership of the newbuilding has to be registered at the same time when registering the ship under construction.

b) The possibility of reservation of title (e.g. by the subcontractor selling equipment to the shipbuilder) would create very serious difficulties for the enforcement of the security rights. The economic effect, which is aimed at by such reservation, can be easily achieved by registering adequate security rights in favour of the subcontractor or other interested party.

c) The transfer of title has to be registered in order to produce legal effects mentioned above.

3. a) The possessory liens of the shipbuilders would in our opinion upset the whole system of registered security rights and we therefore do not think they are admissible in the system of the Draft Convention. As in the case under 2. b) the same aim can be achieved by registered securities.

b) Mortgages on the newbuilding (« hypothèque sur navire en construction ») have to be registered to achieve legal effect at all.

c) Such acts have to be registered (as provided in our law).

4. a) We believe that contracts of affreightment which imply demise might be registered.

b) We do not see sufficient reasons for registering of assignments of charter-parties or freights due thereunder.

5. According to our law the ship under construction has to be compulsory registered by her owner (or the yard), which implies the unavoidable necessity of registering all relative property and security rights, in order to obtain the above mentioned legal effects.

VI. Materials and equipment.

1. a) and b) In our opinion the registered rights and charges should comprise materials and equipment only when the parties to the shipbuilding contract have agreed thereupon and the relative agreement (contract) has been registered.

2. a) to c) The registered rights and charges should comprise materials and equipment, not yet incorporated in the newbuilding, only when these are already located in the builder's yard, marked as intended for the newbuilding and, of course, owned by the same person who is the owner of the ship under construction.

d) If the above conditions are fulfilled, we believe that there doesn't exist the need for a specific inventory, which inventory — on the other part, — if it had to be registered, would probably create a lot of difficulties owing to the continuous changes in its consistency.

3. Under the above conditions the registered rights and charges should comprise any type of material and equipment intended for the newbuilding, as it is obvious that they are an indivisible entity.

4. We do not believe that the possibility of registering special rights on materials and equipment, separate from the rights registered on the newbuilding, would be compatible with the true system of the Draft Convention, Apart from these considerations, however, we are of course of the opinion that special rights on materials and equipment, if such rights exist, should lapse when the object is incorporated in the newbuilding.

VII. Legal consequence of registration.

1. See our answer to question n° I 4.

2. Registered rights and charges have legal priority over all un-registered rights.

3. Registered instruments obtain such priority from the moment when the relative instruments have been produced to the registrar.

4. The wording of Art. 5 of the Draft Convention provides sufficient protection to the interested party.

5. In our opinion the acquirer should be deprived of the benefits of the registration only if his bad faith is proved.

VIII. Transfer of the newbuilding to another State.

We consider that the wording of Art. 10 and 11 of the Draft Convention establish sufficient protection for all interested parties.

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Our Association is deeply convinced that an International Convention for the unification of certain rules of law relating to registration of ships under construction is highly desirable. It would very much contribute to eliminate the risks involved in the enforcement of registered securities either during the construction or after delivery of the ship.

At this stage we do not make any comments as to the wording of each Article of the Draft Convention. We will possibly put forward some remarks at a later stage.

Vladislav Brajkovic

President of the Yugoslav Maritime
Law Association

Nikola Percic

Rapporteur

**Registration of Ships
under construction**

already printed

**Enregistrement de navires
en construction**

déjà imprimé

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August 1962

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Preliminary Draft Convention	RSC 3

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