

INTERNATIONAL MARITIME COMMITTEE

LONDON CONFERENCE

1922

International Maritime Committee

BULLETIN N^o 57

INCLUDING BULLETINS N^{os} 48 TO 56)

LONDON CONFERENCE

OCTOBER 1922

President : SIR HENRY DUKE

I. — IMMUNITY OF STATE-OWNED SHIPS.

II. — EXONERATING CLAUSES IN BILLS-OF-LADING.



ANTWERP

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1923

INTERNATIONAL MARITIME COMMITTEE

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SUMMARY :

	PAGES
Prefatory Note	V
Resolutions of London Conference	V
Statutes of the International Maritime Committee	XII
Permanent Board of the Committee	XIV
Members of the International Maritime Committee	XVI
National Associations	XXVII
List of attendance at the Conference	XXXII
Agenda-paper of the Conference	XL
Preliminary Reports	I
Synoptical Table	207
Report of the proceedings at the Conference	209
Administrative Sitting	505

(See the Index, page 507).

PREFATORY NOTE

I. - LONDON CONFERENCE

9th-11^h OCTOBER 1921

The Conference dealt with the questions of Immunity of State-owned ships and Negligence clauses in Bills-of-Lading (amended Hague Rules). Delegates had been appointed by the National Associations of the following countries : Argentine Republic, Belgium, Denmark, France, Germany, Great-Britain, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United States. In addition, several Governments had sent delegates *ad audiendum*.

The following resolutions were passed :

A). Immunity of State-owned ships.

« This Conference resolves :

1° Sovereign States in regard to ships owned or operated by them and cargoes owned by them and cargo and passengers carried on such ships ought to accept all liabilities to the same extent as a private owner;

2° Except in the case of the ships and cargoes mentioned in paragraph 3, such liabilities should be enforceable by the tribunals having jurisdiction over and by the procedure applicable to, a privately-owned ship or cargo or the owner thereof;

3° In the case of :

a) Ships of war;

b) Other vessels owned or operated by the Sovereign State and employed only in Governmental non commercial work;

c) State-owned cargo carried only for the purpose of Governmental non-commercial work on ships owned or operated by the Sovereign State,

such liabilities should be enforceable by the like tribunals but only of the State by which the ship is owned or operated, and should be enforceable by action *in personam* against such State and in addition by any other form of procedure permitted by the law of such State ».

B). Negligence clauses in Bills-of-Lading.

« 1) This Conference agrees in substance with the principles which constitute the basis of the Hague Rules and the « Rules for the Carriage of goods by Sea » and regards these Rules as affording a solution alike practical and fair of the problem of Clauses in Bills-of-Lading excepting or limiting the liabilities of the Shipowner.

2) This Conference is of opinion that an international Convention is the most desirable means of reaching a general solution of the problem and of the serious conflicts of law which it raises.

3) This Conference expresses the wish that through the Permanent Bureau a special Commission may be appointed which shall, in cooperation with the Bureau, prepare the draft of such Convention on these lines and

on this footing, and that all necessary steps may be taken to ensure that the subject may be brought to the notice of the Diplomatic Conference meeting at Brussels on October 17th the next. »

II. — BRUSSELS DIPLOMATIC CONFERENCE

(17th-23rd OCTOBER 1922)

Immediately after our London Conference, there was held at Brussels, on the 17th October, a further session of the International Maritime Conference whose labours had been interrupted owing to the war. At this session, the following States were represented : Argentine Republic, Belgium, Chile, Cuba, Denmark, Esthonia, Finland, France, Germany, Great-Britain, Hungary, Japan, Lettonia, Netherlands, Norway, Poland, Portugal, Roumania, Kingdom of Serbs, Croats and Slovenes, Spain, Sweden, United States of America, and Uruguay.

The deliberations were resumed on the basis of the draft-conventions prepared by the Sub-Committee of 1913 and led to the following results :

A). Limitation of Shipowners' Liability.

The Conference fully confirmed the provision constituting a special fund which would in any event be available in favour of claimants in respect of loss of life or personal injury. This special fund, originally fixed at £ 7 per ton, has been increased up to £ 8.

Another alteration in favour of the cargo interests was introduced in this sense that the new bases imply the

payment, as an equivalent of freight, of 10 % of the value of the ship at the beginning of the voyage, this fund also to be available in any event.

Finally, in accordance with the resolution passed by our Antwerp Conference (1921) it was admitted that the values expressed in sterling currency shall be gold values, it being understood that the contracting States, where the sterling currency is not the official currency, shall be at liberty to convert into round figures in their own currency system the amounts expressed in sterling.

B). Maritime Liens and Mortgages.

In view of the provisions of the Merchant Marine Act 1920, the American delegates were led to suggest proposals which modify the basis adopted in 1913. The prominent feature of these suggestions made by the United States is that the number and respective ranks of the liens should be settled especially *where they concur with mortgages*. The Conference having adopted this view, the new basis provide that henceforth, hypothecations and mortgages shall only be superseded by 1°) Court fees, taxes due to the State and expenses for maintaining the ship; 2°) wages of Captain and crew; 3°) remuneration for salvage and general average; 4°) indemnities in respect of collision and other accidents of navigation.

In addition to these preferred claims, the new basis also provides liens in favour of a) claims in respect of contracts entered into or of operations effected by the Master for the actual needs and the maintenance of the

ship and the continuation of the voyage, *b*) claims arising in respect of bills-of-lading. A mixt system was adopted for these last two classes of claims : they will only over-rank the mortgages when they arose previously to the inscription of the mortgage and when the lien has been filed on the public register, mentioned under article 1st of the Convention, within a period of three months from the date at which the claim originated.

Finally it must be observed that contrarily to the bases previously adopted, the present draft-Convention is not of a limitative character in regard to the existence and to the number of liens, that is to say that national legislations may maintain any liens they like and settle their respective rank. The main idea of the new system is that the limited number of liens which is to be settled internationally, is only of interest when such liens concur with maritime mortgages.

c). Negligence clauses in Bills-of-Lading

The resolution passed at our London meeting and referred to above, was also laid before the Conference. It was recognised that the commercial and practical character of the compromise arrived at by the shipowning and cargo-owning interests, ought to be respected.

The text itself of the « Rules for the Carriage of Goods by Sea », as altered by the London Conference of this Committee has therefore been maintained as a basis of an international Convention for the unification of certain Rules in the matter of bills-of-lading. However, on some

points of secondary importance, some alterations were made, namely in regard to reservations and protests in the event of loss or damage to goods.

Owing to the short delay which elapsed between our London meeting and the Brussels Diplomatic Conference, it was quite natural that the various delegates had received no special instructions from their respective Governments, to whom therefore it will be necessary to submit the texts adopted as a basis for a Convention.

D). Immunity of State-owned ships.

The Diplomatic Conference took cognizance of the resolutions passed by our London meeting. As a result of the views exchanged, it appears that those resolutions met with the unanimous approval of the members present. But this altogether new subject had not been brought to the notice of the various Governments represented and as there does not yet exist a formal draft of international Convention on the matter, it was impossible to go farther than to obtain the individual and personal opinion of the delegates attending the Conference. The question can be taken up again as soon as a draft-Convention shall have been prepared.

* * *

The International Maritime Committee were tendered the most cordial and magnificent hospitality by their English friends in London. Brilliant receptions were successively held by the Honourable Society of the Inner

Temple, the Maritime Law Committee (of the International Law Association), Liverpool S.S. Owners Association, British Bankers Association, Corporation of Lloyds, as well as by the Chamber of Shipping of the United Kingdom.

International Maritime Committee

STATUTES

ART. 1. — The International Maritime Committee propose :

- a) to further by conferences, publications and divers works, the unification of maritime law;
- b) to encourage the creation of national associations for the unification of maritime law;
- c) to maintain, between these associations, regular communication and united action.

ART. 2. — The International Maritime Committee is composed of titular members and of delegates of the national Associations.

The founding members are, by right, titular members.

Their number is limited to ten for each country.

The number of delegates of national associations is limited to six for each country.

To complete the number of titular members, as when a vacancy occurs, an election may be held at the first meeting following the constitution of the committee or the vacancy.

The election shall be decided by secret ballot of the titular members, the candidate obtaining the absolute majority being successful.

ART. 3. — Each conference shall choose its own officers and take the necessary steps for the execution of its resolutions and the preparation of subsequent reunions.

The following article however shall provide for such cases where no such decisions have been taken.

ART. 4. — In the interval between the conferences, the administration of the Committee shall be entrusted to a permanent board.

The permanent board shall be appointed for three years and shall consist of :

- 1° A president, vice-president and secretary or secretaries,

who shall provide for the maintenance of regular communication between the national Associations, the management of the Committee and the execution of its decisions.

2° Of members, in the proportion of one for each country represented in the Committee, chosen from among either the titular members or the delegates of the national Associations.

The board thus formed shall, should it be necessary, draw up the programme of the International Conferences.

The members of the permanent board are appointed by the International Maritime Committee. The elections are by secret ballot, the candidate obtaining the absolute majority being successful.

ART. 5. — The titular members of the International Maritime Committee pay an annual subscription of one guinea.

ART. 6. — The national Associations shall be invited to contribute to the expenses of the Committee.

ART. 7. — The length of time during which a titular member may sit is indefinite and can be terminated either by resignation or by deliberation of the Committee.

ART. 8. — The present statutes may always be modified, at the proposal of the board and after such proposal having been placed upon the agenda-paper of the meeting.

ART. 9. — The International Maritime Committee shall meet, unless unforeseen circumstances prevent, at least once a year. It shall determine directly or by delegation the time and place of such conference. An extraordinary meeting may be called by the permanent board or at the request of fifteen members, in which case the meeting shall be held in the country where the headquarters of the permanent board are established.

No vote shall be considered valid if not more than one half of the countries affiliated to the Committee are present and if the vote does not give an absolute majority of the countries present, the members voting by nations.

ART. 10. — Every three years the Committee shall designate the headquarters of the permanent board.

Permanent Board of the International Maritime Committee

FOR 1921-1924.

President : Mr LOUIS FRANCK, Minister of Colonies, Vice-president of the Association belge de Droit Maritime, Antwerp.

Vice-Presidents : Mr Senator ALBERT LE JEUNE, Insurance broker, Antwerp.

Sir LESLIE SCOTT, K. C., M. P., London.

Hon. General Secretaries : MM. LÉON HENNEBICQ, Advocate at the Court of Appeal, Professor at the Institut des Hautes Etudes, Brussels.

GEORGE P. LANGTON, barrister-at-law, London.

FRÉDÉRIC SOHR, Dr juris, Underwriter, General Secretary of the Belgian Association of Maritime Law, Professor at the Brussels University.

Members : MM. A. TYPALDO BASSIA, Advocate, Member of the House of Representatives, President of the Hellenic Association of Maritime Law, Athens (Greece).

CHARLES C. BURLINGHAM, Advocate, New-York, (U. S. A.).

Dr JORGEN H. KOCH, President of the Danish Association of Maritime Law, Copenhagen (Denmark).

ELIEL LÖFGREN, President of the Swedish Association of Maritime Law, Stockholm (Sweden).

B. C. J. LODER, President of the International Court of Justice, Chairman of the Maritime Law Association of the Netherlands, The Hague.

MM. FRANCESCO BERLINGIERI, Advocate Professor at the University of Genoa, President of the Italian Association of Maritime Law, Naples (Italy).

Sir ANTON POULSSON, Underwriter, President of the Norwegian Association of Maritime Law, Lysaker, Christiania (Norway).

Dr ALFRED SIEVEKING, Advocate, Secretary of the German Association of Maritime Law, Hamburg.

RENÉ VERNEAUX, Manager of the legal Department of the Compagnie des Messageries Maritimes, General Secretary of the French Association of Maritime Law, Paris.

MATSUNAMI, Professor of Maritime Law at the Tokyo Imperial University and Professor at the Higher Naval Staff College, President of the Japanese Association of Maritime Law, Tokyo.

List of Members of the International Maritime Committee

MM. EDVIN ALTEN, General Secretary at the Ministry of Justice, President of the Commission for Revision of the Maritime Law in Norway, Christiania.

(*) **LORD ALVERSTONE**, Lord Chief Justice of England, President of the British Maritime Committee, London.

Sir REGINALD B. D. ACLAND, K. C., London.

HAROLD ANDERSON, Underwriter, Stockholm.

EARL APPONYI, late Councillor of His Imp. & Roy. Majesty Apost., Deputy, Buda-Pest.

Baron ARICHI, Vice-Admiral, Tokio.

(*) **Prof. ASCOLI**, of the University of Venice.

(*) **CHARLES MC. ARTHUR**, M. P., Average Adjuster, former President of the Liverpool Chamber of Commerce.

(*) **T. M. C. ASSER**, Minister of State, formerly Professor at the University of Amsterdam, Member of the Council of State of the Netherlands, The Hague.

C. D. ASSER, Jr., Advocate, Gen. Secretary of the Maritime Law Association of the Netherlands, Amsterdam.

(*) **F. C. AUTRAN**, Advocate, Director of the « *Revue Internationale de Droit Maritime* », Vice President of the French Association of Maritime Law, Marseille.

(*) **BALLIN**, General Manager of the Hamburg-Amerika Linie, Hamburg.

(*) **Lord GORELL BARNES OF HAMPTON**, Judge at the High Court, London.

A. TYPALDO BASSIA, Advocate, former President of the House of Representatives, President of the Hellenic Association of Maritime Law, Athens.

(*) Deceased.

MM. LAURISTON BATTEN, K. C., London.

CHARLES BAUSS, Advocate, Antwerp.

NORMAN B. BEECHER, Admiralty Counsel of the Shipping Board, Washington; D. C.

(*) A. BEERNAERT, Minister of State, formerly Minister of Finances, former President of the House of Representatives, Member of the Royal Academy of Belgium and of the Institut de France, President of the International Maritime Committee, President of the Belgian Association of Maritime Law, Brussels.

Dr BEHN, Advocate, Hamburgh.

Prof. ENRICO BENZA, Advocate, Genoa.

DE BERENCREUTZ, former Consul general of Sweden at Antwerp.

FRANCESCO BERLINGIERI, Advocate, Professor at the University of Genoa.

Dr W. R. BISSCHOP, LL. D., Barrister-at-Law, Hon. Secretary of the Maritime Law Committee of the International Law Association, London.

(*) J. BOISSEvain, Manager of the Navigation Company « Nederland », Amsterdam.

PAUL BOSELLI, formerly Minister, M. P., Rome.

Hon. EDWARD G. BRADFORD, Judge for the District of Delaware, Wilmington (U. S. A.).

(*) President Dr OTTO BRANDIS, President of the German Association of Maritime Law, Hamburgh.

JOHAN BREDAL, Advocate at the Supreme Court, Christiania.

(*) ADDISSON BROWN, Judge at the District Court of the U. S., New-York.

FREDERICK M. BROWN, Councillor-at-law, New-York.

(*) FRED. M. BRUZZO, Shipowner, General Manager of the « Veloce » Navigat. Cy, Genoa.

(*) Deceased.

MM. CHARLES C. BURLINGHAM, Advocate, New-York.

EDOARDO CANALI, Chairman of Committee of Underwriters, Genoa.

(*) Baron CAPELLE, Minister plenipotentiary & Env. Extraordinary, General Director at the Ministry of Foreign Affairs, Brussels.

(*) T. G. CARVER, K. C., London.

(*) MAURICE CAVERI, Advocate, Genoa.

(*) G. CERRUTI, President of the Italian « Veritas » and Underwriter, Genoa.

(*) Dr CHRISTOPHERSEN, Minister for Foreign Affairs, Christiania.

EDOUARD CLUNET, Advocate at the Court of Appeal, Paris.

(*) VICTOR CONCAS, formerly Minister of Marine, Senator, Madrid.

Dr ANTONIO AMARO CONDE, Advocate, Lisbon.

(*) CALLISTO COSULICH, Shipowner, Trieste.

JUAN CARLOS CRUZ, Professor at the University, Buenos-Aires.

Dr DÉsirÉ DE DARDAY DE BARANYA-BAAN, Councillor at the Ministry, Fiume.

JACINTHO CANDIDO DA SILVA, Formerly Minister, President of the Naval League, Vice-president of the Portuguese Association of Maritime Law, Lisbon.

FRANCISCO ANTONIO DA VEIGA BEIRAO, Councillor of State, formerly Minister, President of the Portuguese Association of Maritime Law, Lisbon.

THOMAS DE BIRO, Councillor at the Ministry of Commerce, Buda-Pest.

COLOMAN DE FEST, Councillor at the Ministry, former Vice-President of the Royal Maritime Government, Director of the Hungarian Association of Maritime Law, Fiume.

(*) Deceased.

MM. HENRY DE GRANDMAISON, Advocate, Vice-President of the French Association of Maritime Law.

LÉON DENISSE, President of the Court of Justice, Ploërmel (France).

PAUL DE ROUSIERS, General Secretary of the Central Committee of French Shipowners, Paris.

(*) ARTHUR DESJARDINS, Advocate General of State at the Supreme Court, Member of the Institut de France.

A. DE OLIVEIRA SOARES, Chancellor of the Legation of Portugal, Brussels.

Dr JOAO DE PAIVA, formerly Deputy, President of the Commercial Court, Lisbon.

C. A. DE REUTERSKIOLD, Professor at the University of Upsal (Sweden).

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LEOPOLD DOR, Advocate at the Barreau of Marseille, Director of the Revue Internationale de Droit Maritime, Marseille.

Sir HENRY DUKE, President of the Probate, Divorce & Admiralty Division of the High Court Justice, London.

ARTHUR DUNCKER, President of the Maritime Underwriters Committee, Hamburgh.

(*) C. DUPUIS, Average Adjuster, à Paris.

Dr ECKER, Director of the Hamburg-Amerika Linie, Hamburgh.

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EMBIRICOS, formerly Minister of the Marine, Athens.

(*) ENGELHARDT EGER, Shipowner, Christiania.

K. W. ELMSLIE, Average Adjuster, London.

LOUIS FRANCK, Minister of Colonies, President of the International Maritime Committee and of the Belgian Association of Maritime Law, Antwerp.

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MM. HENRI FROMAGEOT, Advocate at the Court of Appeal, Paris.

DOMENICO GAMBETTA, President of the Committee of Maritime Underwriters, Genoa.

Sir ERNEST GLOVER, Chairman of the Chamber of Shipping of the United Kingdom, London.

(*) Sir JOHN GLOVER, Shipowner, formerly President of the Chamber of Shipping of the United-Kingdom, President of Lloyds Committee, London.

(*) Hon. W. GOODRICH, Judge at the Court of Appeal, New-York.

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Sir NORMAN HILL, Secretary Liverpool Steamship Owners' Association, Liverpool.

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(*) JACOB IHLEN, Advocate at the Supreme Court, Christiania.

Jhs. JANTSEN, Christiania.

Dr JOSEPHUS JITTA, Professor at the University of Amsterdam.

AXEL JOHNSON, Shipowner, Stockholm.

(*) Sir ALFRED JONES, K. C., M. G., Shipowner, Liverpool.

(*) Sir WILLIAM R. KENNEDY, Lord Justice of Appeal, London.

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Dr JORGEN H. KOCH, President of the Maritime and Commercial Court, Copenhagen.

Baron REMPEI KONDO, President of the Navigation Company Nippon Yusen Kaisha, Tokio.

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(*) MINGOTTI, President of Committee of Underwriters, Genoa.

(*) DUKE MIRELLI, Councillor at the Court of Cassation, Rome.

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- Sir ANT. POULSSON, Underwriter, President of the Norwegian Association of Maritime Law, Lysaker, Christiania.
- EINAR POULSSON, Underwriter, Lysaker, Christiania.
- HONORIO PUEYRREDON, Professor at the University, Buenos-Aires.
- HARRINGTON PUTNAM, Judge at the Supreme Court of State of New-York (U.S.).
- (*) E. N. RAHUSEN, Advocate, Senator, President of the Netherlands' Association of Maritime Law, Amsterdam.
- RAEBURN, W. N., K. C., London.
- GEORGES RIPERT, Professor at the Faculté de Droit, Paris.
- (*) SARTORI, Shipowner, President of the Deutscher Nautischer Verein.
- Dr AUG. SCHENKER, Shipowner, Vienna.
- Sir LESLIE SCOTT, K. C., M. P., Barrister-at-Law, member of Parliament, London.
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- FRÉDÉRIC SOHR, Dr juris, Underwriter, Hon. General Secretary of the International Maritime Committee and of the Belgian Association of Maritime Law, Professor at the University of Brussels, Antwerp.
- GERMAIN SPÉE, Advocate, former Chief-Registrar of the Tribunal of Commerce, Antwerp.
- Lord STERNDALÉ, Master of the Rolls, High Court of Justice, London.

(*) Deceased.

MM. GEORGES STREIT, Professor at the University of Athens,
former President of the Hellenic Association of Mari-
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C. STUBBS, LL. D., Barrister-at-Law, London.

Baron DE TAUBE, Councillor at the Ministry of Foreign
Affairs, St. Peterburgh.

C. L. SCHÖNMEYR, Advocate, Stockholm.

KRISTIAN SINDBALLE, Professor at the University of Co-
penhagen, Copenhagen.

Dr GUSTAV STRUCKMANN, President at the Reichsgericht,
Leipzig.

(*) THALLER, Professor at the Faculté de droit, Paris.

ROBERT TEMPERLEY, Solicitor, Newcastle-on-Tyne.

OTTO THORESEN, Shipowner, Christiania.

WM J. TODD, Secretary North of England Steamship
Owners' Association, Newcastle-on-Tyne.

LAURENT TOUTAIN, Syndic of the Compagnie des Cour-
tiers de Navires, d'Assurances & Agents de Change,
Le Havre.

(*) Dr R. ULRICH, Late General Secretary of the « Inter-
nationaler Transportversicherungs Verband » and of
the « Germanischer Lloyd », Berlin.

KAKICHI UCHIDA, late Director of the Mercantile Marine
of the Ministry of Communications, President of the
Admiralty Court of Mercantile Marine, Tokyo.

(*) L. DE VALROGER, former President of the Bar at the
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Dr G. VAN SLOOTEN, Azn., Councillor at the Court of
Appeal, The Hague.

RENÉ VERNEAUX, Manager of the Legal Department of the
Compagnie des Messageries Maritimes, general Secre-
tary of the French Association of Maritime Law, Paris.

Dr ANTONIO VIO, Advocate, Fiume.

(*) Deceased.

MM. (*) JULES VRANCKEN, Advocate, Antwerp.

(*) NATHAN WEBB, Judge at the District Court of U. S.,
New-York.

(*) JOHN WESTLAKE, Professor of International Law at
Cambridge University.

(*) M. WIEGANDT, Director of the Norddeutscher Lloyd,
Bremen.

(*) AD. WOERMANN, Shipowner, President of the Ham-
burg Chamber of Commerce.

(*) Dr STEPHEN WORMS, Councillor at the Ministry of
Commerce, Vienna.

ESTANISLAO S. ZEBALLOS, Advocate, formerly Minister of
Foreign Affairs, Buenos-Aires.

(*) Deceased.

National Associations

ARGENTINE REPUBLIC

Argentine Association of Maritime Law.

President : Senator LEOPOLDO MELO, Professor at the University, Buenos-Aires.

Vice-President : Mr PEDRO CHRISTOPHERSEN, President of the Centre national de navigation transatlantique, Buenos-Aires.

Secretary : Mr MARIO BELGRANO, Buenos-Aires.

Treasurer : Mr PEDRO MICHANOVICH, Shipowner, Buenos-Aires.

BELGIUM

Belgian Association of Maritime Law.

President : Mr LOUIS FRANCK, M. P., Advocate, Minister of Colonies, President of the International Maritime Committee, Antwerp.

Vice-President : Mr ALBERT LE JEUNE, Senator, Insurance Broker, Antwerp.

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(**) At the time of the Copenhagen Conference.

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9th-11th OCTOBER 1922

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INTERNATIONAL MARITIME COMMITTEE

London Conference

9th-11th OCTOBER 1922

*The Meeting of the Conference will be held in Lincoln's
Inn Hall (Holburn).*

MONDAY, 9th OCTOBER

- 10 a. m. : Formal opening of the Conference.
Election of the Officers of the Conference.
Report on the Labours of the International Maritime Committee.
International Code of Affreightment. — Exonerating Clauses in Bills-of-Lading.
2 p. m. : International Code of Affreightment. — Exonerating Clauses in Bills-of-Lading (*Continued*).

TUESDAY, 10th OCTOBER

- 10 a. m. : International Code of Affreightment. — Exonerating Clauses in Bills-of-Lading (*Continued*).
2 p. m. : Immunity of State-owned ships.

WEDNESDAY, 11th OCTOBER

- 10 a. m. : Immunity of State-owned ships (*Continued*).
2 p. m. : Immunity of State-owned ships (*Continued*).
Closing of the Conference.
Administrative sitting. — General meeting of the Permanent members of the International Maritime Committee.

GREAT BRITAIN

A note on immunity of Sovereign States in respect of proceedings against Maritime Property

PREPARED BY THE

HON. Mr. JUSTICE HILL,

Judge of the Probate,

Divorce and Admiralty Division of the High Court of Justice.

I invite the *Comité Maritime International* to consider the immunities which are and which should be granted by national Courts of Justice to foreign Sovereign States in respect of proceedings in rem against maritime property (ships and cargoes) and the arrest of such property. These questions arise in practice as to ship and cargoes owned by foreign Sovereign States, and also as to ships privately owned but for the time being in the possession or service of a foreign Sovereign State. In considering these questions it will, I think, be necessary also to consider the immunities which are or which should be granted by national Courts of Justice to the national sovereign in respect of proceedings in rem against and arrest of maritime property owned by the national sovereign and in respect of the arrest of ships privately owned but for the time being in the possession or service of the national sovereign. The questions are not new, but before the war were not insistent. During

the war they were frequently forced upon the attention of the Courts. Since the war they continue to arise, especially the question as to the immunity of State owned maritime property. In proportion as Sovereign States engage in trade and own trading ships and mercantile cargoes, the matter becomes of greater and greater importance.

I am not myself sufficiently familiar with the law and practice of other States, to offer any useful observations thereon. The *Comité Maritime International* is peculiarly fitted to investigate the whole subject. As a contribution to such investigation I will state the problems as they arise in the English Admiralty Court. I observe that in various directions the question has been under the consideration of jurists and of business men. I believe that the Maritime Law Association of the United States has for some time dealt with the matter as it affects ships owned by the United States. I see by Lloyd's List, 4 February, 1922, that the question was discussed in the Netherlands Chamber of Commerce in New York with special reference to the immunities claimed by the American Shipping Board and their recognition by German Courts. The matter is dealt with in the following reviews : The British Year Book of International Law 1921, p. 57, Mr. Arnold D. Mc Nair on Judicial Recognition of States and Governments and the Immunity of Public Ships; The American Journal of International Law (1919), vol. 13, p. 12, Mr. F. K. Nielsen on The Law and Practice of States with regard to Merchant Vessels; and The Journal of the Society of Comparative Legislation (1920), series 3, vol. 2, p. 252, Professor

F. P. Walton on State Immunity in the Laws of England, France, Italy and Belgium.

The English Admiralty Court has had to consider the question in many cases with reference to claims of immunity by its own Sovereign and by various foreign Sovereigns. I will state the result of its decisions :

1^o) The immunity of foreign Sovereign States in respect of *State owned* maritime property may be illustrated by two cases, in each of which the Portuguese Government successfully claimed immunity from the jurisdiction of the English Court. The first arose out of a collision on the high seas between the British S.S. *Waiwera* and the S.S. *Espozende*. The case is reported in Lloyd's List, 19 and 27 February 1918. The *Espozende* put into an English Port and a writ in rem was served upon the ship at the suit of the owners of the *Waiwera*. The Portuguese Government moved the Court to set aside the writ on the ground that the *Espozende* was a public vessel belonging to the Government of the Republic of Portugal. The Court set aside the writ, holding that it had no jurisdiction to entertain the suit. The second case arose out of the salvage by Liverpool tugs of the S.S. *Porto Alexandre* and her cargo and freight in the River Mersey. The case is reported in 1920, p. 30. A writ in rem was served and ship and cargo were arrested at the suit of the salvors. The Portuguese Government moved the Court to set aside the writ and arrest as regards ship and freight on the ground that the *Porto Alexandre* was a State owned vessel belonging to the Government of the Portuguese Republic. There was no question but that she was engaged in an ordinary

trading voyage. The Court, confirmed by the Court of Appeal, set aside the writ and the arrest so far as ship and freight were concerned. The cargo being privately owned, no attempt was made to set aside the proceedings as against it.

The principle upon which the English Court acts is established by the decisions of the Court of Appeal in *The Parlement Belge*, 5 P. D. 197 and *The Porto Alexandre*, 1920, P. 30.

It is an application to foreign sovereigns of the rule that the British Sovereign is immune from the jurisdiction of the British Courts except in cases where he consents. The British Sovereign cannot, against his will, be made subject to the jurisdiction of his own Courts by any form of procedure. He cannot be impleaded directly by proceedings in personam, and he cannot be impleaded indirectly by proceedings against his property. Immunity from proceedings in rem against and arrest of maritime property owned by him is only a part of his general immunity from legal process otherwise than by his own consent. The like immunity, in compliance with «the international comity which induces every Sovereign State to respect the independance and dignity of every other Sovereign State», is extended by the English Courts to a foreign Sovereign State. Such foreign Sovereign State cannot, in the English Courts, be impleaded against its will either directly by proceedings in personam or indirectly by proceedings against its property. It makes no difference whether the Sovereign State is using the property in trade or otherwise; see, as regards the British Sovereign, *The Scotia*, 1903, A. C.

501, and as regards a foreign sovereign, *The Porto Alexandre*, 1920 P. 30. What applies to ships also applies to cargoes owned by a Sovereign State. In the *Erissos*, Lloyd's List, 24 Oct., 1917, a writ in rem in a salvage action was set aside so far as it related to the cargo of coal which was the property of the Italian Government. Most of the English decisions relate to collision or salvage actions. The principle was applied in favour of the Esthonian Government in an action of possession. The *Gagara*, 1919, P. 95. The same principle must apply to other actions in rem, e. g., for wages, master's disbursements, necessities, or damage to cargo in breach of a contract of affreightment.

2°) The immunity in respect of *ships privately owned but in the possession or service of a Sovereign State* rests, in the English Courts, upon a somewhat different application of the principle. It extends only to immunity from arrest. The difference arises from the distinction in English law between a proceeding in rem and an arrest. A proceeding in rem is made effective by service of the writ upon the ship. An arrest is a seizure of the ship by the officer of the Court. The service of the writ in rem compels the appearance of the owner if he wishes to defend; if he does not appear judgment will go against the ship by default. The arrest makes the ship, or the bail which in practice is given to secure the release, answerable to the amount of any judgment which may be recovered in the action. When a ship is privately owned but for the time being in the employment of a Sovereign State, the service of the writ in rem is good and neither writ nor service can be set aside. The immu-

nity with which we are dealing is an immunity only of the Sovereign State. It cannot be invoked by a private owner. The mere issue and service of the writ interferes with no right of the Sovereign State. It does not compel the Sovereign State to appear and submit to the jurisdiction. The Sovereign State is affected only if the ship is seized. But arrest does interfere with the use of the ship by the Sovereign State. In several cases in recent years the English Court, on the invitation sometimes of its own Sovereign and sometimes of foreign Sovereign States, has set aside the arrest of a privately owned ship employed by a Sovereign for public purposes. The first of these cases was *The Broadmayne*, 1916, P. 64, a British ship in the service of the British Sovereign; the action was for salvage. The order made was that «all further proceedings in this action with a view to the arrest or detention of the ship be stayed for so long as the ship shall remain under requisition in the service of the Crown». Other cases in which similar orders were made were :

The Messicano (1916) 32 Ti. L. R. 519, Italian ship in the service of the Italian Government; cause of action, collision.

The Erissos. Lloyd's List 24 Oct. 1917, Greek ship in the service of the British or Italian Government; cause of action, salvage.

The Eolo, 1918, 2 I. R. 78 : Lloyd's List 12 July 1917, Italian ship in the service of the Italian Government; cause of action, salvage.

The Koursk, Lloyd's List 22 June, 1918; Russian ship

in the service of the British Government; cause of action, collision.

The Crimdon, 35 Ti. L. R. 81, and Lloyd's List 6 Nov., 18 Dec., and 21 Dec., 1918, Swedish ship treated in the Court below as being in the service of the American Government; cause of action, collision. The Court of Appeal ordered an appeal, to stand over for further information as to whether any claim was made as an act of state by the United States, and as to whether the United States Emergency Fleet Corporation was a branch of the United States Government. The objection to give bail was subsequently withdrawn. Bail was given and the action was tried. So far as I know, the position of ships owned or operated by the Emergency Fleet Corporation, though it has been raised, has not been adjudicated upon in the English Court.

All these cases arose during the war and the service in which the ship was engaged at the time of arrest was in the nature of a war service. So far as I remember, the question has not arisen since the war. While it is certain that the immunity extends only to ships in the public service of the Sovereign State which asserts the immunity, and continues only so long as they remain in such service, there seems to be nothing in principle to limit such service to war service. But, in the absence of decision, it cannot be treated as settled law that it would extend, for instance, to a privately owned ship chartered by the Italian Government to carry a cargo of coal for the Italian State Railways or by the Russian Government to carry any of its national property in the way of trade.

There seem to me to be very grave objections to the

immunities from writ and arrest of State owned ships and cargoes and from arrest of State employed privately owned ships, at least when they are engaged in times of peace and in trade. Some of these objections have been pointed out in cases mentioned above. Thus, in the *Espozende* it was said : « It is in the interest of safe navigation and of the preservation of property at sea that those who have suffered injury by negligence or have rendered salvage service or have otherwise acquired rights which, if the ships were privately owned, would give the right to sue in rem and, if the ships were privately used, also the right to arrest, should have no doubt as to the speedy consideration of their claims in Courts with which they are familiar and which are regularly engaged in dealing with Admiralty law ». And in the *Crimdon* it was said : « It is a great hardship upon the persons who have claims against such privately owned vessels that they should lose their most substantial remedy (arrest), and in the interest of safe navigation it is most unfortunate that there should be a number of vessels navigating the seas whose owners know that however negligently they may be navigated no maritime lien can be enforced on the vessel while it is in State employment ».

In 1873 Sir Robert Phillimore in *The Charkieh* L. R. 4 A. & E. 99, said : « No principle of international law, and no decided case, and no dictum of jurists of which I am aware has gone so far as to authorise a Sovereign Prince to assume the character of a trader, when it is for his benefit; and when he incurs an obligation to a private subject, to throw off, if I may so speak, his disguise and

appear as a Sovereign, claiming for his own benefit, and to the injury of a private person, for the first time, all the attributes of his character ». This, as the *Parlement Belge* showed, was not a correct statement of the law. But it expresses a view consonant both with justice and with the sound conduct of international commerce. By Article 281 of the Treaty of Versailles it is provided : « If the German Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty ». Art. 233 of the Treaty with Austria is in similar terms.

My own opinion is that a remedy for the most unsatisfactory position at present existing is to be sought on such lines as these. If Sovereign States engage in trade and owe trading ships of their own or use trading ships of private persons, they should submit to the ordinary jurisdiction of their own and foreign Courts and permit those Courts to exercise that jurisdiction by the ordinary methods of writ and arrest.

It is also matter for consideration whether the like should not apply to State owned ships not engaged in trade. If arrest of ships of war cannot be permitted, there seems no good reason why proceedings in rem should not be allowed, or why some machinery should not be provided whereby an undertaking to pay should take the place of arrest and bail. I invite the *Comité Maritime International* to consider this question also.

I should add that a committee has recently been appointed by the Lord Chancellor in England to consider

the whole question of civil proceedings by and against the Crown, i.e., the British Sovereign.

I have dealt with the immunity of Sovereign States in respect of maritime property so far only as it affects the jurisdiction of Courts of Justice. But it must not be forgotten that it also raises important questions as to liability to port and harbour dues, import and export duties, and taxation.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW.

International Code of Affreightment. Parcel-Post Regulations.

The French Association of Maritime Law are of opinion that for the purposes of an international convention, only the following points should be taken into consideration :

- 1° the guarantees of the Carrier for the payment of the freight;
- 2° exceptions and prescriptions;
- 3° the through-bill-of-lading;
- 4° carriage by parcel-post.

The 1°, 2° and 3° are met in Mr Marais' paper.

The 4° is dealt with in a report presented by Mr Audouin on behalf of a Sub-Committee appointed in the year 1913 by the French Association of Maritime Law for the purpose of examining the question of application of the provisions of maritime law to shipments by parcel-post.

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INTERNATIONAL CODE OF AFFREIGHTMENT.

R E P O R T

PRESENTED BY

Mr. GEORGES MARAIS,
Dr. jur. Advocate at the Court of Appeal, Paris.

The French Association of Maritime Law, having cognizance of the draft-code prepared by the London Commission (1914) printed in Bulletin Nr 41 of the International Maritime Committee, are of opinion that for the purpose of an international convention only the

points mentioned hereafter should be taken into consideration and propose the solutions set out below.

I. — Fate of the claim for freight when the goods do not reach their destination.

It is well known that, in view of this event, the French code of commerce instituted the rule of freight *pro rata itineris*.

This rule comes into application, during the voyage, in the three following alternatives :

a) *when it becomes necessary to repair or to purchase provisions.* In such case, under article 234 of the French Code of Commerce, the Captain has the right to sell or to pledge the goods. But on the other hand, the charterer, if there is only one, or the various shippers if they all agree, are entitled to oppose the sale or pledging of their goods, by discharging same and by paying freight in proportion to the part of the voyage performed;

b) *when the ship becomes unseaworthy and the Captain cannot find another ship to charter.* — In such case, under art. 296 of the Code of Commerce, the Captain is entitled to require payment of freight in proportion to the part of the voyage performed;

c) *when the ship is lost, but the goods are salvaged.* — Here, also, under art. 303 of the Code of Commerce, the claim for freight is proportioned to the distance effected.

This rule of *pro rata itineris* freight is now considered everywhere as obsolete.

It is based on the notion that the affreightment is a lease of things, whereas in fact it constitutes a contract of

carriage. In the three preceding alternatives the contract is not carried out. Yet, the obligation which derives therefrom for the shipowner is undivisible by reason of its nature. Therefore, the shipowner must not be entitled to require from his co-contracting party a partial prestation, since he himself has not carried out his own obligation.

At the most, he might be granted an action based on the plea of unjustified profit, if he could prove that the charterer has actually derived a profit by the part of the voyage performed (see Ripert, *Droit Maritime*, T. 2, n° 1495).

That is why the draft prepared in view of the revision of Book II of the Code of Commerce, provides, in its art. 317. § 1, as follows :

« No freight is due in respect of goods which have not been delivered to the Consignee or put at his disposal at the port of destination ».

To this general rule, § 2 of art. 317 provides the following exceptions :

« Art. 317 § 2. However freight is due :

» When the non-delivery is the result of the negligence or default of the charterers, shippers or of their assigns;

» When dangerous, noxious or prohibited goods, the nature of which has not been declared to the carrier at the time of shipment, had to be destroyed at sea;

» When in the course of the voyage, the goods had to be sold by reason of their damaged condition, however caused;

» When the loss of the goods has been made good in general average;

» When the goods have perished owing to their inherent vice.

» Freight is also due in respect of animals which die at sea by any cause, other than the default of the carrier».

In this regard, the rules adopted by the London Commission (1914) are, in their general trend, similar to those of the draft of revision of Book II of the French Code of Commerce, the text of which is as follows :

ARTICLE 25

« No freight is due in respect of goods which are not delivered to the consignee or put at his disposal at the agreed port ».

ARTICLE 26

« However, freight shall be payable in the following cases:

a) where the non-delivery is the consequence of the negligence or default of the charterers, shippers or their assigns;

b) where the goods have perished by reason of their condition at the time of shipment or by reason of their nature, provided the primary cause of the loss was not due to a fortuitous accident;

c) in the case of animals which die during the voyage, provided their death be not due to any negligence on the part of the carrier;

d) in case prohibited goods or goods of a dangerous

nature had to be destroyed during the voyage, provided the carrier was not aware of their nature at the time of shipment;

e) in case goods had to be sold in the course of the voyage owing to their damaged condition, whatever may be the cause thereof;

f) in case the loss of the goods has been made good in general average ».

In conclusion, the French Association of Maritime Law proposed to adopt these resolutions, giving however preference to the French wording of the above-mentioned French draft of revision.

Article 33 of the wording of the London Commission, — differing in this with the draft of revision, — contains an attenuation to the rules embodied in art. 26 in respect of the goods which do not reach their destination.

This attenuation is based on the notion of unjustified profit by the shipowner. It is formulated as follows :

ARTICLE 33

« In all cases provided for in art. 26, the freight payable in respect of goods which do not reach their destination is to be understood under deduction of freight for goods which the charterer can prove to have been taken instead, or to have been offered to the Captain and refused by him without legitimate cause ».

As a consequence to the exceptions admitted by art. 26 to the general rule of art. 25, the draft of the London Commission adds the following solutions :

a) *Case of a Lump sum freight.*

This case is regulated in the following manner by art. 27 of the draft of the London Commission.

« ART. 27. Lump sum freight is payable, whether the goods shipped be delivered or not at the port of destination ».

The French draft does not mention such derogation. It is probably a case rarely occurring in practice.

The *lump sum* freight, translated imperfectly by the French expression « fret global » would apply to the lease of a specified part of the ship, for instance a hold, a between-deck etc.

The co-contracting parties would also have in view not only a mere transport, but transport in a specified location in the ship.

The idea of lease of things would appear again in that particular form of affreightment, thence the deviation from the general rule established by art. 25.

b) *Case of a temporary delay of the ship by a fortuitous accident or by force majeure.*

This case is provided for by art. 30, in the following terms :

« b) Art. 30, § 1. When after departure, the ship is held up owing to a *force majeure* or a fortuitous accident, the charterer must either wait or pay the whole freight ».

Obviously, in this alternative, what is meant is merely a delay of a temporary nature, and which, from its origin has been considered as such.

Otherwise, if the holding up should be definite, or if it should last so long that the interests of the shippers would be gravely endangered, it would be equivalent to non-delivery of the goods at the agreed port.

The rule of art. 25 would then apply again.

The § 2 of art. 30 undoubtedly justifies this construction. It is in fact worded as follows :

« Art. 30, § 2. — If the delay lasts so long that it may endanger gravely the interests of the shippers, the Captain is bound to apply to the latter for instructions and to act in the best possible manner for the protection of their interests. »

c) Case of a force majeure, preventing the ship from reaching the port of destination.

This case is regulated by art. 31 in the following terms :

« Art. 31 : When after departure, owing to a *force majeure* or by the act of any Power, the ship is prevented definitely or for an undetermined space of time, from entering the port of destination, the Captain has the right to discharge the goods at a port in the vicinity, acting for the best to protect the shippers' interests. In such case, the freight agreed upon is due to him ».

According to this last derogation, the goods have not been delivered at the agreed port, and yet, contrary to the general rule of art. 25, the stipulated freight is payable by the shipper.

Indeed, the maritime venture, and the whole of the intermixed interest it involves, are suffering by reason of a *force majeure*.

Nevertheless, the carriage undertaken has been effected as far as circumstances would allow. The Captain has discharged the goods in a near port, for the best of the shippers' interests.

The vicinity of that port will always remain a question of appreciation. But if it is admitted, it would be contrary to equity to allow that the shippers should derive a profit out of an event of *force majeure* which prevented the entire fulfilment of the stipulated undertaking.

To summarize, under reservation of the exceptions specified, the London Commission advocates for the future that freight shall be payable only in so far as the goods are delivered at the port of destination.

The French Association of Maritime Law are prepared to accept the rule and the exceptions proposed.

II. — Guarantees of the Shipowners.

Let us summarize briefly the system embodied in our Code of Commerce, which following a traditional rule, denies to the Captain the right of retaining the goods to ensure payment of his freight.

But, it grants him, — which is practically the same thing, — the right of applying to the Court, within the period of discharge, for the purpose of obtaining the deposit of the goods with a third party until freight be paid (art. 306, C. of C.).

Thus the right of retention in the hands of a third party appointed by the Courts, is clearly recognised.

On the other hand, the Code of Commerce grants the Captain a lien for the payment of his freight (art. 20, C. of C.).

As long as there is no delivery into the hands of the Consignee, the exercise of the lien cannot give raise to any difficulty.

In case of delivery, the Captain's lien remains in force during a fortnight, provided however that the goods have not passed into the possession of third parties.

In the latter case indeed, *bona fide* purchasers are protected by art. 2279 § 1 of the civil Code. The sale followed by delivery into the hands of the purchaser has involved the extinction of the carrier's lien (art. 307, C. of C.).

On the contrary the sale without delivery would leave that lien in existence.

Finally the Code of Commerce provides for the case of bankruptcy of the consignee after delivery into his hands. In such event, the Captain's lien will continue in existence if the order of bankruptcy is issued before expiry of the above mentioned fortnight's delay (art. 308, C of C.).

On expiry of that delay, the lien is extinct.

The draft of revision of Book II adopts as a whole the system of the commercial Code.

It merely grants again to the Captain the right of retention which, under common law, he should normally possess in his capacity as a carrier.

It will therefore suffice to copy the provisions of the draft which regulate the guarantees granted to the shipowner.

« Art. 332. — The shipowner may retain the goods in case of non-payment of the freight, unless he has obtained good and valid bail.

The shipowner may also apply for the deposit of the goods in the hands of a third party, until freight be paid

to him, or even apply for the sale of the goods up to the amount of his claim ».

« Art. 331. — As a guarantee for the payment of the freight and of the accessories, the shipowner has a lien on the goods constituting the cargo, during a fortnight after the delivery, provided the goods have not passed in possession of third parties ».

The draft of the London Commission does not mention the guarantees which ought to be reserved to the shipowner.

The French Association of Maritime Law, to the contrary, recommends the addition of the rules relating to such guarantees, and further the adoption of the rules embodied in the French draft of revision.

III — Exceptions and Prescriptions.

With regard to exceptions, art. 435, which is so well known and so often quoted before the Courts, provides :

« Art. 435. — Are not admissible :

» Any actions against the Captain or the underwriters, in respect of damage occurring to the goods, if the latter have been received without protest.

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» Such protest will be void if it is not made and notified within 24 hours and, if within one month from its date, it is not followed by an action before the Court ».

By reason of its very nature, such exception does not apply to claims for total loss or delay in delivery.

The jurisprudence, on the contrary, applies it to claims for partial loss, deficiency or shortage in the number of

packages or weight of the goods carried (Ch. Civ. Cass., 25 July 1895. D. 1896-1-108).

On the other hand, in order that the shipowner be allowed to avail himself of the exception provided by article 435, it is necessary that a material delivery into the hands of the Consignee have taken place (Rouen, 3rd November 1906. Rev. Intern. de Droit Maritime, 22-425).

With regard to prescription, art. 433 of the Code of Commerce provides as follows :

« Art. 433. — Shall be extinct by prescription :

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» Any claim for delivery of goods or for damages in respect of damage to goods or delay in their transportation, one year after arrival of the ship »

In the event of shipwreck, the practice of the Courts is that this delay shall be one year from the date of the loss of the ship, or at least from the date on which the parties interested obtained information of the loss (Rev. 9th November 1908. D. 1921-1-241).

It may indeed be considered that from that moment the voyage has come to an end in so far as the parties interested are concerned. It behoves then that they shall act speedily for the protection of their rights.

The prescription provided by art. 433 of the Code of Commerce is in no way a duplication of the exception mentioned in art. 435.

The latter, in fact, does not apply either to claims for delivery or to actions in damages in respect of total loss which might be instituted in lieu of claims for delivery;

nor does it apply to claims for compensation in respect of damage to goods, when there has not been any reception of the goods, or to actions by reason of delay in delivery of the goods.

The draft of revision of Book II of the Commercial Code suggests in its article 333, that there should be admitted an exception in respect of any actions for damages by reason of particular average or partial losses instituted either against the Captain and the shipowner, or against the owners of the goods, when within three days (exclusive of holidays) from the date on which the goods were put at the actual disposal of the Consignee, there has not been served, either by extra-judicial deed or by registered letter, a protest containing the reasons thereof, and when such protest has not been followed within a delay of thirty days, by proceedings before the Court.

As to the prescription, art. 334 of the draft of revision is worded as follows :

« Art. 334. — Any actions deriving from the contract of affreightment, are extinct by prescription one year from the date of arrival of the goods at the port of destination, and in the event of their not reaching that port, from the date at which such goods ought to have reached that port ».

Without wishing to examine very minutely these articles 333 and 334, we may note that the delay of twenty-four hours is extended to three days after the effective putting at disposal of the goods, in order to enable the Consignee to notify his protest (compare for

analogy art. 105 of the C. of Comm., in respect of carriage by land).

The system proposed by the London Commission does differ materially from that embodied in the French draft.

Under art. 47 (of the London Commission) the delay available for protest in respect of loss or damage to the goods carried, is increased to one week from the date of delivery to the Consignee.

Then, the obligation to institute judicial proceedings within one month is suppressed.

As to prescription, art. 48 of the London Commission's draft suggests to regulate it as follows :

« Art. 48. — Claims arising out of a contract of hire of a ship, of affreightment or of carriage by sea, are extinct by prescription two years to be reckoned from the date at which the claim originated ».

The French Association of Maritime Law do not consider it advisable to recommend the adoption of either the one or the other system.

In the first place, since their drafting, the Hague Rules were recommended for adoption in September 1921 by the Maritime Law Committee of the International Law Association. Their international adoption appears desirable, with the reservation however of subsequent amendments which are indispensable if these Rules are expected to produce practical results.

However this may be, the said Rules contain an article 3, § 6, which is worded as follows :

« Unless written notice of a claim for loss or damage and the general nature of such claim be given in writing

to the carrier or his agent at the port of discharge *before removal* of the goods, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill-of-lading, and in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within 12 months after the delivery of the goods ».

The effect of this article 3, § 6, really is :

1° to establish a *prima facie* evidence of the good condition of the merchandise in the case they are removed without protest by the Consignee;

2° to do away with any exception by reason of absence of protest;

3° to establish a delay of prescription of one year for loss and damage, to be computed from the time of the removal of the goods.

However, as is quite rightly observed in the circular-letter Nr. 1162 of the Central Committee of French Shipowners (p. 340) :

« When neglecting to proceed with the removal of the goods, the Consignee prevents that the delay of prescription should begin running, whereas the Code of Commerce provides that the delay of one year is to be computed from the time of arrival of the ship, which is an event over which neither the shipper nor the Consignee have any control ».

Yet, and having due regard to the Hague Rules, the French Association of Maritime Law are of opinion that the international system to be followed in regard to exceptions and prescriptions in matters of affreightment, should be based upon the three following principles :

a) the removal of the goods without protest constitutes a mere *prima facie* evidence as to the good condition of the merchandise;

b) there ought to be a delay of prescription of one year, such as is established by art. 334 of the French draft.

This does away with the necessity of bringing a law-suit within one month from the date of the protest.

The delay of prescription shall have to be computed from the date of arrival of the goods at the place of destination, and in the case of non-arrival, from the date at which they ought to have reached at that port.

IV. — Carriage under a Trough-bill-of-lading.

The French Association of Maritime Law are of opinion that, in view of the importance of that question, it should be made the subject of labours and discussions which the war has prevented from being carried on.

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ON THE ADAPTATION OF MARITIME LAW REGULATIONS TO THE CARRIAGE BY PARCEL POST

R E P O R T

PRESENTED BY

Mr. EMILE AUDOUIN

Dr. jur., Secretary of the Committee of Maritime Underwriters, Paris.

The Commission (1) which you have appointed at your meeting of the 3rd July 1913 in view of examining the

(1) *This was a Commission appointed by the French Association of Maritime Law.*

advisability of applying to parcel post the regulations obtaining in maritime law, having appointed me as Reporter, I beg to give below the results of this Commission's labours.

I may remind you, in the first place, that according to your wishes, the Commission confined their labours to the study of the two following questions :

1° Is it advisable or not to apply to parcel post the rules embodied in maritime law in regard to general average ?

2° It is advisable or not to apply to parcel post the rules of maritime law which limit to a certain extent the shipowners' liability in the case of losses occurring in consequence of negligence or default of Captain and crew ?

I may also point out that the reason for laying these two questions more particularly before you was that, in France as well as abroad, they had given rise to decisions which solved them in the negative, that is to say, in the sense that maritime law regulations were not to apply to parcel post. Now, on the one hand, the reasons on which such decisions were based, may seem open to criticism; on the other hand, the non-application of maritime law principles to parcel post can only entail very serious consequences in practice, in view of the enormous development which the carriage by parcel post has taken lately all over the world; finally, the conventions to which the carriage of postal parcels has given rise between almost all the States of the world, had necessarily the consequence that most of the questions relating thereto have passed out of the domain of the

national legislations into the realm of international law, All these reasons justify on your side as thorough and as cautious a study of the matter as possible.

I. — Special Legislation for Parcel Post.

In order to be able to appreciate soundly whether, and to what extent, a special legislation may be allowed to derogate from common law, it is always advisable to consider at least summarily, the historical side of such legislation. This was done by your Commission, and I may add that this study has contributed largely towards the conclusions arrived at.

The creation of the parcel post has been the work of the International Conference convened in Paris on the 9th October 1880, which was followed by the international convention of the 3rd November 1880, passed between the principal states of Europe. But this creation had been prepared previously by the international convention of 1878 which had brought into being the *Union postale universelle*, instituting a reduced and uniform tarification, altogether independent from the distances, for the service of correspondence. At the end of the 1878 conference, the following resolution had been passed : « The Conference considers, in principle, and » under reservation of subsequent negotiations, that a » progress is brought about by the conclusion of an international agreement concerning the transportation of » small articles by the postal service », and the discussions which preceded this resolution prove, that in the mind of the members of the conference, this motion

referred solely to such articles which might be considered as accessories of correspondence, like f.i. samples, intended to facilitate and complete the relations between producers, manufacturers, consumers and merchants of all countries.

It was in the same spirit that two years later, the States signed the international convention of 3rd November 1880, which organized and regulated the carriage, by sea as well as by land, between the various contracting States, of the so-called « postal parcels », the maximum weight of which was not to exceed 3 kilograms.

For the purpose of rendering practicable the organization of this new service, the Convention provided that in such countries where the Postal authorities could not undertake themselves the carriage of parcel post, they had the option of entrusting that service to private railway and navigation companies. Such was the case namely in France, where the Government entered into agreements with seven large Railway Companies and, for the carriage by sea, with the following four large navigation Companies, viz : Compagnie Générale Transatlantique, Compagnie des Messageries Maritimes, Compagnie des Chargeurs Réunis, Compagnie Fraissinet. All these conventions contained the following clause : « The » Company is bound to cooperate to the service and » transportation of the postal parcels, in accordance » with the laws on the subject and in pursuance of the » regulations, tariffs and instructions issued under » these laws ».

« The Company has to assume the obligations and has » the benefit of the advantages which result for the

» French Government from the conventions of the *Union postale Universelle* which might arise for the duration » of the concession ».

The success of the new institution was considerable, so great indeed that a few years afterwards, at the repeated requests of the representatives of commerce and industry in all countries, further international conventions (Lisbon, 1885, Vienna, 1891) increased to 5 kilograms the maximum weight allowed for parcel post.

Finally, a further progression of this kind of traffic decided the French Government, in the year 1897 (law of the 17th June 1897) to institute a service of parcel post up to 10 kilograms per package, and in the following year, the same measure was adopted by other States.

This brief summary clearly shows that the institution of parcel post has deviated considerably from its original object; in fact, packages weighing 5 and 10 kilograms can no longer be considered as being merely small articles, samples, accessories to correspondence; they are henceforth real merchandise, things of *commercial* and not merely *postal* traffic. When we consider that, on certain postal sea-routes these postal parcels do represent nowadays a very important part of the total cargo of the ships, we can easily appreciate the great interest of the question whether, under the special legislation which governs them, postal parcels shall escape being subjected to essential maritime law principles to which all other goods without exception have to submit; and if so, whether it is not advisable that this legislation should be altered, at least to some extent.

In order to be able to answer this question, it is proper

to consider the nature of this special legislation. Briefly summarized, its essential features are as follows :

1. An unvarying tariff (reduced) according to the weight, without *regard to the distance*.

2. Postage is always prepaid.

3. Liability of the carrier in respect of *loss, spoliation* or damage — except in the event of a *force majeure* — always limited, viz : to 0 fr. 15 for parcels weighing not more than 3 kilograms, 0 fr. 25 for those weighing not more than 5 kilograms and 0 fr. 40 for those up to 10 kilograms. For parcels forwarded with declared value, the liability is limited to that value.

4. The exception provided by article 105 Comm. Code is admissible by the mere fact that a parcel has been received without protest (Derogation from this article).

5. Delay of prescription provided by article 108 (Code of Comm.) computable from the day on *which the carrier is entrusted with the parcel* (Derogation from this article).

6. No liability of the carrier by reason of *delay* (Derogation to articles 97 and 104 of the Code of Comm.).

7. *Court having jurisdiction in the case of disputes* : They were administrative Courts up till 1905; since the law of 12th July 1905, they are the lower local Judges (*Juges de paix*).

That is all; and it is not possible to discover in the laws, bye-laws, tariffs and instructions relating to carriage of parcel post, any trace of a derogation from the principles of maritime law, and namely from those governing the matter of general average and that of shipowners' liability.

How then, was it possible to contend that these prin-

ciples should not apply to postal parcels ? That is the question which is to be investigated.

II. — General Average.

In the matter of General Average, there is a general principle — and this principle is applied by all legislations — *that every interest which has profited by the sacrifice or the expense made for the common safety, is liable to contribution.* The few exceptions which are admitted by the laws or by the practice of the Courts, only confirm the rule.

Effects of the crew and of passengers, luggage of passengers, war ammunition : these are either things attached to the individuals and having, commercially speaking, no value of their own, or things which, being necessary themselves, in case of need, in order to ensure the common safety, cannot for that reason in all fairness be subject to contribution.

But beyond these wholly justified exceptions, everything that is on board must contribute, on the sole condition of having a value assessable in money. It does not matter whether such interests have been shipped or not under a bill-of-lading. It was held more than once, in the various countries, that even articles which had been entrusted to the Captain personally, against a mere receipt, had to contribute like the others. In view of the principle of equity which governs the whole matter, one could hardly see why it should be otherwise.

And yet, if not legally, at least *in fact*, such is not the case for postal parcels. The investigations which your Commission has undertaken on this point have shown

that never until this day, in any country, had postal parcels been mentioned in a General Average settlement as contributory values. Or to be more accurate : only once an Average adjuster decided that one of such postal parcels had to contribute, by reason of the great value of its contents; but a decision of the Courts put him in the wrong; we refer to the judgment of the High Court of Leipzig, of which mention is made hereafter.

What then may be the reasons which explain — although they do not justify — such a grave derogation from the principles obtaining in regard to general average ? This question was laid before a certain number of Average adjusters in the various countries, on the occasion of the proceedings at Leipzig, and was answered by them as follows :

IN ENGLAND :

Messrs William Richards & Son, of London : « Postal
» parcels have not until now been subject to contribution,
» solely on account of the practical difficulties and the
» confusion which would result from a strict application
» of the principle of contribution to thousands of small
» parcels, of which many are of very small value, and
» which the consignees would prefer very often to leave
» into the hands of the postal authorities rather than
» to be compelled to supply security for general average
» contribution or salvage expenses ».

Messrs Clancey, Son & Scott, of Glasgow, also agree that it is not customary in the United-Kingdom to require from postal parcels a contribution to general average
« for the reason that generally, they are, taken separa-

» tely, of small value, and owing also to the great difficulty there would be, on account of the inviolability of the postal communications, in tracing the owners of such parcels for the purpose of establishing the legal connection — involving proceedings which would prove necessarily very expensive and probably out of proportion with the amount of contribution to be collected ».

Yet, Messrs Clancey, Son & Scott express their opinion that this practice is in contradiction with the principle of equity, according to which any property which has derived a profit from the measures taken for the common safety, has to contribute, in proportion to its value, towards the expenses involved by such measures, and that, in the special case submitted to their consideration, had the specification and the value of the postal parcel in question been known to them, they would have had no hesitation in subjecting it to contribution.

Messrs Arthur, Clover & Stone, of Liverpool, said :
« Theoretically, we are of opinion that postal parcels ought to contribute, and probably the only reason why such theory has not been applied in practice is to be found in the enormous amount of difficulties that would be involved by ascertaining the correct value of the contents of hundreds of those small parcels and in collecting the contributions charged against them ».

IN AMERICA :

Messrs Johnson & Higgins, the prominent Average adjusters who have in fact almost a monopoly of General average settlements in the United States, answered: « The

» question as regards postal parcels, has never been submitted to our Courts; neither has it been considered in practice, for this reason that it is extremely difficult to establish a legal connection with the owners of such parcels, contents of which are besides known neither by the shipowners nor by the Average adjusters. If however a shipment of currency, precious stones or other valuable articles should be included in the mails, and if the shipowner could supply evidence thereof, we believe that the owners of such cargo would be liable to contribution ».

IN BELGIUM :

Messrs Langlois, Genicot and Van Peborgh observe that no postal parcel is taken on board without a receipt being delivered by the Captain; that such receipt has the same effect as a bill-of-lading, since the Captain cannot obtain discharge from his liability unless he presents at destination the number of packages mentioned on that document; that consequently there is no reason to admit any distinction whatever between such postal parcels and the other packages representing the cargo, in respect of general average contribution.

IN FRANCE :

Mr. Laurent Toutain, of Havre, emphasises the practical impossibility of including postal parcels in general average settlements, since, on a ship, postal parcels represent an endless number of packages of the most miscellaneous character (victuals, sweetmeats, samples, ar-

ticles of dress, &c.), most of them without great value and addressed to thousands of consignees.

Mr. Robert Martin, of Havre, is of opinion that every postal parcel, contents of which have an appreciable value, must contribute, since the law only exempts from contribution war-ammunition, victuals and personal belongings of the crew.

Mr. Harou, of Havre, gives expression to the same opinion, although he acknowledges that in fact, postal parcels were never included in the numerous general average settlements which he had to establish, owing to the lack of information as to such postal parcels.

IN ITALY :

Mr. Umberto Penco, of Genoa, said that in Italy, like in France, postal parcels do not contribute to general average, for the same reasons and owing to the same practical difficulties.

IN GERMANY :

Mr. Alfred Schmidt, of Hamburgh, declared that in Germany it is not customary to require from postal parcels a contribution to general average; but the custom as it stands does not appear to him to be justified.

Besides, in Germany there is more than an opinion of Average adjusters, since it was in that country that the only judgment was given on the question, namely the decision of the Supreme Court of Leipzig dated June 18th 1913, of which the following is a summary :

A Bremer average adjuster appointed for the purpose of establishing a General Average Settlement in respect

of a fire which had broken out on board ss. *Goeben*, owned by the North German Lloyd, in the course of a voyage from Shanghai to Genoa, had admitted among the interests liable to contribution, 10 postal parcels containing stock for about 75.000 Marks, sent with the said steamer by a Bank in Shanghai to the Diskontogesellschaft in Berlin. According to said Average Settlement, the contribution due by the Consignee of those 10 postal parcels amounted to 5.784 Marks. The Diskontogesellschaft contested the adjustment before the Bremen Court, who dismissed the action. The plaintiff then appealed against this decision before the Court of Hamburg, who decided in his favour. The case was finally brought before the Court of Leipzig (Supreme Court), who definitely decided, like the Court of Hamburg, that the postal parcels in question had not to pay contribution.

This decision is based in the first place on considerations of a general nature. Its chief argument is public order, which does not allow of any impediment liable to interfere with the regular and speedy working of the postal service. It also refers to the practice followed in other countries. Finally, it is based on the following arguments of a legal character, viz :

1° There does not exist any contract between the shipper and the Consignee of a postal parcel. Only the postal Administration has contracted with the navigation Company. The post Authorities put a large number of parcels into bags, about whose contents the Captain knows nothing at all; therefore general Average contribution could not be charged against the postal Administration

who are the Consignees of the whole of the parcels. The real Consignee can only be considered as a third party holder, — as defined by art. 725 *in fine* of the German Code of Commerce, — who is exempt from any contribution to general average, when he was unaware, at the time of delivery of the parcel, that the latter was burdened with such charge.

2° Secondly, and as decisive argument, the Court of Leipzig mentions the rule of « professional secrecy » established by art. 5 of the Law of the 28th october 1871 relating to the postal service. The inviolability of correspondence does only admit of an exception in the specific cases provided by special Laws, and this inviolability prevents any investigations as to the actual value of a postal parcel.

This summary statement is sufficient to show the weakness of the reasons for which it is endeavoured to justify the exemption of parcel-post from any contribution towards expenses made for the common safety.

1° *The alleged small value of postal parcels* : This was true at the early period of the institution, when parcels were not allowed to exceed 3 kilogr. in weight; but it is no longer accurate since this weight has been successively increased to 5 and 10 kilograms and we know for certain that a great number of postal parcels do contain goods the value of which is equal and even higher than that of many packages shipped under bills-of-lading. Yet the latter do contribute like any others, however small their value may be.

2° *Inviolability of the postal expeditions*. In reality, that inviolability cannot be imagined and it does not

exist in fact except for such things which have the character of actual correspondence. But that is not the case for the postal parcels.

On the one hand, under the existing regulation, « it is unlawful to forward by parcel post messages or notes having the character of correspondence », and on the other hand it is a matter of general knowledge that, far from being « inviolated » postal parcels are very often opened by the Custom Authorities. Besides, in the matter of general average, it rarely occurs that the opening of the parcels is required in the presence of the Consignee for the purpose of having the value of their contents assessed by experts. More often, the declaration of the Consignee is sufficient, supported if required by the production of the invoices.

3° *Lastly, the absence of any legal connection between the Captain and the Shipper or the Consignee.* This argument is certainly open to controversy from the legal point of view, since, under the agreement concluded between the State and the navigation companies, the latter are subrogated in all rights and obligations of the State in respect of the carriage of postal parcels; but even assuming the argument to be altogether correct, the only result would be that the Captain, instead of claiming contribution from each of the Consignees of postal parcels, would have to claim it from the postal Authorities themselves, it being open to the latter to resort, as against the Consignees, to such measures as they would deem advisable to ensure compliance with the regulations.

Therefore your Commission are of opinion that this important question should be laid before an international

conference for discussion and that it should be solved in the sense of a complete assimilation of parcel post and other goods in regard to general average contribution. They propose to pass a motion to that effect.

III. — Limitation of Shipowners' Liability.

Another principle which is as special to Maritime Law as that of general average, is the rule which enables shipowners to exonerate themselves from any consequences of the civil liability resting upon them by reason of the acts of their shipmasters, either by the payment of a lump amount equivalent to the value of ship and freight or by payment of a lump amount calculated on the basis of so much per registered ton of the ship. Under these various guises, which vary according to the legislations, the principle is absolutely universal and applies without any exception to any claims whatever for loss of damage whether to goods or to persons.

It has been nevertheless contended, in this instance also, that postal parcels are not to be governed by common law and that, as far as they are concerned, the shipowners' liability must be unlimited. It does not appear from the information supplied to your Commission, that this question has been made the subject of any decisions of the Courts in foreign countries. But in France, it was recently submitted to the Council of State, in connection with the loss of the ss. *Tamise*, owned by the Compagnie des Messageries Maritimes. As this loss was ascribed to a default of the Captain, the Postal Administration summoned the Compagnie des Messageries Maritimes to refund to the owners of the postal

parcels shipped by that steamer, the compensation to which they were entitled under the regulations, except in the case of *force majeure*. In answer to these summons, the Navigation Company stated that they intended to free themselves from all liability in this respect by abandoning ship and freight, in accordance with article 216 § 2 of the Commercial Code. As the Minister of Post and Telegraphs did not admit this view, the matter was brought before the Council of State who, by judgment of the 19th January 1912, decided in favour of the Ministry and ordered the Navigation Company to compensate the shippers of the postal parcels lost with the ss. *Tamise*.

This decision is based on the following reasons :

The postal parcels lost with the ss. *Tamise* were carried under the Convention signed on the 30th June 1886, between the Minister of Post and Telegraphs and the Compagnie des Messageries Maritimes relating to the running of the various mail lines which do not belong to the continental home service. Now, under article 3, last paragraph, of the Schedule of Conditions attached to this convention, the Navigation Company have undertaken to effect the carriage of postal parcels in the *conditions fixed by the laws or regulations existing on the matter*; they were thereby subjected to the obligations which the International Convention of the 3rd November 1880 laid upon the French Government, on whose behalf the Company undertook the postal service.

Under article 11 of the said Convention the postal Authorities are responsible for loss of, or damage to, postal parcels, except in cases of *force majeure*; and this

provision, excluding the application of article 216 of the Commercial Code, debars the Navigation Company from availing themselves of the option to free themselves of their liability towards the shippers, by abandoning ship and freight.

But to our mind, this seems like solving the question by the question. The shipowner's liability in such case, is not less certain towards the owners of goods shipped under bills-of-lading, and article 216 has been inserted for the very purpose of enabling the shipowner to free himself from this liability. Why should shippers of postal parcels enjoy a preferential treatment in this respect ? Is it on the plea that the provision of article 216 does not affect « public order » and that the shipowner can always by contract, waive his right to abandon ship and freight ? No doubt this is true; but such renunciation cannot be presumed : it must be clearly expressed in the agreement. Now, in none of the agreements entered into between the Government and the Navigation Companies for the carrying out of the postal services has the slightest allusion been made to the right of abandonment (1).

The case is altogether different in Germany where, in the various contracts passed for the carriage of postal parcels with the North German Lloyd, the Hamburgh-

(1) These remarks may be compared with those of Mr. Lyon-Caen (*Revue Critique*, 1905, p. 513) in regard to the decision of the Council of State of 4th March 1904, which declined to apply article 216 of Comm. Code in favour of a shipowner who carried securities and stock under a contract. Compare also the explanations contained in Mr. René Verneaux's study *La Fortune de Mer* (*Recueil de Législation*, 1906) on the wrong construction of art. 216 by the Council of State.

Amerika Line, the German East-Africa Line and the Woermann Line, the Government has been careful to insert the stipulation (article 21 of the said contracts) that : « The provisions of the Commercial Code limiting the liability of shipowners, shall not apply hereto »).

In England, according to the information gathered from Messrs William Richards & Son, the agreements existing between the Government and the Navigation Company licenced for the mail service, do not contain any derogation from the rule authorizing shipowners to limit their liability to £ 8 per registered ton of the ship, and as a consequence, owners of postal parcels share rateably with the other creditors of the ship the amounts representing this limited liability.

In Italy, according to information supplied by Mr Umberto Penco, of Genoa, there seems to be no doubt that, in case of loss of one of the steamers to whom the Government entrusted the carriage of postal parcels, and if such loss is imputed by the competent authorities to a negligence of the Captain, the shipowner would be entitled to free himself from his liability towards the Postal Administration just as he may liberate himself towards all other creditors, by abandoning ship and freight, according to article 491 of the Italian code of commerce. However, Mr Penco adds that the Courts of his country had never to decide the question up to this date.

This therefore is a most important question, for the solution of which uniformity of practice and jurisprudence in the various countries is not reached by far; and this divergency is a matter for regret, all the more so as

this is a question which — different in this respect from general average — has been made the subject of international conventions so that all shipowners concerned ought to be treated on the same footing.

Your Commission therefore propose to move « that the limitation of Shipowners' Liability in respect of acts of their Captains, shall be emphatically granted in regard to postal parcels as well as for any other goods; and that this motion be forwarded to the French Government by the channel of the Sub-Committee which is sitting at the present time at the Ministry of Foreign Affairs for the purpose of examining the draft of international convention relating to Shipowners' Liability ».

GREAT-BRITAIN

MARITIME LAW COMMITTEE OF THE INTERNATIONAL LAW ASSOCIATION

(Acting as the British National Committee of the
Comité Maritime International).

Immunity of Sovereign States as Regards Maritime Property.

QUESTION I

Does your State own any vessels :

- a)* employed by the State for war purposes only;
- b)* employed by the State partly for purposes of war and partly for commercial or other purposes of Peace;
- c)* employed by the State for commercial or other purposes of Peace only;
- d)* employed by private persons under charter or otherwise ?

ANSWER

a) Yes. — Battleships, cruisers, destroyers, submarines, etc.

b) Temporarily for example, Admiralty-owned oil tankers. (When not required for fleet fuelling purposes, these vessels are chartered to private companies).

c) Yes. — Oil tankers referred to at 1 (b) above.

These and some other commercial ships remaining

over from the war which have not yet been sold. Some are laid up, and a very few are still running; but this class will very soon disappear.

QUESTION II

Does your State employ for public service vessels which are privately owned ?

ANSWER

Yes. — In times of peace private vessels are chartered for the conveyance of coal for the Navy and troops and stores for the Army. In times of war, privately owned vessels are requisitioned for public services.

Apart from chartering vessels, the British Government ships largely Navy and Army stores by the regular Lines, such stores being carried under the ordinary Bills-of-Lading.

QUESTION III

Does the law in your country confer any immunity on :

a) vessels State-owned as mentioned above 1° *a*, *b*, *c* and *d*, or

b) vessels privately owned but employed by the State as mentioned above under II°?

ANSWER

a) With regard to all State-owned vessels, both British and foreign, the answer to question *a)* is in the affirmative.

b) The position in English law of vessels which are privately owned, but employed by a State for public services, is doubtful. Such vessels, if requisitioned by the British Crown, are free from arrest :

The Broadmayne (1916) P. 64.

By the comity of Nations the immunity is extended to vessels requisitioned by Governments other than the British Government, but it extends to freedom from arrest only :

The Messicano (1916) 32 T. L. R. 519.

The Erissos (1917) Lloyd's List Newspaper 23rd Oct. 1917.

The Tervaete (1922) P. 197.

These cases, except the last mentioned, arose in the war. The *Broadmayne* was decided on the ground of the Proclamation dated August 3rd, 1914 stating that a National Emergency existed. It is part of the King's prerogative to lay an embargo and to do various acts growing out of sudden emergencies. In all such cases the emergency is the avowed cause and the act done is as temporary as the occasion.

It is questionable whether with regard to such vessels immunity from arrest would apply if the chartering or the requisitioning were to be done in times of peace, that is to say, in times when a national emergency has not arisen.

QUESTION IV

If any such immunity is conferred :

- a) how far does it extend;
- b) in what manner is it claimed;
- c) upon what principle is it based ?

ANSWER

- a) How far does it extend ?

With regard to vessels mentioned under I *a*, *b*, *c* and *d*, there are no limits to the immunity, whether the vessels are British owned or owned by another State, or whether they are used for public services or not.

The Parlement Belge (1880) 5 P. D. 197, 217.

The Scotia (1903) A. C. 501.

The Porto Alexandre (1920) P. 30, 38.

With regard to vessels mentioned under II the immunity seems only to extend to freedom from arrest, both with regard to British and Foreign vessels, but *quaere*, in times of National Emergency only.

b) In what manner is it claimed ?

The State which is interested applies to the Court to set the writ aside, also the warrant of arrest, and all subsequent proceedings on the ground that the Court has no jurisdiction. With regard to vessels mentioned under II, the application would be to set aside the arrest.

Roscoe's Admiralty Practice, p. 297.

c) Upon what principle is it based ?

So far as British State-owned ships are concerned, the principle is that the British Sovereign is immune from the jurisdiction of the British Courts except in cases where he chooses to consent to such jurisdiction. He cannot be impleaded directly by proceedings against his person nor can he be indirectly impleaded by proceedings against his property. As regards foreign State-owned ships the principle above stated is applied, and immunity granted in compliance with the international comity which is extended by the British Courts to a recognised foreign Sovereign State.

The Parlement Belge, 5 P. D. 197.

The Porto Alexandre (1920) P. 30.

QUESTION V

If any such immunity is recognised, are you in favour of its abolition or modification as to either:

- a) war vessels, or
- b) any of the other vessels mentioned in questions I and II above ?

ANSWER

We are in favour of the abolition of any immunity granted either to a) war vessels, or b) any of the other vessels mentioned in questions I and II of the questionnaire, because

a) It is liable to interfere with the various measures internationally adopted for the promotion of safety at sea. The rules of navigation cannot be properly safeguarded if one class of vessels is exempt from the consequences of failure to observe them, however well trained the ship's personnel and however severe the discipline observed on board ship;

b) Uncertainty as to disabled vessel's chances, and therefore, as to whether salvage services rendered would meet with any reward tends to create at sea reluctance in the rendering of such services, especially if the services were such as to involve risk to the safety of the private merchant and shipowner who may be held liable by the State for torts committed by him or his servants,

but who remains without remedy for torts committed against himself and his property (1).

It is considered that all war vessels should be free from actual arrest, as arrest might interfere with the public services of any such vessel; provided that the place of arrest be taken by the giving of an undertaking by the representative of the Power against whose vessel process is issued for the payment of costs and damages —an undertaking which would be equivalent to bail. A similar undertaking should take the place of bail in the case of all other State-owned vessels. Such undertaking may be given at any time and need not delay the vessel.

QUESTION VI

Does your State claim any immunity in respect of Maritime liabilities as to cargoes which are either :

- a) State-owned, or
- b) privately owned and carried by the State ?

ANSWER

a) English Law extends immunity in respect of maritime liabilities to all cargoes owned by a State whether on any vessel mentioned in questions I and II or on a private vessel.

The Erissos, Lloyd's List Newspaper, 24 Oct. 1917.

The Broadmayne (1916) P. 64.

The Porto Alexandre (1920) P. 30.

(1) In practice this difficulty is overcome by an action being brought against the officer of the watch in case of collision which is defended by the Admiralty Solicitor.

« The same principle must apply to other actions
» *in rem*, e. g. for wages, master's disbursements, neces-
» saries or damage to cargoes in breach of a contract
» of affreightment ».

Hill, J., in Bulletin N° 48, Comité Maritime International.

b) This immunity was extended in *The Constitution* (1879) 4 P. D. 39, to privately owned cargo carried on a public ship. But it is doubtful whether, except in very special circumstances, immunity for private cargo in a public ship would, in modern times, be either claimed by or allowed to the State. For example, in *The Porto Alexandre*, 1920, P. 30, immunity was claimed by, or allowed to, the Italian Government in respect of ship and freight but not in respect of the privately owned cargo.

QUESTION VII

Is any further or other immunity such as exemption from the operation of national revenue laws or any part thereof, conferred by the law of your country upon any of the above vessels trading from or to the shores of your country ?

ANSWER

Light Dues.

By the 2nd Schedule referred to in Sect. 5 of the Merchant Shipping Act (Mercantile Marine Fund) 1898 as amended by Order in Council of the 30th day of July 1919, the following exemptions are made from dues under that Schedule, viz. :

« Ships belonging to His Majesty or to a Foreign
» Government unless carrying cargo or passengers for
» freight or fares ».

In return for the exemptions from light dues for war vessels the Admiralty render gratuitous services which also applies to Foreign Governments.

Harbour Dues.

With regard to harbour dues, under paragraph 28 of the Harbours, Docks and Piers Clauses Act, 1847, 10 Vict. cap. 27.

« Any vessels belonging to or employed in the service
» of the Crown have the free use of harbour,
» dock or pier without any charge or rate being made
» for using the same ».

This Act is incorporated in most Dock and Harbour Acts passed since 1847.

It has always been recognised, that the exemption should not be rigorously enforced during war time, and during the last war an arrangement was made whereby — as a general result — battleships and warlike stores paid 70 % of the charges in the ordinary tariff while all other State-owned vessels or goods paid the full charges.

Pilotage.

By Sect. 11 (3) (a) of the Pilotage Act, 1913, ships belonging to His Majesty are exempt from compulsory pilotage.

Customs.

Government-owned goods on Government ships on Government business are not subject to customs duty.

Income Tax.

In the case of 1 (c) the British Government does not pay income tax on profits derived from chartering.

Limitation of Time.

As regards the limitation of time within which actions may be brought, the Crown enjoys certain immunities. The Crown is not bound by any Statute of Limitation unless the Crown is expressly included in its terms. The limitation of two years provided by section 8 of the Maritime Conventions Act, 1911, for the commencement of actions for damages or loss sustained by collision of ships at sea or in respect of any salvage services does not bind the Crown, because the Crown is not expressly mentioned in the provisions of the section.

Admiralty v. Loredano, Lloyds List Newspaper, 20th March 1922.

The Maritime Conventions Act 1911 was passed specially to ratify the provisions of an International Convention dealing with collisions between vessels at sea entered into at Brussels in 1910 between a large number of maritime States.

The object of the Convention was to assimilate the law of the various Maritime States on this subject and to prevent any clashing of interest caused by the conflict of laws as far as collisions at sea were concerned.

The result of British doctrine of the immunity of the Crown is that while the British Crown can bring an action for collision or salvage against a private owner at any time before a British court, notwithstanding that more than 2 years have elapsed from the date of the

Collision of the rendering of the Salvage services, private owners have no remedy after 2 years unless in the discretion of the Court that period is extended, but it should be noted, so far as salvage is concerned that it is only when a Government ship is equipped with salvage plant or is a tug that the British Crown is entitled to salvage with regard to the use of the vessel (Merchant Shipping Act, 1894 sect. 557 and the Merchant Shipping Act 1916).

It has already been set out that in some countries other than the United Kingdom the Courts are not so bound, and that actions can be brought in other countries against the State for damages sustained by collisions for which State-owned vessels are to blame. No doubt the limitations set out in the Convention signed at Brussels in 1920 equally bind foreign Governments. The non-application thereof towards the British Crown introduces an inequality which is highly undesirable.

It is recommended that the interpretation of international conventions which are intended to assimilate the national laws of various countries should be the same in all countries. It is considered in the public interest that such interpretation of international conventions should rest finally with the Court of International Justice at the Hague.

QUESTION VIII

Have you any further observations to offer on this subject ?

ANSWER

The difficulties created by the doctrine of State immunity are greatly emphasized by the conception of

the Crown's position in English law. In many continental countries immunity of the State is not recognised by the national courts, and in those courts the State can be impleaded as an ordinary litigant.

According to the views held in such States, though they may be impleaded in their own national courts, they cannot be impleaded in foreign courts, on account of the sovereign rights claimed by each State and the consequent refusal on the part of one State to submit to the jurisdiction of another sovereign power.

As such immunity rests on convenience and the comity of nations only, its extension and limitation is subject to international agreement, and we suggest that it is on the lines of international agreement and convention that the difficulties of this subject can best be solved.

For the *Maritime Law Committee*,

W. R. BISSCHOP,
Hon. Secretary.

NORWAY

NORWEGIAN ASSOCIATION OF MARITIME LAW.

International Maritime Committee.

Dear Sirs,

We have received your favour of the 9th ult. and in answer to the questions raised therein, we beg to inform:

I

The International Code of Affreightment.

We are inclined to believe that it will be a very lengthy and very difficult task to try to arrive at an agreement as to a joint international codification of the entire chartering question, and we consider it very doubtful, whether it will at all be possible to gain a result by the course taken.

We therefore agree with those who — like Loder, de Rousiers and others — at the Antwerp-meeting were of opinion that it would be better if we could manage to come to an understanding with regard to questions of a more limited and practical nature in the chartering

business, leaving to the future to decide, whether finally a joint international chartering code may be built up on the foundation thus arrived at.

For the time being the Negligence clauses and the Hague rules are in the front. Of the other questions which might be separately prepared, we would mention:

1) On what conditions may the charterer or the owner cancel the contract without compensation on account of hindrances preventing delivery of the cargo or the continuation of the voyage.

2) When is full freight to be paid and is the freight to be calculated on the quantity taken in or on the quantity discharged, and what is to be accepted as lump sum freight, in case the cargo is partly lost. See the Paris conference in 1911 and the London draft of 1914 art. 25-27.

3) Distance freight. How is it to be paid and how is it to be calculated? See in this special respect the London draft art. 31.

4) Legal rules in regard to «received for shipment documents», when such may be demanded and what legal effect do they involve? — In some respects the Hague rules deal with these documents in article III, paragraph 3 and 7.

5) The responsibility of the various carriers in connection with Through Bills-of-Lading. See The London draft, paragraph 50.

II

Exemption Clauses in Bills-of-Lading.

The Hague Rules.

Since 1893, Norway, Sweden and Denmark have, as will be known, in the main uniform maritime legislations. These maritime laws are now being revised, committees being named a couple of years ago in each of the three countries in order to present a proposition — by cooperation — for such alterations and supplements, which the legal development might demand or make desirable. Finland has also joined in this work.

During this revision the « negligence clauses » have also been under discussion and the committees are now apparently endeavouring to agree on this point. This agreement, in case it matures, aims at preventing the owner — when chartering general cargo — from being entitled to exemption of responsibility as to the seaworthiness and proper outfit of the vessel or for the handling of the cargo during the loading, the transport and the discharge, but that he, on the other hand, should be entitled to reserve to himself exemption of responsibility for loss or damage caused through mistakes or negligence in regard to the navigation or management of the vessel. He should also be entitled to stipulate a certain maximum of compensation for damages to be paid for each unit of the cargo.

As will be seen, the Northern Maritime Committees

have taken a course somewhat similar to the principles put down in the Hague Rules.

To the questions made in this section we beg to remark : .

Some time ago and at the request of the Maritime Legislation Committee, it has been tried in this country to get the shipowners and the merchants to voluntarily — that is without the aid of law — agree on a form of Bill-of-Lading limiting the exemption of responsibility. This however, has not yet reached a result. Later the Hague-rules have been under discussion as well in « Norges Rederforbund » (The Shipowners' Association of Norway) as in « Christiania Handelsstand » (Christiania Chamber of Commerce). — In certain respects the rules seem strange to us from a formal point of view, and objections probably might be made also in reality. But at any rate, the understanding in this country of the benefit, which the shipping trade and the commerce would gain through a binding and legal system in this matter, is so extended that it must certainly be presumed that the rules will be accepted by the other nations. In the meantime we join those who are of the opinion that the work should be promoted by endeavouring to have the rules voluntarily accepted by the interested parties in the different countries. A voluntary acceptance of the Hague-Rules does not meet with any hindrances in the present Norwegian legislation.

III

The Immunity of State-owned Ships.

In answer to your question with regard to this, we beg to state :

1) The State now owns only one single Cargo steamer, this steamer being bought during the war.

2) The State does not any longer charter or time-charter private cargo steamers, but had during the war time-chartered several ships.

3) The State does not claim any immunity for its ships. It being warships or trading vessels — owned or chartered by the State — anyone might still sue the government for damages caused by any such vessels, also for payment of wages or provisions for the ships. In this respect no consent would be needed from the State. The question of arrest in State-owned ships has never been raised, but according to our law there is probably nothing to prevent any ship in ordinary freight trade to be put under arrest.

4) According to the above this question needs no answer.

5) We most emphatically second the opinion that the immunity of the State in those countries where this still exists, must as soon as possible be altered, in such a way that the State and the private citizen be submitted to the same legal rules in regard to the fulfilling of obligations under or outside of contracts. We are most sincerely interested in this being done. Norwegian ship-

owners have had large claims the promotion of which has been blocked and interfered with on account of the present unfortunate rules of procedure, according to which the State, as such could not be sued except with the permission of the proper authorities.

6) The State does not either claim any immunity with regard to cargo.

7) State-owned ships and cargoes pay the same port — and pilot fees, duties etc., as those of private persons; on the other hand the State does not pay taxes — either on capital or income.

Christiania, June 8th. 1922.

Yours very truly,

JOHAN BREDAL.

President.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW

The Legal Position of State-owned Ships and the State Immunities in Maritime Law.

REPORT

PRESENTED BY

Mr. GEORGES RIPERT,

Professor at the University of Paris and at the Institute of Political Sciences.

The International Maritime Committee decided to inscribe on the Agenda-paper of the London Conference to be held in October 1922, a draft of International Convention on this matter, which is headed : *Immunity of Sovereign States in regard to Maritime Law*. At the same time the International Maritime Committee requests the national associations to indicate the rules at present in force in their respective countries in regard to State-owned ships as also to vessels belonging to foreign States.

It is not an easy matter to ascertain these rules, because they have to be deduced from the study of the practice of the Courts, and as far as we are aware, there does not exist in France a general study on the legal position of State-owned ships. On the other hand, in view of the preparation of an international legislation, still greater

difficulties do arise as questions must be worded in a manner to be easily understood in all countries. Now, such questions are dealing with the legal position of property, with jurisdiction, with judicial procedure and forms of enforcing decisions, that is to say: with a whole complex of rules which are not peculiar to maritime law but depend upon the common law of every country.

For instance, the very expression *Immunity of Sovereign States* does not cover the whole extent of the question, because we do not call *immunity* the special legal position granted to State-owned property or to the rules of administrative jurisdiction. Sir Maurice Hill, in his report on behalf of the British Association, questions whether maritime property owned by the States, like ships and cargoes, shall enjoy immunity in regard to actions *in rem* directed against such property. We cannot either consider the problem under this aspect, because in our law there is no action *in rem* and that, except perhaps in regard to arrest, the quality of the property bears no influence upon the nature of the action or upon the jurisdiction.

The legal position of State-owned ships must be considered as a whole. The study of this question has become particularly interesting since the various States have become owners of a fleet of merchant vessels and work same in a commercial manner. It then appeared as extremely unfair that ships worked in that way should not be subjected to the same rules to which every merchant has to submit; but it was doubted whether the general principles of law would permit such assimilation. Obviously, this difficulty has drawn the attention of the International

Maritime Committee. However, it cannot be clearly appreciated unless we undertake a complete study of the legal position of State-owned ships.

The great distinction existing as to legal relationship in France is that between the relationship of public law and the relationship of private law. The maritime laws embodied in book II of the Code of Commerce only regulate the relationship between private parties, and as a matter of principle they do not apply to the State in so far as the latter is presumed to act on public services. When the State undertakes commercial shipping, would it not be fair that it should be subjected to the same laws and to what extent? The solution of this question is at the present time very doubtful.

In order to examine the position of the State in regard to maritime law, it is therefore necessary to establish a distinction between ships employed for public service and commercial vessels. For each of these classes we will then have to examine whether the same rules apply to national foreign subjects.

I

Ships employed on Public Service.

I. — Legal position of such ships.

A) *Vessels of war* are the most clearly defined type of ships employed on public service. Such vessels are part of the public property of the State. They are not subject to the application of private law and even of administrative regulations which only govern private property.

It must, however, be pointed out that such vessels only acquire this legal position after they have been put into service. As long as they are in course of construction, they remain the property of the shipbuilder, at least when built under a *lumpsum* contract and are not yet part of the State's property. This explains why they can be mortgaged. As a matter of fact they are mortgaged on behalf of the State as a security for the advances paid to the ship-yards (1).

On the other hand, as regards the policing of traffic and the regulations of sea routes, war ships are bound to observe the rules on navigation at sea (2).

Finally they can be taken off public service and sold, and in such case they lose their legal position; but in most cases they also cease to be vessels and are reduced to the state of wrecks.

War vessels enjoy the privilege of extritoriality. They are considered in foreign countries as being part of the national territory. France claims this privilege for its own ships and grants it also to foreign vessels.

B) The legal position of ships owned by the State and employed on a public service is less precise. These are, for instance, the ships of the Administration of Bridges and Highways, the training ships and the cable-ships. Add also the vessels under complete requisition in time of war in order to effect the transports necessary to the national defence or to the supplies of a country.

Are these ships part of the public property of the

(1) From 1875 to 1913 the State contracted 1442 mortgages on ships under construction for a total amount of frs. 669.083.457.—

(2) De Ryckere. *Les navires de guerre et les règles de la route de mer.* *Revue Le Droit Maritime*, 1913, p. 509.

State ? This is doubted by many, as they only consider as public property things which cannot be owned privately and as such ships could obviously belong to private shipowners; others think so because they exclude from the public property any movable property and that legally ships are movables. It seems difficult to us to subject such ships to the legal position of public property which would prevent their alienation and the interdiction for the State to mortgage. It is, however, certain that the legal position of such ships will be a peculiar one when affected to public service (1).

In our maritime law a distinction must be drawn between two classes of provisions : the first class relates to commercial relationship arising from the working of the ships, for instance, the rules of affreightment; the other class are relating to their navigation, as, for instance rules on collision and salvage. The latter regulations will most certainly apply to such vessels as well as any administrative rules in regard to the policy of navigation or the supervision of the crews. This distinction, however, is not a very clear one; just as it is not accurately known which rules apply to yachting, there prevails great uncertainty in regard to ships affected to public service.

If we do not subject to the regulations of private maritime law the ships of the French State affected to a public service, we cannot either subject thereto the ships owned by a foreign State and employed to a similar service. For instance, a Belgian training-ship could not be

(1) Hauriou. *Précis de droit administratif*, 9th ed., 1919, p. 716. — Berthelemy, *Traité élémentaire de droit administratif*, 7th édit., p. 106. — Moreau. *Manuel de droit administratif*, p. 562.

treated, in French territorial waters, as a commercial vessel. It cannot be objected that in France we ought not to trouble about the working of foreign public services. To the contrary, the recognition of sovereignty of foreign States compels us not to interfere with the public services of such States. Besides, in most cases the nature of the ship will enable us to ascertain its affectation.

The Brussels Conventions of 1910 on Collision (art. 11) and on Salvage (art. 14) stipulate emphatically that the rules therein contained shall not apply to ships exclusively affected to public services.

II. — French ships. — Jurisdiction and Arrest.

The legal relationship which may arise from the working of ships affected to a public service are extra-contractual, which means that they do not originate from a contract. Such vessels can be made responsible for a collision caused by their negligence or for salvage services.

A) As regards war ships, no application can be made of the commercial Code in respect of collision nor of the law of 29th April 1916 on Salvage; and this applies to foreign ships as well as to French ships. These are indeed provisions of private law which do not apply when any question of sovereignty is involved.

As a matter of fact, this non-application of private law regulations offers less inconvenience than might be supposed. In fact, in the case of a collision caused by the negligence of a war ship, the State is not held liable in virtue of article 407 of the Code of Commerce and of

the law of 15th July 1915, but merely in virtue of the general principles as to damage resulting from the carrying out of public services. As after all there is no great difference between Maritime law and Common law, especially since the suppression of the plea of doubtful collision, the question of responsibility is appreciated just like in the case of a private shipowner (1).

As regards salvage services rendered to a State-owned ship, the salvor cannot claim the remuneration provided by the law of 29th April 1916, but the French Courts admitted that salvage had to be remunerated, long before there was any law to that state. It has therefore been admitted without difficulty that the State has the obligation of paying a remuneration in respect of services rendered to its war ships (2).

The indemnity for collision and the salvage remuneration must not be claimed before the regular Courts. The Council of State has jurisdiction and in fact has often to decide on this point (3).

For the case of collision this administrative jurisdiction can be legally defended since the damage is caused by the State in the exercise of its sovereign right. This in-

(1) For instance, in the case of collision, the Council of State examines whether the war ship has conformed to the rules of the sea-chart. See, for inst. Council of State, 30th January 1917. *Revue internationale du droit maritime*, XXX, p. 465.

(2) Council of State, 14th June 1907 (D. 1908, 3, 125, *Revue internationale du droit maritime*, XXIII, p. 787, and 13th February 1914 (*Croiseur Chateaurenault*)).

(3) Tribunal des Conflits, 17 Janv. 1874. D. 74, 3, 4; S. 75, 2, p. 341; Council of State, 11th May 1870, D. 71, 3, 62; S. 72, 2, p. 120; 15th February 1872, D. 73, 3, p. 57; 15th April 1873, D. 73, 3, p. 58; 19th March 1897, *Revue internationale du droit maritime*, XXII, p. 663; and 16th March 1900, *ibid.*, XXVIII, p. 142, D. 1901, 3, p. 57. S. 1902, 3, p. 64. — (See the circular letter of the Ministry of 4th May 1899).

volves, however, the great inconvenience to defer to an administrative jurisdiction sitting in Paris, the discussion as to the liability for a collision.

As to salvage, there are no sound reasons to justify the jurisdiction of the Council of State. The latter decides on such actions merely for reasons of convenience and for the sake of tradition, but would no doubt not object if it were deprived of jurisdiction (1).

B) All these solutions are true, but are more open to discussion in respect of a ship affected to public service.

In fact, the working of such ships may give rise to legal relationships which do not directly interest the management of the public service. In such case the jurisdiction of regular Courts might be advocated. For instance, difficulties arising from the contracts with the seamen or disputes relating to the carriage of goods exceptionally accepted by the State on ships affected to public service, might be submitted to the regular Courts. The Court of appeal of Poitiers by a decision of 26th May 1919 (*Revue internationale du droit maritime*, XXXII, p. 63)

(1) An order of the Council of State of 17th February 1922 (De Coinck) decides on the Salvage, effected by the trawler *St. Joachim*, of the submarine *U 136* delivered by Germany to France under the peace-treaties. The decision does not contain any mention as to a discussion regarding jurisdiction, but Mr. Laurent, the Governments commissioner, mentions in his written plea that the question of jurisdiction is doubtful and that the jurisdiction of the Council of State is justified more « by obvious reasons of harmony and convenience » rather than « by the strength of principles ». The service rendered to the State through the salvage services is absolutely similar to those which could be rendered to a commercial ship, so that it is rather difficult to justify the administrative jurisdiction. Previously the Council of State had no hesitation in deciding such cases, but nowadays it is recognized that the question is open for discussion. Possibly on this point will administrative jurisdiction be dropped.

has admitted jurisdiction, for these reasons at least (1).

Similarly, when a ship affected to a public service has caused a collision by its negligence or has been given salvage services, it seems that the jurisdiction of the regular courts might be admitted. The Supreme Court admits this in the case of a vessel affected to a public service but which is not State-owned; a decision of 3rd August 1892 has decided so in respect of a collision caused by the aviso « Le Dakar » owned by the Senegal Colony (D. 92.1.572; *Revue internationale du droit maritime*, VIII, p. 16), but the reasons given by this very decision show that the solution would have been different if the ship had been State-owned. The State did not admit that the legal Courts of jurisdiction do appreciate the liability of the collision caused by a requisitioned ship (2), and the commercial Court of Marseilles, by a judgment of 29th June 1915 (*Revue internationale du droit maritime*, XXX, p. 367) has held in fact that it had no jurisdiction in respect of a collision caused by a requisitioned tug, which, it is true, took part in military operations.

(1) This is a decision on a Charter entered into by the State for the Norwegian ship *Sekstant* chartered to the *Office Français d'Affrètement* in Paris, representing the Government and effecting transports for account of the Intendency. Accessorily, the State has accepted merchandise to fill up the space remaining on board. The decision holds that the commercial Court has no jurisdiction, but in the reasons given it recognizes the jurisdiction of the Civil Courts.

(2) See the circular-letter of the Ministry of Marine of 31st May 1916 as to the measures to be taken in case of collision between a requisitioned ship and a commercial vessel in order to ascertain the negligence and the damage (B. O. Marine, 1916, p. 634).

The same rule was adopted when the State, playing the part of a Charterer, had entered into contracts for the carriage of goods intended to a public service. The regular Courts declined to decide on the difficulties arising in respect of the carrying out of this contract (Cas. Civ. Ist. June 1913, *Revue Internationale du droit maritime*, XVIII, p. 5; chartering for account of the colonial administration).

As will be noticed, the notion of public service dominates in the debate and appears to involve the administrative jurisdiction.

C) As to the *arrest*, this is not more admissible in the case of a ship affected to a public service than in the case of a war ship (1).

Indeed it cannot be admitted that a creditor might interfere with the carrying out of a public service by means of an arrest, even if the latter would only be made for the purpose of conservancy. A ship affected to public service cannot be arrested, whoever be the creditor. As to the collection of the claim it must be recovered by administrative channels, even where the creditor would be in possession of an enforceable document, such as a judgment.

The impossibility of arrest must also exist in the case of commercial ships belonging to owners who have entered into contract with the State for carrying out a public service. Although the question is controverted, it is generally admitted that no mail-carrying steamer can

(1) Mittelstein. *De la saisissabilité et de l'insaisissabilité des navires*. *Revue internationale du droit maritime*, t. VIII, IX et X.

be arrested (1); there is all the more reason to apply this to a vessel requisitioned for use only by the State and effected by that State to a public service.

III. — Foreign Ships.

If we consider now the case of foreign war ships or of ships of a foreign State affected to the public service of that State, we have not to examine which among the French Courts would have jurisdiction, because such ships enjoy an absolute immunity.

The French Courts have no jurisdiction whatever in any action which a creditor of the ship might bring against the foreign State. The respect due to the sovereignty of States would not allow the Courts to decide, and, since a public service of the foreign State is involved, the mutual respect, which States owe to each other, enjoins them not to interfere with such services even by the operation of the law. The creditor would have no other remedy than an action before the foreign Courts, if in such foreign country judicial proceedings against the State are admitted, failing which he has to forward his claim by diplomatic channels.

The French jurisprudence admits this unhesitatingly (2). Therefore French Courts could not decide on an action brought against a foreign State in the case of a collision between a French ship and a State-owned ship

(1) Aix, 3 August 1885, *J. Clunet*, 1885, p. 544. — *Guillibert. De l'insaisissabilité des navires affectés à un service postal.* — *J. Clunet*, 1885, p. 515; *Mittelstein*, op. cit., *Rev.* IX, 1893-94, pp. 91 et 648; *Georges Ripert, Droit Maritime*, I, N° 892.

(2) Weiss, *Traité de Droit International privé*. Vol. V, pp. 89 and foll.

affected to a public service, even if such collision should take place in French territorial waters (1). To defend the jurisdiction of French Courts, it would be useless to require the application of article 407 of the commercial Code, because this text merely establishes rules of internal jurisdiction and not of international jurisdiction.

However, as the non-jurisdiction of the French Court is based on the respect for the sovereignty of the foreign State, an action directed against an administrative institution owning a ship affected to its service would no doubt be held admissible (2). This may give rise to actual difficulties since many States have entrusted the management of their ships to independent administrative Institutions. It has to be examined in each case whether this Institution does represent an administrative personality subjected to the State or whether it is merely a mode of carrying out a public service (3).

As to the arrest of a foreign ship affected to public service, this is, of course, impossible; even if merely for conservancy purposes, such arrest would injure the sovereignty of that State (4).

The immunity of arrest can be extended to ships be-

(1) Saint-Nazaire, 8th May 1918. *Revue internationale du droit maritime*, XXXII, p. 439, (collision in the waters of Brest between steamer *Hermès* and steamship *Powhatan*, ex-enemy ship affected by the United States to the fleet). Comp. Brussels 19th February 1895. *Revue internationale du droit maritime*, XI, p. 783, (collision in the Scheldt river between the American cruiser *Chicago* and the British steamer *Azov*).

(2) Paris 19th June 1894, D. 94, 2, p. 513. *J. Clunet*, 1894, V. p. 232. Re-estate of the *Duke of Brunswick* and of the *City of Geneva*.

(3) See : Poitiers, 26th May 1919. *Revue internationale du droit maritime*, XXXII, p. 63, Paris, 16th March 1921, *ibid.*, XXXIII, p. 763.

(4) See : Seine, 15th January 1889, *J. Clunet*, p. 461, on the impossibility of arrest against a foreign State.

longing to private persons and affected to a public State service, viz : the postal service. But this is a question which is not properly settled at present and gives rise to difficulties.

II

Commercial Ships.

At the end of the war the French Government found itself in possession of a considerable fleet through prizes, requisitions, ship buildings, purchases of ships abroad and ships obtained by way of reparation. Part of this fleet was managed by various ministerial services and some of these ships were affected to a public service. But a greater part of these State-owned ships were used for the carriage of goods. The State had become a ship-owner and was managing directly these vessels through agents of the « Transit Maritime » or had them managed by shipowners (1).

The law of 9th August 1921 has ordered the liquidation of these State-owned ships and such liquidation is being carried out at present. But all the ships owned by the State have not yet been disposed of and the complete liquidation of the State-fleet will probably last for some time. It must be noticed that France voluntarily abandons the economical system of managing a commercial fleet and that consequently the legal difficulties resulting thereof will disappear progressively. They will, however,

(1) On 31st March 1921 the French State-owned fleet included a gross tonnage on service of 780.456 tons of which 327.220 tons are ex-enemy vessels.

continue to subsist for trading vessels owned by foreign States. They have arisen more particularly in France in respect of the ships of the *American Shipping Board* and of the *Maritime State-Transports* of Portugal.

I. — National Ships.

It is hardly possible to contend that when a State carries on maritime trade, it is managing a public service. No doubt, when running ships, the State has not merely in view to earn profits and most often it resorts thereto, because maritime transports are matters of national interest for the whole country. Nevertheless, the State resorts to the same means of action as any private person. It owns ships which are private property and manages them like any other shipowner; it may entrust their management to others or give them on time-charter.

Therefore to such State-owned ships must be applied all the regulations of the Code of Commerce and of the maritime legislation relating to ownership, customs, engagement of seamen, limited liability of the shipowners, collision and salvage at sea and also insurance. The contracts entered into by the State as an owner are freight-contracts (1). Besides, the State has conformed to the commercial customs in regard to the wording of Charter-parties and Bills-of-Lading.

Shall this mean that the State shall not have the benefit of any immunity? Not at all, but such immunities do not

(1) See, however Council of State, 8th December 1911. *Revue internationale du droit maritime*, XXIX, p. 889, holding that were the State is Charterer, article 435 of the Code of Commerce does not apply.

depend upon the legal status of the ship. Where they exist, they are derived from the rules of jurisdiction and the modes of execution in actions directed against the State.

A) *Jurisdiction.*

Were a State is responsible in respect of a collision caused by a commercial vessel or liable for a salvage remuneration or for damages by reason of loss or damage during a transport, can it be sued before the commercial Court which would have jurisdiction, should the action be directed against a shipowner? This is a double question for, it must be examined whether the regular Courts have jurisdiction and, if so, whether the case may be submitted before the commercial Court.

I. — There was a time when it was contended that regular Courts could not declare the State to be a debtor and consequently any judicial action against the State then had necessarily to be brought before the administrative jurisdiction. But this is not the present doctrine. The Council of State has unceasingly limited its own jurisdiction and endeavoured to define it in the least extensive way.

Mr. Hauriou enunciates as follows the two principles by which all difficulties are to be solved :

« 1° Anything which is an appreciation of the acts and operations of the public power must come within the jurisdiction of the Administrative Courts.

« 2° Everything which is not an appreciation of the

acts and operations of the public power should be left to the regular Courts ».

The regular Courts therefore have jurisdiction in regard to private operations of the public administration. Mr. Hauriou applies this rule for settling questions of ownership of domanial property and to action for liability in respect of damage caused by private transactions. Mr. Moreau gives a similar rule : « Any disputes with an administrative person which do not interest the public power, which refer to the exercise of the right of private persons, remain within the jurisdiction of the Courts » (1).

We have said that where the State in acting as any other shipowner for the commercial management of its fleet, the regular Court shall have jurisdiction.

2. — But amongst the regular Courts, which one should be chosen ? As the State is assimilated to a private individual, it would be natural to grant jurisdiction to the commercial Court. The difficulty lies in the fact that the Commercial Court has jurisdiction only if the act submitted to its appreciation is a commercial transaction or an act by a merchant for the exercise of its trade. Now, can the State be assimilated to a merchant in such a manner that a collision caused by the default of one of its Captains may be considered as a *quasi-delictum* in the exercise of a trade.

The authorities on commercial law generally think that the State has not the capacity of a merchant (2).

(1) Moreau. *Précis de Droit Administratif*.

(2) Lyon Caen et Renault. *Traité de Droit Commercial*, t. I, p. 210. — Thaller, *Traité élémentaire de droit commercial*, N^{rs} 179 and foll. — Gombeaux, *La condition juridique de l'Etat commerçant et industriel*, 1904.

Therefore jurisdiction ought to be given to the civil Court which is the common law Court. This Court has besides jurisdiction in matters of collision between merchant ships when the claimant is a passenger and not a shipper. Its jurisdiction therefore is not special to State-owned ships. But from the point of view of legislation such solution is not satisfactory and it is obviously better that the same Court should have to judge such cases.

The practice of the Court is unsettled so far. Actions directed against the State have often been brought before the commercial Courts and these held that they had jurisdiction to decide on the liability of the State as carrier. The Court of Appeal of Poitiers by a decision of 26th May 1919 (*Revue internationale du droit maritime*, XXXII, p. 63) (*Sekstant*), even declined to admit the jurisdiction of commercial Courts in respect of a cargo of timber by the State but which was carried on a Norwegian steamer chartered in view of the requirements of national defence.

The commercial Court of Nantes by judgment of 2nd August 1919 (*Marne II*) (*Revue internationale du droit maritime*, XXXII, p. 445) has decided the question of liability for thefts committed on board a steamer chartered by the State, although the Captain raised the plea of no jurisdiction (1). The Commercial Court of Havre by judgment of 9th September 1920 (*Mount-Vernon-Bridge*) (*Rev.* XXXIII, p. 73), decided on an action for payment of demurrage directed against the State as a Charterer. The Commercial Courts would

(1) See also Nantes, 25th April 1921, *Rec. Nantes*, 1921, I, p. 57.

also admit their jurisdiction in respect of liability for collision.

Such jurisprudence might be compared with that established for claims directed against the State when underwriting war risks. Although the State-insurance has been organized in view of the public interest and even of national defence and although the insurance has become compulsory under the law of 19th April 1917, the Commercial Court of the Seine has adjudicated claims directed against the State (1). The Council of State, by a recent decision of 23rd December (*Général de Boisdeffre*) held that it could not decide itself on the claim of a shipowner, because the State did not intend to manage this service in conditions different from those in which private underwriting business is carried on (2).

B) *Arrest.*

When it comes now to the question of enforcing a judgment, the Charterer or the party having suffered by the collision or the salvor ship, cannot resort to the same means of execution which private law grants to a creditor against his debtor. Arrest for execution of commercial ships owned by the State is not admitted.

It is not the legal character of the ship which commands such solution, because this commercial vessel might be sold as private property. If the State has not to apprehend an arrest, this is because it is not permissible

(1) Seine, 18th June 1918, *Rev. Int. du Droit Maritime*, XXXII, p. 392; Seine, 5th February 1920 and Paris, 20th July 1921, *ibid.*, XXXIII, p. 768; in many cases the State has not declined the jurisdiction of the commercial Courts. See Seine, 7th May 1919, *Rev.*, XXXII, p. 110; 5th Dec. 1919, *ibid.*, XXXII, 3, 95, 23th Dec. 1920, *ibid.*, XXXII, p. 589.

(2) *Rev. Int. du Droit Maritime*, XXXIII, p. 769, note Georges Ripert.

to resort against it to the means of execution provided by private law (1). The same rules would apply therefore to State-owned cargoes. These could not be arrested any more than the ships themselves (Havre, 9th September 1920, *Revue intern. du droit maritime*, XXXII, p. 73).

The immunity from arrest of State-owned property is a principle so firmly established in our French law that one cannot see how the commercial management might justify a derogation to this rule.

The only question is whether preventory arrest is quite as impossible as arrest for execution. The preventory arrest does not involve execution of its subject-matter, it merely entails an arrest of the ship by order of the judicial authority. It must be added that in France, the preventory arrest has no influence on the question of jurisdiction, because we do not admit jurisdiction of the *forum arresti*. It would seem therefore that this procedure might be admitted.

But what is the object of a preventory arrest ? It aims at preventing the disappearance of the property and to compel the shipowner to give bail. This is a measure directed against a shipowner supposed to be insolvent. Now, the State, within the limit of its own sovereignty, cannot be presumed insolvent. The preventory arrest therefore will not be possible.

Our jurisprudence has decided in this sense. In the judgments which were published, there is no example of such arrest having been laid in France on a ship owned by the French State; but when such arrests were directed

(1) Hauriou, *Précis de Droit Administratif*, 9th éd., p. 957.

against foreign ships the reason given was that the State-owned vessels were immune from arrest and this reason obviously was put forward in respect of foreign ships, only because our Courts admitted it for the vessels owned by the French State.

II. — Foreign Ships.

A) *Jurisdiction.*

The jurisdiction of French Courts for deciding claims directed against a foreign State, owner of a commercial vessel, depends upon the application of article 14 of the Civil Code. The jurisdiction of the French Court can be based neither on the place where the contract was passed, nor on the place of the delictum, nor on the arrest of the foreign ship. The rules of French law on this point are rules of jurisdiction. Their object is to establish which, among the French Courts, has jurisdiction, but they cannot serve for determining international jurisdiction.

Article 14 of the Civil Code, to the contrary, is a rule of international jurisdiction. It enables a French claimant to sue a foreign defendant before the French Court; therefore, whenever the claimant in the case is a Frenchman, he will be able to sue the foreign ship-owning State before the French Court. But here he will be faced by a rule which seems to be well established in practice.

Article 14 of the Civil Code is not applicable to the foreign debtor State. There would be an infringement of the sovereignty and the independence of that State if it were compelled to appear before a French Court

of Justice. The Court of Cassation decided, in a well-known judgment of the 22nd January 1849 (D. 49.1.9; S. 49.1.81) that « a Government cannot be subjected, in respect of the liabilities it undertakes, to the jurisdiction of a foreign State ».

Modern authors do not longer admit a principle of such rigidity. International lawyers teach that a distinction should be drawn between the acts which concern the carrying out of public services and the acts which merely relate to private interests (1). When a State works a commercial fleet in the same conditions as a private shipowner would do, why should it not be subject to the Courts which would have jurisdiction towards a foreign shipowner ?

The jurisprudence does not draw this distinction of principle between the acts of the State as public power and those of the State acting as a private individual. But it has resorted to different means in order to recognize the jurisdiction of French Courts. Can these means be used as regards the management of the commercial fleet ?

The jurisprudence admits the renunciation either explicit or implicit, by the foreign State in regard to immunity from jurisdiction. It considers as a renunciation the fact that this State should enter into a contract in France with a French citizen. We can therefore admit that for the carrying out of freight contracts, which have been passed in France on foreign State-owned ships with

(1) Weiss. *Traité de Droit International privé*. L. V., pp. 91 and follow. and the references quoted p. 107. Féraud Giraud. *States and Sovereigns before foreign Courts*, 2 vol., 1895; Gabba, *Jurisdiction of Courts towards foreign Sovereigns and States*. *J. Clunet*, 1890, p. 27.

French shippers, French Courts would have jurisdiction.

In a more general way it is considered that a State waives its immunity from jurisdiction, when it carries on an industry or trade outside of its own boundaries, for example, when it manages railways on French territory (1). Mr. Weiss states that « is to be considered as implying a renunciation to the immunity from jurisdiction, the presence within the territory of things which are especially and emphatically affected by the foreign State as a guarantee for its creditors » (2). When sending its trading ships to foreign ports or within foreign territorial waters, a State is carrying on trade abroad and affects more especially its ships as a guarantee towards its possible creditors (3).

Such affectation is all the more clear in Maritime Law as many creditors have a lien on the ship and that all the creditors of the shipmaster have a limited right of lien on the venture. This jurisprudence, founded upon renunciation to the immunity from jurisdiction, has not a very strong judicial basis and it would no doubt be better to declare with more frankness that the foreign State, when acting as a merchant, is to be treated as a private individual and not as a public person. Still this practise seems clear enough to allow the supposition that the jurisprudence would admit the jurisdiction of the French Courts against foreign States in the case of merchant ships belonging to a foreign State.

(1) Feraud Giraud, *op. cit.*, vol. I, p. 77.

(2) Weiss, *Traité*, vol. V, p. 110.

(3) However, such renunciation can hardly be presumed in the case where there is merely passage through foreign territorial waters, because the freedom of passage at sea is everywhere admitted.

Now, when this question has been especially submitted to them, the French Courts do not seem to frankly take this line. The Court of Appeal of Rennes by judgment of 19th March 1919 (*Revue Internationale du droit maritime*, XXXII, p. 345) declined to decide on an action brought by the owner of the French steamship *Angers* against Messrs Heyn & Son of Belfast, who were managing for account of the British Government the English s/s *Ungerford*, (the former German s/s *Lauterfels*) arrested as a prize. It is true that this ship had a cargo on board intended for the French and English Governments and the Court pointed out that it was employed « for purposes of political interest, for the needs of the national defence and without any intention of profits and of speculation ». The judgment of the Court of Appeal of Paris of the 16th March 1921 (*Revue Internationale du droit maritime*, XXXIII, p. 763) reverses a judgment of the Tribunal of Commerce of the Seine dated 26th December 1919 which had decided that it had jurisdiction in respect of disputes which arose on account of a carriage of goods by sea effected for the Office Suisse de Transports Extérieurs, but it points out that this transport of goods was effected in view of purposes of international interest and of interior policy excluding any intention of earning profits or carrying out speculations.

As far as transports of a purely commercial character are concerned, the foreign States generally do not decline the jurisdiction of Commercial Courts. The American Shipping Board namely has not raised before the French Courts the plea of immunity from jurisdiction. Mr. Renard states that « the foreign State carrying on trade

which should plead before the French Courts the exception derived from its immunity of jurisdiction, would be sure to fail » (1). Before the commercial Courts this may be so, because they do not view with favour any discussion as to their jurisdiction; but I am not sure whether before a Court of Appeal, the thesis of immunity from jurisdiction would not finally prevail.

Although this is more essentially a study on French law, we may incidentally mention that foreign Courts do not appear to be disposed to recognize their jurisdiction in respect of State-owned commercial ships. In Germany, the High Hanseatic Court by a judgment of 28th February 1921 given re the collision of the *Jonas Sell*, a German ship, and the *Ice King* belonging to the American Shipping Board, has decided that the American Government was entitled to avail itself of the immunity from jurisdiction; and this decision is all the more important as the Court admits the same exceptions to the immunity rule as the French practice, but states that a further exception cannot be admitted in favour of merchant ships, although it adds that such exception should be desirable (2).

As to England, the report of Sir Maurice Hill states that there could be no proceedings before the English judicature either by way of action *in personam* or by way of action *in rem* in respect of any supplies or of any salvage services rendered to the ships of a foreign

(1) *Rev. int. du droit maritime*, XXXIII, p. 875.

(2) See the summary of the decision : *Rev. Int. du Droit Maritime*, XXXIII, p. 868, with a note discussing the pleas put forward by Doctors Brandis and Stamman. See also : *Traité des Conflits*, 25th June 1910, S. 1912, 4, I, note of M. G. de Lapradelle.

State or in respect of damages caused by such ships, even when they are managed commercially.

In the United States the Act of 9th March 1921 provides that the United States' Government shall have the option to decline the jurisdiction of foreign Courts in respect of the vessels of the Shipping Board.

In the opposite sense we may quote the Egyptian jurisprudence. The Mixed Court of Appeal of Alexandria by a judgment of 24th November 1920 (Rev. Int. du Droit Maritime, XXXIII, p. 167) decided that it had jurisdiction in respect of a collision between the s/s *Sumatra* owned by the British Crown and s/s *Mercedes*. It dismissed the exception of non-jurisdiction which was raised because « the act has been done by servants of a foreign State in the management of its private interests and wholly independently of its political action »; and the judgment states « that the immunity from jurisdiction in such case would be a negation of justice » (1).

B) *Arrest* :

When the question shall be to enforce the judgment granting damages, will the creditor be entitled to arrest the foreign State-owned ships? The French Courts would certainly not admit it, because they would consider as impossible the presumption of a voluntary renunciation by the foreign State to its rights. The ordinary means of execution are not admissible against States; this is the rigid principle of our jurisprudence.

(1) The mixed Court of Appeal has decided in the same sense by judgment of the 9th May 1912. *Bull. de Législation et de Jurisprudence égyptienne*, vol. 24, p. 330.

As far as we are aware, there was never an arrest of execution attempted against a foreign State-owned ship; but conservatory arrests have been rather often attempted and this question has been debated very hotly in the various countries.

In France, such conservatory arrest would have no consequence whatever as to determining the jurisdiction of the Court. The sole result would be to compel the foreign State to give bail if it wished to free its vessel. This is a most excellent result for the creditor who will experience the greatest difficulties, in some cases, to obtain justice from a foreign State. As the conservatory arrest cannot be affected without the authority of the President of the Commercial Court, there seems to be no impediment why it should not be admitted against a foreign State.

Yet, the President of the Commercial Court of Bordeaux by a decree of 27th April 1920, has ordered the withdrawal of an arrest laid on the s/s *Englewood* of the United States' Shipping Board and on the ship's papers (1). The President of the Commercial Court of Havre declined to authorize the arrest of the s/s *Campo* belonging to the Brazils Federal Government (decree of 9th May 1919) and of s/s *Glewridge* owned by the United States of America (decree of 17th July 1920) (2).

Besides, the Shipping Board does deliver letters of guarantee, but only for possible claims by the Charterers. Such letter of guarantee is only an undertaking towards

(1) *Rev. Int. du Droit Maritime*, XXXII, p. 599. *Gazette des Tribunaux*, 30 May 1920. *J. Clunet*, 1920, p. 621.

(2) *Rev. Int. du Droit Maritime*, XXXII, p. 599. *J. Clunet*, 1919, p. 747.

the claimants on cargo. The Act of Congress of 9th March 1921 decides that, in the event of an arrest affected abroad or of a Captain being sued, the United States' Government may give bail, but is not obliged to do so.

In Belgium, the President of the Commercial Court of Antwerp thought himself justified in granting conservatory arrests on foreign ships. But the Brussels Court of Appeal has held such arrests as impossible (27th June 1921. *Jurisp. du Port d'Anvers*, 1921, p. 496) and the Antwerp Court has by itself altered its jurisprudence and declined to grant this arrest (9th February 1920. 2nd May 1921 and 5th July 1921). (*Jurisp. du Port d'Anvers*, 1921, pp. 593, 338 and 496).

In England, the Admiralty Court has quashed, in 1920, the arrest of the *Porto Alexandra*, a Portuguese State-owned ship which has been seized by the salvors (1).

The last Jurisprudence of the United States to the contrary seems to admit that foreign State-owned ships employed on commercial trade are liable to arrest. The South District Court of New-York, by two decisions respectively of the 1st October and 13th December 1921, admitted the arrest of the Italian steamer *Pesaro*. The reason which seems to have been decisive was that at the hearing of the case it was alleged, by the production of a legal opinion, that this ship might have been arrested in Italy and that the ships of the American Shipping Board would also be considered as liable to arrest by the Italian Courts. But this does not imply that the Supreme

(1) Report of Sir Maurice Hill, pp. 5 and 8.

Court would admit the arrest, if the case was laid before same.

The French jurisprudence, when deciding against the possibility of arrest, therefore, only follows the tradition admitted in most countries. There remains, however, the question whether it would not be advisable to innovate and whether the new order of things, in which the State becomes a shipowner, does not require new judicial rules.

CONCLUSIONS.

The International Maritime Committee has put very definite questions and inquired whether it is advisable to maintain or to abolish the immunities from jurisdiction. It has itself foreseen that perhaps some distinctions should be drawn.

Indeed, vessels of war are to be left outside of the scope of the draft convention. This is not because the system of immunity from jurisdiction is in this respect, satisfactory. In France thanks to the organization of the administrative jurisdiction and by favour also of the full independence of the Council of State, we have means of obtaining justice against the Sovereign, and all parties which have sustained damages caused by vessels of war, or those who have rendered to them salvage services, may obtain damages or remuneration. But it seems difficult, at least for the time being, to apply these principles to foreign war ships, all the more so, as foreign countries would not all be in a position to grant us a similar legal remedy.

Should we also leave outside the scope, as the Brussels Convention does, *ships affected to a public service*? This might perhaps be an advisable caution if we wish to arrive at an international agreement. But legally such solution is hardly satisfactory. If a training-ship or a cable-ship orders supply in a French port or causes a collision in French territorial waters, what good reasons should there be for not authorizing judicial proceedings against the foreign State before the French Courts? The French Association does not think so. It proposes to admit judicial actions in the event where the ship is State-owned, just as in the case where it is managed by the State. Such actions shall be brought before the Courts which would have jurisdiction in respect of actions directed against a foreign shipowner.

The draft which is put forward is intended for the actions *in rem* relating to the ships. But it is well understood that in French law there does not exist an action *in rem* against the ship. By this expression we refer to the action *in rem* admitted in certain countries.

The question of arrest of ships affected to a public service has given raise to more discussion. Some members of the French Association have contended that at least the conservatory arrest should be admissible. They alleged that it could not greatly inconvenience the foreign State which might get its ship free by supplying bail. After discussion it appeared inadmissible that a creditor should be entitled to stop a public service in order to get satisfaction, even if his claim should be proven. Nobody admits the possibility of arresting war ships. The reason which prevails in this instance is the

affection to a public service. Now, war services are not the sole public services. Besides, State-owned ships employed on public service are not numerous and consequently their liability will not very frequently come into question.

It must be noticed here that the prohibition of arrest bears no influence on the right of exercising legal actions. The jurisdiction of French Courts is based in fact on the French nationality of the claimant and not upon the arrest of the ship. In the countries where there does exist a *forum arresti*, the impossibility of arresting ships engaged on public service may entail more inconvenience.

If the arrest of State-owned ships is not admitted when such ships are affected to public service, such immunity must be extended to ships belonging to private owners but chartered by the State in view of carrying out the public service. The reasons are the same and the public service would be interfered with if the arrest were possible.

Finally the same rule is to be applied to State-owned cargoes intended for a public service of that State.

But the immunity granted to States requires a counterpart. If the creditor cannot arrest the vessel for surety of his claim, the State should at least be liable towards him for payment in the case of a judgment of condemnation, without being entitled to avail itself of the legal limitation of liability. The State is bound to make good the damage caused by the carrying out of public services and in respect of such damages it cannot be entitled to the limitation of liability which is admitted in favour of private shipowners. In the present French legislation

where abandonment is made in nature, such ship cannot be abandoned in most cases. But it must be stipulated in an emphatic manner that the State should never be entitled in the management of its ships to rely on the legal limitation of liability, in whatever manner it may be established.

In the case of commercial ships belonging to, or managed by, the State or of cargoes which are State-property, it is necessary to admit the jurisdiction of the Courts and the possibility of arrest, that is to say : that the concern run by the State should be treated in the same way as any ordinary commercial concern and such State-owned ships as ordinary commercial vessels. This condition is indispensable in order to avoid that the State concerns should not entail for those who enter into contracts with the State or those who suffer damage by its action, an intolerable condition. In countries, like ours, where does exist a commercial jurisdiction, it is desirable that the commercial Courts should be qualified to decide where the State is in question, but this is not a rule to be included into an international convention.

When thus creating a difference between ships affected to a public service and commercial vessels, it must be feared that the State would extend beyond any measure the notion of public service in order to elude the jurisdiction of foreign Courts. The fiction of public service is indeed very imprecise. The jurisprudence has shown, for example, that one may consider as the carrying out of a public service, the importation of merchandise intended for supplying a country. Therefore, it would be advisable to state with precision that all ships carrying

goods other than those employed for the purpose of national defence, shall be treated as commercial ships even where the State should carry for its own account a cargo owned by itself.

The conclusions can be summarized by the following rules worded in the form which they might take if they were inserted into an International Convention :

RULE I

The actions directed against a foreign State by reason of the management of ships owned or managed by it and also actions *in rem* relating to such ships (war vessels being excluded in both cases) can be brought before the Courts which would have jurisdiction for deciding on any actions against a foreign ship-owner or against a ship belonging to a foreign owner.

RULE II

War vessels and ships owned or chartered by a State and affected, in that State, to the carrying out of a public service cannot be subject to any arrest in another country for any cause whatever. On the other hand, the State cannot avail itself of the legal provisions limiting the shipowners' liability, in respect of the obligations arising from the management of such ships.

RULE III

Commercial ships belonging to a State can be arrested in all countries as a guarantee for the claims arising by reason of the management of such ships.

RULE IV

Shall be considered as State-owned commercial ships,

any vessels employed to the carriage of passengers or of goods, even if the State should affect them to the transport of cargoes belonging to it, except in the case where such goods are intended to the needs of the public services of such State.

RULE V

The cargoes belonging to a State can be arrested as a guarantee for the claims against such State arising by reason of their transport, unless they be intended to a public service of that State.

HAGUE RULES

FRENCH ASSOCIATION OF MARITIME LAW.

Resolution adopted the 16th March 1922 :

« The Association recommends the application of the
» Hague Rules 1921 by voluntary agreement of the par-
» ties and, being of opinion that their general application
» will only be secured by force of law, recommends that
» a diplomatic Conference be convened so that these
» Rules may be sanctioned by an international conven-
» tion and, if necessary be altered as will be deemed
» opportune ».

NETHERLANDS

MARITIME LAW ASSOCIATION OF THE NETHERLANDS.

The general meeting of the members of the Maritime Law Association of the Netherlands held at Amsterdam on the 15th May 1922 unanimously decided a reply as follows to the questions contained in Nr. III of the circular-letter of the International Maritime Committee dated January first 1922.

International Code on Freight.

The Association is of opinion that it is not advisable to continue the efforts towards a complete codification of the laws on Freight.

It is not probable that within a near future, an agreement could be arrived at in this matter and it is equally improbable that a complete Code would be accepted unanimously by the Governments of the sea-trading nations.

Besides, such work would to a great extent be of no practical use since unofficial Conferences between those interested in the more important navigation-routes have led in most cases to an agreement on the more essential questions. Consequently it seems more advisable to limit our efforts to some definite special points amongst which the B/L clauses appear prominently.

Negligence Clauses in Bs/L.

In regard to this we might mention :

1) that negotiations are being carried on between groups of shippers and shipowners Associations in the Netherlands, which negotiations will probably result in the adoption, by mutual agreement, of the Hague Rules for the most important shipping lines.

The only difficulty appears to be in how far other countries will follow in the same wake.

2) that there is no necessity of altering the Netherlands' legislation in order to render possible the adoption of the Hague Rules since that Legislation has proclaimed the principle of liberty of contract in matters of Freight;

3) that consequently there is no impediment of a legal nature which would prevent such adoption;

4) that the Association is of opinion that for the time being it is not desirable to bring about an international convention on this matter since the result of such Convention would be to cristallize the Hague Rules in their present form by means of an official document, which it is always difficult to modify; whereas it is more advisable first to ascertain how the Rules will work in practice, in order to examine whether and to what extent the said Rules ought to be amended.

Immunity of Public Ships.

At a meeting of the Netherlands Maritime Law Association held on May 15th, 1922, the immunity of Public Ships was a subject of discussion and at the instance of

the Comité Maritime International it was resolved that a report be submitted to the Bureau Permanent on the State of the Law in Holland as regards public maritime property and detailing the facts concerning the employment of ships by the Government of this country.

We have been instructed by the meeting to draft that Report and in accordance with these instructions have investigated the questions as set forth in the Questionnaire issued by the Bureau Permanent. In addition we venture to offer a few observations on the desirability of international agreement for the alteration of the existing maxims upon the strength of which immunity is usually claimed.

I. — Vessels owned and/or employed by the State of the Netherlands.

a. Ships owned by the State and employed for purposes of defence only.

The ships of the Royal Navy and of the Indian Military Marine Force, with the exception of those mentioned under *b.*, fall under this head. For the purposes of the present discussion the vessels under the command of the War Department and employed by the Torpedo Service and the Pontoon Bridge Train should be classified with the Navy.

b. Ships owned by the State and employed partly for purposes of defence, partly for mercantile or other peaceful purposes.

In times of peace a certain class of vessels belonging to the Royal Navy are employed for the purposes of

surveying, hydrography, and protection of the fisheries. In the event of mobilization their destination will be changed and the ships will be manned and equipped in a different way. They are never employed for ordinary commercial purposes.

c. Ships owned by the State and employed for commercial and other purposes only.

Such are, in Europe, the vessels of the Pilotage and Coast Light Services and several ships resorting under various Departments and employed for the Inspection of Shipping and Fisheries, the Police Supervision and the Revenue Control. Over and above these the vessels used for the construction of dykes, bridges, and coast-defence works executed by the State, e. g. the reclaiming of the Zuyderzee, should be brought under this head.

In the East Indies the Government employs a number of vessels under the collective denomination of « Government Marine ». Next to Police Supervision and the repression of pirates and smugglers these ships are by order of Government used for various purposes including scientific research. Another class of vessels is used for the Coast Light and Beacon Service and a great number of tugboats and floating working stock is continually in the service of the Government. Neither the Government Marine nor the other ships mentioned are employed for ordinary commercial purposes.

The Government of the West Indies owns quite a numerous fleet of vessels, built for the sea as well as for inland navigation, and employed for the carriage of goods and passengers. Means of transport are absolutely wanting in a large part of the territory, especially in the

Colony Surinam, and the State has to meet this want with public conveyance by water in the same way as in some other parts of the Kingdom railways and tramways are run by the Government to compensate the want of private enterprise. In our opinion these vessels are exclusively employed for commercial purposes.

It is a matter for consideration whether the mail packets owned by the Provincial Government of Zeeland and maintaining a regular service for passengers and goods between the islands forming part of that Province should be brought under the category of public vessels employed for commercial purposes only.

d. Ships owned by the State but employed by private corporations or persons.

Such ships do not exist in Holland.

II. — Ships owned by Private Corporations or Persons and employed by the State.

We have been informed that a great number of small vessels, tugboats and floating stock have been hired by various Departments. In the event of mobilization their number would be increased as the Government has made contracts with the owners of vessels of every description which at such a time will be placed at the disposal of the commanding officers.

III. — The Law and Doctrine.

The leading authorities on International Law in this country generally are agreed that there exists an *indirect* immunity of foreign public ships, inasmuch as it would

be impossible for the officers of the Court to seize or arrest such ships otherwise than with the permission, or when executing a sentence, of the Court. Neither that permission nor that sentence, however, can be granted or pronounced by the Court if, in that way, it would assume jurisdiction over a foreign Sovereign State. A foreign Sovereign State, except by its will, cannot be made subject to the jurisdiction of a Dutch Court as a consequence of its absolute independence and of the international comity which induces every Sovereign State to respect the independence and dignity of every other Sovereign State. There are a few exceptions to this rule but they do not affect the position of the foreign State as a shipowner.

In this connection it should be pointed out that this immunity is not an application of the rule that the State cannot, against its will, be made subject to the jurisdiction of its own Courts. The State of the Netherlands may be impeached in its own ordinary Courts of Justice and has the position of an ordinary litigant in proceedings for collision damages, salvage, towage, and claims arising out of the carriage of goods. It makes no difference whether the State was using its own vessels in public service or otherwise.

The Supreme Courts of Justice in Italy and Belgium have made it a rule to discriminate whether proceedings against a foreign State have been taken in respect of claims arising out of actions « *jure imperii* » or « *jure gestionis* », and from this conception it would seem to follow that the principle of immunity of jurisdiction

would not apply to Sovereign States owning ships employed for ordinary commercial purposes.

This distinction, however, although originally made by van Bynckershoek, has been rejected by the greater part of the Dutch international jurists of our days.

Next to this indirect immunity of State-owned maritime property there exists a *direct* immunity which it would be possible to claim, should the case arise that, owing to voluntary submission or there being found an exception to the aforesaid rule, the Court should be competent to entertain the suit against the foreign government or permission to arrest has been given. This direct immunity is founded upon the principle of the Law of Nations that, in the peaceful intercourse between the States, no obstacle should be put into the way of a Government bent upon the execution of the task it has set itself, and, consequently, that States should not hinder each other from using the property they need for the accomplishment of such a task.

It is generally agreed that it must entirely be left to the judgment of the State itself how far the field of its activity should extend and whether such activity ought to be considered as part of its public service or not. If, therefore, a ship be claimed by a foreign State as employed in its public service, and a statement to that effect be made in Court, such a statement would be conclusive and could not be inquired. And as the most widely differing views as to the sphere of action of a State are at present entertained by the various Governments of the civilised countries, there is nothing really to mark a limit outside of which honest claims for public property could

not possibly be made. So there seems to be no reason why, in practice, the immunity of foreign public property should not extend to State merchant vessels not excluding vessels privately owned but employed by the Government.

The same principles apply to State-owned cargoes. As to cargoes privately owned and carried by the State no immunity is recognised unless the seizure or arrest of the goods should implicate the immunity of the ship.

The Court will have to consider the aforesaid rules of the Law of Nations under Art. 13a of the Law defining General Principles of Legislation, 1917, which runs as follows : « The jurisdiction of the Court and the execution of sentences and public instruments are limited in accordance with the recognised principles of the Law of Nations ».

If international agreement on the abolition or modification of the immunity of public ships could be reached, it would not be necessary to modify the Law quoted as it only refers to the principles of the Law of Nations but does not indicate how far these principles extend.

IV. -- The Cases of the « Ville d'Ostende » and of the « Hvalen ».

There have been only a few occasions on which the immunity of foreign ships has come under the notice of the Dutch authorities.

In 1903 an attempt was made to seize the training ship « Ville d'Ostende », belonging to the Belgian Pilotage Service, at the time in Flushing-harbour. The seizure was attempted to enforce payment of a sum awarded

from the Belgian Government in a suit brought before the Dutch Courts, the Belgian State having voluntarily submitted to foreign jurisdiction.

In 1909 a similar attempt was made against the Swedish submarine « Hvalen », in Ymuiden-harbour. The case arose from a collision with a Dutch vessel.

In both instances the officers in command of the ship not only entered a formal protest against the attempted seizure but threatened forcible resistance. The Government interposed and the officers of the Court were brought to understand that by persevering they would go beyond their powers.

V. — Conclusions.

It has been a matter of consideration whether it would be desirable either to abolish or to modify the aforesaid rules of International Law under which immunity should be granted.

Referring to our statements as to how far the Government of our country has engaged in trade, we beg to point out that it has by no means exceeded the limits which, with respect to shipowning and sea-carriage of goods and passengers, used to be observed by States in pre-War times. As no difficulties of any importance have arisen during that period and, in fact, the question whether there existed any abuses which should be done away with, was never urgent, it would seem to follow that, as far as this country is concerned, there is no need of any alteration in the present practice.

Keeping in mind, however, that other States have

embarked on quite a different course and that a considerable percentage of the tonnage of some countries is owned or employed by the State for commercial purposes only, we agree that there exist grave objections to the immunity of these vessels and that it is in the interest of international trade to set certain bounds to claims to that effect.

There has been some discussion as to the immunity of war ships and it was pointed out by a minority that the time had come to consider whether that privilege was not a thing of the past. But the majority held that it would greatly endanger international agreement on the point of immunity if the question of war vessels should be included and, moreover, that the dignity of the State was directly concerned in the treatment of ships belonging to its Navy. War vessels have given very little trouble in the past and, we trust, will continue to do so in the future.

Confining ourselves to vessels engaged in trade we are prepared to support any proposal tending to international agreement : *a.* that every State engaged in trade should submit to the jurisdiction of every other State in matters relating to trade and should have the same position as an ordinary litigant, and *b.* that its commercial maritime property, as regards immunity, should be placed on the same footing as private maritime property under the ordinary mercantile Law.

We should add that, in our opinion, there remains in most cases the preliminary question whether, in fact, the property concerned should be considered as used for commercial purposes or not. A minority gave as their

opinion that it should not be left to a national court of justice to decide on this point and that it would be preferable to leave questions of such vast importance to a Supernational Court.

G. VAN SLOOTEN Azn.

Reporter.

ITALY

ITALIAN ASSOCIATION OF MARITIME LAW

Immunity of Sovereign States.

State-owned ships can be divided in the following classes :

- | | |
|--|--|
| a) Ships intended for national defence . . . | { War ships or vessels assimilated thereto. |
| | { 1° Safety police (Ships of the authorities in ports, and to ensure order). |
| | { 2° Sanitary police (Ships of the public health). |
| b) Ships intended for police purposes . . . | { 3° Financial police (Customs-ships). |
| | { 4° Ships employed for signalling and lighting purposes on the coast. |
| | { 1° Ships employed for building, dredging & maintainance of ports. |
| c) Ships used for the social activities of the State | { 2° Ships used for pilotage and assistance to shipping. |
| | { 1° Ships employed for public transport services. |
| d) Ships intended for the economical activity of the State | { 2° Ships managed by the State acting as a real shipowner. These are chiefly the vessels obtained by acts of war (prizes, requisitions, &c.). |

This division into classes is more of a theoretical than of a practical character in regard to the question under discussion. For the purpose of the solution to be given to the queries, it will suffice to distinguish merely between ships employed on public service and those used for purely commercial ends.

* * *

Prior to 1865, when the great task of legislative unification was accomplished in Italy, any disputes between the State and private individuals were exclusively referred to the administrative jurisdiction and had to be submitted to the Claims department of the Administration.

The law of the 20th March 1865 (schedule E) reversing the old theory of administrative immunity — the origin of which is to be traced chiefly to the exaggerated extension which the lawyers at the time of the French Revolution gave to the principle of the separation of Powers, — suppressed the Administrative Courts of Claims and granted to the regular Courts jurisdiction in respect of any action against the State that was based upon the infringement of any right. This was done without any distinction between the acts of the Power as such, and the acts of management of the public administration.

Consequently, it is beyond doubt, in Italy that, where a warship comes into collision with a merchant-man, or where a merchant ship affords salvage services to a State-owned ship, any disputes which may arise thereout are referred to the decision of the regular Courts of Justice. *Eodem foro utuntur principatus et libertas.*

It is equally beyond doubt that such judicial connections like any other which may arise out of any dispute

in respect of the rights of a private individual towards the public administration, are subject to the same laws which regulate legal connections coming into existence between private individuals, with the only exception of such rules as are inconsistent with the very nature of State-owned ships.

For instance, warships, as being things which are part of the public property of the State, cannot be made the subject of abandonment, nor can they be burdened with liens, or arrests, &c.

The principle that disputes between the State and private individuals are subjected to the same laws as those between private parties, has been recognised, in maritime law, in an emphatic manner by the law of the 5th April 1908, Nr 111, according to which the Postal and Commercial Maritime Conventions have been approved. This law grants to the Administration of State-Railways the right of running navigation services between the Continent and the islands; and art. 4 provides that the management of such navigation services by the State is regulated by the same provisions which are in force for the mercantile marine, in so far, of course, as they have not been altered by that law.

The sole derogation from common law is to be found in the next following article, providing that the ships employed in the navigation services carried out by the State, are not liable to conservatory arrest, nor to the arrest for execution, nor to judicial action.

This exception to the principles of common law is obviously admitted owing to the postal service which such ships are carrying out; but it cannot be extended to

vessels which are employed for the exercise of the economical activities of the State : the only object was to prevent that the mail service — which is a service of public order — should be interfered with by means of arrests of the ships, whether for conservancy or execution.

To sum up : as regards the jurisdiction for actions directed against the State in respect of obligations which may arise against ships owned by that State and in favour of private parties, it is beyond doubt that such actions do come within the scope of the regular Courts of Justice, even where warships are concerned. And as to the law which should be applied, it is private maritime law which should govern such actions, even towards the State, in so far as the provisions of such law are not inconsistent with the special character of warships.

State-owned ships affected to a public service are not liable to be arrested and cannot either be subjected to a process of arrest for execution.

With regard to merchant vessels belonging to the State, there is nothing in the present Italian system of law which would prevent such ships from being arrested for purposes of conservancy or execution.

After this brief summary of the principles which regulate in Italy the management of State-owned ships, the Italian Association of Maritime Law is of opinion that its views as to the international position should be expressed as follows :

I

Actions against State-owned ships should be submitted to the Court which would have jurisdiction by virtue of

the principles regulating the matter under international law.

And as the question of conflict of jurisdiction always involves great difficulties, it would be advisable — as long as the ideal solution of an International Court of Justice to decide on all disputes in matters of Collision and Salvage, is not arrived at, — to establish a set of rigid rules as to jurisdiction, especially in regard to questions of Collision, on the basis of the studies which have been undertaken already on the subject at the Conferences of Hamburg and Amsterdam.

II

As to the law which ought to be applied, this should be the local law of the proper Court to which the case is submitted. In regard to disputes arising by reason of a collision or of salvage services between ships belonging to States which are bound by the Brussels Conventions, the provisions of the said Conventions should be applied. Hence it will be necessary to abrogate the articles (namely article 11 of the Convention on Collision and article 14 of the Convention on Salvage) which exclude from the scope of the said conventions any ships exclusively affected to a public service.

III

It would be necessary to proclaim the prohibition of subjecting to any arrest, whether for conservancy or for execution, warships and ships employed on public service. Such immunity should be extended even to ships owned by private parties but affected to a public service (Activity of the State for police purposes and for its social activity).

IV

Merchant vessels belonging to a State or chartered by such State, should be subjected to the same system of law as private-owned ships, even in the event of their being employed for the carriage of merchandise belonging to the State.

Additional remark.

In order to avoid the difficulties resulting from the uncertainties and hesitations of the law, doctrine and jurisprudence in regard to the legal actions brought against a State, it would be advisable to fix by means of an international agreement, either who shall be the person to whom a writ of process can be served, or what procedure shall be followed in respect of the issue of such writ. And by way of international agreement also, the various States would undertake to carry out, without any compulsion being required, the decisions of foreign Courts, when such decisions, of course, have been completed by the formula of *exequatur* through the proper judicial authority of the State against which such judgments have been given. This implies necessarily that such judicial authority shall have to examine whether the foreign judgment has been given without encroaching upon the prerogatives which are essential and inherent to the proper working of any form of judicature, and with due respect to international public order.

Prof. FRANCESCO BERLINGIERI,
Reporter.

DENMARK

DANISH ASSOCIATION OF MARITIME LAW.

In reply to the Questionnaire of the Permanent Bureau, we beg to submit the following remarks :

International Code of Affreightment.

In the Danish Association's opinion, it would certainly be desirable that international rules could be introduced on all important questions relating to freight; but they think that, owing to the great difficulties in arriving at an agreement on all the questions incidental thereto, and in view of the considerable time required for attaining this object, it seems preferable for the time being to limit our efforts and to endeavour to bring about uniform regulations on some of the most important questions only.

A.

As more important questions, we would suggest :

I. The question of bills-of-lading and especially of through-bills-of-lading.

II. The question of liability in respect of general cargoes laden on the berth.

As mentioned at the Antwerp Conference, the Governments of the Scandinavian countries (Finland, Norway, Sweden and Denmark) have instituted in the years 1918/

1919 special Commissions for the purpose of studying the alterations which would recommend themselves to the now existing maritime legislations. The present maritime laws of Norway, Sweden and Denmark, which all three date back to 1890, are almost indetical in their text. The object of the Commissions is to examine in common how those legislations can be adapted to modern requirements, whilst maintaining at the same time, as far as possible, the existing harmony between these three legislations. The Commissions and their sub-Committees have up till now accomplished a considerable amount of labour on the questions of freight-law, but they have not yet proposed a final draft. A sub-Committee is sitting just at present and it is expected that in July next a plenary meeting will be convened where it is hoped a further step will be made towards a definite solution.

B.

The provisional results obtained hitherto by the Scandinavian Commissions and to which the Danish Association of Maritime Law must refer in regard to the aforementioned questions, are :

Ad. I, *a*) To provide common rules for bills-of-lading in respect of goods shipped, for bills-of-lading for goods received for shipment and also for through-bills-of-lading.

b) Not to enact any legislative provision in regard to those who may issue and sign the bill-of-lading.

c) To leave upon the Owner the liability, towards the bona fide purchaser, in respect of the accuracy of the

description of the goods in the bill-of-lading, when there is no reservation or clause in the document itself, or when the consignees are not advised thereby that the indications mentioned have not been checked by the party who issued the bill-of-lading.

In regard to through-bills-of-lading, it was proposed by the Commissions

a) that the party who issued the through-bill-of-lading (whether it be the first carrier or a subsequent carrier) should be liable for the whole voyage, whereas the other carriers would only be liable in respect of any damage that might occur whilst performing their share in the carriage of the goods.

Ad. II. As to the liability in respect of general cargo on the berth, the Scandinavian Commissions proposed that the now existing liberty of contract should be restricted in this sense that the shipowner shall only be allowed to limit his liability by inserting a reservation to the effect that he shall not be liable for loss or damage caused by the default or negligence in the navigation or the manœuvring of the ships.

* * *

The Danish Association of Maritime Law at the same time deems it advisable to mention a few other points on which the Scandinavian Commissions have reached conclusions which do not concord with the decisions of the conferences of the International Maritime Committee, or with the proposals framed by the Commission which has met in London in April 1914.

Distance-Freight (freight pro rata itineris).

1. The Scandinavian maritime law Commissions quite agree to waive the ancient Scandinavian method of computing the distance-freight according to the length of the voyage effected as compared with the whole voyage; yet, in accordance with a Dutch draft, they are of opinion that where part of the voyage has been effected, the shipowner is entitled to an amount equal to the profit which the charterer has derived through the fact that such part of the voyage was effected. The Commissions however have not finally drafted the wording for that rule. One of the wordings suggested is to the effect that distance-freight is equal to the amount which would remain of the original freight after a reduction calculated according to the proportion between the ordinary freight and the freight for the remainder of the voyage, and the ordinary freight agreed for the whole of the voyage agreed upon. Another proposed wording is, that distance freight is the balance which remains of the original freight after deduction of the expenses which might reasonably be charged for the continuance of the carriage of the goods until their destination.

Lump sum Freight.

2. Neither did the Scandinavian Commissions think that they could accept as a general rule the regulations proposed by the London Commission namely where it is said that Lumpsum freight is always due whether or not the goods are delivered at the port of destination. The agreement for a lump sum freight cannot always be

considered as a hiring of the ship. The object of such agreement can equally be the desire that the whole amount should be paid, even if the whole available tonnage of the ship should not be used. Another reason may be that parties do not wish to incur the trouble and the expense resulting from a measurement or a weighing of the cargo put on board.

Prepaid Freight.

3. The Scandinavian Commissions did not think they could accept the general rule that prepaid freight and advanced freight shall not be recoverable, even though the goods are wholly or partly lost. The contrary rule is more natural and it accords better also with the principal rule as to freight. It is more apt also to ensure an effective control of the Captain on the cargo he receives. It is especially important for the traffic by small ships, for which generally the freight is not covered by insurance.

Lay-days and Demurrage.

4. Whilst in regard to the lay-days, the Scandinavian Commissions are inclined to abandon the ancient rules embodied in the maritime laws of Scandinavia and propose, in agreement with the draft of the London Commission, that unless otherwise agreed, lay-days shall represent a reasonable delay which is to be computed for the loading cargo, they however wish to maintain the rule that, where there is no agreement to the contrary, there should always be a demurrage-delay equal to half

of the lay-days, and that unless otherwise agreed, the allowance therefore shall be computed in proportion to the amount of freight. This rule is perhaps peculiar to the Scandinavian maritime legislations, but it was thought right to put up a stand for its maintenance, because there always may arise cases where, without any default on his part, the Charterer cannot complete the loading within the usual delay, and in such instances, it would be much more inconvenient for him if the ship were to sail immediately on expiry of such delay, than if the ship were to remain in port for some additional period subject to a reasonable compensation being paid.

Cancellation.

5. The Scandinavian Commissions thought it advisable to propose the suppression of the rule which existed in the Scandinavian maritime laws that in some cases the Charterer is entitled to cancel the contract against payment of one half or of another portion of the agreed freight, which rule was adopted at the Copenhagen Conference of the International Maritime Committee. The Scandinavian Commissions thought it more equitable to abide by the ancient English rule according to which the Charterer has to pay damages to the shipowner. This was found more equitable than the reasons put forward in favour of the opposite rule, — the plea of clearness and simplicity of application have no longer the great importance attributed thereto formerly.

Negligence Clauses in Bills-of-Lading.

I

The Committee of the Grosserer Societet (Corporation of Merchants) of Copenhagen, an institution which in several respects is the equivalent of the Chambers of Commerce in other countries, and whose chairman M. Ernest Meyer, merchant, has already devoted his labours to the introduction of the Hague Rules in Denmark, wrote on the 13th. January last to the Danish Steamshipowners Association a letter by which that Committee, referring to the Maritime Conference held in London in November 1921, invited the Shipowners to adopt the Hague Rules 1921, in their bills-of-lading. A similar letter was addressed to the two most important of our navigation companies, « Ostasiatisk Compagni » and « Det Forenede Dampskibsselskab ».

The Association of Danish shipowners, in their reply of the 26th January, advised the Committee that the regular Liner Companies could not decide finally on this question as long as it was not definitely certain whether the important English Companies and others intended to adopt the said Rules. The shipowning concerns which run tramp steamers were generally bound to accept the charter-parties issued by the Chamber of Shipping's Documentary Committee and by the Baltic & White Sea's Documentary Council, and those shipowners reserved their decision until they could ascertain whether these two institutions intended to introduce the Hague Rules 1921 into the charter-parties they issue.

The East Asiatic company anticipated that the Hague Rules would be introduced at once into bills-of-lading for its line to the East, because it was supposed that the steamship companies with whom the Danish company is working and who all are members of the Straits, China & Japan Conference, would adopt the Hague Rules. However this latter shipping conference has decided subsequently to postpone the date for introducing the Hague Rules and the Danish company has of course to follow this decision. Det Forenede Dampskibsselskab replied that the opinions in regard to the introduction of the Hague Rules were so far quite unsettled in the various countries and that for that reason the company has not been able to apply them.

The question of the introduction of the Hague Rules was on the agenda-paper of the 3rd Scandinavian Commercial Conference in Christiania, which met on the 13th and 14th September 1921. At that conference, where the present chairman of the Grosserer Societet read a paper on the subject, a resolution was passed in favour of the adhesion to the Hague Rules.

A similar resolution was passed by the 2nd Congress of Scandinavian Marine Underwriters which took place a few days ago in Copenhagen.

II

As to the question what are the provisions of the Danish legislation which would have to be altered in order to bring it into harmony with the Hague Rules, we beg to observe that the Hague Rules do contain namely two

groups of provisions which do not accord with Scandinavian maritime law. The first group is that which is contained in article III, paragr. 1, 2 and 8 and also in articles IV, V and VI, as regards the liability of the Captain in respect of goods which he has received for shipment. The other group is that which is expressed more especially in article IV, N^{rs} 3°, 4° and 5° and which deals with the issue of the bills-of-lading and their importance.

As to the first group — the most important of the Hague Rules, — which established a distinction between the commercial negligence and the nautical negligence, and lay an absolute liability on the shoulders of the Carrier for the first class of negligence, whereas they grant him full exemption for the latter negligences, — it would probably not be very difficult to obtain that the Danish law should be altered in the sense of the Hague Rules, provided however that such rules should become international rules and that they should only apply to general cargo loaded on the berth, but not to full cargoes.

Whereas there would thus be no great objection to introducing some alterations in the sense of the Hague Rules in the provisions concerning the liability, it would on the other hand be very difficult to introduce into the Scandinavian maritime laws the provisions of the Hague Rules relating to the bills-of-lading and their value as documents of title.

Articles 7, 144, 145, 146 and 147 of the Scandinavian maritime legislations do contain some rules providing that the Captain (and the shipowner) shall be liable towards the consignee who is *bona fide* purchaser of a bill-of-lading, for the accuracy of the statements made in

the bills-of-lading in regard to the description of the goods, and if the bill-of-lading should contain any statements which the Captain could not verify, he would only be able to relieve himself from liability by means of a special clause in the bill-of-lading. He is bound to insert a clause in the bill-of-lading whenever he loads goods which are apparently damaged or badly packed. As already stated, the Scandinavian Maritime Law Committees have maintained the main principles of these laws.

The legal provision that the *bona fide* purchaser has a right to rely upon the statements of the bills-of-lading as to the description of the goods, so that, where such statements prove inaccurate, he is entitled to seek his remedy against the Captain and the shipowner (who may in his turn fall back upon the shipper when the latter has inaccurately described the goods) is in harmony with the spirit of the provisions of our legislation as to the rights of the *bona fide* purchaser towards the signatory of other negotiable documents. These rules, the aim of which is to facilitate the transaction of negotiable instruments, lay upon the party who issues them, the onus of liability for all statements contained therein. — are very ancient in Danish law, and they were always considered as being fair and sound. We are inclined to consider that on this point, our legislation as to bills-of-lading is more favourable than other laws, which do not adopt as clear and plain a view for ensuring the safety of commercial transactions.

III

A reform which would render possible the voluntary adoption of the Hague Rules would certainly be very

difficult in Denmark as regards the above-mentioned rules contained in articles IV, N^{rs} 3 to 5 : but there would be no other impediment.

IV

It would be most fortunate if an international Convention could be secured on the subject.

Copenhagen, 12th June 1922.

For the *Danish Association of Maritime Law*,
J. KOCH.

Immunity of Sovereign States.

In reply to the questions propounded by the International Maritime Committee in their circular-letter dated 31st March 1922, in regard to the Immunity of Sovereign States, the Danish Association of Maritime Law beg to state as follows :

I. *a)* The State of Denmark does possess ships employed for war purposes only.

b) The State also owns ships which may be employed for purposes of war, but which, in peaceful times are employed for soundings, or as training-ships, or for inspection and other purposes.

c) The State owns a certain number of ships exclusively employed for peaceful purposes only. It owns steam-ferries employed for the carriage of mails, of passengers, of goods and of railway material from one island to another, or from the Danish isles to the Continent or abroad. The State further owns other postal ships, and vessels employed on inspection of the fisheries, on sea-

exploration or dredging, &c. and it finally owns ships employed for commercial purposes. (Trade with the Groenland colonies is carried on by means of merchant-ships owned by the State).

II. The State has only to a very small extent, employed privately owned ships.

III. The Danish law does not confer any immunity to State-owned vessels or to ships employed by the State.

The Constitution of the 5th June 1849, as well as the Constitution, now in force, of the 5th June 1915 contain provisions in virtue of which the Courts of Justice are as far as possible independent from the Executive Power, and empower the Courts emphatically to judge on any questions involving a limitation of the authority of the public administration. It is written now here, but it has always been recognised as an altogether natural fact, that when the State carries on any enterprise which the private citizens themselves may equally undertake — such like navigation or others — it is subjected to the same rules of common law and may be sued before the ordinary Courts of Justice.

When a State-owned ship has been into collision with a privately-owned vessel, or has been given salvage services, the Ministry or the authority who control the ship may be sued and ordered to pay damages, in the name of the State. This actually takes place as well for warships as for any vessels employed for other purposes.

There is in the Danish Constitution only one rule of immunity, namely where it is said that the King personally is not liable. For instance, if he personally owns

a yacht, which causes damages or has been salvaged, he cannot be sued therefor before the Courts of Justice.

IV. As an example of cases which have been submitted to the Maritime and Commercial Court of Copenhagen and were directed against the State, we may quote the case N^o 82/1903; this was an action brought by the owners of the Norwegian ship *Deramore* against the General Management of State-Railways, by reason of a collision between the *Deramore* and the steam-ferryboat *Kronprins Frederik*. By judgment of the 5th December 1904, the General Management of the Danish State Railways was ordered to pay compensation to the Norwegian ship. Further there is the case N^o 25/1920 which was an action brought by the Captain of the Norwegian schooner *Olga* against the Danish State Railways, by reason of a collision between the s/v *Olga* and the steam-ferryboat *Christian IX*. By judgment of the 9th March 1920, the Danish State-Railways were ordered to pay damages.

As examples of cases in which warships were concerned and which were dealt with by the ordinary Courts of Justice, we may mention the case N^o 78/1900; this was an action in which the Owners of the British ship *Alice Otto* had sued the Ministry of Marine before the Maritime and Commercial Court of Copenhagen by reason of a collision with the Danish armoured cruiser *Odin*. By judgment of the 17th July 1901, the Ministry of Marine was ordered to pay to the owners of the *Alice Otto* a considerable amount of damages. Further, there was the case N^o 87/1904 : this was an act directed by the Salvage Association of Emil Svitzer against the Danish Ministry of Marine, for obtaining the assessment of the salvage-

remuneration to the raising of the torpedo-boat *Havhesten* which had been sunk. The salvage remuneration was assessed by judgment of the Maritime and Commercial Court on the 25th January 1905; appeal against this judgment was tried before the Supreme Court who, by order of the 26th July 1906, confirmed the former decision.

V. In Denmark, the feeling that it is but fair that State-owned ships should be treated before the Courts in the same manner as privately-owned vessels, is so deeply rooted that, in our opinion, the contrary rule according to which the State should not be subjected to the jurisdiction of its own Courts against its will, would not appear as affording sufficient security.

VI. The Danish State does not claim either any immunity in respect to maritime liabilities as to cargoes which are State-owned, or which are privately owned and carried by the State. Possibly however, it may be contended that it would not do to arrest State-owned property, as the arrest implies to some extent the presumed insolvency of the party against whom the arrest is resorted to. As far as we are aware, it has never been attempted to arrest State-owned ships or any other property belonging to the State.

VII. The ordinary State-owned ships are exempt from the operation of ordinary revenue laws; but if such ships are trading to Danish ports, they are subject to the ordinary port-dues.

Copenhagen, 12th June 1922.

For the *Danish Association of Maritime Law*,
J. KOCH.

FIUME

Immunity of Sovereign States

R E P O R T

OF

Dr. ANTONIO VIO, SR. of Fiume (1)

As the City of Fiume, to which I belong, has become only recently a free and independent State by virtue of the Peace-Treaty of Rapallo, I cannot, of course, deal with the questions 1, 2, 3, 4, 6, and 7 of the circular letter of 31st March of this year.

Therefore I will confine myself to express my modest opinion on the question sub Nr 5.

As to this, a distinction should be drawn between war ships of the State within whose territory is located the Court before which the case is tried, and the ships belonging to a foreign State.

I. — The State whose Court has to judge cannot, for any disputes caused by its own war ships, avail itself of the immunity, because everybody must be entitled to enforce his proper rights before the judicature of the debtor-State and the latter is bound to recognize the authority of the Courts which it has itself instituted in order to safeguard right and justice.

(1) Translated from the Italian.

When there arises between a private individual and the State a difficulty which cannot be solved through the administrative channels, the private individual must have the possibility of bringing his claim before the proper Court of the defendant State.

A State which should not admit this principle, would not indeed be a judicial State. As to the question by whom it ought to be represented at such proceedings, this will, of course, depend upon its internal organization. The judgment of a Court of the State itself must be respected by such State and enforced, failing which such Court would have no means to give effect to its own decisions.

The applicability of the provisions in respect of guarantee and bail must therefore be excluded in any case, since the State must remain a solvent debtor and cannot be impeded in the free disposal of its instruments of war.

II. — In the case of proceedings against foreign war ships, the conditions of fact are altogether different. The war ships represent the sovereignty of the State as such and cannot be submitted to any measure of enforcement on the part of foreign Courts; besides, the latter would have no means to enforce such execution.

It would be so much more impossible to recur to measures of guarantee against foreign war ships.

If the opposite principle should be adopted, diplomatic incidents would be unavoidable and I believe that no State would accept such solution, even if it were mitigated by the clause of reciprocity.

Where private individuals have a justified claim by reason of obligations incurred by foreign war ships in territorial waters or within the boundaries of the State

to which the individuals belong, shall the latter be deprived of any means of obtaining justice ? Certainly not. But how then will they be able to enforce their rights ?

It is beyond doubt that the duty of every State is to look to it that rights of its citizens be protected. Therefore, it must be open to everyone to turn to its own Government and claim its assistance in order to obtain from the foreign State, through diplomatic channels, that what is his due.

In case the foreign State should not admit the claim of an individual or think it exaggerated, then the creditor ought to have the possibility to apply to the proper Court of its own country in order to have his claim against the foreign State admitted and its amount ascertained.

But to whom should the writ of claim be notified in such case? To the representative of the foreign State accredited with the Government of the State where proceedings are introduced. Such State will, of course, be at liberty to have its rights defended before the Court by a local lawyer of its own choice.

It might perhaps be objected : And if the foreign State should nevertheless refuse to carry out the judgment given against it by the Court of the State, what remedy would there remain for the individual debtor ? To this we reply, first, that it is not admissible that a civilized State would decline to recognize a judgment given by the Court of a friendly State in a case which has been defended regularly. But even if such were the case, the State of the Court which has given the judgment ought to indemnify its own subject, and it would remain for that State to recover the amount against the

defaulting State, by way of reprisals or in another appropriate manner.

The citizens of foreign nationality, especially those belonging to the debtor-State, would have to turn themselves to the authorities of their own country as they could not hope that the State within whose territory they are residents or sojourn occasionally, would take up their own disputes with a foreign State.

III. — That which has been said in respect of war ships of the State or of a foreign State, also applies for the other ships which are State-property, as well those employed partly for military purposes and partly for commercial or other transactions, as well as for carrying goods belonging to the State.

IV. — As to ships belonging to private owners but employed for the service of the State or which are in its possession, a distinction must be made according as the private ship is managed for military purposes or on a commercial traffic. In the first case, the principles set forth sub I, II and III, should apply; in the second case, immunity must be excluded, because it is only fair that a ship of a private owner affected to maritime trade, — whether the manager be a private individual or a Government, — be subject to the common law.

International Code of Affreightment and Negligence Clauses in Bills-of-Lading.

The City of Fiume where, until recently, use was made of the French Code of Commerce and where at present the Italian Code of Commerce is in force, has not and could

not have its own Maritime Code; therefore we can only express the hope that there shall be soon an international Code of Affreightment, based upon the draft of the London Commission of 1914, the draft of revision of Book II of the French Code and also on the Hague Rules 1921, blended into a whole complete and harmonious Codex.

8th July 1922.

GREECE

MARITIME LAW ASSOCIATION IN GREECE.

I

International Code of Affreightment Negligence Clauses (Hague Rules).

The General Secretary of our Association, Mr Georges Diobouniotis, in his capacity of Chairman of a special Committee appointed by the Ministry of Justice and as reporter, has prepared a maritime Draft-Code for Greece. This Draft-Code, after having been discussed by the Committee of Justice, has now been laid before the Ministry of Justice, for the purpose of being proposed to the House of Representatives.

As this Code of Greece has adopted the London draft of 1914 on the International Code of Affreightment, the wording of the said draft-code has been inserted in that part of the Greek law which relates to the matter of Affreightment.

As to the Hague Rules, the Greek Code has adopted part thereof in its provisions re Affreightment, and has embodied in a special Chapter the remainder of the said Rules, namely those which may apply to any kind of affreightment generally.

The special answers to the Questionnaire are as follows :

1° *Have any steps been taken in your country between Associations of Shipowners and Associations of Affreighters towards a voluntary application of the Rules of The Hague ?*

2° *What will be the provisions of your national law which it will be necessary to modify in order that your law may be brought into harmony with the Rules of the Hague ?*

3° *Would a reform, the object of which is to bring the law into conformity with an unofficial set of rules framed for adoption in private contracts, have any chances of success in your country ?*

4° *Would it not be well to obtain the opinion of an international Convention upon this subject ?*

1° No.

2° No provision in our present law would prevent the application of the Hague Rules by way of an international convention.

3° It is likely that the new Code of Greece will be passed before the end of this year.

4° It is an absolute necessity to obtain an international Convention. Indeed, the Maritime Law Association in Greece are of opinion that an international Code of Affreightment which would contain optional provisions and compulsory provisions (including the Hague Rules 1921) would afford this advantage if it were adopted as national law in Greece, that it would do away with all the provisions which as a rule, are now prevalent in the guise of clauses in the bills-of-lading. On the other hand, the Judges, having henceforth a formal text of law, would, in construing contracts, have the benefit of surer means

and more easily accessible than those afforded by the often variable and defectively worded clauses in bills-of-lading.

The principle of freedom of contracts which formerly, and more especially in England, did to some extent fascinate the minds of people and which excluded any legislative settlement, has lately lost much of its glamour. Such liberty has often been degenerating into a means for the stronger party to impose upon the weaker; but this kind of liberty is now valued at its true worth, as it has been found out that absolute liberty is often the subjection of the weakest party. Therefore it would be to no purpose to argue that no limits should be put to the liberty of contract.

The President,
A. TYPALDO BASSIA.

The Secretary,
G. DIIOBOUNIOTIS.

II

Immunity of State-owned Ships.

I. *Does your State own any vessels :*

a) *employed by the State for war purposes only ?*

Yes.

b) *employed by the State partly for purposes of war and partly for commercial or other purposes of Peace?*

Yes.

c) *employed by the State for commercial or other purposes of Peace only;*

No.

II. *Does your State employ for public service vessels which are privately owned ?*

Yes.

III. *Does the law in your country confer any immunity on :*

a) *vessels State-owned as mentioned above 1° a, b, c and d, or*

b) *vessels privately owned but employed by the State as mentioned above under II° ?*

IV. *If any such immunity is conferred ;*

a) *how far does it extend ;*

b) *in what manner is it claimed ;*

c) *upon what principle is it based ?*

Only for anchorage and lighthouse dues.

V. *If any such immunity is recognised, are you in favour of its abolition or modification as to either :*

a) *war vessels, or*

b) *any of the other vessels mentioned in questions I and II above ?*

The law of Greece can remain as it is.

VI. *Does your State claim any immunity in respect of maritime liabilities as to cargoes which are either :*

a) *State-owned, or*

b) *privately owned and carried by the State ?*

No.

VII. *Is any further or other immunity such as exemption from the operation of national revenue laws or any part thereof, conferred by the law of your country upon any of the above vessels trading from or to the shores of your country ?*

Our law admits the exemption from taxes (anchorage

and lighthouse dues) in favour of foreign ships which call at Greek ports under special conditions (such as carriage of mails, &c.).

VIII. *Have you any further observations to offer on this subject ?*

No.

The President,
A. TYPALDO BASSIA.

BELGIUM

BELGIAN ASSOCIATION OF MARITIME LAW

I

International Code of Freight.

REPORT presented by

Mr. EUG. VAN DEN BOSCH

Advocate

The Committee appointed for the purpose of examining the questions relating to the International Code of Affreightment included :

Messrs. Léon Hennebicq, chairman; A. Maeterlinck, Ch. Bauss, Fréd. Sohr, Zeger W. Dekkers, Chr. Sheid, R. Vrancken, G. E. Vandenbroeck, Alfr. De Brouckère, W. Blaess, H. Voet; Eug. Van den Bosch, Secretary-Reporter.

The International Maritime Committee has submitted to the various International Associations the question whether it is advisable to depart from the method followed hitherto in view of codifying all or the greater part of the rules relating to affreightment, or whether it would be better to limit the studies and suggestions to a certain number of questions which might be more easily adopted by the various nations interested.

It has been indeed objected that a complete codification is a task of too great magnitude which could not well be laid before a diplomatic conference.

The draft of International Code of affreightment which was the outcome of the deliberations of the London Commission 1914 and of the discussions at the Antwerp Conference 1921, diverges on so many points from some international legislations that the innovation might appear to be too bold and too drastic and especially too extensive to anticipate the adhesion of all nations interested. Besides, the International Law Association has considered, at the same time as the International Maritime Committee, the question of negligence clauses in charter-parties and bills-of-lading and the Hague Conference has elaborated a form of bill-of-lading known as the Hague Rules 1921.

In consequence of this resolution, which has now been made a basis for the negotiations between shipowners, underwriters and merchants in view of arriving, if possible, at some final arrangement in regard to bills-of-lading and charter-parties, the international codification of the Affreightment questions seems to have lost at least part of its previous importance.

The objection is a serious one and might prove decisive if we were to consider the draft-Code of Affreightment in connection with the most immediate object, viz the unification of maritime law by means of Diplomatic Conferences and international agreements.

In fact, it seems difficult, if not impossible, to obtain the adhesion of all countries interested in the sea-trade to a complete Code, the provisions of which might diverge on so many points from the existing municipal legislations.

But this is not the sole aim of the International Maritime Committee. This body has also in view to submit to the deliberations of international experts the rules which

should govern the Law of the Sea, so as to bring it into harmony with the ever changing requirements brought about by the steady development and extension of international sea-borne traffic.

In other words, if the immediate object of the International Maritime Committee is to prepare the unification of maritime law by means of international conventions, it also aims at bringing to maturity any legal questions which arise by reason of the newly created maritime relations between the sea-faring Nations and enabling thereby the national legislators to draw from the studies and work of the International Maritime Committee the foundations on which the national legislations are to develop themselves in view of bringing them into harmony with the more recent requirements.

On the other hand, it is meet to maintain a general feature of uniformity to the various rules which, as we sincerely hope, will one day regulate the sea-borne trade of the world. For this purpose a methodical and coordinated labour is necessary.

These reasons have decided the Freight-Committee of the Belgian Association of Maritime Law to express as their opinion that it is better to continue the methods which have been followed hitherto, leaving to the annual conferences the liberty of paying a greater amount of interest to any questions which might be of such nature as more particularly to deserve consideration by Diplomatic conferences.

II

Committee on the Hague Rules, (revised).

REPORT presented by

Mr. FREDERIC SOHR, Dr. Jur.

Underwriter, General Secretary of the Belgian Association of Maritime Law

The Sub-Committee included Mr. Alb. Lejeune, chairman, and Messrs. Ed. Marsily, Al. Van Opstal, Jacq. Langlois, C. Smeesters, P. Varlez, Fl. de Braekeleer, Alb. Goeyens, A. de Groote, A. de Wael, De Wandeleer, L. Hennebicq, Alph. Aerts, L. Dens, L. Kort, C. Jussiant, Zeger W. Dekkers, Ant. Franck, Alf. de Brouckère, Fréd. Sohr, secretary-reporter.

The questions to be answered are as follows :

1) Have any steps been taken in your country between Associations of shipowners and Associations of affreighters towards a voluntary application of the Rules of The Hague ?

2) What will be the provisions of your national law which it will be necessary to modify in order that your law may be brought into harmony with the Rules of The Hague ?

3) Would a reform, the object of which is to bring the law into conformity with an unofficial set of rules framed for adoption in private contracts, have any chances of success in your country ?

In Belgium a resolution was passed by the Chamber of Commerce in favour of the application of the Hague Rules, which however implied certain restrictions as regards the position of the timber-trade, of the grain-trade and in regard also to the use of *Received for shipment* Bills-of-Lading. There has been no agreement with the Association of Belgian shipowners. The latter are still in favour of the liberty of contract and at the International Shipowners' Conference held in London on the 25th November 1921, they have abstained from taking part in the vote.

The Hague Rules, which have been revised under the name of « Rules for the Carriage of Goods by Sea », represent in their opinion a further aggravation of their position; however, the shipowners think that said Rules are capable of becoming a basis for an International Convention which would put the shipowners of all countries on the same footing, rather than to serve as a basis for a Belgian law on negligence clauses.

No answer is given to questions 2 & 3 because since the International Maritime Committee issued their circular-letter, events have developed very swiftly in England and because, as legislative intervention seems unavoidable, it would appear that at any rate the Hague Rules, in so far as they represent provisions to be inserted voluntarily in all Bills-of Lading, are bound to disappear altogether.

4) Would it not be well to obtain the conclusion of an international convention upon this subject ?

The Sub-Committee is indeed of opinion that it is advisable to bring about an International Convention based

upon the wording of the « Rules for the carriage of goods by Sea », amended if necessary.

Such solution should be preferred by far to the method of introducing successively in the various maritime countries municipal laws, framed on the same mould.

Indeed we have to face the following alternative :

1) either to pass in all maritime countries isolated municipal laws, but which would be all framed on the same model;

2) or to enter into an international convention which, after ratification by the legislative Powers of every sea-trading country, would be followed by municipal laws in conformity therewith.

We must not ignore the serious danger involved if isolated legislative action were taken in each of the maritime countries.

In fact, this would imply that each country would have to submit to its legislative Power as a pattern, a law which would already operate in another country.

Having regard to the nationalistic turn of mind and the tendency towards protection which have become very keen since the war, it may be expected that the Parliaments of the various countries will decline to follow in this direction. The consequence would be that after animated discussions between shipowners and shippers, every State might finally adopt laws more or less different from each other. There seems to be no doubt that, were this method adopted, it would create, to the great harm of both shippers and shipowners, a confusion of conflicting legislative provisions which it would be extremely

difficult, if not altogether impossible, to remedy later on by means of an international convention.

On the other hand, the second alternative, that is to say, the conclusion of an international convention would lead to a satisfactory solution :

1) In this way immediate uniformity is secured in all cases (most probably the majority) where shippers and shipowners would belong to countries that are signatories to the Convention.

2) After the conclusion of the International Convention, every State will proceed with the introduction of a municipal law intended to regulate the rights of the parties, where shipowners and shippers belong to that State, that is to say where both parties are national subjects.

And in this way, complete uniformity would be secured for every possible alternative.

III

Immunity of State-owned Ships

REPORT on behalf of the
Belgian Association of Maritime Law

BY

Messrs CONSTANT SMEESTERS
Advocate, Member of the Conseil Supérieur de la Marine.

AND

FRÉDÉRIC SOHR,
Dr. jur., Underwriter
General Secretary of the International Maritime Committee.

The Commission appointed for the purpose of answering the Questionnaire of the International Maritime Committee included the following members :

Mr. Albert Le Jeune, chairman; Messrs A. Pierrard, A. Maeterlinck, Fl. de Braeckelee, Alb. Goyens, H. de Vos, Descamps, Chr. Sheid, Théo Kreglinger, P. Gustin, H. Voet, Jacq. Langlois, A. Franck, M. Bourquin, Alex. van Opstal; Messrs Constant Smeesters and Frederic Sohr, Secretaries-reporters.

I. — Does your State own any vessels :

- a) employed by the State for war purposes only;
- b) employed by the State partly for purposes of war partly for commercial or other purposes of peace;

c) employed by the State for commercial or other purposes of peace only;

d) employed by private persons under charter or otherwise ?

a) The Belgian State owns torpedo-boats, mine-layers and other small war-vessels.

b) It does not appear clearly from the wording of the question what is meant by the term « partly ». Is this to be construed as implying that in time of war, such ships are employed for warlike purposes and that in time of peace, they are employed for peaceful purposes ?

Or is it meant that in time of peace, such vessels are used for peaceful objects and at the same time as warships ? The *Zinnia* fishing-survey ship might be included in this latter class. It might be assimilated to the warships of other maritime powers who, by virtue of the International Convention, are policing the fishing in the North Sea by means of warships.

c) The Belgian State owns ships employed on the carriage of mails and goods on the Ostend-Dover line, on ferry-service for passengers, ships employed for survey and police of navigation, pilotage, &c. It also owns the training-ship *Comte de Smet de Naeyer*. At the present time, there is no longer any real commercial vessel (former German ships which were attributed to Belgium) run for account of the State.

d) There is one commercial vessel owned by the State which is chartered under a « bare hull » charter-party to a private firm.

II. — Does your State employ for public services vessels which are privately owned ?

Not at present. But such has been the case for pilotage purposes subsequently upon the armistice, when two Dutch vessels had been chartered. It was intended to do the like for the mail-service Ostend-Dover but this intention was not carried into effect.

III. — Does the law in your country confer any immunity on :

a) vessels State owned as mentioned above 1°, a, b, c, and d, or

b) vessels privately owned but employed by the State as mentioned above under 2 ?

IV. — If any such immunity is conferred :

a) how far does it extend;

b) in what manner is it claimed;

c) upon what principle is it based ?

SUMMARY :

1° It follows from the present state of the Belgian Courts' jurisprudence that the Belgian State could not claim immunity of jurisdiction in respect of either warships or commercial vessels.

2° A foreign State might obtain immunity from the jurisdiction of Belgian Courts in respect of warships, but not for its commercial ships.

3° In no case can State-owned ships be arrested in Belgium.

* * *

In the Belgian legislation, there is no formal text of law which grants to State-owned ships any immunity whatever either from the jurisdiction of the Courts, or from a possible arrest.

Therefore the question can only be solved according to the general principles of law, and in order to indicate the solution of the question, it behoves to draw a distinction.

A first point is whether the Belgian Courts of Justice have jurisdiction over the State owning a ship and whether they can give judgment against same for the damage it has caused.

A second point is whether, when such judgment has been obtained, the creditor should be authorised to arrest the State-owned ship.

For each of these questions, the solution may vary according as the vessels concerned are warships or State-owned ships employed for commercial purposes, and also according as such ships belong to the Belgian State or to a foreign State.

First as to the question of jurisdiction :

For a very long time, our Courts considered as a fundamental principle of public law the dogma of « separation of powers ». By application of this principle, it was held that the Courts had no jurisdiction in respect of differences arising between private persons and the State representing the Executive power.

It would be to no purpose to draw up a list of the decisions given in application of this principle. Whenever the State had acted as a public Power, within its capacities of Sovereign State, the Courts of Justice dee-

med themselves in duty bound, almost as under a fetish-worship, to decline jurisdiction.

But in the end, it was realized that the principle of « separation of powers » was after all a mere catch-word, and that there does not exist in reality an intangible separation between the three forms of power. Is not, in fact, the Executive power, represented by the King and his ministers, one of the branches of the legislative power ? Is it not the Executive which recruits and appoints the members of the judicial power ? In which article of the Belgian Constitution is there embodied the principle of separation of powers with such meaning as the jurisprudence construed it ? True, the Constitution prevents the Courts and Tribunals from doing any acts which come within the province of a public Administration, to reform any acts of the administrative authorities, just as the Administration is not allowed to judge on any disputes bearing on civil rights : but nowhere has the Belgian Constitution reproduced the ancient rule of French public law which, born at the time of the absolute monarchy, forbade the judicial power to judge on any disputes in which the State was interested. The jurisdiction of the Courts was confined to disputes between private parties. But now from the whole mechanism of our modern and essentially liberal Constitution, it clearly results that those who govern, like those who are governed, are subjected to the law, that the scope of their activities is limited by the laws and namely by the legal enactments which regulate civil rights : whenever they infringe any of these rights, the judicial power can decide

that such act was accomplished without legal power, that it is therefore unlawful and constitutes a fault.

This is the new doctrine which the Court of Cassation has expressed in its decision of the 15th November 1920 and which upset the old principle behind which the State screened itself in order to elude liability.

Consequently, under the present jurisprudence of our Supreme Court, the Belgian State, even when it acts as a public power cannot elude the jurisdiction of the Courts whenever it commits a fault which entails injury to any private rights.

* * *

Now, to apply this principle :

The Belgian State owns at present some vessels which can only be used for warlike purposes. When such ship comes into collision with a commercial vessel and causes damage thereto, the State can be sued before the Courts in virtue of art. 1382 of the Civil Code.

Therefore, from the point of view of jurisdiction there does no longer exist any immunity.

* * *

All the more would this be the case for ships which are not exclusively used for warlike purposes but which, although State-owned, are employed for commercial purposes, such as the carriage of goods or of passengers.

Besides, the practice of our Courts had already introduced this derogation to the rule of non-jurisdiction of the Courts towards public powers and had decided that the Courts had jurisdiction whenever the State or the municipality, instead of acting as a public power in the

exercise of their sovereign powers, has acted as a mere private individual.

The Belgian Courts have jurisdiction towards the State in respect of the management of the State-railways. They have jurisdiction also over the State which runs the Ostend-Dover passenger-service. Also where the State acts as owner of tugs or of lighter-barges.

* * *

What would be the position of a foreign State which owns either warships or commercial vessels, if it were sued before the Belgian Courts ? Could such State deny jurisdiction to our Courts ?

Here not only Belgian public law comes into play; but also the law of nations.

Let us examine first the question in regard to warships and assume that a British man-of-war should sink a Belgian ship in a collision. Could then the British State be sued before the Belgian Courts ?

So far, there has been no example of such proceedings before our Courts and it would appear that under the fundamental principles of the law of nations, no legal proceedings would be possible. In fact, this affects the principle of the reciprocal independence of the States. In virtue of the maxim *Par in parem non habet jurisdictionem*, the Belgian State, represented in such instance by its judicial power, would abstain from exercising its power of jurisdiction against the British State. This rule is based on a kind of reciprocal courtesy.

The Belgian State would respect it, in the expectation of being treated in the same way by the foreign Courts.

* * *

However, the case is quite different for a ship owned by a foreign State but used for mercantile purposes.

Here the legal doctrine and jurisprudence do admit that the Belgian Courts may exercise their jurisdiction.

« When the State, writes Rollin (Vol. I, p. 219) is » sued in respect of acts which it accomplished, not as » public power, but as a civil person, of acts which, for » instance, are purported to be acts of management of » property or of ordinary contracts, similar to those » which any private individual might do, and which he » did not *jure imperii*, but *jure gestionis*, (as M. Gian- » zana expressed it rather properly) there is no reason » whatever why the foreign Courts should decline juris- » diction, provided they have such jurisdiction *ratione » loci* ».

The Supreme Court had to decide this question on the occasion of a claim by the Compagnie des Chemins de fer Liégeois-Limbourgeois which sued the State of the Netherlands for payment of its share in the expenses of extending a station common to both lines. The action was based upon a convention signed by the Netherlands. The Court of Cassation (by judgment of 15th June 1903. Bel. Jud. col. 1266) held that the principle of reciprocal independance of nations does only apply when the foreign State acted as a Sovereign Power. Such sovereignty is only involved by the acts of its political existence; but the State here does not confine itself to its political role. In view of the requirements of the collectivity, it may

acquire and own property, enter into contracts, carry on trade, reserve to itself monopolies or the management of public services. In the management of this province or of these services, the State does not exercise its public power; it merely does what private individuals can do as well and consequently it only acts as a civil or private person. Whenever as such it is involved into a dispute after having entered into an agreement on a footing of equality with its co-contracting party or when it has incurred liabilities in respect of a fault which has no connection with political order, the dispute is merely based on a civil right which comes exclusively within the jurisdiction of the Courts.

The Court said that for foreign States the Sovereignty is not involved when they are concerned not as a power but merely for the exercise or the defence of a private right.

The same principle was held good by the Brussels Court of Appeal in its decision of 22th November 1907 (Pas. 1908, II, p. 57).

Consequently a foreign State can not plead immunity from jurisdiction in the case of ships employed for mercantile purposes. Our jurisprudence is settled in this respect.

* * *

Then there remains to examine whether ships owned by the Belgian State or by a foreign State can be arrested in Belgium.

Mr. Hennebicq (Vol. I, p. 509) is of opinion that State-owned ships can be arrested when they are employed exclusively for commercial purposes. But judging ac-

according to the prevailing present jurisprudence, the question is to be answered negatively, whether in respect of warships or of commercial vessels belonging to the Belgian State or to a foreign State.

For instance, the Commercial Court of Antwerp, by judgment of 9th February 1920 (Belg. Jud. 1920, col. 211) ordered the release of the conservatory arrest of steamer *Joulan* owned by the State of Finland. The Court of Appeal of Brussels by judgment of 27th June 1921 (Jur. Anv., p. 496) held as null and void the arrest of two ships belonging to the Portuguese State which were employed for the carriage of goods.

We now examine whereon this immunity is based.

The principle on which the immunity from arrest of Belgian State-owned ships is founded is a principle of public law. The creditors of the State may not, by arresting property or funds of the State, interfere with the regular working of public services which the Government is bound to insure.

As to the justification of the immunity granted to foreign States :

The Commercial Court of Antwerp in the above mentioned judgment observed that a Sovereign State is immune from the jurisdiction of foreign Courts and the very notion of the Courts of a State having jurisdiction towards a foreign State, is not to be conciliated with the notion of Sovereignty of States and of their reciprocal independence.

From the jurisprudence which we have explained above, it appears that the principle, when so stated, is too absolute; that a distinction is to be drawn and that

the Courts have jurisdiction when the dispute refers to a commercial ship.

The argument therefore is wrong.

The Court of Appeal based their above mentioned decision merely on a principle of reciprocity :

« Considering », it states, « that the Belgian legislation does not provide any means of enforcing decisions against the Belgian State, because its creditors must not interfere with the working of the public services which the Government has to insure.

» Whereas, under the principle of international law, which recognises the equality of States, such immunity must be granted similarly to the other States in respect of their property within our national territory, so far at least as those States themselves admit the immunity from arrest for their national property; and it is not alleged that such is not the case in this instance.

» Whereas this must be so *a fortiori* when such property is employed as stated above.

» Whereas such restriction of the national Sovereignty is based upon the courtesy existing between nations and upon their reciprocal obligation not to trouble the conditions of their respective existence; that private interests, however worthy of respect, must be subject to the higher interest ».

This decision therefore is based upon reasons of international courtesy, that is to say on the reasons upon which the Belgian jurisprudence is based when declining to decide on disputes involving the foreign States when acting as Sovereign Powers. But we saw how the Supreme Court proclaimed that the question of Sovereignty is not

involved when the foreign State, instead of acting as a Sovereign Power, merely enters into commercial transactions. In such case the Supreme Court held that without injury to the rules of international courtesy, they could give judgment against the Foreign State.

Under these circumstances, one can hardly understand why the intervention of the Belgian authorities should be limited to exercise of jurisdiction and why a decision given by our Courts should not be enforceable.

Every judgment which has been given regularly, has a double character; it has the authority of the *res judicata* and it also is an enforceable document.

As is taught by Weiss (p. 543) « it is not sufficient that the Judge should have proclaimed what he believes to be the truth, that he has expressed his preference in favour of one of the opposing contentions; it is necessary that his decision shall command obedience, that it shall not remain a mere affirmation of principle, a mere judicial thesis without practical value or efficiency. Else, injustice would in the end remain victorious after all, and the litigant who is put in the wrong would, not without cause, laugh at judges who would be powerless to enforce respect for their decisions ».

In the remarkable opinion which he had to deliver before the Supreme Court on the occasion of the above-mentioned decision, the Attorney-General, Mr. Terlinden, had already stated that, according to his conception, the power of jurisdiction implied the power of execution.

We express our view that possibly, if the decision of the Court of Appeal had been submitted before the Court of Cassation, the latter, faithful to the principles set

forth in its judgment of 1903, might have quashed the decision.

V. — If any such immunity is recognised are you in favour of its abolition or modification as to either :

a) war vessels, or

b) any of the other vessels mentioned in questions I and II above ?

We are of opinion that it behoves to subject to the rules of common law, as well in respect of jurisdiction as of arrest (whether conservatory or arrest for execution) any property of maritime kind which is State-owned, with the sole exception of warships and of State-owned ships exclusively employed for services of public interest. With regard to this latter class of ships, it would be desirable that special agreements should be entered into by all — or at any rate by some — States signatories of the international Convention to be arrived at, which should include some provisions as to guarantees given beforehand, so as to render useless any arrest of warships or of vessels exclusively employed for public services. In this manner, any rights of parties interested, namely as regards collision and salvage, would be safeguarded. It should be observed that such arrangements would imply also some regulations to be agreed upon as to jurisdiction which the States signing such special agreements would reciprocally recognise to their Courts.

The Belgian Association, when limiting the immunity to warships and to State-owned vessels exclusively employed on public service, has followed the wording used

in the Convention of 23rd September 1910 on Collision (art. 11) and on Salvage (art. 14).

It should be noted that, in the course of the discussions which preceded this Convention, the question arose whether the Belgian mail-steamers of the Ostend-Dover service came within the class of State-owned ships exclusively employed on public service. Mr. Louis Franck (reporter of the Sub-Committee at the Brussels Diplomatic Conference) answered in the negative. The Belgian mail-steamers are, besides, subject in every respect to common law. There is no other exception in this regard than that which bears on all State-property and excepts it from arrest. On the other hand, Mr. Lyon-Caen, the delegate of France, opined that ought to be considered as employed on public service any ships intended to be employed on postal service : but he inquired what would be the status of packet-steamers carrying mails as an accessory to their usual traffic. Mr. Beernaert, the president, answered that the question was solved by the very terms of article 11. This article does only contain an exception in favour of warships and State-owned ships exclusively employed on public service. Packet-steamers exclusively employed for postal service are therefore included, but not those who carry mails only accessorially to other traffic (Records of the Brussels Diplomatic Conference 1905, p. 121).

It is worthy of remark that owing to the effect of that very immunity, articles 11 and 14 of the Conventions on Collision and Salvage have remained dead letter. Indeed, even for ships which are neither war vessels nor employed exclusively on State service, the signatory Powers

are entitled to the plea of immunity derived from their sovereign rights, the consequence of which is to render those Conventions inapplicable for such ships. This was namely the case at Hamburgh, in respect of the *Iceking* and *Jonas Sell* belonging to the United States Shipping Board (Higher Hanseatic Court, 28th February 1921, *Revue Internationale de Droit Maritime* 1922, p. 866).

VI. — Does your State claim any immunity in respect of maritime liabilities as to cargoes which are either:

a) State owned, or

b) privately owned and carried by the State ?

As the principle is the same for any State-owned property, immunity might be claimed for cargoes as well as for the ships.

VII. — Is any further or other immunity such as exemption from the operation of national revenue laws or any part thereof, conferred by the law of your country upon any of the above vessels trading from or to the shores of your country ?

There is, indeed, exemption of taxes due to the Belgian State and, by international courtesy, in favour of foreign States.

VIII. — *Have you any further observations to offer on the subject ?*

It ought to be indicated more precisely what classes of actions may give rise to judgment against foreign States or to arrest of their property. This point is not raised in the Questionnaire. The result might be that, once the immunity is abolished, State-owned ships might

be arrested in respect, for instance, of State-loans or as guarantees for the fulfilment of contracts which would have nothing to do with the arrested ship. Therefore it should be stipulated that the only reasons admissible shall be the claims resulting from the navigation or the commercial management of the ship, without prejudice to the rights and immunities which the States may derive either from the laws or from the contract between parties.

Antwerp, 15th July 1922.

GREAT-BRITAIN

**BRITISH NATIONAL ASSOCIATION
(MARITIME LAW COMMITTEE
OF THE INTERNATIONAL LAW ASSOCIATION).**

The Hague Rules 1921 and International Legislation.

R E P O R T

**on the Work of the Committee and on the Rules regulating
the Carriage of Goods by Sea under Bills-of-Lading**

BY

Dr. W. R. BISSCHOP, LL. D.

Hon. Secretary Maritime Law Committee of the International Law Association.

In the seventh Resolution passed by the International Law Association in their meeting at the Hague on the 3rd day of September 1921 the Maritime Law Committee had expressed their wish that the adoption of the Hague Rules should be secured so as to make the same effective in relation to all transactions originating after January 31st, 1922. Steps were almost immediately taken by those who had participated in the Hague Conference to bring the Rules before the mercantile community in Great Britain and other countries and to obtain an expression of opinion from those for whose benefit the work was undertaken and achieved at the Hague.

Generally speaking, their reception in Great Britain has been a favourable one. There have been criticisms. These are unavoidable.

The great demand for regulation came from those shippers whose transport requirements are mainly provided by the so-called liners, that is to say regular lines of steamships laden with general cargo of a great variety, all of which is carried under the same conditions and regulations in bills-of-lading, and where it is practically speaking impossible for a single shipper to make a contract of affreightment of his own.

To them the Hague Rules, 1921, were most welcome. Those districts where the demand for liner accommodation is greatest were the first to adopt the Rules. We find resolutions to that effect passed by the Chambers of Commerce of Manchester, Birmingham, Coventry, Sheffield, Bradford, Liverpool, Aberdeen, Dundee, Edinburgh, Blackburn, Huddersfield, Northampton and Belfast. Other Chambers of Commerce did not pass any resolutions themselves but participated through their delegates at the meeting of the Associated Chambers of Commerce held at Sheffield on 20th October 1921 in passing the following resolution, viz. :

« That the Association of British Chambers of Commerce records its approval of the Rules to be known as the Hague Rules, 1921, defining the risks to be assumed by Sea carriers under Bills-of-Lading which were drawn up and unanimously agreed upon by the Maritime Law Committee and adopted by the International Law Asso-

ciation at the Hague Conference on September 3rd 1921. Further, that the Association believes that the international application of these Rules will greatly facilitate trade between all countries, and urges all concerned in the United Kingdom to endeavour to secure their universal and exclusive use ».

Those who voted against could not be counted antagonists. They were mainly of opinion that time should be allowed for more careful consideration, like the delegates of the Glasgow Chamber of Commerce. Soon afterwards the Council of that Chamber appointed a Committee for the consideration of the Rules and to report (1).

The Rules were further accepted by the Manchester Association of Importers and Exporters, the Manchester Cotton Association, the Manchester Marine Insurance Association, the Sub-Committee set up by the Liverpool United General Produce Association and the Council of Tobacco Manufacturers of Great Britain and Ireland.

They were sympathetically received by the British National Committee of the International Chamber of Commerce and the British Imperial Council of Commerce and have since obtained the sanction of the Executive Council of the International Chamber of Commerce.

(1) The Committee although appreciating the Hague Rules, reported adversely to their being adopted by voluntary agreement and the Glasgow Chamber on 12th December 1921 passed a resolution stating that they were bound to their approval of the Imperial Shipping Committee's proposal that there should be uniform legislation throughout the Empire, but that they were prepared to accept the Hague Rules 1921 as a basis for such legislation.

The Rules were equally welcome to the bankers who more than any other interest concerned have felt the necessity of simplification and standardisation of bills-of-lading. The Rules which their delegates at the Hague Conference had assisted so much in framing, were unanimously approved by the British Bankers Association.

The Underwriters whose interests are less involved, approved of the Rules for similar reasons, and resolutions for their adoption were passed by the Institute of London Underwriters, the Liverpool Underwriters Association, Lloyd's Underwriters, the Committee of Management of the Association of Underwriters, Insurance Brokers of Glasgow and the Manchester Marine Insurance Association.

Less enthusiasm was evinced in other quarters.

The opposition to the Hague Rules was based on two distinct grounds. In the first place certain special trades of an international character, dealing mainly with bulk cargoes, had, in the past, been able to bring sufficient pressure to bear on shipowners to enable the trades in question to secure adequate consideration of their special requirements. The regulations governing the carriage of goods in these trades were embodied in Charter-parties and appear to have given satisfaction. It was therefore found that individuals belonging to these trades were suspicious of anything which savoured of an attempt to interfere with existing arrangements and to extend to them regulations designed to apply to shipping as a whole. They dreaded the adoption of any scheme which

had not been submitted to a practical test and feared that it might dislocate their methods of business. It appears to have been these considerations which engendered hostility on the part of the Timber and Coal Trades, and induced them to stand aloof altogether.

Secondly, amongst certain of these trades there was a body of opinion, which whilst not hostile in principle, insisted on sanction being given to the Rules by legislation, so as to forestall any possible attempt by shipowners to curtail or avoid the operation of the Rules.

As regards the first of these objections, which was largely based on fear of the unknown, it may be pointed out that when once the Rules have been made effective and tested in practice, they will be better understood and no difficulty should be found in providing a solution for the minor difficulties which the period of experiment might reveal.

The desire for legislation is more difficult to deal with. It is based on the belief — well or ill-founded — that the policy of shipowners is to seek to minimise their liabilities as carriers, and is coupled with a strong conviction that this attitude can only be encountered by legislative measures. This view disregards that, which is an undoubted fact, namely, commercial legislation can only be a success if it be preceded by general agreement amongst the business interests involved and be the product of the well matured experience of the men of business who are directly concerned. It is, however, impossible to disregard the fact that legislation was recom-

mended by the Imperial Shipping Committee and that this is the course which has found favour in the United States and in the British Overseas Dominions.

The problem which has presented itself for solution is, how to satisfy this demand for legislative action without sacrificing that element of elasticity which is essential to any Rules for the regulation of commerce and without destroying the prospect of securing uniformity of legislation amongst the maritime nations of the world, many of whom would strongly resent any proposal tending to force on them the adoption of the principles of Anglo-American Law relating to the carriage of goods by sea. In particular it may be observed that a suggestion emanating from influential quarters to the effect that the Canadian Water Carriage of Goods Act should be adopted is open to very strong objections. To begin with, this Act does not like the Hague Rules contain a positive code of regulations complete in itself and clearly defining the liabilities of the shipowners. It follows the Harter Act and the Australian and New Zealand Acts in so far as it is merely a prohibitive measure aimed at precluding shipowners from contracting out of certain of their liabilities. The provisions of the Act are not exhaustive and a reference to the Act in a bill-of-lading completely fails in preventing that multiplication of exceptions, which it is universally agreed, is one of the main grievances from which the cargo interests are now suffering. An argument which is often put forward that there has been no litigation in

respect of the provisions of this Act will not stand critical examination. The Canadians themselves explain this phenomenon as due to the fact that the provisions of the Act had been observed in practice long before they were embodied in a legislative measure. Also, this absence of litigation to a very large extent arises from a sharp distinction between that Act and the Harter Act. The Canadian Act only applies to ships carrying goods « from » any port in Canada, with the result that its operation is much restricted and has not given rise to any conflict between the law of the country of shipment and the laws of other countries such as has been the most prolific source of litigation in connection with the Harter Act, which applies to any vessel transporting goods « from or between ports of the U. S. A. and foreign ports ».

The Hague Rules framed by mutual agreement, backed up by experience — once they are put to the test — would (in the language of Sir Norman Hill) « place » the Bill-of-Lading on a similar footing as a Bill-of-Exchange by inserting in the document itself certain « definite rights to which the holder shall be entitled » as against the shipowner and of which he cannot be « deprived by any agreement or arrangement entered into between the original shipper of the goods and » the shipowner ».

The fears of special trades manifested themselves especially at the discussion of the London Chamber of Commerce which is composed of a greater variety of

trades than any other Chamber of Commerce in the Kingdom. While the Australasian Trade Section, the South African Section, the Marine Sub-Section, the West African Section, the Green Fruit and Vegetable Section, the Merchants Section, the East India Section and the canned goods sections declared themselves in favour of the Hague Rules, objection was taken by the Timber Trade, the Corn Trade and by the East Indian Oil Seed Trade who mainly stood for legislation.

The result was a compromise which was reflected in the resolution : « To recognise the Hague Rules as a » basis for settlement of the respective liabilities and » rights of shipowners and merchants under bills-of-lading » (1).

The shipowners who have been waiting for an expression of opinion on the part of the cargo interests had an opportunity of manifesting their readiness to fall in with their customers' wishes at the International Shipping Congress which was held at the Victoria Hotel in London on the 23rd-25th November 1921.

From the very commencement British shipowners had been opposed to legislative interference with their contractual relations in bills-of-lading and this attitude has been maintained all through.

Yet, difference of opinion was not excluded from their discussions. Similar objections, to those of cargo owners,

(1) This resolution has not prevented the special trades from forming a British Federation of Traders Associations to oppose the Hague Rules, 1921 and to press for imperial legislation.

were forthcoming from those shipowners who are engaged in special trade, whose vessels are tramp steamers mainly engaged in carrying cargoes in bulk or on charter-parties which, in their particular sphere, have long been settled between them and their customers. Why interfere with those who are content ?

Obviously the spirit of compromise for the sake of uniformity needs some strong inducement to enable it to overcome the lethargy of vested interests. The North of England Steamship Owners Association, however, at an early date declared themselves ready to make the Hague Rules effective and at the International Conference the British Steamship Owners showed an united front in favour of them.

Similarly the delegates of Sweden and of Holland, declared themselves without reservation willing to give effect to the Rules after 31st January 1922.

Greater variety showed itself among the other nationalities. The French owners demanded that sanction should be given to the Rules by an international convention.

The Norwegians demanded longer time for consideration. The Italians and Japanese objected to the limitation of shipowners liability for the loss or damage to £100 per package or unit, which was — on the part of the Italian delegates — mainly based on the debased rate of exchange. As, however, the compensation will be payable in the same currency in which the freight has been paid, this difficulty seems to rest on a misunderstanding.

The delegates from the United States of America seemed sanguine as to the possibility of bringing the Harter Act into harmony with the Hague Rules. On the other hand the Australian and Canadian representatives were very reserved on this point.

The resolution which, in the end, was passed by the Conference, runs as follows : « That the Conference representative of the shipping industry in every part of the world, which had before them the Hague Rules, 1921, recently adopted by the International Law Association for submission to the various interests concerned in bills-of-lading, is of opinion that the interest of trade and commerce are best served by full freedom of contract, unfettered by State control; but that in view of the almost unanimous desire manifested by merchants, bankers and underwriters for the adoption of the Hague Rules, this Conference is prepared to recommend them for voluntary international application, if, and so far as necessary for adoption by international convention between the maritime countries, Italy and Japan reserving the rights to raise questions on the rule which prohibits the shipowner fixing a limit of liability below £ 100 per package ».

Since then the Hague Rules have been adopted in Bills-of-Lading by the following steamship companies : Royal Mail Steam Packet Company, T. & J. Harrison, The Cuban Line, Booker Bros., Mc Connell & Co. (all members of the Association of West India and Trans-Atlantic Steamship Lines), White Star, the Cunard, the

Leyland and the Atlantic Transport Lines, the Anchor Line, Anchor-Donaldson Line, Bristol City Line, Canadian Pacific Ry. Co., Dominion Line, Donaldson Line, Ellerman, Wilson Line, Furness Withy & Co., Johnston Line, Warren Line, Furness Philadelphia Transatlantic Line, Manchester Liners, Thomson Line, White Star-Dominion Line, Alfred Holt & Co., Bibby Bros., P. Henderson & Co., Ellerman Line Liverpool, Australian Outward Conference, Calcutta Conference (U. K. Indian Lines), Conference of Malta & Alexandria Steamship Companies, Mediterranean Conferences and Mediterranean Levant Trade, River Plate Conference Lines, South and East African Conference Lines, Elder Dempster & Co. Ltd., the East Asiatic Co.

* * *

Outside Great Britain the reception of the Rules had been of a qualified nature. England's lead in shipping matters made the Continental interests adopt a waiting attitude, to see how England would show the way. A number of voices were heard in favour of legislation and an international convention in preference to voluntary adoption of the Rules by way of international agreement.

In France, Italy and Belgium a number of cargo owners and shipowners were in favour of national legislation based upon an international convention and expression was given to these views in a resolution placed by them before the Council of the International Chamber of Commerce. The members of the Bill-of-Lading Com-

mittee of the International Chamber which represented various nations, were, however, unanimously of opinion that experience should be gained and that an international convention should not be promoted until after the Rules had been in practice for at least a couple of years.

The Scandinavian countries have entrusted representatives of Denmark, Norway, Sweden and Finland to make a draft for a new Commercial Code for those four countries. The members are in sympathy with the Hague Rules and inclined to prevent any provision from being inserted in the draft code which would in any way hinder the adoption, by the interested parties, of the Hague Rules by agreement. So far, it is, however, not considered likely that the Hague Rules will be inserted in the draft code in extenso.

German interests were provisionally against the adoption of the Rules, as several of the provisions of the Rules were antagonistic to the codified German law, and fear existed lest the adoption of the Rules would necessitate an alteration of the Code which the parties were not prepared to adopt.

Holland declared itself in favour of the Rules, although the necessity of amendments in due course was admitted. There also legislation was in preparation which would adopt certain Rules in a modified form.

In the United States of America the Rules met, partly with a sympathetic reception, partly with hostility on the part of the Institute of American meat packers, and criticism from the New York Board of Trade and Trans-

portation. Through the influence of the British Federation of Traders Associations, the Institute of American meat packers among others strongly opposed any interference with the Harter Act unless it would be in the sense of such amendments as would be in agreement with their views. There was no doubt, however, that antagonism would gradually be overcome and it was even hoped that the Government would be prepared to consider an amendment of the Harter Act in order to bring it into harmony with the Hague Rules.

* * *

Under these circumstances in February 1922 the Board of Trade intimated that the British Government felt themselves obliged to the Dominion Governments to proceed with legislation on the basis of the Report of the Imperial Shipping Committee.

Early in the month of May the Marine Department of the Board of Trade, invited Sir Norman Hill, the Secretary of the Liverpool Steam Ship Owners' Association, and Mr. Andrew Marvel Jackson, the legal adviser of the British Federation of Traders' Association, to meet him in informal conference to discuss the form of a Bill to be introduced by the Government to give effect to the Report of that Committee.

The invitation was considered at a Meeting between representatives of the Shipowners and of the Federation, when it was agreed that both sides should co-operate with the Board of Trade.

At a Conference which was held on the 10th May 1922

at the Board of Trade it was explained that the position was as under :

1) The Government were under pledge to the Dominions to carry into effect the recommendations of the Imperial Shipping Committee and introduce a Bill.

2) Such a Bill had been drafted.

3) In order to secure the passing of such a Bill in this Session it should be introduced at an early date.

4) As drafted, the Bill was framed on the lines of the Canadian Act, but the Board of Trade realised the advantages offered by a self-contained code, and especially of a code in a form likely to prove acceptable to all nations, and if all the British interests were agreed on a Code, the Board of Trade would adopt it in their Bill. If there were not such agreement, the Board of Trade would proceed with their Bill as drafted.

The Hague Rules which were objected to by the Federation were then discussed in detail. No views were expressed on behalf of the Board of Trade as to the matters in difference, but it was intimated that, if agreement were not possible on particular points, the terms of the Report of the Imperial Shipping Committee and of the Canadian Act would have to be followed in the Bill.

As a result of this discussion a Code of Rules for the carriage of goods by sea was agreed as between the ship-owners and the Federation and submitted to the Board of Trade in order that they might be embodied in a Government Bill.

The Rules as submitted to the Board of Trade were considered, and after full discussion, accepted by the Council of the Chamber of Shipping at their Meeting on the 26th May, 1922. The decision to accept this measure must not be taken as an attempt to alter the Hague Rules, which, of course, could only be done in a Conference of the International Law Association. The present action had simply been taken in view of the decision of the Government to legislate in this matter, in order to secure by agreement as between the parties that such legislation should be in a form acceptable to all whom it is to affect rather than that the form of the Bill should be left to be determined by a Government draftsman.

Admittedly the proposed legislation may be open to criticism, but as it stands, it represents the best arrangement which in the circumstances could be secured.

The attitude taken up by the Board of Trade and the certainty that the Bill for the codification of these rules would be brought into Parliament during the present Session made it abundantly clear that such Act on the part of the British Government would have to be followed by international action. But to secure regulation of this matter by international action necessitated uniform legislation in all maritime countries and it was realised that this could only be done by a previous international convention.

It became clear that in order to obtain such an international convention it would be desirable that the

British Government should refrain from passing an Act unless it was based upon such a Convention lest the other nations should refuse to adopt what was already enacted in Great Britain without their having been previously consulted and their consent obtained.

At the end of May 1922 the Executive of the Maritime Law Committee thought it desirable to inform the Comité Maritime International at Antwerp of the changes which had taken place. In 1921 the Committee had asked the Comité Maritime International not to interfere with the draft Hague Rules as it was hoped that these would be adopted by voluntary agreement and that legislation — if it were deemed necessary — would follow after the Rules had been in practice for a couple of years. As the voluntary adoption was going to be given up by the British interests concerned, the Committee felt itself in honour bound to withdraw their request to the Comité so that they might frame their course of action accordingly.

At the same time the Committee — acting as the British National Association of the Comité — placed this matter on the Agenda of a meeting which was convened for 12th June 1922 at Lincoln's Inn Hall to consider what action would be advisable and desirable under the circumstances.

* * *

Early in the year the Belgian Government who had acted as conveners of the Diplomatic Conferences, as in the case of the conference which passed the Salvage

convention, wrote to the powers suggesting that the Conference on the limitation of liability and maritime liens and mortgages should resume its work. The British Government on receipt of the communication, having regard to the long passage of time since the previous conference in 1911, communicated with all the commercial interests affected through the Board of Trade and the Board of Trade were collecting views on the subject with a view to a further meeting of the Diplomatic Conference which as is intended will probably meet in October 1922.

On the 12th June 1922 in Lincoln's Inn Hall a meeting was held of the Maritime Law Committee, acting as the British National Association of the Comité Maritime International.

The meeting was presided over by the Rt. Honble. Sir Henry Duke. Present were among others the Lord Phillimore, Sir Maurice Hill, Sir Leslie Scott, Senator Albert Le Jeune and Mr. Frédéric Sohr (of Antwerp), Sir Ernest Clover, Sir Alan Anderson, H. R. Miller and P. Maurice Hill (representing the Chamber of Shipping of the United Kingdom), Jas. S. Mc Conechy and E. Raymond Streat (representing the Manchester Association of Importers and Exporters and the Manchester Chamber of Commerce), R. Temperley, Wm. Todd, Professor Hugh H. L. Bellot, Sanford D. Cole, Wm. Riley, Professor H. C. Gutteridge, G. N. Chapman (representing the Produce Brokers Co. Ltd. of London), J. Frederiksen, C. L. Hussey (of the U. S. A. Navy, representing the U. S. A. Embassy), G. R. Rudolf, A. D. Mackinnon (representing

Messrs Hogg, Lindley & Co., average adjusters), R. B. Mc Comas and P. C. Hunt (representing Messrs W. Haughton & Co., underwriters of London), E. B. Tredwen (representing the Australasian Merchants Association), Professor A. Pearce Higgins, G. P. Langton and Dr. W. R. Bisschop, Hon. Secretaries.

The Agenda contained :

- 1) The convention on collision and salvage.
- 2) Liability of shipowners with regard to maritime liens and mortgages which had been accepted by a Diplomatic Conference in Brussels in 1914 (but which had not been passed finally) and would come up again when next the various Governments would meet in a diplomatic conference.

With regard to « collision and salvage » it was resolved to submit to the Board of Trade that at the next Diplomatic Conference the desirability should be pointed out of the provision : « that the period of limitation of 2 » years provided by Section 8 of the Maritime Conventions Act for commencement of actions for damages » or loss sustained by the collision of ships at sea or in » respect of any salvage services should also apply to » the Crown » and that this modification should be adopted by international convention.

At the same time a complaint was made by Mr. Sohr of Antwerp that the International Labour Bureau had taken up the question of liability of shipowners to steerage passengers and had tried to obtain an international regulation of this single subject, whereby they would

interfere with the broader issue of international regulations of the whole responsibility of shipowners towards passengers and which was exclusively dealt with by an international convention signed by the diplomatic representatives of the various nations.

After some discussion the following resolution was passed :

« The Committee express their sympathy with the views expressed by Mr. Sohr of Antwerp, viz. : that the resolution passed at the Conference of the Comité Maritime International held at Antwerp in July 1921 regarding the liability of shipowners to steerage passengers, which had been forwarded to the International Labour Bureau did not meet with any success but had elicited from the Permanent Bureau of the International Labour Bureau the reply that « as steerage passengers were mainly » composed of workers the Permanent Bureau ought to » deal with those questions », and that subsequent representations made by the Belgian Delegate at the Bureau had remained without effect;

And having taken note of the support given to those views by the representatives of shipping present at the meeting;

Resolve to record their concurrence in those views thus expressed and thus supported and are of opinion that the subject of liability of shipowners to steerage passengers is one which is more satisfactorily dealt with by international arrangement through a Convention of Brussels

than by discussions entered into and passed by the International Labour Bureau ».

3) Immunity of Sovereign States for Maritime Property.

The Chamber of Shipping had brought forward a new subject for discussion by the Comité Maritime International, viz.: the questions in relation to Immunity of Sovereign States as regards Maritime Property. The great evil of an extension of Sovereign rights and powers in the case of States which had engaged in commerce had been brought to the notice of the Chamber of Shipping and the Comité Maritime International by a memorandum written by Mr. Justice Hill.

Based upon that memorandum the Permanent Bureau of the Comité Maritime International had drawn up a questionnaire which had been sent to the various international associations for them to state the provisions of the national law on this subject.

A draft of the answer to this questionnaire as far as English law is concerned was prepared by Mr. W. N. Raeburn, K. C., Prof. H. C. Gutteridge and Dr. W. R. Bisschop for the Committee and was carried with a few amendments. It was decided that it should be forwarded to the Permanent Bureau at Antwerp.

4) Hague Rules.

A long discussion took place with regard to the amended Rules for the Carriage of Goods by Sea and the consequence of having those introduced into a Government Bill. From the discussion it appeared that the

meeting was unanimously of opinion that an international convention should be signed before any legislation were passed on this subject and it was resolved to intimate this to the Board of Trade.

The Chamber of Shipping had drawn attention to the possibility of legislation on identical lines being introduced simultaneously in Great Britain and the U. S. of America. As that would embrace about one-half of the carrying trade of the world, such a proposal ought to be taken into account. On the other hand it was pointed out that it was extremely advantageous if through an international convention identical legislation could be secured in more than one country and moreover that the continental countries would not very willingly adopt legislation in their countries unless it had been framed on the basis of an international convention to which they had agreed.

The views of the meeting were laid down in the following resolutions :

1. That this Committee has taken notice of the proposals to introduce concurrently in the legislatures of the United Kingdom and the United States of America legislation governing the conditions of carriage of goods by sea, and is of opinion that the full benefit of improved conditions as to the carriage of goods by sea can only be obtained by general international agreement.

2. That so far as the British Empire is concerned this Committee is of opinion that the proposed basis of accommodation between the shipowners and the cargo inte-

rests contained in the « Rules for the Carriage of Goods by Sea » lately circulated by the Chamber of Shipping of the United Kingdom represents the considered views of those interests in the United Kingdom.

3. That this Committee records its high appreciation of the parallel work now being done concurrently in the United States of America for the attainment of similar objects to those sought by this Committee and its opinion that co-operation with the United States of America in such a matter is of prime importance.

4. That a Sub-Committee of six, with power to add to their number, be appointed to take action if it should seem desirable with a view to giving effect to the preceding clauses of this resolution and that it be an instruction to the sub-committee to concur in efforts towards the speedy general adoption of agreed Rules by international consent and in case legislation in the United Kingdom should appear in the meantime to be imminent or on any other proper occasion to convene forthwith a meeting of the Committee.

Nemo : The Committee directed it to be recorded that in allowing Clause 2 of the above Resolution to be put to the vote, Mr. Jas. S. Mc Conechy representing the Manchester Association of Importers and Exporters and Mr. Raymond Streat, Secretary of the Manchester Chamber of Commerce, on behalf of the bodies they represented, entered a protest against any steps being taken to sanction or approve any rules or agreement for the carriage of goods by sea which did not include precise reco-

gnition of the validity of a «received for shipment» bill-of-lading and kindred documents.

* * *

Copies of these various resolutions were forwarded to the Board of Trade.

In view of the fourth resolution on the Rules of Carriage of Goods by Sea the following members were nominated by Sir Henry Duke as members of the Sub-Committee :

Sir Norman Hill (for liners),

Sir Ernest Glover (for tramp steamers),

W. W. Paine, or Sir Jas. Hope Simpson, (for bankers),

Jas. R. Rudolf (for Chambers of Commerce and Underwriters),

Jas. S. Mc Conechy (for receivers and shippers of general cargo).

Sir Stephen Demetriadi who had been asked to join the Committee for receivers and shippers of bulk cargoes could not see his way to accept the invitation.

The British Federation of Traders Associations viewed the resolution with fear lest it would lead to a postponement of British legislation. They approached the Chamber of Shipping in the United Kingdom, who at their meeting on the 29th June 1922 passed the following resolution :

« That the Council of the Chamber of Shipping — having learnt with regret that the suggestion has been made that by supporting the resolution passed at the recent meeting of the Maritime Law Committee, ship-

owners are thereby giving countenance to an indefinite postponement of British legislation in accordance with the Rules already agreed on with the Federation of British Traders Associations — desires to record their adherence to the agreement reached with the Federation, and, while being of opinion that full benefit of standard conditions for the carriage of goods by sea can only be obtained by general international agreement, the Chamber will not oppose any action which H. M. Government may think necessary to take to give immediate legislative effect to the agreed Rules ».

On the 30th June 1922 the President of the Board of Trade called a Conference of the parties concerned and after some discussion it was finally agreed :

1) That the British Government should immediately introduce its Bill.

2) That in return the Cargo Interests should lend their full weight to securing an International agreement on similar lines at the October Conference.

3) That steps should be taken to pass such International Agreement through the necessary diplomatic channels without delay.

4) That Parliamentary Debate on the British Bill should be secured on the opening of the Autumn Session towards the end of October.

5) That no substantial variation between the International Agreement and the Bill should be accepted by any of the British Interests including the British Government.

6) That minor amendments introduced at the October Conference should be given effect to by adjusting the then existing bill and not by withdrawing that Bill in favour of a new one.

Shortly afterwards the Government undertook the preparation of a bill for introduction into Parliament during the present Session, while the Permanent Bureau of the Comité Maritime International with the co-operation of the Executive of the Maritime Law Committee took further steps in order to ascertain the feeling on the continent with regard to the proposed « Rules for the Carriage of Goods by Sea », and to prepare a draft Convention (Avant-Projet) for submission at the Conference of the Comité Maritime International to be held in London on the 9th-11th October 1922.

In view of the desire which had been expressed that legislation in Great Britain should be passed in the course of 1922 the available time was found to be too limited to admit an international agreement from being reached by all the Governments concerned previous to the introduction of such a bill in Parliament. Efforts were therefore made to obtain simultaneous and identical legislation in two countries only, viz. : the United States of America and Great Britain. It was hoped that legislation so adopted by these two countries — who embrace more than half the carrying trade of the world — would secure the support of the greatest interests concerned and would induce the other Maritime States to follow suit on the same lines.

For that purpose the Governments of those other Maritime States were unofficially approached with a view

of entering unofficially into negotiations with the Board of Trade as to the possibility of arriving at concerted action before the proposed Diplomatic Conference would meet in the Autumn of 1922.

The preparation of the bill to be introduced in Parliament was entrusted to a Committee of lawyers. They soon came to the conclusion that to draft a bill which would satisfy the test of legal phraseology and Parliamentary draftmanship would necessitate the entire recasting of the proposed « Rules for the Carriage of Goods by Sea ». Such recasting would require time, and as the Parliamentary Session was rapidly drawing to a close, it seemed hardly likely that a proper draft could be prepared within the few weeks still available before the Recess. Such procedure moreover would hardly satisfy the framers of the proposed Rules.

With great difficulty an agreement had been arrived at between the interested parties in Great Britain. The Rules framed for that purpose again contained a compromise drawn in phraseology and provisions which were understood by those parties and seemed to give them satisfaction. All that they required from the Government was, to give sanction to the provisions which they had agreed upon and to render it beyond doubt that those Rules would be binding upon shipowners and shippers alike and would not be deviated from. The form in which they were cast was to them of minor consideration. They formed the substance of an agreement. They were understood by the parties and there seemed no doubt that they would be observed both in the letter and in the spirit in which they were framed. Should these provisions lead to

litigation the parties were confident as to the little risk they ran. Once legal sanction had been obtained the parties were fully prepared to face any such litigation and to learn from the Judges' comments how to improve on the Rules. If only the door for any future amendments were left open and no great difficulties placed in the way of setting the machinery going for embodying such amendments in the Rules, the historical thread would not be broken in the development of regulations which were obtained by private agreement.

The Parliamentary Committee realised this. They recommended the adoption of a short bill containing a few clauses only which would sanction the Rules and prohibit any evasion thereof. To these the agreed Rules were to be added as a Schedule with as little alteration as possible. If such a bill were at the same time to contain provisions which would render it possible without the lengthy process of legislation to introduce amendments which in practice had commended themselves to the interested parties and had been internationally adopted, a machinery would be created whereby due regard could be given to any further agreement and which would secure the smooth working of the Rules and their adaptation to altered conditions and circumstances.

The Government, however, could not see their way to adopt this view. Legal objections to the Rules, as drafted, prevailed and the Parliamentary Session closed without the introduction of the proposed Bill.

London, August 1922.

JAPAN

JAPANESE ASSOCIATION OF MARITIME LAW

I. — International Code of Affreightment (Hague Rules)

1. Our Association is of opinion that it would be better to deal only with the important questions of the Law of Affreightment on which the various national laws are at present at issue.

2. In our country, no steps have yet been taken between Associations of Shipowners and Associations of Shippers towards a voluntary application of the Hague Rules.

3. Some seven provisions will have to be modified in order that our law may be brought into harmony with the Hague Rules, and we are inclined not to change any of those provisions.

4. In our country a reform, the object of which is to bring the law into conformity with an unofficial set of rules framed for adoption in private contracts, might have, to a certain extent, some chances of success.

5. It would be well to obtain the opinion of an international convention upon this subject.

II. — Immunity of State-owned Ships.

1° Does your State own any vessels :

a) employed by the State for war purposes only ?

Yes.

b) employed by the State partly for purposes of war and partly for commercial or other purposes of peace ?

No.

c) employed by the State for commercial or other purposes of peace only ?

Yes.

d) employed by private persons under charter or otherwise ?

Yes.

2° Does your State employ for public services vessels which are privately owned ?

Yes.

3° Does the law in your country confer any immunity on :

a) vessels State owned as mentioned above under 1°, litt. a ?

Yes.

Under 1°, litt. b ?

Needs no reply.

Under 1°, litt. c ?

No.

Under 1°, litt. d ?

No.

b) or vessels privately owned but employed by the State as mentioned above under 2 ?

Yes.

4° If any such immunity is conferred,

a) how far does it extend ?

Fully extend.

b) in what manner is it claimed ?

Not necessary specially to claim.

c) upon what principle is it based ?

Based on principle of our public law.

5° If any such immunity is recognised, are you in favour of its abolition or modification as to either :

a) war vessels. Reply : No, (but Dr. N. Matsunami's personal opinion is in favour of its modification).

b) any of the other vessels mentioned in questions 1 and 2 above ?

In course of investigation.

6° Does your State claim any immunity in respect of maritime liability as to cargoes which are either :

a) state owned ?

Generally speaking, no.

b) privately owned and carried by the State ?

Generally speaking, no.

7° Is any further or other immunity such as exemption from the operation of national revenue laws or any part thereof, conferred by the law of your country upon any of the above vessels trading from or to the shores of your country ?

Generally speaking, no.

8° Have you any further observations to offer on this subject ?

No.

Dr. Matsunami will personally write a memorandum and forward a proposal on collision to the Conference.

Memorandum

by Dr. N. MATSUNAMI,

*of the Tokyo University,
President of the Japanese Association of Maritime Law.*

The paper written by Mr. Justice Hill invites the International Maritime Committee to consider the immunity which is granted by national Courts of Justice to warships in respect of damage by reason of collision between such ships and merchant vessels.

The question is not new : it was already put forward twice at the Conferences of the International Maritime Committee by myself, once at the London Conference of 1899 and the second time at the Paris Conference 1900.

After the world-war, the question was forced upon the attention of the Courts, lawyers and marine circles at large.

The law as it now stands is not righteous; it grants a remedy to the warship damages by a collision when the accident is caused by the act or default of the merchant vessel, while it gives no remedy to the merchant vessel in the reverse case. It is partial and this partiality must be got rid of. There seems to me to be a very grave objection to the immunity conferred on warships in collision cases.

Therefore, I, Dr. Matsunami, of Japan, do propose to the Conference the following resolution :

« In the case of collision between a warship or other » public ship and a merchant vessel, the International » Maritime Committee hopes that the war- or public » ships will pay the damages according to the general » principles of maritime law ».

UNITED STATES
MARITIME LAW ASSOCIATION

Immunity of State-owned Ships.

Resolution carried at the Meeting of 5th May 1922.

Resolved that it is the sense of this Association that vessels belonging to a sovereign, engaged only in Governmental and non-commercial work, should not be subject to attachment or other legal process, either in tort or contract, but the sovereign should be suable in personam in the appropriate municipal courts of the sovereign without special Governmental action; but that it is the sense of this meeting that all Government-owned or operated vessels regularly or temporarily engaged in commercial or profit-earning occupations should be subject to suit, and to the creation and enforcement of maritime liens, in like manner as are vessels privately owned under the maritime law of the sovereign owner.

SWEDEN

SWEDISH ASSOCIATION OF MARITIME LAW.

I

The International Code of Affreightment.

The Swedish Association of Maritime Law does not underrate the very big difficulties connected with the drafting of a complete International Code of Affreightment. A uniform legislation, in any case within the more central parts of the Law of Affreightment, appears, however, to the Swedish Association of Maritime Law as a very desirable aim and it seems that the difficulties associated with the realizing of this desideratum should not deter from taking up the work of regulating in continuity the whole International Code of Affreightment. In this respect speaks especially the circumstance that a considerable work has already been bestowed thereupon by the I. M. C. Besides it is to be noted that in many countries a revision of the Maritime Laws now existing has been taken up and this work is still going on. The preliminary work connected therewith will certainly facilitate a continuation on the way of international legislation. Moreover it is important for the entire work of international legislation that the revision thus started of the national laws should be influenced and supported

by such principles to which international unity may be obtainable.

The subjects hitherto submitted by the I. M. C. for international legislation belong in the main to the Law of Contract in a strict sense. Their reciprocal limitation has been quite automatical, in as much as the different subjects have been advantageously dealt with separately and then adopted by special conventions. To a certain extent the circumstances are different with regard to the numerous subjects falling within the scope of the contract of affreightment, where the different questions are much more connected with each other and are not suitable to be dealt with separately for the purpose of making international agreements.

The difficulties for a work of international legislation — caused by the extent and the nature of the Law of Affreightment — may however make it desirable to nominate a special committee of a somewhat more permanent nature than hitherto has been the case. The Swedish Association will therefore put forward the suggestion that it might be advisable to give to a committee the charge to resume the work of drafting a legislation of the contract of affreightment, which work was interrupted in 1914. The aim of the committee should be *at first* to expose the fundamentals upon which an agreement might be obtained and *then*, after the Conference has fixed the common outlines, to examine and deduce, from the results obtained at the Conference, to what extent a somewhat more detailed legislation would be possible and particularly called for by the necessities of the international trade.

Should it be found advisable that some part of the Law of Affreightment ought to come separately under consideration, it seems to us that an international legislation of such subjects as contained in the Hague Rules of 1921 offers the least trouble from the point of view put forth here above viz. the difficulty of treating separately special parts of the Law of Affreightment. Such a legislation would scarcely be possible, however, without the simultaneous admission of the general principles of a legislation of the clauses of the Bill-of-lading.

II

The Hague Rules.

1. The question of a voluntary carrying out of the Hague Rules has been discussed by both the Swedish Shipowners' Association and the Swedish Chambers of Commerce, whereby on the whole although not always unconditionally the opinion has been expressed in favour of the adopting of the said Rules.

2. As the Hague Rules exclusively are based upon the British principles of the law as regards the Bill-of-lading there are naturally above everything formal difficulties for the assimilation of the said Rules with the legislation now existing which is founded upon the principles of the continental Laws upon the subject.

3. An amendment of our law *solely* in order to bring it in concordance with a private and to its duration vague agreement between the parties concerned — as the Hague Rules appear at present — would scarcely be possible to accomplish.

4. With the opinion of the Swedish Association of Maritime Law as regards the great advantages offered on the whole by a uniform legislation of the Maritime Law it is naturally very desirable to bring about an international convention on the subjects dealt with by the Hague Rules. (Compare above under 1).

III

The Immunity of Sovereign States as regards Maritime Property.

1. The Swedish State owns ships intended for *a*) exclusively war service, *b*) partly war service, partly other purposes and *c*) solely commercial purposes. On the other hand the State does not own any ship used by private persons.

2. The State does scarcely not any longer charter or time-charter private ships, but had during the war-time chartered several ships.

3. The Swedish Law does not recognize any immunity for ships belonging to the Swedish State or used by the State.

4. According to the above this question needs no answer.

5. In such cases as mentioned herein it seems as if the State ought to be equalled with the private citizen.

6. The State does neither claim any immunity within the Kingdom with regard to its own cargoes nor to cargoes carried by the State.

7. As to its own ships the State is exempt from certain duties and fees, e.g. port-charges, beaconage, fees for lightships, etc. etc.

Stockholm in August 1922.

For the *Swedish Association of Maritime Law*,

ELIEL LÖFGREN,

President.

UNITED STATES.

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

Immunity of Government-owned Vessels.

1. Does your State own any vessel :

a) employed by the State for war purposes only ?

Yes.

b) employed by the State partly for purposes of war
and partly for commercial or other purposes of peace ?

Yes.

c) employed by the State for commercial or other
purposes of peace only ?

Yes.

d) employed by private persons under charter or
otherwise ?

Yes.

2. Does your State employ for public services vessels
which are privately owned?

Not in time of peace.

3. Does the law in your country confer any immunity
on :

a) vessels State-owned as mentioned above under 1,
a, b, c, and d ?

Yes.

or b) vessels privately owned but employed by the State
as mentioned above under 2 ?

Yes.

4. If any such immunity is conferred :

a) how far does it extend ?

By Statute of March 9, 1920, it is provided that no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock, or in the possession of the United States or of such corporation, or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall be subject to arrest or seizure by judicial process in the United States or its possessions.

The act, however, expressly does not apply to the Panama Railroad Company, whose stock is owned by the United States Government, and which operates a line of vessels. In view of the above prohibition of the Statute, the Statute itself then provides that in cases where, if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action, a libel *in personam* may be brought against the United States or against such corporation, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suit must be brought in the District in

which the parties suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The Statute further provides that such suit shall be heard and determined in the same manner as admiralty suit between private parties, and if the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels *in rem*, wherever it shall appear that if the vessel or cargo had been privately owned and possessed, a libel *in rem* might have been maintained. Neither the United States nor such corporation shall be required to give any security in such proceeding. The Statute further provides that suit brought under the Act must be brought within two years after the cause of action has arisen.

b) In what manner is it claimed ?

As explained in answer to preceding question, suit against such vessel is prohibited by Statute.

c) Upon what principle is it based ?

As to war vessels, it is based on the ancient principle of the immunity of a sovereign. As to other vessels it is based on convenience to the Government.

5. If any such immunity is recognized are you in favor of its abolition or modification as to either :

a) War vessels ?

No.

b) Any of the other vessels mentioned in questions 1 and 2 above ?

Yes. The Maritime Law Association of the United States has expressed its view in this behalf in a resolution reading as follows :

« *Resolved* that it is the sense of this Association that
» vessels belonging to a sovereign, engaged only in go-
» vernmental and non-commercial work, should not be
» subject to attachment or other legal process, either
» in tort or contract, but the sovereign should be suable
» *in personam* in the appropriate municipal courts of
» the sovereign without special governmental action;
» but that it is the sense of this meeting that all Go-
» vernment-owned or operated vessels, regularly or tem-
» porarily engaged in commercial or profit-earning occu-
» pations should be subject to suit, and to the creation
» and enforcement of maritime liens, in like manner as
» are vessels privately owned under the maritime law
» of the sovereign owner ».

6. Does your State claim any immunity in respect of maritime liabilities as to cargoes which are either :

a) State owned ?

Yes; to the extent indicated by the Statute above referred to.

or b) Privately owned and carried by the State ?

No.

7. Is any further or other immunity such as exemption from the operation of national revenue laws or any part thereof, conferred by the law of your country upon any of the above vessels trading from or to the shores of your country ?

No.

8. Have you any further observations to offer on this subject ?

The Statute above referred to, which is the present law of the United States, repealed an earlier statute (Act of

September 7, 1916) which provided that any vessels purchased, chartered or leased from the United States Shipping Board « while employed solely as merchant vessels, shall be subject to all laws, regulations and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien or other interest therein ». Cases illustrating the right to proceed *in rem* by attachment against Shipping Board vessels under the Act of September 7, 1916, are :

The Lake Monroe (1919) 250 U. S., 246;

The Florence H (1918) D. C. S. D. N. Y., 248 Fed. Rep., 1012;

The Jeannette Skinner (1919) D. C. D. Maryland, 258 Fed., 768;

The Nismaha (1920) D. C. D. Ore. 263 Fed., 959.

Under both the earlier Statute of 1916 and the subsequent Statute of 1920, the right to sue, — under the earlier statute *in rem*, and under the later statute *in personam*, — is conditioned expressly on the existence of a maritime lien on the vessel involved. In this connection it should be noted that the United States Supreme Court in *The Western Maid* (Jan. 3, 1922) held that where vessels are owned by the United States Government either absolutely or *pro hac vice*, and are employed for public and governmental purposes, no lien arises against such vessels for alleged « torts » committed by them during such ownership and employment; consequently such vessels are immune from either attachment or liability even after they come or come back into the ownership of

private individuals. It should also be noted that the Act of September 7, 1916, now repealed, and the present Act of March 9, 1920, by their express provisions, deal only with vessels owned or operated by the United States Government, and do not refer even indirectly to vessels owned or operated by foreign governments.

Immunity from seizure, of vessels owned by foreign governments is a matter wholly of case law.

It is settled that vessels of war of a foreign government are immune from attachment in the courts of the United States.

The Exchange (1812), 7 Cranch, 116.

The Supreme Court of the United States, however, has not yet decided, nor are the inferior Federal Courts in accord upon, the question of the status of foreign-government-requisitioned, or foreign-government-chartered, or foreign-government-owned vessels engaged in commerce.

It has been held that Government ownership by itself is not sufficient :

The Johnson Lighterage Co. No. 24 (1916, D. C. N. J.) 231 Fed., 365, in which cargo owned by the Russian Government was attached in a suit *in rem* for salvage.

In *The Davis* (1869), 10 Wall., 15, an attachment of cargo owned by the United States Government was upheld in a suit *in rem* for salvage; and in *Long vs The Tampico* (1883, D. C. S. D. N. Y., 16 Fed., 491) two vessels, the property of the Mexican Government, in charge of an agent who was taking them to Mexican waters, were subjected to an attachment in suits for sal-

vage, it being held that possession by a bailee for a foreign government is not sufficient to prevent attachment.

In *The Attualita* (1916, C. C. A., 4th Circuit), 238 Fed., 909, the Circuit Court of Appeals for the Fourth Circuit, in a suit for damage to the owners of a Greek steamer resulting from collision, declined to exempt from jurisdiction an Italian merchant vessel requisitioned by the Italian Government and employed in the Italian State service, but officered and manned by her private owner.

On the other hand, in *The Maipo* (1918) 252 Fed., 627, and (1919) 259 Fed., 357, the District Court of the United States for the Southern District of New York exempted from seizure in admiralty « a naval transport owned by a foreign government and in its possession through a naval captain and crew, although chartered to a private individual to carry a commercial cargo ».

In *The Carlo Poma* (1919, C. C. A. 2nd Circuit), 259 Fed., 369, it was held that a vessel owned by the Italian Government and in charge of a Government master and crew, was not subject to attachment, although the vessel was being used as a merchantman in the carrying of commercial cargoes.

In *The Pampa* (1917, D. C. E. D. N. Y.), 245 Fed., 137, an Argentine naval transport, in charge of commissioned officers of the Argentine navy and with a naval crew, was held immune from attachment in a suit for collision, although at the time of the collision the vessel was carrying a cargo of general merchandise belonging to private persons.

In *The Beaverton* (1919, D. C. S. D. N. Y.), 273 Fed.,

539, a vessel privately owned and under charter to the French Government, but not in that government's possession, was held not immune from attachment in a suit for collision.

In *The Pesaro* (1921, D. C. S .D. N. Y.), 277 Fed., 473, a vessel owned by the Italian Government and operated by a civilian crew in the pay of the Italian Government, which vessel was used in the carriage of commercial cargoes, was held by the District Court not immune from attachment in a libel for damage to cargo, on the ground that the vessel, although Government owned, was engaged in a purely commercial service, and on the further ground that it appeared from the evidence that the vessel would not have been accorded immunity from attachment in the Italian courts. It is understood that an appeal will be taken from this decision.

In the case of *Ex Parte Muir*, 254 U. S., 522, it was sought to review a decision of the District Court of the United States for the Eastern District of New York permitting the attachment of the steamship « Gleneden », a privately owned British steamship, in a suit for collision. It was asserted by counsel appearing on behalf of the British Embassy in Washington as *amici curiæ* that the steamship was an Admiralty transport in the service of the British Government by virtue of requisition; but the Supreme Court, after delaying decision for an unusual time, refused to pass upon the claim of immunity on the ground that the suggestion of Government ownership had not been properly presented, and that neither the British Government nor its Ambassador had appeared

as a party to the suit, nor had the claim of immunity been the subject of diplomatic representations to our Government through the usual official channel, to wit, the Executive Department.

In *The Pesaro* (1921), 255 U. S., p. 216, the Supreme Court likewise found it unnecessary to rule upon the validity of a claim for immunity, improperly made (as was held) by way of direct suggestion of the Italian Ambassador to the Court of first instance. The previous decision in *Ex Parte Muir* was referred to, and the Court added :

« What the decree should have been if the matters
» affirmed in the suggestion had been brought to the
» Court's attention and established in an appropriate
» way, we have no occasion to consider now ».

Thus it is seen that there is no ruling on this question from our court of last resort. It may be interesting, however, to note that in the case of the *Bank of the United States vs Planters Bank of Georgia* (1824) 9 Wheat., 904, the Supreme Court, speaking by Marshall, C. J., stated :

« It is, we think, a sound principle that when a go-
» vernment becomes a partner in any trading company,
» it divests itself, so far as concerns the transactions of
» that company, of its sovereign character, and takes
» that of a private citizen. Instead of communicating to
» the company its privileges and prerogatives, it des-
» cends to a level with those with whom it associates and
» to the business which is to be transacted ».

And in the case of *The Exchange* (*supra*) the Supreme

Court, while without occasion to consider the case of a public ship used for trading purposes, pointed out

« a manifest distinction between the private property
» of a person who happens to be a prince and the mili-
» tary force which supports the sovereign power and
» maintains the dignity and independence of a nation.
» A prince, by acquiring private property in a foreign
» country, may possibly be considered as subjecting that
» property to the territorial jurisdiction; he may be con-
» sidered as so far laying down the prince and assuming
» the character of a private individual; but this he
» cannot be presumed to do with respect to any portion
» of that armed force which upholds his crown and the
» nation he is entrusted to govern ».

This language, and the decision of the Circuit Court of Appeals in the case of *The Attualita*, would seem to indicate a tendency in the direction of the *dictum* of Sir Robert Phillimore in *The Charkieh* (1873) L. R. 4 A. & E. at p. 99 :

« No principle of international law, and no decided
» case, and no dictum of jurists of which I am aware, has
» gone so far as to authorize a sovereign prince to assume
» the character of a trader, when it is for his benefit;
» and when he incurs an obligation to a private subject,
» to throw off, if I may so speak, his disguise, and appear
» as a sovereign, claiming, for his own benefit, and to the
» injury of a private person, for the first time, all the
» attributes of his character ».

To summarize :

1) Vessels of war of foreign sovereignties are accorded

the same exemption in our courts as are our own vessels of similar character.

2) The question of the status to be accorded to foreign-government-owned or government-controlled vessels engaged in commerce, has not yet been decided by our Court of last resort, and whether any such exemption will be accorded, if and when the Supreme Court considers such a case, is uncertain.

September, 18, 1922.

JAMES K. SYMMERS,
*for Committee of Maritime Law
Association of the United States.*

CHARLES M. HOUGH,
President.

SYNOPTICAL TABLE

BY

Mr. FREDERIC SOHR

Dr. Jur.

General Secretary of the International Maritime Committee.

SYNOPTICAL TABLE

BELGIUM.

..... We are of opinion that it behoves to subject to the rules of common law, as well in respect of jurisdiction as of arrest (whether conservatory or arrest for execution) any property of maritime kind which is State-owned, with the sole exception of warships and of State-owned ships exclusively employed for services of public interest. With regard to this latter class of ships, it would be desirable that special agreements should be entered into by all — or at any rate by some — States signatories of the international Convention to be arrived at, which should include some provisions as to guarantees given beforehand, so as to render useless any arrest of warships or of vessels exclusively employed for public services. In this manner, any rights of parties interested, namely as regards collision and salvage, would be safeguarded. It should be observed that such arrangements would imply also some regulations to be agreed upon as to jurisdiction which the States signing such special agreements would reciprocally recognise to their Courts.

The Belgian Association, when limiting the immunity to warships and to State-owned vessels exclusively employed on public service, has followed the wording used in the Convention of 23rd September 1910 on Collision (art. 11) and on Salvage (art. 14).

DENMARK.

In Denmark, the feeling that it is but fair that State-owned ships should be treated before the Courts in the same manner as privately-owned vessels, is so deeply rooted that, in our opinion, the contrary rule according to which the State should not be subjected to the jurisdiction of its own Courts against its will, would appear as affording insufficient security.

FRANCE.

Rule I

The actions directed against a foreign State by reason of the management of ships owned or managed by it and also actions *in rem* relating to such ships (war vessels being excluded in both cases) can be brought before the Courts which would have jurisdiction for deciding on any actions against a foreign ship-owner or against a ship belonging to a foreign owner.

Rule II

War vessels and ships owned or chartered by a State and affected, in that State, to the carrying out of a public service cannot be subject to any arrest in another country for any cause whatever. On the other hand, the State cannot avail itself of the legal provisions limiting the shipowners' liability, in respect of the obligations arising from the management of such ships.

Rule III

Commercial ships belonging to a State can be arrested in all countries as a guarantee for the claims arising by reason of the management of such ships.

Rule IV

Shall be considered as State-owned commercial ships, any vessels employed to the carriage of passengers or of goods, even if the State should affect them to the transport of cargoes belonging to itself, except in the case where such goods are intended to the needs of the public services of such State.

Rule V

The cargoes belonging to a State can be arrested as a guarantee for the claims against such State arising by reason of their transport, unless they be intended to a public service of that State.

GREAT BRITAIN.

MARITIME LAW COMMITTEE OF THE INT. LAW ASSOC.

We are in favour of the abolition of any immunity granted either to *a*) war vessels, or *b*) any of the other vessels mentioned in questions I and II of the questionnaire, because

a) It is liable to interfere with the various measures internationally adopted for the promotion of safety at sea. The rules of navigation cannot be properly safeguarded if one class of vessels is exempt from the consequences of failure to observe them, however well trained the ship's personnel and however severe the discipline observed on board ship;

b) Uncertainty as to disabled vessel's chances, and therefore, as to whether salvage services rendered would meet with any reward tends to create at sea reluctance in the rendering of such services, especially if the services were such as to involve risk to the safety of the private merchant and shipowner who may be held liable by the State for torts committed by him or his servants, but who remains without remedy for torts committed against himself and his property.

It is considered that all war vessels should be free from actual arrest, as arrest might interfere with the public services of any such vessel; provided that the place of arrest be taken by the giving of an undertaking by the representative of the Power against whose vessel process is issued for the payment of costs and damages — an undertaking which would be equivalent to bail. A similar undertaking should take the place of bail in the case of all other State-owned vessels. Such undertaking may be given at any time and need not delay the vessel.

CHAMBER OF SHIPPING OF THE UNITED KINGDOM.

i) That all maritime property owned by or in the possession or service of a Sovereign State whether national or foreign, other than property being used solely for purposes of war, should, as regards the rights, privileges and liabilities conferred or imposed by the law of any country be placed on precisely the same footing as private-owned maritime property under the law of that country.

ii) That maritime property owned by or in the possession or service of a Sovereign State and being used solely for purposes of war should, as regards the rights, privileges and liabilities conferred or imposed by the law of any country be placed on the same footing as private-owned maritime property under the law of that country, provided that such property shall not be subject to arrest if it is owned by or in the possession or service of a State which has made provision either generally or in the special case for the giving of security in lieu of arrest in the Courts of the country where the proceedings are instituted.

ITALY.

I

Actions against State-owned ships should be submitted to the Courts which have jurisdiction by virtue of the principles regulating the matter under international law.

And as the question of conflict of jurisdiction always involves great difficulties, it would be advisable — as long as the ideal solution of an International Court of Justice to decide on all disputes in matters of Collision and salvage, is not arrived at, — to establish a set of rigid rules as to jurisdiction, especially in regard to questions of Collision, on the basis of the studies which have been undertaken already on the subject at the Conferences of Hamburg and Amsterdam.

II

As to the law which ought to be applied, this should be the local law of the competent Court to which the case is submitted. In regard to disputes arising by reason of a collision or of salvage services between ships belonging to States which are bound by the Brussels Conventions, the provisions of the said Conventions should be applied. Hence it will be necessary to abrogate the articles (namely article 11 of the Convention on Collision and article 14 of the Convention on Salvage) which exclude from the scope of the said conventions any ships exclusively affected to a public service.

III

It would be necessary to proclaim the prohibition of subjecting to any arrest, whether for conservancy or for execution, warships and ships employed on public service. Such immunity should be extended even to ships owned by private parties but affected to a public service (Activity of the State for police purposes and for its social activity).

IV

Merchant vessels belonging to a State or chartered by such State, should be subjected to the same system of law as private-owned ships, even in the event of their being employed for the carriage of merchandise belonging to the State.

ADDITIONAL REMARK.

In order to avoid the difficulties resulting from the uncertainties and hesitations of the law, doctrine and jurisprudence in regard to the legal actions brought against a State, it would be advisable to fix by means of an international agreement, either who shall be the person to whom a writ of process can be served, or what procedure shall be followed in respect of the issue of such writ. And by way of international agreement also, the various States would undertake to carry out, without any compulsion, being required, the decisions of foreign Courts, when such decisions, of course, have been completed by the formula of exequatur through the proper judicial authority of the State against which such judgments have been given. This implies necessarily that such judicial authority shall have to examine whether the foreign judgment has been given without encroaching upon the prerogatives which are essential and inherent to the proper working of any form of judicature, and with due respect to international public order.

JAPAN.

Immunity for war-vessels to be maintained (*contra* : Dr. Matsunami).

NETHERLANDS.

..... Keeping in mind, however, that other States have embarked on quite a different course and that a considerable percentage of the tonnage of some countries is owned or employed by the State for commercial purposes only, we agree that there exist grave objections to the immunity of these vessels and that it is in the interest of international trade to set certain bounds to claims to that effect.

There has been some discussion as to the immunity of war ships and it was pointed out by a minority that the time had come to consider whether that privilege was not a thing of the past. But the majority held that it would greatly endanger international agreement on the point of immunity if the question of war vessels should be included and, moreover, that the dignity of the State was directly concerned in the treatment of ships belonging to its Navy. War vessels have given very little trouble in the past and, we trust, will continue to do so in the future.

Confining ourselves to vessels engaged in trade we are prepared to support any proposal tending to international agreement : *a.* that every State engaged in trade should submit to the jurisdiction of every other State in matters relating to trade and should have the same position as an ordinary litigant, and *b.* that its commercial maritime property, as regards immunity, should be placed on the same footing as private maritime property under the ordinary mercantile Law.

We should add that, in our opinion, there remains in most cases the preliminary question whether, in fact, the property concerned should be considered as used for commercial purposes or not. A minority gave as their opinion that it should not be left to a national court of justice to decide on this point and that it would be preferable to leave questions of such vast importance to a Supernational Court.

NORWAY.

... We must emphatically second the opinion that the immunity of the State in those countries where this still exists, must as soon as possible be altered, in such a way that the State and the private citizen be submitted to the same legal rules in regard to the fulfilling of obligations under or outside of contracts. We are most sincerely interested in this being done. Norwegian shipowners have had large claims the promotion of which has been blocked and interfered with on account of the present unfortunate rules of procedure, according to which the State as such could not be sued except with the permission of the proper authorities.

SWEDEN.

..... It seems as if the State ought to be equalled with the private citizen.

UNITED STATES.

Resolved that it is the sense of this Association that vessels belonging to a sovereign, engaged only in Governmental and non-commercial work, should not be subject to attachment or other legal process, either in tort or contract, but the sovereign should be suable in personam in the appropriate municipal courts of the sovereign without special Governmental action; but that it is the sense of this meeting that all Government-owned or operated vessels regularly or temporarily engaged in commercial or profit-earning occupations should be subject to suit, and to the creation and enforcement of maritime liens, in like manner as are vessels privately owned under the maritime owner.

LONDON CONFERENCE
OCTOBER 1922
REPORT OF PROCEEDINGS

CONFÉRENCE DE LONDRES
OCTOBRE 1922
COMPTE-RENDU

LUNDI, 9 OCTOBRE 1922.
MONDAY, 9th OCTOBER 1922.

Séance d'ouverture Inaugural sitting

La séance est ouverte à 10 heures au Lincoln's Inn Hall.

The session opened at 10 a. m. in Lincoln's Inn Hall.

M. LOUIS FRANCK. — Messieurs, en ouvrant pour la troisième fois à Londres la Conférence du Comité Maritime International, je me félicite de l'accueil qui nous est fait ici. Je ne crois pouvoir mieux y répondre qu'en essayant, dans la mesure de mes forces, de m'exprimer dans cette noble langue anglaise que nous admirons tous et qui traduit depuis des siècles les aspirations de la grande nation britannique.

* * *

Gentlemen, It is a great honour for me to open the 13th Conference of the International Maritime Committee in this beautiful hall, and before this distinguished company, where the representatives of so many commercial nations have come to work together for the unification of Maritime Law.

When about 25 years ago, we started this crusade for improving the laws of the sea, the winds and the tides were against us. However, we have been fortunate enough to see that, just before the war, positive results had been

achieved and that under the form of the Code on Collisions at Sea, and another Code on Maritime Salvage, Maritime Law had largely become universal. These Codes have been approved of and agreed to by more than twenty nations. Only a few ratifications are wanted to make them fully universal. We hope that those adhesions will be shortly forthcoming, and, especially, that the United States, who have already ratified the treaty on Salvage, and who have always stood for uniformity in the law of nations, will extend their approval to the Collision Code, and the great favour we enjoy to-day of having amongst us His Honour Judge Hough, the most distinguished President of the Maritime Law Association of the United States, gives us great hope that our expectations will be fulfilled. (*Applause.*)

Two other Codes, one relating to the Limitation of Shipowners' Liability, and the other to Maritime Liens, Mortgages and Privileges, have been put in proper form for consideration by the Brussels Diplomatic Conference. A draft of rules on the Law of Affreightment and several other matters were also under consideration by our Committee, and when our 11th Conference met at Copenhagen in May 1913 the atmosphere was full of international goodwill and spelling success to our efforts.

But 1914 came. « The brazen threat of war » put an end to our labours and to so many hopes. When these terrible years were over an express mention in the Treaty of Versailles excepted the Codes on Collision and Salvage from the general rule under which the maintenance of international agreements between the former enemy parties was made optional. We considered that this was

an encouragement to resume our work, and at the end of July 1921 the Committee met again in Antwerp in order to agree on the best method of resuming the work which had been interrupted for 7 years. Since that date the various International Associations connected with this Committee, Associations of Shipowners, Merchants, Underwriters and Lawyers, all over the world have resumed their labours. Numerous and able reports have been drafted and distributed amongst you, and it is only fair specially to mention the very learned and valuable memorandum prepared by Mr Justice Hill (*hear, hear*), on the matter of Immunity of Government-owned ships; and also the very interesting report of Dr Bisschop on the Hague Rules. (*Hear, hear*).

Gentlemen, the agenda of this meeting is very important and I do not wish to waste your time by very long comments or by a long speech. The Law of Affreightment, the Negligence Clauses in Bills-of-Lading, and this matter of Immunity of State-owned ships are all questions towards which no shipowner, no merchant, no underwriter, can remain indifferent.

It is a matter of great congratulation to us that we are able to discuss these questions, thanks to the invitation of our British colleagues and friends, in this great City of which Lord Byron said that it was « A mighty mass of brick and smoke and shipping », but of which we all know that it is the commercial heart, the business metropolis of the world and well worthy of this proud pre-eminence.

Most kind and excellent arrangements have been made for us which will no doubt make our task easier and more

agreeable, and for which we are very thankful to the great public bodies and corporations who are associated with this generous hospitality.

Gentlemen, since our Antwerp meeting, this Committee has sustained an irreparable loss by the death of our late President, Mr Charles Le Jeune, a man of few words but many deeds, and I might say, having known him for more than a quarter of a century, second to none in all that human nature has noblest to display. (*Hear, hear !*) After such a loss, it was a great privilege to this Committee that Sir Leslie Scott, who has since the beginning of our work taken such an eminent part in it, and to whom the success of the Diplomatic Maritime Conference on which he represented Great Britain with that great Judge, Lord Sterndale, the Master of the Rolls (*hear, hear*), is largely due, has accepted the office of Vice-President of the Committee. (*Hear, hear*). I am sure that no adhesion and no acceptance of this nature could spell more in the form of a guarantee of success than the certitude we have of the continued collaboration of Sir Leslie Scott.

Now, Gentlemen, it is my privilege and pleasure to propose to this meeting that Sir Henry Duke be appointed the President of the Conference. (*Applause*). That Sir Henry is the President of that great Admiralty Court whose name is known and whose justice is respected by all nations so far as seafaring men push their trade and run their risks, would already be sufficient a title to preside over a meeting on Maritime matters like this; but Sir Henry has also shown himself in former international meetings, not only the great lawyer that he is, but also a president with so much ability, so much tact,

so much clear-sightedness, that he has been able happily to wed in harmonious agreement the water and the fire, the conflicting interests of shipowners and cargo owners (*Hear, hear*). I express the hope that you will unanimously approve, and that Sir Henry will kindly accept, this appointment as a modest tribute on our part to his great services in the cause of International Maritime Law. (*Loud applause*).

LORD STERNDALÉ (*Master of the Rolls*). — Mr President and Gentlemen, I beg to second the proposal of Sir Henry Duke as President of this Conference. The sympathetic view that he always takes of the claims and the rights of all the respective parties who come before him, makes it certain that under his Presidency every view that can be put forward on behalf of anybody who is interested, will have its full hearing and its fair treatment (*Hear, hear*). He had demonstrated that as President of the Conference at the Hague. (*Hear, hear*). I have not the slightest doubt that he will demonstrate the same again now. Without more words I second the proposal of Sir Henry Duke as President. (*Applause*).

THE CHAIRMAN. — I take it that this proposal is carried unanimously. (*Carried by acclamation*).

The Rt Hon. Sir HENRY DUKE. — Monsieur le Président, Messieurs. So far as good will to serve the objects you all have at heart can make me serviceable to you I am at your service; but I must warn you that I have not the eloquence which has distinguished the speech we have just heard from your President, and in many other particulars I have no doubt you will discover (assuming

that I occupy your Chair during this Conference) the serious limitations there are to my adequate performance of the duties. But I am at your service, and I regard the offer of the Presidency of the Conference as a distinguished honour.

This assembly here in London, when we with all nations are only emerging from the troubles of a period of nearly 8 years, is, I hope, a good omen for the business relations of men in the world at large during the coming time; and I esteem it an honour to be invited to take part in this first International Conference in London at this stage of the affairs of the business world. (*Hear, hear.*) I say that only with regard to the present occasion. There are many matters as to which in the course of your proceedings it will be necessary probably that I should address some concise observations to you; but you will find that, whatever other qualifications or disqualifications I may possess, I am not inclined to be a talking President in a great assembly of business men.

I want to say this further to you with regard to your programme. Your original proposal was that you should first discuss the question of the Rules for the Carriage of Goods by Sea. From representations, which have reached me from various quarters, I have reason to believe that the general view is that you should first discuss the question of the Immunity of Sovereign States in respect of their ships and that you should reserve to a later period the question of the Rules for the Carriage of Goods by Sea. (*Hear, hear.*) That is a matter I shall have to mention to you, assuming you persevere with your intention to place me in the Chair, after you have heard one or

two observations I shall make. I shall make a proposal to that effect if I am placed in the Chair. I shall do more. I shall make a proposal to you that at some reasonable period in your discussions you shall endeavour, with the aid probably of the Permanent Executive of the Conference, and of the Committee, so to apportion your time between your subjects that you may be quite sure that when the time comes for the close of the Conference you will have done what can usefully be done in respect of those various subjects. I say no more than that at this moment.

I am, as I have observed, deeply sensible of the honour conferred upon me in the invitation you have extended to me. If you persevere in it, Gentlemen, I will do my best to render the Conference successful and useful. (*Applause*).

(SIR HENRY DUKE *here took the Chair*).

THE CHAIRMAN. — Mr President and Gentlemen, I shall take the liberty of addressing you always in English. I have some hope that I may make myself commonly understood, as I have found possible among business men where topics, such as are here under consideration, have been discussed. If it becomes necessary that my English should be rendered into some other tongue I will ask some friend to translate me.

The first question, as it seems to me, which you have to determine is as to the order of your business. As I have said, substantial reasons have been presented to me why, in the judgment of those who have approached me, the question of Immunity should be disposed of

first. I do not propose to discuss them. They are to my mind conclusive. I will mention two of them. The leading representative of our friends in the United States of America, the distinguished Judge to whom the President has referred, Judge Hough, only arrived late last night, and it is very desirable, before we come to any detail of discussion upon a very detailed and complex question like the Rules for Carriage of Goods by Sea, that he shall have the opportunity of conversation with those who are interested, as he is, in the matter. Besides that, our colleague Dr Loder, who holds the distinguished position we all know in the International Tribunal at The Hague, is not able to be with us after the middle of the day tomorrow as I understand, and he takes a great interest in the question of Immunity of Sovereign States in respect of their shipping, and is ready to address the Conference upon that subject. Those are two matters : there are many others. I will venture to ask you, if I may, whether it is your pleasure to proceed first with the question of the Immunity of Sovereign States in respect of matters affecting ships owned by them. Is that your pleasure ? (*Agreed*).

Very good. Then we will proceed first with that part of the discussion. I think in view of the position reached since your last Conference by our friend Dr Loder, you would like to hear a personal word from him generally; I think in view of the presence here, after the lapse of many years, of the distinguished representative of the United States, Judge Hough, you would like a personal word from him; and we have also amongst us Monsieur Verneaux, a distinguished jurist, and repre-

sentative of Commerce in its various forms, and I believe you would like a word from him as well. I will venture first to call upon Dr Loder.

M. B. C. J. LODER. — Permettez-moi de dire quelques mots pour exprimer la vive satisfaction que nous éprouvons tous, — et en premier lieu mes compatriotes au nom desquels je parle, — de nous retrouver à Londres, dans la capitale du grand empire britannique, pour continuer nos travaux. Nous sommes particulièrement heureux de nous retrouver ici, parce que non seulement on a dans ce pays le culte du droit et de la justice, mais le droit y est toujours représenté aussi par les magistrats éminents de la Haute Cour de Justice. Nous sommes heureux aussi de savoir que nous délibérerons sous la présidence d'un juriste de haute valeur et de caractère très remarquable.

Je me souviens fort bien que lorsque nous nous sommes réunis ici pour la première fois pour la Conférence du Comité Maritime International en 1899, nous étions très nombreux, comme aujourd'hui. Que de travail n'avons-nous pas accompli depuis et combien de conférences n'avons-nous pas tenues ensuite, ici et ailleurs, pour aboutir finalement à la Conférence de Bruxelles ?

En parcourant cette belle salle, en regardant les tableaux historiques qui couvrent ses murs, mon regard s'est arrêté sur cette belle devise *Prudentia et sapientia*, Ce sont là les mots qui nous ont toujours guidés. J'ai le ferme espoir, Monsieur le Président, que tant que vous serez notre guide, nous aurons toujours le culte de la prudence et de la sagesse dans tout ce que nous allons faire. (*Applaudissements*).

Judge CHARLES M. HOUGH. — Mr President. It is as representing the Maritime Law Association of the United States that I and my colleagues come to you from across the ocean because our Association, composed as it is of the overwhelming majority of all those members of the legal profession in practice at the Admiralty in our country, and a considerable number of others who, in underwriting, or ship management, are devoted to maritime affairs, watches with the utmost interest all questions relating to Maritime Law, of which we largely gain knowledge through the International Maritime Committee, to whom we are so deeply indebted.

For myself permit me to say that although for the first time I am a delegate to a meeting of the International Maritime Committee, it is a rare pleasure, after the lapse of 23 years, to be able again to see the representatives of so many countries at such an extraordinary gathering of those interested in maritime affairs all over the world as we have here to-day.

From America I and my colleagues come prepared, as I say, to express the almost universal feeling of the legal profession, and to a very considerable extent, the profession of the shipowning, and ship operating industries as it prevails in America. I can only hope, Sir, that we may be able to contribute somewhat towards the success and wisdom of your deliberations in this hall. (*Applause*).

M. RENÉ VERNEAUX (Paris). — Messieurs, c'est avec une vive satisfaction que l'Association Française du Droit Maritime prend part aujourd'hui, dans la vieille et glorieuse métropole britannique, à une nouvelle conférence

qui évoque pour moi, comme pour M. Loder, le souvenir de la Conférence de Londres de 1899. Sans doute, ce n'est pas sans mélancolie que je pense, à cette occasion, aux membres disparus tels qu'Autran et tels qu'Octave Marais qui était alors président de l'Association et de la délégation. Aujourd'hui, nous avons à regretter l'impossibilité où MM. Lyon-Caen, Paul Govare et Henri de Grandmaison ont été de se joindre à nous. Mais du moins j'ai le plaisir de compter dans notre délégation des membres dont plusieurs portent des noms que je viens de citer et en sont les dignes continuateurs : M. Georges Marais, M. James Govare, M. Jean de Grandmaison. C'est avec ces nouveaux concours que l'Association Française coopérera aux travaux de cette Conférence, qui ne sera pas moins féconde que celle de 1899. Celle-ci, j'aime à le rappeler, a réalisé un difficile accord entre les membres britanniques et les membres continentaux quant aux données essentielles de la convention internationale à intervenir sur la responsabilité des propriétaires de navires. Je suis convaincu que la Conférence de 1922 sera également marquée par des solutions importantes grâce au concours de toutes les bonnes volontés tendues vers un même but : procurer à la communauté commerciale maritime le bienfait d'une loi commune, inspirée à la fois par la justice et par les nécessités pratiques. C'est avec cet espoir que l'Association Française, avec toutes les autres associations nationales, collaborera en toute sympathie à l'œuvre de la Conférence. (*Applaudissements.*)

M. A. TYPALDO BASSIA (Athènes). — Si j'ai demandé la parole, c'est pour m'associer à ce que vient de dire

notre honorable collègue hollandais. Il a parlé des qualités de la Grande-Bretagne; vous me permettrez d'ajouter une troisième : l'Angleterre a été la protagoniste de la liberté individuelle et c'est ici que cette liberté a fait le plus de progrès. Notre association nationale doit sa naissance au Président M. Louis Franck qui, en passant par Athènes en 1906, a suggéré l'idée que la Grèce ne pouvait manquer de collaborer au Comité Maritime International. Depuis sa fondation notre association a beaucoup contribué au développement du droit maritime en Grèce : nous lui devons le Code maritime de 1910. Je suis certain que la Conférence actuelle, sous la conduite de M. le Président, contribuera énormément au développement du droit maritime et, surtout, d'un code maritime unique pour le monde. (*Applaudissements*).

THE CHAIRMAN. — I think, unless some other delegate wishes to join in the proceedings at this stage, we will go on to deal with the first item of business. Does any other delegate wish to offer any observations generally upon the situation of the Conference? (*No response*). Then I will assume that we may proceed to our first business, which is to nominate Vice-Presidents and Honorary General Secretaries to act for the Permanent Bureau during the Conference, and to elect officers of the Conference, in addition to the President whom you have already elected.

I venture to propose, the President of the Committee, His Excellency Louis Franck; the Vice-Presidents, Senator Albert Le Jeune, and Sir Leslie Scott, His Majesty's Solicitor General, and that the Hon. General Secretaries,

Mr Langton of the Bar of this country, and Dr Frederic Sohr be Hon. General Secretaries of the Permanent Bureau for the purpose of the Conference. Is that agreed ? (*Agreed*).

As Officers of the Conference, as Vice-Presidents : His Excellency our President Mr Louis Franck.

(*Agreed*).

For Denmark : Dr Jorgen Koch. (*Agreed*).

For France : Mr Verneaux. (*Agreed*).

For Germany : Dr Leisler Kiep. (*Agreed*).

For Great Britain : Sir Leslie Scott. (*Agreed*).

For Greece : Dr Typaldo-Bassia. (*Agreed*).

For Holland : Dr Loder. (*Agreed*).

For Italy : Professor Francesco Berlingieri. (*Agreed*).

For Japan : Mr Takezo Okamoto. (*Agreed*).

For Norway : Mr Anton Poulsson. (*Agreed*).

For Sweden : Dr Eliel Löfgren. (*Agreed*).

For the United States : Judge Charles Hough. (*Agreed*).

And as Secretaries : Dr Bisschop, who is the most energetic and indefatigable Secretary of the Maritime Law Committee of the International Law Association, Mr Langton of the English Bar, and Dr Frederic Sohr. I take it Gentlemen that you agree in those proposals. (*Agreed*.) Those then are the officers of the Conference for these sessions.

THE CHAIRMAN. — We may now proceed with the first subject of discussion, namely the

Immunity of State-owned Ships.

I said to you that I thought some consideration would be needed in order to render the discussion of the subject

as straightforward as possible, and as profitable as possible. It is an involved subject. It involves three great heads of matters for consideration which I will mention to you, because I am going to make a suggestion as to the mode of dealing with them. I will read slowly what I have written and submitted in a competent quarter for consideration. First of all there is the enquiry « What liabilities, among those commonly enforceable as against ships and their owners, ought to be accepted by Sovereign Powers in respect of ships owned or operated by them ? ». That is I think the main comprehensive substantive question for discussion on the subject of Immunity. I have given such consideration as I might to the matter, and it seemed to me that, if the Conference, when it comes to a close discussion of the subject, were to place that substantive matter first, it would be a thrifty disposal of our time. (*Hear, hear*). Is that agreed ? (*Agreed*).

The second and the third questions, if I call the first a substantive question, are adjectival questions. The second is : « What means of enforcement of such liabilities ought to be sanctioned as against ships *in rem*, or otherwise ? »; that is as against ships or as against the sovereign states as owners of ships. The third is another adjectival question : « By what tribunals ought disputed questions of liability to be determined ? ».

There are many thorny questions involved under each of these heads of enquiry. That is a very good reason for keeping them apart. They will not mutually inflame one another if we successfully keep them apart. I am not suggesting to you that those three broad divisions complete the extent to which division is proper to be made,

to which you may usefully classify. When you come to deal with the question of what liabilities ought to be accepted, you will, of course, have to deal with it under various subheads. You will have regard to the fact no doubt that States unhappily are sometimes belligerent; you will have to consider whether it is consistent with the common sense of mankind that you should undertake discussion for imposing upon belligerents the nominal acceptance of liability, which the fact of belligerency would operate to repudiate. But you will need to consider it for the purpose of clearing the ground and of defining the decisions at which you are to arrive. If you put belligerency out of question you will still have questions of ships of war, and of ships engaged in time of peace for public purposes, either of defence or of police, or of revenue, or of lighting, or any of those purposes which are commonly exercised as the prerogative of a State; and you will have to consider also ships which are not ships of war, and are not employed in that class of purpose to which I have referred, but are employed in classes of occupations which are open to all the citizens of the commercial world and in which public ships come into competition with the ships of the citizens of the commercial world. Those are sub-heads for consideration in the first broad division, and you will find that the need for defining your thought extends into the second and third classes. For example, you will have to consider not, I think, whether you should make an idle pretence of asserting an individual right to arrest a ship in respect of a belligerent operation — I have not heard that anybody has dreamed of either that proposal, or of a mode

by which it could be carried into effect — but whether, for example, a ship of war in time of peace which comes into collision, or receives services, or incurs a liability, should be able at the will of its owners to sail away and to discharge itself of liability by its disappearance, in fact, to pay its debts, as they used to say in the Navy, « with the flowing sheet ». You will have to consider also whether, if there are to be liabilities, they are to include liabilities to any form of arrest, a proceeding *in rem*. You will have to extend that class of consideration to ships engaged upon public employments. With regard to public employments it is common knowledge that a State, for instance, this State of which His Majesty the King is the head and representative, commonly subjects itself to liability, in respect of defaults in navigation of its officers upon ships of war and upon all its public ships, by allowing them to be sued in respect of those defaults which are committed in time of peace, and which are errors in the discharge of their duty. They are sued and out of fairness His Majesty's Government meets the obligations which are imposed upon them. But with regard to ships of war and with regard to ships employed for public purposes, you will have to consider under the second of the two broad-heads as it seems to me what your conclusion ought to be as to the means of enforcement of liabilities, as well as to the liabilities.

With regard to ships engaged in those pursuits in which the citizens of the commercial world at large are at liberty to engage, the question seems to me to be much simpler, because it does occur to the uninstructed mind that, if a man comes into the exchange or sails upon the sea for

the ordinary business of the citizens who are there engaged, he should come in upon the same terms as his fellows. (*Hear, hear*). At any rate that is a proposal which I can conceive may be advanced, but it is a simpler question. It is like the first question of whether you can purport to impose civil and forensic obligations upon states engaged in war in respect of their acts of war. The intermediate questions are more difficult.

Then the other question with regard to tribunals is a question of the sovereignty of States, of the susceptibilities of States, on the one hand, and of what is necessary for the securing of justice upon even terms and for the securing of prompt attendance upon justice of all persons, who have bound themselves to attend upon justice, in respect of the determination of the questions which arise.

There is one other branch of the whole subject which I will not omit to mention to you, and it is this. Liabilities of shipowners exist not only in respect of their ships *in rem* to be enforced by arrest, but, upon the determination of those liabilities by a competent tribunal, there is an obligation to pay beyond the value of the ship *in rem*, and it may be that you will think fit to consider, under the head of the liabilities which ought to be enforced, to what extent it is practicable or prudent to extend to Sovereign Powers, who own ships, the liability to Civil jurisdiction in the full measure in which that liability attaches to their respective citizens.

Those observations, as my friend Sir Leslie Scott points out to me, are of course entirely apart from the question of the limitation of liability in the several States. I am

not discussing that at all. That is a question of municipal law to a great extent at the present time, and does not seem to me to come necessarily within the ambit of the questions you have to discuss.

Now I take it to be your will that when you come to close quarters of discussion, that is to your practical discussion, you should deal with this question of Immunity under the three heads which I have mentioned; but I will ask you, before we proceed in that way, whether you think it will be more convenient that there should be a short period for a general discussion before we enter upon the discussion under its broad heads. In our Parliamentary procedure, with which Sir Leslie Scott has great intimacy, and with which for something like 18 years I was closely engaged, we begin, as the result of ages of experience, by a general discussion : then we come to the discussion of the broad topics; and then we proceed to details, and to the working out of the conclusions which seem to emerge from the discussion of the broad topics. Is it your pleasure that there should be a period for a general discussion before we enter upon the particular discussion under the three heads ? (*Agreed*). That I take to be agreed.

I am very glad that our Secretary, Dr Sohr, will translate the questions I have outlined for limiting the discussion under the broad heads; and Sir Maurice Hill, at the request of Mr Franck, will follow in this present discussion; and I think Dr Loder will offer us some general observations following upon those of my colleague, Sir Maurice Hill. I am told that Dr Sohr, who is ready at translations, is able to give you a translation

of the questions in French. I will ask him to do that before I call upon Sir Maurice Hill; and I will ask that the speakers, if they propose to address you in set terms, will come to the rostrum to address you in order that you may hear them at the best advantage. (*Hear, hear*).

(Traduction orale par M. Frédéric Sohr).

M. le Président vient de tracer à larges traits le plan de la discussion sur la question de l'immunité des navires d'Etat. Il a énoncé tout d'abord trois questions principales qui sont les suivantes : 1°) Quelles sont, parmi les obligations qui d'après le droit commun peuvent donner lieu à exécution contre les navires ou leurs propriétaires, celles qui devront être acceptées par les Etats souverains pour les navires dont ils sont propriétaires, ou dont ils ont la gestion ?

2°) Quels sont les modes d'exécution qui devront être admis contre ces navires, par voie de procédure réelle c'-à-d. *in rem* ou bien par un autre mode de procédure ?

3°) Devant quel tribunal les questions de responsabilité devraient-elles être débattues ? Quels sont les tribunaux qui auront à décider de la question de responsabilité ?

A côté de ces trois questions principales, notre président nous a signalé trois points de vue qu'il appelle accessoires; chacun de ces points de vue doit se combiner avec les questions principales déjà indiquées :

1°) l'influence de la qualité des Etats : Etats belligérants ou Etats en temps de paix;

2°) le régime de navires de guerre ou de navires publics;

3°) le régime des navires de commerce.

Le président a donné plusieurs exemples montrant que chacune des questions accessoires est à combiner avec les questions essentielles. Je citerai un de ces exemples : la qualité du navire de commerce est intéressante pour connaître les causes de responsabilité qui donneront lieu à un jugement contre l'Etat; pour savoir aussi si l'on peut ou non exécuter un navire de commerce, et enfin au point de vue de la compétence.

Notre Président nous a aussi signalé, à titre de question indépendante, celle de la limitation de la responsabilité. Ce qu'il s'agit d'élucider est de savoir, au cas où l'Etat est responsable, dans quelle mesure on doit admettre qu'il limite sa responsabilité, comme cela est possible dans certaines hypothèses pour les armateurs privés ?

THE CHAIRMAN. — I thank Mr Sohr for his great kindness in making intelligible to all our friends what it was I desired to convey. I will now call upon my colleague Sir Maurice Hill.

Sir MAURICE HILL. — Mr Chairman and Gentlemen. I suppose my being called upon to speak at once must be regarded only as a fair retaliation upon me for having put upon the Committee the troublesome question of the Immunity of Sovereign States in respect of Maritime property and Maritime dealing. I did it because as one of the Judges of what is perhaps one of the most cosmopolitan Courts in the world, having to try actions between not only subjects of its own sovereign, but cases in which subjects of two other States are very often solely concerned, I have been brought up time and again against what seemed to me the injustice as well as the difficulties arising in the proper control of overseas business by the strict application of the doctrine which is summarised, perhaps somewhat inaccurately, as the Immunity of Sovereign States. It is to me a matter of very great concern. I think that the working of this doctrine in some cases effects a complete denial of justice, and in many cases causes that partial denial which is involved in great delay. Theoretically all Sovereign States ought very promptly to meet all just claims against them. It cannot be said that all Sovereign States always do promptly meet all just claims against them. There are other aspects that have been borne in upon me very strongly. One is that you do not encourage safety in navigation and the carrying out of the Collision regulations, or the care of cargo,

if those, who are navigating certain classes of ships, feel that whatever happens they are not amenable to the ordinary jurisdiction of the ordinary Courts of the world. (*Hear, hear*). In cases of salvage, though all seamen are only too prompt, and justly prompt to render assistance at any cost to save life and property, yet it must always weigh with the master of a commercial ship if he is in doubt whether the ship to which he is rendering assistance may be a Government ship, with regard to which difficulties or delays may be presented to his claim for remuneration.

These are only some of the matters that have occurred to me. I gather from the most valuable preliminary reports that there is a general agreement on the main principle (*hear, hear*), namely, that there is an evil, and that that evil calls for a remedy. The difficulties of course are in ascertaining to what extent and in what form the remedy should be applied. I had not the advantage of knowing beforehand the order in which Sir Henry Duke was propounding these questions, and if, in the few observations I have to offer, I am not following the order, I can be brought back to it later on in the proceedings. There are some main considerations that seem to me to apply. If there is a just claim, or indeed a claim which ought properly to be adjudicated upon and litigated, there should be a Court to try it : It should be tried with the least possible delay. That is important for the parties who want to close their accounts as soon as they can ; but I can assure you it is not less important to the Judge, whose difficulties in ascertaining where the truth lies are aggravated when he has to try disputed questions of fact

after a long interval of time. (*Hear, hear*). It should be tried with the least possible expense, and that in shipping matters means that it should be tried where the witnesses are most readily available; and it should be tried by a Court conversant with maritime matters. (*Hear, hear*). In no other way can the decisions command the confidence of all those who are concerned with maritime commerce. For myself I attach the greatest importance to the prompt trial and disposal of commercial disputes, and I would rather be sure of a prompt trial, even by a Court that sometimes went wrong, than a trial by a Court that never went wrong, but only arrived at its decisions after great delay.

Bearing these things in mind it occurs to me that there are some matters which are suggested in some of these reports that want careful consideration. It has been suggested that an ideal solution for the trial of cases by private persons against States in respect of ships and other similar matters should be by one International tribunal. My view is that that is not business, because it involves delay. It is the practice obviously of many countries to permit actions *in personam* against the State in respect of the sort of causes of action with which we are dealing. Technically, in Great Britain, even, that is not so; but practically (for we always get round our technical absurdities by some practical means) the claims against King's ships are admitted, because in a collision action you sue the Commanding Officer under a fiction that he is the negligent party, and the Admiralty stands behind him. If it is a salvage claim it is referred to arbitration, to a Barrister in the Temple; and in the United States we

know that they now have their Act which, as far as commercial ships at any rate are concerned, provides for proceedings *in personam*, and many other countries obviously make no difficulty at all about a proceeding *in personam*. That should be so in all countries and I think it is highly desirable, but it does not carry us the whole way. If there is a salvage of an American State-owned ship by a British ship in the English Channel, it is not business that that claim could only be litigated by an action *in personam* against the United States Government in America. If there is a collision between a British State-owned ship and an American private ship in New-York Harbour, it is not business that the American owner should have no other right of suit except a suit in London against the British Government *in personam*. To attain the end of prompt justice is to my mind quite as important as to attain the end of justice. (*Hear, hear*).

The ideal in my view is that claimants against Governments should have the same rights, enforceable in the same Courts, by the same remedies, as if their claims were against a private person. That may have to be subject to certain limitations for reasons which are not reasons of justice. For the moment I am considering what justice calls for. Sometimes even justice has to submit to some exigencies of sovereignty. It has to submit to them, although it does it not always with a good grace. At least I know I have grumbled enough, quite improperly, in giving judgment in some of these cases. But for the moment I am considering what justice would demand. I say the ideal is that the claimants against Governments should have the same rights, enforceable in the same Courts, by

the same remedies, as if their claims were against private persons. This involves that States should be subject to suit in their own Courts, and that States should be subject to suit in Courts of other nations in the same way as private persons are. To me that presents in our English practice this aspect : that a State-owned ship and its owner should be subject to an action *in rem*, that is, to the service of a writ upon the owner effected by service upon his ship, calling upon him then to appear to answer the claim or to take the consequences. So much for the institution of the suit.

Then comes, of course, the more difficult question, the satisfaction of the Judgment, involving the arrest of the ship. This would no doubt present difficulties which we shall have very carefully to consider. Sovereignty is said to be the insuperable objection to any sort of arrest of a state-owned ship. Sovereignty ? The sovereign after all ought to pay his debts, and an arrest is only to provide the security for his debt, or to satisfy his debt after the debt has been ascertained by a judicial tribunal. But to my mind the fears of arrest are much exaggerated, because I suppose in all countries (I am very ignorant I am sorry to say of the practice abroad) there are methods by which arrest can be avoided by the giving of bail. I have enquired into what happens in our own Admiralty Courts. We issue something like 1,000 writs a year — I leave out of sight this last year because there were a great many default actions and that would vitiate what I am going to say — but in normal times in about 15 per cent only is there an arrest. In nearly all the cases the owners are known, or the underwriters are known, the solicitors for

the owners are known. Communication is made between them « We have a writ; we want to serve a writ upon you : will you give us an undertaking to appear : will you give us an undertaking to put in bail »; the undertaking is given; the Admiralty Marshal who effects arrest is never troubled in the matter; and subsequently, often months afterwards, the undertaking to put in bail is completed, and for the ordinary small commission which you pay the City of London a bail bond is given. In every case it could be avoided, and in the case of States it could always be avoided because the owner of the ship would know it would be known where he was, and presumably in the case of a State it would be known who the representative of the State was, and very simple arrangements could easily be made by every State whereby the Ambassador, Consul, or whoever it was, could give the proper instructions to the lawyer in this country and obtain the proper bail. In my view the fear about arrest is very largely exaggerated. It will have to be considered, and, as Sir Henry Duke has pointed out, there will probably have to be exceptions, or there may be exceptions. Those exceptions may either be as to classes of ships, or they may be exceptions to certain procedures. For instance, you may either exclude ships of war altogether, or you may exclude arrest altogether in respect of certain classes of ships.

The general considerations that I have pointed out, considerations of justice, the necessity of making sure that every man's wrong is righted, safety of navigation, encouragement of salvage services, all these, apply whether the ship be a commercial ship owned by a State,

or a ship of war owned by a State, or a ship devoted to some other public purpose. But I do not know that we may not make, and that it may not be good policy to make some exceptions — it will be, I think not, on any ground of justice, but on some ground of expediency — having in mind that there may be some things that we shall never be able to persuade Governments to do; and it is in that that I feel great difficulty, and shall watch the discussion with the greatest interest. If there are to be exceptions at all, I suppose they will be, first of all, with regard to ships of war — ships of war are rather difficult to define, — but I am not quite sure that it will not turn out to be the best in the end if we could get to an agreement that Governments should submit to actions *in personam* in their own countries in respect of claims arising out of the management of ships of war, and that perhaps it would be wise, with a view to getting the thing through, to be content with that. I am not sure, because I still have the great difficulty that you might have, when a collision or salvage has happened on this side of the Atlantic, to go across the Atlantic, and *vice versa*, and have great expense of witnesses. I have an open mind on that matter.

I see that in these very interesting preliminary reports a great deal is said in some of the reports about public ships, or ships devoted to public services. There I find the very gravest difficulty. I have tried myself all sorts of definitions of « public ships », and have broken down. Some systems of jurisprudence are perfectly familiar with the distinction between the public and the non-public activities of the State, or the activities of the State which are governed by public law, and those which are

governed by private law. Here in England all ships belonging to the Government, belonging nominally to the Crown, are on one footing, and there is no distinction. And though you may try to define it by saying « Ships devoted to public service » again you will get into the same difficulty. What is a « public service »? If there comes into maritime commerce a Socialist state which itself owns and controls all production and conveyance, every ship, every cargo, everything afloat, will be public in that sense. My view is that we shall find it very difficult to get at any satisfactory conclusion with regard to « Public ships », and my own view is that if we except ships of war from all proceedings, except proceedings *in personam* against the State that owns them, we shall have gone far enough, and that there is no reason why any State should, with regard to its other ships, public ships, police ships, cable ships, training ships, and so on, make any difficulty, having regard to the fact that no arrest ever need take place, if an undertaking for bail is given.

Those are matters upon which I am going to listen to what the discussion is with the greatest interest, because they are matters of public interest. I suggest that the principle to keep in view is that in respect of maritime property and of the rights and liabilities arising out of the use of it, the State should be on the same footing as the private person, and should not have any peculiar rights, privileges or immunity of sovereign. Then as to the extent to which you must limit that, limit it by precise exception. It will be noticed that in those words : « not to have any peculiar rights, privileges or immunity of sovereign », I am suggesting that the decision should cover the

head that Sir Henry Duke mentioned. I am not quite sure which head it was, but in which he referred to the question of immunity from Dock and Harbour dues, and Pilotage dues, and things of that kind — I will say nothing about taxation.

I come back to Sir Henry Duke's questions. The first question : « What liabilities among those commonly enforceable as against ships and their owners ought to be accepted by sovereign powers in respect of ships owned or operated by them ? », I have dealt with in my own mind rather as to what the means of enforcement of such liabilities ought to be. My answer would be that all liabilities ought to be accepted if they would be liabilities which would rest upon a private owner : that the means of enforcement of those liabilities should be by the ordinary tribunals, either the national tribunals or the foreign tribunals, applied in the same way as they are applied to private persons, with such limitations, that I should like to see confined to war vessels, as are decided; and that, in respect of the excepted matters, the means of enforcement should be by actions *in personam* against the State in its own Courts. As regards by what tribunals ought these disputed questions to be determined I have already dealt with that. To my mind they should be the ordinary tribunals.

It has been suggested, I notice, that we ought to define the causes of action with which we are to deal. In my view that is not necessary. Whoever can bring the action against the private shipowner ought to be entitled to bring it against the State-shipowner, and for the same causes of action.

It is suggested that there ought to be rules of procedure. I suggest that for the present we should leave all this to be governed by the law of the Court which is exercising jurisdiction in the particular case. If the case is being tried in Antwerp, the Court would apply Belgian procedure and Belgian law. If it is being tried in London, the Court would apply British procedure. I think it would complicate matters very much, and I hope we shall not embark upon it, if we were to try to draw up a sort of International Code of Rules of Procedure which the Courts of the various nations ought to carry out. I should make a mess of it as I know, and I hope I shall not be called upon ever to do it. I have indicated only my general views upon this matter. I am very much obliged to you for listening to me so long. (*Applause*).

(Traduction orale par M. Frédéric Sohr).

Je me contenterai de rappeler brièvement les points saillants du discours très complet que vous venez d'entendre.

Sir Maurice Hill nous a dit que les Etats souverains assument les obligations qui sont à charge d'armateurs particuliers et acceptent la compétence des mêmes tribunaux, c'est-à-dire que les mêmes actions et les mêmes modes d'exécution soient possibles. En ce qui concerne la saisie, on exagère les dangers qu'elle pourrait entraîner, parce qu'en pratique, la saisie est toujours remplacée par une caution.

En somme, à la seule exception des navires de guerre, il faudrait référer aux tribunaux ordinaires toutes les obligations des Etats résultant de la gestion de leurs navires, on devrait même y inclure des navires publics, dont la définition est d'ailleurs pleine de difficultés.

Dr B. C. J. LODER. — Mr President and Gentlemen. The question of the immunity of State-owned vessels, the fresh subject which is to be dealt with, on the proposal of the distinguished English judge and jurist, Sir Maurice

Hill, by the International Maritime Committee, leads us into new domains and opens up far reaching prospects.

Hitherto the Committee has tried to internationalize private law. We have prepared draft treaties for submission to the States. They were to be the contracting parties for the regulation of the rights and duties of their citizens in regard to certain matters of law.

Now, however, these States themselves occupy our attention. They act as private individuals, carry on trade, conclude private contracts and sometimes, through the fault of their captains, cause collisions or request assistance and salvage in the case of distress.

Nevertheless, if perchance they do not fulfill their obligations, if they refuse to pay their debts or to recompense those who have suffered loss as a result of their action or if they will not indemnify those who have performed services for them, and their creditors, in the last resort, summon them before a tribunal, their attitude undergoes a sudden change : the private individual disappears and, shedding its disguise, the State emerges. They surround themselves with all their august majesty, cloak themselves in their ermine robes, adorn themselves with sovereign rights and claim that no one is entitled to summon them before any Court.

This has always been the case, but of late we have acutely felt the consequences. The State is continually extending its sphere of action ; it becomes builder, manufacturer and merchant ; with funds obtained by taxation, it enters into competition with its nationals ; when circumstances appear favourable and a certain form of production promises to be profitable, it creates a monopoly. Sometimes, and this is the point which concerns us now,

it becomes a shipowner and maintains a whole fleet of merchantmen.

But — to answer before a Court for its deeds or misdeeds certainly not ! This would infringe its unimpeachable sovereign rights !

Nevertheless we, members of the Committee, must ask ourselves : what, after all, is this sovereignty ? Where does it lead ? Can it uphold or nullify law and justice at will ? Or, on the contrary, is not law above sovereignty ?

As regards the subject at issue, that is to say, Maritime Law, the answer to this question is obvious. It is as clear as daylight that the present position is intolerable. All contracts must be respected, all obligations must be fulfilled, all damage must be made good and all assistance duly paid for, regardless of the position of the debtor.

Sir Maurice Hill, at the end of his remarks, justly observes that this same immunity raises important questions with regard to the payment of port dues, import and export taxes and in a general way the whole question of taxation.

In the first place, therefore, we shall have to consider the question of principle.

In this respect it appears to me that the various articles of Mr Roosegaarde Bisschop are of prime importance. He shows us that, in the British Empire, the State cannot be sued without its consent, even before a national tribunal.

In most other States a distinction is drawn between the person of the Sovereign, who wears the crown, and the State as a moral entity and as an institution. Law and the principles of justice are supreme. It is the cement

which holds the State together and the latter is subject to this law in the same way as the most insignificant individual. The judicial power is constituted to maintain law and order, and the State may be sued before it. And in my own country, the person of the sovereign is subject to it, though, as a result of the respect owed to the sovereign, special formalities are prescribed. Action is not taken in *his name*, but the principle is the same : he may be plaintiff as well as defendant.

This, however, only concerns domestic law. Directly when come to proceedings against the State, undertaken in regard to collision, assistance, salvage, or any other question of maritime law, — to speak now of nothing else —, the tribunal holds its hand. It respects the sovereignty of the foreign State both as regards its war vessels and vessels employed by it in any public service. The two Treaties of Brussels of 1910 with regard to collision, assistance and salvage are based on the same ideas. But further — and this is the most pressing grievance — national tribunals declare themselves also to be incompetent to deal with suits against foreign Governments even in cases concerning their merchant vessels, that is to say, vessels with which they enter into commercial competition with the whole world, whilst refusing to accept the consequences.

The various situations which arise, are very clearly and exhaustively explained by Professor George Ripert, whose work deserves far higher praise than mine. He shares the view of those who believe that the present state of affairs is no longer tenable and he concludes his remarkable study with a draft treaty or rather cristallises

his ideas in five principles. We shall, however, see, that what he is disposed to grant, leads him no distance after all.

In the first place he categorically excludes all war vessels. No one, he says, contemplates any application of law to these vessels.

« They possess », he says, « the privilege of ex-territoriality. In a foreign country they are considered as a part of their national territory. France, which claims this privilege for her own vessels, grants it to foreign ships. »

This is, indeed, the case. But perhaps, I may tentatively enquire : does this mean that this *part of the national territory* is entirely free to do whatever seems good to it in a foreign country ? If it causes collisions by its fault ; if it violates all port regulations ; if it refuses to make good damage done by it ; if it does not pay for goods delivered at its order — is one simply to make obeissance to this « part of a foreign territory ? »

Mr Ripert says no. He recognises — and this is where we agree — that all these acts involve obligations. But he cannot accept that a tribunal of a country, where the acts occur, should be competent to deal with them.

Neither the origin nor the nature of the obligation in itself are here in dispute, but only the *competence* of a national tribunal when one of the parties is a sovereign foreign State.

Perhaps some day we shall ask why the dignity of a sovereign should be affected *because justice is done upon one of his servants* in the fulfilment of his employment.

Next come vessels belonging to a State and engaged

in some public service. It is in regard to these that Mr Ripert begins to feel some doubts. Does a cable-laying vessel form part of the public property of a State ? He can scarcely admit this. Immediately afterwards, however, he is frightened at his own temerity, and in his five principles, silences his doubts and classes all ships engaged in public services with war-vessels. His Rule II explains it :

« War-vessels and vessels belonging to a State or chartered by it and detained in that state for the performance of some public service may not be distrained in another country for any reason whatsoever ». But then follows :

« On the other hand a State cannot, as regards obligations arising out of the exploitation of these vessels, avail itself of the legal provisions limiting the responsibility of shipowners ».

The obligation therefore is recognised in accordance with the law of the country where the act takes place. But the legal remedy is refused because the judge is *incompetent*.

Is this altogether logical ? If the law is applicable, why only *partially*, if, in some particular case, the national judge lacks competence ?

In the last place, we come to deal with the true mercantile marine. A State becomes ship-charterer, ship-owner, merchant and carrier of goods, either its own or those of the public. It places itself at the disposal of anyone desiring to employ it. It has become a private individual and must be treated as such !

Is this really so ? Is the general aspect of the question

altered as a result of the democratic change in attitude on the part of the foreign State ? Is it less sovereign now ? Is the State, disguised as merchant, less unapproachable ?

A renunciation of immunity from jurisdiction has been presumed whenever private rights are involved.

But, as Mr Ripert rightly pointed out, this view lacks any legal basis. As with many things of this world : things *are* not always what they should be.

It seems to me that there has indeed been no change. Moreover, experience proves this assertion. Whenever a State in the capacity of ship-owner is summoned before a *foreign* tribunal, it cites its immunity and the supreme judge generally recognises it, and rightly so.

For he has to deal with things as they are and not as they should be.

Certain writers, of recognised authority, have proposed to make a distinction between acts undertaken by a State *jure imperii* and those undertaken *jure gestionis*. In the latter case, the foreign State would simply be a private individual, subject, in accordance with the nature of the dispute, to the jurisdiction of foreign national tribunals. The principle of immunity would only have to be respected if the State had acted in the capacity of a sovereign. This opinion, however, is only a theory, contested in the first place by the States themselves.

Whatever be the motive for the institution of proceedings, a foreign State seems not to be subject to the jurisdiction of the national judge of another country. There must be a treaty, or international convention in order to render the national Court competent to judge. Such

conventions are more and more insistently demanded.

Is it, perhaps, not worth while ?

Our colleague, Mr van Slooten, Councillor to the Court of Appeal at the Hague, maintains this point of view in a Dutch publication. Do not be so anxious, he says, the State turned ship-owner is an ill-balanced gentleman who does not know his trade.

The Shipping Board of the United States, according to the Ships Subsidy Bill, needs an annual subsidy of fifty-two million dollars in order to meet the annual losses of this undertaking.

In 1921 the Canadian lines suffered a loss of 8 million dollars.

The Commonwealth Line of Australia is withdrawing its vessels from service as they return to Australia.

The Portuguese lines have failed.

By the law of August 9th, 1921, France is liquidating her merchant fleet of 700,000 tons.

I have not been able to verify these figures, but the sources from which they are derived are indicated.

This is neither reassuring, nor surprising.

A State has never been a business-man; it works unsatisfactorily; it neither understands business, nor business-economy. It works at a loss, unless it kills competition by creating a monopoly.

All this, however, should not check our efforts to arrive at a just and equitable solution. A principle is at stake of which immunity of merchant vessels owned or exploited by sovereign States is merely a consequence.

And once more we ask : what, after all, is this sove-

reignty which invariably avails itself of its immunity whilst inflicting harm upon the world at large ?

Gentlemen, this reminds me of a story which I found some time ago in an English paper. Some airmen had risen rather too high; in spite of all their efforts they were carried into the sphere of attraction of the moon where they were compelled to land. They were conducted to the king of the moon who questioned them :

« You come from the earth », he said. « How is your » terrestrial state carried on ? »

« We have many States », they proudly replied.

« I understand », said the king. « You have a num- » ber of communities; and where is your tribunal ? »

« What do you mean by our tribunal ? », said the men of the earth. « Our communities are sovereign States. »

« But », said the king, « if you form communities, » I suppose that sometimes you have disputes, law-suits, » disagreements. You must have some tribunal to ad- » minister justice among you. »

« No », replied the men of the earth peremptorily, « that would be an infringement of sovereignty. »

« In that case », replied the king, « how do you » manage ? »

« We fight », was the answer. « We invent infernal » machines; we destroy all we can; we kill each other. » Ultimately one sovereign State wins, and of course that » is the right one. »

The king of the moon turned to his servants and said : « Imprison them all, they are a dangerous race. »

What I meant to say, Gentlemen, was, that « sove- » reignty » only means : *absolute independence*.

It is right that a sovereign is not subjected to the national jurisdiction of another sovereign.

It is not right that there should be no justice above all sovereigns alike.

It is not just that a State, in the guise of a ship's master, should be able to do all manner of harm and then freely go his way because the owner of his vessel is a sovereign, and therefore immune.

As regards *law*, there it makes no difference whether the captain is navigating a vessel engaged in a public service or whether he is the commander of a war-ship.

I admit that this latter idea is perhaps too advanced to be put to practice at the present time. As regards the first, however, the time is ripe. Let us therefore agree at least to Mr Ripert's proposal and advocate the adoption of a draft International Convention, dealing with the jurisdiction of national tribunals and authorising them to administer justice against a sovereign State which, in the person of its servants, breaks the law of another sovereign State.

One last word. Mr Bisschop, in the British Yearbook of International Law, expresses the fear that the preliminary question may be raised in connection with jurisdiction. We may prepare a list of subjects in regard to which jurisdiction is recognised, but it will always be incomplete. And objections will be raised against allowing a national judge to decide for himself the question of his own competence. Mr Bisschop proposes to call upon the aid of the Permanent Court of International Justice in order to settle preliminary questions of jurisdiction.

His idea seems practical to me. It might be carried into

effect by a special clause in the Convention. Since, however, the Court only has one ordinary session each year, beginning on June 15th, it would be still more practicable to entrust such decisions to the Chamber of *Summary Procedure*, which can meet at any time, but which requires an agreement between the parties before it can meet, an agreement which might form part of the Convention itself.

Let us hope that the International Maritime Committee may yet pave the way to a practical convention. (*Applause*).

THE CHAIRMAN. — Gentlemen. I have learned from Dr Loder that if it were the wish of the Conference, or of a considerable number of members, he would be ready to repeat in French the address he has given us in English. We should like to hear Dr Loder at all times, and so far as I could follow him I should be equally delighted with either tongue, but it is a question of time. Is it the wish of the Conference, or is it thought necessary, in view of what seems to be the general understanding of Dr Loder's views which has existed, that Dr Loder should be at the trouble of repeating his address in French? Perhaps you would signify your pleasure on that subject. I will ask you: Shall we ask Dr Loder to repeat his address in French? The only answer I gather is that it is not necessary; that the Conference has understood Dr Loder's excellent address. Then I will take that to be the view of the Conference, and that being so, I will not from this time, if the Conference assents, ask for a translation of a speaker's address, unless I gather from the appearance

of the Conference, or it is represented to me, that a translation is desirable. If I may understand that that is your pleasure I will proceed upon that line.

Now I will ask Monsieur Verneaux to give us his general views upon these matters.

M. R. VERNEAUX. — Je désire exposer brièvement les vues de l'Association française sur l'importance de la question soumise à vos délibérations. Cette matière a fait l'objet d'un rapport de M. le Professeur Ripert, qui malheureusement n'est pas ici pour se faire l'interprète des vues de notre association. Ce que je puis dire, c'est que l'Association française a examiné cette matière avec le plus grand soin et a cherché à dégager un système cohérent et logique pour résoudre les différentes difficultés de la matière. Il s'agissait en effet de régler la situation des navires de guerre, des navires affectés à l'exploitation d'un service public et des navires appartenant à l'Etat et affectés par lui à des opérations commerciales. Il s'agissait en outre de régler la question de compétence, d'immunité de juridiction et la question de saisie. L'Association française a tenu à régler ces différentes questions en proposant des règles telles qu'elles pourraient être insérées dans une convention internationale.

Il s'agissait de considérer avant tout la question de l'immunité des navires affectés à un service public. Il est très désirable que ces navires ne puissent pas être distraits de leur service, qu'ils ne puissent pas être arrêtés, que le service public ne puisse souffrir. D'autre part, il était nécessaire de ne pas léser les intérêts des particuliers ayant à souffrir des fautes commises par ces navires.

Voici comment nous sommes arrivés à régler ces différentes questions.

La première règle que nous proposons est la suivante :
« Les actions dirigées contre un Etat étranger à raison
» de l'exploitation des navires lui appartenant ou gérés
» par lui, ainsi que les actions réelles relatives à ces
» navires (à l'exclusion dans les deux cas des navires de
» guerre) peuvent être portées devant les tribunaux qui
» seraient compétents pour statuer sur les actions dirigées contre un armateur étranger ou contre un navire appartenant à un armateur étranger ».

C'est dans la Règle II que se trouve l'innovation principale et la solution originale que nous proposons :

« Les vaisseaux de guerre et les navires appartenant
» à un Etat ou affrétés par lui, et affectés dans cet Etat
» à l'exécution d'un service public, ne peuvent faire
» l'objet d'aucune saisie dans un autre pays, pour quelque
» cause que ce soit. Par contre, l'Etat ne peut se prévaloir, pour les obligations nées de l'exploitation de ces navires, des dispositions légales limitant la responsabilité des propriétaires de navires ».

Ainsi le navire public affecté à un service public, ne peut pas être arrêté, ne peut être distrait à aucun moment du service public; mais l'Etat est indéfiniment responsable des obligations contractées par ce navire par suite de ses fautes. De cette façon, les tiers lésés n'ont pas souffert. Il n'est plus besoin de parler de caution, quel que soit le sort du navire, étant donné que l'Etat est réputé solvable, le tiers lésé sera indemnisé. Sans doute, l'Etat ne pourra se prévaloir d'aucune limitation : il sera responsable *ad infinitum*; mais il n'y a là rien d'illogique

puisque pour l'Etat une limitation légale n'existe pas. Cette limitation a été introduite dans le but d'encourager l'armement, mais rien de pareil n'existe pour l'exploitation d'un service public.

Nous arrivons à la règle III :

« Les navires de commerce appartenant à un Etat
» peuvent être saisis dans tous les pays pour sûreté des
» créances nées à raison de l'exploitation de ces navires ».

Cette règle est la consécration de la nécessité de donner
aux tiers lésés toutes les garanties nécessaires.

Règle IV : « Sont considérés comme navires de com-
» merce d'Etat les navires affectés au transport des pas-
» sagers ou des marchandises, alors même que l'Etat les
» affecterait au transport de cargaisons lui appartenant,
» sauf le cas où les marchandises sont destinées aux be-
» soins des services publics de cet Etat ».

Règle V : « Les cargaisons appartenant à un Etat
» peuvent être saisies pour sûreté des créances contre
» cet Etat nées à l'occasion de leur transport, à moins
» qu'elles ne soient destinées à un service public de cet
» Etat ».

J'ai tenu à vous lire intégralement ces dispositions; elles résument très exactement les résultats de nos délibérations sur cette matière et j'espère que l'assemblée voudra bien considérer, comme nous, qu'elles aboutissent à un système logique et cohérent.

(Verbal translation by Mr G. P. Langton).

Mr Verneaux recalls that his colleague, Mr Ripert, has put before us the whole of the general position from the point of view of the French delegation : He recalls the fact that the delegation has met together and they have discussed the whole of this question and endeavoured to arrive

at a logical and coherent Code, which is already put before you in Nr 4 of the Preliminary Reports. Mr Verneaux then said that it is most important that you should distinguish between the question of powers and the manner of their enforcement; and he then read the rules at which the French delegation has arrived, which are set out in the synoptical table of Nr 8 of the Preliminary Reports. I do not know that it will be necessary for me to repeat them, as they are there before you in English. But, as to Rule 2 he paused for a moment to point out that there was no necessity for the limitation of liability where a State was concerned, and there was nothing illogical in that limitation not being continued so far as the State was concerned. The State, he said, does not require these limitations which are imposed for the purposes of encouraging commerce and the other reasons which are well known to you. He then expressed the hope that you would consider these rules and remember that they showed exactly what the delegation had arrived at, and that he hoped they express a coherent and logical Code.

THE CHAIRMAN. — Dr Kiep, who is the head of the German delegation, is ready now to address us. I call upon Dr Kiep.

Dr LEISLER KIEP (Hamburg). — Mr President and Gentlemen. As there is a divergency between the decisions of the Reichsgericht and the general opinion of the legal profession in Germany, and as the German Association of Maritime Law has not handed in any written statement about its opinion, I think it might help the proceedings if I make a short statement about the opinion in Germany on behalf of our branch of the Comité Maritime International.

The question of the immunity of State ships has particularly of late been discussed in Germany; not that State ships are owned by Germany, but the merchant vessels of the United States, which frequently visit German ports, have made this question arise in practice. Permit me to begin by explaining the German legal

conception regarding ships which are destined to the service of a Sovereign State. If a German State ship has damaged private property (for example through collision), but has thereby not been acting in execution of a right of Sovereignty, such State ship cannot be arrested, but the German Government can be sued for damages in a German law-court. In the case of a foreign State ship the German law Courts are, on grounds of international law, debarred from jurisdiction. The question, however, whether merchant ships of a foreign State, could be summoned before a German law-court in the case of e. g. collision or salvage, has up till now not been definitely settled in the German Court practice. Its great respect for International Law influenced the Reichsgericht in its decision of 10th December, 1921, re the « Ice King » to acknowledge, even in such a case, the immunity of the foreign State, although it was not acting as a Sovereign State, but in the discharge of business. The Reichsgericht is well aware of the fact, that the opposite theory is finding more and more favour; however, it does not follow it, the theory being in the Court's opinion not sufficiently adopted to have overruled the contrary thesis of international law. In many interested circles this decision of the Reichsgericht was regretted and it has been criticised all round by the German legal profession. Thus the President of the German branch of the Comité Maritime has also publicly censured the judgment and is of the opinion that the consideration therein taken on foreign States in exaggerated, is not being a question of ships which represent the Sovereignty of the State, but of vessels which do not in any point

differ from other foreign merchant vessels and are often under charter so that the other parties involved often have no idea that they are dealing with a ship in the property of a Sovereign State.

A State which engages in private commerce cannot demand a special treatment before law. The German judge does not concede a like right to a German State-ship. It is therefore an exaggeration of the rules of International Law, if the German judges concede immunity to the merchant vessels of a foreign State. Opinion in Germany is more and more tending to the opposite standpoint, as expressed in the English and Belgian preliminary reports for the present Conference. (*Applause*).

THE CHAIRMAN. — The Conference will see that we have reached practically the point of time at which we had proposed to suspend the sitting for the mid-day adjournment. I think it would not be fair to another speaker to call upon him with only two minutes free, and I will take the liberty now of declaring the Conference adjourned until 2 o'clock; but I ought to warn members that I have been so accustomed to sit by the clock that, if even I sit by myself, you will find me in this chair at 2 o'clock.

(*La séance est levée*).

(*The Conference adjourned till 2 p. m.*).

LUNDI, 9 OCTOBRE 1922.
MONDAY, 9th OCTOBER 1922.

SÉANCE DE L'APRÈS-MIDI
AFTERNOON SITTING

La séance est reprise à 2 heures.

The Conference re-assembled at 2 p. m.

THE CHAIRMAN. — I call upon Mr Otto Liebe, a delegate from Copenhagen.

Mr OTTO LIEBE (Denmark). — Mr President. I have to say only a few words in the name of the Danish delegates. As stated in our report, Denmark claims no immunity, no privilege whatever, neither for State-owned ships nor for State-hired ships; not to speak about cargoes belonging to the state. We, Danes, are of opinion that it would be a very great advantage for maritime commerce in general if the other countries would follow this example, and would waive their claims to immunity, making it thereby equally easy to get damages in case of collision, remuneration for salvage, and so on, in the case of all State-owned ships as in the case of privately owned ships. Besides this, we are of the opinion that all these claims for immunity ought to be abolished by now, because they are based on a construction and conception of the principle of sovereignty which is not in harmony with modern opinion. Of course there ought to be one exception. You cannot stop a man of war by arrest; and perhaps, — I only say « perhaps », — the same privilege of claiming immunity from arrest should be extended to

our State-owned ships which are exclusively intended for public service. But to our minds this question is of minor importance if we only grant this immunity from arrest on two contingencies : First, that the State ought to subject itself to the jurisdiction of the regular Courts just to the same extent as private individuals, and secondly, that, on demand of the plaintiff, they ought to give bail, and such a bail as can be used for the execution of the judgment. With regard to all our State ships, we are of opinion that the ordinary rules should be applied. If we could get an International Convention to that effect, it seems to us that it would be a very great advance in maritime law — an advance of which this Committee could rightly be very proud.

Although I am speaking only in the name of the Danish delegation, I take the liberty of adding that I have reason to believe that in the other Northern countries, that is Sweden and Norway, they are in the main of the same opinion (*Applause*).

THE CHAIRMAN. — We have not had a representative from the Scandinavian countries other than Denmark. Does any delegate of Norway or Sweden propose to join in the general debate? I gather that that is not so intended. Now, as Judge Hough is not here, I think I will ask Sir Norman Hill to address us.

SIR NORMAN HILL. — Well, Sir Henry, speaking on behalf of the British shipowners there is not very much that I can add to what has already been said. I feel, Sir, that Dr Loder has said on the big question all that really can be said. If you apply his speech to your first question

I think that all the British shipowners are agreed that all liabilities commonly enforceable as against ships and their owners, ought to be accepted by sovereign powers. That, Sir, I think is the principle, and I do not think there is anything to be said against that principle.

I suppose it could be argued that if a sovereign power chooses to exercise those powers within its own territory, it is a matter for it to settle with its own subjects whether or not under any circumstances it would recognise liability. I can imagine a Government that would say to its citizens : — « We shall do whatever we please, and we shall assume no responsibility for doing it ». Well, if its citizens are satisfied, I do not think it should be for anybody else to complain. But it seems to me that such attitude could only be taken up by a sovereign power so long as it is acting within its own territory. If it chooses to act on the high seas, it seems to me that it is absolutely impossible for any sovereign power to take up that position. I think, Sir, that that applies whether the instruments employed by the sovereign power are war vessels or vessels engaged in the public services of that sovereign power; or, following the more recent development, whether they are vessels that that sovereign power is using for the purpose of making, or in the endeavour to make, profit out of trade. I do not think that there is any distinction to be drawn in any of those cases. So I think the answer to your first question is, that all liabilities should be assumed by the sovereign power.

Then you come to the second question, and from the British shipowners' point of view they would answer it that such liabilities should be enforceable by the tribunal

having jurisdiction over, and by the methods applicable to, all other ships. I think that Sir Maurice Hill made two very strong points. The first big point was that you must do justice, and, if wrong and suffering is inflicted upon anyone, whether he is a citizen of the nation whose vessel does the damage — still more so if he is a citizen of any other nation — that sufferer is entitled to the protection of the Courts to give him redress. The second point which seemed to me to be of very great importance was that if that redress is to be effective, it must be prompt. We have elaborated a system of dealing with shipping casualties in the different countries of the world, and the aim of all the Admiralty jurisdiction is to secure prompt hearing, and where the witnesses are available, where the facts are known, that is the Court to deal with it. The third point to which, as I understood, Sir Maurice Hill attached great importance, was the wholesome effect of the discipline exercised by the Courts when they enquired into these casualties. Directly you have vessels navigating the sea that are immune from liability, you weaken the discipline of the sea. You want to have a tribunal, a capable tribunal, determining in public, for example, whether the rule of the road has been observed or broken; and it is absolutely necessary for the discipline of the sea to bring all the vessels that use the high seas under that kind of control. From the British ship-owners' point of view we would put that forward as the principle.

Now what are the exceptions to that principle? I do not think there is any exception which can be justified purely and simply on the ground of justice : it must be

on the ground of expediency. If the sovereign power thinks it necessary that the principle should be limited in the case of warships to a submission to the Courts of the country to which the warships belong, and if the sovereign power thinks that it should be further limited to a right *in personam*, if that is what the sovereign power decides, we, as the trading ships, would have to accept that limitation. But I think that is as far as it could possibly go. The idea of there being no responsibility on the part of a warship seems to me to be utterly opposed to the principle. I can quite understand a nation saying : — « No, we will examine and try all these cases brought against our warships, and we will do justice; we cannot have you arrest the warship; we will be responsible if the warship is held to blame. » If the sovereign power thinks that is necessary, then that should be an exception to the principle. But if you want to go further than that, and if you want to exempt from the principle all vessels which are engaged in the public service of the State, then I think it is good-bye to the principle, and it is not worth bothering any more about the problem put before us. The public services, as has been pointed out, may be of a variety. Most of them, what we regard as really public services, will be rendered within the territorial waters of the State, and those ships will always be subject, and only subject to the Courts of their own State. But, if, in their public service, they go out on to the high sea, I can conceive no reason why the ships engaged in that service should not submit to the tribunal to which all other ships are subject. After all it cannot be for the benefit of a State to prosper by doing injustice, or by refusing justice

to people whom it has injured. That cannot be to its permanent advantage, even when it is running its vessels in the public service.

Dr Loder rather ridiculed a view that was expressed I gather in Holland that from the trading shipowner's point of view perhaps it was just as well to leave the State-owned ships to play any tricks they liked with their customers. Well, there is a great deal to be said for that view, but I cannot conceive that any State which was trying to compete with the commercial ships of the world would ever take up — dare ever take up — the position that it would not honour the obligations incurred by it in the course of carrying on ordinary trade. If it did take up that position, I think at once the bills-of-lading it issued would be blacklisted by the Banks and they would be blacklisted by the underwriters, and I should think it would help most materially in throwing all the traffic on to the commercial ships. But I would not tread on those lines. It seems to me that Dr Loder has laid down a broad principle, and that is what we should accept and act on and advocate and press. If there are to be any exceptions, make the sovereign State state them precisely. I think a claim to exempt warships could be stated with absolute precision. I think there should not be difficulty in giving that qualified exemption. I think, Sir, that is as far as you can go if you want to adopt the principle and you want to make the adoption of that principle effective. (*Applause*).

M. F. BERLINGIERI (Gênes). — Messieurs, vous aurez vu par le rapport présenté par l'Association italienne de

Droit Maritime quel est l'état actuel de la législation, de la jurisprudence et de la doctrine en Italie sur la question qui vous est soumise.

Pour ce qui a trait à la procédure, à la compétence et au droit applicable, il ne devrait y avoir aucune différence entre les navires d'Etat et les navires appartenant à des particuliers. Seulement il y aurait des exceptions eu égard à la nature spéciale des navires de guerre et des navires affectés à des services publics. A raison de leur caractère de biens appartenant au domaine public de l'Etat, ils ne pourraient être l'objet d'abandon et ne pourraient être susceptibles de privilèges, de saisie, etc.

J'ai remarqué que dans le rapport de l'Association Belge de Droit Maritime on propose que les Etats devraient donner caution lorsqu'il s'agit de navires de guerre et de navires affectés à un service public. Je crois qu'on pourrait abandonner ce système, parce que les Etats devraient respecter leurs obligations, sans y être contraints au préalable par des cautionnements.

En ce qui concerne la procédure à suivre, je me permets de me référer à la remarque additionnelle, dont je vous donnerai lecture textuelle :

« Dans le but de parer aux difficultés qui résultent
» des incertitudes et des hésitations de la doctrine et de
» la jurisprudence au sujet de l'action judiciaire contre
» un Etat, on devrait indiquer, par une entente interna-
» tionale, soit la personne à laquelle l'assignation devrait
» être valablement notifiée, soit la procédure à suivre
» relativement à l'assignation. Et en vertu d'une entente
» internationale, les Etats devraient s'engager à donner
» exécution, en dehors de toute contrainte, aux décisions

» des tribunaux étrangers, après que, bien entendu, ces
» décisions auraient été revêtues de la formule exécutoire
» par l'autorité judiciaire compétente de l'Etat contre
» lequel elles ont été rendues. Ce qui implique, néces-
» sairement, que cette autorité judiciaire doit examiner
» si le jugement étranger a été rendu sans méconnaître
» les prérogatives essentielles inhérentes au fonctionne-
» ment de toute juridiction et avec le respect de l'ordre
» public international. »

Voilà, Messieurs, l'opinion générale de l'Association italienne de Droit Maritime.

(Verbal translation by Mr G. P. Langton).

Dr Berlingieri draws your attention to the report of the Italian Association, and observes that in principle his Association is of the opinion that there should be no difference at all by way of immunity between private and State-owned ships. The departure that he has made from some of the previous speakers is this : that in so far as procedure is concerned he thinks that all questions of procedure should be a matter of International agreement. He sees great difficulty in the way of procedure owing to the sovereign rights which may exist in the various States; and he draws your particular attention to the additional remark which is contained in the synoptical table of Preliminary Report Nr 8, and there he puts the matter before you as the considered opinion of his Association to which he hopes you will adhere; the principle being in no wise in dispute, but the question of the application of the Code of Procedure being in his view a matter for general International agreement.

THE CHAIRMAN. — Now I have at present the name of Mr Thorne of Liverpool, who speaks on behalf of the Mersey Docks and Harbour Board, and who also represents the Association of Dock and Harbour Authorities here in this Conference. I have also the name of Judge Hough who will speak on behalf of the United States; and your President, Monsieur Franck, will, I think, follow those speakers whose name I have given. If

there are any members of the delegations whom I mentioned earlier in the afternoon sitting who desire to take part in the debate I would ask them to let me know before I call on the President, Monsieur Franck. I will call upon Mr Thorne.

MR WILLIAM CALTROP THORNE (Liverpool). — I have to thank you, Mr President, for the opportunity you have given me of speaking on behalf of the Docks and Harbours of the Kingdom, and associating myself with what has been already said by the speakers of Great Britain, particularly Sir Maurice Hill, outlined in the memorandum which he has written, and which has been distributed, and Sir Norman Hill, speaking on behalf of the shipowners.

So far as the Docks and Harbours are concerned this question of the increase in sovereign States trading is a matter of importance, more particularly perhaps on the question of damage. Up to the present no trading State has asserted its right, if it is a right, of not paying its dues. I may mention one little trouble we had, and that shows that it is not to the advantage of the States themselves, if they intend to proceed with trading. One may almost regret that the scope of the debate does not allow us to enter into the question of whether the State-trading is to the advantage of a particular nation and trade, or of the community at large; — but that is outside the scope of the debate. The sort of thing that happens if these claims are made is what I will just mention. A few weeks ago an agent of one of these foreign trading State ships said that he was out of funds, and he would not be

responsible. Well, Sir, what happened ? We stopped the discharge, and I think every one of you will say it was a very reasonable attitude to take up. I am sure Dr Loder would. So he had to get in touch with the representatives of the State, and they had to cable to their capital, and they got instructions that he might continue to pledge their credit. That is not in the interests of a State, and it is not in the interest of any particular Dock or Harbour undertaking that they should have to hold up ships. You all know the enormous cost of providing accommodation, and that accommodation, with a view to keeping down charges, must be used to its full capacity. In other words, the cheapness of Docks and Harbours depends upon the amount of tonnage which can pass over a given space in a given time. Instances like that do not assist that dispatch, and, therefore, are not in the interests of business.

I am so in accord with what Dr Loder has said and the memorandum of the learned Judge of the Admiralty Court that it is not necessary for me to speak at any great length; but I do feel this, that the time has come when this immunity of State ships requires revision, and I think abolition; the times have so entirely changed. You must first look at it from the point of view of your own State. These immunities were first started for the protection of the sovereign when money and grants were made to him. Now that he has got his own Civil List, and the Presidents of the Republics also have their own civil lists, there is no object in protecting the sovereign in person. In fact he is not protected in person. The question today is between the individual and the com-

munity, and why should the individual suffer, and the community, of which he is a part, benefit ? There is no reason at all why anybody should perform services at the price of nothing in the £, 5/— in the £, or 10/— in the £; and so the old doctrine of protecting the sovereign is dead, and has been dead for years, and it is really to-day the individual and the community. I have illustrated why it is not in the interests of the person himself to assert these rights I think. And to follow up my line of thought : if once you establish in your own country, as our Government have admitted to the Docks and Harbours of the country, that they will not assert this sovereign right, and they will pay up like ordinary individuals, as they have agreed with us, except on the question of warships, as to which they made a reservation of 25 per cent in certain cases — in others they pay us 100 percent even for warships — when the sovereign state to its own subjects has waived its sovereign rights, it seems to me that in that country the time has arrived when the sovereign rights of the foreign State should also be abolished. It would be ridiculous for an English State ship to have to pay a Dock or Harbour authority, and a foreign State-owned ship to ride off scot free on the ground of this international comity of nations.

On the practical question, having had to do with practical questions for a good many years, I am entirely in favour of these ships being treated like ordinary trading ships. I am also strongly in favour of those ships being brought within the jurisdiction of the territory in which for the time being they are, in which they have done their mischief. Time is an element of great importance.

I for my side, in preparing cases, can speak as strongly as the Judge of the advantage of prompt decisions.

Then again on the question of what these rights and obligations should be; I say that all ships except the warship, should be subject to the jurisdiction of the territorial Court; and, with all due respect to our Italian friend, I think they should be subject to the local jurisprudence.

On the question of the warship my view is this, and in this I do not entirely agree with my two old friends : I would say that you ought to have the right to sue the warship *in personam* if you like, or the sovereign State who own the warship *in personam* in your own Court and leave it. Have a rule, if you like, that suit can be suspended on the undertaking of the State that they will try it themselves. I would not *ab initio* remove the cause of action, if it is a warship, from the territorial Court. I should make the representative of the Government owning the ship make a formal application that the proceedings should be suspended on an undertaking that the case will be tried in their own Courts.

I agree entirely with what Sir Norman Hill said about the discipline of the sea. It is of the greatest importance that every mariner should know that he is subject to the like obligations, the like rights and the like privileges; in other words, that nobody, whether he is the Admiral of the Fleet of one of the great powers, down to the master of a coasting tramp steamer, should think or believe that he is above the law.

I am so thoroughly in accord with the memorandum of the learned Judge, and with what has been said,

particularly by Dr Loder and the representative of Denmark, that I do not think I need say anything more. (*Applause*).

THE CHAIRMAN. — I call upon Judge Hough.

JUDGE CHARLES HOUGH. — We who have come to represent the Maritime Law Association of the United States, are so thoroughly in accord with what has been said in respect of the vessels governmentally owned, and governmentally operated, but operated commercially and for profit, that I shall say nothing more except that I agree with every speaker so far as my imperfect knowledge of French has enabled me to follow some of them. So far as I can observe, every one who has addressed us has in substance agreed that, if any Government, including his own, goes into the business of commercially operating any ship, that commercial operator should be legally responsible to the municipal law of whatever territory the ship enters. That idea we endeavoured to express in a resolution of our Association that is embodied in our Answers, now printed, to the Questionnaire that was submitted to us. I will leave the matter of the commercial vessel at that point.

So far as what has been called public vessels, publicly operated, or operated for Governmental purposes are concerned, permit me to observe that it seems to me that too much has been made of it. The matter should be practically treated. The importance that should be accorded to it depends upon what we think will be the probable importance of the matter in real life. (*Hear,*

hear). How many collisions, salvages, or other matters giving rise to legal proceedings, have any of you ever known which came out of the wrong doing or the contract breaking of the master of a Government vessel operated without profit for Governmental purposes? I observe that Mr Justice Hill has gathered from the Reports of this country two well known instances. Among the papers submitted by my organisation will be found, combed out of the records of the last fifty years, some ten instances, not all of which gave rise to legal proceedings on the part or in respect of vessels owned by the United States. While therefore I respectfully submit that the question of governmentally owned and governmentally operated vessels is not one that requires practically a great deal of time, I must say on behalf of the American organisations that we think that the matter should be practically treated. There is no use in our endeavouring to make law for the whole world if we know that our own country will not in all probability accept that law. That at least is a limitation upon the powers of those of us who have come from the United States. I think I speak for those who have come with me when I say that it is quite idle to imagine that the Congress of the United States will pass or permit any species of legislation which would suffer or encourage suits against the United States in the ordinary Courts, we will say in England, for a cause of maritime tort or contract. That is the question which we have to meet practically, and therefore I may say, I think, for myself and my brethren, that we are not so much concerned with what ought to be — or at least not so much concerned as we are — with what might

be brought about. It would be in our judgment a very great advance in the jurisprudence of the United States — and I can speak for no other country — if it were permitted to bring a suit in the ordinary municipal Courts of the United States against the United States for any cause of collision or what not, wherever arising and to bring such suit without any especial and particular authorisation from the Congress of the United States. That is the possible reform, we think the probable reform, that, so far as our country is concerned, can be produced; and we are especially interested in trying to produce what we think the possible, and not in reaching after what we think the impossible.

Nor, may I add, do we find any especial difficulty — we may find it hereafter, but we do not see it now — in endeavouring to draw the line between the public vessel governmentally or publicly employed, and the governmentally owned vessel which is engaging in commerce. I have looked with great interest at the lists of governmentally owned vessels and their occupations kindly furnished by the Answers to the questionnaire from the world over. With the exception of vessels of war I find that, so far as I am able to understand the Answers, practically every country is in the situation that the United States is in. We have a large variety of vessels publicly employed for anything but profit : vessels of the Treasury, vessels of the Coast Survey, and the like. They are as much public vessels, publicly employed not for profit as is a battle cruiser, and yet it is only the vessels of war which go abroad for any substantial distance. The other government vessels are employed at

home and give very small occasion for even possible legal proceedings. It will be enough, Gentlemen, it seems to us if, drawing the line between those vessels which are employed for public and non-profitable purposes and those which are engaged in commerce, presumably for profit, we push as hardly as we can for the absolute subjection of the commercially employed government vessels to the municipal laws of whatever land they may go to, and limit our efforts in regard to the governmentally owned and governmentally operated vessels to a recourse as a right to the Courts of the country that owns those vessels; and, if we can succeed in going that far, whatever one may think of the desirability of that complete submission to a perfect law which Dr Loder has so eloquently presented, it seems to us, Gentlemen, that in this respect we shall have done a very good piece of work that was much needed (*Applause*).

THE CHAIRMAN. — Dr Bisschop who was present at the Conference of European Underwriters recently on the Continent has a resolution adopted at that Conference which he has been asked to read here. I will ask Dr Bisschop to read it.

Dr BISSCHOP.— Mr Chairman, I believe that I am doing proper by at this moment asking you to allow me to make two observations. The one is, as you say, to read a resolution that was passed at Baden-Baden by the International Union of Marine Insurance, representing 23 European States. There the question of Immunity of ships was discussed, and in the discussion took part represen-

tatives not only of Scandinavia and other European countries, but also from England. This is the Resolution that was passed : « The principal Underwriters present » at the Annual Meeting of the International Union of » Marine Insurance held on the 27th September 1922 » at Baden-Baden and who represent 23 European States, » support the conclusion of an International Convention » among the Maritime States whereby all maritime pro- » perty, whether owned by or in the possession or service » of a sovereign State, with the exception of such mari- » time property as is exclusively used for War purposes, » shall, with regard to any rights, privileges and obli- » gations which are granted or enforced by the law of » any country, be placed on precisely the same footing » as private maritime property. The legal controversies » which may arise with regard to provisions settled by » such Convention should, in order to obtain continuity » and uniformity of jurisdiction, be submitted for final » decision to the Permanent Court of International Jus- » tice at The Hague ».

There is one other expression of opinion that has reached me, Mr Chairman. This Committee consists of delegates of National Unions, or National Associations all over the world. So far this Committee has always considered the British Empire as being represented by the delegates of Great Britain only. To the questionnaire that was sent out to the members of the British National Committee an Answer has come from Australia giving the law of the Commonwealth of Australia. I know that it could not be reported amongst the Reports by the Committee itself; but, Mr Chairman, I hope that I am in

order when I draw attention to the fact that from Sydney an answer has come to the Questionnaire, especially as The Commonwealth of Australia own not only 39 vessels which belong to the Royal Australian Navy, but also 43 vessels which are employed in trading between the Commonwealth and Europe and the Island of Java. In answer to Question 5 that Report says : « The author » agrees with the opinion of Mr Justice Hill that the » immunity from the jurisdiction should be abolished in » the case of vessels other than war vessels mentioned » in Questions 1 and 2; and that, inasmuch as the liability of war vessels to arrest is undesirable, provision » for the giving of an undertaking by the competent » authority to pay in the event of liability being established by a Court of competent jurisdiction appears » to be required ».

THE CHAIRMAN. — As no other name has reached me I will ask the President of the Committee, Mr Franck, to address the Conference.

Mr LOUIS FRANCK. — Mr President and Gentlemen. I only wish to offer some very short remarks on the matter. The question is no doubt of great practical importance. The unanimity which appears to exist in the answers given in the preliminary Reports, and in most of the speeches which you have heard, does not correspond to the actual practice and actual position of the laws in the various countries. As a matter of fact State-owned ships, although practically engaged in purely commercial trade, in many cases cannot be sued in the Courts, and there is scarcely any practical remedy against

them. As a rule also in most nations, at least for foreign claimants, there is scarcely any remedy in the case of damage done through negligent navigation by a man of war. I think that if we try to solve these questions in an absolutely general way as theoretical questions, giving them a full solution to meet all possible cases, we will land nowhere. Our resolution may be carried; it may be carried unanimously; but when we approach the foreign Governments we feel the conservative tendency, especially of all Departments of public services which are connected with naval or military matters, strongly opposing us. So we must by all means try to do as His Honour Judge Hough has in his eloquent address so clearly put before you, we must try to do what is possible and look at the great practical difficulties and see whether we are able to solve, if not all of them, at least the principal ones of them.

To my mind, and from a practical point of view, the principal question is no doubt the position of the State-owned ships which are engaged in commercial adventures, carrying cargo or carrying passengers. I would not make it a distinction whether the cargo or the passengers are carried with the aim of profit. For instance if the State for its own ends carries goods from abroad for other public works, and brings them to its own ports, it is carrying goods or carrying passengers, if passengers are on board; but when ships are engaged in what in common law is the ordinary commercial shipping trade, the carriage of goods or passengers, they ought to be subjected to the common law whether they belong to the State or to any private person. I am myself a member of

a Government; I am therefore very reluctant to venture on any remarks which might mean a criticism of governmental methods and governmental ability to carry on an industry, whether it be a shipping industry or any other industry. It may be that other governments in other countries are much more capable of doing that than my own government may be. I would not like to say anything which would reflect upon any other government, but as far as it is only a matter between my government, and myself, I would say that the government is a bad merchant, a bad industrial master, and a bad shipowner, and that the real art it knows is to lose money where a private industrial merchant or shipowner might earn it. (*Laughter*). After the experiences of the war when all this interference of the State was forced upon us, when it was necessary, when it had to be done under the best possible conditions, when the State got the help of the best brains of the country, and when all these men were highly inspired by the loftiest of motives, after all, apart from the results as far as the War was concerned, — and that was enough for the time being, — if we consider all these undertakings, at least in my country, from a purely economic point of view, there was not one which was not utterly a failure. (*Hear, hear*). And to a large extent the crisis under which the world is labouring at present is still due to the reaction of that constant interference of the State in a domain which is not the State's domain. (*Applause*). Every one has seen that where the head of every private enterprise was looking, as you say so well in England, not after the pound, because the pound will look after itself, but after

the penny, State government enterprise, at least in my country, was mostly managed without any regard to cost. If that be the case, the sooner and the more the State-owned ship comes under the common law the better it will be. (*Applause*).

I am, therefore, strongly of opinion that we should express as the unanimous opinion of this Conference that if a State or any government chooses to go in for having a maritime transport industry of its own it should do so under fair and equal conditions. (*Hear, hear*).

I would not like to raise about that principle some very interesting questions which have been touched on by my friend Mr Berlingieri or in the French Report. They speak about questions of jurisdiction, about questions of procedure, about the question of what law would apply. All these matters are very interesting, Gentlemen, but these questions arise also for privately owned ships. There also all laws are not agreed as to what is the proper system of jurisdiction. Some countries still consider that, if a citizen of their own is claimant, that is a sufficient ground for jurisdiction, even in the case of a collision which has taken place abroad in a foreign port, even if they cannot seize the ship or serve a writ *in personam*. I think it is quite wrong. We had that law in Belgium; we have given it up. But, wrong as it is, the wrong is the same on a private shipowner and on a government; and as nobody forces a government to go in for ship-owning, if it does, it should submit to these inconveniences until the time comes when we shall have been able to pass a Code on the jurisdiction in Collision

matters, a question which we have already discussed in former meetings.

The same with the question whether it should be a suit *in personam* or *in rem*. The same with the question what law you are going to apply. You must leave all that to the common law, to the common law against the private shipowner, and to the common law against the State.

But surely, Mr President and Gentlemen, if we were a legal Academy, and we had to approach, as a legal Academy, the question of warships and public service ships, I for my part would quite follow what has been said by various gentlemen in this debate, and by various Reports. It can be quite maintained that also there, there ought not to be any difference, but whether you like it or you do not like it, you will have to make a difference, or I fear you will wreck your whole draft, and all your hope of getting a Convention through. I think as far as my own Government is concerned we would not make any difficulty; we have not a very great interest in the matter; but I am sure in many other countries very great difficulties will arise; and therefore I think the practical way is to try to do under that head what can be done and to obtain what can be obtained at present, and later we will try to obtain more.

What can be obtained at present, first, as to warships, and, secondly, as to these public service ships of which you know? As to warships first, it seems possible to me that all nations may follow the lead of Great Britain, the United States, France, and other countries, I think, and give right of action against a man of war, at least for Collision claims, claims for damage by wrongful Na-

vigation, and Salvage. I think they would agree to give that right of action before their own Courts, but I do not believe that they will agree to be sued *in rem* or to go into these difficult questions of jurisdiction in collision matters. For instance if, instead of discussing the matter in a general way, you look at the practical effect and at the facts, do you think that all those gentlemen who are in favour of a general rule, if they were sitting in the Cabinet of their own country, would agree to this, that a man of war having had a collision on the high seas with, let us say a Belgian vessel at the time when we had still that law, could be sued in Belgium simply because the claimant is a Belgian ? That system of jurisprudence still holds good ; there are still countries where there is a sort of legal protectionism, where the home citizen is considered and his rights are considered so holy and great that he may, simply because he is a citizen of that country, and he has an action, or thinks he has an action, against any foreigner, bring that foreigner before the Court of his own country, even if the acts have not been committed within that territory, if it is a matter of tort, or if the contract has not been made there, or if no property of any kind has been arrested there. Do you think that there is any nation which would agree to submit its men of war to a rule of that sort ? No doubt they would not.

Then further, beyond these exceptions there are a great many differences and discrepancies between the laws of jurisdiction in the various countries, and if you go to the Governments and say : « Will you submit as regards the men of war to a rule of common law in these

matters », they will examine, and very precisely examine these conflicts of law; they will find very able gentlemen to point out what difficulties may arise in these questions, and I fear they would not agree.

So that, if we could go as far only as this, that the principle be recognised that a man of war should be liable for wrongful navigation and damage done thereby, and also liable for salvage claims, but that you will have to go before the Courts of the country to which the man of war belongs, it would not be perfection, Gentlemen, but it would be a very great success and a very great advance on what we have at present. And we might be satisfied with it because as a matter of practical importance if you have once got that, you have obtained very much more than you have at present, and in most cases you will at least have a remedy. If you are hoping that the nations will be found favourable to an undertaking to give bail in these cases for any amount, I do not think you will succeed because it is not only a question then of maritime law, but it may become a question of all sorts of claims outside of maritime law; it may be claims for debt; it may be claims for loans, it may be claims in damages for God knows what, and surely it would be difficult to succeed in obtaining that.

Then there remains the matter of public owned ships. I think there is very much to be said for the proposition that you should place public-owned ships in the same category as privately owned commercial ships. As far as logic is concerned it is surely the logical view. But, Gentlemen, you know that we are still very far from the time when logic would rule the world. I am not sure that

it would always be an improvement, but surely we are far away from that time. I think that if the matter of these public owned ships were of great practical importance we ought to stick by the principle; but as Mr Hough, who is not only a great Judge, but also a very good judge of these matters, has said, the cases where a cable ship, or a ship which is exercising a police right on Fishery, or surveying the coast, and all these matters, have given rise to an action are rather rare. These ships mostly remain within the territorial jurisdiction of the country to which they belong. If you have a remedy against them in that country, I also think that that is all that you might succeed in getting, or that you might hope for. But I would however be less positive in a resolution to be framed about this third class of vessels than about the men of war. I would at once take my stand on the rule : — Give us an action : give it us before your own Courts, the Courts of the country of which your vessel is flying the flag; we are satisfied with that. As to the public owned ships I would leave the matter open in such a way that, without making it conditional on our agreement, if we can get it, we might try to get it ; but, if we cannot get it and we must be content with only having the first Rules, we also ought to be satisfied with that.

So that I think, taking the matter as a whole, that would be at least a practical solution of the difficulty and the most which we can expect to obtain; and, coming to a conclusion as far as the debate is concerned, I think that if we could at present close the general discussion and go into the examination of the three questions put

by our distinguished and eminent President it will be a good way of working this matter. (*Applause*).

THE CHAIRMAN. — I think the convenient course now would be that we should have a motion proposed by some member of the Conference for a resolution. Word has reached me that Sir Norman Hill is ready to move such a resolution with regard to the first head of discussion, that is : « What liabilities? » I call upon Sir Norman Hill.

SIR NORMAN HILL. — Mr President, the resolution I would like to submit is this :

« That this meeting is of opinion :

» 1) That all liabilities commonly enforceable as
» against ships and their owners ought to be accepted by
» sovereign powers in regard to ships owned or operated
» by such powers;

» 2) Such liabilities should be enforceable by the
» tribunals having jurisdiction over, and by the methods
» applicable to all other ships and their owners, except
» in the case of 1) Warships, 2) other vessels engaged
» only in Governmental and non-commercial work, when
» the liabilities should be enforceable only by action
» *in personam* in the Courts of the country to which such
» vessel belongs against the Government owning the
» vessel ».

THE CHAIRMAN. — It will be convenient probably, as the Conference has agreed to treat the subject distributively, that we should take first Sir Norman Hill's first notice of motion, that is as to all liabilities.

Dr LODER. — Can we have the resolution read once more, slowly ?

THE CHAIRMAN. — Copies will be circulated, but the motion which Sir Norman Hill proposes to make upon the first subject of discussion is this : « That all liabilities » commonly enforceable as against ships and their » owners ought to be accepted by sovereign powers in » regard to ships owned or operated by such powers » — all liabilities. Mr Franck will translate it.

(Traduction orale par M. Louis Franck).

L'honorable Sir Norman Hill a proposé la motion que je traduis dans les termes suivants :

« La Conférence est d'avis 1°) que toutes les responsabilités imposées » par le droit commun à l'égard des navires ou de leurs propriétaires » devraient être acceptées par les Etats souverains en ce qui concerne les » navires qui sont leur propriété ou qui sont employés par eux;

» 2°) Que ces responsabilités doivent pouvoir donner lieu aux recours » et actions appartenant aux tribunaux qui ont juridiction et par les » mêmes méthodes que celles applicables à tous autres navires ou leurs » propriétaires, excepté dans le cas de 1) navires de guerre, 2) d'autres » navires employés par les Gouvernements uniquement à des opérations » gouvernementales et non commerciales.

» Dans ces derniers cas, les responsabilités ne peuvent donner lieu » qu'à une action *in personam* devant les tribunaux du pays auquel ces » navires appartiennent ».

THE CHAIRMAN. — The subject of discussion is the motion Nr 1 « All liabilities ». Is it Sir Norman Hill's desire to address the Conference on the subject of his motion Nr 1 ?

SIR NORMAN HILL. — No Sir, I really do not think there is anything I can add to that. I have endeavoured in Nr 1 to state what I gather is the general sense of the

Conference on the point to which we have got. I gathered that we were all absolutely in agreement as to Nr 1, and the only difficulties arise in regard to the exceptions from Nr I.

THE CHAIRMAN. — That puts upon the Conference at large the task of discovering the exceptions and embodying them. I shall of course endeavour to assist in the discharge of that task, but it is a somewhat onerous one.

SIR MAURICE HILL. — Sir Henry, if you are passing from Nr 1.....

THE CHAIRMAN. — I propose to put it to the Conference when the time comes.

SIR MAURICE HILL. — This only occurs to me. This is limited to ships; I think we want to include cargoes. We ought to have some words more general than « ships ». For instance, the salvage claim against the government-owned cargo upon a private-owned ship has to be in some form included I think. You could put « maritime property » and then define maritime property.

SIR NORMAN HILL. — « Maritime property » or « Marine venture », or something like, that.

SIR MAURICE HILL. — Then that involves a definition. One out of many that I submitted was to this effect : « Maritime property » and then define maritime property as including all vessels and all goods or property carried on board a vessel. You want something at any rate a little wider than « ships ».

Mr LOUIS FRANCK. — Mr President and Gentlemen. The usual course will be that after this resolution has been passed it be referred back to a special Commission; that special Commission will take the lead as a matter of general principle which your Conference will have given, but its work will still be very difficult. Everyone will understand that this resolution of Sir Norman Hill, although it is very clear as far as the general principles are concerned, cannot in this form be embodied either in an International Code or in a text of law. That being the case I do not think it is necessary, nor do I think that it is practical, to insert the words indicated by Sir Maurice Hill, and the reason is this : the difficulties with which we have to contend have arisen about ships.

SIR MAURICE HILL. — And cargoes too.

Mr LOUIS FRANCK. — There may be cases in England—but I have scarcely seen any difficulty about cargo belonging to a Government. It may be that it has arisen, but the difficulty of cargo claims is quite a different thing when Governments are concerned, because giving the rights to seize or arrest a ship or to sue a ship clearly limits your difficulties within I would say the maritime law province. If it comes to a matter of cargo for what claims will you be entitled to seize cargo ?

SIR MAURICE HILL. — Salvage is what I am thinking of.

Mr LOUIS FRANCK. — If you think only about salvage I think that the Commission to which I refer may very well be able to draft an Article which will include salvage;

but, for instance, if you put your principle in such a wide form that a cargo belonging to, let us say, the State of Montenegro, which no longer exists, might have been arrested in Antwerp owing to the fact that that State perhaps had not paid some banking draft or any other obligation, you feel at once that there you enter upon difficult grounds. I quite agree with you that when there is a salvage claim, and the cargo belongs to the State, it must pay. I do not see many other cases where the difficulty with the cargo may arise. So I think it would be better to leave the principle as it stands in Sir Norman Hill's resolution, it being very well understood that that does not at all exclude the idea of Mr Justice Hill, and that we will, on the contrary ask the Commission to bring that idea into effect; but to do it in such terms that the construction put upon it may not be a sort of drawback when you approach the Governments to get the matter through. I do not know whether my idea is quite clear, and whether you see my point and my difficulty; but I do not like to have a general resolution of such a sweeping character that it at once gives rise to problems and difficulties about which we have not thought, and which may at once make some Governments consider the question as much bigger than we intended to make it, and find therein a reason for withholding their approval.

THE CHAIRMAN. — I think I ought to bring this to the notice of the Conference. « All claims » in the general language of the motion comprises claims in respect of damage by negligent navigation or wrongful acts on board the ship, claims in respect of salvage, and claims

in respect of the various grounds of ships' liability which are cognisable in Courts of Admiralty in the various jurisdictions of the world. That is as to the nature of the claims, and it includes in the generality of its language claims in respect of ships of war under all circumstances. Now the Conference of course will pass what resolutions it intends to pass, but I cannot conceive that the Conference intends to pass without discussion, and send to a drafting Committee, a resolution which would subject sovereign powers to claims for indemnification in respect of acts of war. (*Hear, hear*). It may be that that is deemed a prudent thing to do. If that is intended, the Conference will so declare. But with regard to all these various matters, these grounds of claim which are cognisable in Courts of Admiralty, and are ordinarily rendered cognisable by process of arrest, the Conference must consider whether those various heads of claim are intended to be declared proper subjects of jurisdiction, or at any rate of liability, and that the instruction the Conference gives to its drafting-Committee is that instruction. I bring that to your attention, because I think it is necessary that you should consider it, and I will call upon Mr Dor, whose name has been handed up to me.

Mr LEOPOLD DOR (Marseille). — I only want to say a few words to support the view of Mr Franck that we should not vote at this stage on a cut and dried resolution. The resolution proposed by Sir Norman Hill has been read to us and translated into French; but before voting on the resolution I think that the members of this Committee will want to see it in print, or at least typewritten;

they will want to be able to see exactly what is the meaning and scope of every word of it (*hear, hear*); and I think, as Mr Franck proposed, that this Committee should entrust the drafting of the final resolution on which you will be asked to vote to a drafting Committee with very wide powers. When you come to drafting, you discover that such and such word, which seems to be very clear, may mean two or three things. We have had this resolution only for a few minutes before us, and already your attention has been drawn to various points, whether it is the question of cargoes, or the question just raised by your President. As regards cargoes, for instance, in my view you have to consider not only salvage claims, but also general average claims. (*Hear, hear*). It was just said that there is never, or very seldom, any difficulty about Government-owned cargoes. I can assure you, speaking from practical experience, that there are difficulties about general average on Government cargoes and when we want to get a general average contribution from the French Government, for instance, well, I will not go further than to say that it is a very difficult and a very lengthy process. It would be of immense value if, when a ship comes into one of our ports and there is a general average, we could just treat any cargo owned by the French Government on the same footing as private cargo. If, on the other hand, we have, as is now the case, to submit the matter to the Council of State, we may have to wait for about 10 years for a decision. Also when you consider those resolutions you will find that it is perhaps not sufficiently stated that the men of war and public-owned vessels ought to be subjected to the jurisdiction

of the Courts of their own countries. You may have to go a little further than that. I quite admit that a man of war cannot be sued before a foreign Court, but it is of great importance to the claimant before which Court that man of war will be sued. In this country you can sue a men of war will be sued. In this country you can sue a sue the officer by special permission of the Admiralty, or some other similar means. In our country you can certainly sue a man of war as a matter of right, and not as a matter of grace. This is perhaps an improvement; but you have to sue the man of war before the Minister of Admiralty, and from there to appeal before the Council of State. It is a very high jurisdiction, a very impartial one, but the process is lengthy, and when a shipowner or an underwriter has an action for collision he wants a quick result, or at least what we lawyers do call a « quick » result (*hear, hear*): that is one or two years; but not ten years, and that is what he gets before the Council of State. Therefore you may find that you will have to add a few words to the resolution so that public-owned vessels and men of war can be sued before the ordinary common Courts of their own country by the common ordinary procedure. Anyhow, all those questions have to be considered carefully, and to appoint a drafting Committee with wide powers, the members of which, having read these reports, and having heard the speeches which have been delivered here, would do their best to put them in the form of a resolution which they would submit to you, I think would be a safer course than to vote at once on a resolution which we simply have heard for the first time. (*Applause.*)

THE CHAIRMAN. — I gather from the reception Monsieur Dor's observations have met that it is the sense of the Conference that the discussion should be taken to be upon conclusions provisionally arrived at, to be reviewed by a Sub-Committee which will sit to consider questions of drafting and questions of necessary exceptions; and that when the Sub-Committee or Sous-Commission has agreed, it should bring the result of its labours to the Conference in order that the Conference may determine whether it accepts the respective reports. Is that the sense of the Conference ? (*Yes*). Very good. Then the suggestion has been made to me that the difficulty I felt about the absolute form of what at the moment was a proposal for a resolution would be met by prefacing the terms of the motion with these words « Subject to exceptions and provisoes to be defined, this Conference » accepts the general principle ». The motion, if Sir Norman Hill accepted that view, would run in these terms :

« That, subject to exceptions and provisoes to be defined, this Conference accepts the general principle » that all liabilities commonly enforceable as against » ships and their owners ought to be accepted by sovereign powers in regard to ships owned or operated by » such powers ».

I put to the Conference the motion with that qualifying expression, and I will ask the Conference whether its will is to send that motion as an expression of principle for consideration by a Sub-Committee or Sous-Commission to be presently appointed ? (*Agreed*).

THE CHAIRMAN. — That brings us to the second notice of motion which Sir Norman Hill read to you :

« Such liabilities should be enforceable by the Tribunals having jurisdiction over, and by the methods applicable to all other ships and their owners, except in the case of 1) Warships; 2) other State-owned vessels engaged only in Governmental and non-commercial work, when the liabilities should be enforceable only by action *in personam* in the Courts of the Country to which such vessel belongs against the Government owning the vessel ».

That, you will see, raises broadly one of the diversities of principle which have been indicated in the speeches during the general debate, and as the broad distinction is between the proposal which Sir Norman Hill has made, and the recommendation which was made to us in an admirable speech this morning, if I may say so, by my friend and colleague Sir Maurice Hill, I present to the Conference for discussion the second motion of Sir Norman Hill which I have just read. Is it sufficiently before the Conference by my reading of it, and by the translation which Mr Franck was so good as to make ?

SIR NORMAN HILL. — That would go to the Drafting Committee along with the first ?

THE CHAIRMAN. — Yes, it is in the same way a proposal for a principle to be submitted to the drafting Committee or Sous-Commission.

Dr LODER. — The two are quite distinct ?

THE CHAIRMAN. — The two are quite distinct.

Dr LODER. — We have adopted one.

THE CHAIRMAN. — One we have adopted; the other is now open for discussion. As to the motion which has just been made, I think as Sir Maurice Hill addressed us this morning in a contrary sense it would be very desirable if he would address us.

(Traduction orale par M. Louis Franck).

M. le Président vous a signalé, comme vous l'avez tous compris sans doute, qu'il vous demande non pas de voter ces résolutions de façon définitive dans leur texte actuel, mais simplement comme correspondant à votre opinion pour l'heure et de renvoyer ce texte à une commission de rédaction. Celle-ci se réunira sans retard et vous fera rapport et alors seulement vous vous prononcerez définitivement.

On a d'ailleurs inséré en tête de la convention la phrase que sous réserve de rédaction et de qualifications à préciser davantage, nous décidons comme principe général en premier lieu que le droit commun s'applique à tous les navires même lorsqu'ils sont propriété de l'Etat; puis la seconde partie de la résolution crée une situation spéciale à la fois pour les navires de guerre et pour ceux qui sont affectés à un service purement gouvernemental et non commercial. Ce traitement spécial consisterait en ce que le principe général serait applicable, mais que l'action ne pourrait être engagée que devant les Cours du pays dont ces navires battent le pavillon.

THE CHAIRMAN. — Does Sir Maurice Hill offer any observations upon the provisional motion which is suggested to be sent to the Sub-Committee ?

SIR MAURICE HILL. — No, I do not if it is the feeling of the Committee that these should both be excepted. Warships, of course, I recognise should be. I was faced by extreme difficulty in getting any definition of « ships engaged in Governmental and non-commercial work » which will not let in all the ships of a Socialist State. If

the Sub-Committee that is going to draft this matter can get any definition which will not let them in, I shall be only too delighted, because I tried myself many times and wholly failed. Of course, it will be understood, I suppose, that « When the liabilities should be enforceable only by action *in personam* in the Courts of the Country to which such vessel belongs against the Government owning the vessel » again will be subject to this « unless that country provides some even better remedy », which I understand in some cases in these Reports it does, because it allows an action *in rem*.

M. G. LECLERCQ. — J'ai suivi avec la plus grande attention le texte qui nous est soumis.

Il paraissait que tout le monde était d'accord que l'on pouvait exécuter soit par la saisie, soit autrement, l'Etat lorsqu'il faisait des opérations commerciales. Exception est faite pour les navires de guerre, et encore, disait-on, pourrait-on admettre une exception lorsqu'il s'agit de navires employés à un service public. Mais ce sont là en somme deux grandes catégories : d'un côté, c'est l'Etat faisant des opérations commerciales à titre privé, qui devra être traité comme le serait un particulier et pouvant par conséquent être exécuté comme un particulier ; tandis qu'il a de l'autre côté l'Etat agissant comme pouvoir public, comme propriétaire de navires de guerre ou bien de navires affectés à un service public, et dans ce cas on n'a contre lui qu'une action *in personam* devant les tribunaux du pays auquel appartient le navire qui a causé le dommage.

Or, je dois dire qu'en Belgique tout au moins, il est

une règle qui n'est pas inscrite dans notre législation mais qui fait cependant partie de notre droit public, c'est que l'Etat n'est jamais exécutable. Qu'il s'agisse d'un navire d'Etat ou d'un autre objet lui appartenant, vous ne pouvez exécuter l'Etat. Remarquez que si vous acceptez la rédaction telle qu'elle est proposée, que va-t-il arriver pour toutes les autres actions en dommages-intérêts intentées à l'Etat. Vous êtes tous plus ou moins intéressés, soit par vos études, soit par votre profession, soit par votre industrie, dans les affaires maritimes. Nous sommes ici réunis pour nous préoccuper avant tout des affaires maritimes, c'est vrai; mais rendons-nous bien compte que le préjudice, le dommage qui est causé dans des affaires maritimes n'est en somme que la plus petite partie des dommages causés par l'Etat. Il arrive un accident maritime, ou un colis est perdu par ses navires; mais cela ne se présente qu'une fois tous les huit jours, tous les quinze jours. Mais quand je parle des grands dommages causés par l'Etat, je fais allusion à ceux qui arrivent tous les jours, et même deux ou trois fois par jour. Or, allez-vous admettre que tous ceux qui sont victimes de dommages sur terre ne pourront pas exécuter l'Etat, tandis que ceux qui auront à souffrir de dommages sur mer pourront recourir à cette exécution? Pourquoi cette différence de traitement? Pourquoi l'une de ces catégories de réclamateurs aurait-elle cet avantage sur l'autre?

Je comprends encore que cette idée puisse venir à ceux qui, comme les Anglais par exemple, distinguent entre l'action *in rem* et l'action *in personam*; puisque dans l'action *in rem*, on agit en réalité contre la chose qui a causé le dommage, contre le navire lui-même et qui

doit donc en supporter les conséquences. Mais dans des pays comme la Belgique — et en France également, je crois, — où il n'y a que l'action *in personam*, pourquoi faire cette distinction et avantager les uns par égard aux autres ?

Chez nous, on ne peut jamais exécuter l'Etat. D'ailleurs l'Etat paie tous les jours des dommages causés par lui; tous les jours il se plaide des procès contre l'Etat. En Belgique notamment, c'est l'Etat qui exploite les chemins de fer, et ce service entraîne nécessairement des accidents et des dommages; cependant on ne peut saisir des propriétés de l'Etat en garantie de ces dommages. Si cela est exact et admis, je me demande pourquoi on pourrait saisir des navires appartenant à l'Etat. Or, ce qui est vrai pour l'un l'est aussi pour l'autre. Il ne serait donc pas très habile de mettre dans une décision à soumettre à la Conférence diplomatique quelque chose qui heurte complètement les principes de notre droit public, qui est contraire à tout ce qui se fait chez nous et qui peut avoir des conséquences plus graves que celles que vous avez prévues, c.-à-d. que désormais on pourrait exécuter l'Etat pour toutes condamnations qui pourraient être prononcées contre lui.

(Verbal translation by Mr G. P. Langton).

Mr Leclercq says that he himself finds the greatest difficulty in seeing how the proposal which is before the Conference now will ever be brought to a practical issue in France and Belgium. He points out the difference that there is in the public law of France and Belgium from what exists here in England. And he points out also that by far the greater number of actions for damage against the State are actions for damage which arise by reason of accidents on land; not accidents at sea. Here you are going to propose that in respect of certain accidents and certain actions in respect of maritime property there will be a remedy against the

State. Whereas every day there are actions against the State, for which there are no powers of execution against the State. So that we are here endeavouring to introduce something which is entirely new, and which he for his part doubts whether you will be able to introduce as a practical measure in Belgium and France.

THE CHAIRMAN. — Having regard to the time of day, there is a question of procedure I put to the Conference. It will be necessary to nominate the Committee or the Sous-Commission which is to be seized of these matters, and we ought to do that at a reasonable time this afternoon. We ought also to determine when they shall be asked to sit, and when to report; and in connection with that matter, I have learned that the Conference has to bear in mind that tomorrow afternoon several of our most influential British members will be absent by reason of an engagement with a Minister upon a matter closely connected with the classes of questions we have to deal with here. There will be a conference tomorrow afternoon; the Solicitor General and Sir Norman Hill, and I think Mr Hill, are aware of the nature of it, and I am inclined to think that, as the active part in the discussion of these questions has been taken by Sir Norman Hill, and as Sir Leslie Scott must also be absent tomorrow, it would be convenient that we should not be discussing the question of Immunity tomorrow afternoon. Now I take that to be the will of the Conference, so that we come to this : We have our Committee to appoint; we have to ask them to sit at a time which will be convenient for the purpose of giving the Conference the result of their labours, at a time when that result can be discussed; and we cannot take this matter tomorrow afternoon. Some questions remain. There is the question which formed the second

head of discussion as to means of enforcement of liabilities which ought to be sanctioned, and about which there has as yet been no discussion to direct the attention of the Sous-Commission. I think something ought to be said on that subject; and there are one or two further observations to be offered I know from one quarter upon the question of jurisdiction.

I first ask the Conference at what period this afternoon it would be deemed advisable to interrupt the debate in order that we should constitute the Sous-Commission. My own impression is that it is desirable to do that early. Is that the will of the Conference ? Shall we do it now ? (Yes). Very well. Then we suspend the debate upon the topics that we at present are engaged with, while we constitute the Sous-Commission. I will ask for nominations for the constitution of the Sub-Committee, and I venture to suggest that, as the Conference has come to the discussion of this question as the result of a carefully prepared study of it by Sir Maurice Hill, he should be asked to serve. (Yes). I do that because I know what a burden you put upon a Judge when you ask him to do something outside his duties, and in that respect I am pitiless for others. Now I will ask for nominations.

Dr LODER. — How many ?

THE CHAIRMAN. — One mode of dealing with the matter will be to leave it to the Executive.

Mr LOUIS FRANCK. — That would be best.

Mr CHARLES F. HAIGHT (U. S. A.). — I would like to move that the Chair appoints the Sub-Committee.

THE CHAIRMAN. — That would be upon consultation with the Permanent Bureau of the Committee. Is that your pleasure ? (*Agreed*). Very good. Then I will ask the members of the Bureau to remain after the adjournment to-day in order that we may constitute the Sous-Commission, unless it is thought necessary, as a matter of expedition, to constitute it now. If the Conference will give the Bureau a short period for dealing with the matter, the members of the Bureau will withdraw and discuss the matter among themselves. There are one or two speakers I know who may wish to address the Conference upon the topics to which I have referred. Dr Bisschop has something to say upon the question of jurisdiction upon questions of principle affecting liability.

DR BISSCHOP. — Mr Chairman, My remarks refer to the third of your questions. I do not know whether that is really in order at the present moment.

THE CHAIRMAN. — I think it is, because the motion which Sir Norman Hill has made deals with the question of jurisdiction and puts jurisdiction, in cases of vessels other than War ships and Public ships upon the ordinary Tribunals of the country concerned.

DR BISSCHOP. — If that is your view, Mr Chairman, I should not like the second of the resolutions proposed by Sir Norman Hill to go to the drafting Committee without also submitting a third, namely, in somewhat these words :

« Legal controversies which may arise with regard to
» jurisdiction and provisions settled by an International

» Convention should, in order to obtain continuity and
» uniformity of jurisdiction, be submissible for final
» decision to the Permanent Court of International Jus-
» tice at The Hague ».

I submit this for this reason : We have already heard in the general remarks that have been made this morning that questions of jurisdiction do arise especially with regard to collision. Sometimes two or three Courts in different countries are able to, and do take cognisance of one collision that has taken place in their own waters, or outside their own waters. On the other hand a much more serious difficulty arises when an International Convention has been drafted, namely, this, that that Convention has to be sanctioned by legislation in various countries. It has to be submitted to the Courts in the different countries, and it may be interpreted by those various Courts in a different way. It is to my mind of great importance for any International Convention that the interpretation of such Convention by the Courts of the various countries should be the same; otherwise we may legislate, but the Courts of a country which wants to get out of the Convention, may interpret that Convention in such a way that vessels of that country obtain the immunity which, by the International Convention, we try to abolish. I know that there is great difficulty in obtaining the adoption of a new principle that there shall be an International Court in matters not of a public nature, with a final decision which shall be binding upon the National Courts of the various countries; but where it is a question of an International Convention, where it is a question of jurisdiction, I believe that we may limit the jurisdiction

of an International Court to that extent that the difficulties which may be created by a varying interpretation can be obviated without doing any harm to the jurisdiction of the national Courts in the cases actually submitted to them. I will take for instance a collision that has taken place. It is not a question of obtaining an appeal from the decision given by a national Court as to which vessel is to blame; but, if in respect of that collision, two or three Courts can take cognisance of the case, it is of importance that there should be an International Court to decide which of these decisions should be the binding one.

It is for that reason that I submit that we should add to the second resolution of Sir Norman Hill a third in order that cases of jurisdiction and cases of interpretation of the International Convention should be, for a final decision, submitted to an International Court to be created for the particular purpose. We have an International Court at The Hague, and for that reason I propose that those questions shall be submitted to it. We have heard this morning from Dr Loder that it can be done, that there is a Chamber of Summary jurisdiction which sits the whole year through, and for that reason I think that we must consider whether, for the continuity and uniformity of jurisdiction, it would not be desirable to obtain the assistance of the International Court at The Hague, and make cases submissible to that Court. Questions as to when a case should be submissible, and how it should be submissible can be left for later consideration. I only urge upon the Committee that we should lay

down the principle that these questions shall be submissible in order afterwards to work out the procedure and the cases in which such submission should take place.

THE CHAIRMAN. — This is an amendment really upon Sir Norman Hill's second motion, and I think I had better ask Sir Norman Hill now, if he is ready to offer us any observations, to say what he thinks about it.

SIR NORMAN HILL. — Mr President, we are all familiar with the difficulties to which Dr Bisschop has referred. They are now in existence in settling the rights as between private shipowners, commercial shipowners, in which there is no question of sovereign immunities or sovereign responsibilities. We all know that those exist. There would obviously I think be advantages if there were a Summary International Tribunal which could adjust those matters. But, Sir, I should be very sorry to have my resolution weighted with this new point. If we carry our first point depriving the sovereign authorities of immunity, I think we shall have done a very big thing. I think it would be risky to burden our efforts in that direction by adding something else which could be only applicable in cases in which a sovereign power was interested, and would leave quite at large the much greater number of cases in which there is no sovereign power interested. So I would be very sorry if Dr Bisschop pushes his point, which is a good point, and a point which some day this Committee ought to consider, on to my resolution.

MR JAMES PAUL GOVARE (France). — Mr Chairman and Gentlemen. I should only like to call your attention

to one special point which has been at great length discussed by the French Commission in Paris, and in doing this I will answer the points put forward by our colleague who has just addressed you in French. He said that the States often ran a railway Company at the same time as some navigation Company, and that he did not see why there should be better facilities for executing the decision given in favour of the one who suffers damage by the ship than for the one who suffers damage by the Railway Company. And then he spoke of the actions *in rem* and the actions *in personam*. I venture to say that there is a great difference, at least as far as the French State is concerned. If you have a claim against the French State for a railway accident, or a damage caused by a railway belonging to the State, you always have an action against the State, and the State is always liable; while on the contrary, if it is a ship that is concerned, the shipowner has always the right, when the decision is given against him, to limit his liability by giving up the ship to the one who has obtained judgment against him. Now, if this ship, during the time that the process lasts before the Courts (and that may be for two or three years), has sunk, it only leaves to you a ship that is under the sea. Therefore it is of great importance for us that, if the case is taken against the State — (not for a railway collision, because in such cases the State is always liable, but for a ship collision), — then you must be able to arrest and seize the ship until bail is provided by a bank. That is why we were of opinion that if you are not to arrest or to seize a ship belonging to a State, it must be understood that the State will never

be able to put forward any of the clauses of its own national legislation which may limit its liabilities. (*Applause*).

SIR MAURICE HILL. — To go back for the moment to the resolution moved by Dr Bisschop I am bound to say that I am entirely against it. It is not business. As I understand, it is proposed to reserve to some International Tribunal, constituted I know not how — I think Dr Loder will tell us — having powers different from those of any at present existing, to determine two matters; one, the question of jurisdiction, and the other differences of interpretation of the Convention. Let us see how it is going to work. An action is brought in a Court — I shall understand it best if I say in my own Court. Objection is raised to my jurisdiction. That has to be in some way determined by an International Court. How long is the case going to be hung up while that is going to be determined? It may be that after a couple of years it will be found that I have jurisdiction, and perhaps by that time the witnesses are all dead, or scattered. Or it will be found that I have not jurisdiction. Then they have to hunt round and find out who has jurisdiction; and probably the next suit is begun in France, and objection is taken that there is no jurisdiction there, and another two years are spent over that. To my mind it is not business. It is aiming at a sort of perfection which you may attain, but could only attain at the expense of sacrificing all that you are seeking to get.

As to the other matter, the difference of interpretation, what is to be interpreted? When this Convention is

adopted as far as I am concerned it will be given effect by being embodied in an Act of Parliament, and I shall have to interpret the Act of Parliament, and whatever any International Tribunal on a debate as to the meaning of a Convention may say, I shall continue to have to interpret and apply the Act of Parliament until that Act of Parliament is repealed or is altered. It will not help me at all, and, although I am entirely in sympathy with any scheme which can be devised by which all the countries could be kept in touch and should revise their Conventions from time to time and correct misapprehensions as to their meaning, I think it would be absolutely fatal to business to try to tack it on to the conduct of a litigation as carried out under the Convention.

In addition to that I entirely agree with what Sir Norman Hill has said, that to weight what we hope are simple and plain proposals, with a matter of this kind would considerably endanger our chances of getting Governments to accept the plain proposals.

THE CHAIRMAN. — I do not propose to discuss. I am going to call upon Dr Van Slooten, but may I point out to Dr Bisschop that the only classes of cases which are to come to local Tribunals, or foreign Tribunals as I may say, are classes of cases outside of those in which war-ships and public ships are included, and I daresay Dr Bisschop will consider whether powers, who become competitors upon the sea in the business of carriage of goods by sea, need to be particularly protected by reference to an International Tribunal in respect of those matters about which all their competitors have to take their for-

tunes in the countries where they happen to create a jurisdiction against themselves. Dr Bisschop I daresay will consider that. I call upon Dr Van Slooten.

Dr VAN SLOOTEN (Holland). — Mr President and Gentlemen. I should like to support the suggestion made by Dr Bisschop if he will only leave the question of interpretation out of his proposal; and I might say a few words concerning the objections made by Sir Maurice Hill. Sir Maurice suffered, if I may make so bold as to say, under a slight misunderstanding. We — I speak here for the minority of the Dutch section — never have proposed to submit all maritime cases concerning public ships to an International Court. We do not want to have any facts of a maritime case taken from the local Judge to be dealt with by an International Court. What we want is simply this, that nothing but the preliminary question, whether the ship is in the public service or not, should be decided by an International Court. If we agree to that — and it is a very easy thing to prove — then the objections raised by Sir Maurice do not affect the International Court as a Judge on these preliminary matters. It has been said by Sir Maurice that the vital things in Admiralty cases are, a prompt trial, a trial at the place at which the ship's witnesses can conveniently attend, and thirdly a Court which commands the confidence of Underwriters and Shipowners. Now nobody is so foolish as to deny these points, but we do not see why the International Court should not be able to give as prompt a Judgment as the local Judge. Nor do I feel the weight of the objections with regard to witnesses. There will be

no need to hear any witnesses on the preliminary questions, because they are questions of law, and not of fact; and if we are going to enquire whether the International Court will command the confidence of the Underwriters and Shipowners, I should like to point out that it is not a case between the International Court on the one side and, let us say the English Admiralty Court on the other. There are Courts of local Judges, even native Judges, all over the world; there exist civilised judges, and there are Tribunals that can hardly be stamped with that mark, and I venture to say that shipowners and underwriters will be better pleased for their cases to be dealt with by the International Court than to be dealt with by some Tribunal just emerging from barbarism; and at the present time we might perhaps add by a Judge who belongs to a state at enmity with the shipowner's State at the moment.

That is all I have to say, and I support Dr Bisschop's proposal, if he will only leave out of it the question of interpretation. I agree with Sir Maurice on that point.

Dr FRÉDÉRIC SOHR. — Gentlemen. I wish to offer a few remarks on this question of jurisdiction to be decided by an International Court. I understand that probably on the second point, the question of the interpretation of the Convention, Dr Bisschop will consider that especially. I only deal with the question of jurisdiction.

The peculiar position is this. We have already in the International Maritime Committee previously considered the possibility of making an International treaty on the question of jurisdiction as to collision cases, and up to

now this draft has had no following. Now this is the essential thing to do, because, if at this moment an International Court had to decide these questions the issue would be hopelessly confused. Indeed, what law ought the International Court to apply ? If it applies the law of the country where the Court has ~~already~~ adjudicated, why ought the ~~International~~ Court to apply that law ? ~~Supposing~~ there is an appeal against a Judgment rendered by an English Judge on a question of jurisdiction, and supposing the International Court had to decide whether that English Judge was right or wrong. Why ought an International Court to apply English law ? Why not the English Court of Appeal ? I really think at this present moment the question is without any practical interest. We must first of all try to make a Convention on the question of jurisdiction, and when that is done, then refer all these cases to an International Court.

M. TYPALDO BASSIA (Athènes). — Je me permets d'appuyer la proposition de M. Bisschop que je trouve exacte. Il serait en effet curieux de voir un pays attaqué devant sa propre juridiction pour un dommage maritime causé par un navire quelconque appartenant à cet Etat lui-même. Je comprends encore qu'en Grande-Bretagne, on ne peut y faire d'objection parce que la justice maritime y est bien organisée et que le jugement rendu sera juste. Mais dans bien d'autres pays, — et je ne veux pas citer des noms ici, — toutes les questions maritimes sont jugées par les tribunaux de première instance. D'habitude les juges de ces tribunaux, bien qu'étant de bons juristes, n'entendent rien aux questions maritimes: ils en sont

absolument ignorants. Comment voulez-vous dans ces conditions espérer que la décision rendue sera équitable? Ensuite, il faut tenir compte aussi que dans certains cas il peut y avoir du parti-pris. Vous savez que lorsqu'il y a conflit entre deux pays, les juges d'un de ces pays décideront au détriment de l'autre : les juges seront influencés par des questions de nationalité. Reste alors la question de savoir quelle est la loi qu'il faudra appliquer. Or, je crois que nous pouvons éviter la plus grande difficulté si tout en admettant qu'un pays doit être actionné devant ses propres tribunaux, nous réservons la juridiction de seconde instance, la Cour Suprême, qui n'aura qu'à examiner si le jugement est juste d'après la loi du pays. Alors il y aurait comme seconde juridiction la Cour Internationale qui jugerait au point de vue du droit seulement, mais non des faits. Cette proposition me semble pouvoir concilier les deux théories.

(Verbal translation by Mr G. P. Langton).

Mr Bassia supported in its entirety the proposition made by Dr Bisschop, and the grounds upon which he based his support were these : He said it would be very odd in some countries to find a vessel judged by the kind of justice which she might there find. He would not cite instances, but he told us that there were countries where to his knowledge the question was judged by people who were not only not lawyers, but who know nothing about the law, and he thought that the result of a decision of that kind might be very ridiculous and very unpleasant to the parties who brought the cause to the national Court. He also put reliance upon the arguments which Mr Sohr has placed before this Conference, and he supported the suggestion of an International Court, and adumbrated the idea that the Court should be a Court of Revision, and that it should look over the decision which the national Court might have made in the first instance to see if the decision was in general accord with the principles of International law.

DR BISSCHOP. — Mr Chairman. I am exceedingly sorry that both Sir Norman Hill and Sir Maurice Hill have

entirely misunderstood my proposition. I have said distinctly that my proposition is not to create an appeal from a local Court; so the case which Sir Maurice Hill quotes will never arise. If a party comes before him and disputes his jurisdiction; he decides, and nobody else, subject to his own Court of Appeal and the House of Lords. No question of jurisdiction is to be decided by any other Court except the national Court; but, as has been pointed out I think by the last speaker, if, in a collision case for instance, there is more than one Court taking cognizance of the case — I have had myself a collision case fought in three Courts in different countries — if they then come to a different decision there ought to be a means to obtain from an independent International Court a decision as to which Court ought to have the jurisdiction. I submit that in those cases it is certainly to the interest of the parties that there should be a Court above the other Courts in order to obtain, as I said, continuity. Sir Maurice Hill is thinking of his own Court, but let us think for a moment of other countries in Europe, and ask whether he would not think it against fair justice if, after a party has obtained justice in his Court, the same party brings the same case before another Court in Europe, and gets a decision contrary to his, and thereby obtains a possibility of reversing the whole of the practical utility of the decision which he has obtained from Mr Justice Hill.

Exactly the same with regard to the interpretation. Mr Justice Hill says « I have to interpret an Act of Parliament ». Quite so, but that Act of Parliament embodies the Convention verbatim, and so it does in every other

country where an Act of Parliament has been passed in order to obtain the sanction in that country for the Convention which has been internationally concluded. That Act of Parliament might be interpreted in England otherwise than it may be interpreted in France or in Germany, or in Italy, or in any other country in Europe, or the United States. Is it not then in the interest of justice that there should be a Court to decide which interpretation ought to be followed ? I do not mean that every litigant can go to The Hague and simply appeal. I say once more appeal ought to be excluded. The national Court ought to decide upon the interpretation of the Act of Parliament which regulates the Convention in their country; but ought not there to be a Tribunal which, when there is a difference of opinion as to the interpretation of these various Acts of Parliament, interprets the Convention rightly and decides that the true interpretation of these various Acts of Parliament, which are all based on one International Convention, should be in a particular way.

Sir Norman Hill has said : — I quite agree with your idea, but why should you apply it to this particular subject : why should you only have it with regard to a question of immunity of state-owned ships, while we are suffering in the case of private-owned ships exactly the same hardship ? Well, simply because I want to make a beginning. I do want to extend that; I do want to get the interpretation of International law from an independent Tribunal. But here we have a Convention; we have here the possibility of laying down a principle which I think is a right principle.

Mr Chairman, you have said that my proposition was an amendment of the second proposition of Sir Norman Hill. I do not believe so. In saying so you really are of opinion that I try to amend what he says that « Such liabilities should be enforceable by the Tribunals having jurisdiction over, and by the methods applicable to all other ships and their owners ». My proposition is that in addition thereto there should be, in the interests of continuity and uniformity of jurisdiction, a Tribunal which can decide, not as a matter of appeal, but in the interests of the interpretation of the Convention, what the interpretation ought to be, when there is a conflict of jurisdiction. I do not say that an appeal to the International Tribunal could be brought by private persons. I leave the procedure for later decision. I only want to ask that the principle be discussed, and that the principle be studied and be accepted, that there should be a possibility, as I have said, of obtaining the Judgment of an International independent Tribunal, and as such I think that the existing Tribunal at The Hague, which has the power to do this, is the proper Court to whom these cases should be submitted.

THE CHAIRMAN. — As no vote is being taken upon these matters I think probably the more convenient course in respect of the particular question raised here, which has developed differences of opinion, would be that the Conference should ask the Sous-Commission to report as to the advisability of such a submission in the consideration of any International Convention. (*Hear,*

hear). Does that meet the views of the Conference ?
(*Agreed*). Then we will take it in that form.

There is one other matter I should mention. We have now to constitute the Sous-Commission. The names which have been recommended to me and upon which I make a nomination as you have desired that I should, are the names of Sir Maurice Hill, Mr Justice Hough, Mr Loder, (The Hague); Sir Norman Hill, Dr Koch, (Denmark); Dr Kiep, (Berlin); Mr Sohr, (Belgium); Mr Dor (France). I propose those names to the Conference to constitute the Sous-Commission. Do you accept that nomination ?
(*Agreed*). That disposes of this question.

SIR ERNEST GLOVER. — Might I suggest Dr Berlingieri for Italy ?

THE CHAIRMAN. — Is Signor Berligieri willing to act on the Sous-Commission ?

Professor BERLINGIERI. — Yes.

THE CHAIRMAN. — Then I nominate Signor Berlingieri in addition.

The question arises as to when the Sous-Commission will meet. If it is convenient to them I think it is very desirable that they should have a sitting this afternoon after the Conference has adjourned. What do you say, Sir Maurice ?

SIR MAURICE HILL. — Agreed.

THE CHAIRMAN. — It is proposed that Sir Maurice shall be Chairman of the Commission. As I think I men-

tioned Sir Maurice will convene his first meeting therefore upon the adjournment this afternoon.

There is just one other matter I called to your notice and that was as to whether you should give to the body we have just constituted any guidance upon the question of liability to arrest in any case, or of the enforcement of security for due attendance upon a satisfaction of justice in respect of claims. It may very well be I think that with a Committee or Sous-Commission of such experience as that which you have nominated you would be ready to leave that class of question until you have received their recommendations. Is that agreed? (*Agreed.*)

That disposes for the present then of any profitable discussion there can be upon the subject of immunity for these sittings. That leaves us to consider *in future* the report which we shall receive from the Sous-Commission. Would it be the convenient course that tomorrow the Conference should take up at the morning session the question of the Rules in respect of the Carriage of Goods by Sea? Is that agreed? (*Agreed.*)

Then tomorrow morning at 10 o'clock, Gentlemen, I will ask you to be ready to proceed with the discussion upon that question; and if members have a notice of motion of which they can inform me at a reasonable early hour it will facilitate the arrangement of the business with regard to the course of the discussion.

Gentlemen, the Conference stands adjourned until tomorrow morning at 10 o'clock.

La séance est levée.

The Conference adjourned.

SÉANCE DU MARDI, 10 OCTOBRE 1922
SITTING OF TUESDAY, 10th OCTOBER 1922

La séance est ouverte à 10.30 heures, sous la présidence de Sir Henry Duke.

The Conference resumed its labours at 10.30 a. m., Sir Henry Duke in the Chair.

THE CHAIRMAN. — Gentlemen. We have postponed the commencement of business this morning because the Sub-Committee which we appointed yesterday afternoon was still engaged upon its labours, and it seemed to me better that we should not distract their attention from the important new matter with which they are engaged in order to attempt to make progress punctiliously as well as punctually upon another matter; for that reason I took the liberty of postponing calling the Conference to order till this moment.

The subject to which you resolved to direct your attention this morning was that of Bills-of-Lading, and in particular what are called the Hague Rules 1921 with the modifications or additions which have been agreed upon between certain shipowners and certain shippers and other interests, and which have come to be called Rules for the Carriage of Goods by Sea. I said modifications or additions which have been agreed to by certain representatives of those interests. As you know the modifications were agreed to by certain British interests, and

as yet I do not know that they have been submitted to international consideration, but it is not material whether I am quite accurate about that or not.

The basis of the matter is the Hague Rules 1921, adopted unanimously by the International Law Association last September at The Hague. Those Rules as everybody knows have secured a large measure of international assent, and it is international assent at which of course men engaged in international business and overseas business must aim.

I ought to say a word to you further with regard to the Hague Rules. The matter comes before the Conference here by reason of the circulation by the Executive of the Committee of a document which embodies the Hague Rules with the modifications to which I referred. In the minds of very many of us, I daresay in the minds of some of us for want of intimate knowledge of facts known to others, those modifications seem to be of an exceedingly trifling kind, compared with the immensely important result of international adherence to a Code for the Carriage of Goods finally agreed upon, not by lawyers or diplomatists, but by business men. The Conference at The Hague last year was a business Conference. It happened that I was in the Chair. I have always felt that it was an intelligent anticipation of a view which is commonly taken, that I may be a business man, but that probably I am not much of a lawyer. (*Laughter.*) At any rate the business men did me the honour of putting me in the Chair, and of conducting their debates, and coming to their conclusions with any help I was able to give them in the guidance of their proceedings; but the agreement

was theirs. The conclusion of it was a remarkable achievement on their part. I can say that quite frankly, because whether they agreed or disagreed did not affect any interests of mine. I do not ship goods, except perhaps by Parcel Post, and I do not carry goods by sea, and I do not practise in Admiralty Courts. I have to take the law as it exists and try to administer it, sitting on the Bench. It was a remarkable achievement. Men were assembled there of absolutely conflicting interests, and, possessed as they were by the certainty that the proper conduct of business in these modern times requires clarity and certainty in business documents, they devoted much toil, and they sacrificed much in interests which they valued in order to arrive at an agreement, and they pledged themselves before they separated, and I was glad they did, that everyone individually would do his part to secure the adherence of the commercial world to the terms of that agreement, and they have, as you would expect, honourably acted upon that pledge, and that is why from last September down to this time the business world has been concerned upon this question, and that concern has extended not only through Europe, but through the Western as well as the older continents.

That is the position in which we stand, and I am sure this Conference will remember that a large body of those who are delegates here to-day are still bound by the pledge they made last year to secure adherence by all proper means to the bargain which was embodied in the Hague Rules 1921. It is because I am satisfied that no business man ever asks another business man to withdraw from an obligation of honour that I had not any

misgiving about taking the chair here when you discussed this subject. I took no pledge, but I should stultify those who did me the honour of acting under my Chairmanship if I did not conserve and respect the pledge which they took. I mention that to you with regard to the Hague Rules 1921.

Now I want to say something more. The Hague Rules of 1921 are not a sacred text (*hear, hear*); they are not what I believe was called in an ancient and venerable system of law Kabala, but they embody a working agreement by which many people are bound. That is the position in which they stand. The Executive has in substance presented the Hague Rules for the consideration of this Conference. (*Hear, hear.*) It is quite true that in the draft which you have before you it has embodied certain supplementary terms agreed upon by British shipowners and by British shippers. I will say only with regard to those terms that they are entirely, as I understand, in favour of shippers, in favour of merchants (*hear, hear*); that they are concessions by the shipowners. The shipowners in making those concessions sacrificed no pledge. What they had agreed to do was to insist upon no better terms than those of the Hague Rules, 1921. What, for the purpose of a wider concord, they agreed to do was to make some further sacrifice in order to meet classes of merchants who did not think that they could satisfactorily do business under the proposed new Rules. That is the second step.

Now we come here and you have this whole matter for discussion upon the draft which the Executive have cir-

culated. My own view about the matter, and I am sure you will allow me to express it because I shall take no part in the debate, is that it is inevitable that business men must have absolute freedom, where they are not personally pledged by any bargain made by other business men, to discuss it and to suggest amendments. Many people I believe are ready to do that; but you will in my judgment best secure the paramount object of the establishment of a standard of Rules in respect of the Carriage of Goods by Sea by taking care that you do not sacrifice any atom of agreement at which you have already arrived. It is the discord of past times and the conflict of interests of past times, which has prevented the emergence of some settled scheme of Rules, under which business men should work with common understanding among themselves. All I do commend to you is the urgent desirability of not sacrificing any atom of actual agreement at which business men have arrived. The desirability of further agreement no one will doubt if it is possible to arrive at it. Pedantry and learning I daresay have been invoked, and some pique I think has appeared because there were business men who presumed to deal with this matter because they regarded it as urgent, and not to wait because they could not secure co-operation in other quarters. None of those things matters. This is a business undertaking. You are here to consider, as I understand, what is the best mode of giving effect to, and securing permanency for the step in advance which was made at The Hague last year, and I can only trust that you may be as successful in arriving at something like unanimity as the Conference over which I had the

honour to preside at The Hague last year was successful in those respects.

We have among us here to-day distinguished delegates who were not at The Hague. One of the foremost of them is the learned Judge who is at the head of the United States delegation, Judge Hough, whom we had the pleasure of hearing yesterday, and who did the Conference the honour and gave it the assistance of his services at the Committee or Sous-Commission. I propose to ask Judge Hough to open the general debate upon this question which we have before us, and, when members have expressed their general views as to the line we ought to take, the Conference no doubt will receive any particular proposals upon which it is desired to act.

I trust that I may not be thought to have exceeded the functions of your Chairman in this Conference, but it was necessary that I should say something because of the part I took last year in the Conference at The Hague. I call upon Judge Hough. (*Applause.*)

JUDGE CHARLES M. HOUGH (U. S. A.). — Mr Chairman and Gentlemen. It is of course well known to gentlemen that even those of us who have come the farthest to attend this meeting have had, before we started from our respective homes, an opportunity of reading and measurably considering the work which I hold in my hand, which I shall refer to as the « proposed Rules for the Carriage of Goods by Sea ». It is in no sense the result of any American labours, except in so far as my very dear friend and colleague Mr Haight has from time to time during the last year or so been made aware of the

work done I believe by the gentlemen who are with us representing Great Britain.

May I, on behalf of ~~those~~ of us from America, and I **think** some others, but certainly for myself and my colleagues express the thought that, whatever may be the result of the proposed Rules for the Carriage of Goods by Sea, we believe that these represent serious, honest, extremely intelligent, and very well directed labours, and for my own colleagues we are more than glad to have an opportunity of beginning a discussion which rests upon so secure and well considered a foundation. Therefore, so far as we from the other side of the Ocean are concerned, I wish to say in the beginning that in principle, that is, in the concept of trying to arrive at a considered international regulation of sea carriage of goods, we are entirely sympathetic. We very greatly wish to bring about some scheme by which any shipowner, whether his ship belongs to a long established line, or whether it is what is commonly called a « Tramp », may know with reasonable certainty, (for until human nature is made perfect there is always a fringe of uncertainty about such matters), when he makes his contract for the carriage of goods, that that contract, made in the ends of the earth if you please, will be in substance interpreted, in substance administered, in substance enforced wherever, in any civilised land, he takes his cargo for delivery.

It seems to us, Gentlemen, that, however markedly we, who speak English habitually, however badly, are accustomed to extol the virtues of liberty of contract, the time has come, and has come necessarily, when those who engage in business which is international must submit to

a very considerable degree of international regulation. You have hitherto been accustomed — if I may trust my own experience at the Admiralty Bar — to make agreements or bargains usually embodied in Bills-of-Lading, which were in accordance with the general line of legal thought and business habit in your own country, if — let me speak frankly — you did not follow the marked leadership of the shipowners of these Isles, and you have in substance trusted to legal luck — which is the worst kind of luck that I know (*Laughter*); — for the interpretation of the bargain that you thus made in whatever country you might come to do business in at the end. (*Hear, hear.*) I think that that should come to an end.

I understand that our Chairman has called upon me merely to outline the general view of these proposed Rules. I am not going into their details at all; because it is my suggestion I believe that the only way of bringing the matter properly before so large an assemblage as this, is to try to separate from the pages of words that lie before us, matters which are of detail, of choice of language, and those which are of substance; and I may indicate the position of the gentlemen whom I have the honour to represent by saying, subject to correction, that in our judgment the only matter which plainly to us requires open discussion, which contains within itself the probable seeds of such great disagreement that no Committee can settle the matter, is this. It seems to us that the proposed Rules introduce Regulations, regarding what in some jurisdictions is called Valuation, in others, the limitation of liability to a certain amount; and also in respect of the way of making demand for loss or

damage, and the time when such demand or claim for loss or damage shall be made, so widely varying from anything and everything which, speaking as an American lawyer, I have been accustomed to for many years, that we think that that subject should be openly discussed.

Probably other gentlemen will think there are some others; but so far as we are concerned, agreeing as we do in principle with the scheme unfolded by these Rules, appreciating as we do very deeply the honest and intelligent work which has been done in framing them, as far as they are yet framed, we think that all other matters other than this question of loss and damage claims would be best settled by a Sous-Commission which should produce to us as soon as possible the framework, the changed framework, if there be any changes made, and I think there will be, of the rest of the Rules. Thus I hope I make my position plain, that we agree in substance with the Rules as proposed believing that no other changes are necessary than such as may be reached by a Committee for that purpose, but we do not think that any Committee can competently handle, except after a thorough discussion, the question of loss and damage claims and the time and method of presenting them. With that, Gentlemen, I shall leave the matter at present. (*Applause.*)

M. LAURENT TOUTAIN. — Mr President and Gentlemen. I beg to express before the Conference the feeling which I take to be generally prevalent in France amongst the various interests involved in the maritime Commerce. I mean cargo owners, underwriters, bankers, on the outstanding and long disputed question of the clauses of

exoneration in the Bills-of-Lading. I have good reasons to believe that these views are to be soon finally endorsed by the Chamber of Commerce of Havre of which I am a member, and I may state that resolutions have been passed by not a few of the leading Chambers of Commerce in France on the lines that I am to go along.

As far as I know the « Comité Central des Armateurs de France » have taken about the same stand, although I have no authority to speak in their behalf, but I simply appropriate the sensible and clever remarks made by Mr de Rousiers, their Secretary at the Hague Conference. I am all the more pleased to express these views before you that they are highly appreciative of the splendid work done at the Hague with Sir Henry Duke in the chair and that we may confidently hope that, again this time, a general agreement is to be arrived at under his tactful and masterly leadership. We, on the other side of the Channel, have, broadly speaking, hailed with great satisfaction the Hague Rules, because they showed, in a fairly legitimate and practical manner, the way out of the discontent and disputes which have been rife for the last thirty years or so between the cargo and kindred interests, and the carriers by sea. The former, rightly or wrongly, I for one, think it was rather rightly, keenly resented an unsatisfactory state of affairs, whereby they thought they suffered a greater amount of loss and damages than it would have been the case if the carriers by sea, being held responsible to a greater extent according to the provisions of the common law for the carriers by land, had exercised more attention and care on the cargoes entrusted to them. There have been several stages

in this crisis, I prefer not to say, in this struggle. We have been in France, at times, very near enacting a prohibition of the negligence and other clauses of exoneration in the Bills-of-Lading by means of a *National* law.

The last point scored in this direction was a provision to this effect in the Draft Code intended to replace the old Code de Commerce in matters connected with maritime law. My learned friend Mr Dor knows much about it, for he was instrumental in setting up these Sections of the draft Code. He has trashed out the whole matter and, although advocating a settlement by mutual agreement on standardized bills-of-lading, he feared, at that time lest French Shipowners would never be amenable to it. A strong current of opinion ran high, chiefly in the French ports, against the passing of national, or, as you often say, municipal, legislation. Not a few of us were fully alive to its perils since it was likely to act to the disadvantage of our merchant shipping and also of our ports. Besides, all those who are in the least conversant with maritime concerns, if not with maritime laws, could not but feel keenly disappointed with the outlook of conflicting national laws all over the maritime world, whereby a chaotic state of affairs was to be confirmed, all nations then threatening to turn their backs on the much cherished ideal of the unification of maritime laws.

Meanwhile the Hague Conference took place and brought about a general agreement, a self contained Code. As a matter of course, some of its provisions have been open to much criticism when looked at from the legal French and Continental standpoint. They sometimes clash with our traditions and ways. Still, there is a general

feeling on our side that they achieve a momentous result and that they are mainly in favour of the cargo interests. Considering besides that, in the guise of uniformity, they do away with a state of diversity and uncertainty that is greatly prejudicial to all concerned, we are, broadly speaking, in favour of their coming into effect as quickly as possible.

To our great satisfaction, the « Comité Central des Armateurs de France » has come round to these views, on the essential condition that, instead of being left optional, they should become compulsory, at least amongst the seafaring nations which actually count in the shipping competition. Failing an international convention, binding these nations to uniformity, they fear lest there should be evasion from the rules, not only by Shipowners, chiefly by the tramp owners, but also by the shippers and the bankers, whenever, as has been generally the case up to now, under the spur of competition, cheapness counts for more than security. Such an action Mr de Rousiers aptly remarked would not necessarily mean a breach of good faith, for such voluntary agreements as the proposed Rules, even when they are entered into by the leading members of a Syndicate, do not carry with them the pledge of all the members of a profession.

I, for one, fully concur in this opinion. New facts have cropped up since then. The most important and significant of them is, if I understood rightly what has fallen from the Right Honourable President, the pledge given by the Executive Power of Great Britain to the Dominions to pass at an early date a National law if possible on the lines of the amended Hague Rules, called Rules for the

carriage of goods by sea. Thus, the method of voluntary agreement has fallen through. There remains only one way open to clear out of the danger of national legislation on the matter in hand, that is a strong and speedy action towards the adoption of the Hague Rules, more or less amended, by means of an international convention to be carried out by Diplomatic methods and to be followed by the passing of uniform national laws. These methods have been successfully started in the case of the two Codes drafted by the « Comité Maritime International » relating to collisions at sea and salvage.

In recommending this course of action I feel confident that I shall gain the full approval of the French business men at large, in Havre and all over the country. (*Applause.*)

Mr OTTO LIEBE (Denmark). — When the Hague Rules were adopted a year ago the commercial world of Denmark — I thereby mean the merchants, the bankers, the underwriters — hailed them with the utmost satisfaction. Above all they were very glad to see the conditions about the abolition of the negligence clause. A question that had been I think on the order of the day for a long series of years, and which had given rise to many disputes and much litigation was thereby settled in a just and equitable way. The commercial world I say appreciated in the highest degree the admirable way in which this question has been brought forward, and we feel grateful to the shipowners of Great Britain and of the United States who voluntarily complied with the desires of merchants. Since the Hague Rules were adopted the whole

situation is however changed in some way, and in a fundamental way I should say. I do not speak about the modifications that have taken place, though I know that shipowners over in Denmark are not quite sure that the alterations are improvements. But there is another thing that seems to us to be of paramount importance. The Hague Rules were originally destined only to be the basis of a voluntary agreement between shipowners and merchants. Now it is proposed to embody them in an International Convention, that is to make them into legal rules binding upon all shipowners, with or without their consent. I could say we are entirely in sympathy with the proposal, but of course that makes a great difference; and now by all means we must see that we do not go too far, that we do not get Rules binding for the shipowners which are not absolutely needed in order to protect the just interests of the merchants. The shipowners of Denmark (I am only a lawyer; I am not an expert at all, therefore I only have to repeat what the experts say; but there is present here a shipowner who will perhaps explain it to you) say : « Well, that is all right for the liners, but some of the provisions could not be applied to tramps with bulk cargoes. » They use very strong expressions; they say that some of the provisions are almost disastrous to tramp vessels with bulk cargoes. On the other hand the other parties in Denmark, the merchants, the bankers, the underwriters, say : « Well, we do not care so much for having made the Rules applicable to tramp ships with bulk cargoes. There we shall always have a special charter party, and there we will be quite able to protect our interests; we do not ask for

any help from you; but what is interesting to us is to have these rules made applicable in the first instance to liners, to have the negligence clauses abolished by liners with general cargo. »

Under these circumstances we Danish delegates would perhaps suggest that it would be better now, at least for the time being, in the first term, if I may use the expression, to leave the whole question of tramp vessels with bulk cargoes out of the Convention, or perhaps to make a sharp distinction between the rules which can be applied to all vessels, and the Rules which can only be applied to liners with general cargoes. That is the first thing I should take the liberty of saying.

Then there is another question that is also, at least to us lawyers from a legal point of view, of paramount importance. You say in these Rules, in Article IV, Nr 5, I believe : « The declaration by the shipper as to the nature and value of any goods declared shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier ». Now so far as we can conjecture there are two systems quite different from each other. There is the English, and I do not know, but I guess it is also the American, point of view. You say the Bill-of-Lading is only *prima facie* evidence, and therefore the carrier shall not be deemed responsible towards anyone for the description of the goods in the Bill-of-Lading, if he is able to show that the description was wrong, and that he was not personally in fault. That is one system. The other; I am not quite sure I can call the Continental system, but I at least might be allowed to call it the Scandinavian system. In Sweden, Norway, Finland and

Denmark we regard a Bill-of-Lading as a negotiable document, and therefore it follows from our laws on negotiable documents that the carrier who has signed a Bill-of-Lading is responsible towards the *bona fide* possessor of the Bill-of-Lading for the correctness of the description in the Bill-of-Lading, and he is not free from liability, even if he can show that the description was wrong. There are according to Danish law only two exceptions. The first is this : if a carrier is not able himself to check the accuracy of the description then he has the right to make a remark on the Bill-of-Lading drawing the attention of the purchaser of the Bill-of-Lading to the fact that there is something wrong, and then of course he is free from liability. And, secondly, he will probably be exonerated from any liability, even if he has not put such a remark on the Bill-of-Lading, if it is quite obvious to the purchaser of the Bill-of-Lading that it was quite impossible for him to check the accuracy of the description, and he could not know anything about it, that he could not control it for instance on account of the manner in which it was packed. Those are the only two exceptions according to Danish laws. Now this difference of systems entails some consequences. You say in Article III, Nr 3: « Provided that no carrier, master or agent of the carrier shall be bound to issue a Bill-of-Lading showing any description mark, number, quantity or weight which he has reasonable ground for suspecting to not accurately represent the goods actually received ». I think that in Denmark we should say that if it is manifest to the carrier that the description is not all right, is false, it is not only his right, but his duty to put a remark on the

Bill-of-Lading in order not to deceive the purchaser of the Bill. The man who is purchasing the Bill-of-Lading should trust to the description, trust to what is stated in the Bill-of-Lading, and therefore we say that it would be the duty of the carrier to make a remark about the description, when he has reasonable ground for believing, or it is quite manifest to him, that the description is not all right. Of course then on the other part the shipper is obliged not to refuse the Bill-of-Lading in any manner. I admit that from a practical point of view there might perhaps not be such a very great difference between those two systems — I allow myself to call them the British system and the Scandinavian system — but you understand that if we should accept this *prima facie* evidence we should make fundamental changes in our maritime laws, and I venture to say that in Denmark at least nobody would think of going away from a principle which has now been tested over a long series of years, and which is considered as being fair and sound. I do not know what is the case in Norway, but I should not wonder if they do not say entirely the same.

Well, to make a long story short, as you say here in England, we, the Danish delegates, approve the idea, we are in sympathy with the idea, of embodying these Rules in an International Convention; but at the same time we would suggest that for the time being you should not say too much about the tramp vessels with bulk cargoes, and, secondly, that it is allowed to the signatory powers to take some reservation when they sign, to say that they are not prevented by this Convention from deeming a carrier liable also to the *bona fide* purchaser of the

Bills-of-Lading for the accuracy of the description of the goods in the Bill-of-Lading. In this way we should have no need to change our law on fundamental principles; and on the other hand we believe that we shall get hold of the most eminent provisions of the Hague Rules. (*Applause.*)

Mr A. P. MÖLLER (Denmark). — Mr Chairman and Gentlemen. — My compatriot said he was only a lawyer. I feel it incumbent upon me speaking in a gathering like this to say that I am only a shipowner. Further I am a tramp shipowner, and although I am here as a delegate for the entire shipping of Denmark my feelings are naturally coloured by my calling, and I would also ask your pardon if in the following remarks I should make some criticisms, and I would ask them to be attributed to the natural feeling of impatience of the man who is receiving medicine when there is nothing wrong with him. (*Laughter.*)

As regards the Rules for the Carriage of Goods by Sea my view is that these should not be confused with the Hague Rules, and they should not be adopted without being considered rather closely afresh, in fact without being considered just as fully as the Hague Rules 1921 were considered before they were adopted. The Hague Rules 1921 were formulated at the Meeting of the International Law Association at the Hague in September 1921. They were unanimously passed by merchants and others, but I feel constrained to say that shipping was not fully represented. Norwegian and Danish Shipping was not represented whilst mercantile interest were repre-

sented from other countries. We drew attention to that in London and it was hinted that we had ourselves to blame for not being represented. That may or may not be true but at the same time it does not alter the fact and it should not be quite overlooked that the International Law Association has always been not a representative body, but a body of private individuals and that to some extent accounted for the fact that the Danish shipowners did not happen to be represented. I have always had the feeling that if there had been a somewhat more liberal sprinkling of tramp shipowners at the Meeting at the Hague, these Rules might have either been made applicable to liners only or some simple amendment might have been made which would have made them to our view more applicable to both liners and tramps. However that was not so. The Hague Rules 1921 were put before shipowners at large at the International Shipping Conference in London in November last year, and they were put before them by British gentlemen. The British Owners and their legal advisers impressed strongly on us the advisability and desirability of our passing these Rules. That was done in order to try to forestall the British Legislation on the subject. The liner owners came somewhat more prepared to accept the Rules than the tramp owners and I consider naturally so. The tramp owners had very great qualms, but we were told by eminent British lawyers to whom we naturally as laymen applied that these Rules as they then stood were not nearly so dangerous for us as they looked. When I look at the Rules for the Carriage of Goods by Sea some of the safeguards that we were referred to at that Meeting in London

are not in the Rules, and naturally therefore our anxiety about accepting the Rules for tramp shipping generally has become greater than our anxiety about accepting the Hague Rules of 1921 as they stood. I should say that impressed by all that had been put before us, we accepted the Rules to the extent that we undertook to recommend them to our Authorities at home for voluntary acceptance by shipowners, after that they have been thoroughly discussed both by shipowners as man to man and in open shipowners Conferences, and we have come to the conclusion that the Rules could and probably should be introduced voluntarily by liner owners. No doubt there would be some features which would be objectionable to them but they could and should probably be introduced with a view to gain practical experience and in the hope that practical experience would come to bear on these Rules so as to cause them to be amended as time proved that it was necessary. We came to the conclusion that they would not do for tramp shipping and that moreover they were not really called for tramp shipping. It must be remembered that the call for reform and the reason that these Rules have been brought into being at all, as far as I understand it, has been owing to the position as regards liner bills-of-lading. Everyone knows the liner bill-of-lading is full of clauses in small print that few people have the good eyes to read and no one has time to read. Merchants could justly say that there was no freedom of contract in liner bills-of-lading, and so far as I understand it the whole agitation for reform arose through that circumstance. Now as regards tramp shipping the position has always been and is to day quite

different. Tramp shipping is done on a basis of free contract. The Bill-of-Lading is not the primary document; the primary document is the charter party, and the charter party is gone through by both parties and signed by both parties. It is generally signed by the merchants and signed over by a representative of the shipowner, at any rate he acts for the owner and the owner must abide by what he does. Therefore the cargo interests are as regards tramp shipping in a much better position to protect their interests, in fact they are fully in a position to protect their interests, and as there are so many trades in the world it is natural that there will be different charter parties, and it is possible for both parties, and convenient for both parties to be able to do so, to put such special conditions into any given charter party that any given special trade may demand. Therefore I do not really see any need, and as far as my knowledge goes, I never heard of any call, for reform of the present condition of things as regards tramp shipping. I would suggest that a clause should be introduced into these Rules somewhat like this : « Where the carriage is governed by a charter party signed by both parties or by representatives of both parties the relations between carrier, shipper and receivers may be regulated by such charter party and the present Rules shall not apply to such instances ». It seems to me that it would be a practical thing to introduce a Rule like that, and then in time you could gain experience, and if it turned out in a few years that a modification of that kind was not possible and did not meet with the reasonable desires of the parties concerned it could be amended, but it seems to me that it is always

very dangerous to go beyond what is necessary and to go the whole hog at once, and it is much better to leave well enough alone.

Now, Gentlemen, I will make some remarks on some special clauses in the Rules as they stand, and as they differ from the Hague Rules. There is Article 1 Clause (e). The wording of the Hague Rules was « Carriage of Goods covers the period from the time when the goods are received on the ship's tackle to the time when they are unloaded from the ship's tackle ». That is altered in the Rules for the Carriage of Goods by Sea to « Carriage of Goods covers the period from the time when the goods are loaded on to the time when they are delivered from the ship ». Shipowners should be cautious about accepting this; and as I believe that the best interests of trade generally are best served by a reasonable freedom from restrictions, I say that merchants should also be careful about accepting it. It is an open question subject to varying decisions in the Courts of the various countries as to what is meant by « loaded on » and what is meant by « delivered ». For instance I spent five years in St Petersburg. There the cargo was handed to the Port Authorities and it was not looked upon legally as delivered until it was actually applied for by the merchant, and that frequently took very many months. I know of a good few ports where a similar condition of affairs prevails, where the cargo is actually discharged through some Public Authority of one kind or another and remains in the custody of that Public Authority frequently for months until it is finally applied for by the owner of the Bill-of-Lading. Naturally it is much

clearer (and it must be remembered always that we must attempt to get clearness not only in the British language and with a view to British circumstances but translated into any language and under the circumstances of any country) as to what is to be understood by the English wording or any translation of « received on the ship's tackle », and I cannot see that there can be any doubt about « unloaded from the ship's tackle », whilst the new phraseology « delivered » undoubtedly is open to various interpretations, and I say it would lead to considerable variance of practice in the various countries which is just in the opposite direction to what is desired.

In Article II similar alterations in the wording have been made and the same thing applies there.

Now I come to Article III, 3 b) and I would say that this coupled with Article III, 4, and Article III, 8, to my mind form the main stumbling block against the introduction of the Hague Rules to tramp shipping, and to my mind also the stipulations contained in the amended Rules are much less acceptable and to my view much more dangerous than the wording contained in the Hague Rules 1921 as they stood or perhaps more properly as they stand. The effect of these stipulations in the Hague Rules was to make it incumbent on the shipowner to issue a bill-of-lading not only for the number of packages or pieces but also for quantity or weight. Clause 4 went on to say that such a bill-of-lading except in the case of goods carried in bulk or whole cargoes of timber should be *prima facie* evidence of receipt by the carrier of such quantity or weight. The authors of the Rules evidently thought that by excepting from Clause 4 goods carried

in bulk and whole cargoes of timber they took away the main objections that might be raised to these stipulations and made them practicable also for tramp shipping. My compatriot has already hinted that that does not apply to all countries. Even if you do not say that the bill-of-lading is *prima facie* evidence, it is evidence and as a matter of fact in many countries it is conclusive evidence. We objected to that in London but we were told specially by such an excellent authority as Sir Norman Hill, to whom we owe the greatest respect and gratitude for his labours, that we need not have such great fears and he gave us this reason that, according to the wording, the shipper had to give the quantity or measure of each item before the loading started — that was the wording of the original text — and he said, and rightly so, and I was at that time glad to find that leading gentlemen considered that that was really a safeguard : « In 9 cases out of 10 the merchant when the loading starts does not know the quantity which the ship is going to load, therefore he cannot give you that quantity in writing, and, as he has not fulfilled his part of the bargain, you need not sign a clean bill-of-lading for quantity or weight », at least that is the way I understood it at that time. Well, it is to be observed that whereas it is said in the Hague Rules « as furnished in writing by the shipper before the loading starts », the words « before the loading starts » have been eliminated in the amended Rules and to that extent they appear to us now more risky than the original Rules.

In Article III, 4, another clause which was intended to protect shipowners has gone out, namely : « Upon any claim against the carrier in the case of goods carried

in bulk or whole cargoes of timber the claimant shall be bound, notwithstanding the bill-of-lading, to prove the number, quantity, or weight actually delivered to the carrier ». It is to be observed that the burden of proof is on the claimant, in other words on the receiver. Now as far as I understand it the shipper certainly has to guarantee the correctness of the quantity, but there is a very great difference. Suppose I am sailing from Java to Holland. If the Dutch receiver is to prove to me that that quantity the shipper stated was right then it is incumbent upon him to prove that, and he must do all in the world to do that. Now that has gone out and I am to be faced with some claim by some merchant in China or Java or some other place; I have to go to a Court that I know nothing of and the shipper may at that time have failed. I cannot but feel that there is a fundamental difference in the idea of these changed Rules and I do not really see the necessity for the change, and would suggest that it be reconsidered.

I would like to say that to my mind there is not any necessity for tramp ships to sign for quantity or weight. It has not been done and it has never been requested. If you go through the various trades you will find that it is not customary anywhere. Take for instance the timber trade. When you load deals, battens and boards you sign for a number of pieces, but you do not sign for the measurement. When you load props which are more in the nature of bulk cargo you cannot check the number of pieces. It is never done and it could not be done without involving a great amount of trouble which is at

present avoided, and I never met any prop merchants who wanted me to sign for the number.

The same applies to the coal trade. I have carried hundreds of cargoes of coal and have never signed for the weight of the coal, and I have spoken to numerous coal exporters and coal importers and asked them whether they are really interested in having us sign for the quantity and they say no. I have heard very many British gentlemen say : « No, it is not reasonable; we do not want it ».

The same thing applies to grain. I do not think that in any part of the world grain in bulk is carried to-day under conditions that make owners liable for the weight of the cargo. In every grain bill-of-lading the same as in coal and timber there is « weight unknown » or words to that effect. That applies all over. The same with copra and the same with pig iron. For pig iron there is even a clause whereby the charterer is relieved from paying freight on sand that falls off that pig iron during the voyage; he takes care that he is not to pay freight on that, but nevertheless here the shipowner is to be liable for the weight of iron with sand attached to it as if it was the iron. You all know the circumstances about charter parties. I have gone through practically every frequently used charter party and I find that every charter party contains a stipulation that bills-of-lading are to contain « weight unknown » and that applies not only in cases where the charter is an agreed document, but also where merchants have their own documents. For instance to refer to the Rio Tinto Company in London, who are responsible for the transport of a large quantity of ore,

they have their own charter parties which they dictate, and in their charter party they have « weight unknown » or « not responsible for weight ». The Norsk Hydro-Elektrisk Kvaelfstofaktieselskab, Kristiania, who are responsible for large quantities of nitrate for Norway have the same thing. They have « contents, weight and measure unknown ». There also is a merchant's charter party dictated by himself. The Hamburg nitrate charter party of 1891 has the same and the nitrate charter party of E. I. Du Pont de Nemoura & Co who are responsible for transport from Chili to U. S. A. has a stipulation « weight and quality unknown, all on board to be delivered », and it is important to observe that in the grain transportation from Australia which is being conducted under the auspices of the Australian Government under conditions dictated by the Government last year practically all the grain from Australia was being transported under their auspices) the bills-of-lading had the following words « weight, measure, contents, condition, quality unknown ».

What I want to get at is this. We say that that is a condition that has been accepted by both sides all along and without any objection. I think it would be simple and it should be possible to introduce a clause into the Rules that it shall be legal for shipowners to put into the bill-of-lading stipulations such as the one the Australian Government has put in itself, namely, « weight, quantity, measure, contents, condition, quality unknown », and I would say that if that is done then one of the greatest objections to these Rules as they stand from the tramps point of view would be removed.

Mr LOUIS FRANCK. — I think nobody has contemplated rendering these clauses void. (Yes.) Is it contemplated that the clause « weight unknown » or « number unknown » shall be void ?

SIR NORMAN HILL. — Yes, all gone.

Mr MÖLLER. — I have already occupied your time rather long and I have some further objections, but I do not think that I should enter into them now. I would simply say to finish up, that tramp owners are not inimical to the Rules; they are not inimical to the adoption of a uniform standard which shall govern these things, but the tramp shipping is of a more varied description than liner shipping, and new trades constantly crop up, and an owner wants to be careful not to draw lines too close, because there may always be new trades that require special circumstances, and we also desire such simple alterations in the Rules as are important for tramp owners, and which to our view cannot be objectionable to the interests of merchants. (*Applause.*)

Dr H. J. KNOTTENBELT (Holland). Mr Chairman, I quite understand that it is in the line of the International Maritime Committee to urge for an International Convention with the object of unification of the conditions of transport by sea. But I do not think that it is a good policy that this Conference should give an indication that the amended Hague Rules are a sound basis for such unification. The Hague Rules were accepted by the different parties interested as far as they were represented at the Hague after an ample discussion among all parties interested for which discussion the parties

had fully prepared themselves. For this reason the Hague Rules could perhaps be proposed to the Brussels Conference as a sound basis for dealing with the matter because those Hague Rules were as I said internationally accepted. But the amended Rules cannot. The amendments of the Rules are not the result of an international understanding. They are only the result of discussion between the parties interested in this country, and they are not, I should say probably will not be accepted by the commercial representatives of the Continental States. The amendments, Mr Chairman, have in some respects thoroughly altered the nature of the Rules, and I think that this Conference is not competent to discuss the revised Rules with sufficient authority, for in the first place the Continental shipowners and merchants are not sufficiently represented in this meeting, and in the second place as far as they are represented they are not at all prepared for a discussion. That is not their fault, for the Agenda which we received only a few days before the opening of this Conference did not indicate that a discussion would take place about the amendments which, until the present, were considered in Holland, and I think also in other Continental countries, as being a bargain between British shipowners and merchants and not as a proposition for adoption internationally. In fact we were never asked to give our opinion on the amendments, and in consequence they were never publicly discussed in my country. If this Conference should recommend these amended Rules to the Brussels Conference this Meeting will be understood as giving its adherence to these amendments. But in my opinion this meeting will

only be entitled to do so after it has appeared that the amendments are internationally considered to be a fair bargain between the opposite interests, and I think the fact that Mr Möller just now in a long speech was opposed to many of these Rules shows clearly that we cannot speak of an International Agreement about the amendments. I can add that in Holland there will be also eventually a very great opposition and I know that in other countries it is quite the same. Therefore, Mr Chairman, I strongly urge this Meeting not to accept the amended Rules as a sound basis for the work of the Brussels Conference. A discussion cannot be exhaustive for the present. I do not object to a discussion but I do object to a final discussion and to a decision.

I therefore propose that this meeting should not go further than eventually requesting the Brussels Conference to prepare a self-contained code for Carriage by Sea for international adoption by Convention. The Conference of course will take in view the Hague Rules and also the amendments which were the result of the negotiations in Britain between the parties concerned, but the Conference will also take in view that these amendments until the present have not been agreed to by the Continental shipowners and Merchants. (*Applause.*)

SIR NORMAN HILL. — Mr Chairman and Gentlemen. You, Sir, very early in your remarks referred to the pledge that all the men who served at the Hague gave to do our best to carry into effect the Rules as we then agreed to them at the Hague. I was one of the parties who was there and I was one of the parties who gave

that pledge, and from that day to this I have done my very best to honour that pledge. (The Chairman : *Hear! hear!*)

Now, Sir, what happened when we came back to this country ? We were told — I am speaking now for the British shipowners — by the accredited representatives of very big cargo interests that they were neither at the Hague nor were they represented at the Hague. They were quite clear and positive in that statement. We were told that they were not satisfied with the bargain that was made at the Hague. To all of that we could only give one answer that we had been at the Hague and we were bound by the bargain made at the Hague. That was the only answer we could give and it was the only answer we did give until something else happened. That has been summarised by Dr Bisschop in his Memorandum that you have all had before you. What happened was this. We were confronted by a position in which there would have been legislation in this country on entirely different lines from those we had discussed and worked out together at the Hague. It would not have been merely legislation dealing with the exports from this country; it would have been legislation dealing with the whole of the imports and exports of the British Empire; it would have covered all bills-of-lading; it would have covered all charter parties. I want Mr Möller to bear that in mind. It might have been good legislation or it might have been bad legislation, but it was coming.

Now how were we who had promised to do our best to give effect to the principles that we had embodied in the Rules of the Hague to deal with that position. I advised and I hope you will believe that I was an honourable

man when I gave that advice, (*hear, hear*) that the right way was to get into immediate and direct conference with the cargo interests, the very big cargo interests, in this country who were dissatisfied with the work we did at the Hague. That is what I did. I had full authority from the British shipowners in doing it . I was not merely an amiable crank trying to do the work on my own account and trying to show the world how to do everything according to my wishes. I was speaking with their full authority.

Sir, when you opened your statement you referred to these revisions as not in any way affecting the principles of the work we did at the Hague. I believe you were absolutely right. Then, Sir, you went on to describe the alterations as of a trifling character. There, I think Mr Möller must have convinced you you were absolutely wrong. They were substantial alterations; they were meant to be substantial because it was what the cargo interests here were pressing for; but you are right, Sir, when you say that they are all in favour of the cargo interests. That does not prove that they are right; it is very probable that it proves that they are wrong, (*Laughter*) but they were all in favour of the cargo interests. Those are alterations that were made and immediately we did make them we circulated them as widely as ever we possibly could and we did it in a form which drew everybody's attention to what had been done, and we did it for the purpose of directing and guiding the threatened legislation in this country so as to bring it as far as we possibly could into accord with the work we had done at the Hague and so that it might not be on lines which would

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have rendered all that work absolutely useless throughout the British Empire. I do claim that in doing that work I was honouring the pledge I gave to work to give effect to the principles of the Hague Rules.

When we come to the detailed points which have been raised I absolutely agree, and I think every man who was at the Hague agrees, that our work did not constitute a sacred text which could not be departed from and which could not be improved. There is no one, you in particular, Sir, who knows the anxiety and the responsibility of, whilst a Conference of this kind is going on, selecting the absolutely appropriate words to put down, who would ever feel absolutely confident that when the Conference came to a conclusion he had really got the best words, and when one comes away from a Conference like this, whatever care one has taken, one sees how words could be better phrased and better adjusted on many points, and many different points occur to different minds. I see many points in which there is a possibility of ambiguity in the print as it stands. I believe I see the ways in which without touching the principle all that ambiguity could disappear. I know that is the case; but there are some outstanding points that have been raised in the discussion today upon which I think the sense of the meeting should be taken before we attempt to come to adjustments of that kind, and I agree with what Judge Hough said that it would be absolutely impossible at a meeting like this to discuss and settle all those verbal adjustments.

There is one great big point and that is : should or should not tramps come under the Code. That is a great big point and as you answer that you settle a great many

questions. May I point out that there is nothing in the Rules which affects, in any shape or form the operation of a ship under a charter party. Any cargo owner can charter any ship on any terms that he can agree with the shipowner. He is absolutely a free man from first to last and all the time. But, if, under that charter party, bills-of-lading are issued, then the bills-of-lading come under the Code, not the charter party. Is that right or is that wrong? If we are going to satisfy the cargo interests what we have to aim at doing, is to put the bills-of-lading on the same footing as a bill-of-exchange. It must connote in every market of the world, whether you are buying or selling grain or sugar or whether you are arranging your finance or whether you are arranging your insurance, the minimum responsibility on the shipowner as defined by the Code. If you are not going to do that you have not taken the one step which as I understand the cargo owners want. (*Hear, hear.*) The merchants, the bankers, the underwriters have come to us shipowners and have said « Give us a document with which we can deal with the same confidence and the same certainty as we deal with a Bill-of-Exchange ». We cannot do that if we draw a distinction between Bills-of-Lading issued under charter parties and liner bills-of-lading. If we could think of any terms of doing it what would be the result ? If the cargo interests are right, that this negotiable bill-of-lading, this standard bill-of-lading, is of great advantage to cargo, would not the liners at once get an extra preference. They would say to the cargo owners : « We are the only people who carry according to the standard bill-of-lading : the others are all outsiders; you have not

an idea what your security is; you do not know if you have any security ». Now believe me, I know, and it is quite true (I have been bred up amongst the liners and I am regarded as a liner man), if we had started this on that other tack that we were going to make a liner bill-of-lading which would satisfy the cargo interests we should have had all our friends the tramps coming to us saying that we were trying to steal their business. That is what would have happened. If this is going to be good work, if what we are going to produce is going to be a good article, the man who produces that good article will command the market or get a better freight, when it comes to sailing. All the points that are raised with regard to these charters were known, and it is the fact that there has been enormous labour spent in adjusting charters as between trade and shipowners; it has been a free bargain; one knows all that; and in some of these charters Mr Möller has told us it is expressly declared « weight unknown » or « number unknown ». Is there anything to stop business men who adjust those charters from putting those words on the bills-of-lading which are issued under the charters. They could give the numbers or they need not give the numbers. You must remember that all these number and weight clauses only start to operate at the instance of the shipper of the goods. If he says nothing the shipowner needs to put nothing on the bill-of-lading. If the Charterer is content to take his goods without a negotiable bill-of-lading that is his affair, and it is only he and the shipowner who are interested in the transaction, and there is no *bona fide* holder for value who could ever become interested without full notice of

what is in the charter party. If he chooses to take over the charter party I suppose he will read it. But remember that the whole case made against us is : « In the flow of business, in the rapidity with which it has to be handled, the multitude of people through whose hands it has to pass, there is no time to go into detail; we must have a document which we can work on and we must all know without examination that that document carries a minimum of responsibility on the shipowner ».

That is what we are after to day. It may be all nonsense. I troubled you at the Hague with my belief that all this codification, getting away from absolute freedom of contract was a mistake, and I still hold that view, and, having worked for months trying to find out exactly what it is that all the cargo interests want, and having tried to find out exactly what all the shipowners would agree to, I have come to the conclusion that if you left them to make their own bargain it would be infinitely better than trying to do the work you have been trying to do. But there is hardly anybody else who agrees with me.. Everybody has this idea that we must have this negotiable document put on a firm basis. Well, if they are right and I am wrong, and that does increase the interchange of commodities all over the world, then we shipowners have done a good job and we have helped for a useful purpose. If it does not, well sooner or later we shall drift back to freedom, that I am perfectly clear about, until we find the right way of promoting the interchange of commodities all over the world.

I hope I have not wearied you with my true views as to principles. (*No! No!*) Now coming to the details there

is what Judge Hough said. When it comes to the notice clause in particular, it seems to me that at the Hague we struck out on quite new lines, and I believe they are the straight honest lines. The notice clause in the past in most bills-of-lading has been a barring out clause that unless the cargo owner gives notice within a limited period, sometimes it was hours, sometimes it was days, his right went, whatever were the facts. We might have damaged his goods; we might have lost his goods, but if we had got over that number of hours or that number of days he had no more claim. Well, it was a very convenient way of dealing with a man, but I am not sure that it was a very just way of dealing with a man. The big departure we made at the Hague was this. There is not a single word in our Rules, until you come to the period within which suits must be brought, which bars out any claim. All it says is that unless we are notified before the goods are taken away from us that there is a claim or — I must not use the word « claim » because that is criticised — that the goods have been damaged or they are short, then the receiver of the cargo is put in exactly the same position as we were in when we took it on board the ship, that is, it is to be presumed that he has taken what it is presumed we took. That seems to me to be an absolutely just basis upon which to deal as between the interests.

When you come to the question of how long, whether it should be 12 months or two years, the gentlemen I dealt with representing the cargo owners who were not at the Hague attached importance to it being extended to two years. Frankly I think it unfortunate that I agreed

to two years for the purpose of the Imperial legislation here, and I must stand by that agreement.

I have dealt with the point that was raised by Denmark as to whether the tramps are to be included or not, and I believe, Sir, that is a matter of the very gravest importance to the tramp owners. Suppose we recommend that we are to exclude tramps from these Rules, that we are not to give the cargo owners who chose to ship by tramps the benefit of these Rules upon which their hearts are set, it will end up in a pink bill-of-lading or a blue bill-of-lading or something like that which the tramp owners will have to use, and which will be an inferior bill-of-lading on the markets of the world. I do not believe even if we did that we should ever accomplish what the cargo interests want. If you buy and sell wheat in the world, when you come to tender it on the wheat market you satisfy your contract with the bill-of-lading. Are all the wheat markets in the world to provide either for a liner bill-of-lading or a tramp bill-of-lading ? Is it to be the same with regard to cotton, timber and such things ? They will be inferior bills-of-lading in the markets of the world if there is any value in this standard uniform negotiable bill-of-lading.

There are minor points which I think it would be quite impossible to discuss at a meeting like this. We hit for example at the Hague on the expression « from the time when the goods are received on the ship's tackle to the time when they are unloaded from the ship's tackle ». When I talked it over with the cargo interests here I was told : — « We will assume a full cargo of bulk petroleum ; it is pumped on board ; it is pumped

out; when does the ship's tackle begin and when does the ship's tackle end? » I was told : « You will have wheat; the wheat is pumped on board by shore elevators and pumped out by floating elevators; what is the precise time that you cease to use the ship's tackle; the same considerations apply to coal under the tips. You, you cannot really now use that as a general term ». I agree and I think that what the Rule means is that it is from loading to unloading. I agree I think we got into « delivered » a little hastily, but I think even as it stands it is quite clear that it is delivered from the ship and delivered from the ship is the same as unloaded from the ship. Personally I think it would be very much improved if we had « unloaded from the ship ». (*Hear, hear.*)

As to the clause « weight unknown » the reply is this : I quite understand that according to Continental practice the bill-of-lading is evidence of what it contains, but there is nothing in Continental practice to day which prohibits the shipowner from recording that weight is unknown, so the result is that the bill-of-lading in the hands of the holder is conclusive evidence that the shipowner did not know the weight. I can understand that a shipowner would be quite ready to accept that responsibility. One of the main objects of the Rules, and it is in force in the United States, and in force in Canada, and it will be whatever we do here in force in some way throughout the British Empire, is that we are going to be forbidden to qualify our engagements. It is going to be evidence against us in the hands of a *bona fide* holder that we got what we signed for. If that is so under the methods that are now employed, is it possible for the

cargo owners to ask us to assume more than a presumption against us, that it should be *prima facie* evidence that we got it. Take the case of the petroleum. The suppliers of the petroleum report that they had pumped in so many gallons; the machinery is under their control; we cannot supervise it; we sign for that number of gallons; it is *prima facie* evidence that it is there. But we can relieve ourselves, we can discharge our duty, by saying that every gallon that we took we handed over. Take the common case of the coal under the tips. We have nothing to do with the weighing; the shipper has nothing to do with the weighing; it will all be done on the railway Company or by the tips. And how do the shipper and the receiver of the cargo deal with one another? We know that it is common form now to dispense with weighing on delivery, and they pay on the shipping weight, in fact the weight less such and such a percentage. We know that is what the cargo interests have commonly adopted. If we sign the weights that are given to us by the coal tips it is *prima facie* evidence that we have got it, and we shall give to discharge our obligation by proving that we delivered all that we did get. That is not too heavy a responsibility to put upon us, is it. It seems to be reasonable. But I think it would be a monstrous responsibility to put on us, if we, because we had signed under those circumstances, were answerable for every ton we had signed for. The alterations in the Continental practice from the conclusive evidence position to the *prima facie* evidence position is an inevitable consequence of making us put down positive statements.

Now, Sir, I heard with very great interest what Holland

said about the alterations that had been made in those negotiations. I know they are alterations but I would make a very strong appeal to a critical examination of those to see whether they interfere in any way with the principles that we all subscribed to at the Hague. I believe that many of them are merely declaratory of what we all had in our minds. I fought very hard indeed for those clauses limiting the responsibility of the shipowner to use all due diligence in making the ship seaworthy properly equipped and so and so. When I fought for those clauses and when I read out those clauses for consideration, I know that under our law the burden of proof that we had used that diligence was on us the shipowners. I knew it. Now my friends the cargo owners say here « If that is the fact why not put it there ? » Most of the alterations and additions are really declaratory of what we, the men at the Hague who were discussing the Rules, meant. I know that there is this point about the bulk cargoes and I have told you why I believe, if the shipper wants it, we must bring in the bulk cargoes. That is a matter of substance, but you will have noted that because we have brought in the bulk cargoes we added to the exemptions a freedom from inherent liability for shrinkage in weight and such things, and the gentleman who was speaking in and watching very closely the interests of the British tramp owners thought that that was good and sufficient protection. I think that is the only point upon which there has been any departure from the principles that we adopted at the Hague.

I for one could not subscribe on behalf of the British

owners to the policy of handing over to a Drafting Committee the settlement of the Rules. I do not mean here; I would willingly subscribe to it as I did at the Hague, and I think that we must appoint a Drafting Committee, but their labours should be done and brought back to us so that we, as business men, can say whether we are satisfied or not; we could not as the British shipowners subscribe to the policy of passing a Resolution that we are in favour of a Convention, that in settling the Convention regard should be had to the Hague Rules, regard should be had to the amended Rules, regard should be had to what was said in this room, and that it should be left to that Committee, that was going to sit elsewhere and not bring back its labours to us, to settle it. We could not subscribe to that; but if I can give a more full and more detailed account of all my iniquities since the Hague, I will willingly be at the disposal of any Sub-Committee that is appointed and will sit and will report back to this Committee. I will be delighted to do that and I know that in drafting many expressions can be amended.

SIR LESLIE SCOTT. — Mr President, before Sir Norman Hill sits down, I wonder if he would extend his kindness by answering two questions. One is the question of a chartered ship. If the shipper in accordance with Article III, Rule 3, demands a bill-of-lading presumably he is entitled to receive a bill-of-lading. That bill-of-lading containing the stipulations of the Hague Rules may impose a greater burden on the shipowner than the charter. Will the shipowner be entitled to say to the shipper : « If you want a bill-of-lading you shall have it, but you

must pay me a slightly extra freight ». That is one question I should like considered; because I think the solution of the chartered ship is one of the points that has to be made clear. The other question is in regard to that raised by His Honour Judge Hough, namely, with regard to the £ 100 limit of liability. I should like to hear a word or two about that.

SIR NORMAN HILL. — Well, Mr Solicitor General, the answer to the first question is this. If under the charter the shipowner is bound to issue a bill-of-lading then he must give one which comes under the Rules. Now what is to be put into that bill-of-lading? With regard to weight or numbers or quantity or contents the shipowner is only bound to put into the bill-of-lading such information as is furnished to him by the charterer, and the charterer warrants the accuracy of that information. If under the charter party the shipowner does not undertake to issue bills-of-lading the matter is finished. The cargo would be carried and delivered under the charter party.

JUDGE HOUGH. — Mr Chairman, with submission may I put a query to Sir Norman Hill.

THE CHAIRMAN. — Yes. Sir Norman has not yet reached the second of the questions he has in hand.

SIR NORMAN HILL. — I think his question probably clears up this first question.

THE CHAIRMAN. — If it is a relevant question to this first matter perhaps you will put it now.

JUDGE HOUGH. — In my experience, and I think all North Atlantic experience, the common phrase of a charter party is that the master « shall issue bills-of-lading not in contravention of the terms of this charter party » or words to that effect.

SIR NORMAN HILL. — That is right.

JUDGE HOUGH. — Consequently by long established custom the masters of all chartered ships have been by charter obligation bound to issue bills-of-lading under such a charter untouched by the Hague Rules *per se*, and the charter party is just as good as ever it was. If a demand is made upon the master of a chartered ship to issue bills-of-lading as per charter party, do such bills-of-lading come under and connote and imply all the obligations of these Rules irrespective of the charter party ?

SIR NORMAN HILL. — That, Judge, is I understand the effect of the Rules, and it is the intention of the cargo interests that the rules should have that effect. Directly you get a bill-of-lading launched on the world, whether it is in pursuance of a charter party or whether you are loading on the berth, that bill-of-lading and all other bills-of-lading are to have the minimum of protection laid down by the Rules, and that I understand is the deliberate intention of the cargo interests.

MR MILLER. — Might I say a word.

THE CHAIRMAN. — On the same point ?

MR MILLER. — No.

THE CHAIRMAN. — No, Sir Norman Hill is already answering questions. I shall not exclude a question to him, provided he is willing to answer, upon another matter, but he had better answer the questions in the order in which he gets them.

SIR NORMAN HILL. — Under the charter that the Judge instanced I have not reviewed the responsibility of issuing a bill-of-lading on demand; I cannot give an explanation of that, but I can concede to you one of Mr Miller's cases in which I have accepted a charter and I have expressly provided that the charterer shall not demand bills-of-lading.

Dr KNOTTENBELT. — It is not allowed.

SIR NORMAN HILL. — He is clearly allowed to. There is nothing in the Rules to the contrary.

I would appeal to the gentlemen who were at the Hague, is not our object, the object of all of us, to put all bills-of-lading on the same footing ?

Dr VAN SLOOTEN. — Yes.

SIR NORMAN HILL. — Was it not all clear at the Hague that if you could carry on your business without issuing bills-of-lading you would be at liberty to do so in any form you pleased ?

Dr KNOTTENBELT. — But if there is a Bill-of-Lading ?

SIR NORMAN HILL. — If there is a bill-of-lading it comes under it — agreed.

JUDGE HOUGH. — I do understand that there is nothing

in these proposed Rules which so to speak prevents a charterer and a shipowner from contracting out of the bill-of-lading.

SIR NORMAN HILL. — Certainly not.

SIR LESLIE SCOTT. — That answers my first question.

THE CHAIRMAN. — I think Mr Möller had a question upon this matter. If it is upon this matter we will take it now. If it is not I will ask Sir Norman to deal next with the matter of the minimum liability.

Dr MÖLLER. — It is not upon this matter.

THE CHAIRMAN. — Then I will ask you later.

SIR LESLIE SCOTT. — Might I for clearness add one point of the matter we have just been discussing. If I may have Judge Hough's attention for a moment and want to get this point clear. The draft Rules provide in unambiguous language that the shipowner shall on demand of the shipper issue a bill-of-lading. Sir Norman Hill has said, what is clear from the Rules themselves, that, once issued, that bill-of-lading, under the regime of the Rules, will import all the obligations of the Rules. In the case of a Chartered ship it is proposed to leave freedom of contract to the parties to make what terms they like by their charter. The Rules seem to detract from that proposed freedom of contract (*hear, hear*), and to impose upon the shipowner the obligation of issuing a bill-of-lading whether he likes it or not. I think it is essential to make it clear, if that be the intention, that

in the case of a chartered ship it shall be open to the shipowner and the charterer by their contract to say : « We will not in this charter put in the usual clause « Master to sign bills-of-lading as required »; so that in the event of the charterer wanting a bill-of-lading which he may negotiate, it shall then be open to the shipowner to say : « Right, you shall have your bill-of-lading, but in that case since by the bill-of-lading I shall assume more burdensome obligations than under the charter I shall want a little extra freight ». As at present the Rules are drafted, there is a fundamental obscurity on that point, which I think it is essential, should be cleared up.

SIR NORMAN HILL. — I would remind you that as the Rules left the Hague we had Article V, and there we could have adjusted the difficulty of the charterer of the ship who did not want bills-of-lading. We had complete freedom under Article V. That freedom has been hedged round with all kinds of qualifications. The point raised is just one of the kind of points in which the Rules do want adjusting. But as I understand, and there are many men who were at the Hague who are here, we all deliberately intended to include a bill-of-lading that was put in circulation whether under a charter or without a charter. The test was : is the bill-of-lading put in circulation ? If so, it comes under the Rules, I understood that we were all agreed at the Hague that we did not want to interfere with absolute freedom of contract in regard to the chartering of ships, so long as the transaction was carried out throughout strictly under the terms of that charter, and there was no chance of any

uniformed person becoming interested under any bills-of-lading or similar documents in the cargo. That was so carried. That is right, Sir, is it not ?

THE CHAIRMAN. — Sir Norman Hill appeals to me. My recollection is entirely in accordance with what he has just said. That was what I understood to be the view of the business men who agreed upon what I may call the Hague compact.

SIR NORMAN HILL. — With regard to the second point as to amount, you, Sir, can tell the Solicitor General a great deal more than I can about it. When we got to the £ 100 limit at the Hague it was a matter of the greatest controversy. I lost my temper and I think a good many other people lost their tempers.

THE CHAIRMAN. — I did not.

SIR NORMAN HILL. — No, you sat absolutely calm and when we got up to the breaking point you said : « Now I am going to suspend the sitting for a quarter of an hour, and then during the quarter of an hour you lectured the hottest headed of us and the end of it was that we came in and we said that we would take what we thought was a very extravagant term. Of course we agreed it and we will take it. We still think it is an extravagant term and we think that having put it so high you are really putting an unnecessary burden on transportation. We stand by it. After all in 99 cases out of 100 we are carrying the goods of honest people, and even if they are not quite honest they are dealing with goods which are quoted freely on the markets of the

world, and we know the real value and we shall have to pay according to the real value. The big £ 100 limit may afford some attractions to people who are not quite straight and we shall have to shoulder that, and pass it on in the freights we charge to the honest men. That will be the end of it. But really there is no question of principle in it. It was hard fighting and we could not get our way.

THE CHAIRMAN. — Mr Möller desires to ask a question. I think it is very useful, if I may say so, that there should be this free interchange of views on the critical matters. You fixed yesterday your time for adjournment of debate at half past twelve. I am not sure whether you will adhere closely to it in view of the fact that we have a large area of discussion open. Sir Norman Hill says « This cross-examination might just as well be concluded before I have my lunch ». I will ask Mr Möller to put his question.

Mr MÖLLER. — I understand Sir Norman Hill to answer in regard to another question that the Captain certainly has to sign the bill-of-lading for weight, but it was only the weight that the charterer gave him, and the charterer had to guarantee it. Article III, Clause 5, does not say that the charterer guarantees that; it says that the shipper be deemed to have guaranteed it.

SIR NORMAN HILL. — I should have said « shipper ».

Mr MÖLLER. — That is not satisfactory because he may be in the South Sea Islands.

SIR NORMAN HILL. — You can put in that the charterer is to guarantee.

Mr MÖLLER. — To say « the shipper or the charterer ». If we could get that in it would be an improvement; it would lessen our anxiety, for the shipper is a distant person.

SIR NORMAN HILL. — I agree.

Mr MÖLLER. — Upon the same subject I would point out that there is in the Hague Rules a clause that is not in the amended Rules which would really have provided for that. It was Article III, clause 4. It says « Upon any claim against the carrier in the case of goods carried in bulk or whole cargoes of timber the claimant shall be bound, notwithstanding the bill-of-lading, to prove the number, quantity, or weight actually delivered to the carrier ». My point was that it is the man who comes along with his claim who has that obligation. Simultaneously with making his claim he has to provide proof that the quantity you got was actually there whilst now you are referred to a distant person for that. If that could be removed it would remove some of my anxiety, but not all because I am not satisfied that the owners are sufficiently protected under the stipulation that we are not responsible for shrinkage.

SIR NORMAN HILL. — To use a common expression, what gave the show away on that point was that all the timber trade in this country produced your timber charters showing that the shipowner had made himself responsible for numbers. That was the trouble.

Mr MÖLLER. — Not for measure.

SIR NORMAN HILL. — Unless the man gives you measure and guarantees it you only put in number or measure; you do not put in both, and you do not put in measure unless he guarantees you.

MR MÖLLER. — I am very sorry to correct you but are considering the question of sawn wood now, not the question of round wood. For round wood there is no question of number. No man ever can count it; it cannot be done and you do not find yourself responsible for a number of fathoms, i.e., for measure. You do not do that.

SIR NORMAN HILL. — I do not see why you should not under these Rules. The shipper of the goods is going to assume responsibility to you. I do not think he will do it lightly. If he is a little bit uncertain or if it is impossible he will not give you a ridiculous thing to put on the bill-of-lading which he has to honour. He has to uphold you. Surely that is a business adjustment.

MR MÖLLER. — He is frequently a very small man in Finland.

THE CHAIRMAN. — Now we will adjourn to 2 o'clock. As I said yesterday I shall take the Chair at 2 o'clock.

La séance est levée.

The Conference adjourned till 2 o'clock.

MARDI, 10 OCTOBRE 1922.
TUESDAY, 10th OCTOBER 1922.

SÉANCE DE L'APRÈS-MIDI
AFTERNOON SITTING

La Conférence est reprise à 2 heures.

The Conference re-assembled at 2 o'clock.

THE CHAIRMAN. — I will ask Sir Stephen Demetriadi to address the Conference.

SIR STEPHEN DEMETRIADI. — I should like first of all, Mr Chairman, to thank you for the invitation which you have extended to my Federation to be present here to day. As one of the strongest opponents — I put it in that way — in this country to the Hague Rules I do not pretend to be a *persona grata* in Hague Rules circles but I know that I can count upon your indulgence for the very short space of time that I shall take up in explaining to you the position of my Federation. I should like to take this early opportunity, Mr Chairman, of saying that my Federation realises and recognises the hard work, the good work, that was done at the Hague. (*Hear, hear.*)

I will now speak to you in my capacity as President of the British Federation of Traders' Associations. It might be well for this meeting to know at this stage exactly what trades I represent. I think it would be best if I were to give you the names of some of these trades so that this meeting should be able to measure the weight of my Federation. We have amongst our Members amongst others The East Indian Grain and Oilseed Shippers Association of London. We have the Incorporated Oil Seed

Association. That, Gentlemen, I need hardly tell you, is one of the biggest trades in this country. We have the Indian Tea Association. We have the Liverpool Cotton Association. That represents the raw cotton trade of this country. Our friends here from America will realise and know exactly what that trade means. We have amongst our Members the London Jute Association. We have the London Oil and Tallow Trades Association. We have the London Shellac Trade Association and — now I am going to give you one of the most important trades — we have the National Federation of Corn Trade Associations. That, Gentlemen, is the grain trade of this country. It is a Federation in itself and it comprises all the grain Trade Associations of this country. We have also the National Seed Crushers' Association and we have another important trade known as the United Trades' Association of Liverpool. Well, Gentlemen, I think I will leave it at that. You will be able to measure exactly the weight of my Federation.

Gentlemen, when the Hague Rules came into existence my Federation took the strongest objection to them on two points principally. Firstly, because of their voluntary nature. We were in this country pledged to the Dominions to uniform legislation throughout the British Empire. My Federation were in favour of that, and therefore we did not feel that we could be parties to an agreement that was by way of a voluntary arrangement. But I will not dwell at any length upon that point because that I hope is almost past history, and we are now talking about legislation. Our second objection was that we were not represented at the Hague and that our interests were not

properly protected. We were in favour of the Report of the Imperial Shipping Committee. I think you all know what that report was. It was unanimously in favour of the Canadian Carriage of Goods by Sea Act. That Report was submitted in this country to the Prime Ministers and representatives of this country and the Dominions and to a representative from India, and they all unanimously adopted that Report, and thereby committed their Governments to introduce legislation following upon the lines of the Canadian Act. When our attention was drawn to the fact that it would be very much better if there could be an International Agreement, whilst we, as a Federation, preferred the Canadian Act, we did not wish to appear that we would not discuss the Hague Rules, and we therefore took the Hague Rules and we made them a basis for discussion to see whether we could reach an agreement with the shipowners, and thereby facilitate what they so much desired, that is, International agreement. It is not necessary for me to tell you here the difficulties we had in reaching an agreement. We were together for quite a long time and the negotiations were within an ace of breaking down time and again, but we did come to an agreement finally, and my point is that I have made a bargain with the shipowners here, and I am entitled to my bargain. We then went to our Government and we said to them : « You are pledged to legislation following the lines of the Imperial Shipping Committee Report; we have, in order to help the views of the shipowners, taken the Hague Rules and made certain amendments to them which we think make it possible for us to come to an agreement; we have not got all the

concessions that we desire; we have made concessions and made what we consider to be valuable concessions, and we have done so in return for one thing and one thing only, and that is immediate legislation ». Well, Mr Chairman, it would be presumptuous on my part if I were to tell this Meeting how they should act, but I do say if these Rules find favour with them and we are pledged to the substance of them — I do not mean to be too meticulous; we do not object to minor drafting alterations which will not alter the substance or meaning of these clauses — we should be happy to co-operate but I am in one difficulty. I think it right to state that at this stage I see that, after dealing with the Rules for the Carriage of Goods by Sea in this Convention which is now on the Table, there are certain Articles which deal with a common procedure. I am told that I need not worry very much about that, that it is ordinary common procedure. My reply, Mr Chairman, is that this is not a common case. It is an exceptional case that in our view demands exceptional treatment. According to these Articles it is suggested that 2 years may elapse before the high contracting parties notify their willingness to adhere to this Convention, and after those 2 years there shall be another meeting if I correctly understand the Article to decide whether the Rules shall be put into operation. That suggests to my mind 3 years before legislation can be enacted. It says later on in another Article, Article XVII that after 3 years a new Conference may be held to revise these Rules. Neither of these Articles that I have spoken of, Article XII or Article XVII would be acceptable to my Federation, because we have made concessions for imme-

mediate legislation, and this suggests a postponement of legislation. But if it is only common procedure and this Conference, if it comes to an Agreement on the Rules, agrees to amend its common procedure so that we could have immediate legislation, or if we pass a Resolution that whilst amending these Articles so as to contract the period within which legislation can take effect, and if we could pass a Resolution recommending the parties here to urge their Governments to introduce legislation forthwith, then I can say, Mr Chairman, that my Federation will be very happy to co-operate. (*Hear, hear.*)

I do not want to deal with the technical side of it for the moment; I do not think that is your desire, but I did hear this morning a question of charter parties being discussed. I have heard it said in some quarters that a bill-of-lading issued after a charter party has been signed will not follow these Rules. I am here as representing trade and in all my business career I have yet to learn that a charter party has ever been entered into without following in its wake a bill-of-lading, and our view is that, if there is a bill-of-lading, that bill-of-lading under the charter party will follow the lines of these Rules. I want to make that clear.

THE CHAIRMAN. — I understood Sir Norman Hill to say that was his view, Sir Stephen.

SIR STEPHEN DEMETRIADI. — Sir Norman I think agrees with me on that point, but I want to make it quite clear that, if there is a charter party, there follows a bill-of-lading in due course. Very likely in the time-charters it may not always be the same; they may not always have

the same effect because the charterer then takes upon himself the responsibilities of a shipowner, and therefore the Rules have a different governance, but as a general rule a charter party has a bill-of-lading following in its wake, and I think the intention is — that is certainly what we understand — that that bill-of-lading will follow the lines of these Rules.

I do not think I have anything else to say, Sir. I think I have explained as briefly as possible and in as few words as possible the cardinal points which have guided us in our deliberations. (*Hear, hear.*) I would like to thank you once more, Sir, for giving me an opportunity of speaking before this Meeting.

THE CHAIRMAN. — On the technical question which has just been referred to I think Sir Leslie Scott would say a word which will be useful.

SIR LESLIE SCOTT. — Mr President, if Sir Stephen Demetriadi would be good enough to interrupt me and ask any further questions if I do not deal with the point as fully as he intended or I do not satisfy his criticism that he made just now, I should be grateful. Of course in the great majority of cases where charters are issued the charter itself contains a clause that masters will sign bills-of-lading as required in one form or another, but a certain number of charter parties do not contain that clause. I have come across quite a considerable number in the course of my experience, which I suppose is fairly wide. Even where the charter party does provide for the issue of bills-of-lading and a bill-of-lading is issued, there are an appreciable number of transactions in com-

merce where the charterer retains that bill-of-lading in his own hands, particularly those cases where the charterer is shipping raw material from across the water to works of his own on this side. For instance take an illustration which may be familiar to our friends from Holland. A considerable amount of phosphate rock comes from the other side of the Atlantic to super-phosphate works in Holland. In those cases, if I am right in my recollection, charters for part cargoes, weight cargoes, are issued, (the ship filling up with measurement afterwards) in which there is no provision for the issue of bills-of-lading. No doubt there would be a mate's receipt to acknowledge the quantity received by the ship. But even if there be a bill-of-lading according to English law, and I suspect that it is so in Continental law also, the charter remains of a contract, its terms do not supersede the terms of the and although the bill-of-lading is expressed in the form of a contract its terms do not supersede the terms of the charter party, in other words as our Courts put it, it remains a mere receipt for the goods. That being so, you have to make up your mind what is intended by the Hague Rules as a matter of substance in regard to shipments of that type under charter party. Where a bill-of-lading is issued and retained in the hands of the charterer, are the terms of the Hague Rules to govern that shipment or are they not? One decision or the other may be taken according as the business men present think the one is better than the other. I do think it is essential to be clear as to what is intended on that point. The Rules as they are ~~drafted in Article III, Rule 3~~, say this : « After receiving the goods into his charge

the carrier or master or agent of the carrier shall on the demand of the shipper issue a bill-of-lading showing amongst other things » so and so. That is the original Hague Rules. The alteration made in the amended Rules is purely verbal; it says : « shall on demand issue to the shipper a bill-of-lading showing amongst other things » so and so. That bill-of-lading is either to be the contract between the parties containing all the terms of these rules or it is to remain a mere receipt as between those original parties, the charterer and the shipowner, the contract being still contained in the charter party. Which of those two solutions is the best one in business, is a matter that commercial men must discuss and decide. All I want to do is to get that clear, and I want to see whether Sir Stephen Demetriadi is following my point, because he represents some important cargo interests and it is essential that they should appreciate the point of substance that is involved. I asked a question of Sir Norman Hill when he was addressing us so clearly and lucidly as he did; would the shipowner who has entered into a charter be entitled to say to the charterer : If you want a bill-of-lading which *ex hypothesi* of course will be a bill-of-lading incorporating these Rules, because these Rules will be a matter of law, I want an extra freight ? If the bill-of-lading is to remain a mere receipt of course the question would be meaningless. If the bill-of-lading is to supersede the charter as regards the terms of carriage it is a question of great moment.

THE CHAIRMAN. — He is to say that at the time of making the charter.

SIR LESLIE SCOTT. — He is to say that at the time of

making the charter or after the charter has been made. You must decide which it is to be. Anyhow even although as between the charterer and the shipowner the bill-of-lading may remain a mere receipt, if the charterer negotiates that bill-of-lading, it will become the contract of carriage as between the endorsee for value and the shipowner, and then put upon the shipowner all the obligations of the Hague Rules, which *ex hypothesi* would then have become law. Consequently that question of the relation of chartered shipments to these proposals is one upon which a decision is necessary as to what is wanted, and then only a very few words are needed to make it clear that that wish of the commercial community is successfully expressed in the Hague Rules. (*Applause.*)

THE CHAIRMAN. — I do not know if Sir Stephen Demetriadi would wish to say anything upon what Sir Leslie Scott has just said ?

SIR STEPHEN DEMETRIADI. — May I ask Dr Eric Jackson to answer on behalf of the Federation. He is our legal adviser.

Dr ERIC JACKSON. — I am really answering the Solicitor General and not the Conference I take it ?

THE CHAIRMAN. — Yes.

Dr ERIC JACKSON. — The view of the Federation which I represent is that, if there is a bill-of-lading, whether it is issued under a charter party or not, the Hague Rules will be *ipso facto* incorporated in that bill-of-lading.

SIR LESLIE SCOTT. — That is obvious.

Dr ERIC JACKSON. — It seems to me that on this point

the American representatives could give us useful information because as I understand their Harter Act it applies to all bills-of-lading whether issued under a charter party or not, and they must, I should have thought, have had experience during the past 20 years as to what is the effect of a bill-of-lading under a charter party. But certainly, as far as the Federation are concerned, our view is that, if a Bill-of-Lading is once issued then under any statute law that was passed in this country, the clauses of the amended Rules would be deemed to be incorporated in that bill-of-lading, whether the bill-of-lading came into existence because of a prior charter party or not. I think if the other view is taken we should do away with uniformity brought about by legislation (*hear, hear*), because I do not know what the definition of a charter party is, but I see no reason why any contract note of affreightment, even though it may be only for carrying two bags of wheat from America to this country, is not in effect a charter party. Therefore, if the other view were taken, it seems to me that the shipowner would escape any legislative sanction upon him to incorporating the amended Rules by simply giving a freight note beforehand and saying : « I agree to carry your two bags on my vessel » so and so, which as far as I know would be legally a charter party though not the ordinary charter party which is known to commerce.

THE CHAIRMAN. — I do not know whether Dr Jackson has thought of the question the Solicitor General has asked, namely, whether when a charter party is negotiated in the ordinary sense it would be practicable in his view

to make that charter party upon the terms that the charterer should not require bills-of-lading and so should secure any benefit there was as between shipment under charter party and shipment upon bills-of-lading. What I understood Sir Leslie Scott to point out was that if there is not something in the charter party, using the common phrase, which excludes the right to have bills-of-lading the demand may be made, and apparently would be effective under the Rules for Carriage by Sea.

SIR LESLIE SCOTT. — If I may just add one word while Dr Jackson is still there, as the Rules are drawn there is an imperative obligation placed upon the shipowner upon the demand of the shipper to issue a bill-of-lading. That would seem to apply to every shipowner entering into a charter party.

Dr ERIC JACKSON. — That is what I think.

SIR LESLIE SCOTT. — If that is so, then the shipowner who wants to make a charter party and does not want to enter into a bill-of-lading contract is deprived of that liberty. Is it the intention of the Conference that he should be so deprived or not ? That is the real question.

THE CHAIRMAN. — I think that the question in effect is: is the shipper to be at liberty to renounce in concluding a charter party to the rights which he would obtain under the proposed statute ?

Dr ERIC JACKSON. — I must say that I have never prior to this meeting considered the possibility of a charter party that did not result in a bill-of-lading. I know

that there may be charter parties which do not in terms say that any bill-of-lading or any special form of bill-of-lading shall be issued thereunder, but in practice I think as a matter of commerce (you will correct me if I am wrong in this) that a bill-of-lading is always taken by the shipper for his own purposes whether it is under charter or not.

SIR LESLIE SCOTT. — It does not always become the contract.

Dr ERIC JACKSON. — That I follow under our English law. Whether it is the same elsewhere I am not certain.

SIR LESLIE SCOTT. — Is it intended to change that ?

Dr ERIC JACKSON. — I think for this purpose it must be intended to change it, Sir Leslie.

THE CHAIRMAN. — That means to give the charterer the power to take a bill-of-lading under the Rules whether it may or may not have been the intention that he should demand it at the time of the charter.

Dr ERIC JACKSON. — I cannot conceive a charter party where it was not the intention that a bill-of-lading should be issued. But I think probably the view of Sir Norman Hill is correct that, even under these Rules, if a charter party were made excluding the possibility of any bill-of-lading being issued, then that charter party would be good, and there would be no bill-of-lading, and there would be nothing the Rules could affect.

THE CHAIRMAN. — That is just what I think Sir Leslie was asking.

Dr ERIC JACKSON. — That is what I think was Sir Norman Hill's view this morning, and I think that is so, but the possibility of such a charter party I do not appreciate.

THE CHAIRMAN. — You do not think that is business; you think it does not happen ?

Dr ERIC JACKSON. — I would sooner the other commercial gentlemen present would tell you, but I cannot imagine any shipper who does not want to have something to represent his goods better than a mate's receipt.

Mr W. W. PAINE. — Mr Chairman and Gentlemen. I must apologise for the absence of my colleague, Sir James Hope Simpson, who, jointly with myself, represented the Bankers at the Hague Conference. I regret to say that Sir James Hope Simpson has been ill. He is at present absent in Canada. I wish he were here to represent the Bankers to-day.

I had not the privilege of hearing the discussion this morning, and I do not know that I can add anything usefully to what little of the results of that discussion I have heard since I came into this room. But I think it may perhaps be convenient to the Conference if I state very shortly and in purely general terms the general attitude of the Bankers towards the questions involved in these Rules. That attitude is shortly this. The Bankers were represented, as I have told you, at the Hague Con-

ference, and they are very anxious to see that the good preliminary work which was done at that Conference is not thrown away. They thought that by aiding those discussions at that Conference they were helping towards a certain measure of uniformity in regard to Bills-of-Lading to be issued in all maritime countries which would be so helpful to the Commerce of the world; and therefore they are extremely anxious to see effect given to the Hague Rules in the form in which they have now been modified. That must mean, if anything like uniformity is to be secured throughout the world, a Convention between the different maritime states which will recognise the validity of those Rules. (*Hear, hear.*) And it must also mean, as we now know, legislation in Great-Britain and her Dominions; and I hope concurrent legislation on similar lines in the United States of America, and I imagine that that would perhaps be followed by domestic legislation in the various States which became parties to the Convention.

The real object and desideratum from the Bankers' point of view (and of course I speak from that point of view; there are many of you here who are much more competent to speak of the general view of commerce than I am) is to obtain a document which, as you all know, is the very foundation of commerce in some respects, at all events in essential respects, of a uniform character; so that the Bankers who have to handle those documents by the thousand every week, shall know, without too close an examination, that those bills-of-lading are conform to a particular standard. It does seem to me that, if those regulations, whatever they are called, Hague

Rules, or anything else, are embodied in a Convention which is adopted by the maritime states, and are embodied in legislation such as I have described, we shall have made very great progress towards that uniformity which has been the object of all people interested in commerce for many years past. •

I do not know that I am competent to touch at all upon this question which has been raised in regard to charter parties. I am open to correction, but I would like just to state what my personal view in that regard is. From the Bankers' point of view the essential thing is that the document which passes from hand to hand as representing the title to goods should be of a uniform character. We are not concerned as Bankers with the terms of Charter parties which are entered into between individuals who, so far as we are concerned, can make their own bargain. But we become at once concerned and considerably interested as soon as a bill-of-lading, which may be negotiated with us, or may pass from hand to hand, is issued. Therefore very strongly I say that, if and so far as bills-of-lading are issued under Charter parties, they must conform to the Hague Rules. Beyond that I do not care to go, because I must leave it to others to say whether there is any necessity in the case of a charter party, which merely represents a bargain between two individuals, the shipper and the shipowner, for us to attempt to deal with that by these Rules or by legislation in which they may be embodied. From the banking point of view I do not think it is necessary. I can conceive cases, such as Sir Leslie Scott has put, where there is no necessity for any negotiation of any document at all, and where

the parties may wish to make their own bargain quite untrammelled by legislation such as is embodied in these Rules, and personally I do not at the moment see any objection to leaving that outside the Rules so long as, and always so long only as, there is not a document of title which comes into circulation. In that case I think that document must conform to whatever legislation there is. I do not think, Sir, there is anything else that I can usefully add. (*Applause.*)

SIR ERNEST GLOVER. — I do not want to make a speech, I just want to ask a question, Sir, in reference to what Sir Leslie Scott was telling us just now. In the first place I do not think there is any general custom anywhere of not signing bills-of-lading under a Charter party.

SIR LESLIE SCOTT. — No, I quite agree.

SIR ERNEST GLOVER. — There is always a Bill-of-Lading signed; but there are many cases where the Bill-of-Lading is not negotiated; where the shipper and the receiver are practically the same person, and the Bill-of-Lading is simply forwarded by the shipper to the receiver. The question I wanted to ask therefore is this : If the shipper and the receiver are the same person, and the Bill-of-Lading is signed on different terms from the Charter party, will the Charter party supersede the Bill-of-Lading or *vice versa*, on the assumption that the Bill-of-Lading is not negotiated ? It is a question that you touched on, Sir, but will you make it clear to us ?

SIR LESLIE SCOTT. — By your leave, Sir, I will answer the question put by Sir Ernest Glover. As a matter of

fact I have just written this down, and I will ask Lord Sterndale and the President of the Admiralty Division, and Sir Maurice Hill to listen to what I have written, and tell the Conference whether they agree; and if they do not agree we will have a Court of Appeal of merchants. It is this : « As in English law a Bill-of-Lading which remains in the hands of the charterer is not a contract, but a mere receipt, any Convention and any legislation to carry it out must say whether that Rule is to continue or to be replaced by a statutory provision that such a Bill-of-Lading is to be deemed a contract, and to regulate the terms of the carriage by sea of those goods. » In answer to Sir Ernest Glover in the case which he referred to, where the shipper or charterer and receiver is the same person, which is the case that I had in mind mainly, the Bill-of-Lading in English law does not become the contract and does not supersede the Charter party. The Charter party remains the contract and regulates all the relations between the parties. Even if the Bill-of-Lading which is issued contains terms different from the Charter party, the general rule of the Courts is that that Bill-of-Lading is a mere receipt, that you disregard those terms and look only to the Charter party. I think there might be cases conceivably where the operation was such as to show an intention between the charterer and the ship-owner to supersede the Charter party and make a new contract by the Bill-of-Lading. That is a possibility, and there are one or two recorded cases in the books, as I expect our American friends will agree; but the ordinary position is what I have said, that the Charter party remains the contract, and is not superseded by the Bill-

of-Lading. As the Code of Rules is drawn, that would be reversed, and the Bill-of-Lading would supersede the Charter party. If the Conference is of opinion, as I imagine it is, that in what you may call characteristic Charter party shipments, it is desirable to leave to the parties freedom of contract, then you must in the Rules say, and it can be done with two or three words, that, where the parties make a Charter party, the Bill-of-Lading as between the charterer and the shipowner shall be a mere receipt, and it is only when it is negotiated, as Mr Paine said, and gets into the hands of a third party that it will represent the conditions of carriage and constitute the contract between the endorsee, the holder of the Bill-of-Lading, and the shipowner, enforceable against the ship, either by the receiver or by the Bank, as the case may be, in the name of the receiver. It is only that I want to have that point clear, as it is a matter of great commercial importance, because it is essential to decide whether in Charter party shipments proper, the ordinary type of Charter party shipments, you want to control the terms of the carriage by these new Rules, or whether you want to leave the parties free. I have always understood up to now that the intention, at The Hague and subsequently, always has been in those cases to leave freedom of contract unaffected.

SIR NORMAN HILL. — Might I ask the Solicitor General this : The only difficulty that arises is because under these Charter parties you are using a document in the form of a Bill-of-Lading, which you call a Bill-of-Lading, but which our Courts say is merely a receipt.

SIR LESLIE SCOTT. — Quite so.

SIR NORMAN HILL. — Is not the short cut, Sir, that if you want to go on doing that, you use a receipt, and you do not use a Bill-of-Lading ? That is what we did at The Hague. Our Code was quite complete. All these transactions would have come under Article V, and there would be no Bill-of-Lading issued. Now we are sure to get into trouble; there are sure to be difficulties, if we allow two forms of Bills-of-Lading to come on the market. There should only be one form of Bill-of-Lading, and everything which is called a Bill-of-Lading, which is in the shape of a Bill-of-Lading, should come under the Code, if we really want to put it on an equality with a Bill-of-Exchange. We can pay our debts in all kinds of form without the use of a Bill-of-Exchange. There is nothing to stop it. If we have a Charter party and we want to maintain charter party conditions, and nothing else, then there must not be created a document in the form of a Bill-of-Lading; some other document than that will meet the case.

SIR LESLIE SCOTT. — May I add a word upon that, Sir, before I elicit from you and your brother Judges an opinion as to whether I was right or wrong in my statement of the law. I do not think anybody contemplates two forms of Bills-of-Lading, one Bill-of-Lading which incorporates these Rules because they are the law, and another Bill-of-Lading which is allowed so to speak to contract out of these Rules. I do not think any sane person could contemplate that; it would mean hopeless confusion. The point, as I understand it, is this. Sir

Norman Hill suggests : In Charter party shipments where there is no intention to negotiate a Bill-of-Lading, do not issue a Bill-of-Lading, but only a Mate's receipt.

SIR NORMAN HILL. — Certainly, something like that.

SIR ERNEST GLOVER. — We should have difficulty if we had not a Bill-of-Lading to take to our customs.

SIR LESLIE SCOTT. — I agree it might be possible, apart from Customs Regulations to do that, but there are many Charter party shipments where at the outset the charterer may like to keep a free hand as to whether he shall be the receiver himself, or whether he will negotiate his document.

SIR NORMAN HILL. — Under the Code ?

SIR LESLIE SCOTT. — Under the Code, and the point I wanted to get clear was : where he decides to keep the Bill-of-Lading in his own hands and not negotiate it, in that case are the relations between him and the ship to be regulated by the contract contained in the Charter party, or are those relations to be superseded by the Bill-of-Lading ? Perhaps Lord Sterndale would just say a word as to whether he agrees with my statement of the legal position ?

LORD STERNDALÉ. — Mr President, I am very sorry that I cannot comply with my learned friend's request to say whether he is right in his law, and I will tell you why. The question whether he is right or not may come before Mr Justice Hill, or Sir Henry Duke, and it may

come before me on appeal from them, and I do not think I ought standing here, and not sitting judicially, to give any deliverance upon the state of the law. I do not quarrel with what the Solicitor General said, but I do not think it would be right for me here, occupying the position I do of President of the Court of Appeal, to state off hand and generally any proposition that I think as to the English law. But I do wish to say this : I entirely agree with the Solicitor General that this matter should be made clear. It should be made quite clear what is intended in the case of a Charter party shipment as he calls it in the ordinary course. If this Rule as it stands is put into the form of legislation, there is a statutory obligation upon every shipowner who is carrying goods, whether under Charter or not, to give a Bill-of-Lading on demand, and if he gives a Bill-of-Lading, it seems to me, looking at the definition clause of « Contract of Carriage » and Article II that, under this Rule, if it were so made into a statute, that would be the governing document as to the rights and obligations of the Shipowner and the Charterer respectively. I do not know whether that is intended or not, but if this is carried into legislation as it is now, it seems to me that that would be very likely at any rate the effect; and I quite agree with the Solicitor General that it should be made quite clear whether that is intended, or whether it is not.

THE CHAIRMAN. — Following what Lord Sterndale said, I am in the complex position of having a possibility of deciding this question myself, and the added possibility, if somebody else has decided this question, of

having to sit in the Court of Appeal as an *ex officio* member of the Court, and to consider his decision.

It seems to me that the real question upon which you have come now, is whether you can discriminate between a document which is issued for the purpose of coming into commercial use and going into currency. If you can so discriminate, and merchants want us to discriminate, I am sufficiently little of a lawyer to say, if they want to do so, why should not they; if they think there is use in it, why should not they be allowed to do it.

SIR NORMAN HILL. — That is our old Article V.

THE CHAIRMAN. — Yes. If I may add this, it seems to me that if there is any class of business which is better and more economically served, in which you can dispense with a standardised form, because the public is not concerned, or general interests are not concerned, probably you are serving economy by leaving it open to people to do that; but if there is no such class of interest then there is not of course ground for variation. At The Hague the view was that there was business which was between two individuals, and with which the Bankers and Insurers and the world at large had nothing to do, where the shipper was the receiver of the goods and was intended to be, and that you need not legislate about them and need not incorporate Bills-of-Lading terms upon a standard pattern into their transactions. That was the view I think which the business men took at The Hague. I speak in the presence of many of them. If the business men here take the same view, and up to now I have heard nobody dissent from it, then, if there is a Diplo-

matic Conference, the diplomatists must consider whether they are to impose a technical legal principle upon the business men which the business men want to be free from. I think that is the real question. At The Hague — I have said it twice in the presence of many members who were there — the view was that you had better leave the two individuals outside of your restrictive terms, and impose that upon them if they intended to produce negotiable documents. If I do not hear a view to the contrary expressed here in the Conference I shall come to the conclusion that the business men here take the view which the business men at The Hague took, or that they do not differ from it so strongly that they think it fit or necessary to express their difference.

SIR NORMAN HILL. — The only thing I should add is that, in the course of the negotiations to which I have referred, that view was strongly dissented from, and a proviso was added, to which I agreed, very much narrowing the chances of the two business men agreeing with one another and working out the contract they had agreed to. They are only to be left free as long as they are dealing with cargoes which are not ordinary commercial cargoes. That view was rammed down my throat, and I had to submit to it, and it is there now. Article V, now VI does not do what we left it doing when we left The Hague.

MR R. A. PATTERSON. — You cannot have freedom of contract at the same time combined with restrictions; and the Charterer, whether he is receiver or not, or

whether he negotiates the document or not, from the commercial point of view should be protected just as much as the receiver of the cargo who receives the goods on negotiable documents. Therefore, if you are going to have it at all you must restrict equally the transaction from the Charterer direct, as from the man who is dealing with the goods by negotiable documents.

THE CHAIRMAN. — I do not know if Mr Paine wished to add something.

MR PAINE. — No, Sir.

THE CHAIRMAN. — Then I will call upon Monsieur Verneaux.

M. RENÉ VERNEAUX. — Messieurs, je désire présenter quelques observations qui s'inspirent des vues du Comité Central des Armateurs de France et de l'Association Française du Droit Maritime.

Le Comité Central des Armateurs de France a affirmé à maintes reprises son désir de régler la question des clauses d'exonération dans les connaissements, avant tout d'une manière internationale. C'est ce qu'il a acté au lendemain même de l'adoption des Règles de la Haye; il a déclaré notamment que selon lui il fallait une convention internationale suivie de lois nationales conformes pour parvenir à l'uniformité. Effectivement, l'expérience lui a donné raison, puisque depuis l'adoption des Règles de la Haye, il a été constaté qu'il était impossible d'arriver à cette uniformité par voie de référence à ces Règles dans les connaissements. C'est encore ce qu'a dû constater

l'International Law Association à la Conférence de Buenos-Aires. De divers autres côtés, le même sentiment a été exprimé. Il faut donc une convention internationale. Notre désir est d'aboutir le plus rapidement possible. Comment y arriver ? J'estime quant à moi que l'on ne peut accepter tel quel le projet qui nous a été distribué. Je considère qu'il faut renvoyer ce projet à une commission notamment avec les indications suivantes : En premier lieu, cette Commission devrait avoir pour mission de reviser la forme même du projet, qui selon moi a besoin de ce remaniement afin de pouvoir être présenté avec le plus de chances de succès à une conférence diplomatique.

En second lieu, il faudrait que cette Commission eût pouvoir d'opérer certains amendements. En ce qui me concerne, il y a un amendement que je réclame avec le Comité Central des Armateurs de France : c'est notamment celui qui vise la limitation de la responsabilité à £ 100 par colis ou par unité. Lors de la Conférence de la Haye, par la bouche de M. de Rousiers, nous avons demandé que la limite ne fût pas une somme fixe, mais un multiple du fret. La suggestion n'a pas été adoptée; néanmoins, elle avait recueilli les suffrages de beaucoup de membres. C'est pourquoi je demande que la Commission amende le projet sous ce rapport de façon plus équitable et pratique. En troisième lieu, je considère que la Commission devrait éliminer du projet des points qui véritablement ne doivent pas y être insérés logiquement. Ce sont les dispositions qui concernent les fins de non recevoir pour défaut de protestation et les prescriptions. Ces questions-là devraient être réservées pour le

Code international de l'Affrètement. C'est dans ce sens que s'est prononcée l'Association Française du Droit Maritime en adoptant le rapport de M. Georges Marais qui, tout à l'heure, voudra bien sans doute expliquer les raisons pour lesquelles il convient de distraire ces points du projet concernant la responsabilité des propriétaires de navires dans les contrats de transport.

(Verbal translation by Mr G. P. Langton).

Mr Verneaux was placing before you the views of the Central Committee of French Shipowners and of the French Association of Maritime Law of which he is the Secretary. He expresses a general desire for uniformity. He is quite in sympathy, and his Associations are in sympathy with the idea of uniformity, but so far as the project before you is concerned he says this. He thinks that it is impossible to hope that it would secure general assent in its present form, and he suggests that it should be sent back to a Committee for revision, and with the following recommendations. In the first place the form of the project should be revised, and it should be revised in such form as to secure the maximum possible adherence from a Diplomatic Conference. The second recommendation is as regards the £100 limit. To that he takes, on behalf of the French shipowners, the strongest objection, and he says that it should not be fixed as a fixed sum of £100, but it should be a multiple of the freight, and he expounds his view that that is the fairest and the most practicable method of dealing with this question. In the third place he says that there are a number of illogical provisions in the Code as it stands, and in particular he objects to the time limit for claims. He says that he has every hope that Monsieur Georges Marais, who has already presented you in one of the Preliminary Reports with a study of some magnitude, will address you upon that, and he suggests that that should stand outside of this present Code altogether. With those recommendations the matter should be sent back to a Committee in the hope that it should be presented to a Diplomatic Conference with the maximum chance of adherence.

Mr E. B. TREDWEN (*London Chamber of Commerce*).
— Sir Henry Duke, my Lords and Gentlemen. I think the work done at The Hague was one of the best things

that I have seen done in the course of my business career, because it holds forth the possibility of getting an absolute uniformity of practice with regard to Bills-of-Lading amongst all the maritime nations. Of course such an arrangement must necessarily be a matter of compromise in which none gets everything he wants, and some people have to give away a great deal that they would rather not give away. But where there is a compromise made like that, I agree with what you said, Sir, from the Chair, that we should really endeavour to carry it out, and get it universally adopted. There have been objections raised to the Rules as originally amended, and certain modifications have been agreed to at a Conference between merchants, shipowners and bankers. Those modifications I think are all in favour of the merchant, and not of the shipowner. Therefore I think that, taking it generally, merchants should be very well satisfied indeed with the amended Rules. With regard to some of the objections that have been raised as to Bills-of-Lading issued against charters, I take it that, as we no doubt shall have legislation making either the Hague Rules or something like them compulsory upon all Bills-of-Lading, then whenever a Charter party is going to be signed, which will contain the clause that the captain shall sign Bills-of-Lading as required, because even under a Charter party the shipper must usually have a Bill-of-Lading, the shipowner, knowing that whatever Bill-of-Lading he issues must be a statutable Bill-of-Lading, because then there will be a statutable Bill-of-Lading when the legislation has taken place, knows exactly what responsibility he is undertaking when he signs that Charter, the responsi-

lity to issue Bills-of-Lading in conformity with the Hague Rules. I do not think that shipowners generally object to accepting the heavier liabilities which they do under the Hague Rules, because they know exactly what their liabilities are; they know what they have to insure; and similarly the merchant who receives statutable Bills-of-Lading of this kind knows exactly what are his privileges and what are the liabilities that he has to insure against. I think that if these Rules are generally adopted voluntarily in the meantime, but subsequently by the law in this country, and I hope throughout the maritime nations, it will be an immense step forward, because then we shall know that a Bill-of-Lading, issued in **whatever** country, gives the same rights to the receiver as any other Bill-of-Lading, that there is no variation in the responsibilities of the shipowner. (*Applause.*)

THE CHAIRMAN. — A question was raised which was not discussed just now in the observations Sir Leslie Scott made. I think Sir Stephen Demetriadi is now in a position to tell the Conference what his view is as to the rather thorny topic of the necessity of including the transaction between two individuals under what one may call an old-fashioned Charter party, for want of a better term, in the restrictions of the proposed Code.

SIR STEPHEN DEMETRIADI. — Perhaps Dr Eric Jackson can answer for me.

THE CHAIRMAN. — Certainly, if Dr Eric Jackson finds it more convenient to reply, or you think so.

Dr ERIC JACKSON. — I am afraid that we feel on this side that we are in rather a difficulty at the moment in quite appreciating what we are asked to give away, or, it may not be to give away, what we are asked to agree with regard to these Charter parties or the various Bills-of-Lading that may come into existence thereunder. For myself I have not yet appreciated what is the requirement that is made against us, to exclude any Bill-of-Lading whatever, whether they come under a Charter party or not ?

THE CHAIRMAN. — I do not think it has been suggested that you should exclude any Bill-of-Lading. The question was, and I understood from a communication which had reached me, that Sir Stephen and his friends were in a position to say, whether they wanted to include Charter parties in the definition of Bills-of-Lading. That is really what it comes to.

Dr ERIC JACKSON. — I hope I made it clear that we did think the Rules were so drafted that they included every Bill-of-Lading whether issued under Charter parties or not.

THE CHAIRMAN. — I understood that was so. If there is not an understanding about it, I am not going to take up the time of the Conference in trying to elicit one.

Dr ERIC JACKSON. — At the moment there is none.

Mr LÉOPOLD DOR (France). — Mr President and Gentlemen. May I be allowed to express a regret, although

it proceeds from a feeling which is not quite in agreement with the general feeling. I understand that everyone now seems agreed about the necessity of an international convention. Well, I may express the regret that things have come to such a position that we should have the necessity of an international convention, and I want to draw your attention to the fact that it is greatly to be regretted that the Hague Rules could not come into practice in the spirit in which they were drafted and agreed to, namely, as a voluntary agreement. (*Hear, hear.*) We had there a most difficult problem : on the one hand a party, the shippers, the owners of cargo, wanted to restrict the shipowners' right to stipulate all kinds of exceptions. On the other hand the shipowners through Sir Norman Hill very eloquently pleaded the theory of freedom of contract, and we were rather proud to have achieved a solution which gave satisfaction to both, because the merchants got what they wanted, and we had at the same time preserved the freedom of contract. When you have two parties discussing between themselves through their representatives what will be the terms of a standard Bill-of-Lading, and when then those terms are freely and voluntarily incorporated by the shipowners in their Bills-of-Lading, you have freedom of contract in a more advanced stage than you had before. (*Hear, hear.*) Because the Bill-of-Lading as it was before the Hague Rules was not really freedom of contract, the shipper not being at liberty to discuss the terms of the contract with the shipowner. The position at The Hague was : — If you want real freedom of contract you must have those two parties discussing once for all the terms

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under which the goods will be carried; and then those terms will be applied in all Bills-of-Lading. It is rather disappointing therefore to find that, not only on the Continent are people clamouring for an International Convention, but that even in this country, where you have always stood for non-interference of the Legislature, you have shown us the way to State interference. I remember my learned friend Sir Norman Hill saying at The Hague : — « If you ask us to have State interference, our answer will be an emphatic « No ». I know very well that, if Sir Norman Hill has had to change his point of view, it is not because he thought that at The Hague we were wrong in the methods which we devised; it is merely that, as he explained this morning, he was driven to it by the force of circumstances and had to accept the best bargain he could get in fear of something worse being imposed upon the shipowners whom he represented. But at the same time, although you may consider it as a waste of time, and you may say : Well, why should we waste our time in regrets ? I think it is worth while to place on record that, if the methods of the Hague Rules could have been achieved in the same way as the methods of the York-Antwerp Rules were achieved, it would perhaps have been a more satisfactory thing. (*Hear, hear.*)

Now, faced as we are with that International Convention, I want to draw your attention to the position in which we find ourselves. I see details of the Hague Rules being discussed; I see this or that other point being objected to; but surely you realise that, if you are going to interfere with the Hague Rules, if you are going to

amend this point and that other point, if you are going to interfere with the Limitation clause or any other clauses, it is quite out of question that a new text with a new draft should be ready before the end of this Conference. (*Hear, hear.*) I remember that when we were at The Hague for a whole week, we had discussions the whole morning and the whole afternoon, and then the unfortunate gentlemen who were members of the small Executive Committee or the small Drafting Committee spent the rest of their spare time and their evenings till sometimes the small hours of the morning in Sir Henry Duke's Chambers. It was a whole week's work and it was possible to do it in a week only because the work had been very carefully prepared beforehand in preliminary meetings in London. Well, surely it is absolutely impossible that within a day and a half you should build a new text. Are you going to appoint a Sub-Committee : Certainly that Sub-Committee will be unable to report to you before the end of this Conference, and therefore the matter will be necessarily postponed till the next time you meet, I do not know if that is in a year, or two. Also the Sub-Committee may look into questions of drafting; but are you going to give that Sub-Committee an absolutely free hand in all the questions of principle ? I heard for instance mentioned the question of the Limitation clause. All those who were at The Hague will remember that there was a big fight over the Limitation clause. We were a whole afternoon at it, and a whole morning, and I quite agree with Sir Norman Hill that it was only through the excellent tact and diplomacy of our President who interfered at the right moment and in the right way

that all parties finally came to an agreement. But all those who were at The Hague will agree that that concession by the shipowners in respect of the £100 Limitation clause was the central point of all the discussion there; it was really the crux of the matter. Are you going lightly to interfere with that? Are you going to give power to a Sub-Committee to change that £100 per ton, either for a smaller sum or for the freight multiplied a certain number of times? Certainly if that question is interfered with there ought to be a full debate upon it, and I doubt very much that it would be profitable to start again all that discussion upon which the parties were agreed.

As to the question of drafting, certainly I should agree that the Hague Rules are not a perfect text. I may say that those who took part in the drafting were perhaps a little sore in seeing that their work was very much condemned, not only on the Continent, but in this country. When we were condemned on the Continent for bad drafting we had a ready answer: — We said: « Ah, but you expect a Continental draft; you expect a draft from the same good drafting as, for instance, our French Code, but this was done more or less by British lawyers and British shipowners and so on, and on the other side of the Channel they have an absolutely different way of drafting their Acts of Parliament, or their Rules, or their contracts ». But, when we saw that even in England our draft was very much condemned in some very high quarters, we were perhaps a little disappointed; and I may say that it was with a great feeling of satisfaction that I saw in « The Times » the letters of Sir

Stephen Demetriadi and Sir Frederick Lewis saying that they were quite satisfied with the drafting of the Hague Rules, that they knew what they meant, and it was what they wanted.

SIR STEPHEN DEMETRIADI. — The amended Hague Rules.

MR LÉOPOLD DOR. — Well, I quite agree about the amendments, but the amendments, as Sir Norman Hill said, only touch on some smaller points of detail. But we were quite pleased to see it, because, after all, shipowners and merchants are the people for whom we work, and if they are satisfied that is enough for us. But in any case the Sub-Committee may improve on that document, and I shall go further and say that, if you want an International Convention, the drafting will have to be interfered with. When you had the Hague Rules simply as Rules to be included in Bills-of-Lading, they could very well stay as they were. Such has been the fate of the York-Antwerp Rules which were also drafted upon the English methods and which have gone into all the Bills-of-Lading whether of the Continent or of England. But if you ask the various countries to sign a Diplomatic Convention surely they will say : — 'Well, this is not framed, and this is not worded in the way in which we are accustomed to frame and word Conventions which are signed by all the States of Europe or the world; and you will have therefore to come to a compromise between the English drafting of the Hague Rules as they stand, even after being

amended, and what I should call broadly the French way of drafting Codes or such Rules as these.

But I draw your attention to the point that all that you can do at present is one of two things. You may refer the Hague Rules as they stand with their amendments to the Brussels Diplomatic Conference recommending that they should form the basis of an International Convention, and leaving the learned gentlemen who will take part in that Brussels Conference to amend them or to make whatever alteration they like in the drafting. That is a possible course, but of course it means that you accept all the principles which are embodied in the Hague Rules as they stand, including the Limitation of Liability clause. Personally it is a course which I should advocate. I can assure you that it was most difficult to come to an agreement on such a thorny and difficult problem as Bills-of-Lading exceptions which for 30 years in France had been fought over by merchants and ship-owners. Many people when we started predicted that we should fail. That agreement has been obtained, and we had the vote of the Hague Rules by unanimous consent in a body in which all interests, not only lawyers, but shipowners, underwriters, bankers, merchants and Chambers of Commerce were represented. I warn you that you must think twice before touching the result of that compromise. You know what we call in France card castles, which little children build. If you touch as lightly as may be a single one of the cards which make the castle, the whole thing falls flat on the table at once. The Hague Rules are the result of very clever balancing between various and conflicting interests. They are also the result

of the most generous spirit which the shipowners showed at The Hague. On a great many points shipowners have willingly, and without even a discussion, made the most generous concessions to the shippers. They are bound by those concessions, and they stand by them. But if you touch the result of the compromise, if here and there you say : « Oh, the liability of the shipowner will be heavier » or so on, then the shipowner is entitled to say : — « Well, all right, but I am going to have the whole thing revised, and therefore those concessions which I did make in the spirit », as we should say in French « of the night of the 4th August » when our French nobility renounced their privileges, « I now take back ». If you do not choose that first course, namely to stand by the Hague Rules as they are after those few amendments, and to recommend them to the Brussels Conference, leaving it to them to improve upon the drafting, there is only one other course open to you, and that is to appoint a Sub-Committee whose work it will be to go again into the question fully and to report to you at the next Conference. That means a postponement of a year at least. It further means, throwing the whole thing into the melting pot. Personally I should say that I very much deprecate that second course, and that I feel that the whole of our work and labour at The Hague, and the excellent result of compromise at which we have arrived would be gravely imperilled if you entrusted the Committee with looking not only into the drafting of the Rules, but into the various principles involved, and therefore the whole thing was discussed again. Mind you that question of the Bills-of-Lading which is comparati-

vely new, at least in its acute stage in this country, is very old in France. For 30 years, perhaps even 40, people have been fighting over it, and it has always been said : — « What is the use of Conferences; what is the use of agreement at those Conferences; it never comes to anything ». Well, at The Hague we did come to something, and I entreat you not to postpone further the practical application of a solution which after all gives satisfaction to the principal interests concerned. Therefore, as far as I am personally concerned, and I make it quite clear that I speak here on behalf of nobody, I speak simply as one who took a small share in the drafting of the Hague Rules, I think that the only proper course would be to refer the Hague Rules, as they are after their amendment which every one accepts, to the Brussels Conference recommending that the Brussels Conference should take them as the basis for an International Convention. (*Applause.*)

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A mon avis on ne peut toucher à la rédaction existante, qui est le résultat de longs travaux et d'une transaction conclue entre des intérêts divergents, car dans ce cas, ces règles s'effondreraient complètement. Parlant en mon nom personnel, je pense que le seul moyen pratique serait de déférer les Règles ainsi élaborées à la Conférence de Bruxelles en lui recommandant de les prendre comme base d'une convention internationale.

M. FR. BERLINGIERI (Gênes). — J'ajouterai volontiers quelques mots à ce qui vient d'être dit, parce que

je ne voudrais pas que l'Association italienne de Droit Maritime eût l'air de s'abstenir sur une question aussi importante que celle dont il s'agit ici. Tous ceux qui sont intéressés dans les affaires maritimes désirent vivement que l'on puisse arriver une bonne fois à une entente sur la question si importante des « negligence clauses » pour mettre fin aux luttes et aux controverses qui durent depuis si longtemps déjà et qui se sont encore intensifiées en ces derniers temps à raison de l'accroissement énorme du tonnage des navires.

Les Règles de la Haye telles qu'elles ont été élaborées et approuvées à la Conférence de 1921 de l'International Law Association, peuvent certainement servir de base pour une entente. Mais je crois, — et c'est là aussi l'avis de l'Association italienne de Droit Maritime, dont j'ai l'honneur d'être ici le représentant, — qu'il ne suffit pas seulement d'un accord privé entre les armateurs et les chargeurs. En effet, pour résoudre les difficultés d'une façon satisfaisante, il faudrait un accord absolument général entre tous les armateurs et tous les chargeurs. Or, je crois que c'est là une chose impossible. Les armateurs qui resteraient en dehors de l'accord, se trouveraient donc dans une situation privilégiée vis-à-vis des armateurs qui auraient accepté les Règles par voie d'entente volontaire. Ils pourraient notamment, au moyen de rabais sur les taux de fret, exercer une concurrence déloyale au préjudice des armateurs qui s'engagent à observer les Règles. C'est donc bien une Convention internationale, obligeant au même titre tous les armateurs, qu'il faut souhaiter, et je crois que la question pourrait être soumise déjà à la prochaine session de la Conférence diplomatique de

Bruxelles. Je ne partage pas l'avis de mon ami M. Verneaux lorsqu'il demande que la présente Conférence nomme une sous-commission chargée d'examiner les Règles proposées et de les présenter sous la forme d'un avant-projet. Je crois que ce travail pourra être accompli tout aussi bien par la Conférence diplomatique. Il suffirait que notre Conférence ici émette le vœu que la question soit soumise et prise en considération par la Conférence de Bruxelles, et que celle-ci prenne comme base de ses études et de ses travaux les Règles de la Haye. Certes, Messieurs, nous ne pouvons nous dissimuler que ces règles ont besoin de quelques améliorations et modifications. Ainsi, dans le projet présenté à la Conférence, j'ai remarqué que l'on a prolongé la période de prescription jusqu'à deux années. Je trouve pour ma part que cela est énorme. En Italie, la jurisprudence est orientée dans le sens d'une diminution et je pense qu'une prescription d'une année suffit, comme cela est prévu dans les Règles de la Haye. Je trouve qu'à l'article 5, — qui vise les documents non négociables — on a eu plus d'égard pour les intérêts des banquiers que pour ceux de la navigation; car il y est dit que les parties peuvent exonérer l'armateur de la responsabilité concernant même la navigabilité du navire. Or, à mon avis, la question de navigabilité est d'ordre public et intéresse la collectivité et, comme il est dit dans le Harter Act, aucun document, aucun accord ne peut exonérer l'armateur de l'obligation de présenter un navire en bon état de navigabilité à tous les points de vue. En pareille question, les intérêts des parties doivent être mis de côté, car ils sont primés par l'intérêt général. J'admets qu'on puisse exonérer

l'armateur pour tout ce qui a trait à la cargaison, à l'arrimage etc., car ce sont là des intérêts privés; mais lorsqu'il s'agit de la navigabilité du navire, c'est une question d'intérêt public qui concerne la collectivité et en pareil cas, une exonération n'est pas admissible.

Je me résume car je ne veux pas entrer pour le moment dans d'autres détails, qui pourront être discutés en leur temps. Aujourd'hui, notre Conférence ne devrait pas entrer dans le fond des Règles telles qu'elles ont été élaborées et approuvées à la Conférence de la Haye; notre Conférence actuelle devrait simplement émettre le vœu que la prochaine Conférence diplomatique, qui va se réunir à Bruxelles ce mois-ci, prenne en considération la question des « Negligence Clauses » et nomme elle-même une sous-commission chargée de faire l'étude de la question et de préparer un avant-projet de convention internationale sur la base des Règles de la Haye. (*Applaudissements.*)

(Verbal translation by Mr Langton).

Signor Berlingieri says that he willingly agrees to address the Conference on a matter which he conceives to be of the very greatest importance. Everyone in Italy desires to put an end to the struggle which has gone on between shipowners and merchants. In his view the Rules of The Hague, as elaborated and improved may well serve as the basis for an entente; but neither he nor the Association which he has the honour to represent think that the voluntary agreement at present arrived at between owners and merchants is sufficiently comprehensive. Unless it be complete — excluding any possible outsiders — he sees dangers ahead in the application of those Rules. Other merchants might arise who were discontented, who might make agreements between themselves outside of the Rules and which would be to the detriment of those parties who were observing the Rules. He regrets that he cannot agree with Monsieur Verneaux on the course to be adopted at the present moment. He does not think that the work which has to be done upon the Rules as they stand is a

work which could be adequately performed by any Sub-Committee. On the other hand he thinks that the Diplomatic Conference might well take for a basis, in considering this question, the Rules as they are and as they have been elaborated at The Hague, and the Studies and Reports of the International Maritime Committee. He thinks that with that material before them the Diplomatic Conference might well arrive at a solution of this question. He takes one or two instances, and particularly Article V «Special Conditions», and he points out that there the merchant is getting something less than he got before, because it seems to enable the shipowner to contract out of even unseaworthiness, which under many systems he could not do at the present day; and he again renews his suggestion that the proper procedure at the present moment would not be to go to a Committee, but to leave these matters to the Diplomatic Conference at Brussels with the materials as they are at present.

Mr NOBORU OHTANI (Japan). — Mr Chairman. What I am going to say is principally on behalf of the Japanese Shipowners Association. Since the Hague Rules came out they have been taken up for discussion in the Japanese Shipowners Association, the Chambers of Commerce, Trade Associations, and Lawyers and various Societies who have paid a great amount of attention to the Rules, but as far as I can see they have not come to any unanimous conclusion. The only definite views that I can put before you are those of the Japanese Shipowners Association. The Japanese Shipowners Association is composed of about seventy persons. They are generally in favour of these Rules but upon some points they have some slightly different views. When the Rules were before the International Conference of Shipowners in London last December, at which I had the pleasure of being present, I made certain reservations in respect of the minimum amount of the shipowners' liability, which is fixed at £ 100. From various gentlemen here I understand that this was a very knotty problem at The Hague. The

Japanese shipowners are still of the opinion that this amount is too high. It is because the cargoes moving in the Eastern ports are not like those shipped from European or American ports. They are usually of a rough character such as agricultural products, or marine products, and in most cases, the value per unit does not come up so high as £ 100.

Another point which I have to refer to is that recently I received a communication from Japan in respect of the cases where the receivers do not take proper steps to take delivery of the goods. Under the Hague Rules I do not find any provision for such cases. One might say that it can be stipulated for in one of the clauses of the Bill-of-Lading; but if the Hague Rules are going to define the more important points this also ought to be stipulated for. At a later stage I am going to make certain proposals about that. With these remarks I am in favour of these Rules being put in the hands of the Special Committee as suggested by some other gentlemen. (*Applause.*)

THE CHAIRMAN. — Mr Petrie, the Assistant Secretary of the International Law Association, will make a statement with regard to a Resolution adopted at the recent Conference of the International Law Association at Buenos-Aires.

MR JAMES PETRIE. — Mr Chairman and Gentlemen. I think this is a fitting moment just to mention something which was observed at Buenos-Aires. It is a matter of another lacuna, something missing, in the Hague Rules.

The gentleman who spoke last has pointed out one lacuna, and the Argentine people, who are very interested in the Hague Rules and approve of them in substance, made one reservation, and that was that the Hague Rules did not contain any proviso as to jurisdiction. The Argentines passed a Resolution to the effect that they desired the International Law Association to recommend to the International Shipping Conference and to the Chamber of Shipping of the United Kingdom the following measure. That all disputes relative to the discharge of cargo should be settled at the port of destination, and by the Courts of the country of destination. You will easily see that this motion, coming from Argentine where it is notorious, be it said with great diffidence, that justice is very slow, and where their procedure does not at all accord with ours in so far as it is all in writing, and oral proceedings hardly exist at all, met, on the part of the British delegates and other European delegates, with a great deal of opposition; because, first of all we did not agree to the motion that disputes relative to discharge should be settled at the port of destination for very good reasons, not because we want them always settled in England, but because there are countries where we would rather not have them settled; and, secondly, the International Law Association, at least its British members, realised that it was not the business of an Association of lawyers to make such a recommendation, or indeed to make any recommendation to business men as to how they should carry on their business; and Mr Robert Temperley (who I regret is not here, being detained at Buenos-Aires) suggested something else : He suggested that we should

just say that the Association were of opinion that that question of jurisdiction, which is not included in the present draft of the Hague Rules, should receive the consideration of competent bodies like the Comité Maritime International.

THE CHAIRMAN. — Now I call upon His Excellency Monsieur Franck, the President of the Committee.

MR LOUIS FRANCK. — My Lords and Gentlemen. It seems to me that, in the words of one of the heroes of Shakespeare, the time for contention has gone, and the time for decision is arriving. To do my small part in this direction I would like, first, to point out on what matters it seems to me we are practically agreed, and then on what matters I feel some difference of opinion, and possibly suggest what might be the way out of this discrepancy of views.

On what are we agreed ? I think practically we are all agreed that, if we want this long outstanding and vexed question of negligence clauses in the Bills-of-Lading to be finally solved and cleared up, we must have an International Convention. As a matter of theory I quite agree with what has fallen from Dr Dor : it would be much better to leave all that to the free decision and the free bargaining between the parties. But it is no use opposing theory to hard facts. If you try to do it the facts are not disturbed thereby, and they remain what they are. Now, what are the facts ? They are, that there is such a thing as the Harter Act in the United States, and the States do not intend to go back on the Harter Act; that there

are such laws as the Canadian law, the Australian law, and I think also a New Zealand Act, and I do not think any of those powerful Dominions are willing to go back on that legislation. The facts are that, if I am well informed, the British Government has given in some form a pledge to the Government of the Dominions at a Conference in London that Imperial legislation should be passed on the same subject. I further understand that in some Continental countries legislation is contemplated.

My Lords and Gentlemen; these being the facts you have only to choose between two solutions : either you will allow these various legislations to go on, and then the result will be that you will have a discrepancy of systems as to negligence clauses, but the freedom of contract will be gone; or you will try to have an International Convention, and then at least the shipowners and cargo owners will know where they are, and you will have your ships and your cargoes finding everywhere, in all ports, and on all seas, a clear, intelligible and fair legislative system which will be uniform everywhere.

Mr President, I think we might have an endless discussion about what would be the best form of a new law. To my mind the first quality of whatever new system of law will be that it be the same everywhere (*hear, hear*); because if it is the same everywhere after all it will not be such a burden on the shipowners; competition will be on equal terms, and economic conditions will work out who is in the long run going to pay for the increased liability of the shipowner. (*Hear, hear.*) It may be that this new system of law, the system of limiting the negligence clauses, which is after all only

a return to the common law as it stood before, will in practice work out to the benefit of everyone, that more care will be taken of cargoes, that some sort of freights will no longer be possible, and that every one in the commercial community will be benefited by it. It may be also that this new system may mean a heavier burden on the shipowners. I am full of admiration for the generous nature of my friends the shipowners; but surely, if you put a big additional burden on them, I would not like cargo owners to live under a delusion, because surely they will in the long run pay for it. (*Hear, hear! and laughter.*) So that there is only one system, it is the system that we make this new law by convention between all the seafaring and commercial nations. That is a point on which it seems to me that we are all agreed, and if we are it is a great matter.

If we are agreed that there should be a Convention, what is to be the basis, the substance, of this Convention? In his most clear, eloquent and valuable address this morning Mr Justice Hough put the matter in a nutshell. He said : « We ought to agree in substance on the Hague Rules. » I entirely concur with him. My Lords and Gentlemen, years and years have gone by in the discussion of a system of common law, or International law, on these matters of the negligence clause. Shipowners were on one side, cargo owners on the other, and they did not agree. At present they have agreed. I do not think that the shipowners have always agreed with their own free will, but they have agreed. They have made a bargain and they say that they wish to stick to the bargain. I have read these Hague Rules, and they seem to me to be a

very fair settlement of the question. I can naturally imagine that you can make them more perfect. That may be, but perfection is the enemy of good things. Why are you going to change the result of a drafting to which the principal parties are agreed, and which has only been reached after such careful and laborious efforts ?

I have listened with very much attention to suggestions made. Let us take some of them. One of our friends from Denmark said that the Rules as they stand do not entirely suit the position of the tramp steamers, and put to the meeting especially the example of the difficulty of questions of weight, of measure, and so on. These questions were formerly covered by the clauses : « Weight unknown » ; « number unknown » ; « value unknown » ; « condition unknown » ; and so on. My Lords and Gentlemen, surely, if, instead of Rules which are optional, these Rules are going to be the common law of the world, we must be careful that the interests of such an important trade as that of the tramp steamers be not sacrificed. (*Hear, hear.*) Nobody I think is wishing for that. How are you going to do that ? Is it possible to leave the tramp steamers out ? It is impossible, my Lords and Gentlemen. You and I perhaps — you more than I — in a given instance know what is a tramp steamer, and what is a liner ; but to put in the law that tramp steamers will be under one system of law, and liners under another is impossible. It is impossible to draw the line somewhere between the two, (*hear, hear,*) and you will only favour those who will not be men of good faith in that bargain, and according to their interests they will parade as tramp steamers or as liners.

It is no use trying that. You must, if you want a uniform law, have it for everyone; but you must take into consideration the commercial necessities of the sort of trade, and, if really the people who are always shipping bulk cargoes, such as props, do not want these provisions, well, it is very easy to find a form which will suit them both, I do not think the alterations in the text will be very great. So that I think the difficulties of our friends the tramp steamers must be met, but it seems impossible that we can do that to-day here.

Then it has been said that you ought to replace the limit of £ 100 as the limit of liability per parcel by a multiple of the freight. Does that really matter very much ? I do not think so. I think that the maximum of £ 100 has at least one great advantage. You can insure your shipowners against this risk and in every insurance in a mutual club and elsewhere it is a great bounty to the insurer if he knows that there is a limit. In any case, if our British friends the liners can afford to accept the £ 100 limit, I suppose the Continental liners can do so also. It is a small matter; we ought not to go back on that.

Then I hear that it has been suggested that we should increase the burden of the proposed Convention and of the Rules and include such matters as jurisdiction in it. I would be very happy if conflicts of law as to jurisdiction were out of the world. When I was still at the Bar I did not like them. It may be an abundant source of litigation, but really it is not business. But surely this is not a system or a problem which only arises about the negligence clauses and we cannot bring it in here.

Then it was said that we ought to bring Charter Parties

in, and that if you make a law of contracting oneself out of the liabilities for the negligence of one's servants in the case of the Bill-of-Lading you might do it in the case of the Charter Party. Well, my Lords and Gentlemen, if, in this difficult matter of creating a new law of the seas which will be uniform all over the world, we are not going to look to the practical side of things, but are going in for academical perfection, we shall do nothing at all. The problem has arisen with regard to the Bills-of-Lading. Let us try to solve the problem where the difficulty is, and, when it shall have been proved that on the matter of Bills-of-Lading the law which we have carried and rendered applicable everywhere is a good one, if there are difficulties with regard to Charter Parties, we will deal with them. But I am strongly of opinion that, if you make a law for a Bill-of-Lading, it should be made for all Bills-of-Lading. More difficult is the question when there is a Bill-of-Lading. As a matter of theory it may be a very interesting question, but I might say that, except for such people who charter ships only for their own private use, in every case where there is a Charter Party you want a Bill-of-Lading, and every merchant, every trading concern, will want a Bill-of-Lading, because, even if to-day he is sure that he will not want to go to his banker within three months or six months when the ship will arrive, in the meantime he will not deprive himself of the possibility of obtaining credit, and so he will want a negotiable instrument. (*Hear, hear.*) So we must take the matter broadly as it is. If this law is to be good for one set of Bill-of-Lading, it must be good for all sets of Bills-of-Lading, always pro-

vided that we meet the difficulty which has been put by our friends from Denmark.

Therefore my opinion is that we ought to do what His Honour Judge Hough suggested to us: We ought to say that we approve in substance the Rules as they were proposed at The Hague including the draft which has been passed or arranged here in London.

Then comes another question. Are we going to exclude any revision of the drafting or some minor changes on this question of « weight unknown » in order to meet the case of the tramp steamers? I do not think so, and I may say why I do not think so. I think that if you go to the Governments and if you wish to have this matter brought before the Diplomatic Conference you must put your proposal into a proper form. You cannot really expect that the Governments are going to send diplomats to Brussels if you yourself say: « We know that this draft of ours is not put in a form which is really a good one; it is not so good as we can make it and we expect you to do our work ». That would not be the system. That may be very convenient for this meeting and leave everyone to go home and say the matter is settled and we may be happy; but certainly it would not commend the matter to the Governments. But, I am quite agreed with what has fallen from Sir Norman Hill, it must be understood that a drafting committee of that sort should not have power to change the principles — (*Hear, hear*) — and, if it should happen, upon looking into the matter, that, on an important point, a really important point, some change appears necessary, it should not be within the power of the drafting committee to decide that.

Therefore the drafting committee should remain under the control of the Permanent Bureau, and I for my part, speaking in the name of the Permanent Bureau, will gladly undertake that, if any change of such importance should appear or be recommended by the committee, I would not hesitate to refer the matter back to a plenary meeting of the Conference — (*Hear, hear*) — but I am quite convinced that that will not be the difficulty. I do not know whether you have followed what I was saying. I think it is necessary from a matter of policy that we should appoint a drafting committee on this matter to revise the minor difficulties which there may be, and to look into the question of the position of the tramp steamers which is interesting and which does not seem to be insoluble, but it must be clearly understood that this drafting committee will not have the power to change the substance of the Rules, and the Permanent Bureau will give you the guarantee that it will look after that. But, my Lords and Gentlemen, let me call your attention to this, that it is absolutely necessary to scrutinise very carefully the drafting of a Convention of this sort when once you want to make it a general law. And what is the reason for that? This general law, this International Convention, will settle the principles as to the carriage of goods by sea; and, if a given case comes before the Court under this Convention, the Court is going to apply naturally the Convention on the matters which come within the limits of the Convention; but behind the Convention, above the Convention, as the great source out of which the construction and application of the Convention will finally be influenced, there is the common law of the

land. Let me give you an instance. I remember a case where a fire in a cargo of cotton had broken out on the quays of Antwerp after the cotton had been discharged from a steamer which had loaded it in the States. The Harter Act Clause was in the Bill-of-Lading. The shipowner said : If you combine the Harter Act and the common law in America I am entirely protected against any liability for fire on the quay, because fire in America, I think, *prima facie* is considered as a case of *force majeure*, at least as an accident which would not be by itself within the liabilities of the shipowner. But the common law in Belgium is quite different. Under the common law in Belgium as long as a given object, a cargo for instance, is within your possession, you being a shipowner, if fire breaks out, it is on you that lies the burden to prove that that fire was caused by *force majeure*, by a fortuitous accident, or without your own fault or the fault of your servants; and, as in that matter, as in many other cases, the real cause of the fire was not known, what was the result ? Under the American law the shipowner got off free; because there was no right of action against him either under the Harter Act or under the common law of the States; but in Belgium he was liable under the common law, and as there was no special clause as to that in the Harter Act he got a decision against him. Well, my Lords and Gentlemen, this proves — it is only an instance — how important it is that if you have to apply these Rules as a basis of a general Convention in matters of that sort, a drafting committee should look very carefully into this, but it must be well understood

that the limit of the jurisdiction of this drafting committee will be circumscribed by the Rules themselves.

Well, my Lords and Gentlemen, so we have arrived at these two conclusions. First, we are agreed on the necessity of an International Convention; secondly, I think we must stick to the Rules in substance as they are. What have we therefore to do? I think we ought to express our views on these two points, and beyond that we ought to appoint a drafting committee who will put these Rules in a proper form to be sent to the Diplomatic Conference and then take as rapidly as possible any necessary measures so that the Diplomatic Conference may take this matter up.

Sir Stephen Demetriadi objected, I think, to a certain number of Articles which have been inserted in a draft Treaty. I am quite prepared to drop these Articles and not to ask you to carry any vote as to that. Surely if we go to the Diplomatic Conference just as if we go to the Governments and the Parliaments, we cannot have here the pretension of dictating laws to them, but I think we must not give them weapons against our own interest. We must not tell them beforehand that if they do these things in two or three years we will be satisfied. Let us tell them that we are agreed on the Hague Rules; that we want them to pass an International Convention at the earliest possible time, and that will be all that we can do.

I would therefore suggest that we might arrive at a resolution in three points to the following effect: « 1) This Conference agrees in substance with the principles which constitute the basis of the Hague Rules and regards

these Rules as affording a solution alike practical and fair of the problem of clauses in Bills-of-Lading excepting or limiting the liabilities of the shipowner. 2) It is unanimously of opinion that it is only by an International Convention that it is possible to reach a general solution of the problem and of the serious conflicts of law which it raises. 3) It expresses the wish that through the Permanent Bureau a special Commission may be appointed which shall in co-operation with the Bureau prepare the draft of a Convention on these lines and on this footing, and that all necessary steps may be taken to ensure that the subject may be brought to the notice of the Diplomatic Conference at the earliest possible time ». I would not ask you to vote on this to-day, but I would like you to consider it and to see whether it is not going to afford a good solution of this most interesting debate. I may say that if we arrive at a solution of that sort we shall not have lost our time and we may, in my opinion, have rendered a considerable service to shipowners and cargo owners, and to the commerce of the world. (*Applause.*)

* * *

Il me semble, pour résumer la discussion, que nous pouvons nous demander :

1°) sur quelles questions sommes-nous pratiquement d'accord ?

2°) sur quelles questions y a-t-il divergence d'opinion et comment en sortir ?

Nous sommes d'accord que pour régler cette question des « Negligence clauses » dans les Connaissements, il

faut une convention internationale. Théoriquement, je suis d'accord avec M. Dor qu'il vaudrait mieux laisser tout cela à la libre décision des parties. Mais il ne sert à rien d'opposer la théorie aux faits. Or, les faits sont : qu'il y a un Harter Act aux Etats-Unis et que les Américains ne songent pas un instant à y renoncer; qu'il y a de même une loi canadienne, une loi australienne, un New-Zealand Act. En outre le Gouvernement britannique a donné aux gouvernements des Dominions l'assurance qu'une législation impériale sera prochainement votée sur le même objet. Il est un fait aussi que dans certains pays continentaux, on s'occupe d'établir une législation en la matière. Nous n'avons donc plus qu'à choisir entre deux solutions : Ou bien permettre que dans les divers pays des lois différentes s'établissent, avec ce résultat que nous aurons ainsi bientôt une véritable mosaïque de dispositions sur les clauses d'exonération. Mais même dans ce cas, la liberté de contrat aura disparu. Ou bien, on établira une législation internationale et dans ce cas, on saura tout au moins où l'on en est. Tous les navires, dans tous les ports et sur toutes les mers seront soumis à un système législatif clair, net et juste. Nous pouvons avoir des discussions sans fin sur les qualités des Règles qui nous sont proposées en ce moment; mais à mon avis, la première qualité d'une pareille loi, c'est qu'elle soit la même partout. Dans ce cas aussi, elle ne pourra constituer un fardeau trop lourd pour l'armateur, puisque la concurrence se fera aux mêmes conditions pour tout le monde. Peut-être que ce nouveau système de loi, — qui est après tout un retour vers le droit commun antérieur, — donnera en pratique des résultats favorables pour tout

le monde. Il aura pour effet de ne plus rendre les fraudes possibles et cela sera évidemment un avantage énorme pour le monde des affaires en général. Peut-être aussi constituera-t-il un nouveau fardeau pour les armateurs; mais dans ce cas, comme il y aura égalité, les propriétaires de cargaisons finiront par payer. Donc, il faut une convention entre tous les pays maritimes, — tout le monde est d'accord là-dessus.

Seconde question : S'il faut une convention, que doit-elle être en substance ? Dans son discours si clair, M. le Juge Hough l'a bien dit, et je suis d'accord avec lui. Des années se sont passées à discuter un système de droit commun ou de loi nationale sur cette question de clauses d'exonération; d'une part les armateurs et d'autre part les chargeurs ont discuté à perte de vue, sans jamais se mettre d'accord. Aujourd'hui, ils se sont mis d'accord. J'ai lu les Règles de la Haye; elles me semblent arrangées de manière très juste; je puis bien m'imaginer que vous essayiez de les rendre plus parfaites; mais la perfection est quelquefois l'ennemi du bien.

Quelles sont les critiques qu'on a relevées contre ces règles ? Nos amis du Danemark ont dit que ces règles ne représentent pas bien la situation des « tramp steamers » et ils ont donné comme exemple les difficultés qui peuvent se présenter pour les questions de mesure, de poids etc. Evidemment on ne peut laisser ces navires hors de la loi ; on ne peut établir dans une loi une distinction entre navires « tramps » et ceux qui ne le sont pas; mais on peut prendre en considération les nécessités de chaque commerce spécial. La différence dans

le texte ne serait pas énorme; mais il est impossible de faire cela ici aujourd'hui.

Puis on a dit qu'on devrait remplacer la limite de £ 100 (limite de responsabilité par colis) par un multiple du fret. Cela a-t-il réellement beaucoup d'importance? Le maximum de £ 100 représente un grand avantage et puis, vous pouvez assurer ce risque.

On a aussi fait valoir qu'il faudrait comprendre dans le traité la question de compétence. Je serais heureux quant à moi de voir mettre fin aux discussions sur la compétence, mais je crains bien que nous devrions attendre longtemps pour cela.

On a soulevé de même la question de savoir quand il y a un connaissance. Théoriquement, cela peut être très intéressant, mais pratiquement on peut dire que dans presque tous les cas où il y a une charte partie, il y a un connaissance. Cela devra être un instrument négociable.

Nous devons donc dire qu'en substance, nous approuvons les Règles telles qu'elles ont été votées par les intéressés. Allons-nous exclure toute revision de rédaction ou les petites modifications sur les questions de « poids inconnu », ou sur les conventions des « tramps » etc.? Je ne le pense pas car si nous demandons aux gouvernements de porter la question devant la conférence diplomatique, nous devons au moins présenter notre proposition dans une forme convenable. Or, vous ne pouvez croire que les gouvernements enverraient des délégués à Bruxelles si vous leur dites : Nous savons bien que notre projet n'est pas bon, qu'il a besoin d'être amélioré; mais examinez-le quand même.

Mais il doit être entendu que le Comité de rédaction

n'aura pas pouvoir de modifier les principes exprimés dans les Règles.

Permettez-moi de vous rappeler qu'il est nécessaire de scruter avec soin la rédaction d'une convention internationale si vous voulez en faire une loi générale.

En conclusion donc :

1) Nous sommes d'accord sur la nécessité d'une convention internationale;

2) Nous devons nous en tenir aux règles comme elles sont présentées en ce moment.

Voilà l'avis que nous devons exprimer et nous devons ensuite nommer un Comité de rédaction pour reviser le texte.

SIR STEPHEN DEMETRIADI. — Might I ask Mons. Franck whether he would be prepared to accept a fourth resolution somewhat on these lines : « That this Committee recommends the Rules for the Carriage of Goods by Sea as approved by this Conference for adoption by all nations and urges the various Governments individually to give them legislative sanction forthwith ».

Mr LOUIS FRANCK. — May I just point out that it appears to me to be necessary to make a distinction in my answer. As to the first part of your resolution it only differs from mine because you mention not only the Hague Rules but the amended Rules as to the law of carriage by sea.

SIR STEPHEN DEMETRIADI. — Yes.

Mr LOUIS FRANCK. — I do not object to adding the

amended Rules as to the law of carriage by sea to my resolution.

SIR STEPHEN DEMETRIADI. — Thank you.

MR LOUIS FRANCK. — But the second part of your resolution does not appeal to me. You suggest that the individual States and Governments may take legislative measures in their own countries. I think that is landing us in a hopeless position. Fortunately for you, Sir Stephen, I do not think you are in Parliament. I have been since 16 years. If you want to go to Parliament with a Bill of that sort, what will happen? Parliaments in all countries have so many irons in the fire that within a distance of ten years you will not get your Bill through.

MR ALBERT LE JEUNE. — Or 50 years.

MR LOUIS FRANCK. — It may be 50 years, and the reason is very simple. A Bill on maritime law does not carry very great weight with public opinion, and there are so many questions of paramount importance which carry great weight with public opinion that they take precedence. No Government will fight you, but you will never get in a good place on the agenda of any sitting of Parliament, and when the bell rings for the closure your Bill will not come on. That is our experience; and that is, Sir Stephen, I may confess it, up to the present what we have gone through and that system is working. That has been the main reason why we have had recourse to the system of International Convention and the success of the International Maritime Committee lies there

and nowhere else. An International Convention can be deliberated by men who know the matter, men of commerce, men of practice. It is then examined by diplomats, it is trashed out and prepared and put in as perfect a form as possible, and when it comes before Parliaments it is a matter agreed on by 20 or 25 nations and the Government says : « You ought to authorize me to this convention; there is no amendment possible »; and that is the way of getting it through. If, on the contrary, your view is adopted, you will lose an enormous amount of time and then you will get a varying system of law in every country. You can always find a man who will think that he is very competent in maritime matters and who will prove that you must alter this or that clause; and, instead of having what you want, a uniform Bill-of-Lading, which will be like a Bill-of-Exchange and pass all over the world and be accepted everywhere, putting all cargo owners and all shipowners on the same footing, you will have an endless system of divergencies. So that I would accept the substance of your first part, but I could not agree to the second part.

THE CHAIRMAN. — If I might ask Sir Stephen, I am not sure whether His Excellency and Sir Stephen were speaking upon quite the same point. I gather that what Sir Stephen desires is that the Conference should request of the nations of the commercial world that they would at the earliest possible time give effect to any Convention which may be arrived at. That is what I understood. Was that it ?

SIR STEPHEN DEMETRIADI. — Not quite that, Mr Chairman. If there could be some indication as to when the Diplomatic Conference was to take place that might be helpful from my point of view.

SIR LESLIE SCOTT. — May I intervene with one word, Mr President ? I understand that the Diplomatic Conference begins next Tuesday, and a good many of the official representatives of the different nations who will attend that Conference in Brussels are present here to-day. I have the honour to be one of them. Should it be found possible to bring the results of this Conference before the Diplomatic Conference, there should be very little delay in arriving at a result. I understood Sir Stephen Demetriadi as expressing the wish that this Conference should record its wish that, if the Diplomatic Conference does arrive, as we should hope in that event, at an agreement, it should recommend immediate legislation by the different nations to carry it out.

SIR STEPHEN DEMETRIADI. — That is quite correct.

THE CHAIRMAN. — That is what I said.

SIR LESLIE SCOTT. — If that is so, I think our President of the Comité Maritime International would entirely agree with that view.

SIR STEPHEN DEMETRIADI. — I should like to add that. if it does not arrive at an agreement, the British Government is pledged this year to immediate legislation.

SIR LESLIE SCOTT. — I say nothing about that.

THE CHAIRMAN. — The Solicitor-General, of course, cannot discuss that topic. But let me supplement what was said by His Excellency the President. I served in the Legislature of this country during most of the time from 1900 to well on in 1918, and I say this : The decision as to what legislation will pass through Parliament in commercial matters does not rest with the Government. A Government may do its best, but if you have a contentious commercial matter in which business men are at variance and they occupy the time of Parliament at such length as they see fit, I have not known a Government which would take up a measure of a commercial class in which popular feeling did not attend the discussions and make it a question of confidence in the Legislature. My experience has been what Mr Louis Franck's has been, that, if you get an agreed Bill, it can be passed; if you get a Bill agreed by a Convention it is something like a point of honour to pass it. If you cannot get a Bill agreed by a Convention then your resource will be to go back where the Hague Rules place you and where men of standing in business interests had pledged themselves pending legislation, at any rate, to conform to regulations which they regarded as just. The Conference I am sure will indulge me in making those observations.

There are two speakers who have said to me that they have brief observations to offer, and if it is the will of the Conference I think I would call upon them this afternoon, because it is obvious that to-morrow morning the proposal which has been made by Mr Louis Franck

will need consideration in itself. I had the name of Dr Kiep of Berlin.

Dr LEISLER KIEP. — Mr Chairman and Gentlemen. I would hardly venture to speak after the eloquent address given by his Excellency the President, and I would not do so if what I was going to say was not absolutely on the same lines as what the President of the Comité Maritime International, Mr Louis Franck, said. I would like to make a brief statement on behalf of the German branch of the Comité Maritime International. I would like to say that the Hague Rules came to the notice of the German branch only last November, but the German branch came to the conclusion that the German shipowners might introduce these Rules in practice and gather experience with them. The Hague Rules which we have here before us to-day have numerous amendments, and they became known to the German branch so late that a thorough discussion was impossible. We are of the opinion, however, in Germany that, if British commerce can be carried on under these rules for shipping and these conditions for shipping, German commerce and shipping should accept them too. Germany's position is in so far more difficult as the Hague Rules are based on Anglo-American conceptions and cannot so easily be transferred into German law which differs in many points and gives special importance to the Bill-of-Lading with reference to the binding effect of the wording of the document, and also to the transfer of the rights with reference to the goods carried — an importance and meaning much more far reaching than the acknowledgment as *prima facie*

evidence as expressed in the Hague Rules, Article III, Nr 4. For this reason the German branch, willing as it is to accept the Hague Rules, would think it desirable to have the opportunity of first thoroughly discussing and examining the draft.

I had several questions which I was requested to answer, but most of them have all been already explained through Sir Norman Hill so that I do not need to say anything more about them, except one, and that is the change in Article I (e) where the word « unloaded » has been changed into « delivered ». In Article III (2) the wording is « unload and deliver » so that it would seem that there is a difference between those two words « unloaded » and « delivered », and that seems to be something which is not quite clear, because « delivered » at any rate in German means something quite different from « unloaded ». Then there are a lot of other points which particular German shipowners are not exactly delighted about. We heard that the £ 100 per package was only a small item; in Marks it is over one million, but we are not to make any point of this. But I would like to declare on behalf of the German branch and of the German shipowners and underwriters that we are willing to line up and assist in any arrangement which will arrive at an international agreement about the matters under concern here. (*Applause.*)

THE CHAIRMAN. — I propose next to call upon Dr Bagge, but before I do that I think Mr Paine is able to say something which may help us a little further forward.

MR W. W. PAINE. — Mr Chairman. I am sorry for intruding upon the Conference again but one wants to be helpful if it is possible. The learned Solicitor-General has told us that it is up to this Conference to settle one question, and that question we have not yet settled. I must remind you of hard facts, to come back to that. We have to settle whether these Rules are to apply not only to Bills-of-Lading which is their primary scope and object, but to Charter parties. I think the learned Solicitor-General has also explained to us that if we are going to apply them to Charter parties that will involve an alteration of the law, that is to say, that the Charter party will have to be superseded by the Bill-of-Lading. Having listened very carefully to all the arguments that have been addressed to the Conference on this side, I remain, as I said in my original speech, of the opinion, and I think we are all agreed upon this, that these Rules must apply to every negotiable document in the shape of a Bill-of-Lading that is issued. We cannot have two forms of Bills-of-Lading. But I still remain of opinion that, where no Bill-of-Lading is going to be issued except possibly a thing which may call itself a Bill-of-Lading for the purpose of Customs, and things of that sort, where no Bill-of-Lading in the ordinary sense of the word, no document which it is intended to negotiate, is going to be issued at all, the parties should be left free to make their own bargain under a Charter party and we are not concerned with that. (*Hear, hear.*) That is my view. That can be readily carried out by a very slight amendment of Article VI. I will read it from the beginning, putting in the words which I think would carry out the

object that one has in view : « Notwithstanding the provisions of the preceding Articles a carrier, master, or agent of the carrier and a shipper shall » — now come the interpolated words — « in regard to *shipments carried under a Charter party and also in regard, subject as hereinafter provided, to the shipment* of any particular goods be at liberty to enter into any agreement » etc. Now, bear in mind that that Article goes on to provide, and these words will govern both of the cases that I have named, that in any such case no Bill-of-Lading either can have been or shall be issued in connection with that shipment. So that you have got the absolute protection in that case; but you have to rely upon your Charter party only and issue no Bill-of-Lading, otherwise the Rules prevail. I do not know whether anybody, having heard that explanation, would be prepared to recommend that amendment to the Conference, but I am rather hopeful that it may settle this question which the Solicitor-General has told us we must settle if we are going to make this Conference effective either to-night or to-morrow.

THE CHAIRMAN. — I take it that what Mr Paine desires to ascertain is whether in the interested quarters there is concurrence in some such modification as he has mentioned; because, so far as the mode of carrying an arrangement of that kind into effect is concerned, I rather gathered that the Conference as a whole shared the view of His Excellency that it would be better to reserve questions of language to be dealt with by a committee and to determine the principle if it could be

determined. I do not know if either Sir Stephen Demetriadi or Dr Jackson can say anything to us on this topic.

SIR STEPHEN DEMETRIADI. — Mr Chairman, we do not agree to the amendment that has been put forward by Mr Paine. We will consider this point and see whether we can be helpful in making some suggestion if not upon that Article, or some other Article which will cover the same point.

THE CHAIRMAN. — Then perhaps to-morrow upon consideration I dare say Sir Stephen will be able to give us some information.

Mr NORMAN B. BEECHER (U. S. A.). — May I ask one question upon one point for consideration ?

THE CHAIRMAN. — Yes.

Mr NORMAN B. BEECHER. — What is understood in the proposed alteration or amendment of the Rules to be the definition of the term « Charter Party »? In other words, are we referring to a Charter Party of the entire cargo carrying capacity of the ship, or may we have a Charter Party for a small shipment of goods and then by the device of having a Charter Party issue any Bill-of-Lading thereunder free from any of the restrictions of the Rules ?

THE CHAIRMAN. — That, I think, is a question which ought to be considered. Devices as Mr Beecher I think most properly described that procedure to which he referred, I am sure, are not in favour. It is plain dealing that is in favour, (*Hear, hear*), and I am sure that will

be considered. Now I will call upon Dr Bagge to address you. I gather that his observations are few, and I thought it would be convenient that you should hear him this afternoon.

Dr ALGOT BAGGE (Sweden). — Mr Chairman and Gentlemen. I would only say that the Delegates for Sweden quite agree with what the representative for Denmark has said this morning about the difficulty of accepting the conception of the Bill-of-Lading of the Hague Rules as part of the maritime laws of the northern countries. I want to say that because if we are going to work for the resolution proposed by Mr Louis Franck we shall not be bound by that at the coming Diplomatic Conference. Of course, there are minor things which seem to us doubtful but I will not discuss them now at this time of the day.

THE CHAIRMAN. — Thank you, Dr Bagge. On the question of procedure yesterday we appointed a committee or Sous-Commission to deal with the question of Immunity. That body met last night and this morning and has agreed upon its conclusions. I am not sure whether they have been circulated. They are very concise. They seem to me to be quite upon the lines of what I gathered to be the sense of the Conference yesterday, and, as it is desirable that we should deal with the whole of our business, I venture to suggest to the Conference that to-morrow morning at 10 o'clock the Report of the Committee on Immunity should be read and a decision taken upon it. Is that the pleasure of the Conference ?
(Agreed.)

THE CHAIRMAN. — Very good; I do not anticipate that that can be a prolonged business and when that is concluded we shall be able to return to this subject of Rules relating to Bills-of-Lading, and, I hope, to come to conclusions upon this subject.

Some drafting questions upon the topics we have been discussing to-day were raised. It has been suggested to me that, if Sir Norman Hill and Mr Justice Hough would meet a couple of other gentlemen, the ground might, perhaps, be cleared a little; so that we might see what topics of that kind need debate and what topics can be relegated to the Sous-Commission which you will ultimately no doubt appoint. The names I have before me are those of the learned Judge Mr Hough, Mr Möller, Dr Jackson, and Léopold Dor and, of course, the name of Sir Norman Hill; but Mons. Franck has just indicated to me that he would be willing to sit with them. (*Hear, hear.*) I think we are much indebted to him. (*Hear, hear.*) The use of this committee will be that it should meet promptly, if it is to save our time. I would suggest that Mr Franck will accept the Chairmanship, and, if he will name his time, his colleagues whom I have named with your consent are here and it is for them to consider when they can best have regard to this matter so that they may clear the way for us and leave us the real topics of debate to-morrow. The Conference stands adjourned till 10 o'clock to-morrow morning.

La séance est levée à 5 ½ h.

The Conference adjourned at 5 ½ p. m.

SÉANCE DU MERCREDI, 11 OCTOBRE 1922
SESSION OF WEDNESDAY, 11th OCTOBER 1922

La séance est ouverte à 10 heures, sous la présidence du
Rt HON. SIR HENRY DUKE.

The Conference re-assembled at 10 o'clock, the Rt Hon.
SIR HENRY DUKE *in the Chair.*

Immunité des Navires d'État.

(Reprise de la discussion)

Immunity of State-owned Ships.

(Discussion continued)

THE CHAIRMAN. — Gentlemen. The Session is convened. I will ask Sir Maurice Hill to present the Report of the Sous-Commission with regard to Immunity of State-owned ships.

SIR MAURICE HILL. — Sir Henry Duke and Gentlemen. The sub-committee which considered this matter recommend three resolutions. They are based upon the two resolutions which were referred to them and those two have been broken up into three. Having considered those resolutions in the light of the recommendations in the

various preliminary reports and of the discussion which took place on Monday here, they recommend, as I have said, three resolutions. The first sets out to declare what ought to be the liabilities; the second sets out to declare what ought to be the jurisdiction and the procedure applicable to any cases except those which are specially excepted; the third sets out to declare what ought to be the excepted cases and what ought to be the jurisdiction and procedure applicable to them. As I was shown yesterday a type copy of these draft resolutions which omitted a whole line I think it will be better if I read the resolutions and call attention to one other mistyping as I go on.

With regard to the third resolution which deals with the excepted cases there was in the sub-committee, as in the general discussion on Monday, considerable difference of opinion as to the ideal solution of this question, but the sub-committee felt that the essential thing was to secure unanimity on lines which it was thought all Governments could be induced to accept, and therefore the sub-committee strongly recommend to the Conference for their consideration that the exceptions should be as they are drafted; if that is done it is felt that unanimity will be obtained, and I think in no other way can it be obtained, and it will be obtained on lines which are such that those who are attending this Conference will feel that it is probable that their respective Governments will be ready to accept them.

I should add one other matter. The sub-committee considered Dr Bisschop's proposal and their decision was that, whatever its merits, it was unwise to complicate the simplicity of our resolutions on one topic by introducing

a matter which was of much wider application. If I may, I will read these resolutions so as to be quite sure that everyone has a correct copy before him.

« (1) Sovereign States in regard to ships owned or operated by them and cargo owned by them, and cargo and passengers carried on such ships, ought to accept all liabilities to the same extent as a private owner. »

I hope everybody has those last words because that is what was omitted in one copy that I saw — « to the same extent as a private owner ».

« (2) Except in the case of the ships and cargoes mentioned in paragraph 3, such liabilities should be enforceable by the Tribunals having jurisdiction over and by the procedure applicable to, a privately-owned ship or cargo or the owner thereof.

» (3) In the case of

a) ships of war ;

b) other vessels owned or operated by the Sovereign State and employed only in Governmental non-commercial work ;

c) State-owned cargo carried only for the purpose of Governmental non-commercial work on ships owned or operated by the Sovereign State, such liabilities should be enforceable only by the like Tribunals, but only of the State by which the ship is owned or operated and should be enforceable by action *in personam* against such State and in addition by any other form of procedure permitted by the law of such State ».

Those last words were put in because it appears in some of the reports that some States might admit more than a mere action *in personam*, and it was not desirable to exclude such additional remedies if the State consented to submit to them, but the minimum to be recommended

was that they should be enforceable by actions *in personam* against the State.

Those are the resolutions which the sub-committee commend to your consideration.

THE CHAIRMAN. — Now, Gentlemen, the question is, after hearing the weighty words we have just heard, whether the best course will be that the Conference, which has considered this matter and is able to discriminate between what is certainly good and what might if it were agreed upon be better, will proceed now to vote upon the resolutions, or whether the Conference, on the other hand, thinks it profitable to discuss the resolutions.

MR CHARLES S. HAIGHT (U. S. A.). — Mr President, might I ask the single question : Did the Committee intentionally omit Government-owned cargo which might be shipped on private vessels.

SIR MAURICE HILL. — It considered it and it intentionally omitted it.

THE CHAIRMAN. — Is there any other question ?

MR WYNDHAM BEWES. — Might I make one suggestion under 3), where it says : « Such liabilities should be enforceable only by the like tribunals ». I am going to suggest a slight alteration, but not in the sense — « but only by those of the State », to make it a little more clear.

THE CHAIRMAN. — That is verbiage. I do not know what Sir Maurice Hill thinks.

SIR MAURICE HILL. — Putting in « by those » — « by the like Tribunals but only by Tribunals of the State ».

THE CHAIRMAN. — My own impression, if I may venture to say so, is that the language as it stands will be understood by people who consider drafting, and although it could be amplified I think you would have to put in more than one word. There is a clear simplicity about it now as it seems to me.

Dr BISSCHOP. — Might I suggest this ? In the first paragraph would it not read better if we reversed the words and instead of « Sovereign States in regard to ships », said : « Sovereign States ought to accept all liabilities in regard to ships owned or operated by them and in regard to cargo owned by them, and in regard to cargo and passengers carried on such ships to the same extent as a private owner ». I believe it reads better.

THE CHAIRMAN. — Does it alter the sense ?

Dr BISSCHOP. — It does not alter the sense.

THE CHAIRMAN. — Very well. Is it worth while then as we have had a carefully considered report ? Will the Conference proceed to vote, Aye or No ? (*Aye*).

THE CHAIRMAN. — Very good ; then I put the question.
« Sovereign States in regard to ships owned or operated »
» by them and cargo owned by them, and cargo and »
» passengers carried on such ships ought to accept all »
» liabilities to the same extent as a private owner ».

Is that the opinion of the Conference ? (*Agreed.*)

THE CHAIRMAN. — « Except in the case of the ships
» and cargoes mentioned in Paragraph 3, such liabilities
» should be enforceable by the Tribunals having juris-
» diction over and by the procedure applicable to a
» privately-owned ship or cargo, or the owner thereof ».
Is that the opinion of the Conference ? (*Agreed.*)

THE CHAIRMAN. — « In the case of a) ships of war;
» b) other vessels owned or operated by the Sovereign
» State and employed only in Governmental non-com-
» mercial work; c) State-owned cargo carried only for
» the purpose of Governmental non-commercial work
» on ships owned or operated by the Sovereign State,
» such liabilities should be enforceable only by the like
» tribunals but only of the State by which the ship is
» owned or operated, and should be enforceable by
» action *in personam* against such State and in addition
» by any other form of procedure permitted by the law
» of such State ».

SIR MAURICE HILL. — There is, I notice, in the reading of it — I had not observed it before — a redundant « only » — « should be enforceable by the like tribunals but only of the State ».

THE CHAIRMAN. — Yes. Very well then, I omit the first « only »; I will not read it again. It is before you. I have read resolution 3. Does that resolution express the opinion of the Conference ? (*Agreed.*)

THE CHAIRMAN. — Then I think I may in your name heartily congratulate the committee to whom you entrusted

this task upon the eminent success of their labours.
(*Applause.*)

THE CHAIRMAN. — Now, as the Conference knows, we appointed a Sous-Commission last night in the hope that they might give us a lead such as has been given us by Sir Maurice Hill and his colleagues. They were in session before we assembled here; I left them here yesterday afternoon, and I found them here this morning. Some of them I saw later in the night, but that is the state of facts. They are hard at it now in an adjoining room. Would it be convenient, do you think, that we should proceed to a discussion — I have speakers here who can discuss the topics and we can occupy the time in that way — or that we should suspend the Conference. My impression is that, as the members of the Sous-Commission are very conversant with these matters and so not so well open to conviction as the less conversant persons like myself, they would not feel it a slight if you listened to speeches which I know are ready to be made. Then shall I call upon some speakers? (*Agreed.*) Then I call upon Mr Haight of the United States Deputation.

Mr CHARLES S. HAIGHT. — Mr President and Gentlemen. I do not presume this morning to speak for the American delegates at all. The expression of the American views has been made by Judge Hough to my very complete satisfaction, but it does so happen that I am the Chairman of the Bill-of-Lading Committee of the International Chamber of Commerce, and I should like to say a few words on behalf of the International Chamber.

That Chamber has been keenly interested and is fairly active in the work now being done to bring about international uniformity. It is true that a considerable number of us assembled here are lawyers, but the constituent members of the International Chamber are actively engaged in international trade. Their troubles are not theoretical but practical. They know the difficulties surrounding international transportation to-day, and they are sick and tired of the friction and litigation which always has and which always will surround international transportation so long as every carrier has a different form of Bill-of-Lading, and the law of every country in the world differs from all the rest of the world.

The International Chamber feels, — and to this extent I think I can speak of the unanimous opinion of my Committee in the Chamber, — that something must be done, and that the only possible way of accomplishing it is through an agreement between the parties. Whether uniform rules are to be applied by the voluntary acceptance of carriers or by an international convention, we do not believe that uniformity can be secured unless the parties agree. There is no form of Government that I know of which offers any hope of securing uniformity in legislation if the parties interested maintain an attitude of active belligerency. When you get to a legislature, it is not pure reason that counts. It is nothing but the question of the man who has the most votes, and, as in the past so in the future, one side or the other will always dominate.

We saw during the war a period when the carrier could impose upon a shipper any terms that he liked, and to-

day the pendulum has swung back precisely to the other extreme; half of the tonnage of the world is tied up, and a shipper to day, if he so wished it, could secure a Bill-of-Lading in the form of a paragraph in the *Magna Charta*, or a page from Alice in Wonderland if only he would write out a paying freight rate on top of it. (*Laughter.*) Those extremes do no one any good. The pendulum will continue to swing back and forth if we allow those conditions to remain. The vital thing is that we stop that pendulum somewhere near the centre, and I say now that, at least in my own very definite view, and I think largely the view of the International Chamber, it really does not matter very much precisely at what point that pendulum is stopped as long as it is reasonably near the centre. If we have one form of Bill-of-Lading, personally I do not much care what it is, we can all adjust ourselves to it. If you have a thousand different forms you cannot adjust yourself to anything. With one form, if it bears more heavily upon the carrier, it will bear upon all carriers alike, and they will do what they have always done in the past and must do to eternity : add their cost to their freight rate and go on doing business. Similarly it makes no real difference to the shipper at what precise point we draw the line on the question of liability, because he can and he does insure; but the vital thing is that the underwriter may know what risk he is assuming. Especially here in England it is notorious that you are able to insure yourselves against any vicissitude of life or death : it is just as easy to insure against a gale that wrecks a ship or against a small shower that merely threatens to ruin my lady's hat and thereby

interfere with the lawn party. But you must know what risk you are insuring against before you write your policy and fix your premium, and the present movement will enable the cargo underwriter to do just that. So I say that the International Chamber stands for the proposition that the really vital thing is uniformity. (*Hear, hear.*) Let us here to-day agree upon something. I am perfectly convinced, and so is my entire Committee, that if we refer the Hague Rules back to another drafting Committee and that Committee is told to report at the next meeting of the Comité Maritime International, our whole work will have been wasted and our prospect of ultimate success, I think, ruined. (*Hear, hear.*) We shall have six days hence a meeting of diplomatic representatives of the commercial world to pass upon Maritime questions. It is ten years since we had such a similar Conference and it may be ten years more before we have the next one. The world is not going to wait ten years nor two or three years for a solution of this particular problem. There are some things that have to be done cautiously and slowly. There are other things where it makes no real difference whether you hurry or not; as regards the hypothecation of ships, a man cannot help himself, he has to wait; but we heard from Sir Stephen Demetriadi yesterday that he does not want to wait two or three years. I am advised that the House of Commons and the British Government are not likely to wait indefinitely and I can assure you that the House of Representatives of the United States does not propose to wait a period of years to solve this problem. To-day they are standing still, just waiting to see what we do. I have talked by

the hour to Mr Edmonds, the ranking Republican member of the Merchants Marine Committee of our House of Representatives; I have talked by the day to the Government experts on the subject and they mean to do something in connection with the three major claims that cargo has been making : 1) an insufficient value per package, 2) a claims-clause that rules everybody out and 3) a burden of proof which a shipper can never sustain. They are going to do something and they are simply waiting to-day to find out if we can accomplish internationally something that is better than anything they can do. If we adjourn and the Diplomatic Conference in Brussels adjourns with nothing done, many Governments, at least some Governments, will start out on independent legislation and then our dream of uniformity is finished. (The Chairman : *Hear, hear.*)

So I say let us agree to something, and I submit that the differences between us are really unimportant. (*Hear, hear.*) From now I am speaking individually and not for my Committee, because among the Members of my Committee there is a difference of opinion as to bulk cargoes and various questions; but, speaking for myself, I repeat, it seems to me that the differences are wholly unimportant compared with the great and important principles we are striving for. Take the question of bulk cargoes. I have always felt and have repeatedly said in the many debates in America, that it is not fair for the owner of a bulk cargo who pumps it in or shoots it in, to be allowed to a claim for shortage without proving at some time how much he loaded. I still think so. But on the other hand is it a sufficient reason for wrecking the whole

enterprise ? (*No !*) Suppose it does bear unfairly upon the shipowner ; suppose it does ; it bears upon every shipowner precisely alike. And what will he do ? He will go to his P. and I. clubs and he will insure his liability and he will add the cost of insurance to his freight rate. He always has, he always will, and we want him to, otherwise he goes out of business.

So I again repeat, let us agree to something and for my part any agreement that can be reached and fairly meets the situation, is the really desirable thing.

I am indebted to Sir Frederick Lewis for a new definition of an optimist, according to which the optimist is a man who sees a long way in the distance a light which really is not there, while the pessimist is a man who blows that light out. (*Laughter.*) There were many people, I should say 99 per cent of the world, who told us that our vision was wholly defective when 12 or 15 years ago a few of us thought that we could discern a long way ahead just a glimmer of the light of international uniformity. 18 months ago we were told, at least I was told violently in America, that my idea of international uniformity was a pure hallucination of a diseased mind ; but to-day we see the light ; it is just ahead of us. I hope that, through no delay, through no carelessness on our part shall we allow that light at this late stage to be extinguished. (*Loud Applause.*)

THE CHAIRMAN. — Now I must consult the Conference : is it desirable that we should have a scattered debate or is it desirable that we should suspend for a bit, while the Committee is sitting, and have an opportunity of

considering the very remarkable speech we have just heard. Shall we proceed to a debate or shall we suspend for a while, remaining here so that I may learn when the Committee is able to give us its guidance. Is it your pleasure to suspend ? (*Agreed.*)

Very good, then if members will remain within reach, conversation, of course, is better than a set debate at a time like this. I think perhaps as time is important to-day that I should suggest a little delay. You will see what the paradox means. In order that Members may have freedom of movement I will attend here and announce the resumption five minutes before I proceed to business.

La séance est suspendue.

The session was suspended.

(*At 12 o'clock*).

THE CHAIRMAN. — I think it would be convenient, as the Sous-Commission has not completed its labours, that we should suspend the Session until 2 o'clock. I shall be in the Chair at 2 o'clock.

La séance est levée.

The Conference adjourned till 2 p. m.

MERCREDI, 11 OCTOBRE 1922.
WEDNESDAY, 11th OCTOBER 1922.

SÉANCE DE L'APRÈS-MIDI
AFTERNOON SITTING

La séance est reprise à 2 heures, sous la présidence de
SIR HENRY DUKE.

The Conference re-assembled at 2 o'clock, the Rt Hon.
SIR HENRY DUKE *in the Chair.*

THE CHAIRMAN. — Gentlemen, your Sous-Commission on the questions involved in the Rules for Carriage of Goods by Sea has completed its labours, and has, I am informed, deputed Sir Norman Hill to report to the Conference. I think the resolutions of the Sous-Commission are in type, and will probably be before you.

Let me say, before Sir Norman Hill reports, that from the view I have been able to form, I know that there is a general sympathy with the views of the Commission, and I know also that there are certain delegates who, from their own views and from a regard to the obligations they all owe to those who sent them here, may find it necessary to record some reservations. It occurs to me that, if the Conference is agreed in principle, or at any rate in sympathy, in case the resolutions cannot be adopted with one assent without reservation, it may well be that the Conference can agree to bring to the notice of the Diplomatic Conference the reservations which

some of its members feel themselves impelled to make. After all we are not a Legislative body; in the main this is a business assembly, and what is desired is that the Conference, which I believe we all desire to set to work upon this subject, shall set to work with the best advantage for arriving at a conclusion universally satisfactory, or as near to that as may be.

SIR NORMAN HILL. — Mr President, the Sub-Committee that was appointed last night met this morning at 9 o'clock, and we concluded our labours at 1 o'clock; I was then deputed to place before the Conference the conclusions at which we have arrived.

Your Sub-Committee reviewed the amendments introduced into the Hague Rules by the Rules for Carriage of Goods by Sea. They reviewed also the points raised in the papers and reports prepared for the information of this Conference, and they reviewed the points raised in this Conference. They made their review with the object of distinguishing between the points of substance, the points of business importance, on the one hand, and the language in which the agreement arrived at could be best expressed. They took it, Sir, that the duty that you put upon us yesterday, was to distinguish between these two classes of amendment, with a view of reporting as to the points of substance upon which it appeared absolutely necessary to obtain the opinion of this Conference. With regard to the other point, the language in which the agreements arrived at could be best expressed, we thought that, provided the agreement was clear, the language was for the Diplomatic Conference. We wanted

to be perfectly certain that we were all agreed as to what we wanted, that was, that we should speak as business men. Having spoken absolutely clearly and with absolute precision, then, Sir, we feel that our duties as business men are discharged, and that it is the duty of the legal members of the Committee, and finally of the diplomatic representatives to find the proper language. That, as we understood it, was the duty placed upon your Sub-Committee.

Now there is first a preliminary point I want to clear up. The Sub-Committee in their review assumed that the Conference is agreed that the period covered by the Rules, which are to be international, begins with the loading on the ship, and ends with the unloading from the ship; further that the Conference is agreed that the rights and obligations that are to attach to the period before the loading on and after the discharge from the ship must be subject to the control of the nation within whose jurisdiction the operations are performed. That is a fundamental point, and in the work we have been doing for you this morning, we have assumed that we are all absolutely agreed on that point, and it would help here if the Conference would indicate whether we were right in that assumption.

THE CHAIRMAN. — Would you like that done now ?

SIR NORMAN HILL. — I would, because it goes right to the root of what I have to say.

THE CHAIRMAN. — Very well. The question is as be-

tween the transit upon the sea, which is the universal highway, and handling upon the land, which is the domain of the several communities occupying the land. The Committee has proceeded upon the footing that its function is to deal with the transactions upon the universal highway, and not with the incidental transactions which lead to the bringing of goods to the ship, and which follow from the unloading of goods from the ship. The Committee has interpreted its duty as being to deal with transit upon the sea, and to limit its recommendations to that. Is the Conference agreed with the Committee in that view ? (*Agreed.*)

SIR NORMAN HILL. — Now, Sir, on that understanding, the Sub-Committee report that all the points raised deal with the language in which the agreements arrived at can be best expressed, except on the following points, which we conceive to be points of substance to be settled by the business men directly engaged in overseas traffic. They are not points that any draughtsman can settle; they are not points, with great respect to the Diplomatic Conference, that we think that Conference should settle. We think they are points upon which diplomatists should first ascertain what are the interests and wishes of commerce, and then give effect to the conclusions arrived at in the proper language.

The first point is one that has been debated a great deal, and deals with bulk cargoes. It is one that gave your Sub-Committee great concern, great anxiety, to do justice as between the parties interested. They think that the position of the ships carrying the bulk cargoes can

be reasonably protected and they think that the rights of the cargo owners, shipping by such ships, can be reasonably secured if we add a few words to the proviso to Article III, Rule 3, which appears on page 3 of the print that was circulated.

Mr W. W. PAINE. — Page 4.

SIR NORMAN HILL. — If gentlemen are working by the red and black print it is on page 4 : if they are working by the print circulated by the Conference it is on page 3. It deals with a proviso which follows on c), and I will recall to the Conference that the proviso, as it stands, is that « No carrier, master or agent of the carrier shall be bound to issue a Bill-of-Lading showing any description, marks, number, quantity, or weight which he has reasonable ground for suspecting to not accurately represent the goods actually received ». Now, Sir, your Sub-Committee propose to add to that « or which he has had no reasonable means of checking ».

THE CHAIRMAN. — Have members had a fair opportunity of writing down those words ? We will not stop now, if members have had a fair opportunity of recording what Sir Norman Hill has spoken. I think that is all that is necessary now.

SIR NORMAN HILL. — The next point arises on Rule 6 of the same Article. It is at the foot of page 3 of the print that the Comité has circulated and at the foot of page 4 of the red and black print. The clause begins

« Unless notice of a claim... » There is just one point there which is purely verbal which I think it would be well to clear away. We are going to leave out « a claim for »; we are going to let it read: « Unles notice of loss or damage and the nature of such loss or damage ». That is to avoid the possibility of a man losing his right of claim, by not specifying that he has a claim for a certain amount in pounds, shillings and pence.

SIR ERNEST GLOVER. — What paragraph and Article is it ? Can we have it over again ?

THE CHAIRMAN. — It is Article III, paragraph 6. I will read the first few lines as they are: « Unless notice of a claim for loss or damage and the general nature of such claim be given » and so on. « Written » has been struck out in the course of previous revisions, and it read : « Unless notice of a claim for loss or damage and the general nature of such claim be given ». What is proposed is to make that « Unless notice of loss or damage » leaving out « a claim for » — « and the nature of such » leaving out « general », and instead of « claim » introducing the words « loss or damage », so that it would read: « Unless notice of loss or damage and the nature of such loss or damage be given ».

Dr ERIC JACKSON. — I do not understand that there is any proposition before the Committee to strike out « general ».

SIR NORMAN HILL. — No, « general » stands in — « general nature of such loss ».

THE CHAIRMAN. — Very good; then « the general nature » stands.

SIR NORMAN HILL. — Now, Sir, the other points that arise under that Rule 3, as to the period or as to the time from which the notice is to count, and as to the time within which the suit is to be brought, were considered very carefully indeed by the Committee. They considered them in relation to Article IV. 5, which fixes the maximum amount of £ 100. Your Sub-Committee realise and indeed it has been made manifest at the meetings of this Conference, that there is very great diversity of opinion on these points. Take for example the period within which the suit is to be brought. In this country it is six years; in France it is one month. There are so many views upon this point that your Sub-Committee, having considered all these views, would submit to the Conference that these are right and proper points upon which we should ask the Diplomatic Conference to decide. They are not points of vital importance going to the whole. You will recollect, as we have drafted the Rules and as we all approve of them, the want of notice does not bar out a claim. That is all gone. The want of notice merely shifts the burden of proof. If the receiver takes over the goods without notifying a claim for loss or damage, he is presumed to have received the goods in the same manner as we are to be presumed to have received the goods when we sign the Bills-of-Lading. It is not a matter of very vital importance. The time within which suit is to be brought is of vital importance, but I think we are all agreed that the only thing we want to do, is to

fix a reasonable time. I think that our French friends agree that their mouth is a little short; I think that our French friends and some other of our friends agree that possibly six years is rather long. (*Laughter.*) Those seem to us to be points and also the point with regard to the maximum liability of £100 with which we think the Diplomatic Conference can be trusted to deal.

Now, Sir, it is quite clear that there are members of that Sub-Committee who take very clear and very firm views indeed that the £100 is a business bargain, and that it must stand. There are other members of the Sub-Committee who were not at our meeting at the Hague, who take equally clear and positive views that that is too much. We could not bring back from the Sub-Committee any recommendation. You have our suggestion that we should leave it to the Diplomatic Conference. It will be for you, Sir, to say whether or not you think that is a wise recommendation, that we should leave the three points to them : the time from which the notice is to run, the period within which the suit is to be brought, and the amount.

THE CHAIRMAN. — Sir Norman, it is suggested to me that you may not be thought to have made quite clear to the Conference what is involved in your phrase : « the time from which the notice is to run ».

SIR NORMAN HILL. — The point we have to consider, and of course it is a very difficult point, is this. You can use the words « unloaded from the ship », that the notice has to be given on the goods being unloaded from

the ship. That would be perfectly precise, but we all think that that would be very unfair. The receiver of the cargo might have no opportunity of seeing the cargo at the moment it is unloaded from the ship. You can go right to the other end and you could say : « from the time when the receiver of the cargo takes delivery ». That might be if the receiver of the cargo was negligent months after the ship had been unloaded. That again would be very unreasonable. In the amended Rule as we have it we used a term which we thought, so far as our experience in this country is concerned, was reasonable. We took it that the notice was to be given « at the port of discharge before or at the time of removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage ». We thought that that was not an unreasonable time to give the cargo. The language was questioned, and of course it is open to abuse. The person who is entitled to delivery under the contract of carriage can delay coming forward if he pleases for a year or any other time, though that is not what is meant, and if any better words could be found — we as business men were rather puzzled — we thought the diplomatists had better have a try; but we all know what we mean that, if there is loss or damage detected by the person who is really interested in the cargo, he should notify it at once before he takes the cargo away.

THE CHAIRMAN. — Sir Norman, as you are dealing with that, are you able to give us any words which you are proposing to modify in the document or are you leaving it to a Resolution ?

SIR NORMAN HILL. — Well, Sir, I cannot tell you that your Sub-Committee are prepared to offer any alternative words, but they thought it was a point that should be considered, when you were considering whether it should be two years or some other period within which suit is to be brought.

THE CHAIRMAN. — I followed that. I only wanted to know in advance whether the proposal of the Sub-Committee is for a modification of the draft here or whether it is a Resolution.

SIR NORMAN HILL. — It is, Sir, that these points should be left to be dealt with by the Diplomatic Conference, and we should abide by the decision that they arrive at.

THE CHAIRMAN. — It is a resolution.

SIR NORMAN HILL. — A resolution.

Dr ERIC JACKSON. — I am sorry to interrupt Sir Norman again, but I did not understand that the Committee were in favour of altering the words « into the custody of the person entitled to delivery thereof » in any way. What was in question was whether the words « under the contract of carriage » should be there as well or not. My Federation attach very great importance indeed to the wording « into the custody of the person entitled to delivery thereof », and I understood the view of the Committee was that those words certainly stood; but there was a question raised by some of the members of the Committee as to whether « under the contract of

carriage » should stand or not. I am open to correction on that point and one other point made by Sir Norman. I understand he says that the point of the £100 was raised on the Sub-Committee. I did not understand it to be raised at all.

SIR NORMAN HILL. — I think so.

M. LÉOPOLD DOR. — May I add a few words in that respect ?

THE CHAIRMAN. — I do not think I can have an interlocutory discussion unless the Conference so rules. At present Sir Norman Hill is addressing the Conference.

SIR NORMAN HILL. — Gentlemen, the next point we dealt with arises under the same Article section 8. That is at the bottom of page 4. It is the clause which prohibits the carrier from inserting any clause relieving him from liability imposed by the Rules. A question was raised as to whether, what is commonly known as a « benefit of insurance » clause was such a clause. The clause in question as you know provides that the shipowner having met his liability is entitled to take over any insurance the cargo owner may have effected on his cargo, and the question is whether that clause would be a clause relieving the shipowner from liability within the meaning of the Rule. We are all quite clear that we mean to prohibit such a clause, and it is therefore proposed to introduce words to the following effect: « *A « benefit of insurance » or similar clause shall be deemed to be a clause relieving*

the carrier from liability ». That is to say that that clause will be a prohibited clause.

MR A. P. MÖLLER. — Will that be a prohibited clause? I did not understand that.

SIR NORMAN HILL. — That is right, Mr Möller.

THE CHAIRMAN. — I think on the whole that it would be better that members should reserve observations. It is not convenient to have a preliminary statement interrupted with discussion. Members will make a note of the reservations they desire to make.

SIR NORMAN HILL. — The next point of substance arises on Article IV, 3. That is on page 6 of this copy and at the bottom of 6 on the red and black copy. That is the clause which provides that « The shipper to the same extent as the carrier shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from » and then reference is made to the perils. Your Sub-Committee had difficulty in attaching a very precise meaning to that clause as it stood, and their suggestion is that it should be revised and should read as follows: « The shipper shall not be responsible » — that is striking out the words « to the same extent as the carrier » — « for loss or damage sustained by the carrier or the ship arising or resulting from » — then these are new words « any cause without the act, fault or neglect of the shipper, his agents or servants ».

THE CHAIRMAN. — Would you read the clause again as it will stand amended, Sir Norman ?

SIR NORMAN HILL. — I will read: « The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or servants ».

Mr W. W. PAINE. — Are the rest of the words all left out ?

SIR NORMAN HILL. — Yes, all the rest comes out.

Now, Sir, the last point arises on Article 5 and we are back again on bulk cargoes and chartered vessels which has been the subject of so much discussion, and the proposal is that we should add at the end of that Article the following words.

THE CHAIRMAN. — It is the Article 5.

SIR NORMAN HILL. — Yes, at the foot of page 7 of the red and black : « Nothing in these Rules shall prevent or control the making of any charter party or the issuance of bills-of-lading thereunder but no provision in such bills-of-lading shall violate the terms of these Rules ».

A DELEGATE. — Is that in substitution for Article 5 or an addition ?

SIR NORMAN HILL. — No, an addition.

Mr W. W. PAINE. — As a separate paragraph.

SIR NORMAN HILL. — A separate paragraph in Article 5.

Now, Sir, may I sum up. The points upon which the Sub-Committee suggest that the Conference should come

to a determination are : First as to the clause we have added to meet the difficulties incident to the ascertaining of weights, numbers, measurements of bulk cargoes, we suggested words which would relieve the ship from obligation to record such facts when the ship has not had reasonable means of checking the figures that are given. That is the first point upon which we would wish the guidance of the Conference whether or not they think that is reasonable.

Then, Sir, there is the next point, and if I am not conveying the views of the Sub-Committee — I did my best to ascertain them — I shall regret it very much with regard to my fellow members and still more to the Conference. As I understand it our recommendation is that we leave to the Diplomatic Conference to settle, we accepting their decision, first, the time from which the notice of loss or damage is to run — that depends upon what is to be treated as delivery, as the handing over from the ship. Secondly the time within which suit is to be started or claim barred, and thirdly, as I understand it — I am afraid that some members of the Sub-Committee think that my understanding is at fault — the limit of the £ 100. It is not that we want the Diplomatic Conference to start all over again and decide out of its innate wisdom the right solution on all those points. We thought that we had got it up to the point at which we could not get to an agreement, but if the Diplomatic Conference reviewed all the considerations that had been placed before us, they were points upon which we could take their judgment as an impartial tribunal. That is the second point.

The third point is whether or not the clause which we suggest, relieving the cargo from all liabilities caused by the act or default or neglect of cargo, is a reasonable clause and a better clause than the one we have got in print, and the last point is, coming back to the chartered boats point, as far as possible we want to leave to be determined by the charter the conditions as between the ship and the cargo owner. We want to leave it as far as possible to be determined by the charter, but we recognise that, if the rules are really to accomplish their main object, if under that charter party bills-of-lading are issued, then the bills-of-lading will have to conform with the code. (*Applause.*)

MR W. W. PAINE. — Before Sir Norman leaves the rostrum may I ask one very minor point. It is perhaps of importance.

THE CHAIRMAN. — Mr Paine, I am going to call upon each of the gentlemen who rose and who I thought would better reserve their inquiries until Sir Norman had concluded his statement. I will take your question now or theirs, just as it is convenient.

MR PAINE. — I think it might be convenient whilst Sir Norman is in the rostrum. « The time from which the notice is to run » under Article III, 6, seems to me to be a funny expression, if you look at the terms of Article III, 6. I want to see whether what is meant is not the time at which that notice is to be given, because there is no period of notice.

SIR NORMAN HILL. — Yes, that is a better expression.

Mr W. W. PAINE. — The time at which notice is to be given.

THE CHAIRMAN. — I think Mr Jackson was the first delegate to rise in the course of Sir Norman's statement, if Mr Jackson has either a query or a representation.

Dr ERIC JACKSON. — There are certainly some points which I think the Conference as a whole ought to have before them. The first point placed before you by Sir Norman Hill, was the question of the period of time within which the rules should govern bills-of-lading.

THE CHAIRMAN. — One moment. At present the Conference is receiving the Report of the Sub-Committee. Sir Norman Hill as I understood presented a Report. Is it in writing ?

SIR NORMAN HILL. — No, Sir, we had not any time.

Mr LOUIS FRANCK. — It has been taken down.

THE CHAIRMAN. — Very good. Then I think what will be in order upon that statement of the Report, will be any inquiry as to what is intended by it or any challenge of its completeness.

Dr ERIC JACKSON. — On what is intended by the Report I think a difficulty arises on Article 1 e) *the time from loading on, to the time when they are delivered from the ship* as it stands at present. As I understood at the Committee meeting this morning, the American re-

representatives had great difficulty in accepting the words « delivered from » because « delivered from » may have some technical meaning under their statutes. The Federation for whom I act have placed great reliance upon the words « delivered from » which they had adopted from the Imperial Shipping Committee's Report. To meet this difficulty I suggested that if my Federation could agree we should have the word « *discharged* » used instead of the word « *delivered* from », and I understood that members of the Committee agreed to that, and I am pleased to say that I have now consulted my Chairman and although he thinks we are making a great concession, because we are departing from the words given to us by the Imperial Shipping Committee, still we would accept the word « discharged ».

THE CHAIRMAN. — Just one moment, because we must take care to be able to do our business if we can. Sir Norman, is there any difficulty in your view in Article 1 e) in making the termination of the period of « Carriage of goods » the time when the goods are discharged from the ship ?

SIR NORMAN HILL. — No, Sir, I hope, I have made it clear. If it is quite clear what the Conference wants, that the rules are to cover the period from the loading on to the discharging from, then there are drafting amendments required in a good many rules, but they are purely verbal expressions.

THE CHAIRMAN. — I do not understand that Mr Jackson at all challenges that. He wants to be clear that in

the definition clause, the document we have before us, goes on that the time of discharging from is the *terminus ad quem*.

SIR NORMAN HILL. — I think that would necessarily follow. If the Conference accepts the view that I have put forward, then it will be the appropriate word I cannot think of a more appropriate word.

THE CHAIRMAN. — You are at one upon that.

Dr ERIC JACKSON. — I understood the Committee were at one upon that and accepted the word « discharged ». I just wanted to make that clear because Sir Norman in his remarks used the word « unloaded » and I wanted to say that we agreed to « discharged ».

THE CHAIRMAN. — Do not let us get into a debate about it. I take it that the Conference will accept, as the limitations of the period of Carriage of Goods,¹ these limitations beginning at the time when the goods are loaded on the ship and terminating at the time when they are discharged from the ship. Is the Conference agreed upon that ? (*Agreed.*)

Dr ERIC JACKSON. — The other point which I made as a point of order when Sir Norman Hill was addressing the Conference — I make it again — was that I understood that the words « into the custody of the person entitled to delivery thereof », under clause 6 Article III, had been accepted.

THE CHAIRMAN. — Wait a moment, I want just to make sure that I appreciate it on the document : « before or

at the time of the removal of the goods into the custody of the person entitled to delivery thereof ». You say that is where the agreed words as you understand them end.

Dr ERIC JACKSON. — I understood that up to that point there was no divergence of opinion. There was some divergence of opinion as to whether the following words « under the contract of carriage » should come out or not, and we simply said that could be left to the Diplomatic Conference to settle; but I want to make it perfectly clear that, so far as I understood the Committee, the rest « into the custody of the person entitled to delivery thereof » stood.

Mr LOUIS FRANCK. — Yes.

THE CHAIRMAN. — I will ask Sir Norman whether it is his view that the agreed words are the words « at the time of the removal of the goods into the custody of the person entitled to delivery thereof ».

SIR NORMAN HILL. — Sir, you must not put it too high. The Sub-Committee were not prepared this morning to pass that Rule in any particular form of language, I think that they were satisfied with those words, but those words hinge on the next words, and I do not think it was the wish of the Sub-Committee — certainly I did not understand it — merely to refer three words to the Diplomatic Conference. I do not think the Sub-Committee would have thought that they could fairly make such a recommendation to the Diplomatic Conference. As I understand, you will have on the Diplomatic Conference a very able representative of the Sub-Committee in the person of

Judge Hough who heard everything that was said. I think that the members of the Sub-Committee were satisfied with those words, but if the Diplomatic Conference want to adjust the following words, it may be that they will want to adjust those words, and I do not think the Sub-Committee wanted to tie their hands.

Dr ERIC JACKSON. — It is, question for the Federation, for whom I act, as to how far, having got these amendments with difficulty out of the shipowners, they can leave it to some body, upon which they will not be represented, to alter those amendments.

THE CHAIRMAN. — I think this is debate. We only want to know at present what the views of the Committee are.

Mr MÖLLER. — May I speak?

THE CHAIRMAN. — I want that we shall deal with one set of objections at a time.

Dr ERIC JACKSON. — The only other point was that I did not understand that the £100 was considered by the Committee at all.

Mr LOUIS FRANCK. — No.

Dr ERIC JACKSON. — We agreed that the two years should stand; another member of the Committee pressed that the one year should stand, and that was left over.

THE CHAIRMAN. — That was left to go to the Diplomatic Conference.

Dr ERIC JACKSON. — I do not think there is any other point.

THE CHAIRMAN. — You must forgive me keeping you to what I think is the rule of order.

Mr MÖLLER. — I would like to say as regards this question of « into the custody » that I understood the same as Sir Norman Hill has described it, that there was some doubt in our minds as regards the proper phrasing of it.

THE CHAIRMAN. — Which is that ?

Mr MÖLLER. — That is clause 6 of Article III « into the custody of the person entitled to delivery thereof ». I believe I was the person who raised the point and I said that I thought that my objection would be met by striking out the words that Mr Jackson has told you, namely « under the contract of carriage », but I distinctly did not understand that we would leave these words « into the custody of the person entitled to delivery thereof », and only submit the further words to the Diplomatic Conference. My understanding was just as Sir Norman Hill has described it, that we would leave the entire matter to the decision of the Diplomatic Conference.

Mr LOUIS FRANCK. — I do not think that there was really, as to the root of the thing, any dissenting view. The case which was put before us was the following one. You see here that this Rule will not apply until the time when the goods get into the custody of the person entitled

to the delivery thereof under the contract of carriage. In 99 cases out of 100, there is not the slightest difficulty about that; the person entitled to receive the goods under the contract of carriage is the consignee or the holder of the bill-of-lading or his agent. But there may be cases where the goods are left over for several months, let us say in a bonded warehouse of the State or with the Customs, or on the quay even, and the question is whether you are going to construe a case of that sort as coming under these rules, or whether you are going to keep the shipowner always liable even if the goods have gone practically out of his possession or out of his control. Then the suggestion of Mr Möller was that this difficulty would be met if the words « under the contract of carriage » were struck out, and then we decided that, without any prejudice to the principle, we would leave this narrow question of construction, of drafting, to the Diplomatic Conference. The idea is very clear. If it is a matter of responsibility, the responsibility which comes under this Convention will cease for the ship under the ship's tackle, but as far as the delivery of the goods is concerned, and the application of this clause saying that if there is no notice and the goods are taken away without notice, it will be *prima facie* evidence that all was right with that delivery, surely the shipowner must make a real delivery, but what that delivery is to be it will be for the law of the land, the law of the port of destination to say. There is the end of it. So I think that really we can take notice of the fact, that the gentleman who raised objection on the matter, would be satisfied if the words « under the contract of carriage » were left out, and as

for revising this drafting we can leave it to the Diplomatic Conference.

THE CHAIRMAN. — With that exception, is the Conference ready to proceed from that point? Is that agreed? (*Agreed.*)

M. LÉOPOLD DOR. — I have, Sir, very few words to add.

THE CHAIRMAN. — Not debate.

M. LÉOPOLD DOR. — Not debate. It has been said by Sir Norman Hill that we agreed to leave the wording of that paragraph, the question of the time limit and the £ 100 per ton to the Diplomatic Conference. I quite agree with Sir Norman Hill as regards the first two points. I do not think the wording of the paragraph matters very much. As to the time limit, we wanted one year and the English delegates wanted two years.

THE CHAIRMAN. — This is debate, and I have passed from the point by direction of the Conference.

M. LÉOPOLD DOR. — But as to the £ 100 limit, I do not understand that we were to leave it to the Diplomatic Conference. If that point had been raised in that Committee, I should have opposed with all the strength of which I may have been capable and I think that it is vital that we should not invite the Diplomatic Conference to dabble with that question of the £ 100 limit on which agreement was arrived at with such difficulty.

THE CHAIRMAN. — This is debate. I must ask Sir Norman Hill whether in his view the Committee was

agreed to submit to the Diplomatic Conference the question of the limitation of amount, namely, the £ 100.

SIR NORMAN HILL. — So I understood, Sir.

THE CHAIRMAN. — Then I will ask Mr Franck what is his view first. Will the Committee be ready to accept the view of Mr Franck on that subject ?

Dr ERIC JACKSON. — Certainly.

M. LÉOPOLD DOR. — Certainly.

SIR NORMAN HILL. — Certainly.

Mr LOUIS FRANCK. — Then, Gentlemen, you will quite understand how difficult it is, when time is so short, that we cannot make a written report. The exchange of views upon this matter of the £ 100 was only very short, and made for a part in French, and it may have escaped the notice of Sir Norman Hill what was the real meaning. My opinion is that the Commission was of opinion that we should not bring that matter back before the Conference, but that we should stick to the bargain which had been made and keep the £ 100. (*Hear, hear.*)

THE CHAIRMAN. — Before inviting the members to agree to accept Mr Franck's decision, I ought to have consulted the Chairman, Judge Hough. Perhaps Mr Justice Hough will tell us whether he has anything to add to that ?

Mr JUDGE HOUGH. — It appears to me it is a question of reporting. I have a very distinct impression that the question of the time of making claim, the way of making

claim, and the amount to which each claim would normally be limited, were all tied and fastened together. That was so in my mind and I went away from the Committee meeting, with the belief that all of those subjects so tied together were properly, in the opinion of the Sub-Committee, to be left for consideration at Brussels in which I agree with Sir Norman Hill.

THE CHAIRMAN. — We are in this position that Sir Norman Hill has consented and the other members have consented to accept the view Mr Franck had formed. I daresay the learned judge will find himself in a position, as this is a matter of reporting, to fall in with the Committee about it. May I assume that ?

JUDGE CHARLES HOUGH. — I assume the Report is in favour of the statement made.

THE CHAIRMAN. — I think the Conference has received the verbal report. It will have taken note of what has passed. My difficulty is to bring to your consideration in a convenient way the questions as they arise, but I think I can do that. I will take care not to exclude any topic in debate. Under Article III, rule 3, Sir Norman Hill informed us of the view of the Committee, that the difficulty could be met by adding to the proviso the words which he read « or which he has had no reasonable means of checking ». Is the Conference agreed to the addition of that term to the proviso ?

SIR STEPHEN DEMETRIADI. — No, I should like a slight alteration there. I think the Captain, as master of his

ship, has reasonable means of checking, but if he has not reasonable means of checking then it is beyond his power to check, and I should like to suggest to this Meeting that the words should be changed to read « or which does not come within his power to check ».

THE CHAIRMAN. — Do you want to advance the matter by argument. Do you want to argue upon it, or do you merely submit it ?

SIR STEPHEN DEMETRIADI. — I submit it.

MR LOUIS FRANCK. — Well, Sir, I think that the words which were indicated by Sir Norman Hill; « or which he has had no reasonable means of checking » are much better in the interests of the cargo than the words which have just been suggested by Sir Stephen. If you say that the Captain must have had the power of checking, it is much more than if he must have had reasonable means of checking, because the Captain will not have had the power of checking in any case where there will not have been weighing or tallying at the port of loading, and in most cases of bulk cargo to-day, there is no weighing or scarcely any tallying except for bags, certainly no weighing for grain, for instance, or for coal or for oil. In all those cases there is not the slightest doubt that the Captain may say: « The captain has had no power to do it » whereas under the form « which he has had no reasonable means of checking » you have a much larger power of control. By the draught of his steamer or for any other reason, or by the lighters from which the cargo has been brought on board, or whatever it may be, or a

reasonable survey of what is going on on board, he may have had reasonable means of checking the cargo. I think we ought to keep to that and in any case the difference between the two is really a matter of drafting, because we are all agreed that you cannot expect to have a bill-of-lading for a fixed number, if there has not been reasonable means for the man who has to sign it to know what he has taken on board. As you understand, my Lords and Gentlemen, it is a very important point that we should accept this, seeing that it seems to be in the opinion of Mr Möller a difficulty of the tramp steamers, and that is a very great difficulty. If they are satisfied with that I do not think we might be too difficult about it.

SIR STEPHEN DEMETRIADI. — Mr Chairman, I do not press it.

THE CHAIRMAN. — Thank you. Then is it agreed to add to the proviso the words I previously read ? (*Agreed.*)

THE CHAIRMAN. — Then Article III, clause 6. Is it agreed with regard to the first two lines there, that the words shall read : « Unless the notice of loss or damage and the general nature of such loss or damage be given ». Is that agreed ? (*Agreed.*)

THE CHAIRMAN. — Then in the same Article, with regard to the period of time, is it agreed that, due regard being had to the first term in the present statement of the period of time, namely, « the time of the removal of the goods into the custody of the person entitled to delivery thereof », it shall be left to the Diplomatic Con-

ference to determine the best mode of expressing what is just between the respective interests ? Is that agreed ? (*Agreed.*)

THE CHAIRMAN. — Now with regard to the second question, the limitation of suits, the limitation of actions, is it agreed that the just period to be fixed as that within which action is to be brought should be left to the Diplomatic Conference ?

SIR STEPHEN DEMETRIADI. — I am in a little difficulty in accepting that. In this country we deal very largely with Australia, a great distance from here. If we are given 12 months within which to bring a suit, we may have to send out to Australia for certain information. If that information is not right we have not time to refer it back again and get it back within a twelve month. It is a great distance from here to Australia. That is why we put in two years.

THE CHAIRMAN. — May I point out that I hope the members of the Diplomatic Conference, with the assistance of Sir Leslie Scott, will recognise what are the various centres of commercial action and what are the periods of correspondence between them, which must be safeguarded by the period of limitation fixed by their decision ?

SIR STEPHEN DEMETRIADI. — If I may put it in this way, having brought it to the attention of this Meeting, I leave it at that.

THE CHAIRMAN. — Thank you. Then is it agreed to

leave that question to the Diplomatic Conference ?
(*Agreed.*)

THE CHAIRMAN. — Article III, clause 8. It is proposed that this paragraph shall be added at the end of the clause : « A « benefit of insurance » or similar clause shall be deemed to be a clause relieving the carrier from the liability ». Is that agreed ?

SIR ERNEST GLOVER. — From a shipowners point of view we are not at all clear why that should be added. It seems to me that it is depriving the shipowner of something to which he is fairly entitled. I do not think Sir Norman has said it quite sufficiently up to the present; I cannot see any justification for giving a benefit to the merchants at the cost of the shipowner.

SIR NORMAN HILL. — I do not think it is a case with which the British shipowners are very familiar. It is an American clause. I put it to the Judge and he said : Yes, it was a clause which was used very largely in the United States and to which very great exception has been taken. I am not familiar with such clause in any British bill-of-lading. It provides that the shipowner having incurred a liability and having paid can step into the shoes of his cargo owner and recover from the cargo owner the amount for which the cargo was insured.

Mr LOUIS FRANCK. — May I add for Sir Ernest Glover's information that as far as I am concerned and continental jurisprudence will be concerned, that clause would be considered as being void under paragraph 8, because it

certainly is lessening and diminishing the liability which is on the shipowner under these conditions, if you give him the right by contract to take away from the cargo-owner an insurance which the cargo owner has paid for by his premium and about which he has made his own bargain. There is no doubt that the general principle would already cover it, but the observation of the learned Judge was that as in the States there has been doubt on that, we ought to apply the old saying : « Things which go without saying go even better if you mention them », and that is the reason for it.

SIR ERNEST GLOVER. — With that explanation I am satisfied.

THE CHAIRMAN. — I think that now it is explained, it is agreed by Sir Ernest Glover. Is it the view of the Conference that the proposed paragraph should be added at the end of clause 8 of Article III ? (*Agreed.*)

THE CHAIRMAN. — Now Article IV, clause 3. Will members follow my reading. The matter needs close attention. There are amendments proposed and I intend to put the clause phrase by phrase so that it shall appear in the form in which I think it is intended it shall appear. Is it agreed that the words « The shipper » shall stand ? (*Agreed.*)

Is it agreed to omit the words « to the same extent as the carrier » ? (*Agreed.*)

Is it agreed that the words « shall not be responsible for loss or damage sustained by the carrier of the ship arising or resulting from any » shall stand ? (*Agreed.*)

Is it agreed that the words « of the » shall be omitted ?
(*Agreed.*)

Is it agreed that the word « causes » shall be made to read « cause » ? (*Agreed.*)

Is it agreed to leave out the words after the word « cause » now inserted ? (*Agreed.*)

Is it agreed to insert in substitution for those words these words : « without the act, fault or neglect of the shipper, his agents or servants ». (*Cries of « Agreed ».*)

MR HARRY R. MILLER. — May I ask a question upon that? I do not know whether the Committee, in re-drafting this clause, had before them the possibility of cargo's contribution to a general average claim. It seems to me that to say that the shipper should not be responsible for the loss sustained by the ship arising from « any cause without the act, fault or neglect » might exclude — I do not say it does, but I should like information on the subject — the possibility of the shipowner recovering from the cargo owner his proportion of general average. I do not say that it does that, but it struck me that it might read in that way, because it is « loss » and it may be a general average loss as distinguished from sacrifice; it may be a loss sustained by the ship and it does arise from a cause without the act or fault of the shipper.

THE CHAIRMAN. — I will ask Mr Franck to deal with the question, Mr Miller.

MR LOUIS FRANCK. — It is quite useful that this question be raised. The answer to my mind is that nothing in these rules has to interfere with general average. These

rules are limited to their object: They are restrictions to the freedom of contract and such restriction is not to be construed in an extensive way; so, general average stands entirely independent from this. I may add that even if you read the words, nothing in clause 3 is likely to interfere with general average. It says : « The shipper shall not be responsible for loss or damage sustained ». General average is not based on the responsibility for loss or damage. General average is based on services rendered by or at the cost of one of the parties to the whole adventure, and that sort of partnership in the cost of that service, just as there has been a partnership in the benefit of the act, is ruled by a special set of principles which are adopted in all maritime laws, so that you may be quite sure it is a different matter.

MR H. B. HURD (Glasgow). — May I venture, arising out of Mr Franck's remarks, to suggest that we do introduce the exception of general average in this Code in section 7 of this Article. Therefore I venture to think if we introduce the exception in clause 7 we should include it, as Mr Miller has pointed out, in section 3.

THE CHAIRMAN. — Yes, Mr Hurd, it had been suggested to me, this being a negative provision with regard to general average, that it might be that the Conference would express its view as to whether this draft was intended in any way to interfere with the existing state of things with regard to general average unless it was so expressed.

SIR NORMAN HILL. — Sir, we discussed it at the Sub-

Committee and I thought it would be provided in the Convention that this Convention does not affect the law of general average.

Mr R. A. PATTERSON. — I should like to say I have been told by Mr Jackson that there was a general dislike to the form which we have already employed in this clause « under the headings b), c), d) and e) » and so on. It seems to me that the clause you are proposing is too wide and too narrow at the same time. May I take one single point ? The words « strikes or lockouts or stoppages or restraint of labour from whatever cause whether partial or general ». You may say that that is without the powers of the consignee of the goods, but it will form a very fruitful source of discussion.

THE CHAIRMAN. — May I ask if this refers to Article IV, clause 3.

Mr R. A. PATTERSON. — Yes.

THE CHAIRMAN. — But we have passed it.

Mr R. A. PATTERSON. — I understood you to say that before you passed it you asked for remarks.

THE CHAIRMAN. — No, we are upon the question of inserting the words « without the act, fault or neglect ». The Conference agreed. If necessary I will refer to the Shorthand Writer but my own understanding was that the Conference agreed.

Mr R. A. PATTERSON. — I understood you to say that

there were amendments to be moved and I was waiting for the amendments to be moved before speaking.

THE CHAIRMAN. — The only question which was raised was general average and that was raised upon the point of whether the words should be added, but I must rule — the Conference of course can reverse its decision no doubt — that the Conference has decided to omit the words after the word « cause » down to the words « (p) and (q). (*Hear, hear.*) That is what the Conference has decided. Now, the Conference, as I understood, had also agreed to substitute for those words « without the act, fault or neglect of the shipper, his agents or servants ».

Mr R. A. PATTERSON. — I had not heard those words put.

THE CHAIRMAN. — I will put the words and any debate that is necessary will then arise. I put the question whether the Conference agrees to the insertion of the words which have last been read. (*Cries of « Agreed ».*)

Mr R. A. PATTERSON. — I object to it.

THE CHAIRMAN. — I have not taken the division.

Mr R. A. PATTERSON. — I object to those words because I think the clause is too general in its nature : « any cause », I think there is a distinct advantage in the particularising. In the case of the shipowner you particularise and you give him all the various causes. In the case of the receiver of cargo you strike it out and you give him a general cause. I think that is not the way

to treat it. I think the fair and proper way is to give equal treatment to both sides on this matter. If you are going to give the shipowner the particular exceptions, I think you ought to give exceptions to the shipper. I understand — Sir Stephen will correct me — that this matter was discussed and the clause was inserted at the direct request of the shippers involved, because they thought it was very important that they should have equal protection with the shipowner if the shipowner claims exemptions. One of the greatest objections that the traders of the country have made, is to the very wide range of exemptions and we thought it was only fair that the traders should have equal exemptions, and in my opinion, I may be wrong, of course, the clause as worded will not protect the receiver to the same extent as the shipowner is protected.

THE CHAIRMAN. — My own impression about it is that the words framed here have been designed to give the shipper the largest protection that could be devised for him. I may be wrong about it, but I must take the judgment of the Conference upon the subject. Is it the sense of the Conference that the words which have been read be inserted in the clause ? (*Agreed.*)

THE CHAIRMAN. — Now upon the question which Mr Miller raised, is it sufficient that it shall appear upon the Shorthand Note that, in the presence of Sir Leslie Scott, the learned Judge, Signor Berlingieri and other delegates to the Diplomatic Conference, it has been agreed that the intention of the Conference is not to construe the terms

which are expressed here, so as to interfere in any way with the law of general average, where there is no such express reference to the law of general average. Is that sufficient ? (*Agreed.*)

Dr BISSCHOP. — Before you leave this Article, I want to draw attention to this. It has been possible for the Committee to frame Rule 3 in a general way. I wanted to propose that this meeting should ask the Diplomatic Conference to bring Rule 3 and Rule 2 in harmony in this way, that also Rule 2 should be framed in a general way. It can easily be done.

THE CHAIRMAN. — Order ! Order ! The Conference has adopted Clause 2. The Conference has also adopted clause 3. If any question is to arise as to a representation to the Diplomatic Conference, we must make it independently.

Now Article IV, Clause 5. The question here is whether a representation shall be made to the Diplomatic Conference upon the subject of Article IV, clause 5, and in particular the limitation as to damage to an amount not exceeding £ 100 per package. I think I ought to take the sense of the Conference as to whether the Conference desires to make a representation to the Diplomatic Conference upon the terms of that Article.

Mr J. R. RUDOLF (Liverpool). — Mr Chairman. I am sorry, at this stage of our proceedings, to introduce anything which may appear to run counter to the spirit of unanimity which appears to prevail ; but, Sir, with regard

to this clause, the £ 100 limit of liability, you may recall that at the Hague Conference a moment arrived in our proceedings when I, as one of the representatives of cargo, had very frankly to state that, if the shipowners were not prepared to consider a limit of liability, in so far as I was concerned, and my constituents were concerned, I could not usefully remain at the Conference. You, on that occasion, Sir, very advisedly I think, suggested that we should adjourn for tea. We did follow that course, and after that innocent refreshment, those of us representing cargo came back with the £ 100 limit of liability in our pockets. That was owing in a great sense to the conciliatory spirit exhibited by the shipowners; and I say here frankly to-day that, with the values as they rule to-day as compared with the values which ruled at the time of our Conference at The Hague, I doubt very much if we would have got to-day such a minimum limit as £ 100; but it may be a satisfaction for our shipowner friends in years to come to remember that they dealt with us generously.

Now, Sir, why were we, as representatives of the cargo, so insistent upon having this minimum limit ? The reason was that we had found from bitter experience that, in the case of legislative enactments such as the Harter Act and other similar Acts, they provided for the nature of the liability to be assumed by the carrier, but they did not provide for the measure of damages which might flow from a breach of that responsibility on the part of the carrier; in other words the legislative enactments embodied in those documents were quite illusory. It was perfectly competent to a carrier, while being responsible

under the terms of the Act for the nature of the liability, to insert a stipulation in the contract of carriage to the effect that, as between the parties to the contract, the value per package should be agreed at so and so; in other words it practically rested with the carrier to say what amount he should be liable for in the event of damages occurring. Let me give the Conference, if I may, a concrete instance of what I have in mind. 20 bales of cotton insured under a bill-of-lading embodying the Harter Act were mis-delivered at Havre. The value of the cotton at that time was approximately £ 40 to £ 45 per bale, yet the bill-of-lading included the clause that the value as between the parties was to be taken as 100 dollars per bale. At the rate of exchange then ruling that represented some £ 25 per bale as against a value of £ 40 to £ 45. The carriers declined to pay anything more than 100 dollars per bale, and the Courts upheld their view. The Courts in this country I believe, the Courts in the United States I believe, and in many Continental countries, have also given their sanction to a stipulation of that nature in a contract. That is why we, as cargo representatives, consider that if you do away with this minimum limit of liability you destroy one of the twin corner stones of the whole principle of these Rules. We have fought as cargo owners for that, and we cannot, as far as the interests which I represent are concerned, consent to one of the most vital principles of the Rules being relegated to the consideration or to the decision of a body such as the Diplomatic Conference. The Diplomatic Conference may be perfectly well, and, I have no doubt, undoubtedly, capable to deal with all matters of jurisprudence and ques-

tions of drafting regulations, but I do say, Sir, that the Diplomatic Conference are not the body to consider questions of commercial values as between commercial men. (*Hear, hear.*) And I say that we should be very badly advised, I think, if we do not agree to allow that stipulation to remain in the Rules as amended, and as they are before us to-day, and to eliminate entirely any question of referring such a point to the Diplomatic Conference. (*Hear, hear.*)

Mr E. B. TREDWEN. — I should like to speak on this subject, because in the Australasian trade, which I particularly represent, the maximum limit, and it is a maximum limit not a minimum limit, as Mr Rudolf stated, is £ 200. In all these matters it is a question of compromise. We were not desirous of giving up the £ 200 which we can go up to under the previously existing bills-of-lading, but in order that we might carry out the agreements arrived at at The Hague we, as a trade, were willing to give up that and come to £ 100. But I think it will be a great mistake to go below that, and, particularly as £ 100 was agreed to at The Hague, I think we should carry out loyally the arrangements made at The Hague, and vary those Rules as little as possible. (*Hear, hear.*) Therefore I think it will be very undesirable to make any alteration in this, especially as in the trade I particularly represent it is half the amount that we previously were getting. (*Applause.*)

M. LAURENT TOUTAIN. — I have just a word to say. It is not quite clear to me if the provision in these Rules means that the £ 100 is the maximum responsibility, or

if there is to be admitted a proportion of it for the real value of the thing, or if the shipowner is always responsible up to the amount of £ 100. There are differences of decision on this question in the Courts.

THE CHAIRMAN. — I will ask Mr Franck to reply.

MR LOUIS FRANCK. — My Lords and Gentlemen. The reply is that this figure of £ 100 is a maximum limit and in all cases, and I think we ought to maintain it. It does not really matter very much : the main thing is that there is limit, and this is a very reasonable one, and I should say, a very generous one, and we ought not to ask more.

MR LÉOPOLD DOR. — I only want to ask Mr Franck whether he does not really mean a minimum limit ?

MR LOUIS FRANCK. — No.

MR LÉOPOLD DOR. — That is rather important.

MR LOUIS FRANCK. — It is a maximum.

MR LÉOPOLD DOR. — Do you mean that the £ 100 is the maximum, because I understand you to want to mean that the £ 100 is the minimum limit of responsibility, and that the shipowner cannot limit his liability for any package to less than £ 100.

MR LOUIS FRANCK. — Yes.

MR LÉOPOLD DOR. — I call that a minimum limit, not a maximum.

MR LOUIS FRANCK. — Oh, well.

THE CHAIRMAN. — The question which I submitted was whether the Conference desires to make any representation to the Diplomatic Conference upon the matter raised by Article IV, Rule 5. Does any member offer any further observations upon that ?

MR J. S. MC CONECHY. — I only wanted to say that it is not a question for the Diplomatic Conference, and I quite agree with all that Mr Rudolf has said. It is no use my wasting time by going over the ground again.

THE CHAIRMAN. — Mr Mc Conechy, as the members know, speaks for the Manchester interests in particular. Now I put the question : Is it the desire of the Conference that any representation should be made to the Diplomatic Conference upon the question involved in Article IV, clause 5? (No.) Then I take it that it is not the opinion of the Conference that any such representation should be made. That is agreed ? (*Agreed.*)

THE CHAIRMAN. — Then we proceed to Article V. It is proposed to add to Article V this clause or paragraph : « Nothing in these Rules shall prevent or control the making of any charter party or the issuance of bills-of-lading thereunder, but no provision in such bills-of-lading shall violate the terms of these Rules ». Is that the will of the Conference ? (*Agreed.*)

THE CHAIRMAN. — Now I think I have dealt with the points raised by the Report of the Sous-Commission,

and, that being so, I will ask Mr Franck, who has considered the form in which it is best to embody our conclusions, to make any motion it seems fit to him to make. I call upon His Excellency Monsieur Franck.

MR LOUIS FRANCK. — Well, my Lords and Gentlemen, I think that the time has now arrived to pass resolutions embodying the views which you have been expressing. I think the first resolution ought to be :

« This Conference agrees in substance with the principles
» which constitute the basis of the Hague Rules and the
» Rules for the Carriage of Goods by Sea, and regards these
» Rules as affording a solution alike practical and fair of
» the problem of Clauses in Bills-of-Lading excepting or
» limiting the liabilities of the Shipowner. »

It seems to me that that is the general opinion of the meeting. (*Cries of « Agreed ».*)

DR ERIC JACKSON. — Can we have it again.

THE CHAIRMAN. — The clause Monsieur Franck has read, of which I have a copy is in these words: « This Conference agrees in substance with the principles which constitute the basis of the Hague Rules and the Rules for the Carriage of Goods by Sea, and regards these Rules as affording a solution alike practical and fair of the problem of Clauses in bills-of-lading excepting or limiting the liabilities of the Shipowner ». I understand that Mr Franck moves that resolution. Does any member deem to offer any observation upon it ?

Mr A. P. MÖLLER. — Would it not be better, Sir, to say « These Rules as amended at the present Conference »?

Mr LOUIS FRANCK. — That is understood.

THE CHAIRMAN. — Monsieur Franck says that is understood, but he is ready to accept it.

Mr OTTO LIEBE. — We are in agreement with this resolution, and we intend to vote for it; but to avoid all misunderstanding, I beg to say only a very few words. As already mentioned yesterday, our system with regard to the bill-of-lading is quite different from the English and the American system. We only would like to say that we should not, by voting for this resolution, be regarded as binding ourselves, even as private individuals, to go back to our homes and say : « Well, now we recommend you to give up this old system which we have had for centuries, and to go over to the British and American system »; that we ought not to be regarded as bound in honour to do that by the fact that we voted for this resolution; and still more, I need perhaps not say, it ought not to be taken that the Danish delegates who go from here to Brussels can regard this point as a verbal point. That is all I wish to say. We intend to vote for it.

Mr EDVIN ALTEN (Norway). — Mr President and Gentlemen, as a delegate of the Norwegian Government to the Diplomatic Conference at Brussels, I find it also necessary to take a general reservation with regard to the resolution which has been proposed. Certainly I have no objection to the proposal that the Hague Rules shall

be submitted to the Diplomatic Conference for further consideration, but personally I am not at the present stage prepared or disposed to bind myself, and therefore I beg to join the reservation which has been made already on behalf of the Danish delegates.

MR ALGOT BAGGE (Sweden). — I have only to say, as a delegate from Sweden, that I quite agree with what has been said by the delegates of Denmark and Norway.

DR H. J. KNOTTENBELT (Holland). — Mr Chairman. I am ready to vote in favour of this resolution, but I want to point out that I am not entitled to bind in any way the Dutch shipowners. I must make that reservation.

THE CHAIRMAN. — I am sure the members of the Conference will appreciate the spirit in which the general feeling of the Conference has been met by the personal reservations made by the delegates who are sitting here with us, and will not in any way misunderstand.

JUDGE CHARLES M. HOUGH (United States). — If I may be permitted to say a few words, I and the colleague with whom I have the honour to serve, are not only appearing here as the representatives of our Maritime Law Association in the United States, but we likewise are *en route* to Brussels, where we hope to represent the United States Government, and may I join with the others in saying that, of course, while we may express our views, here — and I have attempted to express my views with reasonable freedom, — I am doing it here in London on

behalf of my brother members of the Maritime Law Association of the United States whether lay or legal (*Hear, hear*) from whom I had, before departing, most ample instructions, and received the advantages of their advice before coming. But, I take it that it goes without saying that all of us who have likewise received instructions from our several Governments, shall exercise full powers in accordance with our instructions when we change our nature, or our skin, or whatever be the proper simile, and endeavour to become diplomatists, which, for me at all events, will be an extremely difficult operation. With respect to the resolution which results from the labours of those three days, may I add, if I am in order, Mr Chairman, that this, as has been pointed out, is a business body : we are trying as best we may to do what ? I take it we are trying to submit to a diplomatic body, so called, at any rate a Governmental creation, a business project, (*Hear, hear*) with recommendations, which may or may not be listened to, which are of course subject to revision and to arguments next week and thereafter, to the end that some at least of our business desires may be transmuted into an international agreement. (*Hear, hear.*) Now what is the practical use of that in this year 1922. I am informed and believe, if I speak after the legal fashion, that the real reason why are here, a good many of you over on that side of the room, is that you wish to bring about a business arrangement which will forestall some action by Parliament, (*Hear, hear*) a proceeding which I have no doubt you are eminently in favour of, having had long experience with that body. We from the other side of the ocean can assure

you, Gentlemen, that, in the not inconsiderable area of the United States, transacting a fair business, if we do not bring home some advice from you, Gentlemen, which I for instance, in my humble capacity, can say represents the considered opinion of the world, which we can lay before the Executive Officers of our own Government and thereby guide if not forestall action by the Congress of the United States, an eminently respectable body concerning which I say nothing further (*Laughter*), we are certain to have legislation without any advice from you, Gentlemen, and without any advice from ourselves. Therefore the one point, if I have not spoken too long, I desire to impress upon you is that, if you are not going to be at the mercy of parties in Parliament on what is really a matter of business (*Hear, hear*), for God's sake, Gentlemen, have something concrete suggested, not final but thoughtful, (and we hope, have gotten it) to submit to a body of men who will be able to take it home authoritatively to the several countries from which they came. (*Applause.*)

SIR ANTON POULSON (Norway). — Mr President. After the reservations taken by others, I should wish on behalf of the majority of my Norwegian colleagues very shortly to say that, after having listened to and considered what has been so very ably said here on the questions raised, and having taken into consideration the position in which we stand relatively to an eventual result — I am thinking especially of the alternatives we are standing up against — between some international convention on the one side, and separate national legislation on the other. (*Hear,*

hear.) I feel quite confident that I am on the right side when I say, and the majority of my colleagues say, that we are fully prepared to vote for the resolution presented to us by the President of our Committee. (*Hear, hear.*) I ought perhaps to add that I do not know whether I am in accord or whether I am not in accord with the general opinion of Norwegian shipowners. I hope I am (*Hear, hear*), but I do not really know. I only know, and what I wish to say is, that after all that we have heard, when we vote here we vote on our own personal opinion (*Hear, hear*) and as members of this International Maritime Committee. We know our own minds on this matter, and I am rather glad that we have arrived as far as that in this intricate matter. (*Laughter and Applause.*)

THE CHAIRMAN. — Now I put to the Conference His Excellency the President's first resolution. On that resolution is the Conference agreed ? (*Agreed.*)

THE CHAIRMAN. — Then I will ask His Excellency to explain his second proposed resolution.

Mr LOUIS FRANCK. — The second resolution reads : « This Conference is of opinion that it is only by an international convention that it is possible to reach a general solution of the problem and of the serious conflicts of law which it raises ». It has been suggested to me that instead of putting it in that form it would be more agreeable to a part of the Conference that it should read : « This Conference is of opinion that an international Convention is the most desirable means of reaching a general solution of the problem and of the serious con-

flicts of law which it raises ». I am quite prepared to accept that form. In my personal opinion, and I think, in the opinion of the majority of the meeting, there is only one good way out of it, and that is the international Convention, but if it is said that it is the most desirable means of reaching a general solution of the problem and of the serious conflicts of law which it raises, that I think will do, and we can all accept it. (*Hear, hear.*)

THE CHAIRMAN. — The second resolution is in these terms :

« This Conference is of opinion that an International Convention is the most desirable means of reaching a general solution of the problem and of the serious conflicts of law which it raises ».

Is the Conference agreed ? (*Agreed.*)

THE CHAIRMAN. — Then comes a third resolution in these terms :

« The Conference expresses the wish that through the Permanent Bureau a Special Commission may be appointed which shall in cooperation with the Bureau prepare the draft of such Convention on these lines and on this footing, and that all necessary steps may be taken to ensure that the subject may be brought to the notice of the Diplomatic Conference meeting at Brussels on October 17th next ».

Is the Conference agreed ?

SIR STEPHEN DEMETRIADI. — May I move an amendment to that ?

THE CHAIRMAN. — Yes.

SIR STEPHEN DEMETRIADI. — I should like to move an amendment in place of 3), which we have just heard read out by you, Sir. This is the form of my amendment :

« This Conference expresses the wish that all necessary steps may be taken to ensure that the draft Convention now agreed shall be brought to the notice of the Diplomatic Conference on the 17th October 1922 ».

THE CHAIRMAN. — I gather that what Sir Stephen proposes is to omit any reference to a Commission, and to send the document to the Conference *simpliciter*. I think Mr Franck's view is that, if you can give them a lead, it might be helpful (*Hear, hear*) ; it might shorten their labours. (*Hear, hear.*) But I daresay Sir Stephen will add what he has to add upon his motion.

SIR NORMAN HILL. — If I might be allowed a word on behalf of the Sub-Committee appointed this morning, I endeavoured to explain that there were matters of expression of language upon which the Sub-Committee were quite clear that amendments were desirable, and should be inserted. We brought before you, Sir, and the Committee, all the points of moment. Now you have given us your orders and I do think that it would be a great mistake to let the drafts go forward with what are obvious imperfections in language. (*Hear, hear.*) I should be very sorry, Sir ; I think it would do more to delay the enactment of the Convention than anything else we pleased. I am absolutely in accord with Judge Hough. What we want as business men is to put in business language quite

clearly before the Diplomatic Conference what we want. At the moment we have not got it so stated.

THE CHAIRMAN. — I think I ought to remind the Conference that the Sous-Commission, at the will of the Conference, reported with great promptitude, and it reserved a variety of drafting amendments and amendments of that class for which it had no time, and as to which in its opinion it was not either necessary or practicable that the Conference as a whole should occupy its time. The question is whether the Sous-Commission, or some body of that kind, shall proceed with that labour so as to make the draft consonant, so far as practicable, with what has been declared as the intention of the Conference, or whether you shall cut short their labours and hand over the documents to the Diplomats next week. I think I will put the question to the Conference. Perhaps I might add this. I have been informed that the Chairman of the Sous-Commission has ascertained that his fellow members will be ready to proceed with the matter at once and to continue tomorrow this work which was interrupted.

SIR STEPHEN DEMETRIADI. — With what we have just heard, I accept that.

THE CHAIRMAN. — Very good.

Mr W. C. THORNE. — Before you put the resolution, Sir, does this resolution referring matters to the Diplomatic Conference embrace the resolution passed this morning relating to the Immunity of State-owned ships ?

THE CHAIRMAN. — No, not yet. Shall I read the third resolution, or have members appreciated it. (*Cries of « Agreed. »*)

THE CHAIRMAN. — Then the question is : Is the Conference agreed upon the third resolution ? (*Agreed.*)

THE CHAIRMAN. — Then, Gentlemen, I think that terminates the discussions upon the question of the Rules for the Carriage of Goods by Sea.

SIR STEPHEN DEMETRIADI. — I thought I had submitted to you a 4th resolution.

THE CHAIRMAN. — I was not aware, Sir Stephen, that it was your motion.

SIR STEPHEN DEMETRIADI. — I should like to move that a 4th resolution be submitted to this meeting in this sense :

« This Conference nevertheless recognises that in the
» event of failure of immediate action by International
» Convention the representatives of each nation are at
» liberty to press for immediate National legislation on
» the above lines ».

THE CHAIRMAN. — Do you add any observation ?

SIR STEPHEN DEMETRIADI. — No, except that our position is that we are bound here as a nation to immediate legislation, and we do not want anything to be done that will impair that legislation.

THE CHAIRMAN. — May I point out to Sir Stephen that what is embodied in this resolution is a mere declaration of the inherent liberty of every nation ?

SIR STEPHEN DEMETRIADI. — Quite so.

THE CHAIRMAN. — Every nation is at liberty to do this. As the Conference have told us day by day here that what is essential in their view of the matter is that, if there is to be a Convention it shall be a prompt Convention (*Hear, hear*), can we add to the force of that by sending in a resolution to the Diplomatic Conference ? (*No.*)

Mr LOUIS FRANCK. — I would strongly urge upon Sir Stephen not to press his motion. Surely, my Lords and Gentlemen, it cannot be the intention of our friends the cargo-owners to present a sort of ultimatum to the Diplomatic Conference. It is surely a very big thing to get the Governments to send a matter of this sort to a Diplomatic Conference: it is a still bigger thing to do it at such a short notice. If then you come and you say : « In the event of your failing to give us immediate action by international Convention, the representatives of each nation are at liberty to press for immediate national legislation on the above lines », really you are going to put us in an impossible position. You cannot dictate your terms in such a way to Governments or to Diplomatic Conferences. (*Hear, hear.*) They are very likely to take it not in the way which you expect, and I might say that instead of advancing the business you would really not do it. You may be sure that to leave it as it stands is the best way.

What I can say is this: I am also in various capacities here. I am not making any reservation, but I say that you may rely upon me for doing anything which is in my power to get all this quickly through and at the earliest possible opportunity, and I hope you will be satisfied with that. (*Loud applause.*)

MR R. A. PATTERSON. — Mr Chairman and Gentlemen, I am sorry that we cannot find ourselves completely in accord with Mr Franck on this matter. I would point out first of all that the resolutions that you are passing here to-day are not directions to the Diplomatic Conference in any shape or way : They are the expressions of the opinion of this Conference which may or may not be helpful to the Diplomatic Conference. Therefore you are not making any official pronouncement or direction in any way to the Diplomatic Conference. Then I want to make plain the position of the cargo-owners on this matter. The cargo-owners, shall I say without any unpleasant expression, have put themselves in direct opposition to much that has been done up to now. We have negotiated at the request of our own Government with the ship-owners, and we have come to terms with the shipowners who are acting in accord with us upon this matter for legislation. That was what we wanted, and that was what we hoped to have, and what I expect we shall have. At the same time when the members of this Conference, or those who direct it, came forward with a fresh scheme and approved the Rules, we were desirous of helping in every possible shape and way to get a general agreement (*Hear, hear*) ; and we are in accord with you that if you

can get it done by a general Convention we shall be only too pleased, and we shall do everything we can to help it forward. Please understand that there is no opposition, but you had no objection to these Gentlemen here making reservations. We make a pretty strong reservation, and our reservation goes a little stronger.

THE CHAIRMAN. — Mr Patterson, you said that I had made no objection to reservations by Gentlemen. I could make no objection to any reservation which any delegate desires to make; but the question here is not whether delegates shall make reservations, but whether this Conference shall present a resolution to the Diplomatic Conference.

MR R. A. PATTERSON. — May I make myself a little clearer? I am not in any way endeavouring, Sir, or would not be so presumptuous as to criticise what you have done in connection with these reservations. I am only saying that we want to make our position clear. (*Hear, hear.*) Our position is a very clear one. We do not wish to give up any advantage that we have or can get by legislation. We are of the opinion, on our side of the table, that there are very distinct advantages to be got by legislation. But on the other hand, if greater or more general advantages are to be obtained by Convention, we are quite willing to subscribe, as we have subscribed, to this first resolution, that it is the most desirable means of obtaining a solution of the problem. Having said that much, we certainly are not prepared to withdraw our claim that we shall reserve our liberty of action. It is all very well to tell us : « You have a general liberty of action », but we do

not want to be told afterwards, not by you gentlemen here, but by higher powers : « You gentlemen are pressing us for legislation on the one hand; on the other hand you are quite prepared to leave it to some future Conference ». We are desirous of having it immediately, and we only put this resolution because we desire to put our position on record that, in the event of failure of immediate action by international Convention, we intend to proceed with the pressure for legislation. I think that is clear. I do not want to say anything more.

MR E. B. TREDWEN. — I should like to oppose the amendment.

THE CHAIRMAN. — I am not sure that it is now an amendment. What Mr Patterson has said I think makes the matter more clear. He says that it is a record of the determination of the interests for which Sir Stephen Demetriadi, Mr Patterson and Mr Jackson have been speaking, to proceed with their claim for legislation in the event of failure to proceed by Convention.

MR E. B. TREDWEN. — Then, Sir, I object very much to the wording of the resolution because it appears to me to be an attempt to teach the other nations their business, and to tell them with effusive generality that they can go in for legislation if they like.

THE CHAIRMAN. — I do not think I made it clear that it is not a resolution : it is the declaration to the Conference of the personal position of the gentlemen who have spoken.

SIR STEPHEN DEMETRIADI. — That is quite correct, Sir.

THE CHAIRMAN. — Then does any member desire to offer any further observations upon the question whether the proceedings in respect of Carriage of Goods by Sea shall now be deemed to be closed? (*There being no response.*) Then I declare the proceedings of the Conference on the question of Carriage of Goods by Sea to be hereby closed. (*Applause.*) I think, Gentlemen, that, amongst the various words I have used to you, those are certainly the most welcome. (*Laughter and Applause.*)

* * *

There is one matter with regard to Immunity of State-owned ships.

We adopted this morning unanimously and with very distinct emphasis, the report of the Committee or Sub-Commission on the question of Immunity of State-owned ships. Is it your desire that the representatives of the various Governments shall take such action as is practicable to secure procedure upon those resolutions at the Diplomatic Conference which is now imminent? (*Agreed.*)

SIR LESLIE SCOTT. — Before we adjourn, I should like, if I may, on behalf of the whole Conference, to move two votes of thanks; one to our Chairman (*Loud applause*) for that wonderful combination of tact, courtesy and firmness which has enabled us to arrive at so remarkable and successful a result on both subjects. I desire also to propose a vote of thanks to the Treasurer and the Masters of the Bench of this Inn for so kindly putting this Hall at our disposal, and to tell them that we believe that their kindness is likely to be fruitful. (*Applause.*)

Mr LOUIS FRANCK. — My Lords and Gentlemen, I beg most cordially to second the motion of Sir Leslie Scott. We are greatly indebted certainly to this Inn of Court for the hospitality they have given us in this beautiful building, and I am quite sure that in this Conference, where there have been so many unanimous votes, there will be none more unanimous than the thanks of the meeting to Sir Henry Duke who has so ably presided over us. (*Applause.*)

SIR LESLIE SCOTT. — I put both resolutions. (*Carried by acclamation.*)

THE CHAIRMAN. — Gentlemen. I said to you at the opening of your proceedings that I deemed it to be a very great honour to be invited to take the Chair at these sessions. I said also that I knew you had before you not only a task which I conceived to be of very great importance in the business world and outside the business world, but a task of almost equal difficulty. It is a very proud thing to me to have been associated with the efforts of so many distinguished representatives of commercial interests, and of the interests associated with commerce, as well as with those of the distinguished lawyers who are here, in the endeavour to promote human progress upon lines where human progress is perhaps most safely to be promoted, and most sure of benefit when it is devised. I thank you most heartily. (*Loud applause.*)

Mr WYNDHAM BEWES. — Before we close may I suggest that we are perhaps forgetting what lies mostly at

my heart, and that is to express the thanks of this Conference, and I should like it to come from that Bench, to our friend Dr Bisschop for all the untold labours which are represented on the table here. Nothing can exceed his hard work and zeal and I am quite sure, though we have not yet said anything about it, that we all feel extremely grateful to him, and would like to express it. (*Applause.*)

Mr LOUIS FRANCK. — My Lords and Gentlemen. The debt of gratitude of your foreign colleagues is not solved or paid by what has been said. We have had the great honour and pleasure and benefit of the hospitality so kindly and generously shown to us by several great British Corporations and bodies, the Maritime Law Committee of the International Law Association, the Honourable Society of the Inner Temple, the Chamber of Shipping of the United Kingdom, the Association of Bankers, the Association of Underwriters, the Liverpool Steamship Owners' Association, and last — not least, but it is alphabetical order that brings it there — Lloyds Committee. We are greatly indebted to all of these Associations for what they have so kindly done for us. There is no doubt that such a series of manifestations are a great proof that the ideal for which we are standing here, of giving to all seafaring nations and commercial men interested in maritime affairs the benefit of one uniform law on all seas and in all ports, is commanding the heartiest sympathy of the English commercial community. Really, gentlemen, we are exceedingly thankful for what you have been kind enough to do for us. I therefore move that a vote of

thanks should be accorded by our foreign colleagues to these various British Associations, and I would ask Professor Berlingieri, who has kindly announced that he would support my motion, to say a few words in support.

M. FR. BERLINGIERI (Gênes). — Je crois être l'interprète de toute la Conférence en appuyant avec toute l'effusion du cœur les expressions de gratitude et de remerciements qui viennent d'être prononcées par notre président M. Franck.

J'espère et je souhaite de tout cœur que les solutions que nous avons adoptées trouveront un accueil favorable à la Conférence diplomatique qui se réunit dans quelques jours et que les décisions de la Conférence diplomatique seront favorables au commerce maritime et à la navigation. (*Applaudissements.*) A cette occasion, j'adresse les plus sincères félicitations à mon vieil ami Sir Leslie Scott... (*Applaudissements.*)

SIR LESLIE SCOTT. — Tous mes remerciements !

THE CHAIRMAN. — Before I close, the President asks me to say that the Permanent Members are requested to attend a meeting forthwith. Having complied with that request, I declare this session of the Comité Maritime closed. (*Applause.*)

Administrative Sitting

General Meeting of the Permanent Members of the International Maritime Committee.

After the closing sitting of the Conference, the Permanent Members of the International Maritime Committee gathered in general meeting under the Presidency of Mr LOUIS FRANCK.

The meeting ascertained that the Permanent Bureau had been appointed in Antwerp for a period extending to 1924.

At the invitation of Prof. Dr BERLINGIERI, it was decided in principle that the next Conference will be held in Italy, the Maritime Law Association of that country eventually to choose the town where the Conference is to meet.

Were appointed as Permanent Members :

For the United States : His Honour Judge HOUGH and
Mr BEECHER.

For Greece : Mr TYPALDO BASSIA.

For Denmark : Mr KLINGAARD and Mr KRISTIAN SIND-
BALLE.

For Norway : Mr JHS JANTZEN, Mr EINAR POULSSON and
Mr EDVIN ALTEN.

For Great-Britain : SIR ERNEST GLOVER, Mr W. R. BIS-
SCHOP and Mr STANLEY TODD.

For France : Mr GEORGES RIPERT, Mr GEORGES MARAIS,
Mr LÉOPOLD DOR, Mr LAURENT TOUTAIN, and
Mr P. DE ROUSIERS.

For the Netherlands : Dr VAN SLOOTEN.

Mr TYPALDO BASSIA (Greece), Sir ANTON POULSSON
(Norway) and Mr MATSUNAMI (Japon) replacing Mr
KAKICHI UCHIDA, who resigned, were appointed Coun-
cillors to the Permanent Bureau.

INDEX

N.B. — In this Index *Immunity* means « *Immunity of State-owned ships* ».
 — *Bills-of-lading* means « *Rules for the Carriage of Goods by Sea* »
 and « *Amended Hague Rules* », also « *Negligence Clauses in Bills-of-lading* ».

	PAGES
ADMINISTRATIVE SITTING	505
AGENDA-PAPER of Conference	XL
ALTEN (Edvin), Norway,	
Speaking on Bills-of-Lading	488
BAGGE (Dr Algot), Sweden,	
Speaking on Bills-of-Lading	431
BASSIA (Mr A. Typaldo), Athens,	
Appointed vice-president of Conference	223
Reply to opening speech	221
Speaking on Immunity	306
BEECHER (Norman R.), Washington,	
Speaking on Bills-of-Lading	430
BERLINGIERI (Prof. Dr Francesco), Genoa,	
Appointed vice-president	223
Speaking on Immunity	261
Speaking on Bills-of-Lading	400
BEWES (Wyndham A.), London,	
Speaking on Immunity	436
BILLS-OF-LADING (Certain Rules as to Carriage of Goods by Sea),	
Discussion	313
BISSCHOP (Dr W. R.), London,	
Appointed Hon. Gen. Secretary of Conference ...	223
Speaking on Immunity	271, 297, 307
BUREAU of the Conference (Election of)	222

	PAGES
DEMETRIADI (Sir Stephen), London,	
Speaking on Bills-of-Lading	364, 473
Proposing resolution	421, 494
DOR (Leopold), Marseilles,	
Speaking on Immunity	286
Speaking on Bills-of-Lading	392, 468
DUKE (Sir Henry), London,	
Elected Chairman of the Conference	215
Opening address	215
Speaking on Immunity	223, 295
Speaking on Bills-of-Lading	313
FRANCK (Louis), Brussels,	
Inaugural address	211
Speaking on Immunity	273, 284
Speaking on Bills-of-Lading	407, 421, 466, 497
Proposing Resolution on Bills-of-Lading	487, 492
Moving vote of thanks	503
GLOVER (Sir Ernest), London,	
Speaking on Bills-of-Lading	379, 474
GOVARE (James Paul), Paris,	
Speaking on Immunity	300
HAGUE RULES (amended),	
Proposals of French Association	94
Report of Maritime Law Committee	159
Report of Swedish Association	193
Discussion	313
HAIGHT (Charles S.), New-York,	
Speaking on Bills-of-Lading	439
HILL (Sir Maurice), London,	
Speaking on Immunity	230, 283, 302
Report for Sub-Committee on Immunity	433
HILL (Sir Norman), Liverpool,	
Speaking on Immunity	257, 282, 300
Resolution on Immunity	281
Speaking on Bills-of-Lading	342, 355, 381, 386
Report of Commission on Bills-of-Lading	447

	PAGES
HOUGH (Judge Charles M.), New-York,	
Appointed vice-president of Conference	223
Answering inaugural address	220
Speaking on Immunity	268
Speaking on Bills-of-Lading	318, 356, 489
HURD (H. B.), Glasgow,	
Speaking on Bills-of-Lading	477
IMMUNITY of State-owned ships,	
Discussion	223, 433
Special Sub-Committee on	311
Report of Sub-Committee on	433
Resolutions of Conference on	v, 435
JACKSON (Dr Eric), London,	
Speaking on Bills-of-Lading	32, 392, 455, 461
KIEP (Dr Leisler), Hamburgh,	
Appointed vice-president of Conference	223
Speaking on Immunity	253
Speaking on Bills-of-Lading	426
KNOTTENBELT (Dr H. J.), Netherlands,	
Speaking on Bills-of-Lading	340
KOCH (Dr Jorgen), Copenhagen,	
Appointed vice-president of Conference	223
LANGTON (George P.), London,	
Appointed Hon. General Secretary of Conference.	223
LECLERCQ (Georges), Brussels,	
Speaking on Immunity	292
LE JEUNE (Albert), Antwerp,	
Appointed vice-president of Conference	222
LIEBE (Dr Otto), Copenhagen,	
Speaking on Immunity	256
Speaking on Bills-of-Lading	325, 488
LIST of Attendance at Conference	xxxii
LODER (B. C. J.), The Hague,	
Appointed vice-president of Conference	223
Answering inaugural address	219
Speaking on Immunity	239

	PAGES
LÖFGREN (Dr Eliel), Gothemburg, Appointed vice-president of Conference	223
MARAIS (Georges), Paris, Report on International Code of Affreightment ...	11
MATSUNAMI (Prof. Dr N.), Tokyo, Note on Immunity	189
Mc CONECHY (J. L.), Manchester, Speaking on Bills-of-Lading	486
MEMBERS of Permanent bureau	xiv
of International Maritime Committee	xvi
of London Conference 1922	xxxii
MILLER (Harry R.), London, Speaking on Bills-of-Lading	476
MÖLLER (A. P.), Copenhagen, Speaking on Bills-of-Lading	330, 361, 466
NATIONAL ASSOCIATIONS (List of)	xxvi
NEXT CONFERENCE	505
OHTANI (M. Norboru), Tokyo, Speaking on Bills-of-Lading	404
OKAMOTO (M. Takezo), Japan, Appointed vice-president of Conference	223
PAINE (W. W.), London, Speaking on Bills-of-Lading	376, 428
PARCEL-POST (International system of), Proposal of French Association	11
Report of Mr Emile Audouin	25
PATTERSON (R. A.), Speaking on Bills-of-Lading	478, 498
PETRIE (James), London, Speaking on Bills-of-Lading	405
PERMANENT BUREAU	xiv
POULSSON (Sir Anton), Christiania, Appointed vice-president of Conference	223
Speaking on Bills-of-Lading	491
PREFACE	▼

PRELIMINARY REPORTS :

ON IMMUNITY

	PAGES
<i>Great-Britain</i> : Report of Sir Maurice Hill	1
Report of Maritime Law Committee	44
<i>France</i> : Report of Mr George Ripert	61
Proposal of French Association	92
<i>Netherlands</i>	96
<i>Italy</i>	106
<i>Denmark</i>	121
<i>Fiume</i> (Report Dr Ant. Vio)	126
<i>Greece</i>	133
<i>Belgium</i>	143
<i>Japan</i>	187
<i>United-States America</i>	190, 196
<i>Sweden</i>	194

ON BILLS-OF-LADING

(Negligence clauses and amended Hague Rules)

<i>Netherlands</i>	96
<i>Belgium</i>	136, 139
<i>Denmark</i>	112
<i>Greece</i>	131
<i>Japan</i>	186
<i>Sweden</i>	191

INTERNATIONAL CODE ON AFFREIGHTMENT

<i>France</i> : Report of Mr Georges Marais... ..	11
<i>Norway</i> : Report of Norwegian Association	55
<i>Netherlands'</i> Association Report	95
RESOLUTIONS of the Conference	v/XI
RIPERT (Georges), Paris,	
Report on Immunity	61

	PAGES
RUDOLF (J. R.), Liverpool,	
Speaking on Bills-of-Lading	481
SCOTT (Sir Leslie), London,	
Appointed vice-president of Conference	222
Speaking on Bills-of-Lading	354, 358, 369, 382
Moving vote of thanks	501
SESSIONS of the Conference,	
Monday, 9th October, morning	211
Monday, 9th October, afternoon	256
Tuesday, 10th October, morning	313
Tuesday, 10th October, afternoon	364
Wednesday, 11th October, morning	433
Wednesday, 11th October, afternoon	446
SHORTHAND REPORT on Proceedings of Conference.	211
SOHR (Frederic), Antwerp,	
Appointed Hon. General Secretary of Conference.	223
Speaking on Immunity	305
STATUTES of International Maritime Committee	xii
STERNDALE (Lord), London,	
Seconding motion	215
Speaking on Bills-of-Lading	383
SUB-COMMITTEE on Immunity,	
Appointment of	311
Report of	433
SUB-COMMITTEE on Bills-of-Lading,	
Report of	447
SYNOPTICAL TABLE on Immunity	207
THORNE (William Calthrop), Liverpool,	
Speaking on Immunity	264
TOUTAIN (Laurent), France,	
Speaking on Bills-of-Lading	321, 484
TREDWEN (E. B.), London,	
Speaking on Bills-of-Lading	389, 484
VAN SLOOTEN (Dr), Amsterdam,	
Speaking on Immunity	304

	PAGES
VERNEAUX (René), Paris,	
Appointed vice-president of Conference	223
Answering opening address	220
Speaking on Immunity	250
Speaking on Bills-of-Lading	387
VIO (Dr Antonio), Fiume,	
Report on Immunity	126

